



WELLINGTON NEW ZEALAND

PURSUANT to Section 28 of the Civil Aviation Act 1990

I, MAURICE WILLIAMSON, Minister of Transport,

HEREBY MAKE the following ordinary rules.

SIGNED AT Wellington

This *6* day of *October* 1998

by **MAURICE WILLIAMSON**

Maurice Williamson
Minister of Transport

Civil Aviation Rules

Part 119, Amendment 2

Air Transport Operator – Certification

Docket 98/CAR/1317

Civil Aviation Rules
Part 119, Amendment 2

Air Transport Operator – Certification

RULE OBJECTIVE, EXTENT OF CONSULTATION AND COMMENCEMENT

The objective of Amendment 2 to Part 119 is to extend the period that the standards applicable to certain certificates issued under the Civil Aviation Regulations 1953 continue to apply to the holders of these certificates.

The current Part 119 transition period has been determined to be insufficient to transfer to Part 119 certification the following certificate holders:

- (a) holders of air service certificates issued under regulation 136:
- (b) holders of aerial work certificates issued under regulation 136A:
- (c) holders of certificates of approval issued under regulation 191.

Amendment 2 to Part 119 prescribes the timetable for the transition of the above certificate holders to the revised requirements of Part 119. Part 119 enables the Director to exercise control over entry into that part of the civil aviation system through the granting of Air Transport Operator Certificates.

A draft of Part 119 was developed by the CAA in consultation with members of the industry and this culminated in the issue of Notice of Proposed Rulemaking 98-2 under Docket 98/CAR/1317 on 31 July 1998.

The publication of this notice was advertised in the daily newspapers in the five main provincial centres on 15 August 1998. The notice was mailed to 41 industry members who were considered likely to have an interest in the proposal. Copies were also made available to all other industry organisations and individuals through the CAA Internet home page.

A period of 30 days was allowed for comment on the proposed rule. Seven written submissions were received, all of which were in favour of the proposed amendment. The submissions and verbal comments were considered and where appropriate the proposed rules amended to take account of the comments made.

The rules as amended were then referred to and signed by the Minister of Transport.

Part 119 comes into force 28 days after its notification in the *Gazette*.

List of Rules

Part 119 Amendment

119.169 Transition	3
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Part 119 Amendment

Rule 119.169 Transition is revoked and the following new rule inserted:

"119.169 Transition

(a) Each holder of a valid air service certificate issued under regulation 136 of the Civil Aviation Regulations 1953, or a valid aerial work certificate issued under regulation 136A of the Civil Aviation Regulations 1953, or a valid certificate of approval issued under regulation 191 of the Civil Aviation Regulations 1953 may continue to exercise the privileges of the certificate, without complying with 119.5 and notwithstanding the expiry date specified on the certificate, until the applicable date specified in paragraph (d) provided that the certificate holder—

- (1) continues to comply with the standards prescribed in the following requirements that were in force and applicable to the certificate holder immediately before the commencement of this Part—
 - (i) the Civil Aviation Regulations 1953; and
 - (ii) the orders, notices, requirements, circulars, or other publications issued under regulation 8A of the Civil Aviation Regulations 1953; and
 - (iii) the conditions contained in the certificate holder's operations specifications; and
 - (iv) regulation 7 of the Civil Aviation (Security) Regulations 1989; and
- (2) notwithstanding paragraph (a)(1), complies with the applicable requirements in Part 91; and
- (3) complies with any conditions or requirements made by the Director under 19.13.

(b) For the avoidance of doubt, paragraph (a) shall apply notwithstanding the revocation of the Civil Aviation Regulations 1953 and the expiry of the

orders, notices, requirements, circulars, or other publications issued under regulation 8A of the Civil Aviation Regulations 1953.

(c) A person employed, at or after the time this Part comes into force, by the holder of a certificate referred to in paragraph (a), shall not be required to meet the requirements in Appendix A or B for the position that person holds while that person is employed in that position by that certificate holder.

(d) Each valid air service certificate issued under regulation 136 of the Civil Aviation Regulations 1953, and each valid aerial work certificate issued under regulation 136A of the Civil Aviation Regulations 1953, and each valid certificate of approval issued under regulation 191 of the Civil Aviation Regulations 1953 shall remain in force until the earliest of the following:

- (1) if the holder of the certificate operates at least one single engine aircraft, 31 December 2002:
- (2) if the holder of the certificate operates at least one aircraft with two or more engines, 31 December 2000:
- (3) if the holder of the certificate operates at least one aircraft with a passenger seating configuration of more than 10 seats, excluding any required crew member seat, 30 June 2000:
- (4) if the holder of the certificate operates at least one aeroplane with a passenger seating configuration of more than 30 seats, excluding any required crew member seat, or a payload capacity of more than 3410 kg, 31 December 1999.

(e) Notwithstanding paragraph (a)(1)(i), each holder of a valid air service certificate issued under regulation 136 of the Civil Aviation Regulations 1953, and each holder of a valid aerial work certificate issued under regulation 136A of the Civil Aviation Regulations 1953, may have its checking and training carried out by an aviation training organisation appropriately certificated under Part 141."

CONSULTATION DETAILS

(This statement does not form part of the rules contained in Amendment 2 to Part 119. It provides details of the consultation undertaken in making the rules.)

Background to the Rules

The new rules are structured in a manner similar to the Federal Aviation Regulations (FAR) of the FAA, and aim to achieve maximum harmonisation whilst allowing for national variations. Close co-operation is also being maintained with the Civil Aviation Safety Authority of Australia to ensure maximum harmonisation with their regulatory code.

New Zealand's revised legislation is published as Civil Aviation Rules (CAR) which is divided into Parts. Each Part contains a series of individual rules which relate to a particular aviation activity.

Accompanying most Parts will be at least one associated Advisory Circular (AC) which will expand, in an informative way, specific requirements of the Part and acceptable means of compliance. For instance an AC may contain examples of acceptable practices or procedures which would meet the requirements of a particular rule.

The objective of the new rules system is to strike a balance of responsibility between the State authority and those who provide services and exercise privileges in the civil aviation system. This balance must enable the State authority to set standards for, and monitor performance of, aviation participants whilst providing the maximum flexibility for the participants to develop their own means of compliance.

Section 12 of the Civil Aviation Act 1990 requires participants in the aviation system to carry out their activities safely and in accordance with the relevant prescribed safety standards and practices. Section 28 of the Act empowers the Minister to make ordinary rules.

Notice of Proposed Rule Making

To provide public notice of, and opportunity for comment on the proposed new rules, the Authority issued Notice of Proposed Rule Making 98-2 under Docket 98/CAR/1317 on 31 July 1998. This Notice proposed the

amendment of Civil Aviation Rules Part 119 to provide a new transition programme for Air Transport Operator Certification.

Supplementary Information

The comments made on the Notice of Proposed Rule Making are available in the rules docket for examination by interested persons. A report summarising each substantive contact with the Civil Aviation Authority contact person concerning this rule making has been filed in the docket.

Availability of the Document

Any person may view a copy of these rules at Aviation House, 1 Market Grove, Lower Hutt or on the CAA Internet page at <http://www.caa.govt.nz> Printed copies may be obtained from Publishing Solutions Ltd, PO Box 983, Wellington 6015, Telephone 0800 800 359.

Summary of Comments on Docket 98/CAR/1317 NPRM

1. General comments on the NPRM

From the seven submissions received, one general comment was raised.

1.1 One commenter suggested that the specifying of deadlines in the rule may unnecessarily constrain the industry and CAA in completing the re-certification programme.

CAA response: The CAA agrees that this is a concern but is confident that the deadlines can be met. The CAA also considers that by including them in the rule the deadlines are visible to all participants and serve to focus industry and CAA efforts to meeting those deadlines.

2. Specific comments on the NPRM

Specific comments received from the seven submissions are discussed as follows:

2.1 Two commenters pointed out that the amended transition meant that operators could be disadvantaged by the application of Ground Proximity Warning System (GPWS) equipment standards in Parts 121 and 135. The commenters pointed out that the GPWS equipment standards applied at an

earlier date than the new transition and therefore disadvantaged those operators that chose to certificate early in the transition period.

CAA response: The CAA agrees and has amended the GPWS rules in Parts 121 and 135 to reflect a date of 30 June 2000. This date was suggested by one commenter and fits in with the transition date now included in Part 119 for the size of aircraft requiring the equipment.

2.2 One commenter suggested that an allowance be built into the rule to permit operators to change their aircraft types without incurring an earlier, or even expired, transition date.

CAA response: The CAA agrees that this is a possibility. After discussions with the Operator Certification Unit the CAA considers that an operator changing aircraft types should also consider the transition provisions and plan accordingly. A change of aircraft types may therefore require a move to Part 119 certification to meet the requirements of the transition provisions. No rule change has been made.

2.3 One commenter suggested that the requirements in paragraph (d)(3) should be applied only to aeroplanes as there are a few twin engine helicopters with greater than nine passenger seats to which two different rule requirements seem to apply.

CAA response: The CAA agrees but after discussions with the Operator Certification Unit considers the dates appropriate even for the large twin helicopter operators. A rule change is not considered necessary as it only results in a six month difference in the transition dates as specified in paragraphs (d)(2) and (d)(3) and those operators affected should be able to comply by the 30 June 2000 date.

Transitional arrangements

No transitional arrangements are necessary as this Part 119 rule provides the transitional arrangements for the certification of air transport operators.

Regulatory activities

No additional regulatory activities are necessary for these amendments.

Conclusion

The CAA concludes from this consultation that the aviation industry participants favour the direction of the amended rules. The rules also meet New Zealand's international ICAO obligations. The comments and all the background material used in developing the rules are held on the docket file and are available for public scrutiny. Persons wishing to view the docket file should call at Aviation House, 1 Market Grove, Lower Hutt and ask for docket file 98/CAR/1317.