

THE LEGALITY OF AIPNZ

// By CAA Principal Solicitor John Parnell

The AIP is not, as a complete publication, legally enforceable. But in some cases, it *is* mandatory to comply with its advice.

Introduction

The *Aeronautical Information Publication New Zealand* is one-third of this country's answer to ICAO obligations to have an aeronautical information service. (The other two 'thirds' are a preflight information service and a NOTAM service).

Consulting the AIP is a fundamental part of flight planning because it contains a mixture of advice and information from a variety of sources, including aerodrome operators.

The AIP is not, in itself, legally enforceable. But, depending on the underlying requirements of the Civil Aviation Rules (or CARS) or those of the Civil Aviation Act 1990, (referred to here as 'the Act'), information in the AIP can become a compulsory requirement. Or it provides an exception to specific requirements in the rules.

Pilot obligations under section 12

Section 12 of the Act is a key provision obliging aviation participants to act responsibly, safely and in accordance with the relevant prescribed safety standards and practices.

The aeronautical information in the AIP would, in some cases, constitute safety standards and practices. As such, acting contrary to procedures in the AIP could constitute a breach of section 12 of the Act.

The AIP and the rules

Rule 91.223 provides a good example of how the rules and the AIP work together.

Under CAR 91.223(3) a pilot operating on or in the vicinity of an aerodrome *must* perform a left-hand aerodrome traffic circuit when approaching for a landing at and after take-off from an aerodrome *that is published in the AIP*.



There are, however, two exceptions to this:

- (i) The pilot is otherwise authorised or instructed by ATC; or
- (ii) the IFR procedure published in the AIPNZ for the runway being used specifies a right-hand turn and the approach for landing or the take-off is being performed in accordance with the instrument procedure.

Also under rule 91.223(4) a pilot operating on or in the vicinity of an aerodrome *must* perform a right-hand aerodrome traffic circuit when approaching for a landing at and after take-off from an aerodrome that is published in the AIPNZ, *if the details published in the AIPNZ for the aerodrome specify a right-hand aerodrome traffic circuit for the runway being used.*

There are also two exceptions to this:

- (i) The pilot is otherwise authorised or instructed by ATC; or
- (ii) the IFR procedure published in the AIPNZ for the runway being used specifies a left-hand turn and the approach for landing or the take-off is being performed in accordance with the instrument procedure.

As you can see, in the former case, if a right-hand circuit direction is specified in the AIP it displaces the left-hand turn requirement in CAR 91.223. In the latter case, the rule requires the pilot to comply with the right-hand turn circuit if this is published in the IFR procedure in the AIP.

In the above situations, the AIP circuit direction is incorporated into the rule requirement and has legal force. This means that in the absence of a permitted and recorded change in the AIP (consistent with the exceptions set out above), the law requires a right-hand circuit approach except in emergency situations (discussed below).

There are numerous other provisions in CAR Part 91 that reference the AIP, and the CAR requirements are dependent on the information in the AIP.

Compliance in emergencies

All aviation participants have an obligation to comply with the CARs. However, civil aviation legislation does allow for a departure from the CARs in emergency situations. Under section 13A of the Act, a pilot-in-command may breach the CARs in emergency situations, subject to the following requirements in section 13A(2):

- a) The emergency involves a danger to life or property; and
- b) the extent of the breach of the prescribed requirement goes only as far as is necessary to deal with the emergency; and
- c) there is no other reasonable means of alleviating, avoiding, or assisting with the emergency; and
- d) the degree of danger involved in complying with the prescribed requirement is clearly greater than the degree of danger involved in deviating from it.

The CAA will exercise sensible discretion in how it treats any departure from CAR-mandated AIP procedures in emergency situations but expects participants to otherwise comply.

More information, if you're interested

The obligation on New Zealand to have an aeronautical information service comes from international law, via ICAO requirements in annex 15.

In New Zealand, these requirements obliges the CAA to:

ensure the collection, publication, and provision of charts and aeronautical information, and to enter into arrangements with any other person or organisation to collect, publish, and distribute such charts and information¹:

The CAA is also required to:

ensure that an information service is provided which shall comprise the collection and dissemination of aeronautical information and instructions relating to the safety, regularity, and efficiency of air navigation².

The three features of New Zealand's aeronautical information service – the AIP, a flight information service³ and the NOTAM service⁴, must be made readily available to any person (once they've paid a reasonable charge)⁵.

While it's the CAA's responsibility to make sure an AIP is published, the legislation allows for this service to be contracted out – in New Zealand's case, to the Aeronautical Information Management unit at Aeropath Limited. The CAA certifies Aeropath under Part 175 of the CARs to do this. 

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¹ See section 72B(2)(g) of the Civil Aviation Act 1990.

² See section 75(1) of the Civil Aviation Act 1990.

³ See definition of "flight information service" in Part 1 of the CARs.

⁴ See definition of "aeronautical information service" in Part 1 of the CARs. NOTAM is also defined Part 1 and means a "notice distributed by means of telecommunication containing information concerning the establishment, condition or change in any aeronautical facility, service, procedure or hazard, the timely knowledge of which is essential to personnel concerned with flight operations".

⁵ See section 75(2) of the Civil Aviation Act 1990.