

# **Memorandum of Understanding**

*between*

**The Air Accidents Investigation Branch,  
The Marine Accident Investigation Branch,  
The Crown Office and Procurator Fiscal Service**

*and*

**The Association of Chief Police Officers in Scotland**

**For the Investigation of Air and Marine  
Accidents and Incidents in Scotland**

**11 January 2008**





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## **Contact Details**

### **AIR ACCIDENTS INVESTIGATION BRANCH**

**Address:**

Air Accidents Investigation Branch  
Farnborough House  
Berkshire Copse Road  
Aldershot  
Hampshire  
GU11 2HH

**Telephone numbers:**

Accident Reporting Line: 01252 512299 (24 hr)  
General use: 01252 510300  
DfT Duty Officer (out of hours): 020 7944 5999

**Other contact details:**

Fax: 01252 376999  
e-mail: [enquiries@aaib.gov.uk](mailto:enquiries@aaib.gov.uk)  
Website: [www.aaib.gov.uk](http://www.aaib.gov.uk)

### **MARINE ACCIDENT INVESTIGATION BRANCH**

**Address:**

Marine Accident Investigation Branch  
Carlton House  
Carlton Place  
Southampton  
SO15 2DZ

**Telephone numbers:**

Accident Reporting Line: 023 8023 2527  
General use: 023 8039 5500  
DfT Duty Officer (out of hours): 020 7944 5999

**Other contact details:**

Fax: 023 8023 2459  
e-mail: [maib@dfat.gsi.gov.uk](mailto:maib@dfat.gsi.gov.uk)  
Website: [www.maib.gov.uk](http://www.maib.gov.uk)

## **CROWN OFFICE AND PROCURATOR FISCAL SERVICE**

**Address:**

Crown Office (Head Office)  
25 Chambers Street  
Edinburgh  
EH1 1LA

**Telephone number:**

Reception: 0131 226 2626

**Other contact details:**

e-mail: [PS/COPFS@scotland.gsi.gov.uk](mailto:PS/COPFS@scotland.gsi.gov.uk)  
Website: [www.crownoffice.gov.uk](http://www.crownoffice.gov.uk)

## **ASSOCIATION OF CHIEF POLICE OFFICERS IN SCOTLAND**

**Address:**

Association of Chief Police Officers in Scotland  
26 Holland Street  
Glasgow  
G2 4NH

**Telephone number:**

General use: 0141 435 1230

**Other contact details:**

e-mail: [secretariat@acpos.pnn.police.uk](mailto:secretariat@acpos.pnn.police.uk)  
Website: [www.acpos.police.uk](http://www.acpos.police.uk)



## **INTRODUCTION**

1. This Memorandum of Understanding (MoU) has been agreed between the Air Accidents Investigation Branch (AAIB), the Marine Accident Investigation Branch (MAIB)<sup>1</sup>, the Crown Office and Procurator Fiscal Service (COPFS), and the Association of Chief Police Officers in Scotland (ACPOS).

2. It sets out the principles for effective liaison, communication and co-operation between these parties so that air and marine accidents, and related criminal incidents and deaths, can be independently investigated, as necessary, by each party, in parallel with each other, whilst also ensuring that legitimate public expectations are met.

3. The MoU recognises that all parties have duties to perform in relation to investigating air and marine accidents and incidents, and that each party, in discharging these, should take into account the roles and responsibilities of the other parties, ensuring that independent parallel investigations proceed in cooperation with each other, as appropriate, and in accordance with the public interest.

4. In practice, this will mean that, where possible, parties will exchange factual information about the details of an accident or incident in a timely manner, as their respective investigations proceed in parallel.

5. Successful implementation of this protocol in relation to any air or marine accident or incident will be significantly enhanced by:

- The senior representatives of each organisation at the scene of the incident taking personal responsibility for setting and delivering clear standards of communication and co-operation;
- All representatives of each organisation at the scene of the incident having an understanding and respect for each organisation's interests, professionalism and expertise.

6. All parties agree to keep this MoU under review as appropriate.

## **ROLES & RESPONSIBILITIES**

### **Air Accidents Investigation Branch**

7. The Air Accidents Investigation Branch (AAIB) has a heritage dating back to 1915. The AAIB discharges the United Kingdom's obligations under Annex 13 to the Convention on International Civil Aviation and the European Council Directive 94/56/EC. Its legislative powers are defined by the Civil Aviation Act 1982 and the associated secondary legislation, The Civil Aviation

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<sup>1</sup> For the purposes of this MOU, the term "AIB" refers to the MAIB or the AAIB and "AIBs" refers to both the MAIB and AAIB.

(Investigation of Air Accidents and Incidents) Regulations 1996. (SI 1996/2798).

8. The AAIB investigates aircraft accidents and serious incidents that occur in the UK or involve UK registered or manufactured aircraft overseas. It also participates in accident investigations worldwide where there is a specific UK interest. The AAIB also provides technical assistance to the Ministry of Defence in support of Boards of Inquiry investigating military aircraft accidents.

9. AAIB Inspectors have powers to investigate all civil aviation accidents and incidents within the UK. They are appointed under section 8(1) of the Regulations and have the powers under section 9 to have free access to the accident site; the aircraft, its contents or its wreckage; witnesses; the contents of flight recorders; the results of examination of bodies; the results of examinations or tests made on samples from persons involved in the aircraft's operation and relevant information or records. They also have the power to control the removal of debris or components; examine all persons as they think fit; take statements; enter any place, building or aircraft; remove and test components as necessary and take measures for the preservation of evidence.

10. The AAIB is independent of the Civil Aviation Authority and the European Aviation Safety Agency.

### **Marine Accident Investigation Branch**

11. The Marine Accident Investigation Branch (MAIB) was set up in 1989 with responsibility for investigating accidents to determine their circumstances and causes. Its legislative powers are primarily contained in Part XI of the Merchant Shipping Act 1995 and associated secondary legislation with the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005 (SI 2005/881) putting the framework into effect.

12. These regulations are the foundation of the MAIB's work. They apply to merchant ships, fishing vessels and (with some exceptions) pleasure craft. They define accidents, set out the purpose of investigations, and lay down the requirements for reporting accidents. They make provision for the ordering, notification, and conduct of investigations, but allow inspectors the necessary discretion, given the wide variety of cases.

13. Prior to deciding whether to conduct a full investigation, the MAIB will conduct a Preliminary Examination. Only those accidents/incidents which are considered could influence future safety are taken forward as a full investigation, leading to a published report. A short summary of investigations that remain as Preliminary Examinations will be posted on MAIB's website.

14. The MAIB inspectors have powers to investigate accidents involving or occurring on board UK ships anywhere in the world, and any ships in UK territorial waters including accidents that occur on UK inland waterways. They

are appointed under section 267 of the Merchant Shipping Act 1995 and have the power under section 259 to enter any premises in the UK or board any UK ship wherever it may be in the world and any other ship which is present in the UK or in UK waters for the purposes of making such examination or inspection as the inspector considers necessary. They also have the power to require any person to attend for interview, obtain documents, information and records relating to any investigation and prohibit persons from gaining access to, or interfering with any ship, ship's boat or other equipment involved in an accident. Additionally, the MAIB Chief Inspector may require a ship to remain accessible within United Kingdom waters until the process of collecting or preserving the evidence has been completed.

15. The MAIB is independent of the Maritime and Coastguard Agency (MCA) and the European Maritime and Safety Agency.

### **The Lord Advocate, COPFS & the police in Scotland**

16. The Lord Advocate has primary responsibility, under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976, for the investigation of sudden deaths in Scotland, and at common law for the investigation and prosecution of criminal offences. The Lord Advocate's position in relation to these matters is specifically recognised and preserved by section 48 of the Scotland Act 1998.

17. The Lord Advocate and procurators fiscal, who hold commissions from the Lord Advocate, have a statutory power to instruct the police in their investigation and reporting of crime and all suspicious, sudden and unexplained deaths.

### **Body recovery and identification**

18. The Police are entrusted with the recovery and subsequent identification of human remains, where it is practicable to do so, following an event that results in a death. The processes and procedures utilised during this phase of the investigation will be scrutinised routinely and closely at any subsequent legal proceedings. This key area of an investigation will form part of the early discussion aimed at agreeing a joint strategy to move the investigation forward.

### **Interface between investigations carried out by the AIBs, COPFS and the police in Scotland**

19. The purpose behind the respective investigations carried out by the AIBs, and the police and procurators fiscal is very different.

20. The police, under the instruction of procurators fiscal, investigate potential criminal activity and deaths that may arise out of an air or marine accident or incident. The police investigation is concerned with the cause of the accident to the extent that it is important evidence in any criminal and/or deaths investigation. The focus of their investigation is to gather evidence about the

commission of a crime(s), or which points to or helps to explain the circumstances which contributed to, or caused a death(s), with a view to assessing whether there should be a criminal prosecution and/or a Fatal Accident Inquiry.

21. The AIBs have a statutory responsibility independently to investigate air or marine accidents and incidents, including those which may involve the commission of a criminal offence or where deaths may have occurred, and to establish the surrounding circumstances, and all the causal factors of the accident or incident. Their prime concern is to ensure that safety lessons are identified and promulgated; they do not apportion blame or determine liability.

22. The police, procurators fiscal and AIB inspectors, in carrying out their respective investigations, will take account of the roles and responsibilities of the other parties, and cooperate with one another to ensure the legal requirements of all parties are met. This is particularly important in respect of the collection and preservation of evidence from the accident site, the subsequent examination and analysis of items of evidence, and the interviewing of witnesses.

23. It is essential for the AIBs, the police and procurators fiscal that the highest standard of expertise is employed in an investigation. Generally the police will not be trained to carry out such a technical investigation as members of the AIBs into air or marine accidents, but the police, in working with an AIB in carrying out a criminal and/or deaths investigation, may contribute specialist forensic skills, including examination and analysis of prints and samples. Therefore, in establishing the causes, or reasons for severity of consequences of an accident or incident, the necessary technical expertise<sup>2</sup> will normally lie within the relevant AIB.

24. The police will, in most instances, be first in attendance at the scene of an accident and will make contact, and establish early and good communication with the relevant AIB, discuss any subsequent rescue operation, and the collection and preservation of evidence prior to the arrival of the AIB team.

## **MANAGEMENT OF THE INVESTIGATION**

25. All parties will make every effort to establish and maintain good liaison, communication and cooperation with one another throughout their respective investigations, and to work together as appropriate to achieve the best outcome for all. The responsibility for achieving this lies with the senior representative of each party at the scene of the accident or incident. Where it is not clear initially whether another party has an interest in carrying out an investigation, the potential involvement of the other parties should be borne in mind in the conduct of any investigation.

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<sup>2</sup> Technical expertise refers to all aspects of construction and operation of aircraft or marine craft including human factors in aviation and marine operations.

## **Accident site**

26. Parties must have a clear understanding of their respective duties and responsibilities on the accident site to ensure preservation of the best evidence.

### Prior to the arrival of the AIB

27. Where any party is made aware of an accident or incident likely to require the attendance of the police or one of the AIBs, that party will contact the other parties as soon as possible to inform them of the accident.

28. The AIBs each have a duty co-ordinator available 24 hours a day who will decide whether the AIB is to undertake an immediate investigation and the form that any such investigation should take. Where appropriate, the AIB duty co-ordinator will mobilise an AIB investigation team to attend the accident site.

29. The AIB duty co-ordinator will provide the police with information about:

- the intended AIB response and estimated time of arrival;
- contact details for the AIB investigation team;
- advice on technical issues that may require urgent attention.

30. The priority should be to arrange appropriate medical attention for, and the removal of any casualties, and to identify and secure the accident site. Once cordoned/secured, the police should maintain the security of the site until the arrival of the AIB.

31. The site should be preserved as closely as possible in its state immediately after the accident. If it is considered necessary, for the security of evidence, to move items or in any way affect the site, the police should, where practicable, notify the AIB and agree the steps they intend to take. If it is not possible to discuss such action with the AIB, the police should inform the AIB as soon as practicable of any action taken.

32. The police may compile an initial list of witnesses and their contact details which can be shared with the AIB team on arrival.

### After the arrival of the AIB

33. AIB staff will identify themselves on arrival and the police should brief them as to actions taken prior to their attendance. The AIB lead inspector will discuss and devise with the police a plan of action for carrying out an investigation of the accident site.

34. The AIB inspectors will need to access the site without delay to allow identification and securing of perishable evidence. As an expert in their field, AIB inspectors will recognise evidence crucial to an air or marine accident investigation that may not be needed for a police investigation. AIB inspectors will also have the expertise necessary to collect and remove evidence expeditiously with the minimum amount of necessary damage.

35. It is important that the AIB and the police review the level of scene preservation and site security throughout the investigation. If any party intends to withdraw from the site they will inform the other parties. This is particularly important where the police wish to withdraw, so that the AIB can make alternative security arrangements before their departure.

36. The AIB may be able to release parts of the site from its investigation in a phased manner, as evidence is gathered and the investigation becomes more focused. In such cases this will be only after consultation with the COPFS and the police to ensure that any hand-over/hand-back is done in a controlled manner, taking account of the interests of all parties.

### **Accident Site Safety**

37. Parties will retain primary responsibility for the safety of both their own staff and those working under their direction, but it is important for all parties to co-operate, and to co-ordinate their activities in order to maintain the safety of the accident site.

## **COLLECTION AND USE OF EVIDENCE**

38. References to evidence in this section relate to evidence in which the AIB, police and COPFS have an interest. Each party should liaise and agree the overall plan for gathering evidence to ensure all parties remain informed. Steps should be taken by all parties to clarify their respective interests in a piece of evidence.

39. In this regard, the police and AIB agree to keep a record of any evidence collected and significant steps<sup>3</sup> taken in the course of their investigation which can be shared at any time with the other party, subject to legal restrictions on disclosure.

40. It is essential that the AIBs and the police and procurators fiscal take account of their respective interests in the gathering and preservation of evidence from the accident site, and in any subsequent examination or analysis of items of evidence.

41. In this regard, it is essential for the police and procurators fiscal that the manner in which evidence is gathered in the course of any investigation into an air or marine accident or incident takes account of the evidential requirements of Scots law, in particular those relating to the admissibility of

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<sup>3</sup> "Significant steps" include actions taken which may impact on the evidence gathering process, e.g. moving a piece of wreckage as part of the rescue operation. It is not intended that parties will note down every minor action taken on the accident site or otherwise in connection with their investigation, but the record of evidence gathered should contain necessary information about actions taken as part of the evidence collection process, which have been essential for the securing of best evidence.

evidence and the need for corroboration of each essential fact in a criminal case.

42. Any evidence gathered by the police or the AIB inspectors should be properly preserved so that the other parties can access it if required, and if it is within their power to do so. Where one party wishes to dispose of evidence in their possession, and it is unclear whether another party has an interest in retaining that item, parties should consult with each other prior to its disposal to agree the best course of action.

43. As a general rule, technical evidence gathered by AIB inspectors which requires further examination will be held by the AIB, who will maintain the necessary evidential trail. However, where the police do not, or it appears that they will not require to carry out an investigation into an air or marine accident or incident, it may not be necessary for the same detailed evidential trail to be maintained.

44. Where documentary evidence is collected and retained by the police, normally copies of these documents will suffice for purposes of the AIBs. Where the AIB take possession of documentary evidence, the necessary evidential trail will be maintained.

45. Scottish criminal law requires that all essential facts in the commission of a crime are corroborated, i.e. the prosecution must present corroborated evidence to the court to establish that a crime was committed and who is responsible. This means that there must be evidence of each essential fact from two independent sources.

46. This evidential standard must be taken account of when evidence is being gathered, passed on to any third party, examined or analysed. Therefore, for example, when pieces of evidence are gathered from the accident site this must be done by one person in the presence of another. Both of these people should be able to speak about the evidence gathering process and the record of the collection of evidence must be maintained by two people. For this purpose AIB inspectors may provide mutual assistance, or require police assistance.

47. These evidential standards are equally important with regard to the examination or analysis of a piece of evidence. This is particularly important where the examination or analysis could result in the controlled destruction of the item; in this event other parties will not have an opportunity to instruct an independent analysis. If this is contemplated then all parties must be consulted, and given the opportunity to be represented during the examination or analysis.

### **Sharing of Evidence**

48. Subject to any legal restrictions on disclosure, the AIBs will make available to COPFS or the police, evidence, including any factual information,

with the exception of: witness statements, witness details, medical records, and inspector's working notes or working documents.

49. The COPFS or the police will make available relevant evidence and findings to the AIBs. This applies even where the AIB has not initially attended at the accident site but subsequently decides to commence an investigation.

## **INTERVIEWS AND DECLARATIONS**

50. Both AAIB and MAIB take evidence from witnesses on the basis that it is confidential and will not be disclosed unless either AIB is required to do so in the public interest by the relevant court. Both AIBs are subject to a statutory prohibition on disclosing witness statements or declarations.

51. The police may assist their own and/or the AIB investigation by compiling a list of persons who have witnessed the accident or incident and their contact details.

52. The AIB must carry out its own separate interviews of those persons as appropriate. The police will also carry out their own separate interviews of witnesses. The AIB will normally interview persons before the police do so, in order to obtain the fullest and most frank account of events. Parties will liaise, as appropriate, to co-ordinate witness interviews.

53. In exceptional circumstances, where a person is suspected of committing an imprisonable offence, and following discussion with the AIB, the police may require to exercise their power under section 14 of the Criminal Procedure (Scotland) Act 1995 to detain the suspect for a period of up to six hours as part of the criminal investigation.

## **OTHER COORDINATION**

### **Contact with the injured, bereaved and next of kin**

54. When accidents result in serious injuries and fatalities, it is important that all the investigating bodies liaise and agree arrangements for keeping the injured and bereaved informed regarding the progress of the investigations. In the first instance the police Family Liaison Officer (FLO) will be the main channel for this process and as far as possible all contact with the bereaved and injured will be co-ordinated through the FLO. It is helpful if the FLO explains to the bereaved the respective roles of the police and the AIB, and the fact that the AIB investigation is independent of any criminal investigation. The AIBs can supply brochures to assist with this process.

## **Employing third parties**

55. As far as is practical parties should consult with one another on the employment and remit of third parties to be contracted in relation to their investigation to ensure their remit meets the needs of all parties.

## **Public Statements / Media Coverage**

56. In the event of a need to make a public statement, the AIB, the police and COPFS will consult one another to ensure the factual accuracy of any media release and as far as possible to co-ordinate activities.

## **AIB reports and recommendations / Potential criminal prosecution / FAI**

57. The AIB is required to publish reports on the accidents and incidents it investigates as early as possible so safety lessons can be learned and recommendations made known as soon as possible. Subject to the normal provisions of contempt of court, reports may be published whether or not civil or criminal proceedings are in progress or may be instituted. The AIB may also issue a special bulletin, interim report or immediate safety advice if appropriate.

58. Where a prosecution and/or a fatal accident inquiry is under consideration, the COPFS shall notify the AIB of its interest in their investigation. In this instance, the AIB will make available to the COPFS a pre-publication copy of the finalised report at the earliest opportunity. This will be treated as confidential and not disclosed before the date of publication.

59. The COPFS will keep the AIB informed as to the possible timing of any prosecution or fatal accident inquiry related to an accident which the COPFS is aware the AIB is investigating and will make every effort to give as much notice as possible.

60. The COPFS may comment on the finalised report and any comments made will be considered by the AIB before the report is published, but the AIB is not obliged to take any action as a result. Information given to the AIB by the COPFS will be treated as confidential.

61. If a report has been produced, the AIB will, if required, provide an inspector to a FAI to speak to that report. In the case of a fatal marine accident where the Preliminary Examination (see paragraph 13) is complete and it has been decided that a full investigation will not be conducted, the Chief Inspector of the MAIB will contact the Procurator Fiscal at an early stage to advise of this decision and to outline any safety issues he believes could be considered at a FAI.

62. However, in any criminal proceedings AIB inspectors should only be cited by the Prosecution as witnesses where the evidence which they are able to give could not be made available from any other source.

## Training/awareness

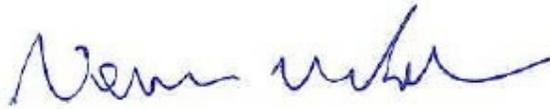
63. COPFS/APCOS will arrange and conduct initial and refresher training for AIBs in evidential requirements in Scotland. The Chief Inspectors of the AIBs will undertake appropriate briefings/training for COPFS and APCOS personnel on the roles and procedures of the AIBs.



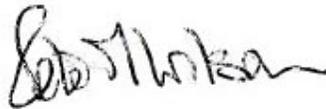
On behalf of AAIB  
David King, Chief Inspector of Air Accidents



On behalf of MAIB  
Stephen Meyer, Chief Inspector of Marine Accidents



On behalf of COPFS  
Norman McFadyen, Crown Agent



On behalf of ACPOS  
Peter M Wilson, Chief Constable Fife Constabulary

Dated: 11 January 2008