

The proposed restructure of the aircraft operations OTARs

Introduction

A review of the aircraft operations OTARs has been carried out as part of the continuous review of regulations to ensure that they remain appropriate for the management of aviation risks, are compliant with ICAO Standards and Recommended Practices (SARPs) and can be economically maintained.

This has resulted in a reorganisation of the rules (which, for most part, have not been changed in intent) into a more logical form. A single ordering and numbering system is proposed which permits integration between Parts 91, 121, 125 and 135.

Guiding Principles

The proposed amendments have been constructed in line with a number of guiding principles. These are:

- A Regime for Safety
- Clarity of applicability
- Consistency of Rules
- ICAO Compliance
- Integrated Set of Regulations

Each of these principles can be explained using examples from the proposal.

1. **A Regime for Safety:** It was necessary to ensure Territories were provided rules with a sound basis for operational safety:
 - a) A clear, simple, but comprehensive rule set - for example, rules which have the same function have the same rule number suffix (e.g. 91.45, 125.45, 135.45 or 121.45 – ‘Documents to be carried’).
 - b) ICAO compliant rules that enhance safety, permit Territory aircraft to operate internationally without hinder, and are in line with our Treaty obligations.
 - c) Objective rules (where possible) so that appropriate methods of compliance can be adopted.
 - d) Eliminating the ambiguity of interpretation by removing doubt on what is required – it should be clear which rules apply, and to whom.
2. **Clarity of applicability:** It was necessary to ensure clarity of applicability so that it is clear to all users which rules apply to them.

In examining the current OTARs, it was not always clear whether Part 91 rules applied. Doubt has now been removed: with few exceptions, there is no referral to Part 91 from the other Parts: all Part 91 rules apply unless expressly stated (with the use of ‘notwithstanding’, which indicates that the Part 91 rule does not apply).

Rules that were in Part 91 were worded differently in other Parts – unnecessary differences have now been removed and the text of Part 91 either applies as provided or is supplemented in the other Parts.

The main body of Part 91 contained elements from ICAO Annex 2 - ‘Rules of the Air’. This duplication, and the resulting potential for conflict, has been eliminated by removing rules in the body of Part 91. Rules of the Air are now found only in Appendix D of Part 91 (which has not been modified).

3. **Consistency of Rules:** It was necessary to ensure that rules in all Parts were consistent in their intent and in their application.

Previously rules in different Parts appeared to have different styles (and sometimes intent); these differences have been removed as far as possible and common text has been inserted.

Obvious and unnecessary differences between Parts 135 and 121 have been removed. Where it has been possible, text for Parts 125, 135 and 121 has been made common (this has been achieved where it is clear that the SARPs of Annex 6 Part II and Annex 6 Part I have a common intent).

The Approval process rules for Part 125, which were previously embedded in one of the Subparts, have been placed into a separate Appendix which now performs a function similar to that provided by Part 119 for commercial air transport operations.

Equipment rules that previously included operational instructions have been split so that the equipment element remains in Subpart F but the operational element is put into Subpart B: the requirement for the carriage, and use, of oxygen is one example.

Document rules have been divided between those elements that specify the carriage and use (Subpart B), from those elements which contain the description (Subpart L); this is particularly evident for the Operational Flight Plan and Operations Manual.

Requirements for the retention and storage of documents have been placed into Subpart L of Part 91, which becomes the single point of reference on this issue.

4. **ICAO Compliance:** It was necessary to ensure that 'ICAO Compliance' was being achieved in the OTARs, and could continue to be achieved in the future in accordance with the Directions of the UK Department for Transport; Policy Statement 2; and findings of the ICAO Audit. The requirements of the OTARs have been examined to ensure that they are in compliance with the ICAO intent.

For the procedural rules (those which do not affect equipment) there is an adjustment of the text of the rule to ensure compliance; this can best be seen in the proposed text for the provision of alternates (which now allows VFR destinations) and fuel computations (where the requirements have been clarified).

There have been substantial changes to the aircraft equipment provisions in ICAO SARPs over the last five years. Following the ICAO Audit, it was established that the equipment scales in the OTARs were not in compliance with the SARPs. Therefore the Subpart F in each part of the OTARs has been substantially amended to give full compliance with the SARPs for general aviation or commercial air transport, as applicable. These proposals include changes to the requirement for Flight Recorders, Emergency Equipment and terrain awareness and warning systems (TAWS).

Integrated Set of Regulations: It was necessary to provide an integrated set of rules that would be easy to understand and maintain:

- a) Transparency has been enhanced across the set of rules, provided by common text where possible.
- b) Contradictions resulting from addressing; rules in Part 91 are now dealt with more objectively ('an aircraft shall not be flown...' or 'baggage and cargo shall not be carried...') rather than 'the pilot-in-command shall...'. This avoids a conflict with other Parts where the Operator (not the pilot-in-command) has the responsibility for compliance. This editorial device is made possible because the content of Article 134 of the AN(OT)O permits responsibility to be a matter of interpretation¹.

¹ Article 134 says that both the operator and the pilot-in-command of an aircraft can be held responsible for any contravention; and provides for a reasonable defence if that person was not involved in any way.

- c) Horizontal equivalence is enhanced; where a rule exists in more than one Part, it is proposed that the text is common as far as is possible.
- d) Consistent and harmonised Subpart naming; differences in Subpart naming have been removed so that Subparts in each Part now have the same name.
- e) A universal numbering system is proposed; although this does result in spaces in some parts (where a rule does not apply) the advantage of common numbering now permits correlation of rules across Parts.
- f) Rules are now spaced at an interval of 5 instead of 2 to permit insertion of additional rules when required.
- g) Appendices which are associated with a specific rule are now contained within the Subpart (after the last rule in the Subpart): an example is the appendix for the provision of an Operations Manual (Appendix 1 to 135.1250).
- h) Appendices that are applicable to more than one rule or Subpart are provided at the end of the Part: for example, Appendix B – Emergency Equipment.

Some significant proposed changes

These are the more significant changes contained in the proposal:

1. Rules of the Air text from Annex 2 have been removed from the main body of Part 91 (and Appendix C): Rules of the Air are contained in an (unchanged) Appendix D.
2. The ‘technical description’ of the Performance Classes has been removed from Parts 135 and 121 and placed into Appendix E of Part 91. The performance requirements are still contained in Subpart E of each Part and, where compliance with Performance Classes is required, Appendix E is referenced. This makes no difference to the requirements but it does permit a more logical organisation and removes redundant text. The fact that the Appendix is in Part 91 does not require compliance from that Part as is made clear in the introduction to the Appendix.
3. There is an introduction of Subpart SPA into Part 91; this provides the requirements for special approvals (Specified Navigation Performance – MNPS and PBN; RVSM; and LVO). This Subpart, which could be extended to include other approvals, provides the general requirements for approval as well as specific compliance text for each of these areas. The whole compliance text for Low Visibility Operations is in place, but Specified Navigation Performance relies for compliance on guidance that can be found in publicly available documents. This objective approach provides flexibility because compliance can be shown to FAA or EASA (or any other available and suitable) guidance. Provision is also made in Part 91, which puts the approval process within scope of Parts 91 and 125, should such an approval be required for aircraft operating within those Parts.
4. Removal of all rules from Subpart G (management of continuing airworthiness) and replacement with a pointer to Part 39 removes the possibility of a conflict between the operational Parts and Part 39 and will simplify the requirement for the management of continuing airworthiness.
5. The change in the operational Parts from a ‘weight’ based to a ‘mass’ based regulation; i.e. using MTOM instead of MTWA. This has no significant impact upon operations but does put the OTARs in compliance with the ICAO SARPs. It completes a change that has been partially under way for some time.
6. The method of calculating Aerodrome Operating Minima, which was previously contained in Appendix B of Part 91, has been removed. The Territories – in accordance with Policy Statement Number 23 – use Appendix 1 (Old) and Appendix 1 (New) to EU-OPS 1.430 for the provision of minima. Part 91.240 calls for compliance with the more stringent of the ‘State of the Aerodrome’ minima, or minima derived in accordance with the EU-OPS

text referenced (usually provided on 'plates' in commercially available flight guides). Approach and landing limits are bounded at Category I for those who do not hold an approval in accordance with Subpart SPA.LVO. Part 91.415 gives IFR departure limits bounded at 400m for commercial operators (unless operating in accordance with SPA.LVO); and for general aviation includes the present limit of 150m (and a limit of 200m for Category D aeroplanes).

7. Crew requirements in Subpart H have been simplified and brought into line with the intent of the AN(OT)O. Requirements for single-pilot operations at night or under instrument flight rules (IFR) are now in line with the ICAO SARPs: this is reflected in Subparts I and J (training and checking). The requirements for recency have also been rewritten to bring them into line with the ICAO SARPs.
8. The training and checking requirement of Parts 135 and 121 have been rationalised – the differences (additional rules in Part 121) due to size of aircraft are retained. The term 'competency' has been retained to encompass all checks including proficiency; line; safety and emergency, and route and area. This ensures that the term Operator Proficiency Check (OPC) is used as it is worldwide. In view of the fact that the elements of the OPC are not specified, the rule now requires, for every other check, the 'inclusion of the mandatory items of the proficiency checks contained in OTAR Part 61'; this removes the possible conflict between the OPS OPC and the Licence Proficiency Check and permits them to be carried out concurrently.
9. Although there have been amendments in the individual elements of the Subparts F (equipment), the policy of containing all the equipment requirements in each Part's Subpart F has been retained. It is important to appreciate that each Subpart F (still) applies only to the aircraft contained within the scope of that OTAR Part.

Viewing the proposals

To permit comparison of a rule across all the Parts the drafts are presented in Matrix form. This also demonstrates the move to the single 'universe' of rules with a common numbering scheme (ie an equivalent rule has the same number in each Part). Not all rules are present in all Parts, so viewing a single Part or two Parts together might give the impression that the rule set is sparse (eg if viewing Part 91 only, or Parts 91 and 125, in the training or checking Subparts which are more densely populated in Parts 135 and 121).

The comprehensive reorganisation means that the changes in the drafts cannot be signalled with the use of side bars. Due to the limitations of the format used for this consultation, where TABLES are referenced in the OTARs these are provided in a separate document.