

Notice of Proposed Rule Making

NPRM 23-01

12 February 2024

Assorted Issues

Docket **24/CAR/01**

Affected Rule Parts:

Part 1

Part 61

Part 91

Part 121

Part 129

Part 145

Consequential Amendments:

Part 1

Part 61

Part 172

Background to the Civil Aviation Rules

The Civil Aviation Rules (the Rules) establish the minimum regulatory safety boundary for participants to gain entry into, operate within, and exit the New Zealand civil aviation system. The rules are structured in a manner similar to the Federal Aviation Regulations of the USA.

Rules are divided into Parts and each Part contains a series of individual rules which relate to a particular aviation activity. Some rules empower the use of a CAA notice. Notices contain specific mandatory requirements including detail about the approvals, standards, conditions, procedures and technical specifications that have been approved or determined by the Director as being appropriate in accordance with the corresponding enabling rule.

Advisory circulars accompany many rule parts and contain information about standards, practices and procedures that the Director has established to be an acceptable means of compliance with the associated rule. An advisory circular may also contain guidance material to facilitate compliance with the rule requirements.

The objective of the Rules system is to strike a balance of responsibility between, on the one hand, the Crown and regulatory authority (CAA) and, on the other hand, those who provide services and exercise privileges in the civil aviation system. This balance must enable the Crown and regulatory 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 within the safety boundary.

Section 12 of the Civil Aviation Act 1990 prescribes general requirements for participants in the civil aviation system and requires, amongst other things, participants 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 for any of the following purposes:

- the implementation of New Zealand's obligations under the Convention
- to allow for the mutual recognition of safety certifications in accordance with the ANZA mutual recognition agreements
- the provision of aviation meteorological services, search and rescue services and civil aviation security programmes and services
- assisting aviation safety and security, including but not limited to personal security
- assisting economic development
- improving access and mobility
- protecting and promoting public health
- ensuring environmental sustainability
- any matter related or reasonably incidental to any of the following:
 - i. The Minister's objectives under section 14 of the Act;
 - ii. The Minister's functions under section 14A of the Act;
 - iii. The Authority's objectives under section 72AA of the Act;
 - iv. The Authority's functions and duties under section 72B of the Act; and
 - v. The Director's functions and powers under section 72I of the Act
- any other matter contemplated by any provision of the Act.

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1. Purpose of this NPRM

The purpose of this rule-making proposal is to make minor amendments to various rules that are considered not significant enough in nature or impact to warrant their own rule proposal. Traditionally, there have been two categories of rule changes: Omnibus, for minor editorial and drafting changes; and standard for all others. In 2016, a third category was developed, Small Issues, to package together a suite of distinct rule changes that are not Omnibus changes but that also do not require the extensive cost-benefit analysis of standard rule changes because the costs are insignificant. These changes are not likely, on an individual basis, to be prioritised high enough for proceeding with rule development. The name was changed to Assorted Issues as these are a variety of issues, but not necessarily small in size or importance.

An issue is considered to have met the criteria for the Assorted Issues Rule if—

- the proposal is minor, does not include a policy change, or Cabinet approval has been obtained for that change;
- the proposal addresses minor technical matters or updates;
- compliance costs are insignificant or no safety risk will result from the proposal;
- the proposal is not likely to be controversial; and
- the proposal has little or no regulatory impact.

2. Background to the proposal

2.1 General Summary

The Assorted Issues Rule Proposal proposes a broad range of minor amendments to CAR Parts 1, 61, 91, 121, 129, 145 and 172. There are 10 distinct policy items in this NPRM set out below:

- a. **Part 61 Night Vision Imaging Systems (NVIS):** Amend Part 61 *Pilot Licences and Ratings* to include requirements for the training in and use of NVIS.
- b. **Part 91 Performance-Based Communication and Surveillance (PBCS):** Amend Part 91 *General Operating and Flight Rules* to align with Standards and Recommended Practices (SARPs) set by the International Civil Aviation Organization (ICAO) and provide an appropriate regulatory system for aircraft operators and air traffic control providers wanting to operate using PBCS.
- c. **Part 91 Aircraft Call Signs:** Amend Part 91 *General Operating and Flight Rules* to enable the use of unique call signs and replace a general exemption.
- d. **Part 145 Maintenance Organisation Rating Requirements:** Amend *Part 145 Aircraft Maintenance Organisations Certification* to formalise an organisations' document management and limit future risks associated with voluntary compliance.
- e. **Part 129 Foreign Aircraft Operations:** Amend Part 129 *Foreign Air Transport Operator Certification* to provide further clarity for operators on how many take-offs or landings they may complete within New Zealand before they require a Foreign Air Operators Certificate (FAOC).
- f. **Part 121 Flight Attendant and Cabin Crew Ground Instructor Training Requirements:** Amend Part 121 *Air Operations Large Aeroplanes* to include Flight Attendant and Cabin Crew ground instructors in Human Factors and Crew Resource Management training requirements.
- g. **Part 91 Helicopter Hover Entry/Exits:** Amend Part 91 *General Operating and Flight Rules* to enable helicopter operators to conduct hover entry/exits in line with requirements to be specified in the Rules, replacing a general exemption.
- h. **Part 91 Definition of Introductory Flight:** Amend Part 1 *Definitions and Abbreviations* to shift from the undefined 'trial flight' to a new definition of 'introductory flight'.
- i. **Part 91 Definition of a Crew Member Revision:** Amend Part 1 *Definitions and Abbreviations* to recognise a new type of crew member on board an aircraft conducting a commercial transport or hire or reward operation.
- j. **Part 91 Definition of Cost-Sharing Flights:** Amend Part 1 *Definitions and Abbreviations* to more clearly define what constitutes a cost-sharing flight.

2.2 NPRM Development

The proposal was developed in consultation with internal and external subject matter experts. Some of the issues addressed were raised by industry stakeholders, who were also consulted on their respective submissions. Feedback on these issues was also provided by the Aviation Community Advisory Group (ACAG) in the issue assessment stage.

In July 2021, the Assorted Issues proposal was approved by the Ministry of Transport to be added to the Rules programme.

2.3 Key Stakeholders

The following are identified by the CAA as key stakeholders in the proposed rule amendments contained in this NPRM:

- The Minister of Transport:
- The Ministry of Transport:
- The CAA:
- Airways Corporation Limited:
- Airlines:
- NZ Airline Pilot Association:
- Aviation Community Advisory Group (ACAG):
- Part 145 maintenance organisations:
- Part 149 recreation aviation organisations:
- Part 129 foreign aircraft operators:
- Flight crew members and flight attendants.

3. Issues addressed during development

April 2024 Rules deadline:

One of the main issues discussed was whether it is feasible to have the new rules in force by April 2024. The CAA was advised by the Ministry of Transport that there will be a pause in rule making from end of April 2024 up to April 2025. This is to allow time for the Ministry to focus its resources on the implementation work for the Civil Aviation Act 2023 coming into full force in April 2025. The CAA considers that it is feasible provided that the NPRM is produced and published for public consultation on its own. The associated CAA notices and Advisory Circulars (ACs) can be developed and published for public consultation at a later date, when the new rules are in place.

The CAA acknowledges that this is not an ideal situation as having the draft notices and AC alongside the NPRM would help affected individuals to better understand the draft rule requirements and their purpose. On the other hand, having all the draft documents (NPRM, 3 draft CAA notices, several revised ACs) published for public consultation at the same time means that industry will need a lengthy period to review all the documents, thus jeopardising meeting the April 2024 rules in-force date.

NVIS:

The NVIS proposal had a few issues that needed to be resolved. For instance, there was some discussion as to which of the current flight instructors should give flight instruction using NVIS. A subject matter expert's view is that category C flight instructors are considered not experienced enough to give flight instruction using NVIS. In addition, although category A flight instructors may exercise night privileges, that does not automatically qualify them to give flight instruction using NVIS. The question that remains to be answered is whether category A flight instructors can give NVIS flight instruction, if they satisfy additional requirements. If yes, what would those additional requirements be? For the purposes of this NPRM, it is proposed that a category D, B and A flight instructor be allowed the privilege to give flight instruction at night using NVIS. Another issue concerned the appropriate minimum level of pilot experience: should the minimum requirement be a PPL with at least a class 2 medical certificate issued under the Act, or a CPL with a class 1 medical certificate?

At present, NVIS is mainly used by pilots operating helicopters under VFR at night. It was floated in the discussions whether the rules should extend the use of NVIS to operations at night under IFR. Plus, whether the rules should also extend the use of NVIS to fixed wing aircraft, such as small aeroplanes. Due to time constraint, the CAA was not able to fully explore these possibilities, hence they are not included in the draft rules. However, the CAA is keeping an open

mind and welcomes feedback from the aviation industry on these 2 issues. In particular, it would be useful to know whether similar requirements regarding eligibility, pilot training and currency that apply to helicopter pilots also apply to pilots of small aeroplanes, or whether there are additional requirements. What should be the minimum requirements for operating an aircraft at night under IFR?

PBCS:

This considers what processes or procedures should be put in place to deal with ongoing non-compliance of aircraft against prescribed performance requirements, and in particular whether it is appropriate to have such procedures in the rules. It was decided that it would be better to leave the details of such procedures regarding non-compliance in a Civil Aviation Notice.

Introductory flight:

The original policy work recommended that a new definition of introductory flight be inserted in Part 1 and that such flights would continue to be considered as “not for hire or reward.” Upon legal review, it was contended that introductory flights should be defined as being for hire or reward. The exception in the air transport operation definition in Part 1 excludes trials flights (now renamed introductory flights) from being an air transport operation, but it does not exclude such flights from being hire or reward. New draft rule 91.227H anticipates that members of the public going on an introductory flight will pay for that flight - at least when they are in a pilot seat and able to manipulate controls, under supervision.

It was considered appropriate to allow introductory flights for hire or reward on a limited basis. It would be an untenable legal fiction to say that an introductory flight, which the customer pays for, is not for hire or reward. The legal view pointed out that this is also consistent with much ab initio flight training, which is often conducted under Part 91 by an instructor appropriately qualified under Part 61.

While developing the draft definition, it became clear that there needs to be a substantive rule to specify the restrictions, and impose certain requirements, on the participants carrying out an introductory flight. A definition of the term by itself does not fully address the issue. (*See draft rule 91.227H) and introductory flight definition*)

Crew member:

The original policy work recommended that Part 1 be amended to include an ‘additional crew member’ who is carrying out safety critical tasks on board an aircraft. There was much discussion as to whom the new crew member could possibly be (e.g. winch operator, NVIS crew, photographer, shooter, frost worker, medical crew, etc). Similar to the introductory flight issue, it became clear when developing the draft definition that there needs to be a substantive rule to specify the restrictions, and impose certain requirements, on the participants involved in the carriage of the new crew member. Given that the requirements and circumstances surrounding this new crew member can change quickly over time, the decision was made to place the details in a CAA notice. A definition of the term by itself does not fully address the issue. (*See draft rule 91.227D and paragraph 3(a) of crew member definition*) Note that the notice will be produced and published for public consultation once the new rules are in force.

Cost sharing flight:

The original policy work recommended that the **cost sharing flight** definition in Part 1 be amended to include certain new elements.

While developing the draft definition, it became clear that there needs to be a substantive rule to specify the restrictions and impose certain requirements on the operator when carrying out a cost sharing flight. A definition of the term by itself does not fully address the issue. (*see draft rule 91.227B and the cost sharing flight definition*)

Objectives of the Assorted Issues Proposal:

This Assorted Issues rule amendment project presents a set of proposals that do not meet the criteria for an Omnibus rule change but that also do not, taken individually, warrant the resources of a standard rule change process.

The primary objectives of these proposals are to:

- a. reduce regulatory burdens on aviation operators without reducing safety;
- b. address risks to aviation safety;
- c. achieve consistency with ICAO standards and recommended practices (SARPs), and
- d. achieve the above objectives (a–c) with no reduction of aviation safety, and at minimal cost to the aviation industry, the travelling public and government.

The ten proposals presented here seek to amend several Civil Aviation Rules. The issues addressed and the main rules affected are:

1. **Part 61 Night Vision Imaging Systems (NVIS):**
2. **Part 91 Performance-Based Communication and Surveillance (PBCS):**
3. **Part 91 Aircraft Call Signs:**
4. **Part 145 Maintenance Organisation Rating Requirements:**
5. **Part 129 Foreign Aircraft Operations:**
6. **Part 121 Flight Attendant and Cabin Crew Ground Instructor Training Requirements:**
7. **Part 91 Helicopter Hover Entry/Exits**
8. **Part 91 Definition of Introductory Flight**
9. **Part 91 Definition of a Crew Member Revision:**
10. **Part 91 Definition of Cost-Sharing Flights:**

3.1 Night Vision Imaging Systems (NVIS)

- 3.1.1 There is an increasing use of night-vision imaging systems (NVIS) in aviation in New Zealand. This equipment aids pilots who wish to fly at night according to visual flight rules (VFR). NVIS equipment includes interior and exterior lighting, cockpit windows, radar altimeters, and crew station design/components, such as filtration, transparencies, head-mounted night-vision goggles (NVGs), and ancillary equipment.¹
- 3.1.2 NVIS equipment is expensive, with each set costing approximately \$20,000, and costs for obtaining an NVIS rating are generally in the order of \$20-25,000 NZD (including ground course and flight time instruction). The cost has been a barrier to widespread use by private recreational pilots in the past. However, technological advances may see the cost reducing over time. The equipment could become more accessible, and potentially more variable in terms of performance.
- 3.1.3 In New Zealand, the main users of NVIS equipment are helicopter operations, predominantly those involved with search and rescue operations, air ambulance operations and operations supporting NZ Police. In recent years, users of this equipment have also expanded to those that transit at night to emergencies such as wildfires. The use of this equipment has had a significant benefit to the operational capability and safety of night flying. While the number of operators using NVIS equipment in New Zealand is still low, the potential falling costs and accessibility of this equipment will likely see greater utilisation in the future.
- 3.1.4 There are currently no specific references in the Rules for NVIS. When these Rules were written this technology was not being used in civil aviation in New Zealand. Given the lack of specific Rules, CAA staff have provided regulatory oversight to commercial operators by using more general Rule requirements.
- 3.1.5 At present, these makeshift measures to provide regulatory oversight have been successful. Subject matter experts have advised that this is largely because there are a small number of operators currently using NVGs, so the impact on the industry is limited.
- 3.1.6 Current users are typically good operators who proactively engage with the CAA and are aware of the potential negative safety consequences from misuse of this equipment. However, NVIS is starting to become more commonplace. Some modern helicopters can be purchased with NVIS cockpit equipment already installed, which enables use of these systems by a wider group of participants, including private pilots.
- 3.1.7 The CAA is currently using a makeshift regulatory system to provide oversight of NVIS use in commercial operations. This makeshift approach will become less appropriate as NVIS technology becomes more accessible and is used by a wider group of operators.

¹ FAA Safety website; <https://www.faa.gov/files/gslac/library/documents/2012/Nov/70735/NVIS2.pdf>

- 3.1.8 Faulty or low standard NVIS equipment has the potential to create significant safety risk as does poor training in the equipment and flight technique required to use it. With equipment becoming more accessible to operators, a prevalent gap in our regulatory framework may appear in the future if NVIS use is not appropriately accommodated.
- 3.1.9 This gap is most apparent in relation to private users of NVIS. This is because there is less oversight of such operators, and the Rules regarding private operations do not contain the same general obligations that have allowed the CAA to help regulate commercial users of NVIS.
- 3.1.10 This proposal would provide safety benefits where night-time helicopter operations are improved through using acceptable aids to night vision with appropriate training. Application fees to the CAA for NVIS equipment and training programme approvals would be insignificant compared to the costs detailed in paragraph 13 for purchasing NVIS equipment and obtaining a rating.
- 3.1.11 Consequential amendments to Rule parts will also be required to specify the conditions regarding the operation of an aircraft on a night flying operation. In tandem with these consequential amendments, the Rules will also need to specify the performance and airworthiness standards of NVIS and related equipment.

3.2 Performance Based Communication and Surveillance (PBCS)

- 3.2.1 As a signatory to the Convention on International Civil Aviation 1944 (the Chicago Convention, New Zealand's civil aviation system is guided by SARPs set by ICAO for aviation safety, security, efficiency and environmental protection. As an ICAO Member State, New Zealand is expected to follow SARPs to the extent practicable but are not required to where it would be unreasonable or impractical.
- 3.2.2 Increasing aviation traffic has necessitated changes to allow more traffic in airspaces that are experiencing increasing demand. Performance-based communications and surveillance (PBCS) allows for more effective and efficient management of airspace by providing ATC with access to comprehensive information on the data communication capability and performance of aircraft. The increased level of information available to ATC regarding an aircraft's data communication ability can inform routing decisions. For example, where ATC is aware that it can communicate rapidly with aircraft, separation distances may be reduced. Where ATC is aware that an aircraft has a slower communication system, wider separation distances may be applied. The ability to offer closer separation distances allows a more direct route, which reduces travel times and fuel usage. Separation distances are prescribed in ICAO Document 4444 and 7030 based on airworthiness and operator approval processes. Airways currently provide performance-based separation criteria using RCP 240/RSP180 within Auckland Oceanic as documented in Annex 11 and ICAO document 4444.
- 3.2.3 To enable the use of PBCS, States need to adopt Required Communication Performance (RCP) and Required Surveillance Performance (RSP) indicators. RCPs and RSPs will be used by operators in their flight plans to support the implementation of PBCS. ICAO Annex 11 prescribes requirements for States for the implementation of RCPs and RSPs.
- 3.2.4 Further, Annex 6 states that operators and ATC that wish to take advantage of PBCS in airspace where they are available, will need to obtain a PBCS operational authorisation by the State of the operator for applicable RCP and RSP specifications. This PBCS authorisation will certify that the aircraft and operator meet both the communication and surveillance requirements allocated to them.

- 3.2.5 New Zealand currently does not meet the ICAO Annex 11 requirements for RCP and RSP indicators and has differences filed against these SARPs. In doing so, New Zealand does not impose obligations in relation to approvals and minimum safety standards, as required by the Annex amendments.
- 3.2.6 Further, there is currently no formalised process for aircraft operators seeking approval from the CAA to use PBCS, which is required under Annex 11 SARPs. Therefore, the CAA has no regulatory oversight of PBCS users especially with regards to aircraft airworthiness.
- 3.2.7 Airways New Zealand (Airways) has implemented a PBCS system and is already applying RCPs and RSPs.² However, there are no formalised regulatory requirements aircraft airworthiness regarding PBCS, which limits CAA oversight and poses a risk if this technology be used incorrectly. In order for Airways to continue using the RCPs and RSPs on a formalised basis, the RCPs and RSPs will need to be adopted by the CAA and published in the Aeronautical Information Publication (AIP). Where RCP and RSP specifications for PBCS have been set, Annex 6 requires that the state of the operator must ensure that various elements of compliance have been documented by an operator wishing to use them.³

Problem statement

- 3.2.8 There is no formalised process for the approval of PBCS use in New Zealand by aircraft operators. As a result, New Zealand is non-compliant with ICAO SARPs. Aircraft operators and ATC require formal approval to use PBCS by the State of the operator, as per Annex 6 SARPs. The inability to issue formal approvals for the use of PBCS by New Zealand registered aircraft could undermine their performance and efficiency when operating in airspace where PBCS separation criteria may be applied to aircraft meeting the performance requirements.
- 3.2.9 A failure to implement PBCS will have negligible safety impacts. PBCS is ultimately designed to improve efficiency, rather than necessarily improving safety. It is also likely that a failure to introduce a formalised system for PBCS will have an impact on the reputation of New Zealand in global aviation. The associated loss of efficiency for New Zealand registered aircraft and aircraft operating in the NZZZO FIR is likely to impact negatively on the reputation of the CAA. New Zealand has been at the forefront of the development of PBCS and failing to implement the resulting policy may reflect poorly on New Zealand.

Recommendation

- 3.2.10 In order to fully benefit from PBCS technology, New Zealand needs an appropriate regulatory system that aligns with ICAO SARPs and provides an appropriate level of regulatory oversight. It is recommended that Part 91 is amended to provide a system for regulatory approvals that would enable operators to apply to the CAA for permission to use PBCS. The approval will be a prerequisite to the use of PBCS.
- 3.2.11 This will ensure that operators are able to safely take advantage of the efficiency gains and related cost savings associated with operating in PBCS airspaces. The ability to approve the use of PBCS by New Zealand ATC would ensure that operators in the Auckland Oceanic Flight Information Region, approved to use PBCS by their State of registration, would safely benefit from the reduced separation distances, leading to time and fuel savings. The resulting time and cost savings will have wider benefits for consumers of air travel and the airfreight sector.
- 3.2.12 By amending the Rules, the CAA will have a formalised system of assessing equipment used by PBCS operators, and meet ICAO recommended standards.
- 3.2.13 We expect costs for this regime to be minor and be limited to standard CAA costs for changes to an operator's exposition (CAA hourly rate of \$284), as well as standard airworthiness certification costs.

² RCP 240 and RSP 180

³ Annex 6, Part I, Standards 7.1.4 and 7.3.3 (November 2016 amendment)

3.3 Aircraft Call Signs

Status quo:

- 3.3.1 Aircraft with approved identifiable paint schemes or markings and aircraft seeking or using an accepted unique personalised call sign are predominately aircraft of historical significance such as vintage aircraft, warbirds or ex-military aircraft. Most are under the purview of the Special Flight Operations and Recreational Aviation.
- 3.3.2 Rule 91.249(a)(3) requires pilots in command of New Zealand registered aircraft to use the name of the aircraft manufacture or model, and the last three letters of the aircraft registration marking when speaking to other pilots and air traffic control (ATC) over the radio.
- 3.3.3 The intent of Rule 91.249(a)(3) is to reduce the risk of confusion while communicating, by making clear which aircraft is speaking on the radio, or, in the case of ATC, which aircraft their instructions are intended for. Identification using a call-sign is also useful for other things, like helping airports charge for landing fees.
- 3.3.4 In January 2016, the Director issued general exemption 15/EXE/43 due to misidentification of aircraft increasing potential risks to safety. It allows participants with approved identifiable paint schemes or markings to have a unique personalised call sign accepted by the CAA and for them to use it when operating their aircraft within New Zealand, rather than their standard ZK call sign, as set out in CAR 91.249(a)(3).
- 3.3.5 Under general exemption 15/EXE/43, operators using a unique personalised call sign must ensure the following:
- the aircraft must have an identifiable paint scheme or marking that has been approved by the CAA, issued in accordance with Rule 47.104; and
 - the operator must receive acceptance of the proposed unique personalised call sign from the CAA; and
 - the unique personalised call sign must include the aircraft make/model and alphanumeric identification visible on the fuselage of the aircraft.
- 3.3.6 Approximately 49 aircraft are now using personalised call signs under 15/EXE/43. The CAA lists these aircraft on its website.

Problem statement:

- 3.3.7 The current Rule is out of date and does not provide for the use of personalised call signs linked to the markings that would enable identification of the aircraft. This is currently being managed by a general exemption as an alternative to rulemaking. This is not good regulatory practice.

Recommendation:

- 3.3.8 It is proposed that the CAA amend Part 91 to include provision for the use of accepted unique personalised call signs that have a direct link to an aircraft's approved identifiable paint scheme or markings, as opposed to using a general exemption. This proposed regulatory change will provide a long-term solution to the problem and provide certainty for operators. Further, this recommendation will satisfy our regulatory stewardship obligations.
- 3.3.9 Amending the Rules will give enduring effect to what 15/EXE/43 delivers in the short-term – a simpler unique personalised call signs acceptance process, greater transparency, reduced cost to participants, and reduced possibility for risk around confusion and misidentification of aircraft.

3.4 Maintenance Organisation Rating Requirements

- 3.4.1 Part 145 sets certification requirements for organisations conducting aircraft maintenance activities. Some maintenance organisations also undertake ‘supply’ activities, which typically requires an additional certification under Part 19F. Part 145 was amended in 2015 to allow for this without the need for a Part 19F certification.
- 3.4.2 A release note is a document that provides evidence that parts, materials or fluids meet the minimum airworthiness standards acceptable to the Director of Civil Aviation. A release note enables the products to be traced back through the various stages of manufacture, distribution and maintenance. The requirements for release notes are intended to ensure that they include all information and are issued pursuant to processes that guarantee the safety of the products being issued.
- 3.4.3 When the Rules were amended in 2015, the explicit requirement for maintenance organisations to provide a release note in their exposition was removed and was not replaced in Part 145. Therefore, maintenance organisations are currently including release notes in their expositions on a voluntary basis. However, this means that the CAA is relying on maintenance organisations voluntarily completing this action and poses a safety risk if a Release Note is not provided for a product where an issue may arise.
- 3.4.4 Further, there is a requirement (via CAR 145.68(3)) for a Release Note to include a supply organisation number, which the relevant Part 145 organisations are no longer issued with.
- 3.4.5 The 2015 amendments to the Rules that allowed maintenance organisations supplying aircraft products to dispense with Part 19F certification failed to consider two necessary consequential amendments relating to release notes. First, maintenance organisations are not required to include a copy of the release note in their exposition under Part 145. Second, maintenance organisations are required to include a supply organisation number on their release notes (via CAR 145.68(3)). These organisations no longer hold a supply organisation number.
- 3.4.6 Without explicit requirements in the Rules that allow for CAA oversight of release notes via inclusion in the exposition, there is no way of ensuring that maintenance organisations are providing evidence that parts, materials or fluids meet the minimum airworthiness standards acceptable to the Director of Civil Aviation unless an organisation chooses to voluntarily provide a release note.
- 3.4.7 Further, without a valid supply organisation number being included on the release note, it will be difficult to trace a release note to an issuer should a problem arise with the products supplied.
- 3.4.8 The inability of the CAA to exercise oversight of the content and form of Release Notes and to trace faulty products may lead to inadvertent or deliberate poor practice around the issue of Release Notes and the supply of aviation products.
- 3.4.9 It is recommended that rule 145.101 is amended to require maintenance organisations to provide a copy of a release note in their exposition. (*See draft paragraph (1a)*). It is also recommended that rule 19.321 be amended to allow maintenance organisations to include an approval number on their release notes as opposed to a supply organisation number. (*See amended paragraph (b)(4)*)
- 3.4.10 In practice, the maintenance organisations are providing copies of their release notes with their expositions and including the maintenance organisation number on the release note on a voluntary basis. Given this, there will be no additional cost to industry.

3.5 Foreign Aircraft Operations

3.5.1 Under Part 8A of the Act, operators require authorisation before conducting most non-scheduled flights in and out of New Zealand. Authorisation of these flights is carried out by senior members of the Ministry of Transport, under delegated authority from the Secretary for Transport.

3.5.2 The Minister of Transport may issue guidelines to the Secretary for Transport relating to the authorisation of non-scheduled flights. Guidelines were set in 1997 by the then-Minister of Transport. In summary, the guidelines state that the flight/s must:

- not constitute the circumvention of bilateral air service arrangements; and
- meet all safety and security requirements of New Zealand law, including all those established by the Director of Civil Aviation in New Zealand.

Civil Aviation Rule Part 129

3.5.3 Civil Aviation Rule **Part 129 Foreign Air Transport Operator – Certification** determines the safety and security requirements noted in the second guideline. The purpose of Part 129 is to prescribe the certification requirements for foreign operators that perform air transport operations to, from, or within New Zealand and the operating requirements for the continuation of this certification. There are currently 56 certificated Part 129 operators.

3.5.4 In comparison to certification of New Zealand registered aircraft operations (for example, Parts 119, 121, 125, 135), Part 129 specifies lesser standards because it accepts that the operators have been appropriately certified by an equally capable ICAO contracting State.

3.5.5 Rule 129.1 specifies that, except for operations conducted for the purpose of medical emergency (including evacuations, or the carriage of medical supplies or body organs), Rule Part 129 shall only apply to persons conducting foreign air transport operations of:

- more than two take-offs or landings within New Zealand in any consecutive 28-day period; or
- more than eight take-offs or landings within New Zealand in any consecutive 365-day period.

3.5.6 Rule 129.1(1) (and 129.1(2) by extension) can be interpreted in two ways:

- An operator does not require a foreign air operator certificate (FAOC) unless it lands more than two times, or takes off more than two times, within 28 days in New Zealand. This interpretation allows a non-certificated operator to fly two stops in New Zealand (e.g. into Auckland, on to Wellington, and out); or
- An operator requires a FAOC if it is doing more than two take-offs or landings in New Zealand, within 28 days. This interpretation would allow only one stop in New Zealand (e.g. into Auckland and back out).

3.5.7 The current guidance provided by the CAA regarding the interpretation of 129.1 is that “more than two take-offs or landings”, and “eight take-offs or landings” allows an operator one take-off and landing in any consecutive 28 day period, and four take-offs and landings in any consecutive 365 day period respectively without requiring a Part 129 certificate.

3.5.8 The Ministry of Transport considers that the Rule should be amended to clarify which interpretation is to be applied. The Ministry suggests there may be benefits in allowing operators to make more than one stop in New Zealand, within 28 days – because:

- Applying for a FAOC imposes costs on operators may be a disincentive for tourist and business charters to fly to New Zealand. This could reduce New Zealand’s economic opportunities; and

- The Ministry often receives requests to authorise non-scheduled flights at short notice, and there is not enough time to grant a FAOC. This can have adverse impacts on New Zealand's reputation and economy when the flights in question are high profile (for example, touring international musicians).

- 3.5.9 Internal CAA subject matter experts advise that the intent of Rule 129.1 is to limit the number of commercial flights that a foreign operator can conduct in New Zealand without requiring a FAOC. This ensures that the CAA maintains sufficient regulatory oversight and control of operations conducted. If the amount of landings and take offs within New Zealand are increased, there may be a gap in regulatory oversight, which may present an unacceptable safety risk because the operator has not been subject to a safety assessment as part of obtaining a FAOC under Part 129 (e.g. fit and proper person assessment, senior persons approval, operating procedures, etc).
- 3.5.10 Rule 129.1 is drafted in a way that allows for two interpretations of the take-off and landing limits on non-scheduled, foreign-operated flights. This exposes the CAA to legal and reputational risk, given that there is a 'grey area' in the Rule which could be disputed in the courts.
- 3.5.11 Furthermore, there will be a gap in regulatory oversight if these operators are conducting more than one take-off or landing in New Zealand. This means that the CAA has minimal assurance that the non-scheduled operators are operating safely within the New Zealand system because they have not been subject to the safety checks and balances as part of obtaining a Part 129 FAOC.
- 3.5.12 These differing interpretations highlight the uncertainty about the appropriate safety limits and the CAA's risk appetite for the number of take-offs and landings permitted before requiring a Part 129 FAOC. This uncertainty could result in either an unaddressed safety risk or a regulatory burden.
- 3.5.13 It is recommended that Part 129 is amended to clarify the maximum number of take-offs and landings permitted by an operator before requiring a FAOC to explicitly convey the policy intent of the Rule. In order to maintain sufficient regulatory oversight, it is recommended that the Rule is amended in a way that allows operators to complete no more than one (1) landing and one (1) take off in New Zealand within a 28-day period, and no more than four (4) landings and four (4) take offs in New Zealand within a 365-day period.
- 3.5.14 The CAA is already more flexible with these Rule requirements than most other States – most require an FAOC or landing permit no matter how many flights. If we were to allow for four landings and take offs (a flight would land, take off, land in another domestic location and then take off out of New Zealand), we would move further away from being in line with international practice. By amending the Rules to allow for no more than one landing and one take off in a 28-day period, we will remain closer to international practice.
- 3.5.15 Further, the CAA needs to ensure that we are considering the range of different airlines which may want to operate in New Zealand, and the varying levels of safety maturity of these airlines (from very safe to not as safe). By maintaining a higher level of oversight, the CAA is able to do this.
- 3.5.16 This recommendation will ensure alignment of the policy intent and the Rule, and that participants are clear on how to comply. The Rule will be explicit on the absolute maximum number of landings and take-offs that can take place before a FAOC is required. It will also ensure that the current legal and reputational risks are fully addressed.

3.6 Flight Attendant and Cabin Crew Instructor Training Requirements

- 3.6.1 **Part 121 Air Operations Large Aeroplanes** was amended in 2012 to introduce new requirements relating to training and competency requirements in human factors (HF) and crew resource management (CRM). Both are designed to ensure that flight and cabin crew are aware of HF and CRM principles, which are critical to airline safety.
- 3.6.2 CRM is a management system for flight and cabin crew, which relies on crew using all available resources to ensure safety and limit the possibility of human error. CRM training places an emphasis on

cognitive and interpersonal skills and is a critical aviation safety element. The risks associated with a failure of CRM are potentially major. Where CRM fails, the potential for human error increases, the ultimate result of which could be major loss of life or injury, or severe damage to aircraft and other property. CRM stems from research into HF in aircraft accidents and is designed to mitigate future occurrences. For CRM to be effective every crew member on an aircraft needs to be trained and competent.

- 3.6.3 HF are the non-technical factors related to human behaviour that can affect how a person performs their job. It includes social and interpersonal skills and decision-making ability. Like CRM, HF training can reduce the likelihood of occurrences resulting from human behaviour.
- 3.6.4 The training and competency requirements introduced by the 2012 amendments apply to a range of types of persons involved in Part 121 operations. Due to the training related nature of the changes, all parties involved in training flight and cabin crew were included in the amendments. Flight Attendant and Cabin Crew Ground Instructors were not, however, included in the amendments. This has created issues for the implementation of the HF/CRM scheme.
- 3.6.5 Advisory Circular (AC) 121-4 accompanies the amended CAR Part 121 and provides guidance regarding the implementation of HF/CRM. The AC notes that all instructors (including ground instructors) must have completed a training course in methods of assessing crew member competency in the HF/CRM aspects of aircraft operation.⁴
- 3.6.6 The Rules currently do not require Flight Attendant or Cabin Crew Ground Instructors to be trained in HF or CRM, despite being included as part of the training requirements in the AC. CAR 121.529 excludes Flight Attendant or Cabin Crew Ground Instructors. It is directed at 'the programme required by Part 121.553 for flight crew', of which Flight Attendants and Cabin Crew Ground Instructors are not a part of.
- 3.6.7 There is a gap in the regulatory design for HF/CRM training requirements. Specifically, Part 121.529 refers to HF and CRM training being required by all 'flight crew'. However, under CAR Part 1 there is no definition for 'flight crew', rather there are definitions for flight crew members and flight attendants.⁵ These definitions are not explicitly referred to in relation to training requirements for HF/CRM.
- 3.6.8 The lack of a requirement for flight attendant and Cabin Crew Ground Instructors to be trained in this area is at odds with the policy intent and has made enforcing the Rules as they were intended difficult. This has increased safety and reputational risks.
- 3.6.9 Without this issue being addressed, there is a risk that Flight Attendant and Cabin Crew Ground Instructors might not have the applicable training for their role. A failure to include flight attendant and cabin crew ground instructors in the requirements for HF and CRM training may result in insufficient training, posing a safety risk. It is also problematic in terms of the overall CRM/HF training regime, which is intended to ensure that all crew are trained in CRM/HF, which includes training on the ground.
- 3.6.10 It is recommended that Part 121 is amended to require all Flight Attendants and Cabin Crew Ground Instructors to be trained in HF and CRM. This will align with the intent of the 2012 amendment.
- 3.6.11 The amendment will result in a comprehensive HF/CRM training system that ensures all relevant crew members, and the instructors training them understand the relevant HF/CRM principles and are able implement an effective CRM process. This will ensure that the training requirements are fully implemented in the New Zealand airline industry, mitigating the known risks associated with HF.

⁴ AC 121-4, section 11, pp 20 -21.

⁵ The Part 1 definition of 'Flight Crew Member' means an appropriately qualified person assigned by the operator for duty in an aircraft during flight time as a pilot or flight engineer. This definition explicitly does not include Flight Attendants or Cabin Crew Ground Instructors. The Part 1 definition of a Flight Attendant means an appropriately trained person assigned by the operator to be responsible to the pilot-in-command for passenger safety on an aircraft.

3.6.12 This change will impact all operators certificated under Part 121 that use Flight Attendant and Cabin Crew Ground instructors. Costs for these operators will arise through additional training course costs to accommodate for the training of Flight Attendant and Cabin Crew Ground Instructors. The exact cost of these training courses are unknown due to many Part 121 operators having in-house facilitators for these training programmes.

3.7 Helicopter Hover Entry/Exit

3.7.1 Civil Aviation Rule **Part 1 Definitions and Abbreviations** defines “hover” as “a helicopter flight at a constant height and position over the surface”. Hovering is a unique and important function of helicopter flight. It enables stationary observation and the lowering of persons, equipment, or goods to the ground at lower heights by rappelling, winching or other means. At low levels, it also enables a landing-type exercise (e.g. loading and unloading passengers or cargo) where actual landing may be unsafe due to the uneven nature of the surface or other barriers prohibiting landing.

3.7.2 CAR 91.207(a)-(b) requires pilots-in-command of aircraft to ensure passengers are restrained in their seat at specified times:

91.207 Occupation of seats and wearing of restraints

a. *A pilot-in-command of an aircraft must require each passenger to occupy a seat or berth and to fasten their safety belt, restraining belt or, if equipped, shoulder harness or single diagonal shoulder belt -*

1. *during each take-off and landing; and*
2. *when the aircraft is flying at a height of less than 1000 feet above the surface; and*
3. *at other times when the pilot-in-command considers it necessary for their safety; and*
4. *during aerobatic flight; and*
5. *at all times in an open cockpit aircraft.*

b. *A pilot-in-command of an aircraft may permit a passenger to unfasten a shoulder harness or single diagonal shoulder belt -*

1. *during take-off and landing; and*
2. *when the aircraft is flying at a height of less than 1000 feet above the surface -*

if the pilot-in-command is satisfied that such action is necessary for the passenger’s performance of an essential function associated with the purpose of the flight.

3.7.3 The exclusion of “safety belt” and “restraining belt” in CAR 91.207(b) means passengers must remain restrained in their seats but are able to remove their shoulder harness or single diagonal shoulder belt to more easily reach around the cabin while seated. As a result of the requirements of 91.207 (a)-(b), the Rules do not allow for the practice of entering or exiting a helicopter when it is in hover mode.

3.7.4 In 2018, the then Director issued a general exemption (19/EXE/1) from Rule 91.207 (a)(2) in respect to passenger entry into or exit from the aircraft while it is hovering.

3.7.5 A general exemption is appropriate to address the problem with Rule 91.207 in the short term; however, it should not be used as a long-term mitigation strategy. Reliance on exemptions for setting standards or addressing wider systemic issues is not good regulatory or legal practice.

3.7.6 The Rules prohibit helicopter operators from conducting a hover entry/exit where it may be safer to do so. The nature of many helicopter operations, such as wild animal recovery in remote or uneven terrain, means helicopters are unable to land safely to permit entry and exit.

- 3.7.7 Although hover entry/exit is not permitted under the CARs, the CAA is managing this gap in the Rules by a general exemption. This is not good regulatory practice and does not provide a reasonable long-term solution to this issue.
- 3.7.8 It is recommended that Part 91 is amended so that the pilot-in-command of an aircraft is not required to fulfil the requirements of Rule 91.207 (a)-(b) only with respect to allowing passenger entry into or exit from the aircraft when it is hovering. This option would allow all operators the option of hover entry/exit where appropriate. Applicable training on the safe practice of this manoeuvre would be provided. This would ensure that helicopter sector safety is improved through the consistent and safe practice of hover entry/exit.
- 3.7.9 Where operators are not certificated, and thus not subject to routine regulatory oversight (e.g. Part 91 operators), some safety risks remain where there is inadequate compliance with the Rule or no regulatory assurance that implemented practices are appropriate. This could be mitigated by a consequential amendment to Part 61 Pilot Licences and Ratings requiring these (and all other) pilots to receive acceptable hover entry/exit training, record this in their logbook and be assessed as part of their biennial flight review.
- 3.7.10 This proposal will satisfy the legal concerns and risk caused by general exemptions. The CAA will no longer be rule making by general exemption.

3.8 Definition of Introductory flight

- 3.8.1 Trial flights allow the public to take a flight with a flight instructor to see if flying and obtaining a pilot licence is something they want to pursue. These flights serve as an important gateway into aviation. However, there are longstanding concerns that the status quo is being exploited by some operators who describe their operations as ‘trial flights’ to avoid obtaining the required certification to carry fare-paying passengers.
- 3.8.2 The Rules do not define trial flights, but specifically exclude them from the Part 1 definition of an ‘air transport operation’. Consequently, they are not considered a hire or reward operation and are subject to a lower level of safety regulation. They can be conducted without an Air Operator Certificate (AOC), despite a passenger being carried. This is because the intent of these flights is based on a bona fide interest in receiving flying instruction, rather than for example, an adventure aviation experience or transport operation.
- 3.8.3 A trial flight can be offered if conducted by a Part 141-certificated aviation training organisation or by a flight instructor qualified under Part 61 Pilot Licences and Ratings or Part 91 General Operating and Flight Rules. Operators must ensure that appropriate evidence is available attesting their trial flights are bona fide.
- 3.8.4 The exact size of this issue is difficult to determine as many of those affected are non-certificated and outside the scope of CAA monitoring and inspection activities. However, all 45 Flying New Zealand member clubs and approximately 40 other organisations that use fixed-wing and rotorcraft can offer trial flights. Part 149 - Aviation Recreation Organisations, such as Gliding New Zealand can also provide trial flights.⁶
- 3.8.5 CAA engagement and interactions with trial flights is often reactive ranging from responding to questions of acceptable means of compliance, to varying levels of enforcement action. Issues arise when operators use trial flights to carry fare-paying passengers without having the required certification. Below are examples of air transport operations that require certification if the intent of a trial flight is not met:
- Scenic flights or a joy ride – these must be conducted with authorized aircraft under a Part 119 or a Part 135 General Aviation Air Operator Certificate (GA AOC); and

⁶ There are 22 gliding clubs with a combined flying membership of about 900 pilots and 291 gliders - approximately five percent of all registered aircraft. Gliding clubs have traditionally used trial flights to attract new members.

- Adventure aviation flights - these must be conducted under a Part 115 Adventure Aviation Operators Certificate with the appropriate exemption for control manipulation.⁷

3.8.6 The regulatory framework for bona fide trial flights in New Zealand is open to exploitation because they are not defined in the Rules. This increases the risk that some operators will use trial flights to avoid certification under Parts 115, 119, and/or 135 when conducting operations that carry fare-paying passengers.

3.8.7 To address this problem, it is recommended that a substantive new rule be added to Part 91 to specify the restrictions and duties for pilots and passengers when carrying out an introductory flight. (*See draft rule 91.227H*) It is also recommended to shift from the undefined status quo to a new Part 1 definition for an ‘introductory flight’ that captures the bona fide intent of such flights. Introductory flights would continue to be considered not air transport operations. New guidance material would also be created to support this. The deliberate shift from the status quo seeks to mitigate safety issues and risks outlined above.

3.8.8 A bona fide introductory flight would require:

- a pilot to be authorised by a Part 141 aviation training organisation, or a Part 149 aviation recreation organisation or is a flight instructor;
- the pilot to meet all the applicable requirements for the appropriate category of aircraft under Part 61;
- the aircraft to have a single engine and a certificated maximum passenger seating capacity of 4 passengers including the instructor;
- a passenger in the student seat to have only a basic level of manipulations of the controls (considered appropriate for a student) under the direct supervision of the instructor;
- to be an A to A flight, or where the aircraft only lands to swap over the person in the student seat;
- each accompanying passenger who is not manipulating the aircraft controls not to be charged separately;
- a passenger not to be carried on more than 2 flights;
- the pilot to ensure that the flight briefing consists of a basic initial training lesson only; and the pilot to ensure that an aerobatic manoeuvre is not performed during the flight.

3.8.9 This recommendation reflects that no one is on ‘trial’ under the status quo. For many, the word trial muddies the intent and perpetuates the issues with the status quo. This shift also aligns with other aviation regulators who recognise an ‘introductory flight’, such as the United Kingdom Civil Aviation Authority.⁸

3.8.10 The recommendation will improve the CAA’s regulatory effectiveness and allow it to better address problems stemming from the status quo. Operators who might be offering adventure aviation or scenic flights under the guise of trial flights can seek relevant certification if they wish to continue. Further, it will not limit genuine introductory flights for prospective students, especially through non-commercial clubs.

⁷ These are unlikely to be bona fide trial flights as the tourist, or a group of tourists, likely do not intend to continue seeking flight instruction. Rather it is part of their adventure and sightseeing holiday package. Further examples could include offering trial flights in high performance aerobatic aircraft with no legitimate flight training activities underpinning the operation. In such cases, the CAA would not accept that the trial flights are offered to attract new students. Part 115 often provides a better option for operators carrying tourists instead of a Part 119 or 135 GA AOC or Part 61 and 91 flight training operations as it allows tourists to legitimately manipulate the aircraft controls.

⁸ Based on new European Aviation Safety Agency (EASA) Rules, any flight against hire or reward consisting of an air tour of short duration, offered by an approved training organisation or an organisation created with the aim of promoting aerial sport or leisure aviation, for the purpose of attracting new trainees or new members.

3.9 Definition of crew member

- 3.9.1 Aviation operations in New Zealand are diverse and can include specialised services related to agriculture, construction, photography, surveying, observation or patrol, and search and rescue. These often have the characteristics of air transport operations, general aviation, or private operations, whilst at times having unique operational characteristics.
- 3.9.2 There have been longstanding issues with the definition of crew member since a 2004 amendment excluded crew members not directly associated with the operation of the flight. The amendment was to capture crew members in weight and balance calculations, but there was, and remains, no clear policy rationale behind the amendment. As a result of the 2004 amendment, additional persons such as a camera operator (as one example), are deemed a ‘passenger’, rather than a crew member of the aircraft, and subsequently an Air Operator Certificate (AOC) is required by the operator if the passenger is carried for hire or reward.
- 3.9.3 The regulation of civil aviation is underpinned by the principle that those operating commercially are subject to higher standards than those operating privately. In the late 1990s, the Rules shifted from recognising aerial work operations to the terms ‘commercial transport operations’, and ‘hire or reward’ operations. The distinction between a crew member and a passenger is critical. If a passenger was on board and/or the operation is for hire or reward determines whether an AOC is required, and if the operation meets the requirement for more regulatory oversight.
- 3.9.4 In 2009, the CAA published Legal Information Bulletin 4 (LIB4), a technically sound, but narrow interpretation of ‘crew member’ and ‘commercial transport operation’ for the purposes of determining what is a Part 119 or Part 135 air operation. LIB4 was in response to a District Court decision that criticised the CAA’s interpretation of that definition and clarified that operations that are interpreted as CTOs must be conducted by Part 119-certificated operators and pursuant to the requirements of Part 135. Whilst the CAA has not shifted from the interpretation in LIB4, there have been challenges in consistency in enforcement. Also, the approach is seen as unreasonable in some situations, compared to the risk certain operations pose to safety. This has also contributed to much of the sector’s long-standing issues with the status quo.
- 3.9.5 At the same time, operators are conducting a more diverse range of operations that could experience problems caused by the status quo. This issue predominantly affects the helicopter sector due to the versatility of the aircraft and the different types of operations e.g. camera work, surveillance, and search and rescue operations. Some fixed-wing operators may be affected, but on a smaller scale.
- 3.9.6 While some operators have exited the system since 2009 and others have gained certification that they previously did not have (e.g. to comply with LIB4 despite not carrying fare-paying passengers), retaining the status quo will continue to cause problems for the sector and the CAA.
- 3.9.7 Recently, this issue has caused acute problems for some operators and, in turn, different areas of the CAA including certification and enforcement. Advice from the CAA Investigation and Response team noted that related investigations would be straight forward if there was an accepted interpretation of the definition of crew member. Therefore, if this issue is not resolved, and there remains no CAA consensus and no industry acceptance of the definition, there is a high likelihood that any enforcement action or case taken by the CAA would be challenged and ultimately taken to the High Court for resolution.
- 3.9.8 For operators, in some certain instances the Health and Safety at Work Act 2015 (HSWA 2015) and other requirements should adequately cover risk to workers on board aircraft, even for those without certification. It could also create inequities in the system as some operators might need to obtain an AOC because they are deemed to be carrying a passenger, even if that ‘passenger’ is trained and is performing a task related to the purpose of the operation, while other operators may not.
- 3.9.9 The existing definition of a crew member is not fit for purpose as it creates regulatory requirements that can be disproportionate or unreasonable to the safety risk it seeks to mitigate or manage. As a result, some

operations must have an AOC in order to carry crew members who are not directly associated with the operation of the flight. This can prohibit or put unnecessary limitations on certain activities.

- 3.9.10 To resolve these longstanding problems, it is recommended that a new substantive rule be added to Part 91 to specify the restrictions and duties for a new crew member. Essentially the new rule prohibits a person to act as a crew member while carrying out a specific or safety task necessary for the purpose of an operation, without an air operator certificate, unless the specific or safety task is one determined by the Director and specified in a notice. (*See draft rule 91.227D*) A new rule is also to be added to Part 91 which allows the Director to specify what those specific or safety tasks are, and the conditions under which they are to be carried out. (*See draft rule 91.227E*) A new rule is further added to Part 91 to allow the same procedures for an ADS-B notice to apply to the making, amending or revoking of a notice for the specific or safety tasks. (*See draft rule 91.227F*) A consequential amendment is made to the **crew member** definition in Part 1 to include a new type of person on board on aircraft. (*See draft paragraph (3a) of the definition*) . Under the status quo, this person would be considered a ‘passenger’.
- 3.9.11 As Part of this amendment, it is recommended that the CAA creates new guidance material to support the changes to the definition of crew member, and revoke or amend LIB4 following the above Rule amendments.
- 3.9.12 This recommendation will allow a more risk-based approach to assessing what level of protection and safety operators need to provide to people on board an aircraft for specific operations. It shifts the focus to the purpose of the operation, and from the narrower status quo based on the operation of the aircraft. Whilst their role is not related directly to control or operation of the aircraft, their actions if poorly conducted, could impact on overall safety of the operation and aircraft. It also recognises the variable nature of the possible risks associated with different types of operations, the roles people carry out within those operations, and the level of risk posed to the travelling public. An acceptable level of safety will continue to protect the public to ensure that risk associated with different types of operations is managed appropriately.
- 3.9.13 The concept of hire or reward would remain undefined as the term is well understood. In the absence of a definition, the ordinary meaning of the term as defined in the Oxford Dictionary, applies. Where a case is unclear as to whether there is hire or reward, the case will continue to be considered on its own merits by the CAA. However, it is recommended that the CAA do more to articulate the concept and produce clear, external-facing operational guidance that includes different examples of its broad guidelines. This would allow the sector to better understand the CAA’s expectations and interpretation of what is, or is not, hire or reward. This would likely mitigate some of the risks with not having a specific hire or reward definition.
- 3.9.14 This recommendation does not seek to make significant changes to how the CAA regulates or certifies commercial transport operations or hire or reward operations.

3.10 Definition of Cost-sharing Flights

- 3.10.1 A cost-sharing flight is a private flight where the passenger (or passengers) and the pilot split the cost of the flight and are not considered an air transport operation, or a hire or reward operation. A key benefit of these flights is that it provides private pilots with a cost-effective way to increase their flight hours and their skill level. This provides an overall safety benefit which would be lost if private licence holders were prohibited from conducting such flights.
- 3.10.2 In 1997, a Civil Aviation Rule Part 1 definition of ‘cost-sharing flight’ was created allowing these flights. Specifically, a cost-sharing flight is:
- Any flight that is performed solely for the carriage of persons where –*
- (1) the flight is not advertised to the public; and*
 - (2) the crew members receive no payment or other reward for their services; and*

(3) the persons carried by the aircraft, including the crew members, share equally in the cost of the flight; and

(4) no payment or other reward is required of a person on the flight other than that specified in subparagraph (3) –

and, for the avoidance of doubt, a cost-sharing flight is not an operation for hire or reward.

- 3.10.3 This definition has remained unchanged, despite advice in 2002 to the CAA that it should be amended to ensure it linked to an appropriate ‘operational’ Rule - something that was overlooked in a 1999 amendment.
- 3.10.4 As a result of previous amendments, several issues have arisen about the existing definition. For example, it is not clear what is exactly covered by “the cost of the flight.” It is likely, from the context, that the definition is intended to refer to “direct costs.” This would align with the corresponding provisions in equivalent United States and Australian Rules. In the United States, costs are explicitly set out as “fuel, oil, airport expenditures, or rental fees.”
- 3.10.5 Other issues that have arisen with the definition is determining when a participant has advertised to the public. ‘Advertise’ is defined in the Concise Oxford Dictionary as:
- a. *draw attention to or describe favourably (goods or services) in a public medium to promote sales.*
 - b. *make generally or publicly known.’*
- 3.10.6 The requirement that the flight not be advertised to the public may be regarded as meaning the flight must not be brought to the attention of people generally (i.e. as a whole) by any means. Advertising in a private company newsletter is unlikely to be in breach of this Rule. However, it is unclear to what extent a person may advertise via social media.
- 3.10.7 The restriction on advertising appears to be to prevent cost-sharing flights from being presented and operated as pseudo-commercial flights. From a safety and risk perspective, it is unclear whether the means of advising prospective passengers of a flight would have any material effect. A prospective passenger who hears about a flight through word of mouth, or via a noticeboard in a flying club might not be as well informed as someone who gets this information from a public website, which clearly sets out the risk and carriage conditions.
- 3.10.8 From a commercial perspective, there is clearly greater potential for a widely advertised private cost-sharing flight to be confused with a commercial operation. The United Kingdom and Europe do not restrict advertising of cost-sharing flights and allow flights to be advertised openly on websites which effectively operate in a similar manner to Airbnb.
- 3.10.9 The CAA has experienced several cases where infringement notices or warnings have been issued to pilots operating cost-sharing flights in a manner considered to be commercial in nature. In one case, the lack of clarity in the definition prevented the CAA from taking enforcement action to address a safety concern. However, the number of complaints and investigations is relatively small, with around seven cases since 2007. It is likely that there will be some additional non-compliance within the general aviation community, but there is nothing to indicate that this has manifested.
- 3.10.10 There is a lack of clarity in the Civil Aviation Rule Part 1 definition of ‘cost-sharing flight’. This can result in the inconsistent application of regulatory requirements, and consequently a higher safety risk as cost-sharing provisions can be used for higher-risk operations that would normally be subject to more stringent safety requirements e.g. certification.
- 3.10.11 There are also some safety risks associated with the carriage of passengers in non-commercial operations (due to the less stringent requirements applicable to aircraft and pilots operating privately in comparison to commercial operations). It is important that the nature of the operation is clear to prospective passengers, so they can make an informed decision as to whether that additional risk is acceptable. The misuse of cost-sharing provisions due to this lack of clarity also has the potential to create an inequitable situation

where commercial operators are disadvantaged by private individuals offering revenue flights without incurring the same compliance costs.

3.10.12 To address this problem, it is recommended that a new substantive rule be added to Part 91 to specify the restrictions and duties for participants involved in a cost sharing flight. (*See draft rule 91.227B*). The Part 1 definition of a cost-sharing flight should be revised to improve clarity and to remove any ambiguity. It should also be linked to other operational rules. This will build a common understanding for both the CAA and operators and should in turn improve compliance with the definition's provisions and reduce the need for enforcement. New CAA-produced guidance material would also communicate the requirements of a cost-sharing flight to operators and the potential users of such services.

3.10.13 Cost-sharing flights would continue to be considered not an air transport operation. It is proposed that a cost-sharing flight in New Zealand would:

- be limited to aircraft with 6 or fewer seats;
- only charge passengers for direct costs;
- incur upon the pilot including crew members an equal share in the direct costs of the flight;
- only be permitted in non-complex aircraft such as aircraft not powered by a turbojet or turbofan and non-pressurised aircraft;
- not be a routine scheduled flight;
- not be advertised to the public; and
- not be an operation for hire or reward.

3.10.14 Restricting the number of passengers that can be carried on a cost-sharing flight will limit the risk exposure of the operation and further reduce the scope for pseudo-commercial operations. This is in line with the United Kingdom, Europe and Australia who also limit cost-sharing to aircraft with no more than six seats. It will also make it clear that such flights on complex aircraft must be conducted under a certificated air transport operation, and not as a cost-sharing flight.

3.10.15 This recommended option is the most effective "minimum change" option that would address the key problems that have been identified without significantly changing how cost-sharing flights are operated at present.

3.11 ICAO Standards and Recommended Practices (SARPS)

The proposed rule amendments are intended to align with International Civil Aviation Organization (ICAO) annexes and are written in consultation with the following annexes:

- Annex 1 – Personnel Licensing
- Annex 2 – Rules of the Air
- Annex 3 – Meteorological Services for International Air Navigation
- Annex 6 – Operation of Aircraft
- Annex 11 – Air Traffic Services
- Annex 14 – Aerodromes
- Annex 15 – Aeronautical Information Services
- Annex 19 – Safety Management

4. Summary of changes

Part 61 Night vision imaging system (NVIS):

Rule 61.7(b) is amended by inserting “paragraph (10) aid to night vision rating”. This new rating is not an aviation document but an endorsement on a pilot licence provided that the licence holder meets all the applicable requirements for the rating.

Rule 61.107(b)(1) prohibits a person who holds a medical certificate issued under the Land Transport Rules (LTA medical) to act as pilot-in-command of an aircraft operating at night. This rule is amended to further prohibit the person from using NVIS. Although it seems redundant to expressly prohibit the use of NVIS given that NVIS is used at night, (thus already covered in the night prohibition) the CAA considers it necessary to do so. The use of NVIS requires specific training in how to use NVIS equipment properly. This training is in addition to the night flying training. It is envisaged that a breach of the use of NVIS will be a separate offence to the night flying prohibition.

As part of the eligibility requirements, rule 61.153(a) is amended to allow a holder of a PPL to exercise PPL privileges during the night and use NVIS, provided that the PPL holder has appropriate experience acceptable to the Director. What is considered to be ‘appropriate experience’ will be specified in an AC. Note that the draft AC will be developed once the NPRM is published for public consultation.

Rule 61.155(b)(3) is amended to prohibit a PPL holder from acting as pilot-in-command or as co-pilot of an aircraft being operated using NVIS unless an appropriately qualified flight instructor has certified in the holder's logbook that the holder has satisfactorily completed the flight training required to perform that activity. Whilst rule 61.155(bb) is amended to prohibit the PPL holder with a LTA medical certificate from acting as pilot-in-command or co-pilot of an aircraft that is being operated at night using NVIS.

Rule 61.203 is amended to allow a CPL holder to exercise commercial pilot privileges during the night under VFR using NVIS if the holder has appropriate experience acceptable to the Director. What is considered to be ‘appropriate experience’ will be specified in an AC. Note that the draft AC will be developed once the NPRM is published for public consultation.

Rule 61.205 is amended to prohibit a CPL holder from acting as PIC or co-pilot of an aircraft operating at night using NVIS unless an appropriately qualified flight instructor has certified the holder's logbook that the holder has satisfactorily completed the required night flight using NVIS training.

Rule 61.303 – Paragraph (b) is amended to allow for a category D flight instructor to instruct at night under VFR using NVIS provided that the person has appropriate experience acceptable to the Director. What is considered ‘appropriate experience’ will be specified in an AC. A similar amendment is made to paragraph (d) regarding a category B flight instructor.

Rule 61.305(g) is amended to prohibit a category D flight instructor from instructing at night using NVIS unless an appropriately authorised flight examiner has certified the holder's logbook that the holder has the necessary experience and demonstrated competence in that activity. New paragraph (1a) is inserted which prohibits the holder of a category C flight instructor from using NVIS if the holder is allowed to instruct at night.

Rule 61.305(p)(1) is amended to prohibit the holder of a category B flight instructor rating from instructing using NVIS unless an appropriately authorised flight examiner has certified in the holder's logbook that the holder has the necessary experience and demonstrated competence in that activity.

Rule 61.305(q) is amended to allow the holder of a category A flight instructor rating the privilege to give flight instruction at night under VFR using NVIS. In addition, the rule is also amended to allow for authorising a solo flight during the night under VFR using NVIS, if applicable.

A new subpart T is inserted to provide for aid to night vision rating. This new subpart adopts a similar format to current ratings set out in Part 61. It contains provisions on eligibility, issue of rating, privileges and limitations, currency requirements and savings. The contents for these provisions are largely copied from current AC91-13.

Consequential amendments:

Consequential amendments made to rules in Part 91 are to prohibit the use of NVIS, in addition to the current prohibition that a pilot must not operate an aircraft at night. (See rules 91.131, 91.137, 91.139.)

Rule 91.233 provides for aircraft lights. The rule is amended to prohibit a pilot of an aircraft from operating an aircraft at night under VFR unless the aircraft's internal and external lighting meets the performance requirements as specified in a notice. (New paragraph (3a) inserted.)

New rule 91.271 provides for the requirements for operating aircraft at night under VFR using NVIS. Given that airworthiness and performance requirements can change quickly over time, the rule allows for some flexibility. A person can either meet the airworthiness and performance requirements specified by the Director in a notice, or those requirements that the Director accepts to be equivalent to those in the notice, via an AC.

New rule 91.273 provides for the Director to determine airworthiness and performance requirements and related matters in a notice. A person is required to comply with any requirement in a notice if it applies to the person.

New rule 91.273B provides that the procedures for making, amending and revoking of an ADS-B notice apply to a NVIS notice. This is to ensure that the same procedures are followed for making, amending or revoking notices and avoids having a duplicate set of similar procedural rules.

New rule 91.273C provides for transitional arrangements. The rule allows a person who was approved by the Director to carry out operations in a particular aircraft at night using NVIS immediately before the new rules come into force, to continue carrying out NVIS operations up to 1 year from the rules in-force date. The transition period of 1 year allows sufficient time for the new NVIS notice to be put in place and for operators to make the necessary arrangements to meet the new rule requirements. It is envisaged that most of the contents of the notice will be adopted from current AC91-13.

Rule 135.803(a)(2) prohibits a holder of an air operator certificate to cause or permit an air operation to be performed unless the scheme addresses the factors specified in the rule. Subparagraph (iv) is amended to include the use of NVIS if applicable, as a relevant factor to be considered.

Part 1 is amended by including the definition of **night vision imaging systems** and the abbreviation of **NVIS**.

Part 91 Performance Based Communications and Surveillance

New rule 91.265 provides for the requirements for PBCS. A person is prohibited to operate an aircraft under IFR using PBCS unless all the requirements specified in the rule are met. Given that aircraft airworthiness and performance requirements can change quickly over time, the rule allows for some flexibility. A person can either meet the standards specified by the Director in a notice or requirements that the Director accepts to be equivalent to those in the notice, via an AC.

It is envisaged that in most cases it is not necessary to require the Director's approval for an operator to use PBCS. However if a situation arises where operational approval by the Director is considered necessary, then a notice would specify such an approval with regards to a particular route or airspace for instance.

New rule 91.267 allows the Director to determine and specify the requirements for PBCS and related matters in a notice. A person must comply with any requirement specified in a notice if it applies to the person. The rule defines what **suitably trained** and **qualified** means.

New rule 91.267B provides that the procedures for the making, amending and revoking of an ADS-B notice apply to a PBCS notice. As stated earlier for a NVIS notice, this is to ensure that the same procedures are followed for making, amending or revoking notices and avoids having a duplicate set of similar procedural rules.

New rule 91.267C provides for a transitional and savings provision. The rule deems a person who was approved by the Director to operate an aircraft using PBCS on certain routes, airspaces and horizontal separations immediately before the new rule comes into force to have been approved to operate an aircraft using PBCS under new rule 91.265(3). A transition period of 1 year is given before a person may operate an aircraft using PBCS, and to comply with the operational requirements associated with PBCS as specified in a notice. This transition period provides sufficient time for the new PBCS notice to be put in place and for operators to make the necessary arrangements to comply with the new rules. (*see paragraph (b)*)

A consequential amendment is made to Part 1 by adding the abbreviation of **PBCS**.

Part 91 Aircraft call sign:

Rule 91.249 is amended to provide for a unique personalised call sign which is part of an identifiable paint scheme or markings approved under rule 47.104. The unique call sign will refer to an aircraft type or model, letters or numbers in a manner or form approved by the Director. (*new paragraph (a)(4) inserted*) Being future looking, the rule is also amended to include any other similar radiotelephony call sign that is acceptable by the Director. A radiotelephony call sign that was approved by the Director through general exemption 15/EXE/43 immediately before the in-force date of the new rules is deemed to have been approved by the Director under paragraph (a)(4). This preserves the current arrangement under general exemption 15/EXE/43 so that affected individuals do not need to reapply for the Director's approval to get a new unique personalised call sign.

Editorial amendments are made to update wording with modern plain language such as replacing 'Notwithstanding' with 'Despite' and use of correct terminology ('call sign' instead of 'callsign').

Part 145 maintenance organisation rating requirements:

Rule 145.101 is amended to require a holder of a maintenance organisation certificate to include a copy of a release note in its exposition for any aeronautical product issued by the organisation. (*new paragraph (1a) inserted*) Upon review, the term 'aeronautical product' is preferred instead of 'part, material, fluid' as used in the original policy work. This is in view of the broader definition of the term 'aeronautical product'⁹ in Part 1 and also for consistency in usage as the term is used in rule 19.321.

A consequential amendment is made to rule 19.321(4)(i) to require the name 'of the supply organisation and certificate of approval number', to replace the current 'name and certificate of approval number of the supply organisation issuing it'. (*see draft rule 19.321(b)(4)*)

Minor editorial corrections are made to certain phrases such as 'procedures to inspect' and 'procedures to prevent' are replaced with 'procedures for inspecting' and 'procedures for preventing', etc.

Part 129 Foreign aircraft operations:

Rule 129.1(a) is amended to clarify the intent of the current status and remove existing ambiguity of interpretation. The amended paragraph provides that Part 129 applies to persons conducting foreign air transport operations of –

- (1) more than 1 take-off and 1 landing within New Zealand in any consecutive 28 day period; or
- (2) more than 4 take-offs and 4 landings within New Zealand in any consecutive 365 day period.

The CAA has been using the interpretation of one take-off and one landing without a foreign aircraft operator certificate (in paragraph (a) scenario) for several years. The minor amendment to paragraph (a) affirms the CAA's position. The exception in current paragraph (b) of rule 129.1 remains unchanged.

Part 121 Training requirements for flight attendant and cabin crew ground instructors:

Rule 121.529 is amended to remove the reference to 'flight crew or flight attendants' as it is redundant. Given that rule 121.553(a) provides for the crew member training programme and specifies the persons assigned to act as a crew member. However, the latter rule does not include 'flight attendant' which seemed to have been overlooked when the rule was drafted. The latter rule is amended to read "each flight crew member and each flight attendant". The term 'flight crew' is amended to read 'flight crew member' to align with the definition in Part 1. An editorial amendment is made to the closely related rule 121.555(a) to replace 'flight crew' with 'flight crew member'.

Part 91 Helicopter hover entry and exit:

Rule 91.207(a)(2) places a duty on a pilot-in-command of an aircraft to require each passenger to occupy a seat or berth and to fasten their safety seat belt, restraining belt or, if equipped, shoulder harness or single diagonal shoulder belt when the aircraft is flying at a height of less than 1000 feet above the surface. New paragraph (da) is inserted to provide an exception to the rule. The exception being that paragraph (a)(2) does not apply to a passenger who is permitted by the pilot-in-command to enter or exit from a helicopter while hovering, provided that the requirements specified in the

⁹ **Aeronautical product** is defined in Part 1 to mean *anything that comprises or is intended to comprise any part of an aircraft, or that is or is intended to be installed in or fitted or supplied to an aircraft, and includes fuel and other similar consumable items necessary for the operation of the aircraft:*

paragraph are met if applicable. Note that the new paragraph (da) is largely copied from current exemption 19/EXE/1. This exemption will be removed when the new rule is in force.

Part 91 Introductory flight:

New rule 91.227H is inserted to provide for an introductory flight subject to restrictions. Essentially a pilot is prohibited from performing an introductory flight unless the requirements specified in the rule are met. The restrictions seem self-explanatory. Note that for the purposes of this rule, an introductory flight is not an air transport operation. (*See paragraph (c)*). This is consistent with the definition of air transport operation in Part 1 which excludes a trial flight.

Also note that the defined term (introductory flight) does not state that it is not an operation for hire or reward.

A consequential amendment is made to the definition of **air transport operation** in Part 1 by deleting “a trial flight” in paragraph (5) and replacing with “an introductory flight”.

Part 91 Crew member:

New rule 91.227D prohibits a person to act as a crew member carrying out a specific or safety task necessary for the purpose of an operation without an air operator certificate unless the restrictions specified in the rule are met. Namely, that the specific or safety task is one determined by the Director and specified in a notice. In addition, the circumstances under which the specific or safety task are carried are to be similar to those determined by the Director and specified in a notice. It is premature at this stage to make any assumptions as to what those specific or safety tasks might be, or the surrounding circumstances. However, the CAA advises that it will fully engage with the aviation industry through the public consultation process on the draft notice.

This new rule is placed in Part 91 so it would generally apply to the other Rule Parts such as 135, 125 or 121. In addition, the details regarding the specific or safety tasks, circumstances and conditions for which a crew member under rule 91.227D is carried will need to be specified in a Part 91 notice. In addition, the Part 91 notice will also apply to the other Rule Parts, with possible variations to suit certain operations under a particular Rule Part. For instance, certain conditions may apply to an operation under Part 135 but not applicable to an operation under Part 121. However, having one notice avoids having to create a separate notice for each Rule Part with duplicate information in them.

Part 91 Cost sharing flight:

New rule 91.227B provides for a cost sharing flight subject to restrictions specified in the rule. For instance, a pilot must not perform a cost sharing flight unless the requirements specified in the rule are met. Note that the pilot is required to hold a PPL with at least a current class 2 medical certificate issued under the Act. It is proposed that a PPL holder with a LTA medical certificate is not permitted to perform a cost sharing flight. The rest of the restrictions and draft defined terms (**advertising to the public** and **direct costs of the flight**) seem self-explanatory and consistent with the policy intent.

This new rule is placed in Part 91 so it would generally apply to the other Rule Parts, such as Part 135.

A consequential amendment is made to Part 1 to insert the new definition of **introductory flight**. A consequential amendment is also made to Part 61 to prohibit a PPL holder with a LTA medical certificate to perform a cost sharing flight. (*See rule 61 rule 61.155(bb)(3), new paragraph (viii) inserted*)

Legislative analysis

4.2 Power to make rules

The Minister may make ordinary rules under sections 28, 29, 29A, 29B and 30 of the Civil Aviation Act 1990 (the Act), for various purposes including implementing New Zealand’s obligations under the Convention, assisting aviation safety and security, and any matter contemplated under the Act.

These proposed rules are made by the Minister pursuant to the following sections of the Act:

- (a) Section 28(1)(c) which allows the Minister to make rules for assisting aviation safety and security, including but not limited to personal security:
- (b) Section 29(c) which allows the Minister to make general operating rules, air traffic rules, and flight rules, including but not limited to the following:

- (i) the conditions under which aircraft may be used or operated, or under which any act may be performed in or from an aircraft:
 - (ii) the prevention of aircraft endangering persons or property:
- (c) Section 30(a) which allows the Minister to make rules for the designation, classification, and certification of all or any of the following:
- (i) aircraft:
 - (ii) aircraft pilots:
 - (iii) flight crew members:
 - (vi) aircraft maintenance personnel:
 - (viii) air traffic services:
 - (xi) aviation training organisations:
 - (xiii) aeronautical procedures:
 - (xvii) any other person who provides services in the civil aviation system, and any aircraft, aeronautical products, aviation related services, facilities, and equipment operated in support of the civil aviation system, or classes of such persons, aircraft, aeronautical products, aviation related services, facilities, and equipment operated in support of the civil aviation system.
- (d) Section 30(b) which allows the Minister to make rules for the setting of standards, restrictions, and licensing requirements for all or any of those persons or things specified in paragraph (a), including but not limited to the following:
- (i) the specification of the privileges, specifications, and ratings associated with licences or other forms of approval:
 - (ii) the settings of standards for training systems and techniques, including recurrent training requirements:
 - (v) the specification of standards of design, construction, manufacture, maintenance, processing, testing, supply, approval, and identification of aircraft aeronautical products:
- (e) Section 30(d) which allows the Minister to make rules for the definitions, abbreviations, and units of measurement to apply within the civil aviation system.

4.3 Matters to be taken into account

The development of this NPRM and the proposed rule changes take into account the matters under section 33 of the Act that the Minister must take into account when making ordinary rules including the following:

ICAO Standards and Recommended Practices

The proposed rules are not inconsistent with applicable sections of the following International Civil Aviation Organization (ICAO) Annexes:

- Annex 1 – Personnel Licensing
- Annex 2 – Rules of the Air
- Annex 6 – Operation of Aircraft
- Annex 8 - Airworthiness of Aircraft
- Annex 11 – Air Traffic Services
- Annex 14 – Aerodromes
- Annex 15 – Aeronautical Information Services

New Zealand's international obligations relating to aviation safety and security

The proposed rules are not inconsistent with New Zealand's international obligations relating to aviation safety and security.

The level of risk existing to aviation safety

NVIS: The new regulatory framework will reduce the risk to safety as the requirements and performance standards regarding NVIS equipment and aircraft are put in place. In addition, the framework provides clarity and certainty to operators on what they are required to do to safely operate an aircraft at night using NVIS.

PBCS: No adverse effect to aviation safety.

Aircraft unique call sign: The proposed rule amendment will reduce the risk around misidentification of aircraft, thus reduces the risk to aviation safety.

Part 145 maintenance organisation rating requirements: The proposed rule is likely to reduce risk to safety as it enables tracing a release note to an issuer, if a problem arises with a supplied product. The proposed rule will allow the CAA to have oversight of the content and form of release notes and trace faulty products.

Part 129 foreign aircraft operations: No adverse effect to aviation safety.

Part 121 Crew member training requirements: The proposed rule amendments is likely to reduce risk to safety as flight attendants and cabin crew ground instructors are included in the human factors and crew resource management training.

Part 91 Helicopter hover entry: The proposed rules will reduce the risk to safety as hover entry or exit is restricted to day time except if there is an approved aid to night vision used by the pilot-in-command or any other suitably trained person on board the aircraft. A certificate holder carrying out a hover entry or exit operation is required to establish, document and implement standard operating procedures, passenger briefing procedures, training procedures and competency assessment procedures to ensure that any potential injury to a person entering or exiting the aircraft is kept as low as reasonably possible. For operations carried out by non-certificate holders, the pilot-in-command is required to have been received suitable training by an appropriate instructor. The pilot-in-command is also required to identify risks regarding a person entering or exiting an aircraft and the mitigations to be used to keep the risk of injury as low as reasonably possible.

Part 91 introductory flight: The new proposed rules will reduce the risk to safety by imposing certain restrictions on a pilot conducting the flight and also on the passengers, to ensure the safety of the flight.

Part 91 crew member revision: It is envisaged that the new regulatory framework will reduce the risk to safety as it provides a clear approach regarding the carriage of a new crew member on a flight. The proposed rules prohibit a person from acting as a crew member while carrying out a specific or safety task necessary for the purpose of an operation, without an air operator certificate, unless the specific or safety task is one specified by the Director in a CAA notice. The draft CAA notice that has yet to be developed will clarify what the permitted tasks are, and under what conditions. This will help operators to know what is required of them, when carrying a new crew member onboard.

Part 91 cost sharing flight: The proposed rule is likely to reduce the risk to safety by requiring the pilot to have a current class 2 medical certificate and restricting the carriage of passengers to a maximum of 6 people in an aircraft that is not powered by a turbojet or turbofan or is not pressurised.

Assisting economic development

NVIS: The new regulatory framework provides clarity and certainty to operators on what they are required to do to safely operate an aircraft at night using NVIS. Combined with the anticipated reduced cost of NVIS in the nearby future due to technological advancement means a likely increase in NVIS purchase. This may result in a further increased uptake in NVIS use, thus assist economic development.

PBCS: The new regulatory framework will assist economic development by improving access to the operational benefits of PBCS by supporting increased uptake of PBCS by more operators. These benefits include more direct routes and reduced horizontal separations at certain airspaces and routes. Increased use of PBCS would allow for increased airspace and airport capacity, which can be achieved through more efficient design of routes in controlled airspace. More efficient approach and departure procedures can mean that more aircraft can take off and land per hour.

Unique aircraft call sign: No adverse effect on economic development.

Part 145 maintenance organisation rating requirements: No adverse effect on economic development.

Part 129 foreign aircraft operations: Clarifying the rule intent on the number of take-offs and landings that a foreign operator can do without a foreign air operator certificate, creates certainty for affected operators. These operators can now make plans for the long term, with confidence. This can potentially result in an increased uptake of foreign operators flying to New Zealand thus assist economic development.

Part 91 Helicopter hover entry and exit: Regulatory clarity and certainty around the requirements for carrying out a helicopter hover entry and exit mean that operators can make plans for the long term, which can result in a potential increased uptake in operations. This is likely to assist economic development.

Part 121 Flight attendant & cabin crew ground instructor training: No adverse effect on assisting economic development.

Part 91 Introductory flights: The new regulatory framework provides clarity and certainty on what a pilot is required to do. This means pilots can better plan for future, including more flights, with confidence. Plus, an introductory flight is a hire or reward operation therefore more flights mean more revenue, thus assist economic development.

Part 91 New crew member: The new regulatory framework will provide greater clarity and certainty on whether people performing certain tasks on aircraft are considered to be members of the aircraft crew, or passengers. This will ensure that all commercial operators are subject to the most appropriate regulatory requirements for the operation being carried out, without unnecessary compliance costs being incurred.

Part 91 Cost sharing flight: No adverse effect on assisting economic development.

Assisting safety and personal security

NVIS: Regulatory clarity and certainty on what the requirements are for using NVIS, related equipment and aircraft, plus pilots being suitably trained before using NVIS, will improve safety. In addition, night vision is much improved with the use of NVIS, thus reduces the likelihood of incidents or accidents occurring for aircraft operating at night.

Aircraft call sign: Using a simpler unique personalised call sign reduces the possibility for risk around confusion and misidentification of aircraft. The proposed rule amendment will improve safety.

PBCS: The airworthiness and performance requirements of the aircraft, the operator's competency to operate the aircraft, and the associated operational procedures which include addressing any non-compliance issue, all of which are required under this proposal, will improve safety.

Part 145 maintenance organisation rating requirements: No adverse effect.

Foreign aircraft operations: No adverse effect.

Helicopter hover entry and exit: Regulatory clarity around the requirements for carrying out a helicopter hover entry and exit operation means operators are clear about what is required of them in order to safely conduct such operations. This would assist safety.

Flight attendant and cabin crew ground instructor training: Regulatory clarity by including flight attendants in the crew member training programme would assist safety.

Introductory flight: Regulatory clarity and certainty on what a pilot and passengers are required to do for an introductory flight will assist safety. This is shown by limiting the number of passengers that can be carried in a non-complex aircraft, allowing a passenger to have only a basic level of manipulating the aircraft controls under direct pilot supervision and prohibiting an aerobatic manoeuvre being performed.

New crew member: Regulatory clarity will improve safety by ensuring that operators will be operating under an appropriate level of regulatory oversight for the activities being undertaken.

Cost-sharing flight: Additional clarity for cost-sharing flight operations will assist safety by limiting flights to those where safety risks can be well managed, and by limiting the public's exposure to risk.

Improving access and mobility

NVIS: Regulatory clarity and certainty on the requirements around NVIS use, combined with the anticipated reduced future cost for NVIS, and the benefit of improved night vision by using NVIS, will improve access and mobility.

Unique aircraft call sign: No adverse effect on access and mobility.

PBCS: Increased uptake of aircraft operations using PBCS will improve access and mobility by allowing for more direct routes (therefore shorter travelling distances) and more aircraft on any particular route due to the application of reduced horizontal separations. However only those operators who meet the prescribed requirements to operate an aircraft using PBCS may enjoy the benefit of more direct routes.

Part 145 maintenance organisation rating requirements: No adverse effect on access and mobility.

Foreign aircraft operations: Clarity and certainty on the number of take-offs and landings without a foreign air operator certificate will allow operators to make plans, including potentially more flights in and out of New Zealand, for the longer term. This would improve access and mobility.

Helicopter hover entry and exit: Allowing the continued practice of helicopter hover entry and exit will enable access to remote areas where normal landings are not possible.

Flight attendant & cabin crew ground instructor training requirements: No adverse effect on access and mobility.

Introductory flight: No adverse effect on access and mobility.

New crew member: No adverse effect on access and mobility.

Cost sharing flight: No adverse effect on access and mobility.

Protecting and promoting public health

This proposal will not have a detrimental impact on public health.

Ensuring environmental sustainability

NVIS: Due to the relatively small number of current NVIS users, there is little or no adverse effect on environmental sustainability. However, this can change in the long term if there is an increased uptake of NVIS use.

Unique personalised call sign: No adverse effect.

PBCS: Increased uptake of PBCS will improve environmental sustainability by reducing the environmental impact of each flight, due to reduced fuel burn and efficiency improvements from more direct routes. However, by increasing capacity at airports, greater use of PBCS could allow an increased number of flights, which could adversely affect the environment.

Part 145 maintenance ratings requirements: No adverse effect.

Foreign aircraft operations: No adverse effect

Helicopter hover entry and exit: No adverse effect

Flight attendant and cabin crew ground instructors training requirements: No adverse effect.

Introductory flight: No adverse effect

Crew member: No adverse effect

Cost sharing flight: No adverse effect

4.4 Incorporation by reference

There is no material incorporated by reference in the draft rules. However, there will be material incorporated by reference in the NVIS and PBCS notices.

4.5 Civil Aviation (Offences) Regulations 2006

Schedule 1 of the Civil Aviation (Offences) 2006 is made by the Governor General pursuant to section 100 of the Civil Aviation Act 1990 and contains a list of summary and infringement penalties associated with offences against various civil aviation rules.

New offences and penalties are required for the new rules regarding NVIS, PBCS, helicopter hover entry and exit, the new crew member category, cost sharing flight and introductory flight. Given the time constraint to have the new rules in force by April 2024, the CAA has mainly focussed on developing the NPRM first and getting it published for public consultation. The draft offences will be developed in due course.

4.6 CAA Notices:

There will be 3 CAA notices developed and published for public consultation once the new rules are in force. These notices are to give full effect to rules for NVIS, PBCS and the new crew member category.

5. Submissions on the NPRM

5.1 Submissions are invited

Interested persons are invited to participate in the making of the proposed rules by submitting written data, views, or comments. All submissions will be considered before final action on the proposed rulemaking is taken. If there is a need to make any significant change to the rule requirements in this proposal as a result of the submissions received, then interested persons may be invited to make further submissions.

5.2 Examination of submissions

All submissions will be available for examination by interested persons both before and after the closing date for submissions. A consultation summary will be published on the CAA web site.

Submissions may be examined by appointment with the Docket Clerk during business hours on weekdays, except statutory holidays. Appointments to examine submissions are to be arranged by phone or email docket@caa.govt.nz.

5.3 Official Information Act

Submitters should note that subject to the Official Information Act 1982 any information attached to submissions will become part of the docket file and will be available to the public for examination.

Submitters should state clearly if there is any information in their submission that is commercially sensitive or for some other reason the submitter does not want the information to be released to other interested parties. The CAA will consider this in making a decision in respect of any Official Information Act requests. It should be noted that the CAA cannot guarantee confidentiality in respect of any specific submissions.

5.4 How to make a submission

5.4.1 Submission response sheet

A submission response sheet may be downloaded from our website and sent by the following methods:

e-mail: docket@caa.govt.nz and marked NPRM 23-01

by mail: Docket Clerk (NPRM 24/CAR/01)
Civil Aviation Authority
PO Box 3555
Wellington 6140
New Zealand

5.5 Final date for submissions

Comments must be received by close of business on Monday 25th March 2024.

5.6 Availability of the NPRM:

Any person may obtain a copy of this NPRM from–

CAA web site: www.caa.govt.nz;

or from:

Docket Clerk

Phone: 64–4–560 9640 (quoting NPRM 23-01)

5.7 Further information

For further information, contact:

Salote Raiwalui

Rules Drafter

Salote.Raiwalui@caa.govt.nz

[Note: Inserted texts are shaded, deleted texts are struck through and shaded]

Night Vision Imaging Systems (NVIS)

Part 61 Pilot licences and Ratings

61.7 Pilot licences, ratings, and permits

(a) The following pilot licence types, ratings and permits are issued by the Director under section 9 of the Act in accordance with the applicable requirements of this Part:

(1) *Revoked*

- (2) private pilot licence
- Aeroplane:
 - Helicopter:
 - Glider:

- (3) commercial pilot licence
- Aeroplane:
 - Helicopter:
 - Balloon:
 - Glider:

- (4) airline transport pilot licence
- Aeroplane:
 - Helicopter:

- (5) instrument rating
- Aeroplane:
 - Helicopter:

- (6) flight instructor rating category A, B, C, D, and E
- Aeroplane:
 - Helicopter:

- (7) flight examiner rating
- Airline:
 - General aviation:
 - Agricultural:

(8) validation permit:

- (9) agricultural rating Grade 1 and 2
- Aeroplane:
 - Helicopter:

(aa) Despite paragraph (a)(2), a private pilot licence referred to in rule 61.35(a)(1)(ia) must not be issued for a glider.

(b) The following ratings are issued under this Part in accordance with the applicable requirements of this Part:

- (1) aircraft type rating:
- (2) aerobatic flight rating:
- (3) glider tow rating:
- (4) parachute drop rating:

- (5) *Revoked*:
- (6) pilot chemical rating:
- (7) aerial topdressing rating:
- (8) aerial spraying rating:
- (9) aerial vertebrate toxic agent (VTA) rating:
- (10) aid to night vision rating.

61.107 Limitations

- (a) A person who does not hold a current pilot licence issued in accordance with this Part must not act as pilot-in-command of an aircraft—
 - (1) for remuneration; or
 - (2) if the aircraft is being operated for hire or reward; or
 - (3) on an international flight; or
 - (4) if any other person is being carried on the aircraft other than a flight examiner or flight instructor.
- (b) In addition to paragraph (a), a person who holds a medical certificate under rule 61.105(a)(2)(ii) must not act as pilot-in-command of an aircraft operating—
 - (1) at night or using night vision imaging systems (NVIS); or
 - (2) into or out of a controlled aerodrome unless the licence holder has provided the Director with evidence of a successful colour vision screening test that is acceptable to the Director; or
 - (3) over a congested area of a city or town, except for the purpose of take-off and landing.

61.153 Eligibility requirements

- (a) Except as provided in paragraphs (b) and (c), to be eligible for the issue of a private pilot licence a person must—
 - (1) be at least 17 years of age; and
 - hold—
 - (i) at least a current class 2 medical certificate issued under the Act; or
 - (ii) a current medical certificate referred to in rule 61.35(a)(1)(ia); and
 - (2) have the minimum of—
 - (i) 50 hours flight time experience as a pilot in the appropriate category of aircraft comprising solo flight time, dual flight time, instrument time, and cross-country flight time acceptable to the Director; or
 - (ii) if the person is not seeking to exercise private pilot privileges on a cross-country flight, 40 hours flight time experience as a pilot in the appropriate category of aircraft comprising solo flight time, instrument time, and dual flight time acceptable to the Director; and
 - (3) if the person seeks to exercise private pilot privileges during the night, have night flight experience acceptable to the Director; and
 - (3a) in addition to paragraph (3), if the person seeks to exercise private pilot privileges during the night using NVIS, have appropriate experience acceptable to the Director; and
 - (4) if the person seeks to exercise private pilot (helicopter) privileges in the carriage of sling loads, have flight training on the carriage of sling loads acceptable to the Director; and

- (5) have a valid written examination credit, or approved equivalent, that covers the following private pilot licence subject areas:
- (i) air law;
 - (ii) air navigation and flight planning;
 - (iii) meteorology;
 - (iv) aircraft technical knowledge (Aeroplane or Helicopter), as appropriate;
 - (v) human factors;
 - (vi) flight radiotelephony; and
- (6) have successfully demonstrated the following to a flight examiner in a flight test:
- (i) knowledge in the ground examination subjects specified in paragraph (6), including those detailed in the examination knowledge deficiency reports;
 - (ii) knowledge of the privileges and limitations of a private pilot licence;
 - (iii) technical and operational knowledge relevant to the aircraft type to be used in the flight test;
 - (iv) competence to operate the aircraft within its performance capabilities and limitations in accordance with the aircraft flight manual in all normal, abnormal, and emergency conditions and procedures while exercising appropriate levels of judgement and command;
 - (v) competence in radiotelephony (RTF) procedures and phraseology;
 - (vi) control of the aircraft at all times in a manner that ensures the successful outcome of a procedure or manoeuvre is never in doubt; and
- (7) if applicable, comply with all the requirements of a notice issued under Subpart I.
- (b) Under section 9 of the Act, a person who holds a current pilot licence and associated medical certificate issued by an ICAO Contracting State may have the licence and medical certificate recognised by the Director for the purpose of the Director issuing a private pilot licence to the person, for the same category of aircraft.
- (c) A person who holds a current glider pilot certificate issued by a gliding organisation under delegated authority from the Director is eligible for the issue of a private pilot licence (Glider) if the person—
- (1) is at least 17 years of age; and
 - (2) holds a flight radiotelephony examination credit; and
 - (3) holds at least a current class 2 medical certificate issued under the Act.
- (d) Qualifications held by a member of the New Zealand Defence Force who is in current flying practice as a first or second pilot may be accepted by the Director as meeting the requirements in—
- (1) paragraph (a)(6), if the person has passed the appropriate air law examination in the 5 years before applying for the issue of the private pilot licence; and
 - (2) paragraph (a)(7).

61.155 Privileges and limitations

- (a) Subject to paragraphs (b) and (bb), the holder of a current private pilot licence may—
- (1) act as pilot-in-command of an aircraft of the category for which the pilot licence is granted and for which the pilot holds an aircraft type rating, and may carry passengers in the aircraft; and
 - (2) act as a co-pilot of an aircraft of the category for which the pilot licence is granted and for which the pilot holds an aircraft type rating, and which is required to be operated with a co-pilot.

- (b) The holder of a private pilot licence must not act as pilot-in-command or as co-pilot of an aircraft—
- (1) for remuneration; or
 - (2) if the aircraft is being operated for hire or reward; or
 - (3) if the aircraft is—
 - (i) being operated at night or being operated using NVIS; or
 - (ii) being operated on a cross country flight; or
 - (iii) a helicopter carrying a sling load—

unless an appropriately qualified flight instructor has certified in the holder's logbook that the holder has satisfactorily completed the flight training required to perform that activity; or
 - (4) if applicable, unless the holder has complied with all the requirements of a notice issued under Subpart I.
- (bb) The holder of a private pilot licence who only holds a current medical certificate referred to in rule 61.35(a)(1)(ia) must not act as pilot-in-command or co-pilot –
- (1) of any aircraft with a MCTOW exceeding 2, 730 kg:
 - (2) of any pressurised aircraft exceeding 25, 000 feet AMSL:
 - (3) of an aircraft –
 - (i) operating outside of New Zealand, unless a foreign country permits the holder of the private pilot licence to operate in that country:
 - (ii) operating under IFR:
 - (iii) operating into or out of a controlled aerodrome unless the holder maintains radio contact with the appropriate ATS unit at all times:
 - (iv) performing an agricultural aircraft operation:
 - (v) performing a banner tow operation below 500 feet AGL:
 - (vi) performing a drogue tow operation below 500 feet AGL:
 - (vii) performing a parachute drop operation exceeding 10, 000 feet AMSL:
 - (viii) while exercising the privileges of an aerobatics rating:
 - (ix) despite paragraph (a)(1), carrying more than 5 passengers;
 - (x) that is being operated at night exceeding 25 nm of a lit aerodrome; or
 - (xa) that is being operated at night using NVIS.
- (bd) Despite paragraph (bb)(3)(iii), the holder of a private pilot licence who only holds a current medical certificate referred to in rule 61.35(a)(1)(ia) is not required to have radio contact with the appropriate ATS unit at all times if the person has already successfully passed a colour deficiency screening test that is acceptable to the Director, and the flight has been approved by the ATS Unit.
- (bf) Despite paragraphs (a)(1) and (bb)(3)(ix), the holder of a private pilot licence who only holds a medical certificate referred to in rule 61.35(a)(1)(ia) must not carry a passenger while performing an aerobatic manoeuvre.
- (c) Despite paragraph (b)(2), the holder of a current private pilot licence may act, but not for remuneration, as pilot-in-command or as a co-pilot of an aircraft that is operated for hire or reward to tow a glider in flight, but only if the operation is under the direct control of a gliding organisation, or under the authority of an adventure aviation operator certificate issued by the Director under the Act and Part 115.

61.203 Eligibility requirements

- (a) To be eligible for a commercial pilot licence, a person must—
- (1) be at least 18 years of age; and
 - (2) in the case of an aeroplane and helicopter, hold a current private pilot licence for the appropriate category of aircraft; and
 - (3) hold a current class 1 medical certificate issued under the Act; and
 - (4) have the following minimum general flight time experience as a pilot comprising specific flight experience that is acceptable to the Director for the appropriate category of aircraft:
 - (i) in the case of an aeroplane, 200 hours or, if undertaking a course of approved training, 150 hours;
 - (ii) in the case of a helicopter, 150 hours or, if undertaking a course of approved training, 125 hours;
 - (iii) in the case of a glider, 150 hours;
 - (iv) in the case of a balloon, 50 hours; and
 - (5) if the person seeks to exercise commercial pilot privileges during the night, have night flight time experience acceptable to the Director; and
- (5a) in addition to paragraph (5), if the person seeks to exercise commercial pilot privileges during the night under VFR using NVIS, have appropriate experience acceptable to the Director; and**
- (6) have a valid written examination credit, or approved equivalent, that covers the following commercial pilot licence subject areas:
 - (i) air law;
 - (ii) flight navigation general;
 - (iii) meteorology;
 - (iv) principles of flight and aircraft performance (Aeroplane), (Helicopter), or (Glider), as appropriate;
 - (v) general aircraft technical knowledge (Aeroplane), (Helicopter), or (Glider), as appropriate;
 - (vi) balloon technical knowledge and aerostatics, (Balloon);
 - (vii) human factors; and
 - (7) have successfully demonstrated the following to the Director in a flight test:
 - (i) knowledge in the ground examination subjects specified in paragraph (6), including those detailed in the examination knowledge deficiency reports;
 - (ii) knowledge of the privileges and limitations of a commercial pilot licence;
 - (iii) technical and operational knowledge relevant to the aircraft type to be used in the flight test;
 - (iv) competence to operate the aircraft within its performance capabilities and limitations in accordance with the aircraft flight manual in all normal, abnormal and emergency conditions and procedures while exercising appropriate levels of judgement and command;
 - (v) competence in radiotelephony (RTF) and phraseology;
 - (vi) control of the aircraft at all times in a manner that ensures the successful outcome of a procedure or manoeuvre is never in doubt; and
 - (vii) if applicable, comply with all the requirements of a notice issued under Subpart I.

(b) Qualifications held by a member of the New Zealand Defence Force who is in current flying practice as a first or second pilot may be accepted by the Director as meeting the requirements in—

- (1) paragraph (a)(2); and
- (2) paragraph (a)(6), if the person has passed the appropriate air law examination in the 5 years prior to applying for the issue of a commercial pilot licence; and
- (3) paragraph (a)(7).

61.205 Privileges and limitations

(a) Subject to paragraph (b), a current commercial pilot licence authorises the holder to exercise the following privileges in aircraft of the same category for which the pilot licence is granted and for which the pilot holds an aircraft type rating:

- (1) any of the appropriate privileges of a private pilot licence:
- (2) act as pilot-in-command of an aircraft that is certificated for single pilot operation and engaged on an operation for hire or reward:
- (3) act as pilot-in-command of an aircraft that is certificated for multi-pilot operation and engaged on an operation for hire or reward, that is not an air transport operation:
- (4) act as co-pilot of an aircraft that is certificated for multi-pilot operation and engaged on an operation for hire or reward.

(b) The holder of a commercial pilot licence must not act as pilot-in-command or as co-pilot of an aircraft at night, unless—

- (1) an appropriately qualified flight instructor has certified in the holder's logbook that the holder has satisfactorily completed the required night flight training, or the required night flight using NVIS training if applicable; and
- (2) if applicable, that the person complies with all the requirements of a notice issued under Subpart I.

61.303 Eligibility requirements

Category E flight instructor

(a) To be eligible for the issue of a Category E flight instructor rating, a person must—

- (1) be the holder of at least a current commercial pilot licence for the appropriate category of aircraft; and
- (2) hold a current Grade 1 agricultural rating for the appropriate category of aircraft with a rating to conduct aerial topdressing, aerial spraying, or aerial VTA as appropriate; and
- (3) have a minimum of 2000 hours flight time experience on agricultural aircraft operations which must include—
 - (i) if the person seeks to instruct in aerial topdressing, a minimum of 100 hours flight time experience of aerial topdressing as a pilot in the appropriate category of aircraft:
 - (ii) if the person seeks to instruct in aerial spraying, a minimum of 100 hours flight time experience of aerial spraying as a pilot in the appropriate category of aircraft:
 - (iii) if the person seeks to instruct in aerial VTA operations, a minimum of 100 hours flight time experience as a pilot in the appropriate category of aircraft, comprising flight time experience on aerial topdressing operations and at least 50 hours of flight time experience on aerial VTA operations; and
- (4) *Revoked*
- (5) *Revoked*

- (6) demonstrate to the Director adequate technical knowledge of agricultural aviation by passing an oral examination and a flight test that are acceptable to the Director; and
- (7) if not already the holder of a current flight instructor rating, have satisfactorily completed an approved instructional techniques course within the 12 months prior to applying for a Category E flight instructor rating, or such other period acceptable to the Director.

Category D flight instructor

- (b) To be eligible for the issue of a Category D flight instructor rating, a person must—
 - (1) be the holder of at least a current commercial pilot licence for the appropriate category of aircraft; and
 - (2) have a minimum of 700 hours flight time experience as a pilot including pilot-in-command experience acceptable to the Director; and
 - (3) if the person seeks to instruct at night, have night flight experience acceptable to the Director; and
 - (3a) in addition to paragraph (3), if the person seeks to instruct at night under VFR using NVIS, have appropriate experience acceptable to the Director;
 - (4) if the person seeks to instruct in multi-engine aircraft, have multi-engine flight experience acceptable to the Director; and
 - (5) if the person seeks to instruct in instrument flight, have an appropriate current instrument rating; and
 - (6) demonstrate to the Director the ability to competently instruct for aircraft type conversion by passing an oral examination and a flight test that are acceptable to the Director; and
 - (7) if not already the holder of an instructor rating, have satisfactorily completed an approved course in the practice and theory of flight instruction.

Category C flight instructor

- (c) To be eligible for the issue of a Category C flight instructor rating, a person must—
 - (1) be the holder of at least a current commercial pilot licence for the appropriate category of aircraft; and
 - (2) have a minimum of 200 hours flight time experience as a pilot in the appropriate category of aircraft comprising specific flight experience that is acceptable to the Director; and
 - (3) if the person seeks to instruct at night, have night flight experience acceptable to the Director; and
 - if the person seeks to instruct in multi-engine aircraft, have multi-engine flight experience acceptable to the Director; and
 - (4) if the person seeks to instruct in spinning or aerobatic manoeuvres in aeroplanes, have aerobatic experience acceptable to the Director; and
 - (5) have satisfactorily completed an approved course in the practice and theory of flight instruction; and
 - (6) have passed oral examinations in the following subject areas:
 - aeroplane or helicopter principles of flight and performance, as appropriate:
 - (iv) meteorology;
 - (v) cross-country navigation techniques;
 - (vi) the practice and theory of flight instruction;
 - (7) have a minimum of 25 hours dual flight instructor training or approved equivalent; and

- (8) demonstrate to the Director the ability to give flight instruction in the appropriate category of aircraft in all normal and emergency flight manoeuvres by passing an oral examination and a flight test that are acceptable to the Director.

(ca) A person who holds a current New Zealand Defence Force flight instructor qualification may be accepted by the Director as meeting the requirements in—

- (1) paragraph (c)(2); and
- (2) paragraph (c)(6), if the person's New Zealand Defence Force instructor qualification is for aeroplanes; and
- (3) paragraph (c)(8).

Category B flight instructor

(d) To be eligible for the issue of a Category B flight instructor rating, a person must—

- (1) be the holder of at least a current commercial pilot licence for the appropriate category of aircraft; and
- (2) be the holder of a Category C flight instructor rating or approved equivalent for the appropriate category of aircraft; and
- (3) have a minimum of 500 hours flight time experience as a pilot in the appropriate category of aircraft comprising specific flight experience that is acceptable to the Director; and
- (4) if the person seeks to instruct at night, have night flight experience acceptable to the Director; and

(4a) in addition to paragraph (4), if the person seeks to instruct at night under VFR using NVIS, have appropriate experience acceptable to the Director;

- (5) if the person seeks to instruct in multi-engine aircraft, have multi-engine flight experience acceptable to the Director; and
- (6) if the person seeks to instruct in spinning or aerobatic manoeuvres in an aeroplane, have aerobatic experience acceptable to the Director; and
- (7) have passed oral examinations in the following subject areas:
 - (vii) aeroplane or helicopter principles of flight and performance as appropriate:
 - (viii) meteorology;
 - (ix) cross-country navigation techniques;
 - (x) the practice and theory of flight instruction; and
- (8) demonstrate to the Director the ability to give flight instruction in the appropriate category of aircraft in all normal and emergency flight manoeuvres by passing an oral examination and a flight test that are acceptable to the Director.

(da) A person who holds a current New Zealand Defence Force flight instructor qualification may be accepted by the Director as meeting the flight time experience required by paragraph (d)(3) for the issue of a Category B flight instructor rating.

Category A flight instructor

(e) To be eligible for the issue of a Category A flight instructor rating, a person must—

- (1) be the holder of at least a current commercial pilot licence for the appropriate category of aircraft; and
- (2) be the holder of a Category B flight instructor rating or approved equivalent for the appropriate category of aircraft; and
- (3) in the case of an aeroplane, be the holder of an instrument rating; and

- (4) have a minimum of 1250 hours experience in the appropriate category of aircraft comprising specific flight experience that is acceptable to the Director; and
- (5) if the person seeks to instruct in multi-engine aircraft, have multi-engine flight experience acceptable to the Director; and
- (6) have passed oral examinations in the following subject areas:
 - (i) aeroplane or helicopter principles of flight and performance as appropriate:
 - (ii) meteorology:
 - (iii) cross-country navigation techniques:
 - (iv) the practice and theory of flight instruction; and
- (7) demonstrate to the Director an above average ability to give flight instruction in the appropriate category of aircraft during the day and night in all normal and emergency flight manoeuvres (including in the case of an aeroplane, spinning and aerobatic manoeuvres) by passing an oral examination and a flight test that are acceptable to the Director.

61.305 Privileges and limitations

Category E flight instructor

- (a) An appropriate current Category E flight instructor rating authorises the holder to—
 - (1) give technical and flight instruction in agricultural aircraft operations to the holder of a current pilot licence for the purpose of aerial topdressing, aerial spraying, or aerial VTA:
 - (2) authorise solo practice in aerial topdressing, aerial spraying, or aerial VTA by the holder of a current pilot licence who does not hold an agricultural rating:
 - (3) give conversion instruction and issue an agricultural aircraft type rating under rule 61.55, if the instructor has at least 50 hours flight time experience as pilot-in-command in the same type of aircraft to be used for instruction:
 - (4) [Revoked]
 - (5) conduct competency checks for agricultural ratings under rule 61.707:
 - (6) conduct competency checks under Subpart OA (aerial topdressing), Subpart OB (aerial spraying), and Subpart OC (aerial VTA):
- (b) A flight instructor holding a Category E flight instructor rating must not exercise the privileges specified in—
 - (1) paragraph (a) unless the flight instructor holds an appropriate pilot licence, and aircraft type rating or an authorisation under rule 61.57 for the type of aircraft being used; and
 - (2) paragraph (a)(1), unless the flight instructor holds an appropriate and current rating for the agricultural aircraft operation being conducted.
- (c) [Revoked]

Category D flight instructor

- (d) Subject to paragraphs (e), (f), and (g), an appropriate current Category D flight instructor rating authorises the holder to—
 - (1) give the holder of a pilot licence instrument flight instruction to the standard required for an instrument rating using radio aids to navigation; and
 - (2) conduct aircraft type ratings.

(e) Paragraph (d) applies only to a Category D flight instructor who holds an aircraft type rating or an authorisation under rule 61.57 for the type of aircraft being used for such instruction.

(f) The holder of a Category D flight instructor rating must not give instrument flight instruction, unless the instructor is the holder of a current instrument rating for—

- (1) the appropriate category of aircraft; and
- (2) the approach aid or system used for instruction.

(g) Unless an appropriately authorised flight examiner has certified in the holder's logbook that the holder has the necessary experience and demonstrated competence in that activity, the holder of a Category D flight instructor rating must not instruct—

- (1) at night or use NVIS; or
- (2) in a multi-engine aircraft; or
- (3) in instrument flight.

Category C flight instructor

(h) Subject to paragraphs (i), (j), (k), and (l), an appropriate current Category C flight instructor rating authorises the holder, when under the supervision of the holder of an appropriate current Category A or B flight instructor rating, to—

- (1) give flight instruction; and
- (2) authorise a solo flight other than a first solo flight by a student pilot by day; and
- (3) authorise a solo flight other than a first solo flight by a student pilot by night; and
- (4) record in a pilot's logbook that the pilot has complied with any requirements prescribed for pilots that require logbook certification in accordance with Category C flight instructor privileges; and
- (5) conduct aircraft type ratings.

(i) Paragraph (h) applies only to a Category C flight instructor who holds an aircraft type rating or an authorisation under rule 61.57 for the type of aircraft being used for such instruction or assessment.

(j) The holder of a Category C flight instructor rating must not exercise the privileges in paragraph (h) unless for at least the first 6 consecutive months and for a minimum of the first 100 hours of instructional flying, the flight instructor is under the direct supervision of the holder of a Category A or B flight instructor rating who is—

- (1) on the same aerodrome, at the same time; and
- (2) directly responsible for the flight instruction actions of the flight instructor under supervision.

(k) The holder of a Category C flight instructor rating must not give instrument flight instruction in IMC or on an IFR flight plan, unless the instructor is the holder of a current instrument rating for—

- (1) the appropriate category of aircraft; and
- (2) the approach aid or system used for instruction.

(l) Unless an appropriately authorised flight examiner has certified in the holder's logbook that the holder has the necessary experience and demonstrated competence in that activity, the holder of a Category C flight instructor rating must not instruct—

- (1) at night; or
- (2) in a multi-engine aircraft; or
- (3) in the case of an aeroplane, in spinning or aerobatics.

(la) The holder of a Category C flight instructor must not use NVIS if allowed to instruct at night under paragraph (1)(1).

Category B flight instructor

(m) Subject to paragraphs (n), (o), and (p), an appropriate current Category B flight instructor rating authorises the holder to—

- (1) give flight instruction; and
- (2) authorise a solo flight; and
- (3) record in a pilot's logbook that the pilot has complied with any requirements prescribed for pilots that require logbook certification; and
- (4) conduct aircraft type ratings; and
- (5) conduct biennial flight reviews.

(n) Paragraph (m) applies only to a Category B flight instructor who holds an aircraft type rating or an authorisation under rule 61.57 for the type of aircraft being used for such instruction or assessment.

(o) The holder of a Category B flight instructor rating must not give instrument flight instruction in IMC or on an IFR flight plan, unless the instructor is the holder of a current instrument rating for—

- (1) the appropriate category of aircraft; and
- (2) the approach aid or system used for instruction.

(p) Unless an appropriately authorised flight examiner has certified in the holder's logbook that the holder has the necessary experience and demonstrated competence in that activity, the holder of a Category B flight instructor rating must not instruct—

- (1) at night or use NVIS; or
- (2) in a multi-engine aircraft; or
- (3) in the case of an aeroplane, in spinning or aerobatics.

Category A flight instructor

(q) Subject to paragraphs (r), (s), and (t), an appropriate current Category A flight instructor rating authorises the holder to—

- (1) give flight instruction during the day or night; and
- (1a) in addition to paragraph (1), give flight instruction during the night under VFR using NVIS; and
- (2) authorise a solo flight during the day or night; and
- (2a) in addition to paragraph (2), authorise a solo flight during the night under VFR using NVIS if applicable; and
- (3) record in a pilot's logbook that the pilot has complied with any requirements prescribed for pilots that require logbook certification; and
- (4) conduct aircraft type ratings; and
- (5) conduct biennial flight reviews; and
- (6) give spinning and aerobatic instruction.

(r) Paragraph (q) applies only to a Category A flight instructor who holds an aircraft type rating or an authorisation under rule 61.57 for the type of aircraft being used for such instruction or assessment.

(s) The holder of a Category A flight instructor rating must not give instrument flight instruction in IMC or on an IFR flight plan, unless the instructor is the holder of a current instrument rating for—

- (1) the appropriate category of aircraft; and
- (2) the approach aid or system used for instruction.

(t) The holder of a Category A flight instructor rating must not instruct in multi-engine aircraft unless an appropriately authorised flight examiner has certified in that holder's logbook that the holder has the necessary experience and has demonstrated competence in that activity.

Subpart T Aid to night vision rating

61.935 Eligibility requirements

(a) To be eligible for the issue of an aid to night vision rating, a person must –

- (1) hold at least a current private pilot licence in the appropriate category of aircraft; and
- (2) hold at least a current class 2 medical certificate issued under the Act; and
- (3) have successfully completed the following –
 - (i) an approved NVIS ground training course conducted by an aviation training organisation under Part 141 or an air operator under Part 119 if authorised to conduct NVIS ground training; and
 - (ii) an approved NVIS flight training course for the same type of aircraft as the one intended for NVG operations, consisting of a minimum of 5 hours flight time, conducted by an aviation training organisation under Part 141 or an air operator under Part 119 if authorised to conduct NVIS flight training and checking approvals; and
 - (iii) a NVIS initial flight check conducted by an appropriately qualified flight instructor or flight examiner which includes as a minimum, the person is to demonstrate competency in those areas specified in a notice referred to in rule 91.273.

61.937 Issue

(a) If the flight instructor or flight examiner who conducted the competency demonstration referred to in rule 61.933(a)(2)(iii) is satisfied that the pilot complies with rule 61.933(b), the flight instructor or flight examiner may issue the aid to night vision rating by entering the following statement in the pilot's logbook:

I certify that on [date of assessment] [name of pilot and licence number] has satisfied the requirements of Civil Aviation Rules Part 61 for the issue of an aid to night vision rating for helicopter/aeroplane. [enter the date, full name, signature, and licence number of the flight instructor/flight examiner issuing the rating].

(b) The holder of an aid to night vision rating issued under paragraph (a) may apply to the Director to have the rating endorsed on the holder's pilot licence.

(c) On receiving an application and payment of the applicable fee, the Director may endorse the pilot licence with the aid to night vision rating.

(d) A pilot who holds an aid to night vision rating endorsed by the Director immediately before [date that NIVIS rules come into force] is deemed to have an aid to night vision rating endorsed under paragraph (c).

61.937 Recognition of New Zealand Defence Force NVIS qualifications

A pilot who has a New Zealand Defence Force NVIS qualification may be certified for night flying using NVIS if the pilot has completed the night flight training required under this Part and has completed the NVIS recurrent training acceptable to the Director.

61.939 Privileges and limitations

- (a) The holder of a current aid to night vision rating may act as pilot-in-command of an aircraft operating at night under VFR using NVIS.
- (b) Paragraph (a) is subject to the privileges and limitations of the holder's pilot licence.

61.939 Currency requirements

- (a) Except as provided in paragraph (b), the pilot who holds an aid to night vision rating must not exercise the privileges of the rating after 5 years from the date of issue unless, —
- (1) within the previous 5 years, the pilot has successfully completed a refresher course that is acceptable to the Director; and
 - (2) a record to that effect has been entered in the pilot's logbook as required by rule 61.29.
- (b) A pilot who successfully completes the refresher course required by paragraph (a) within 90 days before the date on which it is required is deemed to have completed the course on the required date.
- (c) For a helicopter pilot, the take-offs and landings required under rules 61.37(c) and 61.37(d) must -
- (1) be carried out in a NVIS - equipped helicopter of the same type that is normally used by the pilot for NVG flight operations; and
 - (2) be performed using NVGs; and
 - (3) include hovering tasks and an enroute segment or an area reconnaissance.

Consequential amendments:

Part 91 General Operating Rules

91.131 Low flying zones

- (a) A pilot must not operate an aircraft within a low flying zone designated under Part 71 —
- (1) during the night or use NVIS; or
 - (2) during the day unless—
 - (i) the pilot—
 - (A) is receiving dual flight instruction; or
 - (B) holds an instructor rating issued under Part 61; or
 - (C) is briefed on the boundaries of the low flying zone and the method of entry and exit from the low flying zone and is authorised for that flight by the holder of an instructor rating issued under Part 61; and
 - (ii) the pilot has been briefed by the using agency on the conditions of operation for flight within the low flying zone; and
 - (iii) the pilot complies with the conditions of operation for flight within the low flying zone; and
 - (iv) before entering the low flying zone, the pilot broadcasts on the appropriate VHF frequency details of the flight and the proposed duration in the low flying zone; and
 - (v) the pilot maintains a listening watch on the appropriate VHF frequency while in the low flying zone and broadcasts or reports on vacating the low flying zone.
- (b) A pilot operating an aircraft within a low flying zone designated under Part 71 must ensure that the aircraft is operated without hazard to persons or property on the surface.

(c) A pilot operating an aircraft within a low flying zone designated under Part 71 must not carry a passenger on the aircraft.

91.137 Volcanic hazard zones

A pilot must not operate an aircraft within a volcanic hazard zone designated under Part 71—

- (1) during the night or use NVIS; or
- (2) in IMC; or
- (3) in VMC during the day unless the pilot determines that, after considering all of the following, the volcanic hazard will not affect the safety of the flight:
 - (i) relevant meteorological information contained in SIGMET;
 - (ii) NOTAM information;
 - (iii) other information provided for this purpose by an organisation that holds a meteorological service certificate issued by the Director under the Act and Part 174.

91.139 General aviation areas

A pilot must not operate an aircraft within a general aviation area designated under Part 71—

- (1) during the night or use NVIS; or
- (2) during the day unless—
 - (i) the general aviation area is active permanently during the day; or
 - (ii) if the general aviation area is made active by the approval of the ATC unit responsible for the airspace, an approval has been given by the ATC unit to operate within the general aviation area and the pilot complies with any request from the ATC unit to vacate the general aviation area; or
 - (iii) if the general aviation area is made active by notification from an airspace user to the ATC unit responsible for the airspace, prior notification has been given to the ATC unit, and the ATC unit has confirmed that the general aviation area is active.

91.233 Aircraft lights

(a) A pilot of an aircraft must not—

- (1) operate an aircraft at night unless it has lighted position lights; or
- (2) moor or move an aircraft at night on a water aerodrome unless the aircraft complies with the lighting requirement of the International Regulations for Preventing Collisions at Sea; or
- (3) operate an aircraft at night that is required by Subpart F to be equipped with an anti-collision light system unless the anti-collision light system is operating.; or
- (3a) operate an aircraft at night under VFR using NVIS unless the aircraft's internal and external lighting meets the performance requirements as specified in a notice referred to in rule 91.271(1).

(b) A person must not park or move an aircraft at night on a manoeuvring area of an aerodrome that is in use for aircraft operations unless the aircraft—

- (1) is clearly illuminated; or
- (2) has lighted position lights; or
- (3) is in an area that is marked by obstruction lights.

(c) Notwithstanding Despite paragraph (a)(3), a pilot of an aircraft is not required to operate the anti-collision light system if the pilot determines that, because of operating conditions, it is in the best interest of safety to turn the system off.

91.271 Requirements for operating an aircraft at night under VFR using NVIS

A person must not operate an aircraft at night under VFR using NVIS unless –

- (1) the aircraft and NVIS meet the airworthiness and performance requirements –
 - (i) determined by the Director as specified in a notice under rule 91.273; or
 - (ii) the Director accepts as equivalent to those in paragraph (i);
- (2) the person –
 - (i) is suitably trained and qualified to operate the aircraft using NVIS as specified under Part 61 or in a notice; and
 - (ii) complies with the operational procedures and any limitations regarding the use of NVIS as specified in a notice.

91.273 Director may determine airworthiness and performance requirements and related matters in a notice

(a) After complying with the procedures referred to in rule 91.273B, the Director may determine the following as specified in a notice –

- (1) the airworthiness and performance requirements for an aircraft operating at night under VFR using NVIS;
- (2) the airworthiness and performance requirements for NVIS;
- (3) the areas of competencies on the eligibility requirements for the issue of an aid to night vision rating referred to in rule 61.935(a)(3)(iii); and
- (4) definitions and abbreviations to give full meaning to the terms used in a notice.

(b) A person must comply with any requirement specified in a notice referred to in paragraph (a) if the requirement applies to the person.

91.273B Procedures for ADS-B notice apply to NVIS notice

(a) The procedures for the making, amending and revoking of an ADS-B notice under rules 91.258A to 91.258E apply to a NVIS notice referred to in rule 91.273.

(b) When following the procedures, a reference to ADS-B or ADS-B systems is to be read as NVIS.

91.273C Transitional arrangements

- (1) A person who was approved by the Director to carry out operations in a particular aircraft at night under VFR using NVIS immediately before (date that the new rule comes into force) may continue to carry out NVIS operations until (one year from in-force date of new rules).
- (2) The person must comply with all the conditions regarding NVIS operations.
- (3) This rule expires on (one year from in-force date of new rules).

Part 135 Air Operations Helicopters and Small Aeroplanes**135.803 Operator responsibilities**

(a) A holder of an air operator certificate must not cause or permit an air operation to be performed with an aircraft unless—

- (1) a scheme has been established for the regulation of flight and duty times for every person flying as a flight crew member in the aircraft; and
- (2) the scheme addresses the following factors for air transport operations where appropriate to the operator's type of operation:

- (i) rest periods before flight:
- (ii) acclimatisation:
- (iii) time zones:
- (iv) night operations, and use of NVIS if applicable:
- (v) maximum number of sectors:
- (vi) single pilot operations:
- (vii) two pilot operations:
- (viii) two pilots plus additional flight crew members:
- (ix) flight crew members' qualifications:
- (x) mixed duties:
- (xi) dead-head transportation:
- (xii) reserve or standby period:
- (xiii) flight duty period:
- (xiv) in-flight relief:
- (xv) type of operation:
- (xvi) cumulative duty time:
- (xvii) cumulative flight time:
- (xviii) discretionary increases in flight time limitations or flight duty limitations or both:
- (xix) circadian rhythm:
- (xx) days off:
- (xxi) record-keeping; and

(3) the scheme for commercial transport operations, complies with the following:

- (i) flight crew members must not fly in excess of 160 hours in any 30 consecutive days:
- (ii) flight crew members must have not less than 2 days free of duty in any 14 day period:
- (iii) flight crew members must have not less than 2 consecutive days free of duty in any 30 day period; and

(4) the scheme is acceptable to the Director.

(b) The operator of an aircraft performing an air operation must not cause or permit any person to fly in the aircraft as a flight crew member if the operator knows or has reason to believe that the person is suffering from, or, having regard to the circumstances of the flight to be undertaken, is likely to suffer from, such fatigue while the person is flying as may endanger the safety of the aircraft or its occupants.

(c) The operator of an aircraft performing an air operation must—

- (1) keep an accurate record of the flight time and duty time of each flight crew member; and
- (2) retain the flight time and duty time record required by paragraph (c)(1) for a period of 12 months from the date on which it was made.

Part 1 Definitions and Abbreviations

Night vision goggles means a head-mounted, lightweight, and self-contained binocular appliance that amplifies ambient light used to enhance the ability to maintain visual reference to the surface at night:

Night vision imaging system –

- (1) refers to the integration of all of the following elements for the successful and safe operation of an aircraft using NVGs –
 - (i) operational procedures;
 - (ii) suitable training, competency and currency requirements;
 - (iii) NVGs and associated equipment;
 - (iv) lighting system and associated aircraft components;
 - (v) continuing airworthiness requirements; but
- (1) excludes –
 - (i) enhanced vision imaging system;
 - (ii) a synthetic vision system;

Enhanced vision imaging system refers to technology which uses imaging sensors to see in front and along the flight path of aircraft to display an image of the external scene topography to the flight deck:

Synthetic vision system refers to a system which uses computer generated images of the external scene topography from the perspective of the flight deck, derived from aircraft attitude, high precision navigation solutions, and databases of terrain obstacles and relevant cultural features to display a synthetic vision image of the external scene topography to the flight deck:

NVG operation means an operation during any part of which NVGs are used to maintain visual reference to the surface in an aircraft which is NVIS equipped and approved for NVIS operations:

1.2 Abbreviations

NVIS means night vision imaging system:

NVG means night vision goggles:

Performance Based Communications and Surveillance:

Part 91 General Operating and Flight Rules

91.265 Requirements for PBCS

- (a) A person must not operate an aircraft under IFR using PBCS unless all of the following requirements are met –
 - (1) the aircraft meets the airworthiness and performance requirements –
 - (i) determined by the Director as specified in a notice in accordance with rule 91.267; or
 - (ii) which the Director accepts are equivalent to those in paragraph (i);
 - (2) the person –
 - (i) is suitably trained and qualified to use PBCS on the planned route and airspace as specified in a notice;

- (ii) complies with the operational requirements and any limitations regarding the use of PBCS, planned route and airspace, as specified in a notice; and
- (3) the Director has approved the operation if specified to do so in a notice.

91.267 Director may determine requirements for PBCS and related matters in a notice

- (a) After complying with the procedures in rule 91.267B, the Director may determine and specify in a notice –
 - (1) the routes, airspaces and the application of horizontal separations based on PBCS;
 - (2) the operational requirements and limitations associated with PBCS;
 - (3) the airworthiness and performance requirements for an aircraft operating under IFR and using PBCS;
 - (4) requirements for demonstrating compliance and procedures for addressing non-compliance with PBCS;
 - (5) suitable training requirements for a person who operates an aircraft under IFR and using PBCS;
 - (6) definitions and abbreviations to give full meaning to the terms used in a notice.
- (b) A person must comply with any requirement specified in a notice referred to in paragraph (a) if the requirement applies to the person.
- (c) For the purposes of rule 91.265(2)(i) and this rule, **suitably trained and qualified** means the person meets all the applicable training requirements specified in a notice and under Part 61; and **suitable training** has a corresponding meaning.

91.267B Procedures for ADS-B notice apply to PBCS notice

- (a) The procedures for the making, amending and revoking of an ADS-B notice under rules 91.258A to 91.258E apply to a PBCS notice referred to in rule 91.267.
- (b) When following the procedures, a reference to ADS-B, ADS-B system or ADS-B systems is to be read as PBCS.

91.267C Transitional arrangements and savings

- (a) An operator who was approved by the Director to operate an aircraft using PBCS [on the routes, airspaces and the application of horizontal separations] immediately before [new rule comes into force] –
 - (1) is deemed to have been approved by the Director to operate an aircraft using PBCS under rule 91.265(3);
 - (2) may operate an aircraft under IFR using PBCS as specified in a notice referred to in rule 91.265(1); and
 - (3) must comply with all the applicable requirements specified in a notice referred to in rule 91.267(a)(2).
- (b) Paragraphs (a)(2) and (3) come into force on [12 months from date of Minister signing the rule.]

Consequential amendments:

Part 1 General Definitions and Abbreviations

1.2 Abbreviations

PBCS means Performance Based Communications and Surveillance

Aircraft unique call sign:

Part 91 General Operating and Flight Rules

91.249 Aircraft ~~callsigns~~ call sign

- (a) If required to communicate by radiotelephony under the ~~Civil Aviation~~ Rules, a pilot-in-command of a New Zealand registered aircraft must use 1 of the following radiotelephony callsigns call signs—

- (1) the telephony designator of the aircraft operating agency as approved by the Director, followed by the flight identification; or
 - (2) the telephony designator of the aircraft operating agency as approved by the Director followed by the last 3 letters of the aircraft registration marking; or
 - (3) the name of the aircraft manufacturer, or the aircraft model, and the last 3 letters of the aircraft registration marking; or
 - (4) a unique personalised call sign which is part of an identifiable paint scheme or markings approved under rule 47.104, that refers to the aircraft type or model, letters or numbers in a manner or form approved by the Director; or
 - (5) any other similar radiotelephony call sign that is acceptable to the Director.
- (b) ~~Notwithstanding~~ Despite paragraph (a)(2), the pilot-in-command may, after establishing two-way communication with an appropriate ATS unit, use an abbreviated ~~callsign~~ call sign consisting of the last 3 letters of the aircraft registration marking.
- (c) The Director may only approve the ~~callsigns~~ call signs prescribed in paragraphs (a)(1) and (2) for the use of—
- (1) the holder of an air operator certificate issued under ~~the Act and~~ Part 119 or Part 129 conducting—
 - (i) a regular air transport service; or
 - (ii) a search and rescue flight; or
 - (iii) a medical transfer or medical emergency flight; and
 - (2) aircraft being flown on a police operation that is authorised by the Commissioner of Police.
- (d) An applicant for the approval of a telephony designator must submit to the Director in writing the name of the aircraft operating agency and a payment of the appropriate application fee prescribed by regulations made under the Act.
- (e) A radiotelephony call sign that was approved by the Director through general exemption 15/EXE/43 immediately before [date that new rule comes into force] is deemed to have been approved by the Director under paragraph (a)(4).

Consequential amendment:

Part 172 Air Traffic Service Organisations — Certification

172.105 Radio and telephone procedures

- (a) Each applicant for the grant of an air traffic service certificate must establish systems and procedures for ensuring that—
- (1) the standard telephony and radiotelephony phraseology prescribed in paragraph (b) is used; and
 - (2) in all radiotelephony communications discipline is observed, by transmitting only those messages that are necessary for the provision of an air traffic service, or that otherwise contribute to safety; and
 - (3) communications procedures are in accordance with the applicable communication procedures prescribed in ICAO Annex 10 Volume II, except that—
 - (i) procedures relating to ~~callsigns~~ call signs for domestic use by New Zealand registered aircraft are those required by rule 91.249; and
 - (ii) an aerodrome flight information service ~~shall use~~ uses the radiotelephony callsign suffix **flight service**.
- (b) The applicant must establish procedures for ensuring that, for the purposes of paragraph (a), the standard phraseology, and the circumstances in which it is used, is that published in—
- (1) Subpart F; or
 - (2) ICAO Annex 10; or

- (3) ICAO Document 4444; or
- (4) ICAO Document 9432.

(c) For the purposes of paragraph (b), where differences occur between the stated documents, the particular phraseology ~~shall be~~ is selected according to the order of precedence of the documents as listed.

Maintenance organisation rating requirements:

Part 145 Aircraft Maintenance Organisations Certification

145.101 Continued compliance

~~Each~~ A holder of a maintenance organisation certificate ~~shall~~ must—

- (1) hold at least one complete and current copy of its exposition at each work location specified in its exposition; and
 - (1a) include a copy of a release note in its exposition for any aeronautical product issued by the organisation; and
- (2) comply with all procedures detailed in its exposition; and
- (3) make each applicable part of its exposition available to personnel who require those parts to carry out their duties; and
- (4) continue to meet the standards and comply with the requirements of Subpart B; and
- (5) determine that each aircraft or component released to service by it is in an airworthy condition.

Consequential amendment:

Part 19 Transition Rules

19.321 Supply control procedures

- (a) An applicant for the grant of a certificate of approval for supply must establish supply control procedures—
 - (1) ~~to~~ for inspecting and, if applicable, testing an aeronautical product to determine that it conforms to airworthiness standards acceptable to the Director, has no unsafe features, and is fit for use; and
 - (2) for the identification of each aeronautical product by—
 - (i) determining the correct description of the aeronautical product; and
 - (ii) ensuring that the aeronautical product is identical to the description determined under paragraph ~~(a)(2)~~(i); and
 - (3) for determining that each aeronautical product other than a standard part, conforms with acceptable airworthiness standards that are identified from—
 - (i) the documentation accompanying the product if the documentation is acceptable to the Director; or
 - (ii) another means that is acceptable to the Director; and
 - (4) ~~to ensure~~ for ensuring that each aeronautical product or batch of aeronautical products consigned by the supply organisation is—
 - (i) issued with a release note; or
 - (ii) accompanied by the original documents specified in paragraph (a)(3)(i); and
 - (5) ~~to ensure~~ for ensuring that every aeronautical product dispatched by the supply organisation is in a good state of preservation and is free from apparent defect or malfunction; and

- (6) ~~to prevent~~ for preventing deterioration of, and damage to, stored items; and
 - (7) ~~to segregate~~ for segregating items for which acceptance procedures have not been completed; and
 - (8) ~~to segregate~~ for segregating and ~~dispose~~ disposing of items that do not conform to airworthiness standards acceptable to the Director; and
 - (9) for the notification, investigation, and reporting of defect incidents under Part 12.
- (b) The procedures for the issue of a release note must include a means ~~to ensure~~ for ensuring that each release note—
- (1) is identified as such; and
 - (2) is uniquely numbered; and
 - (3) is accompanied by supporting evidence from the aeronautical product manufacturer if the aeronautical product is an authorised alternative to another aeronautical product; and
 - (4) contains the following information:
 - (i) the name of the supply organisation and certificate of approval number ~~of the supply organisation issuing it~~;
 - (ii) the date of issue;
 - (iii) an identification of the aeronautical product by description and, as applicable, part, drawing, specification, serial, and batch number;
 - (iv) the eligibility and any limitations relating to the use of the aeronautical product, including shelf life and finite life;
 - (v) the quantity involved;
 - (vi) details of any modifications incorporated during manufacture; and
 - (5) is certified by an appropriately authorised person listed in the supply organisation's exposition; and
 - (6) is issued in the form of a separate document suitable for attachment to an aeronautical product or a batch of aeronautical products.

Foreign aircraft operations:

Part 129 Foreign Air Transport Operator Certification

129.1 Applicability

- (a) Except as provided in paragraph (b), this Part ~~shall apply~~ applies to persons conducting foreign air transport operations of—
- (1) more than ~~two~~ 1 take-offs ~~or~~ and 1 landings within New Zealand in any consecutive 28 day period; or
 - (2) more than ~~eight~~ 4 take-offs ~~or~~ and 4 landings within New Zealand in any consecutive 365 day period.
- (b) This Part ~~shall~~ does not apply to operations conducted for the purposes of medical emergencies, including evacuations, or the carriage of medical supplies or body organs.

Flight attendant and cabin crew ground instructors:

Part 121 Air Operations Large Aeroplanes

121.529 Ground instructor experience requirements

A holder of an air operator certificate must not designate a person to perform the functions of a ground instructor in its crew member training programme required by rule 121.553 ~~for flight crew~~, unless that person has completed—

- (1) an instructional techniques course acceptable to the Director; and
- (2) a human factors course acceptable to the Director; and
- (3) a comprehensive training course in the subject matter area in which instruction is being provided.

121.553 Crew member training programme

(a) A holder of an air operator certificate must establish a crew member training programme under this Subpart to ensure that each flight crew ~~member and each flight attendant assigned~~ to act as a crew member on an aeroplane conducting an air operation, and who is not participating in an advanced qualification programme specified in Subpart M, is trained to perform their assigned functions.

(b) The certificate holder must ensure that the training programme required by paragraph (a) is conducted safely, in a structured manner, and without unacceptable risk to the equipment and personnel, or third parties.

(c) The certificate holder must ensure that the training programme required by paragraph (a) contains the following segments—

- (1) introduction training;
- (2) transition training;
- (3) upgrade training;
- (4) recurrent training.

(d) The certificate holder must ensure that the training programme required by paragraph (a) includes human factors as an integral component in every training segment referred to in paragraph (c).

(e) The certificate holder must ensure that a pilot who completes an introduction training segment, a transition training segment, or an upgrade training segment also completes the pilot line training requirements specified in rule 121.567, and the pilot consolidation requirements specified in rule 121.569.

(f) The certificate holder must ensure that the person responsible for its flight crew member training programme holds a flight examiner rating.

(g) The certificate holder must ensure that the person responsible for its flight attendant training programme is qualified as specified in rule 121.525, or rule 121.527, or has appropriate qualifications and experience that are acceptable to the Director.

(h) The certificate holder is responsible for controlling the training programme required by paragraph (a).

(i) The certificate holder may—

- (1) conduct the training in accordance with the training programme required by paragraph (a); or
- (2) contract with the holder of an aviation training organisation certificate issued under Part 141, to conduct the training in accordance with the training programme required by paragraph (a) if the Part 141 certificate authorises the holder to conduct that type of training; or
- (3) for a training conducted outside New Zealand, contract with an organisation that meets a standard equivalent to that specified in Part 141 to conduct the training in accordance with the training programme required by paragraph (a) for flight crew members.

(j) The certificate holder must ensure that when a crew member completes a training segment of the training programme—

- (1) the training record for that crew member is updated with the details of the qualification acquired; and
- (2) the training record and details of the qualification referred to in paragraph (1) are kept in accordance with the procedures referred to in rule 119.67; and

- (3) the crew member is informed of the qualification.

121.555 Syllabus for crew member training programme

- (a) A holder of an air operator certificate must ensure that each segment of the training programme for **flight crews** and flight attendants includes a syllabus that is applicable to the certificate holder's operations and is acceptable to the Director.
- (b) Each syllabus required by paragraph (a) must include at least the following elements as applicable to—
 - (1) the aeroplane type to be used, including special equipment fitted for the intended operation:
 - (2) the routes and aerodromes appropriate to the intended operation:
 - (3) the crew member assignments, functions, responsibilities, and the relationship of these to the assignments, functions and responsibilities of other crew members, particularly in regard to abnormal or emergency procedures:
 - (4) training in all types of emergency and abnormal situations or procedures caused by power plant, airframe or system malfunctions, fire or other abnormalities:
 - (5) the location and operation of emergency equipment available for use by crew members:
 - (6) the location and use of oxygen equipment:
 - (7) the location and use of all normal and emergency exits, including evacuation slides and escape ropes:
 - (8) training on human factors and crew resource management:
 - (9) training in strategies to manage risks including threat and error management:
 - (10) the requirements of Part 92 regarding the carriage of dangerous goods:
 - (11) security training in accordance with the air operator security programme required by rule 119.75:
 - (12) the certificate holder's policies and procedures appropriate to its air operations.

Helicopter hover entry and exit:

Part 91 General Operating and Flight Rules

91.207 Occupation of seats and wearing of restraints

- (a) A pilot-in-command of an aircraft must require each passenger to occupy a seat or berth and to fasten their safety belt, restraining belt or, if equipped, shoulder harness or single diagonal shoulder belt—
 - (1) during each take-off and landing; and
 - (2) when the aircraft is flying at a height of less than 1000 feet above the surface; and
 - (3) at other times when the pilot-in-command considers it necessary for their safety; and
 - (4) during aerobatic flight; and
 - (5) at all times in an open cockpit aircraft.
- (b) A pilot-in-command of an aircraft may permit a passenger to unfasten a shoulder harness or single diagonal shoulder belt—
 - (1) during take-off and landing; and

- (2) when the aircraft is flying at a height of less than 1000 feet above the surface— if the pilot-in-command is satisfied that such action is necessary for the passenger’s performance of an essential function associated with the purpose of the flight.
- (c) A pilot-in-command of an aircraft must require each passenger to place their seat in the take-off and landing configuration during take-off and landing.
- (d) Paragraphs (a)(1), (2), and (3) do not apply to a child under 4 years of age if the child—
- (1) is held by an adult who is occupying a seat or berth, and the child is secured by a safety belt attached to the adult’s safety belt; or
 - (2) occupies a seat equipped with a child restraint system, if the child does not exceed the specified weight limit for that system and is accompanied by a parent, guardian, or by an attendant designated by the child’s parent or guardian to attend to the safety of the child during the flight.
- (da) Paragraph (a)(2) does not apply to a passenger who is permitted by the pilot-in-command to enter or exit from a helicopter while it is hovering provided that the following requirements are met if applicable –
- (1) the pilot-in-command must hover the helicopter as close to the surface as reasonably practicable;
 - (2) except for winching operations, the passenger entering or exiting from the aircraft must be able to enter directly from or exit directly onto a stable surface;
 - (3) each hover entry or exit must be conducted during the day, except where an approved aid to night vision is used by the pilot-in-command as well as another suitably trained person on board the aircraft for the purpose of assisting the pilot-in-command to manage the risks associated with the operation;
 - (4) for operations carried out by the holder of an air operator certificate, agricultural aircraft operator certificate, or training organisation certificate –
 - (i) the operator of the aircraft must establish, document and implement standard operating procedures, passenger briefing procedures, training procedures and competency assessment procedures for ensuring the risk of injury to any person entering or exiting the aircraft in the hover and any person on board the aircraft while a person is entering or exiting the aircraft in the hover, is reduced to as low as reasonably practicable;
 - (5) for operations carried out by a person who does not hold an air operator certificate, agricultural aircraft operator certificate, or training organisation certificate –
 - (i) the pilot-in-command must have been trained by an appropriate instructor in the operational techniques necessary to manage the risks associated with a person entering or exiting the aircraft in a hover and have been checked by an appropriate instructor in these techniques within the last 2 years; and
 - (ii) the pilot-in-command must identify the risks associated with persons entering or exiting the aircraft in a hover and the mitigations that will be used to reduce these risks as low as reasonably practicable; and
 - (iii) the pilot-in-command must brief each person that will be on board the aircraft while a person exits the aircraft in a hover and any person intending to enter the aircraft in a hover, on the mitigations identified for entering or exiting the aircraft in a hover.
- (db) Paragraph (da) does not apply to fast roping or rappelling operations.
- (e) Paragraph (a) does not apply to passengers carried in balloons or engaged in parachute operations.

Introductory flight

Part 91 General Operating and Flight Rules

91.227H Restrictions on performing an introductory flight

- (a) A pilot must not conduct an introductory flight unless –

- (1) the pilot—
- (i) is authorised by an aviation training organisation certificated under Part 141; or
- (ii) is authorised by an aviation recreation organisation certificated under Part 149; or
- (iii) is a flight instructor,
- who meets all the applicable requirements for the appropriate category of aircraft under Part 61;
- (2) the aircraft has a single engine and a certificated maximum passenger seating capacity of 4 passengers including the instructor;
- (3) a passenger in the student seat is allowed only a basic level of manipulations of the controls under the direct supervision of the instructor;
- (4) it is an A to A flight where the aircraft only lands to swap over the person in the student seat; and
- (5) each accompanying passenger carried on the flight who is not manipulating the controls, is not charged separately.
- (b) The pilot must ensure that –
- (1) the flight briefing consists of a basic initial training lesson only; and
- (2) an aerobatic manoeuvre is not performed during the introductory flight.
- (c) A passenger must not be carried on more than 2 introductory flights.
- (c) For the purposes of this rule, an **introductory flight** is not an air transport operation.

Consequential amendment:

Part 1 General Definitions and Abbreviations

1.1 Definitions

Air transport operation means an operation for the carriage of passengers or goods by air for hire or reward except—

- (1) a commercial transport operation;
- (2) an adventure aviation operation;
- (3) a helicopter external load operation under Part 133;
- (4) an agricultural aircraft operation under Part 137;
- (5) ~~a trial flight~~ an introductory flight carried out under rule 91.227H.

Introductory flight means a flight of short duration offered by a flight training organisation or an organisation promoting recreational aviation to a prospective trainee or member where the dominant purpose of the flight is to encourage a new trainee or member.

New crew member:

Part 91 General Operating and Flight Rules

91.227D Restrictions for crew member carrying out specific or safety task necessary for purpose of a flight

- (a) A person must not act as a crew member while carrying out a specific or safety task necessary for the purpose of an operation, without an air operator certificate, unless –

- (1) the specific or safety task is one determined by the Director and specified in a notice referred to in rule 91.227E(a)(1); and
- (2) the circumstances under which the specific or safety task is carried out are similar to those determined by the Director and specified in a notice referred to in rule 91.227E(a)(2); and
- (3) the person complies with all the conditions relating to the specific or safety task as determined by the Director and specified in a notice referred to in rule 91.227E(a)(2).

(b) This rule applies to a person acting as a crew member for the purposes of paragraph (3a) of the **crew member** definition.

91.227E Director may determine specific or safety tasks necessary for purpose of a flight under certain circumstances and conditions in a notice

(a) After complying with rule 91.227F, the Director may determine the following in a notice –

- (1) specific or safety tasks necessary for the purpose of an operation; and
- (2) the circumstances and conditions under which those specific or safety tasks are to be carried out.

(b) A person must comply with any requirement specified in a notice referred to in paragraph (a) if the requirement applies to the person.

91.227F Procedures for ADS-B notice apply to notice made under rule 91.227D

The procedures relating to the making, amending and revoking of an ADS-B notice referred to in rules 91.258A to 91.258E apply to a notice made by the Director under rule 91.227E.

Consequential amendment:

Part 1 Definitions and Abbreviations

1.1 Definitions

Crew member means a person carried by an aircraft who is—

- (1) assigned by the operator—
 - (i) as a flight crew member or flight attendant to perform a duty associated with the operation of the flight; or
 - (ii) to perform a duty associated with the operation of the aircraft during flight time; or
- (2) a person carried for the sole purpose of—
 - (i) undergoing or giving instruction in the control and navigation of the aircraft; or
 - (ii) undergoing instruction as a flight engineer or flight attendant; or
- (3) authorised by the Director to exercise a function associated with the operation of the aircraft during flight time; or
- (3a) a person carried to perform a specific or safety task necessary for the purpose of an operation under certain circumstances and conditions determined by the Director as specified in a notice under rule 91.227E; or
- (4) a flight examiner.

Cost sharing flight

Part 91 General Operating and flight rules

91.227B Restrictions on performing a cost sharing flight

- (a) A pilot must not perform a cost sharing flight under this Part unless –
- (1) the pilot holds at least a private pilot licence and a current class 2 medical certificate issued under the Act; and
 - (2) the crew members receive no payment or other reward for their services; and
 - (3) the persons carried by the aircraft, including the crew members, share equally in the direct costs of the flight; and
 - (4) a payment or other reward is not required of a person on the flight other than the direct costs of the flight; and
 - (5) the aircraft that is being operated –
 - (i) is not powered by a turbojet or turbofan; or
 - (ii) is not a pressurised aircraft; and
 - (iii) has a maximum certificated passenger seating capacity of 6 or fewer seats; and
 - (6) the flight is not a routine scheduled flight; and
 - (7) the flight is not advertised to the public.
- (b) For the avoidance of doubt, a cost sharing flight is not an air transport operation or an operation for hire or reward.
- (c) For the purposes of this rule –
- (1) **advertising to the public** includes advertising on social media;
 - (2) **direct costs of the flight** means, but is not limited to, the costs of any form of energy or material consumed during the flight, airport expenditure or rental fees.

Consequential amendments:

Part 1 General Definitions and abbreviations

1.1 Definitions

Cost sharing flight means a flight that is performed solely for the carriage of persons subject to the restrictions under rule 91.227B:

Part 61 Pilot licences and ratings

61.155 Privileges and limitations

- (a) Subject to paragraphs (b) and (bb), the holder of a current private pilot licence may—
- (1) act as pilot-in-command of an aircraft of the category for which the pilot licence is granted and for which the pilot holds an aircraft type rating, and may carry passengers in the aircraft; and
 - (2) act as a co-pilot of an aircraft of the category for which the pilot licence is granted and for which the pilot holds an aircraft type rating, and which is required to be operated with a co-pilot.
- (b) The holder of a private pilot licence must not act as pilot-in-command or as co-pilot of an aircraft—
- (1) for remuneration; or

- (2) if the aircraft is being operated for hire or reward; or
- (3) if the aircraft is—
 - (i) being operated at night; or
 - (ii) being operated on a cross country flight; or
 - (iii) a helicopter carrying a sling load—

unless an appropriately qualified flight instructor has certified in the holder's logbook that the holder has satisfactorily completed the flight training required to perform that activity; or

- (4) if applicable, unless the holder has complied with all the requirements of a notice issued under Subpart I.

(bb) The holder of a private pilot licence who only holds a current medical certificate referred to in rule 61.35(a)(1)(ia) must not act as pilot-in-command or co-pilot –

- (1) of any aircraft with a MCTOW exceeding 2, 730 kg:
- (2) of any pressurised aircraft exceeding 25, 000 feet AMSL:
- (3) of an aircraft –
 - (i) operating outside of New Zealand, unless a foreign country permits the holder of the private pilot licence to operate in that country:
 - (ii) operating under IFR:
 - (iii) operating into or out of a controlled aerodrome unless the holder maintains radio contact with the appropriate ATS unit at all times:
performing an agricultural aircraft operation:
 - (iv) performing a banner tow operation below 500 feet AGL:
 - (v) performing a drogue tow operation below 500 feet AGL:
 - (vi) performing a parachute drop operation exceeding 10, 000 feet AMSL:
 - (vii) performing a cost sharing flight:
 - (viii) while exercising the privileges of an aerobatics rating:
 - (ix) despite paragraph (a)(1), carrying more than 5 passengers;
 - (x) that is being operated at night exceeding 25 nm of a lit aerodrome.

(bd) Despite paragraph (bb)(3)(iii), the holder of a private pilot licence who only holds a current medical certificate referred to in rule 61.35(a)(1)(ia) is not required to have radio contact with the appropriate ATS unit at all times if the person has already successfully passed a colour deficiency screening test that is acceptable to the Director, and the flight has been approved by the ATS Unit.

(bf) Despite paragraphs (a)(1) and (bb)(3)(ix), the holder of a private pilot licence who only holds a medical certificate referred to in rule 61.35(a)(1)(ia) must not carry a passenger while performing an aerobatic manoeuvre.

(c) Despite paragraph (b)(2), the holder of a current private pilot licence may act, but not for remuneration, as pilot-in-command or as a co-pilot of an aircraft that is operated for hire or reward to tow a glider in flight, but only if the operation is under the direct control of a gliding organisation, or under the authority of an adventure aviation operator certificate issued by the Director under the Act and Part 115.