

POLICY STATEMENT 4 | REGULATION/SERVICE PROVISION**UNCONTROLLED DOCUMENT WHEN PRINTED****Effective date of Implementation:** 7 July 2005**Rationale:**

The State is required by ICAO to ensure that certain services to facilitate international air navigation are provided. There is also a requirement for a safety regulator who, in accordance with the intentions of ICAO and the policy of the UK Government, must be independent of the organisation which it regulates. This separation is purely intended to eliminate any possible conflict of interest on behalf of the regulator by ensuring that all service issues are outside its control. However, due to the limited size of the industry in some OTs, the DCAs have traditionally acted as service provider and safety regulator. In a modern aviation environment, this is unacceptable.

Additionally, in certain circumstances, the definitions for 'regulator' and 'service provider' need clarification, as does the degree of independence of the regulator which is required.

Definitions:

Service provider (ICAO Definition: Doc 9734 Safety Oversight Manual, Part A. The Establishment of a State Oversight System – Third Edition- 2017

An organisation, serving operators or other providers, that is part of the aviation activity and is functionally separated from its regulator.

Regulation: (ICAO Definition: Doc 9734 Safety Oversight Manual, Part A. The Establishment of a State Oversight System – Third Edition- 2017

The giving of authoritative direction to bring about and maintain a desired degree of order. (This term includes instructions, rules, edicts, directives, sets of laws, requirements, policy, orders etc.)

Regulator:

The organisation or body charged with the responsibility for the provision of regulation.

Policy Statements:

1. An organisation acting as a service provider cannot also act as regulator for that service.
2. Where a DCA is acting as service provider, ASSI will act as regulator.
3. Means by which the separation of regulation and service provision is to be achieved to provide the necessary degree of independent oversight shall be considered on a case by case basis.

Explanatory Notes on the Degree of Separation Required

These explanatory notes are intended to assist in defining the degree of separation required in accordance with the need to consider each example on a case by case basis. They are guidelines only and should not be considered either definitive or exclusive.

The regulator is the organisation or individual responsible for the control and supervision of the safety of the civil aviation industry with the aim of ensuring compliance with relevant laws, regulations, and rules and achieving compliance with ICAO Standards and Recommended Practices. In practice, in the Overseas Territories, this is the organisation or person Designated by the Governor for that purpose under the terms of Article 6 of the Air Navigation (Overseas Territories) Order 2013 (as amended).

In some circumstances, the separation of service provider and regulator is clear and acceptable. For example:

- where an aerodrome operator is a private company, and the regulator a Government body
- where an airline is a private company and the regulator a Government body

It is also acceptable to have organisational separation, for example:

- where an aerodrome is operated by one Government Department (or authority) and the regulator is part of another Government Department (or is a separate authority) and they have separate reporting lines
- where a Government Meteorological Office is providing met services in accordance with those defined as required for aviation by the aviation regulator

However, in some cases, separation cannot be identified as easily – particularly within smaller industries. For example, the Search and Rescue ‘service’ may be provided by organisation(s) directly employed, managed or contracted by the DCA. In these circumstances, the DCA cannot act as regulator because they are acting as service providers. However, if the DCA merely defines the service level to be provided, and the contractual arrangements are managed by another Government Department, then it is acceptable for the DCA to ensure the service levels are met and thereby act as regulator.

Similarly, if air traffic control services are provided by a contracted body, then it is not acceptable for the DCA to establish and manage the contract, at the same time acting as ATS regulator. However, if the ATC service is contracted to the aerodrome authority (and that authority is separate from the DCA) then the DCA can clearly act as the regulator. This will apply even where aerodrome authority and DCA are both Government bodies – provided they do not have common reporting lines.