



**WELLINGTON NEW ZEALAND**

**PURSUANT to Section 30 of the Civil Aviation Act 1990**

**I, WILLIAM ROBSON STOREY, Minister of Transport,**

**HEREBY MAKE the following ordinary rules.**

**SIGNED AT Wellington**

this *1st* day of *June* 1993

**by WILLIAM ROBSON STOREY**

*W. R. Storey*  
**Minister of Transport**

**Civil Aviation Rules**

**Part 157**

**Notice of Construction, Alteration,  
Activation, and Deactivation of Aerodromes**

**Docket Nr. 1055**

**Civil Aviation Rules  
Part 157**

**Notice of Construction, Alteration,  
Activation, and Deactivation  
of Aerodromes**

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

The objective of Part 157 is to enable the Civil Aviation Authority to manage the safe and effective use of the navigable airspace associated with the use of aerodromes.

In May 1990 the Air Transport Division of the Ministry of Transport published a notice of intention to carry out a complete review of the aviation regulatory system. This notice, in Civil Aviation Information Circular Air 3, listed the areas in which rules would be made and invited interested parties to register their wish to be part of the consultative process. This register was identified as the Regulatory Review Consultative Group. The need for Part 157 was identified after this process and Part 157 was distributed to those individuals and organisations who had registered their interest in Part 139 (Aerodromes - Certification, Operation and Use).

A draft document was developed by the rules rewrite team in consultation with the members of the consultative group. An informal draft was published and distributed in February 1992.

An intensive period of informal consultation followed which included written submissions from the consultants. This informal consultative process culminated in the issue of Notice of Proposed Rule Making 92-5 under Docket number 1055 NR on 13 May 1992.

The publication of this notice was advertised in the daily newspapers in the five main provincial centres on 13 May 1992. The notice was mailed to all members of the Regulatory Review Consultative Group and to other parties, including overseas Aviation Authorities and organisations, who were considered likely to have an interest in the proposal.

A period of thirty days was allowed for comment on the proposed rules. Thirteen written submissions were received in response to this notice. These submissions were considered and where appropriate the proposed rules amended to take account of the concerns raised.

Those rules as amended were then referred to and signed by the Minister of Transport.

## List of Rules

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### **157.1** *Applicability*

- (a) This Part prescribes rules for persons proposing to construct, alter, activate, or deactivate an aerodrome or heliport of the kind specified in paragraph (b).
- (b) This Part applies to an aerodrome or heliport unless it is —
- (1) an aerodrome that is required to be certificated under Part 139; or
  - (2) an aerodrome or heliport restricted to VFR operations that is used or intended to be used for a period of less than 7 days in any 30 consecutive day period; or
  - (3) an aerodrome used or intended to be used exclusively by aircraft engaged in agricultural operations and that is not located inside a control zone and that is located more than —
    - (i) 5 nautical miles (9 kilometres) from the nearest other aerodrome; and
    - (ii) 3 nautical miles (6 kilometres) from the nearest heliport; or
  - (4) a heliport used or intended to be used exclusively by helicopters engaged in agricultural operations and that is not located inside a control zone and that is located more than —
    - (i) 3 nautical miles (6 kilometres) from the nearest aerodrome; and
    - (ii) one nautical mile (2 kilometres) from the nearest other heliport.

### **157.3** *Definitions*

For the purposes of 157.1 and 157.5:

**Aerodrome** does not include a defined area of land or water intended or designed specifically for use by helicopters:

**Heliport** means any defined area of land or water, and any defined area on a structure, intended or designed specifically for use by helicopters.

### **157.5 Projects Requiring Notice**

Each person who intends to do any of the following (who in this Part is referred to as a 'proponent') shall notify the Director in the manner prescribed in 157.7:

- (1) construct or otherwise establish an aerodrome or heliport to which this Part applies or activate such an aerodrome or heliport:
- (2) construct, re-align, alter, or activate any runway or other aircraft landing or take-off area of an aerodrome or heliport to which this Part applies:
- (3) deactivate, discontinue using, or abandon an aerodrome or heliport to which this Part applies, or any landing or take-off area of such an aerodrome or heliport, for a period of one year or more.

### **157.7 Notice of Intent**

(a) The notice required by 157.5(1) and (2) shall be submitted on form CAA 24157/01 and shall be submitted at least 90 days before the day that work is to begin.

(b) The notice required by 157.5(3) shall be submitted in writing at least 30 days before the date planned for deactivation, discontinuance of use, or abandonment.

### **157.9 Aeronautical Study**

(a) On receiving a notification under 157.7(a), the Director shall conduct an aeronautical study.

(b) In conducting the aeronautical study, the Director shall consult with such persons, representative groups, and organisations as the Director considers appropriate.

(c) The purpose of the aeronautical study shall be to consider the effects that the proposed action would have on the safe and efficient use of airspace by aircraft, and on the safety of persons and property on the ground. In particular, the aeronautical study shall consider the following:

- (1) the effect the proposed action would have on existing or contemplated aerodrome traffic circuits of neighbouring aerodromes:
- (2) the effect the proposed action would have on existing and projected airspace uses:

- (3) the effect the proposed action would have on the safety of persons and property on the ground:
- (4) the effect the existing or proposed man-made objects and natural objects within the affected area would have on the proposed action.

### **157.11 Aerodrome Determination**

(a) On completion of the aeronautical study, the Director shall issue to the proponent, appropriate local authorities, and other interested persons an aerodrome determination which shall be one of the following :

- (1) **Unobjectionable:** An unobjectional determination shall be made when the Director is satisfied that the proposed action will not adversely affect the safe and efficient use of the airspace by aircraft nor the safety of persons or property on the ground:
- (2) **Conditional:** A conditional determination shall be made when the Director identifies objectionable aspects of a proposed action but specifies conditions which, if complied with, satisfy the Director that the proposed action will not adversely affect the safe and efficient use of the airspace by aircraft nor the safety of persons or property on the ground:
- (3) **Objectionable:** An objectionable determination shall be made when the Director identifies objectionable aspects of a proposed action and shall specify the Director's reasons for finding the proposed action objectionable.

(b) Unobjectionable and conditional aerodrome determinations shall contain a determination void date in order to facilitate efficient planning for the use of the navigable airspace.

(c) All work or action for which a notice is required by this Part shall be completed by the determination void date. Unless otherwise extended, revised, or terminated, an aerodrome determination becomes invalid on the day specified as the determination void date.

(d) Interested persons may, at least 15 days in advance of the determination void date, petition the Director to —

- (1) revise the determination based on new facts that change the basis on which it was made; or
- (2) extend the determination void date.

**157.13 Notice of Completion**

The proponent of any proposed action covered by this Part shall notify the Director in writing within 15 days after completion of the action.



## CONSULTATION DETAILS

*(This statement does not form part of the rules contained in Part 157.  
It provides details of consultation undertaken in making the rules.)*

### **Background to the Rules**

In April 1988 the Swedavia - McGregor Report on Civil Aviation Regulation in New Zealand was completed. As a result, the Government enacted the Civil Aviation Act 1990 to implement the first stage of the report's recommendations. To implement the remaining recommendations of the report the Civil Aviation Authority of New Zealand is undertaking a complete review of all existing civil aviation legislation.

Considerable research was carried out to determine the format for the new legislation. The Authority decided that the most suitable legislative framework should incorporate the advantages from the system being developed by the European Joint Aviation Authorities (JAA) and from the existing United States of America Federal Aviation Administration (FAA) system. The European Joint Aviation Requirements (JAR) are being structured in a manner similar to the Federal Aviation Regulations (FAR) of the FAA and aim to achieve maximum harmonisation whilst allowing for national variations.

New Zealand's revised requirements will be published, in several Parts, as Civil Aviation Rules (CAR). Each Part will set out a series of individual rules which relate to a particular aviation activity.

Accompanying each Part of the CAR will be at least one associated Advisory Circular (AC). These will expand, in an informative way, specific requirements of the CAR Part and show an acceptable means of compliance. For example, an AC will contain the minimum acceptable practice or practices which will be necessary to meet the rules.

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

The FAR has been used as the start point for the development of many of the CAR, but there are likely to be significant differences in the content of each Part of the Rules. The structure and content of Part 157 follows closely the content and arrangement of the latest draft of the FAA FAR 157. Changes have been made to conform to New Zealand legal practices and terminology.

The objective of the new rules system is to strike a balance of responsibility between the State Authority and those who provide services and who exercise privileges in the civil aviation system. This balance must enable the State Authority to maintain continuing regulatory control and supervision whilst providing the maximum flexibility for participants to develop their own means of compliance.

### ***Notice of proposed Rule making***

In order to provide public notice of, and opportunity for comment on, the proposed new rules, the Authority, on May 13 1992, issued Notice of Proposed Rule Making 92-5 under Docket Number 1055 NR. This notice proposed the introduction of Civil Aviation Rules Part 157 to provide notification requirements for persons proposing to construct, alter, activate, or deactivate certain aerodromes.

### ***Supplementary information***

All comments made on the Notice of Proposed Rule Making are available in the rules docket for examination by interested persons. A report summarising each substantive contact with the Civil Aviation Authority contact person concerning this rule has been filed in the docket.

### ***Summary of comments to Docket Number 1055 NPRM***

Thirteen written submissions were received.

Three commenters stated that they had no comments to make about the rules and another two that they agreed with the contents and purpose of the rules.

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

**1.1 The New Zealand Air Line's Pilot Association (ALPA)** considered that the costs and benefit statement did not properly address the objectives, the alternatives and the costs and benefits for the rule. They cited the FAA rulemaking procedure as a good example to follow and consider that a meaningful cost benefit analysis of proposed regulatory action is likely to be of advantage to all industry participants.

**AALEDA Systems Ltd** said that the NPRM statement falls well short of a cost benefit analysis that is required to justify a new rule. Similarly it is not clear what the benefits of this rule are, and whether they outweigh the costs.

**Authority response:** As part of these rule making procedures, the Authority is obliged to examine the potential benefits and costs of each proposed rule making action to ensure that the public and the aviation industry are not burdened with rules whose costs outweigh the benefits.

The requirements set out in this Part are modelled on the basic principles used by the FAA for the notification of the construction, alteration, activation, and deactivation of aerodromes. The FAA carries out cost benefit analyses on proposed aviation rules, hence the Authority is confident that the notification system on which the Part is based represents a safe and economic system.

The benefits that will be generated by this rule arise through the safe and effective management of the navigable airspace for the benefit of the aircraft operators as the users of the airspace.

**1.2** Several comments were received about the advisory status of the determinations made by the Director.

**AALEDA Systems Ltd.** said that it is not clear that the contents of the rule is in accord with section 29 of the Civil Aviation Act 1990. The Act provides rules for preventing interference, whereas the NPRM is providing a rule for notification.

**Massey School of Aviation** said that the draft rules seems to provide the Civil Aviation Authority with little teeth in its determination on advised changes. These determinations are not binding, but advisory.

**ALPA** considers the fact that the aeronautical study produced by the Director will have an advisory status only will be insufficient to meet the stated objectives of the new rules. They consider the process described as following an objectionable determination to be admirable in intent but lacking in force by which the Director could require changes in the face of an obdurate proponent intent on forging ahead with a specific proposal.

**Authority response:** Part 157 ensures that proponents and affected parties are aware of the safety implications of proposals covered by the rule. Such awareness promotes proper consultation and responsible decision making. In this context, we do not consider that Part 157 need specifically provide for the obdurate proponent. Where such a proponent does proceed there is sufficient provision under the broader safety requirements in the Civil Aviation Act 1990 and in the general law governing the use of land, air, and water to prevent an unsafe situation arising. Rule 157.11 (b) that referred to the advisory status of the determination has been deleted.

**1.3 Massey School of Aviation** said that elements of the Advisory Circular AC 157.01 could be re-drafted into the Part 157 rule to reduce the repetition. For the sake of a slightly more detailed part the AC could probably be dispensed with.

**Authority response:** The AC is repetitive but it does contain additional advisory material about the administrative procedures and actions to be taken by the Director which are inappropriate for inclusion in the rule.

2. The following submissions relate specifically to the Part 157 rules.

### **157.1 Applicability**

**Mount Cook Airline** said that this should not apply to snow landing areas as these do not fall within the limits of aerodromes established for normal wheel operations. The site of a ski landing area may change daily due to changing snow conditions and the site is determined on a day to day basis.

**Authority response:** The airspace usage of snow landing areas is as relevant as any other aerodrome in terms of need to know by other airspace users. In these circumstances the notification should be of the area in which snow field operations take place.

**Mount Cook Airline** said that the period of seven days in 157.1 (b)(2) requires clarification. Is this per annum, per month or at any one time?

**Authority response:** The rule is amended to state “a period of less than 7 days in any 30 consecutive day period”.

### **157.3 Definitions**

**ALPA** considers that for the purposes of achieving consistency with Annex 14 the definition of aerodrome should be amended. The amendment is the replacement of the word “landing” with “arrival”. They recommend the same amendment for the definition of “airport” and “heliport”.

**Authority response:** The definition of aerodrome is derived from the Civil Aviation Act 1990. There is a slight variance from the ICAO definition but it is substantively the same.

**ALPA** recommends that the definition of “aerodrome traffic circuit” define, or make reference to the appropriate publication with the definition of, the physical dimensions that are considered to enclose the traffic circuit for various different speed and size aircraft to enable more efficient planning by proponents and evaluation by the Authority. This would also serve as a future indication to pilots overflying the area of the need to advise local traffic of their presence or remain clear of the area.

**Authority response:** The Civil Aviation Act 1990 defines “Aerodrome traffic circuit” as “the pattern flown by aircraft operating in the vicinity of an aerodrome”. This recommendation has merit, but while the study would calculate the dimensions of the likely circuit pattern, it is not practical to promulgate such information for the use of overflying aircraft. There is no compulsion for aircraft to be operated in the circuit area within the dimensions of a calculated circuit pattern and any information about these dimensions could be misleading.

**Massey School of Aviation** said that it seems unnecessary for definitions to be included in this Part as all definitions will be in Part 1.

**Authority response:** The definitions which have general application to civil aviation rules and which appear in Part 157 were included in the NPRM for comment by the aviation industry. These definitions will now appear in Part 1 (Definitions and Abbreviations). However, the terms “aerodrome” and “heliport” used in 157.1 and 157.5 require a narrower definition than that appearing in Part 1. These terms are retained in Part 157 because of their specific application to the rule Part only.

### ***157.5 Projects requiring notice***

**Mount Cook Airline** said that the deactivation of an instrument approach does not create a hazard and the thirty days notice serves no purpose. The requirement should be to merely notify of the event.

**AALEDA Systems Ltd.** said their expectation would be that most of the proposed conflicts, involving IFR airspace, would be handled by the SOE rules the Airways Corporation operate under.

**Airways Corporation of New Zealand** said that from their point of view there is a practical difficulty with the 30 days notice for the deactivation of an instrument approach procedure. In the ordinary course of events the 30 days would fit into the AIP publication cycle but there are occasions when IFR procedures have to be deactivated by NOTAM.

**Authority response:** This requirement has been reviewed and it is concluded that in the New Zealand context the provision of sub paragraph (4) is not required. There are processes and controls already in place which address the use of airspace associated with instrument approach procedures.

### ***157.7 Notice of intent***

**Mount Cook Airline** said that the advance notice period of 90 days is excessive and too restrictive. A period of 30 days should be sufficient as the Authority can apply appropriate safety limitations pending the outcome of the aeronautical study.

**Authority response:** The suggestion that a shorter period is acceptable on the basis that the Authority can take some interim action is not supportable. While some studies could be completed in a relatively short period, others could be complex particularly if there are some objectionable features which need to be resolved.

**Mount Cook Airline** said that many aerodromes that fall within the Part 157 criteria will be merely open fields that do not require any development to meet the criteria for operation of aircraft. Currently these are known as landing ground authorisations and may be established within days. Those aerodromes which fall within the same criteria described in 157.1 (b)(3) about distance from other airports should only require a seven day notification.

**Authority response:** Many of the aerodromes could be as described in this comment but some could be substantial aerodromes requiring a detailed aeronautical study by the Director. While the requirement is for a 90 day notification, this does not mean that it would take the Authority 90 days to issue a determination. If the aerodrome is an open field well away from any other aerodrome and clear of populous areas, the Director could issue a determination relatively quickly if the proponent requested urgency.

**Mount Cook Airline** said that when such an aerodrome lies within the distances of 157.1 (b)(3) outside a control zone but is under the control of the same person, then notification within seven days is all that is necessary.

**Authority response:** This is not accepted as such an aerodrome could affect other airspace users and an aeronautical study needs to be conducted.

### **157.9 Aeronautical study**

**ALPA** said that there should be an obligation on the Authority, for every proposal, to advertise the fact that a study is taking place with a provision for comment to be made. Interested persons or organisations ought to be automatically notified and a time set for their comments on the proposal. The NPRM could be suitably adapted for such notification and comment.

**Authority response:** Most projects remote from any other aerodrome and populous areas would not require a detailed study by the Authority. Any major project which could affect other airspace use would require a detailed study and comprehensive consultation as suggested by the association. The inclusion of the Authority's procedures and actions in the rule as suggested by ALPA would not allow for the flexibility required under this Part and could incur a considerable cost. The procedures and actions will be detailed in the Authorities procedure manuals and those relevant to the aviation industry included in the Advisory Circular.

**ALPA** considers that proponents and interested parties are entitled to know the minimum considerations which will be studied by the Director for every study.

**Authority response:** The minimum considerations which will be studied are contained in 157.9 for each and every study. A specific study will identify if potential conflict arises from these considerations and the proponent and interested parties will be consulted as to the effects.

**ALPA** considers that the effects of objects on the proposed action ought not to be limited to those on file but ought to extend to all known existing or proposed objects. To this end, the Association recommends that an obligation be placed on a proponent to advise of all such objects that it is aware of.

**Authority response:** We agree with the comment that the effects of objects should be extended to all objects. The rule is amended by deleting "on file with the Authority" as suggested to extend the study to all known existing or proposed objects. The notice of intent on form CAA 24157.01 requires the proponent to list any obstructions in the vicinity of the project and there is no need to make such an obligation in the rule.

**ALPA** recommended that the limitation to the subject matter of an aeronautical study contained in 157.11(b) ought to be re-sited in 157.9.

**Authority response:** 157.11(b) has now been transferred to the Advisory Circular and 157.9 amended to clearly state the purpose of the aerodrome study.

**ALPA** considers that, as a rule imposing mandatory requirements, the rule must reflect its mandatory requirements, the language of the rule must reflect its mandatory nature.

**Authority response:** We agree and the rule is amended as suggested.

### ***157.11 Authority Determination***

**ALPA** considers that the lack of any objection to any proposed action be solely on the basis that the proposed action will not adversely affect the safe and efficient use of airspace by aircraft nor the safety of persons and property on the ground.

**Authority response:** We agree and the rule is amended as suggested.

**ALPA** restated its contention that the study must have more potent status than merely advisory so as to enable the Authority to properly carry out "the task of airspace designation and management of the use of navigable airspace". They also said that the Part should also set out the mechanisms available to the Authority to ensure compliance with determinations.

**Authority response:** The response to the previous statement explained why mechanisms were not written in this rule for compliance with the determinations. The rule is amended in the same manner as 157.9 to reflect the mandatory nature for the Director to issue determinations.

### ***Advisory Circular AC 157.01***

ALPA considers that the purpose of charting an aerodrome ought to include “to make the aerodrome available as a possible option for use in an emergency”.

**Authority response:** The AC is amended to add this clause.

### ***Implementation***

The rules will come into force 28 days after their notification in the New Zealand Gazette.

### ***Regulatory Evaluation***

There are no regulatory amendments or revocations associated with the coming into force of this rule Part.