



WELLINGTON NEW ZEALAND

PURSUANT to Section 28 of the Civil Aviation Act 1990

I, HARRY JAMES DUYNHOVEN, Associate Minister of Transport,

HEREBY MAKE the following ordinary rules.

SIGNED AT Wellington

This *5th* day of *July* 2004
by **HARRY JAMES DUYNHOVEN**

Associate Minister of Transport

Civil Aviation Rules

Part 77, Amendment 1

Objects and Activities Affecting Navigable Airspace

Docket 98/CAR/1304

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Part 77 Amendments

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Consultation Details

Rule objective

The objective of amendment 1 to Part 77 is to change the references to Part 73 in rules 77.1, 77.5, and 77.19 to read Part 71, and to change the references to low flying areas to read low flying zones.

These changes are consequential to the re-issue of Part 71 and the revocation of Part 73.

Extent of consultation

A Notice of Proposed Rule Making 99-5 was issued for public comment in September 1999. As a result of comments received to this NPRM, and the need to harmonise airspace terminology with Australia, extend the Director's power to designate transponder mandatory airspace to provide for the more effective use of ACAS, and to address consequential amendments to other Parts, a new NPRM 01-04 was issued in October 2003.

Considerable public and industry consultation on various issues had already taken place prior to and during the development of this new NPRM. This consultation included:

- The public consultation that took place on the original NPRM 99-5 issued in 1999, and the consequential meetings and discussions with Gliding New Zealand and Airways Corporation
- The airspace terminology harmonisation discussions that took place with the Civil Aviation Safety Authority Australia over the period December 2000 to July 2001
- Discussions on transponder mandatory airspace during the Part 121 and Part 125 Airborne Collision Avoidance System rules development projects during 2001 and 2002
- The extensive consultation that took place with various aviation user groups and industry representatives during 2001/02 in association with the Airspace Review conducted by the CAA Aeronautical Services Unit.

A Notice of Proposed Rulemaking, NPRM 04-01, containing the proposed re-issue of Part 71 and the revocation of Part 73 together with the consequential amendments to Parts 1, 77, 91, 101, 105, and 172 was issued for public consultation under Docket 98/CAR/1304 on 16 October 2003.

The publication of this NPRM was notified in the Gazette on 16 October 2003 and advertised in the daily newspapers in the five main provincial centres on 18 October 2003. The NPRM was published on the CAA web site and mailed to identified stakeholders including representative organisations who were considered likely to have an interest in the proposal.

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

Summary of comments

Fourteen written submissions were received on the NPRM. No written submissions or oral comments were received in relation to Part 77. As a result no changes were made to the proposed amendments to this Part.

The rules were then referred to Parliament's Regulations Review Committee before being signed by the Associate Minister of Transport.

Examination of comments

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

Insertion of Amendments

The amendments to the rules in this Part are reflected by the revocation of the existing rules and the insertion of new rules.

Effective date of rule

Amendment 1 to Part 77 comes into force on 5 August 2004.

Availability of rules

Civil Aviation Rules are available from–

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

Freephone: 0800 GET RULES (0800 438 785)

Part 77 Amendments

Rule 77.1 is revoked and the following new rule is inserted:

77.1 Purpose

(a) Subject to paragraph (b), this Part prescribes rules for persons within the territorial limits of New Zealand, including the New Zealand Defence Force, proposing—

- (1) to construct or alter a structure that could constitute a hazard in navigable airspace; or
- (2) the use of a structure, lights, lasers, weapons, or pyrotechnics, that could constitute a hazard in navigable airspace.

(b) This Part does not apply to—

- (1) any member of the New Zealand Defence Force or any aircraft operated by the New Zealand Defence Force acting in connection with—
 - (i) any war or other like emergency; or
 - (ii) the defence of New Zealand and other New Zealand interests; or
 - (iii) aid to the civil power in time of emergency; or
 - (iv) the provision of any public service; or
 - (v) any operation performed within a restricted, danger, or military operating area designated under Part 71 for military purposes; and
- (2) activities to which Part 101 applies.

Rule 77.5 is revoked and the following new rule is inserted:

77.5 Notice of construction or alteration of structure

Each person proposing to construct or alter a structure must notify the Director of the proposal in accordance with 77.13 if—

- (1) the structure will extend more than 60 m in height above the ground level at its site; or
- (2) the structure will exceed the general tree height in the area by 18 m and be located in an area of low level aerial activity or other low flying activity, or in a low flying zone or low level route as prescribed under Part 71; or
- (3) the structure is or will be located below the approach or take-off surfaces of an aerodrome as outlined in figures A.1 and A.2 of Appendix A, and will extend to a height greater than a surface, outlined in Appendix A, extending outward and upward at one of the following:
 - (i) a slope of 1:83 from the fan origin of the takeoff surface of each runway where the runway is used or intended to be used by aircraft with a MCTOW above 5700 kg;
 - (ii) a slope of 1:50 from the fan origin of the takeoff surface of each runway where the runway is used or intended to be used by aircraft with a MCTOW at or below 5700 kg;
 - (iii) a slope of 1:25 from the nearest point of the safety area of each heliport; or
- (4) the structure would penetrate the conical, inner horizontal, or transitional side surface of an aerodrome as—
 - (i) outlined in figure A.1 of Appendix A; or
 - (ii) specified in Part 139; or
 - (iii) as defined in the local district scheme.

Rule 77.19 is revoked and the following new rule is inserted:

77.19 Standards for determining hazards

(a) The Director must determine a structure to be a hazard in navigable airspace if—

- (1) it is 120 m or higher above ground level at its site; or
- (2) it is 60 m above ground level at its site and located within 1 km of a defined VFR transit lane.

(b) The Director must determine the use of a structure to be a hazard in navigable airspace if the structure will or may discharge efflux at a velocity in excess of 4.3 m per second through the obstacle limitation surfaces applicable to an aerodrome.

(c) The Director must determine the use of a structure to be a hazard in navigable airspace if the structure will or may discharge efflux at a velocity in excess of 4.3 m per second higher than 60 m above ground level.

(d) The Director must determine the use of lights to be a hazard in navigable airspace if an analysis discloses that their use will constitute a hazard in navigable airspace.

(e) The Director may determine, based on the circumstances of each proposal, the use of lasers to be a hazard in navigable airspace if their use will produce exposures in navigable airspace exceeding the maximum permissible exposure defined for that laser in NZS/AS 2211.

(f) The Director must determine the use of weapons to be a hazard in navigable airspace if an analysis discloses that their use will constitute a hazard in navigable airspace.

(g) The Director must determine the use of pyrotechnics to be a hazard in navigable airspace if an analysis discloses that their use will constitute a hazard in navigable airspace.

(h) The Director may determine, based on the circumstances of each proposal, a structure to be a hazard in navigable airspace if—

- (1) it is 60 m above ground level at its site and stands in a flat plain area; or
- (2) it is located within an instrument flight procedures area that is specified in ICAO document 8168–OPS/611, including standard arrival routes, initial, intermediate, final, visual and missed approach segment areas, departure areas and standard instrument departure routes, and would result in—
 - (i) the vertical distance between any point on the structure and an established minimum instrument flight altitude within that area or segment being less than obstacle clearance required under 19.155; or
 - (ii) additional or new ceiling or visibility restrictions or a change in flight procedures applicable to departures within that area; or
- (3) it is located within an IFR en-route obstacle clearance area, including evaluated routes on NZ en-route and area charts but excluding charted routes as published in the NZAIP instrument flight guide, and would necessitate an increase in an existing or planned minimum obstacle clearance altitude; or
- (4) it exceeds the general tree height by 18 m and is located in an area of low level aerial activity or other low flying activity, or in a low flying zone or low level route as prescribed under Part 71; or
- (5) it is in the vicinity of an aerodrome and protrudes through the obstacle limitation surfaces.

Consultation Details

(This statement does not form part of the rules contained in Part 77. It provides details of the consultation undertaken in making the rules.)

The consultation details relating to amendment 1 to Part 77 are contained in the consultation details of the re-issue of Part 71. The comments and all the background material used in developing the rules are held on the docket and are available to the public. Persons wishing to view the docket should call at the Civil Aviation Authority and ask for docket 98/CAR/1304.