



**WELLINGTON NEW ZEALAND**

**PURSUANT** to Section 28 of the Civil Aviation Act 1990

**I, JENNIFER MARY SHIPLEY, Minister of Transport,**

**HEREBY MAKE** the following ordinary rules.

**SIGNED AT** Wellington

This *20<sup>th</sup>* day of *February* 1997

by **JENNIFER MARY SHIPLEY**

*Jennifer Mary Shipley*  
Minister of Transport

**Civil Aviation Rules**

**Part 129**

**Foreign Air Transport Operator — Certification**

*Docket Nr. 1134*

**Civil Aviation Rules**

**Part 129**

**Foreign Air Transport Operator —  
Certification**

## **RULE OBJECTIVE, EXTENT OF CONSULTATION AND COMMENCEMENT**

The objective of Part 129 is to prescribe rules providing for certification of foreign operators that perform air transport operations to, from, or within New Zealand.

In May 1990 the Air Transport Division of the Ministry of Transport published a notice of intention to carry out a complete review of the aviation regulatory system. This notice, in Civil Aviation Information Circular Air 3, listed the areas in which rules would be made and invited interested parties to register their wish to be part of the consultative process. The Register was identified as the Regulatory Review Consultative Group.

A draft of Part 129 was developed by the rules rewrite team in consultation with members of the consultative group. An informal draft was published and distributed on 22 January 1996 and a period of informal consultation followed. This culminated in the issue of Notice of Proposed Rulemaking 96/10 under Docket 1134 on 18 July 1996.

The publication of this notice was advertised in the daily newspapers in the five main provincial centres. The notice was mailed to members of the Regulatory Review Consultative Group and to other parties, including overseas aviation authorities and organisations, who were considered likely to have an interest in the proposal.

A period of 30 days was allowed for comment on the proposed rules.

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 129 comes into force on 1 April 1997.



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## Subpart A — General

### 129.1 *Applicability*

This Part prescribes rules governing the certification and activities of persons and organisations conducting a foreign air transport operation.

### 129.3 *[Reserved]*

### 129.5 *Requirement for certificate*

(a) No person shall perform a foreign air transport operation except under the authority of, and in accordance with, a foreign air operator certificate issued under this Part.

(b) No person shall advertise, promote, or otherwise offer to perform a foreign air transport operation unless the operation—

- (1) is authorised by the scope of a foreign air operator certificate issued under this Part; or
- (2) would be authorised by the scope of a foreign air operator certificate, application for which has been made in accordance with 129.7; or
- (3) would be authorised by an amendment to a foreign air operator certificate, application for which has been made in accordance with 129.103.

### 129.7 *Application for certificate*

Each applicant for the grant of a foreign air operator certificate shall—

- (1) complete form CAA 24129/01 and submit it to the Director with a payment of the appropriate application fee not less than 90 days before the date of intended operation, unless a shorter period is acceptable to the Director; and
- (2) provide the details required by 129.13(b) for the operations specifications; and
- (3) provide for review those parts of its exposition relevant to its operations to, from, or within New Zealand, required by 129.63; and
- (4) provide evidence of its authorisation, required by 129.51(1).

**129.9 Issue of certificate**

An applicant is entitled to a foreign air operator certificate if the Director is satisfied that—

- (1) the applicant meets all applicable requirements of Subpart B; and
- (2) the applicant, where the applicant is a natural person, and the applicant's senior person or persons nominated in accordance with 129.63(1) and (2) are fit and proper persons; and
- (3) the granting of the certificate is not contrary to the interests of aviation safety.

**129.11 Privileges of certificate holder**

A foreign air operator certificate specifies the foreign air transport operations that the holder of the foreign air operator certificate may perform.

**129.13 Operations specifications**

- (a) The holder of a foreign air operator certificate shall comply with the operations specifications on the certificate.
- (b) Operations specifications shall contain—
  - (1) the specific location of the certificate holder's principal base of operations; and
  - (2) if different, the address that shall serve as the primary point of contact for correspondence between the Director and the certificate holder; and
  - (3) the certificate holder's New Zealand address for service; and
  - (4) other business names under which the certificate holder may operate; and
  - (5) the type of aircraft authorised for use; and
  - (6) the kinds of operations authorised; and
  - (7) the authorisation and limitations for routes and areas of operations; and
  - (8) any exemption granted from any requirement of this or any other Part; and
  - (9) any other item the Director determines is necessary to cover a particular situation.



**129.15 Duration of certificate**

- (a) A foreign air operator certificate may be granted or renewed for a period of up to five years.
- (b) A foreign air operator certificate remains in force until it expires or is suspended or revoked by the Director.
- (c) The holder of a foreign air operator certificate that expires or is revoked shall forthwith surrender the certificate to the Director.
- (d) The holder of a foreign air operator certificate that is suspended shall forthwith produce the certificate to the Director for appropriate endorsement.

**129.17 Notification of termination of operations**

- (a) Each holder of a foreign air operator certificate who terminates air transport operations to, from, or within New Zealand shall notify the Director in writing within 30 days of the date of termination.
- (b) The notification required by paragraph (a) shall include a request for revocation of the foreign air operator certificate.

**129.19 Renewal of certificate**

- (a) An application for the renewal of a foreign air operator certificate shall be made by the holder on form CAA 24129/01.
- (b) The application required by paragraph (a) shall be submitted to the Director before the application renewal date specified in the certificate or, if no such date is specified, not less than 60 days before the certificate expires.

**129.21 Exemptions**

A person may apply for an exemption from any requirement in this Part in accordance with Part 11 and the provisions in Section 37 of the Act.

## **Subpart B — Foreign Air Operator - Certification Requirements**

**129.51 Authorisation**

Each applicant for the grant of a foreign air operator certificate shall—

- (1) be authorised by the civil aviation authority of its country of domicile, to conduct the proposed air transport operations to, from, or within New Zealand; and
- (2) when required by the Director, produce evidence of its authorisation to the Director.

**129.53 Proving flights or tests**

(a) Each applicant for the grant or amendment of a foreign air operator certificate shall, if required by the Director, perform proving flights or tests to satisfy the Director that it can meet any relevant prescribed requirement.

(b) The flights or tests shall be conducted in a manner acceptable to the Director.

**129.55 Reporting of accidents and incidents**

Each applicant for the grant of a foreign air operator certificate shall establish procedures for notifying any accident or incident involving its aircraft and occurring within New Zealand to the Director, in accordance with Part 12.

**129.57 Records – Personnel**

Each applicant for the grant of a foreign air operator certificate shall establish procedures to ensure that—

- (1) a record is maintained, in New Zealand, of each person employed, contracted, or otherwise engaged by it who is domiciled in New Zealand and to whom any of the following applies:
  - (i) the person, in the performance of their duties, is required to hold a licence or rating;
  - (ii) the person is exercising any delegation of the Director's functions or powers;
  - (iii) the person is exercising any authorisation granted by the certificate holder.
- (2) the record includes details of—
  - (i) the relevant experience, qualifications, and training of each person listed under subparagraph (1); and
  - (ii) the scope, validity, and currency of any licence or rating referred to in subparagraph (1)(i); and
  - (iii) the delegations referred to in subparagraph (1)(ii); and
  - (iv) authorisations referred to in subparagraph (1)(iii).
- (3) the record is retained in New Zealand for one year, or such longer period as may be required by the Director, from the date that the person—
  - (i) ceases to perform duties requiring a licence or rating; or
  - (ii) exercises any delegation or authorisation.

**129.59 Records – Resources**

Each applicant for the grant of a foreign air operator certificate shall—

- (1) establish procedures to ensure details are recorded of testing, checking, and calibration of any safety-critical resources used in carrying out the operations specified on the certificate; and
- (2) retain in New Zealand the record of details required by subparagraph (1) for 2 years from the date the details are recorded.

**129.61 Air operator security programme**

Each applicant for the grant of a foreign air operator certificate that proposes to operate a regular air transport service from or within New Zealand with any aircraft that has a passenger seating configuration, excluding any required crew member seats, of more than nine seats shall establish an air operator security programme that meets the requirements of Part 108.

**129.63 Foreign air transport operator exposition**

(a) Each applicant for the grant of a foreign air operator certificate shall ensure that its exposition contains the following details—

- (1) the titles and names of its senior person or persons domiciled in New Zealand; and
- (2) the titles and names of its senior person or persons, whether domiciled in New Zealand or elsewhere, who have responsibility for ensuring that the operator meets the requirements of this or any other CAR Part; and
- (3) the duties and responsibilities of the senior person or persons specified under paragraphs (a)(1) and (2), including matters for which they have responsibility to deal directly with the Director on behalf of the applicant's organisation; and
- (4) a summary of the scope of activities at each location within New Zealand where operational personnel are based for the purpose of providing the foreign air transport operations; and
- (5) an organisation chart showing lines of responsibility of the senior persons specified under paragraphs (a)(1) and (2), and extending to each location listed under paragraph (a)(4); and
- (6) a summary of the applicant's staffing structure at each location listed under paragraph (a)(4); and

- (7) the principal place of operation in its country of domicile and, where applicable, its main operations base and main maintenance base; and
  - (8) appropriate contacts within the civil aviation authority that have principal oversight of the applicant's organisation; and
  - (9) the procedures required by—
    - (i) 129.55 regarding accidents and incidents; and
    - (ii) 129.57 regarding personnel records; and
    - (iii) 129.59 regarding resource records; and
  - (10) where required by 129.61, the air operator security programme; and
  - (11) the procedures by which the exposition is authorised, controlled, distributed, amended, and reviewed; and
  - (12) such other information that is required by it to satisfactorily conduct foreign air transport operations to, from, or within New Zealand.
- (b) The Director shall not issue the applicant with a foreign air operator certificate unless the applicant's exposition as it relates to foreign air transport operations is acceptable to the Director.

## **Subpart C - Operating Requirements**

### **129.101 Continued compliance**

- (a) Each holder of a foreign air operator certificate shall-
- (1) continue to meet the standards and comply with the requirements of Subpart B; and
  - (2) hold at least one current copy of those parts of its exposition required by 129.7(3) and its operations specifications issued under this Part at each major location in New Zealand specified in its exposition; and
  - (3) comply with all procedures detailed in its exposition; and
  - (4) make each applicable part of its exposition and the operations specifications issued by the Director under this Part available to personnel who require those parts to carry out their duties

(b) Each holder of a foreign air operator certificate shall, on request by the Director, make available to the Director its exposition containing the details required by 129.63.

**129.103 Changes to certificate holder's organisation**

- (a) Each holder of a foreign air operator certificate shall—
- (1) ensure that its exposition is amended so as to remain a current description of its operations to, from, or within New Zealand; and
  - (2) ensure that each amendment made to its exposition meets the applicable requirements of this Part and complies with the amendment procedures contained in its exposition.
- (b) Where the certificate holder proposes to make a change to any of the following, prior application for and acceptance by the Director is required:
- (1) the senior person or persons nominated in accordance with 129.63(1); and
  - (2) the base locations in New Zealand from which it performs air transport operations; and
  - (3) the scope of its certificate, relative to operations to, from, or within New Zealand; and
  - (4) the air operator security programme required by 129.61.
- (c) The Director may prescribe conditions during or following any of the changes specified in paragraph (b).
- (d) The certificate holder shall comply with any conditions prescribed under paragraph (c).
- (e) Where any of the changes referred to in paragraph (b) requires an amendment to the certificate, the certificate holder shall forward the certificate to the Director as soon as practicable.
- (f) The certificate holder shall make such amendments to its exposition as the Director considers necessary in the interests of aviation safety or security.

**129.105 Transition**

- (a) Each holder of a valid air service certificate issued under regulation 136 of the Civil Aviation Regulations 1953 may continue to exercise the privileges of the certificate, without complying with 129.5, until the expiry of that

certificate or until 6 months from the time this Part comes into force, whichever is the sooner, **provided** that the certificate holder—

- (1) continues to comply with those of 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.

## CONSULTATION DETAILS

(This statement does not form part of the rules contained in Part 129. It provides details of the consultation undertaken in making the rules.)

### Background to the Rules

In April 1988 the Swedavia-McGregor Report on civil aviation regulation in New Zealand was completed. Following the recommendations contained in that report, the Civil Aviation Authority (CAA) (formerly the Air Transport Division of the Ministry of Transport) commenced a complete review of all existing civil aviation legislation. The existing legislation that is still appropriate is being rewritten into the new *Rules* format. New legislation is being generated where necessary for the areas not presently covered.

Considerable research was carried out to determine the format for the new legislation. It was decided that the legislative framework should incorporate the advantages of the regulatory system of the Federal Aviation Administration (FAA) of United States of America and the system being developed by the European Joint Aviation Authorities and published as Joint Aviation Requirements (JAR).

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 CAR numbering system is based on the FAR system. As a general principle the subject matter of a rule Part will be the same or similar to the FAR although the title may differ to suit New Zealand terminology. Where a CAR Part does not readily equate with a FAR number code, a number has been selected that does not conflict with any existing FAR Part.

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 allows 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 96-10 under Docket Number 1134 on 18 July 1996. This Notice proposed the introduction of Civil Aviation Rules Part 129 to provide a certification system for foreign operators that performed air transport operations to, from, or within New Zealand.

### **Supplementary Information**

All 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. Copies may be obtained from Publishing Solutions Ltd, PO Box 983, Wellington 6015, Telephone 0800 800 359.

### **Summary of Comments on Docket Number 1134 NPRM**

#### **1. General comments on the NPRM**

Seven submissions were received on Part 129.

#### **2. Specific comments on the NPRM**

Specific comments received from the submissions are discussed as follows:

### **Subpart A – General**

#### **129.3 Definitions**

One commenter suggested a slight variation to the wording used to define "operational responsibility.

**The Authority response:** Reference to operational responsibility is no longer used in this Part.



One commenter expressed concern in regard to the definition of foreign air transport operation contained in this Part and to air transport operation that was contained in Part 119 as, in the absence of a draft of Part 115, it was not clear how foreign operators would be controlled should they perform operations involving gliders.

**The Authority response:** Any operation involving the use of gliders for hire or reward will not be an air transport operation and therefore Part 119 or 129 will not apply. It is proposed that such an operation will be controlled under Part 115 that will deal with adventure aviation.

### 129.5 Requirement for Certificate

One commenter suggested additional wording, to cover the promotion of an operation during an application for that operation, to the effect that “the advertised service is subject to authorisation being granted by the Director” in order to provide a level of protection for the Director from becoming involved in commercial disputes and also to ensure the public are aware of this situation before the purchase of a ticket.

**The Authority response:** The Authority considers that the suggested wording is not necessary because the authorisation will not be the only determinant of whether a particular proposed operation will go ahead.

### 129.7 Application for certificate

One commenter was opposed in principle to the payment of an application fee.

**The Authority response:** These fees are set by the Civil Aviation Charges Regulations 1991. The fees structure is based on cost recovery.

### 129.9 Issue of certificate

Two commenters requested a definition or clarification of *fit and proper person*.

**The Authority response:** The Authority points out that section 10 of the Civil Aviation Act 1990 lists the criteria that shall be used by it to determine whether a person is fit and proper; however it agrees with the tenor of the comment that further elucidation would be helpful and so will, as the concept develops, inform industry, possibly through the appropriate AC, of those developments.

### 129.13 Operations Specifications

One commenter suggested a wording change so that operations specifications are associated with the certificate.

**The Authority response:** The Authority considers that the operations specifications form part of the certificate and so the rule now states that instead of using the term “associated with” or “applicable to”.

One commenter suggested that there should be flexibility to accommodate substitution of aircraft in the event of aircraft unserviceability.

**The Authority response:** The Authority considers that flexibility already exists because the operator can nominate more than one type of aircraft provided the aircraft is authorised for the operation.

### **129.15 Duration of certificate**

Two commenters suggested that approval should not be subject to an expiry date and that the rule should include a statement that continued authorisation by the country of domicile is a condition of continued validity.

**The Authority response:** Based on the Swedavia-Macgregor report recommendation that a terminating period be prescribed not exceeding 5 years, the Authority has adopted a policy that certificates will be issued for no longer than a 5 year period. This provides the CAA with a re-entry process to ensure continued compliance. Where it has been possible the CAA has provided for non-terminating certification, for example certificates of airworthiness. This Part also requires that the holder of a foreign air operator certificate continues to be authorised by its domicile certificate.

## **Subpart B - Foreign Air Operator – Certification requirements**

### **129.51 Certification requirements**

One commenter questioned whether the country of domicile would have jurisdiction to authorise operations to, from, or within New Zealand.

**The Authority response:** The Authority considers that the requirement is valid as the authorisation for a foreign air transport operator to perform an air transport operation to, from, or within New Zealand will be contained in the operation specifications under their domicile certificate.

One commenter suggested that the Director should be satisfied with the rules and the regulatory authority of the country of domicile.

**The Authority response:** The Director will have the discretion to find an exposition is not acceptable if it does not comply with New Zealand safety standards.

### **129.57 Air Operator Security Programme**

One commenter suggested that this rule discriminates against scheduled operators to the benefit of charter operators.

**The Authority response:** Equivalent requirements can be imposed as a condition of the approval for any charter operation.

### **129.59 Air Operator Exposition**

One commenter requested a definition for senior person.

**The Authority response:** 129.9 requires that a senior person is fit and proper. Section 9 of the Civil Aviation Act 1990 requires that any person who has control over the exercise of privileges under an aviation document is fit and proper. The Authority therefore believes any further definition of senior person is not necessary as it is any person who has control over the exercise of privileges under an aviation document.

One commenter requested clarification of wording in 129.59(8) and also that 129.59(9) should be deleted as it was already covered in 129.57 and that 129.59(11) was unnecessary and was not required in Part 119.

**The Authority response:** The wording of paragraph (8) is not considered to need the wording suggested because the country of domicile may not be the principal overseer. Paragraph (9) requires the procedures to be contained in the exposition whereas 129.57 only requires a programme. With respect to paragraph 11 the Authority considers that, although the requirement is not contained in Part 119, such a provision is required in this Part because there may be relevant information other than that required in paragraphs 1 to 10 that may be necessary to satisfactorily conduct foreign operations to, from, or within New Zealand.

## **Subpart C - Operating requirements**

### **129.105 Records - Resources**

One commenter suggested that the rule should specify a period for which records should be retained and that consideration should be given to the requirements of the country of domicile.

**The Authority response:** The Authority agrees with the need for a specific period for record keeping, however the requirement is necessary for our monitoring purposes and so the domicile practice is not considered relevant.

### 129.107 Changes to certificate holder's organisation

One commenter suggested corrections to wording in paragraph (b) and a cross-reference in paragraph (c).

**The Authority response:** The Authority agrees that both were typographical errors.

### 129.111 Safety inspections and audits.

One commenter made reference to legislation before Parliament, and suggested a change from *audit* to *monitoring*. The commenter suggested that the CAA should only have access during airline normal hours of operation and by prior arrangement with regard to airline operational requirements. The commenter stated that there needs to be a clear statement as to frequency of compliance checks. The commenter stated that spot checks are potentially disruptive and not supported and that the cost of compliance checks should be carried by the CAA. The commenter suggested that confidentiality and record-keeping need to be addressed.

**The Authority response:** 129.111 has been deleted and reliance will be placed upon the Civil Aviation Act 1990 for this power. The CAA will normally carry out routine audits by pre-arrangement and during normal hours of airline operation. The CAA reserves the right to carry out such audits, monitoring, inspections or spot checks as the Director deems necessary to meet the requirements of the Act in the interests of civil aviation safety and security (refer Section 15 of the Act). New Zealand operates in a user-pays regulatory environment. Subject to any statutory limitations, the CAA operates on a system of protection of commercial confidentiality. Record-keeping requirements in line with those of domestic operators have been included.

### Conclusion

The Authority concludes from this consultation that the majority of the aviation industry participants favour the direction of the new rules. Specific issues that were identified in the comments received from the consultative group have been addressed. The rules also meet New Zealand's international obligations under the applicable ICAO Annex. 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 1134.

**Transitional arrangements**

Part 129 contains a transition provision in 129.105. This provision will allow holders of air service certificates issued under the Civil Aviation Regulations 1953 to continue operating under those certificates for a maximum of 6 months from the time this Part comes into force provided certain conditions are met.

**Regulatory activities**

Part 129 replaces numerous requirements from the Civil Aviation Regulations 1953. It replaces the existing certification requirements under regulations 136, of the Civil Aviation Regulations 1953.

Section 14(2) of the Civil Aviation Amendment Act 1991 (as amended by section 34 of 1996 No. 91) deems the Civil Aviation Regulations 1953 that are continued in force by section 8 of that Act to be revoked on the close of 31 March 1997.

Section 14(3) states that any order, notice, requirement, circular, or other publication continued in force by section 8 shall expire on the close of 31 March 1997.