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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT-SECOND SESSION

COMMITTEE ON DELEGATED LEGISLATION

REPORT ON THE CIVIL AVIATION (REMOTE PILOTED
AIRCRAFT SYSTEMS) REGULATIONS, 2017

JUNE 2018

Directorate of Committee Services
The National Assembly,
Parliament Buildings, Continental House, Room 402
NAIROBI

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ABBREVIATIONS

EM	Explanatory Memorandum
KCAA	Kenya Civil Aviation Authority
LN	Legal Notice
RMA	Regulatory Making Authority
SI Act	Statutory Instruments Act
SI	Statutory Instruments
SO	Standing Order

CHAIRPERSON'S FOREWORD


In exercise of the powers conferred by section 82 of the Civil Aviation Act, 2013, the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development, published the Civil Aviation (Remote Piloted Aircraft Systems) Regulations, 2017 on 6th October, 2017 vide LN No.259/2017.

Following publication, the Regulations were tabled in the House on 21st November, 2017 and immediately committed to the Select Committee on Delegated Legislation for review and scrutiny pursuant to section 12 of the Statutory Instruments Act, 2013 and Standing Order (SO) 210 of the National Assembly Standing Orders.

The Committee extensively considered the Regulations in several sittings between January 2018 and 15th May 2018, when the decision to annul the Regulations was made, for reasons advanced herein. In considering the Regulations, the Committee conferred with the Kenya Civil Aviation Authority (KCAA) pursuant to Section 16 of the Statutory Instruments Act (SI Act), 2013 both at Parliament Buildings and at their office headquarters in Embakasi, Nairobi.

The Committee wishes to express its gratitude to the Speaker for the support accorded to the Committee in the discharge of its mandate. The Committee also wishes to record its appreciation to the Office of the Clerk of the National Assembly and the supporting Directorates for providing technical support which was vital in the consideration of this instrument.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 210 (4), it is my pleasure and duty to present to the House the Committee's Report on the Civil Aviation (Remote Piloted Aircraft Systems) Regulations, 2017.

Signed.....
HON. GLADYS BOSS SHOLLEI, CBS, MP

Date.....5/6/2018.....

EXECUTIVE SUMMARY

The Civil Aviation (Remote Piloted Aircraft Systems) Regulations, 2017 were tabled in the House on 21st November 2017 and immediately committed to the Select Committee on Delegated Legislation for review and scrutiny pursuant to section 12 of the SI Act, 2013 and SO 210 of the National Assembly Standing Orders.

Having considered the Regulations, the Committee observed that they were published on 6th October, 2017 and submitted to the National Assembly on 21st November, 2017. This was within the statutory timeline contemplated under section 11(1) of the Statutory Instruments Act.

The Committee observed that annexed to the Regulations was an explanatory memorandum which lacked in detail as required by section 5 read together with the Schedule to the Statutory Instrument Act hence it was not possible to analyse the extent of public participation or level of consultation required by the Act and the spirit of Article 10 and Article 118 of the Constitution.

Similarly, the Committee observed that despite the limitation in section 24(5) of Statutory Instruments Act that Regulations may only provide for a maximum fine of twenty thousand shillings or a maximum prison term of six months, the penalty imposed by Regulation 56 of five million or six-month imprisonment, or both was in contravention of Sec. 82 (4) of the Civil Aviation Act (No 21 of 2013) which allows for the imposition of a fine not exceeding two million or three years imprisonment. In addition, Section 13(n) of Statutory Instruments Act requires the Committee to consider if the Regulations impose a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation.

In view of the foregoing, the Committee recommends that pursuant to Standing Order 210 (4) (b) and section 15 (1) of the SI Act, the Civil Aviation (Remote Piloted Aircraft Systems) Regulations, 2017 be annulled in entirety for the following reasons –

THAT –

- i) despite the limitation in section 24(5) of Statutory Instruments Act that Regulations only provide for a maximum fine of twenty thousand shillings or a maximum prison term of six months, section 82 of the Civil Aviation Act allows for imposition of a fine through Regulations made thereunder. Section 13(n) of the Statutory Instruments Act further requires the Committee to take into consideration whether the Regulations impose a fine,

- imprisonment or other penalty without express authority having been provided for in the enabling legislation. Therefore, the penalty imposed by Regulation 56 of five million or six-month imprisonment, or both, contravenes Sec. 82 (4) of the Civil Aviation Act (No 21 of 2013) which allows for the imposition of a fine not exceeding two million or three years imprisonment;
- ii) the regulation-making authority, Kenya Civil Aviation Authority, did not undertake adequate public participation, as required by the Statutory Instruments Act and Article 10 and Article 118 of the Constitution on public participation, read together with Sections 5 and 11 (2) of the Statutory Instruments Act, 2013;
 - iii) in addition, pursuant to Section 13(q) of the Statutory Instrument Act, 2013, the Committee raised constitutional concerns regarding issues of safety, security and infringement of rights to personal privacy under the Bill of Rights, which are implied but are not *prima facie* latent on the Regulations, and which were not sufficiently addressed by the regulation-making authority during their elucidation, hence contravening Article 2(4) of the Constitution and sections 13 (h) of the Statutory Instruments Act; and
 - iv) the Regulations as published require further amendments to address various pertinent issues raised including reviewing of licensing fees and privacy concerns, amongst others.

1.0 PREFACE

The Select Committee on Delegated Legislation is established pursuant to *Standing Order No. 210* and is mandated to consider statutory instruments submitted to Parliament for consideration. The Committee is expected to consider in respect of any statutory instrument, whether it is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws.

1.1 Mandate of the Committee

The Committee is mandated to consider in respect of any statutory instrument, whether it: -

- (i) is in accordance with the provision of the Constitution, the Act pursuant to which it is made or other relevant written laws;
- (ii) infringes on fundamental rights and freedoms of the public;
- (iii) contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;
- (iv) contains imposition of taxation;
- (v) directly or indirectly bars the jurisdiction of the court;
- (vi) gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;

The Committee is equally tasked with the responsibility of scrutinizing statutory instruments, whether: -

- (i) it involves expenditure from the consolidated fund or other public revenues;
- (ii) is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
- (iii) appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
- (iv) appears to have had unjustifiable delay in its publication or laying before Parliament;
- (v) makes rights, liberties or obligations unduly dependent upon non-renewable decisions;
- (vi) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
- (vii) inappropriately delegates legislative powers;

- (viii) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
- (ix) appears for any reason to infringe on the rule of law;
- (x) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
- (xi) accords to any other reason that the Committee considers fit to examine.

1.2 Committee Membership

The Committee on Delegated Legislation as constituted by the House in December 2017 comprises of the following Members –

Hon. Gladys Boss Shollei, CBS, MP	- Chairperson
Hon. Fatuma Gedi, MP	- Vice- Chairperson
Hon. Alice Wahome, MP	
Hon. Robert Mbui, MP	
Hon. Daniel Maanzo, MP	
Hon. Muriuki Njagagua, MP	
Hon. Isaac Waihenya Ndirangu, MP	
Hon. Alfred Bernard Wekesa Sambu, MP	
Hon. William Kamket Kassait, MP	
Hon. Ronald Kiprotich Tonui, MP	
Hon. Munene Wambugu, MP	
Hon. Charles Gimose, MP	
Hon. Abdi Koropu Tepo, MP	
Hon. George Gitonga Murugara, MP	
Hon. Jennifer Shamalla, MP	
Hon. Muturi Kigano, MP	
Hon. Martha Wangari, MP	
Hon. Patrick Kariuki Mariru, MP	
Hon. Timothy Wanyonyi, MP	
Hon. William Kamoti, MP	
Hon. Wilberforce Oundo, MP	
Hon. Sammy Seroney, MP	

1.3 Committee Secretariat

The secretariat comprises of the following members of staff –

Mr. Susan Maritim	Clerk Assistant I (Team Leader)
Mr. Jimale Mohamed	Clerk Assistant III
Mr. Dima Dima	Senior Legal Counsel
Ms. Mugure Gituto	Legal Counsel II
Ms. Anne N. Kigoro	Research & Policy Analyst

2.0 CONSIDERATION OF THE INSTRUMENT

2.1 Introduction and Background Information

The Regulations provide for the classification of Remote Piloted Aircraft Systems (RPAS) in terms of their weight and usage, the eligibility of ownership of RPAS, conditions of importing and export of the RPAS, the requirements for manufacture, assembling and testing of RPAS, procedures of registration and deregistration of RPAS and that RPAS must at all times be in airworthy condition.

The Regulations also deal with the operations of RPAS specifying the general obligations placed on the owner or operator, creating offences and sets the penalties for noncompliance with the requirements of the Authority at a maximum of two million of six-month imprisonment or both. Further, the Regulations prohibit the operation of RPAS negligently recklessly or without authorization from the Authority. It also prohibits carriage of dangerous goods in the RPAS, operating of RPAS in congested areas or crowds, avoidance of collision of RPAS, certification of RPAS pilots or instructors, reporting of incidents and accidents by RPAS, prohibition of international RPAS., cancellation, suspension or variation of authorization granted to operate RPAS, requirements for filing of flight plans, development of emergency and contingency links, ensuring that the owner or operator is in command at all times, and outlines certain limitations for operating RPAS. The Regulations also require the operator be in communication with Air Traffic Communication and prohibits operation in the vicinity of aerodromes unless with the consent of the Authority.

2.2 Making of the Regulations and Committal to the Committee

In exercise of the powers conferred by conferred by section 82 of the Civil Aviation Act, 2013, the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development, published the Civil Aviation (Remote Piloted Aircraft Systems) Regulations, 2017 on 6th October, 2017 vide LN No.259/2017.

Following publication, the Regulations were tabled in the House on 21st November, 2017 and immediately committed to the Select Committee on Delegated Legislation for review and scrutiny pursuant to section 12 of the Statutory Instruments Act, 2013 and Standing Order (SO) 210 of the National Assembly Standing Orders.

2.3 Consideration of the Instrument

The Committee extensively considered the Regulations in several sittings between January 2018 and 15th May 2018, when the decision to annul the Regulations was made, for reasons advanced hereunder. In considering the Regulations, the Committee conferred with the Kenya Civil Aviation Authority (KCAA) pursuant to Section 16 of the Statutory Instruments Act (SI Act), 2013 both at Parliament Buildings on 20th February, 2018 and at their office headquarters in Embakasi, Nairobi on 24th April, 2018.

The Committee considered the Regulations 2017 against the Constitution of Kenya, the Civil Aviation Act, 2013, the Statutory Instruments Act, (No. 23 of 2013) and the Interpretation and General Provisions Act, (Chapter 2) which regulate the making, scrutiny and publication of the Regulations.

2.4 Committee Observations

After extensive scrutiny of the Regulations as presented and having conferred with the regulation-making authority, the Committee observed **THAT** –

- v) despite the limitation in section 24(5) of Statutory Instruments Act that Regulations only provide for a maximum fine of twenty thousand shillings or a maximum prison term of six months, section 82 of the Civil Aviation Act allows for imposition of a fine through Regulations made thereunder. Section 13(n) of the Statutory Instruments Act further requires the Committee to take into consideration whether the Regulations impose a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation. Therefore, the **penalty imposed by Regulation 56 of five million or six-month imprisonment, or both, contravenes Sec. 82 (4) of the Civil Aviation Act (No 21 of 2013) which allows for the imposition of a fine not exceeding two million or three years imprisonment.**
- vi) the regulation-making authority, **Kenya Civil Aviation Authority, did not undertake adequate public participation, as required by the Statutory Instruments Act and Article 10 and Article 118 of the Constitution on public participation, read together with Sections 5 and 11 (2) of the Statutory Instruments Act, 2013;**

vii) in addition, pursuant to Section 13(q) of the Statutory Instrument Act, 2013, the Committee raised constitutional concerns regarding issues of safety, security and infringement of rights to personal privacy under the Bill of Rights, which are implied but are not *prima facie* latent on the Regulations, and which were not sufficiently addressed by the regulation-making authority during their elucidation, hence contravening Article 2(4) of the Constitution and sections 13 (h) of the Statutory Instruments Act.

viii) the Regulations as published require further amendments to address various pertinent issues raised including reviewing of licensing fees and privacy concerns, amongst others.

3.0 RECOMMENDATION

Having considered the Civil Aviation (Remote Piloted Aircraft Systems) Regulations 2017 against the Constitution of Kenya, the Civil Aviation Act, 2013, the Statutory Instruments Act, (No. 23 of 2013) and the Interpretation and General Provisions Act, (Chapter 2) which regulate the making, scrutiny and publication of the Regulations; and having extensively conferred with the regulation-making authority, the Committee **recommends that** pursuant to Standing Order 210 (4) (b) and section 15 (1) of the SI Act, **the Civil Aviation (Remote Piloted Aircraft Systems) Regulations 2017 be annulled in entirety.**

ANNEXURES

- (i) Minutes of Committee
- (ii) Sitings
- (iii) Adoption List
- (iv) Copy of the Civil Aviation (Remote Piloted Aircraft Systems) Regulations, 2017

MINUTES OF THE 33RD SITTING OF THE COMMITTEE ON DELEGATED
LEGISLATION HELD ON TUESDAY, 15TH MAY, 2018, AT 11.00 A.M. IN THE
COMMITTEE ROOM 12 AT MAIN PARLIAMENT BUILDINGS

PRESENT

Hon. Fatuma Gedi, MP - Vice Chairperson
Hon. George Gitonga Muragara, MP
Hon. Alice Wahome, MP
Hon. (Dr.) Wilberforce Oundo, MP
Hon. Timothy Wanyonyi, MP
Hon. Charles Gimose, MP
Hon. Martha Wangari, MP
Hon. Patrick Kariuki Mariru, MP
Hon. Munene Wambugu, MP
Hon. Sammy Seroney, MP

ABSENT WITH APOLOGY

Hon. Gladys Boss Shollei, CBS, MP - Chairperson
Hon. Daniel Maanzo, MP
Hon. Robert Mbui, MP
Hon. Jennifer Shamalla, MP
Hon. William Kamoti, MP
Hon. Isaac Waihenya Ndirangu, MP
Hon. Muriuki Njagagua, MP
Hon. Ronald Kiprotich Tonui, MP
Hon. Abdi Koropu Tepo, MP
Hon. William Kamket Kassait, MP
Hon. Alfred Sambu, MP
Hon. Muturi Kigano, MP

IN-ATTENDANCE

National Assembly Secretariat

Ms. Susan Maritim - First Clerk Assistant
Mr. Jimale Mohamed - Third Clerk Assistant
Mr. Dima Dima - Senior Legal Counsel
Ms. Rahima Manzura - Secretary

MIN.NO. CDL/193/2018:

PRAYER & PRELIMINARIES

The Vice Chairperson called the meeting to order at 10.25 a.m. followed by prayer.

MIN.NO. CDL/194/2018: CONFIRMATION OF MINUTES FROM PREVIOUS SITTINGS

Minutes of the 27th sitting were read and confirmed as a true record of the proceedings having been proposed and seconded by Hon. Sammy Seroney, MP and Hon. Wambugu Munene, MP respectively.

Minutes of the 28th sitting were read and confirmed as a true record of the proceedings having been proposed and seconded by Hon. Wambugu Munene, MP and Hon. Sammy Seroney, MP respectively.

Minutes of the 29th sitting were read and confirmed as a true record of the proceedings having been proposed and seconded by Hon. Sammy Seroney, MP and Hon. Wambugu Munene, MP respectively.

Minutes of the 31st sitting were read and confirmed as a true record of the proceedings having been proposed and seconded by Hon. Patrick Mariru, MP and Hon. Sammy Seroney, MP respectively.

Minutes of the 32nd sitting were read and confirmed as a true record of the proceedings having been proposed and seconded by Hon. George Gitonga, MP and Hon. Sammy Seroney, MP respectively.

MIN.NO. CDL/195/2018: MATTERS ARISING

No matter arose.

MIN.NO. CDL/196/2018: CONSIDERATION OF CIVIL AVIATION (REMOTE PILOTED AIRCRAFT SYSTEMS) REGULATIONS 2017

The Committee considered the Civil Aviation (Remote Piloted Aircraft Systems) Regulations 2017 and was informed that –

- i) the Regulations 2017 were published on 6th October, 2017 and submitted to the National Assembly on 21st November, 2017, being within the statutory timeline contemplated under section 11(1) of the Statutory Instruments Act;
- ii) the Regulations are made pursuant to section 82 of the Civil Aviation Act, which section has been properly cited as enabling the CS to make the Regulations;
- iii) the Regulations were accompanied by an explanatory memorandum which lacked in detail as required by section 5 read together with the Schedule to the Statutory Instrument Act hence it was not possible to analyse the extent of public participation or level of consultation required by the Act and the spirit of Article 10 and Article 118 of the Constitution;
- iv) despite the limitation in section 24(5) of Statutory Instruments Act that Regulations may only provide for a maximum fine of twenty thousand shillings or a maximum prison term of six months, the penalty imposed by Regulation 56 herein of five million or six month imprisonment, or both is in contravention of Sec. 82 (4) of the Civil Aviation Act

(No 21 of 2013) which allows for the imposition of a fine not exceeding two million or three years imprisonment. Sections 13(n) of Statutory Instruments Act requires that the Committee considers if the Regulations imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation .

Committee Observations

After careful consideration of the Regulations as presented and having conferred with the regulation-making authority during a visit to KCAA headquarters on 24th February 2018, the Committee observed THAT -

- i) the Regulations conform both to the parent Act and the Statutory Instruments Act;
- ii) the regulatory-making authority did not undertake adequate stakeholder consultations and engagement before publishing the Regulations;
- iii) KCAA officials admitted during the field visit that the Regulations needed further improvements on various issues including reviewing of licensing fees and privacy concerns, amongst others.

Committee Resolution

Having considered the Civil Aviation (Remote Piloted Aircraft Systems) Regulations 2017 against the Constitution of Kenya, the Civil Aviation Act, 2013, the Statutory Instruments Act, (No. 23 of 2013) and the Interpretation and General Provisions Act, (Chapter 2) which regulate the making, scrutiny and publication of the Regulations, the Committee recommends that pursuant to Standing Order 210 (4) (b) and section 15 (1) of the SI Act, the Civil Aviation (Remote Piloted Aircraft Systems) Regulations 2017 be annulled in entirety for the following reasons:-

- a) THAT, despite the limitation in section 24(5) of Statutory Instruments Act that Regulations only provide for a maximum fine of twenty thousand shillings or a maximum prison term of six months, section 82 of the Civil Aviation Act allows for imposition of a fine through Regulations made thereunder. However, the penalty imposed by Regulation 56 herein of five million or six month imprisonment, or both , contravenes Sec. 82 (4) of the Civil Aviation Act (No 21 of 2013) which allows for the imposition of a fine not exceeding two million or three years imprisonment. Section 13(n) of the Statutory Instruments Act requires that *the Committee considers if the Regulations imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;*
- b) the regulation-making authority did not undertake adequate public participation, as required by the Statutory Instruments Act and Article 10 and Article 118 of the Constitution on public participation, read together with Sections 5 and 11 (2) of the Statutory Instruments Act, 2013;
- c) pursuant to Section 13(q) of the Statutory Instrument Act, 2013, the Committee raised constitutional concerns regarding issues of safety, security and infringement of rights to

personal privacy under the Bill of rights, which are implied but are not *prima facie* latent on the Regulations, and which were not sufficiently addressed by the regulation making authority during their elucidation, hence contravening Article 2(4) of the Constitution and sections 13 (h) of the Statutory Instruments Act.

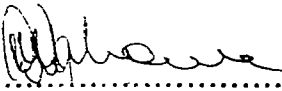
MIN.NO. CDL /197/2018: ANY OTHER BUSINESS

The following issues were discussed: -

1. **Proposed amendment to the Public Finance Management (National Government) Regulations, 2015:** the Committee was informed that the Cabinet Secretary, the National Treasury had submitted a proposed amendment to the PFM (National Government) Regulations, 2015 for conferring before publishing. The Committee resolved to confer with the regulation making-authority on Tuesday 29th May 2018 on the matter.
2. **Energy (Solar Water Heating) Regulations, 2012:** pursuant to section 12(2) read together with section 16 of the Statutory Instruments Act, 2013 which empowers the Committee to scrutinize instruments previously published before the commencement of the Statutory Instruments Act, the Committee resolved to confer with the Energy Regulatory Commission (ERC) on the propriety of the Energy (Solar Water Heating) Regulations, 2012. The meeting is scheduled for Tuesday 29th May 2018 in Parliament Buildings.
3. The Committee was also notified by the Secretariat that the following draft instruments are awaiting the Committee's consideration –
 - i. *Political Parties (Registration) Regulations, 2017*
 - ii. *Political Parties (Funding) Regulations, 2017*
 - iii. *Political Parties (Liaison Committee) Regulations, 2017*
 - iv. *Public Finance Management (National Government) Regulations, 2015*
 - v. *Betting, Lottery & Gaming Regulations, 2017*
 - vi. *Technical Standards for Gaming Devices Regulations, 2017*
 - vii. *Online and Mobile Betting, Lotteries and Gaming Regulations, 2017*

MIN.NO. CDL /198/2018: ADJOURNMENT

There being no other business, the meeting was adjourned at 12.40 p.m.

Signed: 

Date: 29/5/18

For
HON. GLADYS BOSS-SHOLLEI, CBS, MP
(CHAIRPERSON)

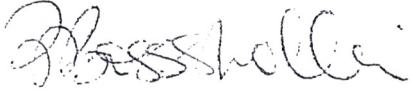

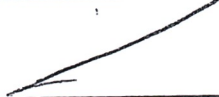
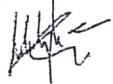
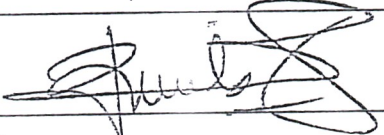
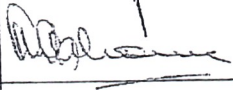
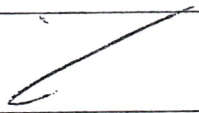
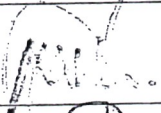


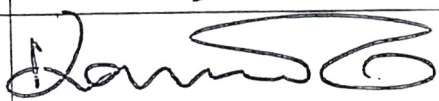
COMMITTEE ON DELEGATED LEGISLATION

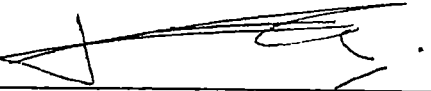



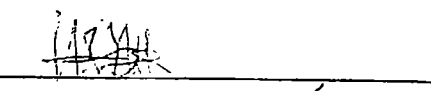
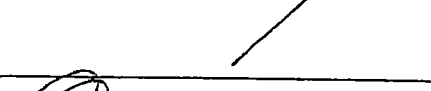
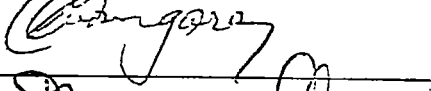
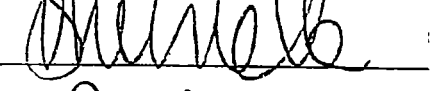
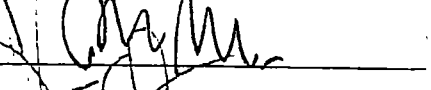
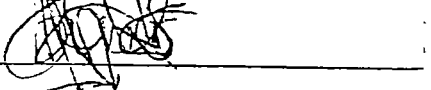

ADOPTION LIST

REPORT ON THE ADOPTION OF THE CIVIL AVIATION (REMOTE
PILOTED AIRCRAFT SYSTEMS) REGULATIONS, 2017

We, the undersigned, hereby affix our signatures to this Report to affirm our approval:

DATE: 05/06/2018

	HON. MEMBER	SIGNATURE
1.	Hon. Gladys Boss-Shollei, MP (Chairperson)	
	Hon. Fatuma Ali Gedi, MP (Vice Chairperson)	
3.	Hon. Alfred Sambu, MP	
4.	Hon. Isaac Waihenya Ndirangu, MP	
5.	Hon. Robert Mbui, MP	
6.	Hon. Alice Wahome, MP	
7.	Hon. Daniel Maanzo, MP	
8.	Hon. Muriuki Njagagua, MP	
9.	Hon. Martha Wangari, MP	
10.	Hon. Timothy Wanyonyi, MP	
11.	Hon. William Kamoti, MP	

	HON. MEMBER	SIGNATURE
12.	Hon. Patrick Kariuki Mariru, MP	
13.	Hon. Ronald Kiprotich Tonui, MP	
14.	Hon. William Kamket Kassait, MP	
15.	Hon. Munene Wambugu, MP	
16.	Hon. Charles Gimose, MP	
17.	Hon. Abdi Tepo, MP	
18.	Hon. George Gitonga Murugara, MP	
19.	Hon. Jennifer Shamalla, MP	
20.	Hon. Muturi Kigano, MP	
21.	Hon. (Dr.) Wilberforce Oundo, MP	
22.	Hon. Sammy Seroney, MP	

(Legislative Supplement No. 78)

LEGAL NOTICE NO. 259

THE CIVIL AVIATION ACT

(No. 21 of 2013)

THE CIVIL AVIATION (REMOTE PILOTED AIRCRAFT
SYSTEMS) REGULATIONS, 2017

ARRANGEMENT OF REGULATIONS

Regulation

PART I—PRELIMINARY PROVISIONS

- 1—Citation.
- 2— Interpretation.
- 3— Application.

PART II—CLASSIFICATION AND REGISTRATION OF REMOTE
PILOTED AIRCRAFT SYSTEMS (RPAS) ORGANIZATION

- 4—Classification of RPAS equipment.
- 5—Eligibility to ownership of RPAS.
- 6—Import and export of RPAS
- 7—Manufacture, assembly and testing RPAS
- 8—Registration of remote piloted aircraft system.
- 9—De-registration of remote piloted aircraft system .
- 10—Airworthiness of remote piloted aircraft system.

PART III—OPERATION OF REMOTE PILOTED AIRCRAFT
SYSTEM

- 11—General obligation of a remote piloted aircraft system
owner or operator.
- 12—Authorization of remote piloted aircraft system operations.
- 13—Prohibited operation of remote piloted aircraft system.
- 14—Carriage of dangerous goods.
- 15—Remote piloted aircraft system operating limitations.
- 16—Operation in congested areas and crowds.
- 17—Collision avoidance.
- 18—Certifications of remote piloted aircraft system pilot or
instructors.

19— Reporting of remote piloted aircraft system incidents and accidents.

20— International remote piloted aircraft system operations.

21— Cancellation, suspension or variation of authorization.

22— Filing of flight plans.

23— Emergencies and contingency links.

24— Command and control.

25— ~~Air-Traffic Control (ATC) communication.~~

26— Operation in the vicinity of aerodromes.

27— Operations at an aerodrome.

PART IV — RECREATIONAL AND SPORTS RPAS OPERATIONS

28— Recreational and sports operations of RPAS.

29— Training requirements for recreational and sports operations of RPAS.

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SCHEDULES

THE CIVIL AVIATION ACT

(No. 21 of 2013)

IN EXERCISE of the powers conferred by section 82 of the Civil Aviation Act, 2013, the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development makes the following Regulations:—

THE CIVIL AVIATION (REMOTE PILOTED AIRCRAFT SYSTEMS) REGULATIONS, 2017

PART I—PRELIMINARY

1. These Regulations may be cited as the Civil Aviation (Remote Piloted Aircraft Systems) Regulations, 2017. Citation.

2. In these Regulations, unless the context otherwise requires—

“accident” means an occurrence associated with the operation of remotely piloted aircraft system which takes place between the time such aircraft is ready to move with the purpose of flight until such time as it comes to rest at the end of the flight and the primary propulsion system is shut down, in which—

- (a) a person is fatally or seriously injured as a result of—
 - (i) being in the aircraft; or
 - (ii) direct contact with any part of the aircraft, including parts which have become detached from the aircraft;
- (b) the aircraft sustains damage or structural failure which—
 - (i) adversely affects the structural strength, performance or flight characteristics of the aircraft; and
 - (ii) would normally require major repair or replacement of the affected component, except for engine failure or damage, when the damage is limited to a single engine (including its cowlings or accessories), to propellers, wing tips, antennas, probes, vanes, tires, wheels, fairings, panels, landing gear doors, the aircraft skin (such as small dents or puncture holes), or for minor damages to main rotor blades, tail rotor blades, landing gear, and those resulting from hail or bird strike (including holes in the radome), or
- (c) the aircraft is missing or is completely inaccessible.

“aerodrome” means any defined area on land or on water, including any building, installation or equipment therein, used or intended to be used either wholly or in part for the arrival, departure and surface movement of aircraft, and includes any such area as the Cabinet Secretary may by notice in the Gazette declare to be an aerodrome;

“Airborne Collision Avoidance System (ACAS)” means an aircraft system based on Secondary Surveillance Radar (SSR) transponder signals which operates independently of ground-based equipment to provide advice to the pilot on potential conflicting aircraft that are equipped with SSR transponders;

“RPAS category” means classification of RPAS in accordance with specifications in these Regulations;

“air traffic” means all aircraft in flight or operating on the maneuvering area of an aerodrome;

“Authority” means the Kenya Civil Aviation Authority;

“Automatic Dependent Surveillance— Broadcast (ADS-B)” refers to means by which aircraft, aerodrome vehicles and other objects can automatically transmit or receive data such as identification, position and additional data, as appropriate, in a broadcast mode via a data link;

“Command and Control (C2) link” means the data link between the remote piloted aircraft and the remote pilot station for the purposes of managing the flight;

“continuing airworthiness” means the set of processes by which an aircraft, engine, propeller or part complies with the applicable airworthiness requirements and remains in a condition for safe operation throughout its operating life;

“controlled airspace” means an airspace of defined dimensions within which air traffic control service is provided in accordance with the airspace classification;

“detect and avoid” means the capability to see, sense or detect conflicting traffic or other hazards and take the appropriate action;

“flight plan” means specified information provided to air traffic services units, relative to an intended flight or portion of a flight of an aircraft;

“human performance” means human capabilities and limitations which have an impact on the safety and efficiency of aeronautical operations;

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

“maintenance” means the performance of tasks required to ensure the continuing airworthiness of an aircraft, including any one or combination of overhaul, inspection, replacement, defect rectification and the embodiment of a modification or repair;

“operational control” means the exercise of authority over the initiation, continuation, diversion or termination of a flight in the interest of the safety of the aircraft and the regularity and efficiency of the flight;

“operations manual” means a manual containing procedures, instructions and guidance for use by operational personnel in the execution of their duties;

“remote pilot station” means the component of the remote piloted aircraft system containing the equipment used to pilot the remote piloted aircraft;

“Remote Piloted Aircraft (RPA)” means an unmanned aircraft which is piloted from a remote pilot station;

“Remote Piloted Aircraft System (RPAS)” means a remote piloted aircraft, its associated remote pilot station(s), the required command and control links and any other components as specified in the type design;

“RPA observer” means a trained and competent person designated by the operator who, by visual observation of the remote piloted aircraft, assists the remote pilot in the safe conduct of the flight;

“RPAS Operator Certificate (ROC)” means a certificate authorizing an operator to carry out specified RPAS operations;

“Safety” means the state in which risks associated with aviation activities, related to, or in direct support of the operation of aircraft, are reduced and controlled to an acceptable level;

“Safety Management System (SMS)” means systematic approach to managing safety, including the necessary organizational structures, accountabilities, policies and procedures;

“toy” means a remotely piloted aircraft system that is less than 2 kilograms gross weight, not powered by any fuel system, not capable of carrying any payload, not fitted with a camera and is operated at a maximum height of 50 feet above ground level, a maximum lateral distance of 50 metres from the operator and a maximum speed of 10 knots;

“type certificate” means document issued by a Contracting State to define the design of an aircraft type and to certify that this design meets the appropriate airworthiness requirements of that State;

“unmanned free balloon” means non-power-driven, unmanned, lighter-than-air aircraft in free flight;

“Visual Line-of-Sight (VLOS) operation” means an operation in which the remote pilot or RPA observer maintains direct unaided visual contact with the remote piloted aircraft; and

“Visual Meteorological Conditions (VMC)” means meteorological conditions expressed in terms of visibility, distance from cloud, and ceiling, equal to or better than specified minima.

3. (1) These Regulations shall apply to any person who imports, tests, operates, procures, assembles, manufactures or maintains a remotely piloted aircraft system registered in Kenya wherever they may be and any other such aircraft operating in Kenya.

Application.

(2) Notwithstanding paragraph (1) above, these Regulations shall not apply to—

- (a) State aircraft;
- (b) unmanned free balloons or airships;
- (c) operation of toys;

Provided that no toy shall be operated within an aerodrome and not less than 500 metres from the aerodrome boundaries, in or

around strategic installations, radar sites, high tension cables and communication masts, prisons, police stations, courts of law and scenes of crime.

**PART II — CLASSIFICATION AND REGISTRATION OF
REMOTE PILOTED AIRCRAFT (RPAS)**

4. Remote piloted aircraft systems shall be classified and categorized by weight and use as set out in the Table below:

Classification of
RPAS
equipment.

	Cat A: Utilized for recreational and sports purposes only.	Cat B: Utilized for private activities excluding recreational and sports purposes.	Cat C: Utilized for commercial activities.
Class 1: 0 – 5kgs (Including any payload carried by the RPAS)	1A	1B	1C
Class 2: 5 – 25kgs (Including any payload carried by the RPAS)	2A	2B	2C
Class 3: 25kgs and above (Including any payload carried by the RPAS)	3A	3B	3C

5. (1) A person shall be eligible to own a remote piloted aircraft system if that person is —

Eligibility to
ownership of
RPAS.

- (a) a Kenyan citizen or resident in Kenya of minimum age of eighteen years;
- (b) a company registered in Kenya; or
- (c) the national government or a county government.

(2) Change of ownership of a remote piloted aircraft system shall be notified to the Authority in writing within seven days following such change.

(3) A person shall not own, register or operate remote piloted aircraft system with military specifications.

6. (1) A person shall not import a remote piloted aircraft system or a component thereof without a permit issued by the Authority.

Import and export
of RPAS.

(2) Before issuing a permit referred to under paragraph (1) above, the Authority shall seek and obtain the necessary security clearance by

the relevant security agencies and approval by the Ministry for the time being responsible for matters relating to defence.

(3) A person who intends to export a Kenyan registered remote piloted aircraft system shall notify the Authority in writing and obtain a deregistration certificate.

(4) Any person who contravenes the provisions of this regulation commits an offence and shall be liable, upon conviction, to a fine not exceeding two million shillings or to imprisonment for a term not exceeding six months, or to both.

(5) Notwithstanding the provisions of paragraph (4), the Authority may confiscate any imported remote piloted aircraft system or a component thereof belonging to a person who contravenes the provisions of this regulation.

7. (1) Any person intending to manufacture, assemble or test a remotely piloted aircraft system or a component thereof shall apply for authorization from the Authority subject to necessary security clearance by relevant security agencies.

Manufacture,
assembly and
testing.

(2) Any person who contravenes the provisions of paragraph (1) commits an offence and shall be liable, upon conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding six months, or to both.

8. (1) An operator or owner of a remote piloted aircraft system shall register that remote piloted aircraft system with the Authority.

Registration of
remote piloted
aircraft system.

(2) Before registering the remote piloted aircraft system referred to under paragraph (1) above, the Authority shall seek and obtain the necessary security clearance by the relevant security agencies and approval by the Ministry for the time being responsible for matters relating to defence.

(3) The Authority shall establish and implement a system for registration, identification of remote piloted aircraft system in Kenya and the display thereof.

(4) Any modification to the specifications of registered remote piloted aircraft system shall be subject to approval by the Authority.

(5) Any person who contravenes the provisions of paragraphs (1) and (4) above commits an offence and shall be liable upon conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding six months, or to both.

9. (1) The Authority may de-register or cancel the registration of a remote piloted aircraft system —

De-registration of
remote piloted
aircraft system.

- (a) upon application of the remote piloted aircraft system owner for purposes of registering the remote piloted aircraft system in another State; or
- (b) upon destruction of the remote piloted aircraft system or its permanent withdrawal from use; or
- (c) in the interest of national security.

10. (1) A remote piloted aircraft system owner or operator shall ensure that all its components are in working order and in accordance with the manufacturers' user manual.

Airworthiness of remote piloted aircraft system.

(2) The Authority may require a remote piloted aircraft system of a certain Class and Category with a type certificate to obtain a certificate of airworthiness.

PART III—OPERATION OF REMOTE PILOTED AIRCRAFT SYSTEM

11. (1) The remote piloted aircraft system owner or operator shall—

General obligation of a remote piloted aircraft system owner or operator.

- (a) be responsible for the safe conduct of its operations;
- (b) comply with all requirements established by the Authority regarding its operation;
- (c) be responsible for contracted services from providers including communications service providers, as necessary, to carry out its operations;
- (d) responsible for operational control of the aircraft; and
- (e) ensure that it is registered in accordance with the provisions of these Regulations.

(2) Unless otherwise specified by the Authority the request for authorization for operation of the remote piloted aircraft system shall include the following—

- (a) name and contact information of the operator;
- (b) remote piloted aircraft system characteristics (type of aircraft, maximum certificated take-off mass, number of engines and wing span);
- (c) copy of certificate of registration;
- (d) aircraft identification to be used in radiotelephony, if applicable;
- (e) copy of the certificate of airworthiness;
- (f) copy of the remote piloted aircraft system operator certificate;
- (g) copy of the remote pilot(s) licence;
- (h) copy of the aircraft radio station licence, if applicable;
- (i) description of the intended operation, to include type of operation or purpose, flight rules, visual line-of-sight (VloS) operation if applicable, date of intended flight(s), point of departure, destination, cruising speed(s), cruising level(s), route to be followed, duration or frequency of flight;
- (j) take-off and landing requirements;
- (k) remote piloted aircraft system performance characteristics, including —

- (i) operating speeds;
 - (ii) typical and maximum climb rates;
 - (iii) typical and maximum descent rates;
 - (iv) typical and maximum turn rates;
 - (v) other relevant performance data including limitations regarding wind, icing and precipitation; and
 - (vi) maximum aircraft endurance;
- (l) communications, navigation and surveillance capabilities;
- (m) aeronautical safety communications frequencies equipment, including—
- (i) ATC communications, including any alternate means of communication;
 - (ii) command and control links (C2) including performance parameters and designated operational coverage area;
 - (iii) communications between remote pilot and Remote Piloted Aircraft (RPA);
 - (iv) Remote Piloted Aircraft observer, if applicable;
 - (v) navigation equipment; and
 - (vi) surveillance equipment, including SSR transponder and Automatic Dependent Surveillance—Broadcast (ADS-B);
- (n) detect and avoid capabilities;
- (o) emergency procedures, including—
- (i) communications failure with Air Traffic Control (ATC);
 - (ii) C2 failure;
 - (iii) remote pilot or remote piloted aircraft observer communications failure, if applicable;
 - (iv) number and location of remote pilot stations as well as handover procedures between remote pilot stations, if applicable;
 - (v) document attesting noise certification, if applicable;
 - (vi) confirmation of compliance with the Civil Aviation (Security) Regulations;
 - (vii) payload information or description; and
 - (viii) proof of adequate insurance coverage.

(3) Where documents identified in paragraph (2) above are issued in a language other than English, the remote piloted aircraft system operator shall ensure that an English translation is included.

(4) A remote piloted aircraft system shall meet the performance and equipment carriage requirements for the specific airspace in which the flight is to operate.

(5) Any person who contravenes the provisions of paragraphs (1)(b) or (2) of this regulation commits an offence and shall be liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding six months, or to both.

12. (1) A person shall not operate a remote piloted aircraft system in Kenya without authorization from the Authority.

Authorization of remote piloted aircraft system operations.

(2) Remote piloted aircraft system operators shall be authorized in accordance with the category of use, for purposes of—

- (a) recreation and sports which shall be through registered clubs established in accordance with the provisions of Part IV of these Regulations;
- (b) private use with authorization granted to the operator directly by the Authority in accordance with the provisions of Part V of these Regulations;
- (c) commercial use where authorization shall be issued in accordance with the provisions of Part VI of these Regulations.

(3) The Authority may grant, upon application, a temporary permit to a person intending to operate a remote piloted aircraft system not registered in Kenya for a period of thirty (30) days renewable once.

(4) An application referred to under paragraph (3) of this regulation shall be submitted to the Authority online and processed within fourteen (14) days upon receipt.

13. (1) A person shall not operate a remote piloted aircraft system in a negligent or reckless manner.

Prohibited operation of remote piloted aircraft system.

(2) For the purposes of paragraph (1) above, a person operates a remote piloted aircraft system in a "negligent" or "reckless" manner where that person—

- (a) in the cause of operation, endangers other aircraft, persons or property;
- (b) operates in or around a prohibited or a restricted area, the particulars of which have been duly published in the Kenya Aeronautical Information Publication (AIP), except in accordance with the conditions of the restrictions or by permission granted by the Authority; or
- (c) operates in or around strategic installations, radar sites, high tension cables and communication masts, prisons, police stations, courts of law, scenes of crime, except in accordance with the conditions of the restrictions or by permission granted by the Authority.

(3) Any person who contravenes the provisions of this regulation commits an offence and shall be liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding six months, or to both.

14. (1) A person shall not take on board or cause to be taken on board a remote piloted aircraft system or deliver or cause to be delivered for loading thereon any goods which that person knows or has reasonable cause to know to be dangerous goods.

Carriage of dangerous goods.

(2) For the purposes of paragraph (1) above, "dangerous goods" includes—

- (a) chemical and biological substances;
- (b) nuclear material;
- (c) explosives;
- (d) arms, ammunition and munitions of war;
- (e) corrosive substances;
- (f) radioactive elements;
- (g) volatile liquids;
- (h) highly flammable liquids;
- (i) aerosol sprays;
- (j) any such materials or substances that may from time to time be so classified by the Authority as dangerous goods.

15. (1) A person shall not operate a remote piloted aircraft system —

Remote piloted aircraft system operating limitations.

- (a) at above 400 feet Above Ground Level (AGL) and within 50 meters of any person, vessel, vehicle or structure which is not under the control of the person in charge of the remote piloted aircraft system;
- (b) in conditions other than Visual Meteorological Conditions (VMC);
- (c) at-night, unless specifically cleared by the Authority on a case by case basis;
- (d) fitted with cameras or imaging devices at heights or lateral distances where such cameras or imaging devices capture information, pictures or videos extending beyond the prescribed area of approved operation.

(2) Notwithstanding the provisions of paragraph (1)(b) above, operations for private and commercial categories of remote piloted aircraft system may be conducted at such higher heights and lateral distances as the Authority may approve.

16. (1) A person shall not operate a remote piloted aircraft system at lateral distance of less than 50 metres from any person, building structure, vehicle, vessel or animal not associated with the operations of remote piloted aircraft system unless authorized by the Authority.

Operations in congested areas and crowds.

(2) Subject to paragraph (1) above, vertical limits shall be no less above ground level than 100 feet except when prescribed by the Authority.

17. (1) All remote piloted aircraft systems in controlled airspace shall operate in accordance with the Civil Aviation (Rules of the Air) Regulations and a remote pilot shall maintain awareness so as to see and avoid other aircraft and vehicles and shall yield the right-of-way to all aircrafts and vehicles.

Collision avoidance.

(2) For the purposes of paragraph (1), "yielding the right-of-way" means that the remote piloted aircraft shall give way to the aircraft or vehicle and may not pass over, under, or ahead of it unless well clear.

(3) No person shall operate a remote piloted aircraft system so close to another aircraft as to create a collision hazard.

18. Remote piloted aircraft system pilots or instructors for commercial operations shall be certified by the Authority in accordance with the requirements specified in the First Schedule to these Regulations.

Certifications of remote piloted aircraft system pilot or instructors.

19. Remote piloted aircraft system operator shall ensure that all incidents and accidents involving such a system are reported to the Authority in accordance with the provisions of the Civil Aviation (Safety Management) Regulations.

Reporting of remote piloted aircraft system incidents and accidents.

20. (1) A person shall not conduct a remote piloted aircraft system flight—

International remote piloted aircraft system operations.

(a) commencing at a place within Kenya and terminating at a place outside without authorization from the State of destination or any other State over whose airspace the remote piloted aircraft system shall fly; or

(b) commencing at a place outside Kenya and terminating at a place within Kenya or over-flying the Kenyan airspace without authorization from the Authority.

21. Notwithstanding the provisions of regulation 12, the Authority may, in the interest of safety and national security, cancel, suspend or vary any authorization granted under these Regulations.

Cancellation, suspension or variation of authorization

22. (1) All Remote piloted aircraft systems flights in controlled airspace shall file flight plans as provided for under the Aeronautical Information Publication (AIP).

Filing of flight plans.

(2) Without prejudice to the generality of paragraph (1) above, all remote piloted aircraft systems flights in uncontrolled air space operating below or within 5 kilometres out of launch area shall notify the nearest Air Traffic Control (ATC) and shall comply with any directions or orders issued by ATC.

23. All remote piloted aircraft systems operators shall develop and implement emergency and contingency procedures acceptable to the Authority.

Emergencies and contingency links.

24. (1) A remote piloted aircraft system owner or operator shall ensure that he or she has command or control of the remote piloted aircraft system at all times during the flight.

Command and Control.

(2) Any remote piloted aircraft system owner or operator who loses command or control of his or her remote piloted aircraft system shall report to the Authority immediately.

25. (1) A remote piloted aircraft system pilot shall ensure that Air Traffic Control (ATC) is made aware of any operations that shall take place in areas which are likely to affect manned and controlled air traffic.

Air Traffic
Control (ATC)
communication

(2) The Air Navigation Service Provider (ANSP) shall establish procedures, acceptable to the Authority, for integration of remote piloted aircraft system operation into the airspace to ensure aviation safety and such procedures shall include communication and surveillance detection.

(3) Procedures referred to in paragraph (2) above shall provide for required information to be passed to Air Traffic Control by remote piloted aircraft system pilot before and during remote piloted aircraft system operations.

26. Except with written permission of the owner or operator of an aerodrome, the appropriate Air Navigation Service Provider and approval from the Authority, a person shall not operate a remote piloted aircraft system —

Operation in the
vicinity of
aerodromes.

- (a) within ten (10) kilometres of an aerodrome from the aerodrome reference point for code C, D, E and F aerodromes;
- (b) within seven (7) kilometres of an aerodrome from the aerodrome reference point for code A and B aerodromes;
- (c) on approach and take-off paths;
- (d) within the vicinity of navigation aids;
- (e) within the aerodrome traffic zone; and
- (f) within terminal traffic holding patterns.

27. The Authority may upon approval of remote piloted aircraft system operation at an aerodrome —

Operations at an
aerodrome.

- (a) impose operating restrictions on the approval in the interest of safety;
- (b) publish details of the approval in the appropriate element of the Integrated Aeronautical Information Publication (IAIP);
- (c) revoke or change the conditions that apply to such approval and publish details of any revocation or change in conditions in the appropriate element of the IAIP.

PART IV — RECREATIONAL AND SPORTS OPERATION OF REMOTE PILOTED AIRCRAFT SYSTEM

28. (1) Remote piloted aircraft system operations for recreation and sports purposes shall be conducted within registered clubs which are approved by the Authority in accordance with the guidelines set out in the Second Schedule of these Regulations and such recognition shall be valid for twelve months.

Recreational and
sports operations
of RPAS.

(2) The Authority shall develop a system for approval of clubs including requirements for composition, documentation and club rules and regulations.

(3) The clubs provided for under paragraph (1) above shall provide the Authority with details of their operation areas and times for approval.

(4) The Authority shall segregate and notify through the applicable element of the Integrated Aeronautical Information Publication (IAIP) of such airspaces designated for use by remote piloted aircraft system operators, including limitations that may apply.

29. (1) Clubs referred to in regulation 28 shall prescribe minimum training requirements for remote piloted aircraft system operation under the club.

Training requirements for recreational and sports operations of RPAS.

(2) Training requirements referred to in paragraph (1) above shall be documented and submitted to the Authority for acceptance.

PART V—PRIVATE OPERATION OF REMOTE PILOTED AIRCRAFT SYSTEM

30. A person shall not operate remote piloted aircraft system for private purposes except with prior authorization issued by the Authority and subject to the conditions contained therein.

Private operations of RPAS.

31. A remote piloted aircraft system pilot for private operation shall be trained in accordance with training requirements set out in the First Schedule to these Regulations.

Training requirements for private operations of RPAS.

PART VI—COMMERCIAL OPERATION OF RPAS

32. (1) An operator shall not engage in commercial remote piloted aircraft system operations unless that operator holds a valid Remote Piloted Aircraft Operator's Certificate (ROC) issued by the Authority.

Remote Piloted Aircraft Operator's Certificate (ROC) compliance.

(2) The Remote Piloted Aircraft Operator's Certificate (ROC) referred to in paragraph (1) above shall authorize the operator to conduct remote piloted aircraft system operations in accordance with the conditions and limitations detailed in the operations specifications attached to that certificate.

(3) The issuance of the Remote Piloted Aircraft Operator's Certificate (ROC) by the Authority shall be dependent upon the remote piloted aircraft system operator demonstrating an adequate organization, method of control and supervision of flight operations, training programme as well as ground handling and maintenance arrangements consistent with the nature and extent of the operations specified and commensurate with the size, structure and complexity of the organization.

(4) A commercial remote piloted aircraft system operator shall establish and implement a Safety Management System (SMS) in accordance with their operational requirements established under the Act or any other Regulations made thereunder.

33. (1) An operator applying to the Authority for a Remote Piloted Aircraft Operator's Certificate (ROC) shall submit an application in a form and manner prescribed by the Authority and containing any other information the Authority may require.

Application for Remote Piloted Aircraft Operator's Certificate (ROC).

(2) An applicant shall make the application for an initial issue or re-issue of an ROC at least sixty days before the date of the intended operation.

34. (1) The Authority may issue a Remote Piloted Aircraft Operator's Certificate (ROC) to an applicant if that applicant—

Issuance of ROC.

- (a) meets the requirements of ownership stipulated under regulation 5;
- (b) meets the applicable regulations and standards for the holder of a Remote Piloted Aircraft Operator's Certificate (ROC);
- (c) is properly qualified and adequately staffed and equipped to conduct safe operations in commercial operations of the remote piloted aircraft system; and
- (d) has an approved aircraft operator security programme in accordance with the Civil Aviation (Security) Regulations, and meets any other requirements as specified by the Authority.

35. (1) A Remote Piloted Aircraft Operator's Certificate (ROC) issued by the Authority shall be valid for 12 months from the date of issue or renewal unless—

Validity and renewal of a Remote Piloted Aircraft Operator's Certificate (ROC).

- (a) a shorter period is specified by the Authority;
- (b) the Authority amends, suspends, revokes or otherwise terminates the certificate;
- (c) the holder surrenders it to the Authority; or
- (d) the holder notifies the Authority of the suspension of operations.

(2) A Remote Piloted Aircraft Operator's Certificate (ROC) which is suspended or revoked shall be returned to the Authority.

(3) An applicant for a Remote Piloted Aircraft Operator's Certificate (ROC) which has expired shall make an initial application.

36. (1) The Authority may amend a Remote Piloted Aircraft Operator's Certificate (ROC) if—

Amendments of ROC.

- (a) the Authority determines that the amendment is necessary for the safety of commercial remote piloted aircraft system operations;
- (b) the Remote Piloted Aircraft Operator's Certificate holder applies for an amendment and the authority determines that the amendment is necessary; or

(c) the amendment is in the interest of national security.

(2) The Remote Piloted Aircraft Operator Certificate holder shall operate in accordance with the amendment unless it is subsequently withdrawn.

37. The Authority shall conduct surveillance, inspections and tests on the Remote Piloted Aircraft Operator Certificate holder to ensure continued eligibility to hold that certificate and associated approvals.

Conducting surveillance, tests and inspections.

38. (1) Remote piloted aircraft system operator shall have an accountable manager acceptable to the Authority, with corporate authority for ensuring that all necessary resources are available to support Piloted Aircraft Operator Certificate holder operations.

Personnel required for RPAS commercial operations.

(2) The accountable manager shall have sufficient qualified and competent personnel for the planned tasks and activities to be performed in accordance with the applicable requirements.

(3) A remote piloted aircraft system operator shall establish initial and recurrent training to ensure continuing competence of its personnel.

39. A remote piloted aircraft system operator shall develop and submit to the Authority for approval an operation manual as set out in the Third Schedule to these Regulations.

Operations manual.

40. (1) A Remote Piloted Aircraft Operator Certificate holder shall not undertake commercial operations of remote piloted aircraft system except with authorization issued by the Authority.

Authorization for commercial remote piloted aircraft system operations.

(2) Authorization referred to in paragraph (1) above shall be specific to particular operations.

41. (1) A person shall not operate a remote piloted aircraft system for commercial or private purposes without a valid Remote Piloted Aircraft System pilot certificate issued by the Authority in accordance with these Regulations.

Certification of remote piloted aircraft system pilots or instructors.

(2) An applicant for Remote Piloted Aircraft System pilots certificate referred in paragraph (1) above shall—

- (a) be at least 18 years old;
- (b) hold a current Class 2 medical certificate;
- (c) demonstrate English proficiency;
- (d) hold a radio telephony licence;
- (e) have completed a course of training approved by the Authority;
- (f) have passed a knowledge and skill test;

- (g) have prove of identity; and
- (h) have police clearance certificate.

(3) Where applicable, a remote piloted aircraft system pilot or instructor shall hold an appropriate rating for the type of operations they shall perform including—

- (a) type rating;
- (b) instrument rating;
- (c) night rating; and
- (d) instructor rating.

42. (1) A person shall not act as a remote piloted aircraft system pilot unless that person holds—

Eligibility requirements for remote piloted aircraft system pilot.

- (a) a remote pilot certificate;
- (b) a rating for the specific remote piloted aircraft system type or is operating under the supervision of a rated remote pilot for the purpose of qualifying for the rating;
- (c) the required knowledge for the type of remote piloted aircraft system; and
- (d) a current Class 2 medical certificate.

(2) A person undergoing training to qualify for a remote pilot certificate or rating shall not—

- (a) act as solo remote pilot of a remote piloted aircraft system—
 - (i) unless under the supervision of, or with the authority of, an authorized remote piloted aircraft system instructor; or
 - (ii) on an international remote piloted aircraft flight;
- (b) form part of the crew of a commercial remote piloted aircraft system flight.

43. The remote piloted aircraft system pilot certificate shall be valid subject to validity of the holder's medical certificate.

Validity of remote piloted aircraft system pilots certificate.
Consumption of alcohol and drugs.

44. No remote piloted aircraft system pilot or observer shall—

- (a) consume alcohol less than 8 hours prior to reporting for duty;
- (b) commence a duty period while the concentration of alcohol in any specimen of blood taken from any part of his or her body is more than 0.04 grams per 100 millilitres;
- (c) consume alcohol or any psychoactive substance during the duty period or whilst on standby for duty; or
- (d) commence duty period while under the influence of alcohol or any psychoactive substance having a narcotic effect.

45. A remote piloted aircraft system pilot for commercial operations shall be trained in accordance with training requirements set out in the First Schedule to these Regulations.

Training requirements for commercial remote piloted aircraft system operations. Instrument and equipment requirements.

46. The Authority shall prescribe instrument requirement for remote piloted aircraft system operators for specific operations depending on—

- (a) the Class and Category of the remote piloted aircraft system;
- (b) type of operations; or
- (c) special authorization sought.

PART VII— SECURITY REQUIREMENTS FOR REMOTE PILOTED AIRCRAFT SYSTEM OPERATIONS

47. (1) A person or a club shall not operate a remote piloted aircraft system without operator security procedures developed in accordance with the provisions of the Civil Aviation (Security) Regulations and accepted by the Authority.

Security programme requirements.

(2) A remote piloted aircraft system operator shall—

- (a) specify the security measures, procedures and practices to be followed by the operator to protect pilots and facilities from acts of unlawful interference;
- (b) carry out and maintain security measures including identification and resolution of suspicious activity that may pose a threat to civil aviation—
 - (i) at a remote pilot station;
 - (ii) on a remote piloted aircraft system; and
 - (iii) any facility under the control of the remote piloted aircraft system operations.

(3) A remote piloted aircraft system shall be subject to security inspection at any time during its operations without prior notification to the operator.

(4) The specific security measures referred to in paragraph (2)(a) shall provide—

- (a) that the premises used for preparing, storing, parking including remote piloted aircraft system ground station shall be secured at all times against unauthorized access;
- (b) for protection of critical information technology and communication systems used for operations purposes from interference that may jeopardize the security of civil aviation;
- (c) for protection of flight documents;
- (d) that commercial operators requesting to operate with a camera shall be required to include details of the camera usage in the application for security review and approval;

- (e) requirements for checks and searches of specific areas and accessible compartments of the interior and exterior of remote piloted aircraft system; and
- (f) that persons engaged in remote piloted aircraft system operations are subject to recurrent background checks and selection procedures and are adequately trained.

48. An operator of remote piloted aircraft system shall—

Security obligations for remote piloted aircraft system operators.

- (a) be responsible for the security of such system operations including associated facilities, personnel and equipment;
- (b) ensure that the Remote Piloted Aircraft (RPA) or any component thereof that is no longer in use is completely disabled or destroyed to prevent unauthorized use; and
- (c) comply with any security directives or circulars issued by the Authority.

49. An operator or owner of remote piloted aircraft system shall—

Acts of unlawful interference against civil aviation.

- (a) have response procedures for operations personnel for threats and incidents involving remote piloted aircraft system operations; and
- (b) ensure that reports on acts of unlawful interference are promptly submitted to the Authority in accordance with the Civil Aviation (Security) Regulations.

PART VIII—GENERAL PROVISIONS

50. (1) A remote piloted aircraft system operator shall establish a system of record-keeping that allows adequate storage and reliable traceability of all activities developed, covering at a minimum—

Record-keeping.

- (a) operator's organization;
- (b) safety management systems;
- (c) personnel training and competence verification;
- (d) documentation of all management system key processes;
- (e) maintenance records;
- (f) security management records.

(2) Records shall be stored in a manner that ensures protection from damage, alteration and theft.

(3) Records identified in this regulation shall be current and in sufficient detail to determine whether the experience and qualification requirements are met for the purpose of commercial operations.

51. (1) A person shall not operate, or cause to be operated or commit any other person to operate remote piloted aircraft system unless there is in force a minimum insurance policy in respect of third party risks.

Insurance.

(2) The minimum sum of insurance in respect of any remote piloted aircraft system insured in accordance with paragraph (1) above shall be notified by the Authority.

(3) An operator of remote piloted aircraft system shall make available third party liability insurance certificate(s), in the authentic form, at the location of the remote piloted aircraft system operator's operational management or other location specified by the Authority.

(4) Notwithstanding the provisions of paragraph (1) above, the Authority may dispense with requirement depending on the class and category of the Remote Piloted Aircraft.

52. (1) There is established a standing committee to be known as the Remote Piloted Aircraft System Regulations Multi-Agency Committee (hereinafter referred to as the "Committee") appointed by the Cabinet Secretary responsible for matters relating to civil aviation in consultation with the relevant security Ministries, Departments and Agencies (MDAs) on remote piloted aircraft systems regulation.

Establishment of
Multi-Agency
Committee.

(2) The Committee shall consist of nine members and shall review remote piloted aircraft system policy, regulations and procedures on a regular basis as and when need arises.

(3) There shall be a secretariat established under the Committee which shall be responsible for coordinating the day to day administrative requirements for the regulation of remote piloted aircraft system regulations operations with the Authority.

53. (1) Any person conducting operations using remote piloted aircraft system fitted with cameras shall operate them in a responsible way to respect the privacy of other persons and their property.

Privacy of
persons and
property.

(2) Without prejudice to the generality of paragraph (1) above, no person shall use a remote piloted aircraft system to do any of the following—

- (a) conduct surveillance of—
 - (i) a person without the person's consent;
 - (ii) private real property without the consent of the owner;
- (b) photograph or film an individual, without the individual's consent, for the purpose of publishing or otherwise publicly disseminating the photograph or film:

Provided that this requirement shall not apply to news gathering, or events or places to which the general public is invited.

(3) Infrared or other similar thermal imaging technology equipment fitted on remote piloted aircraft shall only be for the sole purpose of—

- (a) scientific investigation;
- (b) scientific research;
- (c) mapping and evaluating the earth's surface, including terrain and surface water bodies and other features;
- (d) investigation or evaluation of crops, livestock, or farming operations;
- (e) investigation of forests and forest management; and
- (f) other similar investigations of vegetation or wildlife.

54. A person shall not cause a thing to be dropped or discharged from a remote piloted aircraft in a way that creates a hazard to another aircraft, a person, or property.

Discharging or dropping goods.

55. (1) Any person who knows of a violation under these regulations, shall report it to the Authority.

Reports of violation.

(2) The Authority shall determine the nature and type of any additional investigation or enforcement action that requires to be taken.

PART IX—OFFENCES AND PENALTIES

56. Any person who unlawfully interferes with duly authorized operation of remote piloted aircraft system commits an offence and shall be liable upon conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding six months, or to both.

Unlawful interference of Remote Piloted Aircraft System operations.

57. (1) Any remote piloted aircraft system operator who contravenes the provisions of these Regulations and whose penalty has not been specified in these Regulations commits an offence and shall be liable upon conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding six months, or to both.

Non-compliance.

(2) Any person who fails to comply with any direction given pursuant to these Regulations by the Authority or by any authorized person under any provision of these Regulations commits an offence and shall be liable upon conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding six months, or to both.

(3) Notwithstanding the foregoing provisions, the Authority may—

- (a) revoke, cancel, and suspend, any license, certificate, approval, authorization and or exemptions issued under these Regulations of any person who contravenes any provisions of these Regulations; or
- (b) confiscate any remote piloted aircraft system or a component thereof belonging to a person who contravenes the provisions of these Regulations.

PART X—SAVING AND TRANSITIONAL PROVISIONS

58. An owner of remote piloted aircraft system already imported into Kenya at commencement of these Regulations shall apply to

Saving and transitional provisions

the Authority for registration within six months upon commencement date of these Regulations.

FIRST SCHEDULE

(rr. 18,31 and 45)

CERTIFICATION OF RPAS PILOT

This Schedule sets forth the eligibility and training requirements for the certification of RPAS pilots.

Required Certificate, Ratings and Qualifications for Remote Pilot Certificate

1. Knowledge and skill requirements.

An applicant for a remote pilot certificate shall have demonstrated a level of knowledge appropriate to the privileges granted to the holder of the certificate, in the following subjects—

- (a) air law;
- (b) RPAS general knowledge;
- (c) flight performance, planning and loading;
- (d) human performance;
- (e) emeteorology;
- (f) navigation;
- (g) operational procedures;
- (h) principles of flight related to RPAS; and
- (i) radiotelephony

An applicant for a remote pilot certificate shall pass a skill test to demonstrate the ability to perform, as remote PIC of the appropriate RPA category and associated RPS, the relevant procedures and manoeuvres with the competency appropriate to the privileges granted.

2. Credit.

A holder of a licence issued by the Authority may be credited towards the requirements for theoretical knowledge instruction and examination requirements for the remote pilot certificate.

3. Passing grade.

The Authority shall prescribe the minimum passing grade.

4. Retesting after failure.

An applicant for a knowledge or practical test who fails that test, may retest after the applicant has received the necessary training from an authorized instructor who has determined that the applicant is proficient to pass the test.

5. Special conditions.

- (a) in the case of introduction of new RPA or RPS in an operator's fleet, when compliance with the requirements established by the Authority is not possible, the Authority may consider issuing a specific authorization giving privileges for RPAS instruction.

Such an authorization should be limited to the instruction flights necessary for the introduction of the new type of RPA or RPS:

- (b) the validity period for this authorization shall be for the instruction sought only.

SECOND SCHEDULE

(r. 28)

Operational Guidelines for Remote Piloted Aircraft System (RPAS) clubs.

The following requirements shall apply to RPAS clubs intending to operate for sport and recreation as required in Part V of these Regulations.

General Provisions

1. A Remote Piloted Aircraft System club shall be registered in accordance with the provisions pertaining to the registration of clubs in Kenya for it to be recognized and approved by the Authority.
2. No RPAS club shall operate without the approval by the Authority.
3. The club is required to develop an operational manual that provides for:
 - (a) membership requirements;
 - (b) administration of members;
 - (c) training requirements for its members;
 - (d) procedures and guidelines of operations;
 - (e) types of operation;
 - (f) class of equipment operated;
 - (g) security arrangement for operations; and
 - (h) reporting mechanisms of incidents and accidents of the RPAS operations.

Administration of the club

4. The club management shall ensure that members:
 - (a) have adequate training to facilitate operations;
 - (b) are informed on current regulations, policies and procedures;
 - (c) adhere to safe business practices in their activities;
 - (d) are knowledgeable of airspace restrictions that apply in the area of operation as approved; and
 - (e) are conversant with and meet the training requirements of the club.

Responsibility of the club management

5. The administrator of the club shall:
 - (a) obtain consent of the property owner or person in charge of the area of operation.
 - (b) ensure that the club's recognition status is current with the Authority:

- (c) develop and operationalize a training programme and plan for their membership;
- (d) have a current list of members and particulars of their RPAS;
- (e) maintain a record or database of all accidents and incidents that occur within their area of jurisdiction;
- (f) ensure that it has adequate personnel who are properly qualified and competent to perform their allocated tasks and responsibilities;
- (g) have procedures for responding to an incident, accident, medical emergency, or if any RPAS becomes uncontrollable;
- (h) immediately stop all operations if unable to meet the exemption requirements or if the safety of a person, property or other aircraft is at risk;
- (i) ensure that club activities does not interfere with civil aviation;
- (j) adhere to laws from all levels of government; and
- (k) inspect their RPAS on site before conduct of any flight to ensure that they are safe.

THIRD SCHEDULE

(r. 39)

Remote Piloted Aircraft System (RPAS) Operations Manual

An operations manual shall include each item set forth below which is applicable to the specific operation, unless otherwise approved by the Authority.

Part A – General

1.0 INTRODUCTION

1.1 Purpose and scope of manuals

1.2 A statement that the manual complies with all applicable Authority Regulations, requirements and with the terms and conditions of the applicable RPAS operator certificate.

1.3 A statement that the manual contains operational instructions that are to be complied with by the relevant personnel in the performance of their duties.

1.4 List of manuals comprising operations manual.

1.5 A list and brief description of the various operations manual parts, their contents, applicability and use

1.6 Responsibility for manual content.

1.7 Responsibility for manual amendment.

- 1.8 List of effective pages.
- 1.9 Distribution of manuals and amendments
- 2.0 SAFETY MANAGEMENT SYSTEM
- 2.1 Safety Policy.
- 2.2 Description of safety management system.
- 2.3 Accident and Investigation policies.
- 3.0 QUALITY SYSTEM

~~Description of quality system adopted.~~

4.0 MANAGEMENT ORGANISATION

- 4.1 A description of the organizational structure including the general company organization and operations department organization. The relationship between the operations department and the other departments of the company. In particular, the subordination and reporting lines of all divisions, departments etc., which pertain to the safety of the RPAS operations, shall be shown.
- 4.2 Accountable Manager –duties and responsibilities.
- 4.3 Nominated personnel – functions duties and responsibilities.
- 4.4 RPAS Pilot- duties and responsibilities.
- 4.5 Support personnel in the operation of RPAS- duties and responsibilities.
- 4.6 A description of the objectives, procedures and responsibilities necessary to exercise operational control with respect to flight safety.

5.0 DOCUMENTATION

- 5.1 Documents required in RPAS operations.
- 5.2 Document storage and retention period.

Part B – RPAS Operating Information.

1.0 CREW INFORMATION

- 1.1 Flight team/crew composition.
- 1.2 Qualification requirements of RPAS Pilot and support crew
- 1.3 Medical competencies.
- 1.4 Operations of different types of RPAS.

2.0 OPERATIONS OF RPAS

- 2.1 Operating Limitations and conditions.
- 2.2 Communications.
- 2.3 Weather
- 2.4 On site procedures.

3.0 RPAS FLIGHT MANAGEMENT

- 3.1 Assembly and functional checks.
- 3.2 Pre –flight checks.
- 3.3 Normal flight procedures associated with relevant systems.
- 3.4 Inflight checks associated with relevant systems.
- 3.5 Abnormal procedures associated with relevant systems.
- 3.6 Emergency procedures associated with relevant systems.

4.0 RPAS USER MANUAL

Part C – Areas Routes and Aerodromes

- 1.0 Areas of operations.
- 2.0 Operating site planning and assessment.
- 3.0 Authorizations including site permissions.

Part D – Training

- 1.0 Training syllabi and checking programs for RPAS crew.
- 2.0 Training syllabi and checking programs for RPAS support crew.
- 3.0 Training syllabi and programs for personnel other than crew.
- 4.0 Recurrent training programs.
- 5.0 Additional training requirements that individual clients specify for the proposed operations.

Dated the 11th September, 2017.

JAMES MACHARIA,
*Cabinet Secretary for Transport,
Infrastructure, Housing and Urban Development.*

