



PURSUANT to Section 28 of the Civil Aviation Act 1990

I, HARRY JAMES DUYNHOVEN, Minister for Transport Safety,

HEREBY MAKE the following ordinary rules.

SIGNED AT Wellington

This *23rd* day of *July* 2007

by **HARRY JAMES DUYNHOVEN**

Minister for Transport Safety

A large, handwritten signature in black ink, appearing to read 'Harry James Duynhoven', is written over the printed name. The signature is stylized and includes a large, looped flourish at the end.

Civil Aviation Rules

Part 11 - Revocation

Procedures for Making Ordinary Rules and Granting Exemptions

Docket 6/CAR/1

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Rule objective

The objective is to revoke Civil Aviation Rule Part 11 to ensure there is no inconsistency or conflict with the Civil Aviation Act regarding the Minister's functions to make ordinary rules and the Director's functions to grant exemptions.

These proposed rule amendments are focused on the revoking of rules rather than the making of them. The power of the Minister to make rules also implies the power to revoke.

Extent of consultation

A Notice of Proposed Rulemaking, NPRM 07/01, containing the proposed revocation of Part 11 and other consequential rule amendments was issued for public consultation under Docket 6/CAR/1 on 28 September 2006.

The publication of NPRM 07/01 was notified in the Gazette and advertised in the daily newspapers in the five main provincial centres on 28 September 2006. The NPRM was published on the CAA web site and mailed to identified stakeholders including representative organisations who were considered likely to have an interest in the proposal.

A period of 29 days was allowed for comment on the proposed rule.

Summary of submissions

Two written submissions were received on the NPRM. These submissions and comments have been considered and as a result no amendment was made to the proposal to revoke Part 11.

The rule to revoke Part 11 was then referred to Parliament's Regulations Review Committee before being signed by the Minister for Transport Safety.

Examination of submissions

Submissions may be examined by application to the Docket Clerk at the Civil Aviation Authority between 8:30 am and 4:30 pm on weekdays, except statutory holidays.

Insertion of Amendments

The amendments to the rules in this Part are reflected by revocation of Part 11.

Effective date of rule

The revocation of Part 11 comes into force on 24 August 2007.

Availability of rules

Civil Aviation Rules are available from–

CAA web site: <http://www.caa.govt.nz/>

Freephone: 0800 GET RULES (0800 438 785)

Part 11 Revocation

Part 11 is revoked.

Consultation Details

(This statement does not form part of the rules contained in Part 11. It provides details of the consultation undertaken in making the rules.)

A Notice of Proposed Rulemaking, NPRM 07/01, containing the proposed revocation of Part 11 and other consequential rule amendments was issued for public consultation under Docket 6/CAR/1 on 28 September 2006.

A period of 29 days was allowed for comment on the proposed rule. A total of 2 submissions were received by the closing date.

Each submission is described and identified below, with the submitter named at the start and highlighted in bold font followed by a summary of the submission and the CAA response.

SUBMISSION 1: CAA AERONAUTICAL SERVICES UNIT

Civil Aviation Rule (CAR) 139.15

The preamble states that CAR139.15 is revoked whereas the draft rule wording highlights CAR139.17 as being revoked. Need to ensure it is CAR139.15 and not CAR139.17 that is revoked.

CAA Response:

Accepted. Rule wording changed to revoke CAR139.15.

SUBMISSION 2: PAULINE LEECH, AVIATION QUALITY SYSTEMS Ltd

Part 11 Subparts A, B C and D

The submitter supports the revocation of Subparts A and B whilst noting that agreed procedures will need to be published and petitioners kept well informed. The submitter has no comment on the proposed revocation for Subparts C and D.

CAA Response

The CAA considers that the new rules development process is aimed at involving participants in the development of ordinary rules and keeping

petitioners informed on the processing of their petitions for rule amendments.

Part 3 of the Civil Aviation Act

The submitter believes that the following statement made in the NPRM is not correct and does not provide the justification for the revocation of Subpart E.

“Part 3 of the Act does not, and never has, provided for the Minister to make ordinary rules about Director’s functions under Section 37 to grant exemptions.”

The submitter notes that Part 3 of the Act provides for the Minister “*from time to time to make rules (in this Act called ordinary rules) for all or any of the following purposes:*

(ce) any matter relating or reasonably incidental to any of the following:...

(v) the Director’s functions and powers under section 72I:

(d) Any other matter contemplated by any provision of this Act...”

The submitter considers that section 72I(4)(d) refers to the Director’s functions or powers in relation to the granting of exemptions. The Minister may therefore make rules with respect to exemptions and require a process to be in place. However the decision to grant or decline an exemption is itself done so by the Director independently “*..the Director shall act independently and shall not be responsible to the Minister or the Authority for the performance or exercise of such functions or powers.*”

CAA Response

The CAA notes the comments of the submitter but the CAA is of the view that the provisions in section 28 do not extend the ambit of the Minister's rule making power in a way that would fetter the independent discretionary powers of the Director under the Act.

Part 11 Subpart E

The major concern raised with regard to the proposed revocation of Subpart E is that the submitter believes there is very little understanding of the exemptions process. The submitter considers that the majority of Subpart E should remain in place until it can be ensured that there is a full understanding of the exemption process and the process is robust and reliable.

The submitter suggested that CAR11.503(b)(8) and 11.505(b) could be revoked. The submitter also suggested that CAR11.505(g) should be amended. This currently reads:

11.505(g) Notification of number and nature of exemptions.

The number and nature of exemptions granted are notified in the Gazette as required by section 37(3) of the Act.

The submitter suggests it would be more useful if a report was generated that detailed the number of exemptions granted against each rule, thereby providing another trigger for which action should be taken.

General concerns were raised regarding the robustness of the Exemption process with the submitter noting that the process, procedures and ultimate decision on an Exemption must be robust and withstand scrutiny. The submitter feels that exemptions need to be managed properly, assessed fairly and consistently, documented and recorded otherwise they run the risk of undermining the Civil Aviation Rules.

CAA Response

The CAA agrees that a better understanding of the exemption process would be beneficial however considers that retaining Subpart E would not improve the understanding of the exemptions process. Any such improvement required can be gained through education in CAA

publications and ensuring that the Exemptions procedures on the CAA website that are proposed to replace this Subpart are thorough, concise and clear. It is agreed that the exemptions process must be robust, and managed to withstand scrutiny however it is felt that Subpart E does not assist in this regard.