

Safety Regulatory Oversight of Commercial Operations Conducted Offshore

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1. Purpose and Scope

The purpose of this policy is to ensure that:

- the aviation industry is able to take advantage of business opportunities overseas with reasonable certainty about the CAA's likely requirements in relation to safety certification and oversight,
- the CAA is able to properly discharge its responsibilities with respect to safety oversight, and
- the risks associated with these kinds of operation are effectively managed.

2. Authority

The General Manager Policy and Strategic Interventions is the owner of this document and is responsible for the regular review and maintenance of this document. The General Manager Policy and Strategic Interventions is responsible for ensuring that this document follows and meets the Responsibility, Application, Accountability, Monitoring, Approval/Amendments and Availability criteria described in the Development and Control of CAA Policies and Procedures.

3. References

N/A

4. Records

N/A

5. Policy

5.1 Context

New Zealand General Aviation operators are increasingly seeking opportunities to conduct commercial operations off-shore. The level of this activity is growing and diversifying. The aviation industry wants to be able to take advantage of opportunities to export its services overseas and the Government and the CAA are keen to ensure that there are no unnecessary regulatory barriers put in their way.

There are particular risks associated with some of these operations and in some cases the CAA has had concerns about its ability to exercise adequate safety oversight.

The CAA recognises that there is a need for greater certainty and clarity around the conduct of these operations and what oversight arrangements will apply.

5.2 What kinds of operation will it apply to?

The policy is not directed at airline operations conducted between New Zealand and overseas States. Rather it is directed at the wide range of commercial activity that New

Zealand operators are presently engaged in (have been engaged in, or want to be engaged in) within the borders of foreign states (or at sea). These operations include:

- domestic airline operations,
- skydiving or other commercial "adventure aviation" type activity,
- tourist flights,
- support operations in support of government or international agencies,
- aerial mapping and survey operations,
- fish spotting operations at sea,
- fire fighting operations, and
- agricultural operations.

5.3 What are the safety risks associated with these operations?

Some of these operations incur significant safety risks, including:

- risks related to the physical operating environment (terrain, weather),
- risks related to 'remote' locations (access, supply, supervision, and communications),
- risks arising from other location factors (political, social, legal and regulatory environment), and
- the potential for 'drift' over time away from compliance with NZ regulatory requirements and company practices.

5.3 What are the regulatory risks?

There are risks for New Zealand as the State of Registry with responsibilities in relation to aircraft on its register, wherever they are operating. These risks include:

- enforcement difficulties because of differences in the legal environment between New Zealand and the foreign State,
- difficulties in conducting oversight because of access and communication difficulties, and
- the legal and reputational risk for New Zealand in the event of accidents/incidents to a New Zealand registered aircraft, and for the CAA if lack of effective oversight is a factor in these accidents/incidents.

5.4 The legal framework

The legal framework for oversight of these operations stems from:

- the Convention on International Civil Aviation (the Chicago Convention),

- the Civil Aviation Act 1990 (the Act), and
- the Civil Aviation Rules (the rules).

Appendix 2 contains some relevant provisions and comment on the legal framework.

The present legal framework, while not preventing such operations, does not specifically provide for them either. There are some particular difficulties with New Zealand's legislation because:

- operators are not required to notify the CAA of their intention to conduct commercial operations overseas, or seek authorization to conduct such operations (unless the operation is to be conducted under a New Zealand Air Operator Certificate). As a result, the CAA does not necessarily know who is operating what and where.
- New Zealand's rules relating to aircraft registration require no connection with New Zealand other than an address for service. If the aircraft is operated overseas by an overseas entity the CAA has only limited ability to exercise New Zealand's regulatory responsibilities as the State of Registry.
- present rules inhibit the CAA's ability to transfer New Zealand's responsibilities as the State of Registry to a foreign State (as provided in Article 83 bis of the Convention and section 4 of the Act). This limits the options available for facilitating operations by New Zealand registered aircraft leased to foreign operators.
- there is uncertainty regarding the application of the Act in the context of operations conducted within the jurisdiction of a foreign state, particularly in relation to Air Operator Certification.

The CAA's and the Ministry of Transport's legal teams are working on these and other related legal issues.

5.5 Risk mitigation

Various means have been examined for mitigating the risks associated with operations conducted overseas. As indicated above, some of these mitigations may require legislative change to make them fully effective. In the longer term, the international legal framework may need amendment or clarification to reflect the reality of these kinds of operations. The CAA has already initiated discussions with ICAO on the matter and a regional working group has been tasked with examining the problem.

Notwithstanding difficulties with the present legal framework, the CAA recognises that New Zealand operators have been conducting operations overseas for some time and these are likely to continue to be a significant feature of General Aviation activity. This policy has found mechanisms to enable the operations to continue while solutions to some of the legal issues are addressed.

6 Principles

The CAA has developed the following set of principles to guide the development and application of regulatory policy on this issue.

- The entity conducting (or proposing to conduct) the operation must be clearly identified.
- The foreign State (the “State of Operation”) must have authorized the particular operation(s) within that State (and it is for the foreign State to determine the basis on which the operation may be conducted in that State).
- The operator is responsible for identifying and evaluating the safety risks associated with the operation, and proposing appropriate measures for mitigating those risks.
- There must be certainty about the respective responsibilities of the operator, the CAA and the authority in the State of Operation.
- The CAA must be satisfied that it is able to properly discharge its responsibilities as the State of Registry (and should be able to require the aircraft be removed from the New Zealand register if this is no longer the case).
- If operations are to be conducted under a New Zealand Air Operator Certificate (AOC):
 - the operator’s main base of operation must be in New Zealand and the offshore operation managed from New Zealand as an outstation, and
 - the CAA must be satisfied that it is able to properly discharge its responsibilities as the regulatory authority responsible for the AOC (and should be able to require the overseas operation be removed from the AOC if this is no longer the case).
- The focus of CAA’s oversight of overseas operations will reflect its priorities in the domestic context, namely:
 - passenger air transport operations, then
 - other commercial transport operations, then
 - private/recreation.
- The charges made by the CAA for its oversight of overseas operations should be seen as part of the ‘cost of doing business’ for an operator.

7 Scope

7.1 Operations conducted offshore under a New Zealand AOC

Civil Aviation Rule Part 119 includes provisions for operations conducted at overseas locations (outstations). Where commercial operations are to be conducted within a foreign

State under a NZ AOC, the specific location(s) will be regarded as outstations and any proposal will be assessed against the requirements of Part 119. Appendix 1 provides guidance on the particular factors to be taken into account when assessing an application against the requirements of Part 119.

In addition to the operator satisfying the requirements of Part 119, certain arrangements will need to be confirmed with the State of Operation (i.e. the host State):

- written confirmation will need to be provided that the State of Operation has authorised the operation to be conducted within its State by the New Zealand operator under its New Zealand AOC. (The responsibility for obtaining approval from the foreign State rests with the operator, not the CAA).
- the CAA will have to be satisfied that the State of Operation can support the proposed operation in terms of infrastructure (aerodromes, air traffic services etc). (This would be generally taken as accepted if the State of Operation is an ICAO Contracting State.)
- effective communications will need to be established with the regulatory authority in the State of Operation and arrangements agreed for the CAA to conduct oversight of the operation.

In addition to operations under a New Zealand AOC, the following option is also policy.

7.2 Operations conducted offshore using New Zealand registered aircraft, other than under a New Zealand AOC

If it is proposed that a New Zealand aircraft be used to conduct commercial operations within a foreign State other than under a New Zealand AOC, the preferred mechanism would be for New Zealand to transfer its responsibilities as the State of Registry to the foreign State in accordance with Article 83 bis of the Convention (and section 4 of the Act). However, this is not possible under present Civil Aviation Rules and, even if it were, would depend on the foreign State being willing and able to enter into such a transfer arrangement. This may not always be the case.

In lieu of an Article 83 bis agreement such operations are permitted provided:

- the State of Operation is an ICAO Contracting State,
- the safety regulatory authority in the State of Operation has confirmed that the operation may be conducted using New Zealand aircraft, and
- a Memorandum of Understanding (MoU) is established between the CAA and the safety regulatory authority in the State of Operation setting out understandings and arrangements with respect to safety oversight.

This is similar to the arrangement which applies when New Zealand aircraft undertake commercial operations in Australia (in which case it is CASA that requires the MoU).

Such operations overseas could include a number of arrangements, for example:

- “dry lease” of the aircraft to a foreign operator,
- “wet lease” of the aircraft and crew(s) to a foreign operator,
- operations conducted by a New Zealand operator under an AOC issued by the foreign State, and
- operations conducted by a New Zealand operator but where no AOC is required by the foreign State.

The MoU will need to be clear about the particular operating arrangements and oversight responsibilities. Appendix 1 sets out some specific matters to be considered in entering into a MoU.

Under present legislation there is no obligation for an aircraft owner to obtain CAA authorization before conducting commercial operations overseas (unless it is under a New Zealand AOC). Effective implementation of this policy therefore depends on legislative change to require the CAA to be notified and authorization obtained.

Under present rules, if a New Zealand aircraft is to be leased by a foreign operator for longer than 28 days “registered ownership” of the aircraft would be required to be transferred to that operator although responsibility as the State of Registry would remain with New Zealand. The MoU should take account of this.

A time limit may be established at which point the aircraft will be expected to return to New Zealand or removed from the New Zealand register.

8 Private operations

This Policy has no impact on private operations. No permission from the CAA will be required. The operator will have to comply with rule 91.753 *Operations of New Zealand registered aircraft outside New Zealand* and the relevant provisions of Part 43 *General Maintenance Rules*.

9 Overseas practice

In the course of developing this policy, several States were contacted to ask for information on their policy with respect to the oversight of operations conducted by their aircraft in overseas States. Appendix 3 provides a summary of their responses.

10 Liaison with ICAO

At the 2011 Conference of Directors General of Civil Aviation, Asia and Pacific regions, the then Director presented a working paper on this issue. The meeting noted the increasing amount of domestic commercial operations being conducted away from the State of Registry of the aircraft and the importance of maintaining effective oversight of those operations. The matter was referred to a technical working group to gather information from States about how they are managing the risks associated with these operations. Following the group's assessment, the issue may be referred to ICAO Headquarters for guidance.

Appendix 1 - Decision guidelines

1.1 Operations conducted offshore under a New Zealand AOC

Before approving the issue/amendment of the AOC to provide for the operation, the Director will require to be satisfied that the requirements of Part 119 are met and the issue/amendment of the certificate is not contrary to the interests of aviation safety. The particular factors to be taken into account in making this decision are set out below.

1.1.1 Entity conducting the operation

The entity conducting the operation must be the entity that has undergone safety certification in New Zealand.

1.1.2 Place of business

The principal base of business must remain in New Zealand, i.e.

- overall control and management of the operation must be undertaken from New Zealand, and
- training and supervision of employees must be done primarily from New Zealand.

1.1.3 Proposed operation(s)

The nature and purpose of the overseas operation(s) must be clear, i.e.

- the details of the type of the operation(s) to be conducted have been specified; and
- the area(s) of operation and the scope of activity proposed to be conducted at each location have been specified.

The operator's experience in conducting the proposed kinds of operation(s) in similar operating environments is an important factor to be considered.

1.1.4 Arrangements for supervision

The arrangements for on-site supervision by the operator must be adequate. In assessing this, the CAA will take into account:

- the experience levels of staff exercising operating and supervision roles,
- the level and scope of activity to be undertaken at that location,
- the operator's experience with that kind of operation,
- the duration of operations at the location and any arrangements for rotation of aircraft and/or crews, and
- any particular location-specific issues and risks.

1.1.5 Maintaining compliance

The operator's management system must specify adequate procedures for ensuring on-going compliance with:

- Civil Aviation Rules
- the operator's exposition, and
- the regulatory requirements of the foreign State.

1.1.6 Risk assessment

Part of the process of assessing the operator's compliance with the various provisions of Part 119 necessitates some implicit assessment of the risks associated with the operation and whether the operator's proposals would provide appropriate mitigation of those risks. The Director may require the operator to provide a specific risk assessment of the proposed operation. Factors to be considered in determining whether to require such an assessment include:

- the level of experience the operator has in conducting similar such operations,
- whether the proposed location(s) present a particularly difficult operating environment and/or one that is significantly different from that the operator is used to operating in, and
- the duration of the proposed operation(s).

Depending on the CAA's assessment, an initial time limit on the operation could be imposed at the conclusion of which the operation would be reviewed and a decision made on whether to extend the period of validity.

1.1.7 Cost recovery

The operator will be required to agree to pay all appropriate costs in relation to CAA oversight of the operation.

1.2 Operations conducted offshore using New Zealand registered aircraft, other than under a New Zealand AOC

The policy requires a Memorandum of Understanding to be established between the CAA and the safety regulatory authority in the State of Operation. Before entering into such a MoU the Director will need to be satisfied that:

- details of the type of air operation to be conducted have been specified,
- it is clear who will be conducting the operation,
- the location(s) of the operations have been specified,
- arrangements for communication with the operator have been established,

- arrangements for communicating (and especially for reporting any operational occurrences) with the regulator in the State of Operation have been established,
- arrangements for ensuring continuing airworthiness of the aircraft while overseas are satisfactory,
- in the case of a “wet lease” arrangement, arrangements for ensuring continuing crew competence are satisfactory, and
- arrangements for any in-country oversight by the NZ CAA are stipulated.

A time limit may be established at which point the aircraft would be expected to return to New Zealand or removed from the New Zealand register.

Appendix 2 – legal framework

Following are some relevant extracts and comment on the legal framework.

2.1 The Chicago Convention

2.1.1 Principles:

The Chicago Convention created a safety framework for international (A to B) air commerce. Under the Convention:

- States are sovereign (and therefore control domestic aviation operations),
- operators must comply with the operating rules of the State of Operation, and
- the State of Registry has certain responsibilities for its aircraft wherever they are operated.

2.1.2 83 bis

In recognition of the increasing use of aircraft leasing, under Article 83 bis of the Convention “the State of Registry may, by agreement with such other State, transfer to it all or part of its functions and duties as State of Registry in respect of that aircraft under Articles 12, 30, 31 and 32(a).”

Section 4 (2) of the Act makes provision for such transfer, but there are no rules to give effect to it.

To use 83 bis, both States must have ratified and embodied it into their legislation.

83 bis is not widely used in the international community. Working arrangements (MOUs) between regulators are used instead, but these have no legal force.

2.2 The Civil Aviation Act 1990

2.2.1 Section 4(1)

The Act applies, amongst other things, to:

- every New Zealand registered aircraft whether within or outside New Zealand,
- every holder of an aviation document while outside New Zealand and purporting to exercise privileges of that document, and
- every foreign registered aircraft operating in New Zealand.

2.2.2 Section 4(2):

While operating over the high seas, aircraft must “be operated in a manner that complies with the Rules of the Air contained in Annex 2 of the Convention.”

2.2.3 Part 1A (Sections 11A-J)

This provides for the ANZA mutual recognition arrangement.

2.3 Civil Aviation Rules

2.3.1 Rule 91.753 Operations of New Zealand aircraft offshore:

When operating within a foreign State, the operator:

- must comply with the operating and flight rules of that State; and
- must comply with Part 91, so far as it is not inconsistent with the Convention and/or the operating rules of the State of Operation.

2.3.2 Part 119 Air Operator Certification

Under Rule 119.5 no person may perform an air operation except under the authority of a New Zealand AOC.

2.3.3 Part 47 Aircraft Registration

- The obligation to register an aircraft is linked to the person entitled to possession of the aircraft for 28 days or longer.
- Certificates of Registration have no expiry date.
- Rule 47.69 provides cancellation provisions.
- Revocation is based on a presumption that a Certificate of Registration is an Aviation Document under the Act.
- There is no requirement for the registered owner to have a connection with New Zealand (other than an address for service).
- There is no requirement for operators to notify the CAA if they propose conducting operations offshore (although New Zealand, as the State of Registry, has responsibilities).

Appendix 3 - practice of overseas authorities

3.1 United States

- US AOC holders are permitted to conduct operations within a foreign State, (but must have necessary "economic" authority from the "host" State).
- The FAA establishes a working relationship with the foreign authority to clarify their respective oversight responsibilities but the US does not enter into Article 83 bis arrangements for transfer of responsibilities.
- There is no requirement to remove an aircraft from the US registry when the aircraft is based offshore, but.
- there is (or will be) a requirement to re-register aircraft every 3 years.

3.2 Australia

- Commercial operations overseas must be authorized under an Australian AOC.
- The AOC holder must state how they will operate within the other State's legal framework.
- The operator must show it has approval from the State of Operation to conduct operations there.
- Australia does not does not enter into Article 83 bis arrangements for transfer of responsibilities, but
- if foreign aircraft are to be operated under an Australian AOC, there must be an agreement defining the responsibilities of the two regulators (Section 28A agreements).
- CASA has no power to de-register an aircraft simply because it is operating overseas, but
- Australian requirements for registration are different and more stringent to NZ.

3.3 United Kingdom

- Offshore operations under a UK AOC are permitted, but the principal base must be in the UK.
- UK aircraft may be operated under a foreign AOC for a maximum of 12 months.
- The CAA establishes an oversight agreement with the State of Operation.

3.4 Canada

- Canadian aircraft may operate offshore under a Canadian AOC, but with limits and conditions.
- Canadian aircraft may be leased to foreign operators, but there are limits on fleet size and duration.
- Canadian aircraft may be operated overseas and remain on the Canadian register, so long as a Canadian company retains 'custody and control'.