

II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) No 965/2012

of 5 October 2012

**laying down technical requirements and administrative procedures related to air operations
pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC ⁽¹⁾, and in particular Articles 8(5) and 10(5) thereof,

Whereas:

- (1) Operators and personnel involved in the operation of certain aircraft have to comply with the relevant essential requirements set out in Annex IV to Regulation (EC) No 216/2008.
- (2) Regulation (EC) No 216/2008 requires that Member States, in addition to their oversight of certificates that they have issued, conduct investigations, including ramp inspections, and shall take any measure, including the grounding of aircraft, to prevent the continuation of an infringement.
- (3) In accordance with Regulation (EC) No 216/2008 the Commission should adopt the necessary implementing rules for establishing the conditions for the safe operation of aircraft.
- (4) In order to ensure a smooth transition and a high level of civil aviation safety in the European Union, implementing measures should reflect the state of the art, including best practices, and scientific and technical

progress in the field of air operations. Accordingly, technical requirements and administrative procedures agreed under the auspices of the International Civil Aviation Organisation (hereinafter 'ICAO') and the European Joint Aviation Authorities until 30 June 2009, as well as existing legislation pertaining to a specific national environment, should be considered.

- (5) It is necessary to provide sufficient time for the aeronautical industry and Member State administrations to adapt to the new regulatory framework and to recognise under certain conditions the validity of certificates issued before this Regulation applies.
- (6) As this Regulation constitutes an implementing measure referred to in Articles 8(5) and 10(5) of Regulation (EC) No 216/2008, Annex III to Council Regulation (EEC) No 3922/91 ⁽²⁾ and Directive 2004/36/EC of the European Parliament and of the Council ⁽³⁾ shall be considered repealed in accordance with Article 69(3) and 69(5) of Regulation (EC) No 216/2008. However, Annex III should remain in place temporarily until the transitional periods foreseen in this Regulation have expired and for those areas for which no implementing measures have yet been adopted. Similarly, Directive 2004/36/EC should remain applicable temporarily until the transitional periods foreseen in this Regulation have expired.
- (7) The European Aviation Safety Agency prepared draft implementing rules and submitted them as an opinion to the Commission in accordance with Article 19(1) of Regulation (EC) No 216/2008.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 65 of Regulation (EC) No 216/2008,

⁽¹⁾ OJ L 79, 19.3.2008, p. 1.

⁽²⁾ OJ L 373, 31.12.1991, p. 4.

⁽³⁾ OJ L 143, 30.4.2004, p. 76.

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1. This Regulation lays down detailed rules for commercial air transport operations with aeroplanes and helicopters, including ramp inspections of aircraft of operators under the safety oversight of another State when landed at aerodromes located in the territory subject to the provisions of the Treaty.

2. This Regulation also lays down detailed rules on the conditions for issuing, maintaining, amending, limiting, suspending or revoking the certificates of operators of aircraft referred to in Article 4(1)(b) and (c) of Regulation (EC) No 216/2008 engaged in commercial air transport operations, the privileges and responsibilities of the holders of certificates as well as conditions under which operations shall be prohibited, limited or subject to certain conditions in the interest of safety.

3. This Regulation shall not apply to air operations within the scope of Article 1(2)(a) of Regulation (EC) No 216/2008.

Article 2

Definitions

For the purposes of this Regulation:

- (1) 'commercial air transport (CAT) operation' means an aircraft operation to transport passengers, cargo or mail for remuneration or other valuable consideration;
- (2) 'performance class B aeroplanes' means aeroplanes powered by propeller engines with a maximum operational passenger seating configuration of nine or less and a maximum take-off mass of 5 700 kg or less;
- (3) 'public interest site (PIS)' means a site used exclusively for operations in the public interest;
- (4) 'operation in performance class 1' means an operation that, in the event of failure of the critical engine, the helicopter is able to land within the rejected take-off distance available or safely continue the flight to an appropriate landing area, depending on when the failure occurs.

Additional definitions are laid down in Annex I for the purposes of Annexes II to V.

Article 3

Oversight capabilities

1. Member States shall designate one or more entities as the competent authority within that Member State with the

necessary powers and allocated responsibilities for the certification and oversight of persons and organisations subject to Regulation (EC) No 216/2008 and its implementing rules.

2. If a Member State designates more than one entity as competent authority:

- (a) the areas of competence of each competent authority shall be clearly defined in terms of responsibilities and geographic limitation; and
- (b) coordination shall be established between those entities to ensure effective oversight of all organisations and persons subject to Regulation (EC) No 216/2008 and its implementing rules within their respective remits.

3. Member States shall ensure that the competent authority(ies) has(ve) the necessary capability to ensure the oversight of all persons and organisations covered by their oversight programme, including sufficient resources to fulfil the requirements of this Regulation.

4. Member States shall ensure that competent authority personnel do not perform oversight activities when there is evidence that this could result directly or indirectly in a conflict of interest, in particular when relating to family or financial interest.

5. Personnel authorised by the competent authority to carry out certification and/or oversight tasks shall be empowered to perform at least the following tasks:

- (a) examine the records, data, procedures and any other material relevant to the execution of the certification and/or oversight task;
- (b) take copies of or extracts from such records, data, procedures and other material;
- (c) ask for an oral explanation on site;
- (d) enter relevant premises, operating sites or means of transport;
- (e) perform audits, investigations, assessments, inspections, including ramp inspections and unannounced inspections;
- (f) take or initiate enforcement measures as appropriate.

6. The tasks under paragraph 5 shall be carried out in compliance with the legal provisions of the relevant Member State.

Article 4

Ramp inspections

Ramp inspections of aircraft of operators under the safety oversight of another Member State or of a third country shall be carried out in accordance with Subpart RAMP of Annex II.

Article 5

Air operations

1. Operators shall only operate an aircraft for the purpose of commercial air transport (hereinafter 'CAT') operations as specified in Annexes III and IV.

2. CAT operators shall comply with the relevant provisions of Annex V when operating:

- (a) aeroplanes and helicopters used for:
 - (i) operations using performance-based navigation (PBN);
 - (ii) operations in accordance with minimum navigation performance specifications (MNPS);
 - (iii) operations in airspace with reduced vertical separation minima (RVSM);
 - (iv) low visibility operations (LVO);
- (b) aeroplanes and helicopters used for the transport of dangerous goods (DG);
- (c) two-engined aeroplanes used for extended range operations (ETOPS) in commercial air transport;
- (d) helicopters used for commercial air transport operations with the aid of night vision imaging systems (NVIS);
- (e) helicopters used for commercial air transport hoist operations (HHO); and
- (f) helicopters used for commercial air transport emergency medical service operations (HEMS).

Article 6

Derogations

1. CAT operations starting and ending at the same aerodrome/operating site with performance class B aeroplanes or non-complex helicopters shall not be subject to compliance with Annexes III and IV.

However, they shall be subject to the following:

- (a) for aeroplanes, Annex III to Regulation (EEC) No 3922/91 and related national exemptions based on safety risk assessments carried out by the competent authorities;
- (b) for helicopters, national requirements.

2. By way of derogation from Article 5(1), aircraft referred to in Article 4(5) of Regulation (EC) No 216/2008 shall be

operated under the conditions set out in Commission Decision C(2009) 7633 of 14 October 2009 when used in CAT operations. Any change to the operation that affects the conditions set out in that Decision shall be notified to the Commission and the European Aviation Safety Agency (hereinafter 'the Agency') before the change is implemented.

A Member State, other than an addressee of Decision C(2009)7633, which intends to use the derogation provided for in that Decision shall notify its intention to the Commission and the Agency before the derogation is implemented. The Commission and the Agency shall assess to what extent the change or the intended use deviates from the conditions of Decision C(2009)7633 or impacts on the initial safety assessment performed in the context of that Decision. If the assessment shows that the change or the intended use does not correspond to the initial safety assessment done for Decision C(2009)7633, the Member State concerned shall submit a new derogation request in accordance with Article 14(6) of Regulation (EC) No 216/2008.

3. By way of derogation from Article 5(1), flights related to the introduction or modification of aircraft types conducted by design or production organisations within the scope of their privileges shall continue to be operated under the conditions set out in Member States' national law.

4. Notwithstanding Article 5, Member States may continue to require a specific approval and additional requirements regarding operational procedures, equipment, crew qualification and training for CAT helicopter offshore operations in accordance with their national law. Member States shall notify the Commission and the Agency of the additional requirements being applied to such specific approvals. These requirements shall not be less restrictive than those of Annexes III and IV.

5. By way of derogation from CAT.POL.A.300(a) of Annex IV, single-engined aeroplanes, when used in CAT operations, shall be operated at night or in instrument meteorological conditions (IMC) under the conditions set out in the existing exemptions granted by Member States in accordance with Article 8(2) of Regulation (EEC) No 3922/91.

Any change to the operation of these aeroplanes that affects the conditions set out in those exemptions shall be notified to the Commission and the Agency before the change is implemented. The Commission and the Agency shall assess the proposed change in accordance with Article 14(5) of Regulation (EC) No 216/2008.

6. Existing helicopter operations to/from a public interest site (PIS) may be conducted in derogation to CAT.POL.H.225 of Annex IV whenever the size of the PIS, the obstacle environment or the helicopter does not permit compliance with the requirements for operation in performance class 1. Such operations shall be conducted under conditions determined by Member States. Member States shall notify the Commission and the Agency of the conditions being applied.

*Article 7***Air operator certificates**

1. Air operator certificates (AOCs) issued by a Member State to CAT operators of aeroplanes before this Regulation applies in accordance with Regulation (EEC) No 3922/91 shall be deemed to have been issued in accordance with this Regulation.

However, no later than 28 October 2014:

- (a) operators shall adapt their management system, training programmes, procedures and manuals to be compliant with Annexes III, IV and V, as relevant;
- (b) the AOC shall be replaced by certificates issued in accordance with Annex II to this Regulation.

2. AOCs issued by a Member State to CAT operators of helicopters before this Regulation applies shall be converted into AOCs compliant with this Regulation in accordance with a conversion report established by the Member State that issued the AOC, in consultation with the Agency.

The conversion report shall describe:

- (a) the national requirements on the basis of which the AOCs were issued;
- (b) the scope of privileges that were given to the operators;
- (c) the differences between the national requirements on the basis of which the AOCs were issued and the requirements of Annexes III, IV and V, together with an indication of how and when the operators will be required to ensure full compliance with those Annexes.

The conversion report shall include copies of all documents necessary to demonstrate the elements set out in points (a) to (c), including copies of the relevant national requirements and procedures.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 5 October 2012.

*Article 8***Flight time limitations**

Flight and duty time limitations shall be subject to the following:

- (a) for aeroplanes, Article 8(4) and Subpart Q of Annex III to Regulation (EEC) No 3922/91;
- (b) for helicopters, national requirements.

*Article 9***Minimum equipment lists**

Minimum equipment lists (MEL) approved before this Regulation applies by the State of Operator or Registry, as applicable, are deemed to be approved in accordance with this Regulation and may continue to be used by the operator having received the approval.

After this Regulation applies, any change of the MEL shall be carried out in compliance with ORO.MLR.105 of Annex III.

*Article 10***Entry into force**

1. This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 28 October 2012.

2. By way of derogation from the second subparagraph of paragraph 1, Member States may decide not to apply the provisions of Annexes I to V until 28 October 2014.

When a Member State makes use of that possibility, it shall notify the Commission and the Agency. This notification shall describe the reasons for such derogation and its duration as well as the programme for implementation containing actions envisaged and related timing.

For the Commission

The President

José Manuel BARROSO