



MINISTRY OF TRANSPORT
TE MANATŪ WAKA

Regulatory airport spatial undertakings

Operational policy

December 2024

Contents

Introduction	1
Purpose of this document.....	1
Who the document is for.....	1
Regulatory Airport Spatial Undertakings overview	1
What is a RASU?	1
What are RASUs for?	3
Who has to make a RASU?.....	3
How long does a RASU last for?	4
How do RASUs link to other requirements on airport operators?	4
Roles within the RASU regime	4
Principles for how the Ministry will carry out its RASU functions	5
The process for developing and submitting a RASU.....	6
The Ministry's approach to resolving issues	13
During a RASU's term: Monitoring.....	14
Reviewing a RASU.....	15
When a RASU must be reviewed	16
What should a review cover?.....	16
The Secretary's role in a review	16
Following a review: varying or replacing an undertaking.....	17
Compliance and enforcement	17
Direction orders	18
Relationship to other legislation.....	19
Exemptions	20
What is an exemption?	20
What an exemption application needs to cover.....	21
How we will make decisions about exemptions	23
Principles for exemptions	23
Document Control.....	26

Preface

This **operational policy** has been prepared ahead of the Civil Aviation Act 2023 coming into force from 5 April 2025. It should be read along side the **Regulatory Airport Spatial Undertakings: Guidance for airports and agencies** document which can be found at www.transport.govt.nz/area-of-interest/air-transport/air-transport-regulatory-information/airports/regulatory-airport-spatial-undertakings-rasus

Civil Aviation Act implementation programme

December 2024

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Introduction

Purpose of this document

- 1 This document sets out the Ministry of Transport's (Ministry's) approach to regulatory airport spatial undertakings (RASUs) under the Civil Aviation Act 2023 (the Act). It will be used to guide the Ministry's decision-making about RASUs.
- 2 Extracts from the Act are shown in boxed text.

The related RASUs guidance document advises airport operators on how to develop a RASU, and how airport operators and border agencies should interact with the regime.

Who the document is for

- 3 This document is for:
 - Ministry of Transport staff administering the RASU regime.
- 4 It may also be of interest to:
 - Airport operators that have government agency space requirements.
 - Government agencies that have legislated space requirements at airports.
 - Substantial customers of airports (for example, Airlines).

Regulatory Airport Spatial Undertakings overview

What is a RASU?

- 5 Government policy objectives and airports' commercial operations and planning processes are not always aligned. RASUs aim to encourage and support greater coordination between government, airports, and aviation participants. A RASU is a document that some airport operators will provide to make a binding undertaking with the Secretary for Transport (the Secretary) about how they will meet and continue to meet government agencies' space requirements.
- 6 RASUs are required by the Act. Section 218 of the Act defines "space requirement" as:

space requirement means a requirement under legislation for an airport operator to provide space or amenities for a relevant government agency to carry out or exercise functions, powers, or duties at an airport, including—

- (a) a requirement under [section 37](#) of the Biosecurity Act 1993 to make arrangements, facilities, or systems available;
- (b) a requirement under [section 385](#) of the Immigration Act 2009 to provide or maintain operating areas, accommodation, facilities, buildings, equipment, or storage;
- (c) a requirement under [section 70](#) of the Customs and Excise Act 2018 to provide or maintain operating areas, accommodation, facilities, buildings, equipment, or storage, or to store goods;
- (d) a requirement under the rules to make areas, facilities, or systems available for the provision of aviation security services by AvSec;
- (e) a requirement under the [Health Act 1956](#) for Health New Zealand to undertake any functions or duties set out in that Act

- 7 The Ministry considers that the following are not space requirements for the purposes of RASUs:
 - Arrangements between a government agency and a business that is not an airport operator (for example, if a corporate jet business has a licence for a customs-controlled area within their premises at an airport).
 - Temporary, ad-hoc arrangements (for example, if government agencies are present at a regional airport for just a few days to service non-scheduled flights bringing visitors to a festival).
 - Arrangements located outside an aerodrome as defined in s5 of the Act (for example, an industrial precinct next to an aerodrome owned by an airport operator).
- 8 RASUs describe all of the legislated space requirements from all the relevant government agencies at an airport, allowing for greater transparency and efficiency for airports and the government.
- 9 The Ministry lists “relevant government agencies” for RASUs on their website (See www.transport.govt.nz/area-of-interest/air-transport/air-transport-regulatory-information/airports/regulatory-airport-spatial-undertakings-rasus). The list includes the Ministries for Primary Industries, Business, Innovation and Employment (Immigration), New Zealand Customs Service, Civil Aviation Authority (CAA), and Ministry of Health. The latter is included for potential future legislation changes. Other government agencies (for example New Zealand Police) and State-Owned Enterprises (for example, Airways) operate at airports but cannot impose ‘legislated’ space requirements, so are not “relevant government agencies” for RASUs.
- 10 Airport operators must consult relevant government agencies and substantial customers (for example, airlines) as they develop their RASU and seek agencies’ endorsement of the RASU. They must then provide their RASU to the Secretary who can accept it or refer it back to the airport operator, specifying any matters that must be addressed before the undertaking is resubmitted. RASUs are reviewed at least every 5 years.
- 11 Once a RASU has been accepted, it can be enforced by the Secretary.
- 12 RASUs do not override an agency’s own legislation including its ability to implement and enforce its own legislation’s space requirements at airports.
- 13 RASUs are an important part of planning to ensure airports’ border operations are fit-for-purpose. The RASU regime is designed to ultimately align with and complement existing airport planning and pricing cycles. This acknowledges that the RASU describes those current and known future requirements that are or will be built into airports’ capital and master planning processes and pricing cycles. RASUs describe rather than replace existing engagement and contractual arrangements for space between an agency and an airport.
- 14 While the RASU is a new regulatory requirement, we want to minimise the additional regulatory burden on airports.
- 15 For the transition into the new regime, the first RASU should be submitted to the Ministry by 1 October 2025 to ensure they can be assessed by 5 January 2025.

What are RASUs for?

- 16 The purpose of a RASU is to ensure that airport operators can show how they will meet their regulatory obligations to provide space for agencies under civil aviation and border legislation.
- 17 RASUs will promote ongoing government-airport cooperation at New Zealand's airports to ensure government outcomes are given appropriate weight when considered alongside airports' commercial and planning needs.
- 18 Government agencies are expected to work closely with airport operators so that airports understand and can meet their respective space requirements. RASUs ultimately aim to improve coordination of how space requirements are planned and provided.
- 19 RASUs will give government agencies with space requirements at airports assurance that their current and future infrastructure needs can be accommodated.
- 20 They will give airports confidence to plan for and price future infrastructure requirements and changes in a more coordinated, efficient and transparent way.
- 21 RASUs focus on space requirements for government agencies. While passenger facilitation can have an impact on passenger facilitation, it is only one of several factors that influence the passenger experience through the airport.

Who has to make a RASU?

- 22 An airport operator must make a RASU if there are one or more space requirements in relation to an airport; or when one or more relevant government agencies have notified an airport operator that they intend in the future to impose one or more space requirements.

241 Giving of regulatory airport spatial undertaking by airport operator

(1) This section applies if—

- (a) 1 or more space requirements apply in relation to an airport; or
- (b) 1 or more relevant government agencies have notified an airport operator that they intend in the future to impose 1 or more space requirements on the airport (and have not withdrawn that notification).

(2) The operator must provide the Secretary with a regulatory airport spatial undertaking setting out, to the Secretary's satisfaction, how the operator will meet the space requirements.

- 23 If there is no space requirement, then no RASU is required.

How long does a RASU last for?

- 24 There is no required term for a RASU, but airport operators must review their RASU at least every five years. For example, a RASU may be drafted as an enduring document and reviewed every five years. They can be reviewed more often if an agency requests this. A RASU remains in place until it is varied or replaced. See the 'Reviewing a RASU' section for more details.

How do RASUs link to other requirements on airport operators?

- 25 The requirement to make a RASU is one of several requirements on airport operators in the Civil Aviation Act 2023.
- 26 For more information, see www.legislation.govt.nz/act/public/2023/0010/latest/whole.html#LMS49346

Roles within the RASU regime

Who	Role
Airport operators	<ul style="list-style-type: none"> • Develop a RASU. • Engage with agencies to ensure agency space requirements are as accurate as possible. • Consult substantial customers and seek endorsement from relevant government agencies. • Submit the RASU to the Secretary. • Comply with a RASU that has been accepted by the Secretary. • Self-monitoring of the RASU once it is in effect. • Review the RASU at least every 5 years.
Government agencies with space requirements	<ul style="list-style-type: none"> • Collaborate with each other on future space requirements and optimise space where appropriate. • Understand changes to space requirements because of forecast changes. • Provide their space requirements to airports in a timely manner for inclusion in RASUs. Provide clear metrics and justification to support their space requirements. • Coordinate with other agencies to provide feedback on draft RASUs. • Endorse RASUs. Agencies must not unreasonably withhold endorsement.
Substantial customers of airport operators¹	<ul style="list-style-type: none"> • Provide feedback when consulted by airport operators about their draft RASUs.

¹ Not all operators at the airport will meet the criteria of substantial customer, such as regional airlines or Airways, but may be impacted by the content of a RASU, airports are encouraged to consult all customers who are potentially impacted.

Border Executive Board (BEB)² Deputy Chief Executives' (DCEs') group	<ul style="list-style-type: none"> • Help to coordinate agencies' feedback on RASUs to airport operators. • Help to facilitate a resolution to any issues that may arise (DCEs); DCEs can escalate to the BEB as required.
Ministry of Transport / Secretary for Transport	<ul style="list-style-type: none"> • The Ministry oversees and administers the RASU regulatory regime. • The Secretary has several roles within the regime, including: <ul style="list-style-type: none"> • accepting RASUs • receiving reviews of RASUs • enforcement activity, including issuing direction orders • updating the airport register.

Principles for how the Ministry will carry out its RASU functions

Partnership

- RASUs are a tool to promote increased collaboration and coordination. The Ministry encourages genuine cooperation and coordination between airport operators and relevant government agencies, while maintaining our impartiality.
- We seek to manage the RASU regime in a way that encourages willing compliance by airport operators.
- We consult all relevant people, for example other agencies, before acting, and keep people informed.
- Where differences arise between airports and agencies, we promote resolution through discussion as a first step.

Proportionate

- The Ministry operates the regime in a way that strikes a balance to get the benefits of RASUs (increased cooperation, coordination between agencies and airports) without imposing onerous compliance costs.
- We respond to non-compliance by taking into account the seriousness of the non-compliance and other relevant factors to select the appropriate response for the circumstances.

Pragmatic and flexible

- We will accept RASUs in a format that suits airport operators. We are comfortable with variation in form between RASUs, so long as the required content is included.

Confidence and certainty

- We are clear and transparent about our expectations, and how we will carry out our functions within the regime.
- We make timely decisions and keep applicants informed about progress.
- We treat commercially sensitive information appropriately.

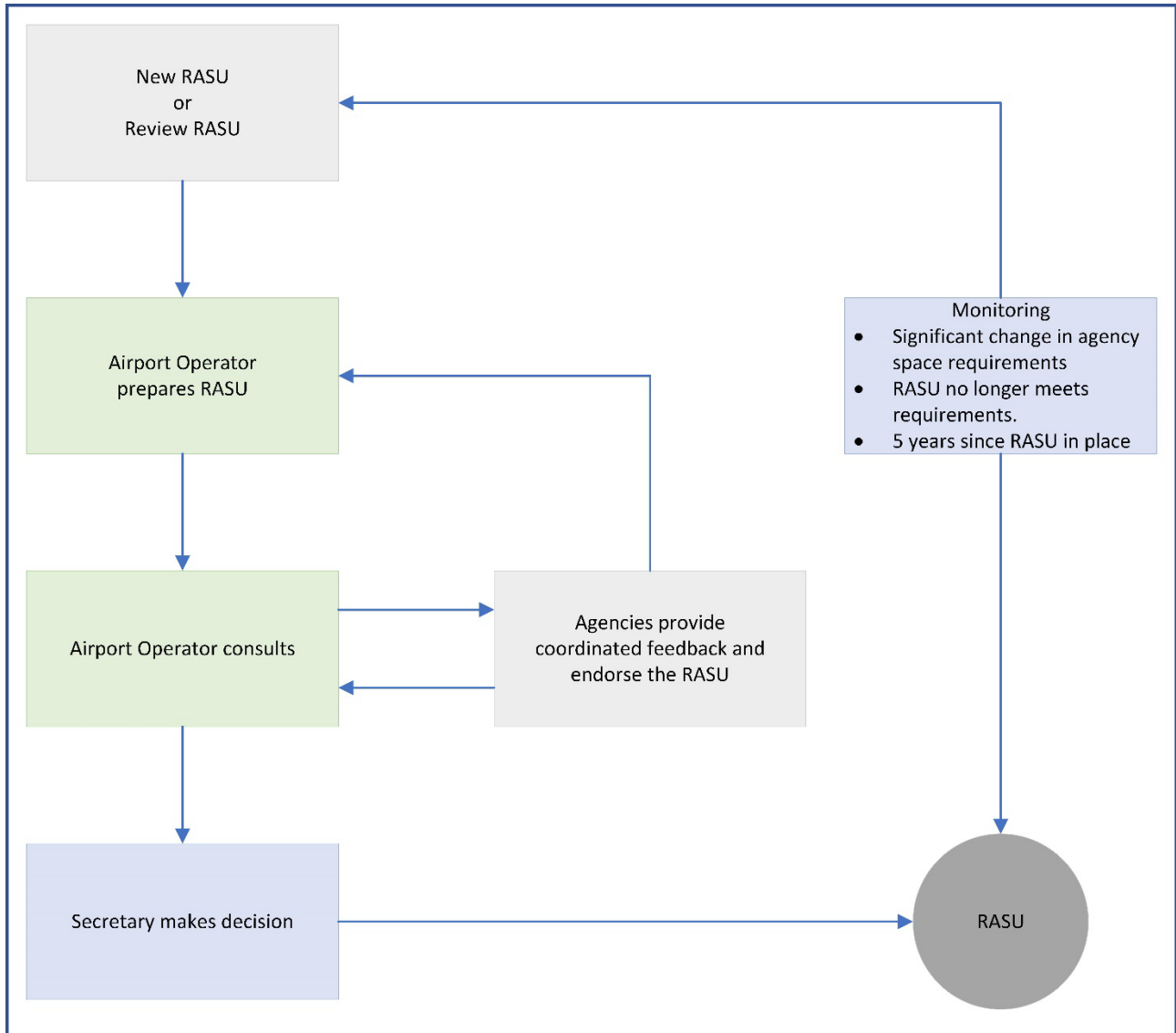
² The Border Executive Board has been established under the Public Service Act 2020 to deliver an integrated and effective border system and is hosted by the New Zealand Customs Service. See: <https://www.customs.govt.nz/about-us/border-executive-board/about-the-border-executive-board/>

The process for developing and submitting a RASU

27 This section describes the Ministry's role and the process for developing a RASU.

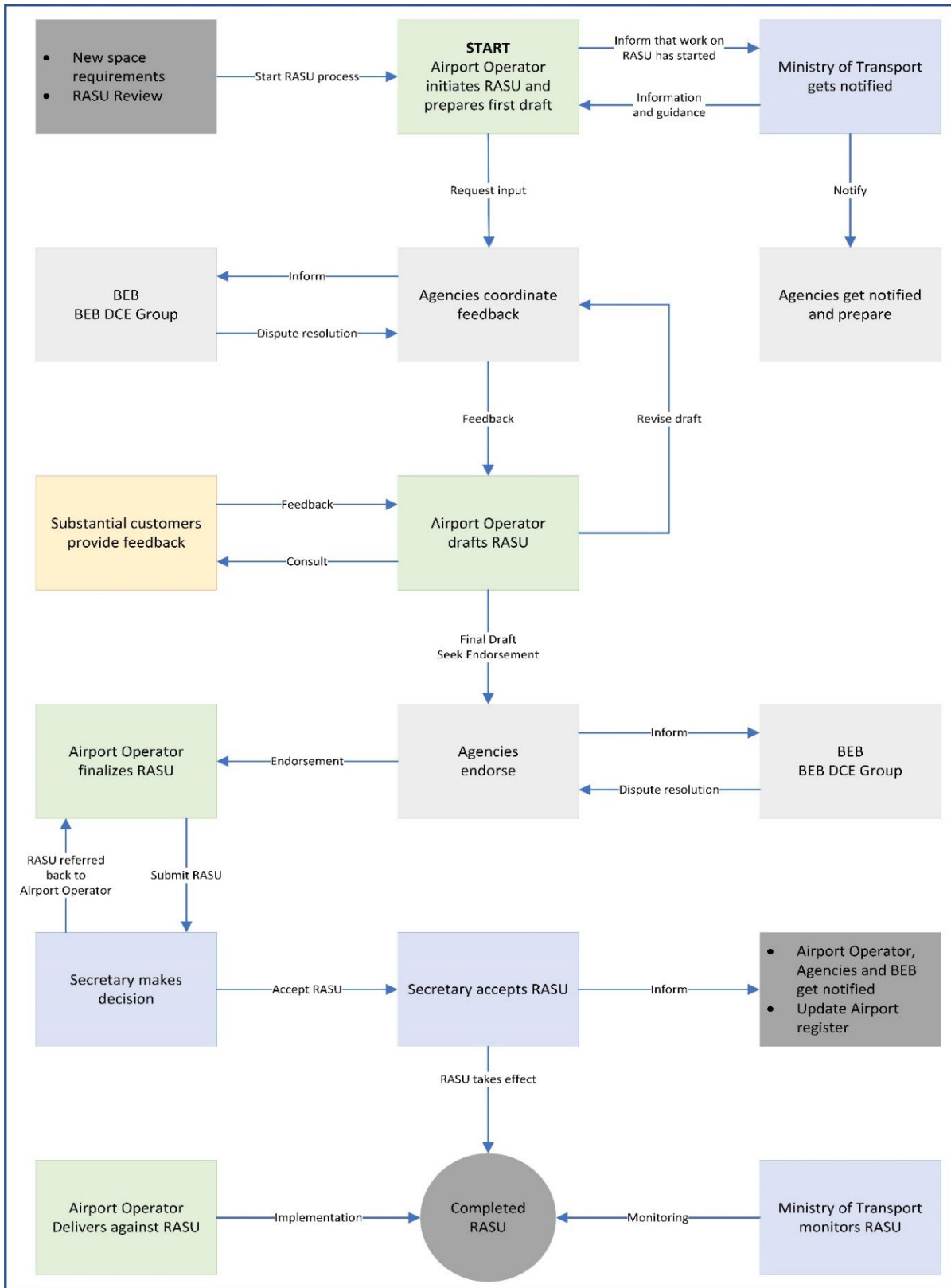
RASU process overview

The flowchart below illustrates an overview of the process for developing or reviewing a RASU. This process is described in detail later in this section.



Detailed RASU process

The flowchart below illustrates a detailed process for developing or reviewing a RASU. This process is described later in this section.



Initiation

- 28 The airport operator informs the Ministry that they are starting work on a new RASU or a replacement of an existing RASU.
- 29 The Ministry:
- provides the airport operator with any information and guidance they need
 - informs relevant government agencies, so they can provide information about their space requirements to the airport operator.

Development

- 30 The airport operator requests information about space requirements from the relevant agencies.
- 31 The airport operator must involve any of the “relevant government agencies” specified on the Ministry’s website that have a space requirement at the airport or that have notified the airport operator that they intend in the future to impose a space requirement at the airport (and have not withdrawn that notification). The relevant agencies may vary from airport to airport. See www.transport.govt.nz/area-of-interest/air-transport/air-transport-regulatory-information/airports/regulatory-airport-spatial-undertakings-rasus for the list of relevant government agencies.
- 32 Agencies give airport operators information about their space requirements, in accordance with their own legislation. We recommend that this is coordinated between agencies for each relevant airport based on a common, consistent and transparent methodology.
- 33 The airport operator prepares a draft RASU which must cover the matters set out in s241(3) of the Act.

241(3) A regulatory airport spatial undertaking offered under this section must—

- (a) specify the space requirements and relevant government agencies concerned; and
- (b) specify projects, milestones, and implementation time frames to meet the space requirements and the related obligations (if any); and
- (c) be made in the manner specified by the Secretary; and
- (d) comply with any prescribed requirements relating to the content, form, timing, and publication of regulatory airport spatial undertakings.

- 34 The Ministry is not involved in the development process but may request updates on progress.
- 35 Space requirements can cover existing requirements already being met as well as any future requirements. Initial RASUs may refer to current requirements as ‘baseline’ requirements.

Consultation and endorsement

242 (1) An airport operator must make reasonable efforts to obtain the relevant government agencies' endorsement of a regulatory airport spatial undertaking and consult with substantial customers before providing the undertaking to the Secretary under [section 241\(2\)](#).

(2) The agencies—

- (a) must not unreasonably withhold or delay their endorsement; and
- (b) must make reasonable efforts to co-ordinate their response.

- 36 The airport operator requests feedback from the relevant government agencies on the draft RASU.
- 37 We encourage agencies to work together right from the start of the RASU development process, for example, by using consistent assumptions and coordinating their input.
- 38 Airports can outline to agencies a RASU consultation process that aligns with their planning and pricing cycle. Existing engagement processes, for example with airlines, should continue and can be enhanced.
- 39 Agencies must make reasonable efforts to coordinate their response. That means agencies should discuss their needs and their proposed feedback with each other, so that their feedback to airport operators is not in conflict. There is no requirement however to provide collective feedback. The Border Executive Board (BEB) Secretariat will keep the BEB Deputy Chief Executive (DCE) group informed of this work.
- 40 After making any changes required in response to the feedback, the airport operator will seek each agency's formal endorsement of the RASU.
- Agencies do not collectively endorse the RASU; this is done on an agency-by-agency basis.
- 41 If any issues arise, the BEB DCE group may help facilitate discussions between agencies or between agencies and the airport operator.
- 42 Throughout this phase, the Ministry will stay informed through its membership of the BEB.
- 43 The airport operator must also consult substantial customers before submitting the RASU to the Secretary. While not all airlines will meet the criteria of substantial customer, we encourage airports to consult all customers who are potentially impacted, including Airways. Airways has space but is not included in the RASU.

219 Meaning of substantial customer

- (1) For the purposes of this Part, a person is a **substantial customer** of an airport operator if subsection (2) or (3) applies (or they both apply).
- (2) This subsection applies if the person paid, or was liable to pay, the airport operator an amount—
 - (a) relating to identified aerodrome activities undertaken during the airport operator's last accounting period; and
 - (b) exceeding 5% of the total revenue paid or payable to the airport operator in relation to identified aerodrome activities undertaken during that period.
- (3) This subsection applies if the person is authorised in writing to represent, and exercise the powers of a substantial customer under this subpart in relation to, a number of persons and—
 - (a) those persons in aggregate paid, or were liable to pay, the airport operator an amount—
 - (i) relating to identified aerodrome activities undertaken during the airport operator's last accounting period; and
 - (ii) exceeding 5% of the total revenue paid or payable to the airport operator in relation to identified aerodrome activities undertaken during that period; and
 - (b) the person has provided the airport operator with a copy of the authorisations for inspection.

Submission and finalisation

- 242(3) The operator must take all reasonable steps to ensure that the undertaking is given and accepted—
 - (a) before the end of the 9-month period beginning with,—
 - (i) if [section 241\(1\)\(a\)](#) applies, the date on which the space requirement arises; or
 - (ii) if [section 241\(1\)\(b\)](#) applies, the date on which the relevant government agency notifies the operator that it intends to impose the space requirement; or
 - (b) by any other deadline specified by the Governor-General by Order in Council made on the recommendation of the Minister.
- (4) An Order in Council made under this section is secondary legislation (see [Part 3](#) of the Legislation Act 2019 for publication requirements).

- 44 The airport operator must submit their final RASU to the Secretary, in accordance with the timeframes in section 242(3).
- 45 The Ministry secretariat will acknowledge that the RASU has been received. They will log it and request internal advice for the Secretary.

241(4) An operator giving a regulatory airport spatial undertaking under this section must provide the Secretary with the information required by the Secretary to assist the Secretary in deciding whether the regulatory airport spatial undertaking complies with this section.

- 46 The Ministry will assess whether the RASU contains enough information for the Secretary to make a decision. If more information is needed, the Ministry will request more information from the airport operator.
- 47 The Ministry will review the RASU and recommend to the Secretary whether the RASU should be accepted or not.

Acceptance policy

- 48 If the RASU development process is followed, and agencies have endorsed it, in most cases we expect that the Secretary's acceptance will be a formality.

243 *Decision and notification*

On receiving the regulatory airport spatial undertaking under [section 241](#), the Secretary may—

- (a) accept the undertaking if it meets the requirements of [section 241\(2\) and \(3\)](#); or
- (b) refer the undertaking back to the operator, specifying any matters that must be addressed before the undertaking is resubmitted.

- 49 The Secretary will accept a RASU if it:
- meets legislative requirements in s241(3), i.e. it must:
 - specify the space requirements and relevant government agencies concerned; and
 - specify projects, milestones, and implementation timeframes to meet the space requirements and the related obligations (if any).
 - Airport operators may present this information in a way that is convenient for them – there is no set format or template.

- meets any prescribed requirements under s241(3)(d). The Ministry's expectations under this section are that the RASU must:
 - briefly describe how the airport operator will maintain and monitor the RASU through its term and how it will be reviewed,
 - indicate when the airport operator plans to review the RASU (which can be no later than 5 years after the RASU's intended start date),
We recommend that the intended review date should be informed by the time period that agencies provide space requirements for, and
 - specify who the "substantial customers" of the airport are and show evidence that they have been consulted.
 - confirm:
 - that the RASU has been endorsed by all the relevant government agencies that have space requirements at the airport, or that have notified the airport that they will impose a space requirement in the future; and
 - the name and role of the person who agreed that their agency would endorse the RASU.
 - specify:
 - the name and role of the person who approved the document for the airport operator,
 - the date it was approved, and
 - contact details for a person at the airport who will be the ongoing contact person for the RASU.
 - clearly indicate any parts of the RASU that the airport operator considers are commercial in-confidence.
 - be readable and clearly presented.

50 The Ministry's guidance recommends other content that, although not mandatory, we consider would be useful to include in a RASU, for example, any inputs or assumptions (such as forecasted passenger numbers) that the airport operator has provided to the agencies to inform their space requirements. See our guidance for more detail.

51 If the RASU does not meet any of the requirements above, the Secretary will:

- refer it back to the airport operator, specifying which matters need to be addressed before it is resubmitted.
- if the RASU has not been endorsed by all the relevant government agencies with space requirements, the Secretary will not accept the RASU, and will:
 - refer the RASU back to the airport operator, requesting further consultation with the agency or agencies
 - clarify with the relevant agency why it has not endorsed; and
 - notify the BEB where appropriate.

- if substantial changes to the RASU are required, the Secretary will request that the airport operator consult *all* relevant government agencies on the revised RASU, and reconfirm their endorsement, before it is resubmitted. If appropriate, the Secretary may suggest that substantial customers are also re-consulted.
- 52 The Secretary will consider a resubmitted RASU using the same criteria set out above. The Secretary has the discretion to accept a RASU that has not been endorsed by one or more agencies but will make efforts to encourage endorsement to secure a durable RASU – see ‘The Ministry’s approach to resolving issues’ section.
- 53 If the RASU meets the requirements, the Secretary will:
- write to the airport operator, confirming that the RASU has been accepted, and the date that the acceptance takes effect. The RASU is enforceable from this date.
- 54 The Ministry will log the acceptance, keep a record of the RASU in a secure location, add a summary of the RASU to the (publicly available) airport register, and notify agencies and the BEB.

In force

- 55 Once accepted by the Secretary, the RASU is in force and is enforceable under section 244 of the Act.
- 56 See ‘Reviewing a RASU’, ‘During a RASU’s term: Monitoring’ sections.

The Ministry’s approach to resolving issues

- 57 Because the Secretary must be impartial when accepting (or rejecting) a RASU, the Ministry will not get involved in the specifics of any issues that may arise between airport operators and agencies while a RASU is being developed.
- 58 However, the Ministry may:
- facilitate discussions between the airport operator and relevant government agency or agencies about the issue
 - provide factual information and guidance about the legislation, and the Ministry’s expectations and approach
 - escalate the issue to Deputy Chief Executives, and/or Chief Executives, of the relevant government agencies
 - ask the BEB to assist member agencies in resolving the issue (note that the BEB can’t direct Crown entities, so will work through the Ministries of Health and Transport when interacting with Health New Zealand and CAA respectively)
 - if the issue relates to possible non-compliance with legal requirements, apply the Ministry’s compliance and enforcement approach (covered later in this document).

What the Ministry will do if there are issues preventing endorsement

- 59 If there are issues preventing endorsement by one or more government agencies, airport operators or agencies may raise this with the Ministry.

- 60 Section 242(1) of the Act requires airport operators to “make reasonable efforts to obtain relevant government agencies’ endorsement” - it does not *require* endorsement.
- 61 However, if the Secretary were to accept a RASU that had not been endorsed by all the relevant government agencies, the RASU may not be workable or effective, and it is more likely that an agency or agencies would trigger a review early in the term of the RASU.
- 62 If a RASU has not been endorsed by all relevant government agencies, the Secretary will refer the RASU back to the airport operator for more consultation and take some or all of the steps outlined in paragraph 58 above.

What it means to “unreasonably withhold or delay endorsement”

- 63 We consider that it would be unreasonable for an agency to withhold endorsement of a draft RASU if, for example:
- the space commitments detailed in the RASU meet and will continue to meet the requirements provided by the agency under its own legislation; and
 - the draft RASU meets the Act’s requirements and the Ministry’s expectations as set out in this document.

During a RASU’s term: Monitoring

- 64 Section 34 of the Act gives the Secretary monitoring powers, as well as powers to collect, analyse, and publish statistics and other information.
- 65 The Ministry expects to have a minimal monitoring role and encourages agencies to monitor their own content within airport operators’ RASUs. However, to support agencies and airport operators to comply with the requirements in the Act, we will:
- remind airport operators of due dates, send out guidance, and keep track of key dates to further encourage compliance.
 - follow up and respond to any complaints or concerns about compliance after airport operators and agencies have attempted to resolve issues themselves or through the BEB.
- 66 In addition, to monitor the overall performance and health of the regime, we will:
- check-in with agencies annually on how each RASU is going, before meeting with the relevant airport operator
 - organise an annual check-in with the airport operator to discuss the RASU and make sure that everything is operating as intended
 - maintain a feedback form and log comments sent to our RASU inbox to collect regime performance data from airport operators and other stakeholders
 - collect (and if required, publish) key monitoring and reporting information to check the regime is operating as intended and to enable us to recommend improvements to regime procedures.
 - This will include, for example, the number of RASUs in place, the time it took for the airport operators and agencies to vary/implement their RASUs, and whether agencies’ space requirements are being met, etc.

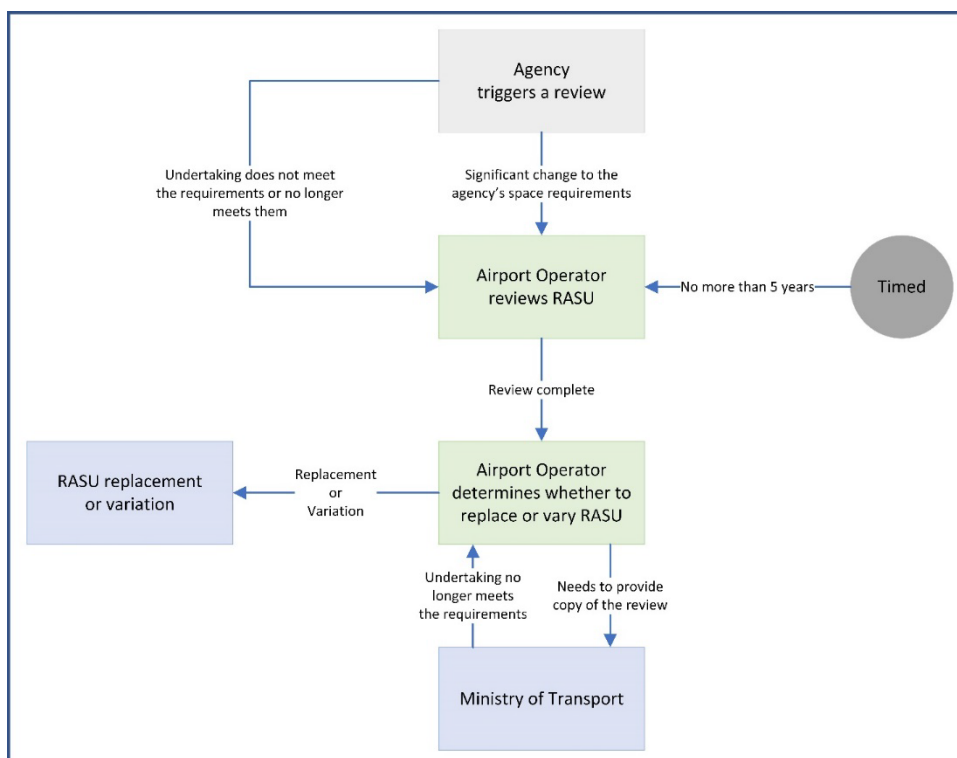
Reviewing a RASU

245 Review by airport operator of regulatory airport spatial undertaking

- (1) An airport operator that has given a regulatory airport spatial undertaking that is in effect in accordance with [section 244](#) must review it—
 - (a) if notified by a relevant government agency that—
 - (i) there has been, or is proposed to be, a significant change to the agency's space requirements; or
 - (ii) the undertaking does not meet the requirements or no longer meets them; and
 - (b) in any case, at intervals of no more than 5 years.
- (2) The airport operator must give a copy of a review under subsection (1) to the Secretary.
- (3) If, as a result of the review, the operator determines, or is notified in writing by the Secretary, that the undertaking no longer meets the requirements of [section 241\(2\) and \(3\)](#), the operator must vary the undertaking to meet those requirements or give a replacement undertaking that meets them.
- (4) [Sections 241 to 244](#) apply to the variation or replacement in the same manner as they apply to the undertaking being varied or replaced.

RASU review process

The flowchart below illustrates the RASU review process which is described in detail later in this section.



When a RASU must be reviewed

- 67 An airport operator must review their RASU when:
- a notified by a relevant government agency that—
 - i there has been, or is proposed to be, a significant change to the agency’s space requirements; or
 - ii the undertaking does not meet the requirements or no longer meets them³
 - b 5 years has elapsed since the undertaking was accepted.
- 68 The airport operator must give a copy of their review to the Secretary.
- 69 There is no timeframe specified for when a review needs to be completed by. However, the nine-month timeframe for varying an undertaking that applies to new space requirements (s242) informs how long a review should take.
- 70 The Act does not define “significant change”, but examples can include:
- significant change in projected passenger volumes below or above what was expected
 - unexpected or unplanned end of life for screening technology that requires replacement and changes the space
 - introduction of a new government policy that changes the way agencies operate or the equipment they use.
- 71 A RASU may document the assumptions, constraints and parameters the government agencies use to determine their space requirements. Conditions which cause a significant change could be documented where known.

What should a review cover?

- 72 We expect a review to:
- explain the reasons for reviewing the RASU
 - assess whether the RASU remains fit for purpose, and if it still meets the requirements of sections 241(2) and (3)
 - proposed next steps (preferably with agreement of agencies) – for example vary or replace the RASU, and the plan for doing so.
- 73 Section 245(4) requires that agency endorsement of any variation or replacement RASU.

The Secretary’s role in a review

- 74 Generally, the Secretary will accept the outcome of the review where the airport operator determines that the RASU should be varied or replaced. In other instances, the Secretary

³ s 245

can determine that the undertaking no longer meets the requirements and will request the airport operator to vary or replace the undertaking.⁴

- 75 When considering a review submitted by the airport operator, the Secretary may take into account:
- the review made by the airport operator
 - any views of relevant government agencies
 - any discussions with those involved.

Following a review: varying or replacing an undertaking

- 76 If, as a result of the review, the airport operator determines, or is notified in writing by the Secretary, that the undertaking no longer meets the requirements of [section 241\(2\) and \(3\)](#), the airport operator must vary the undertaking to meet those requirements or give a replacement undertaking that meets them.
- 77 If they are ready to do so, the airport operator may submit a variation or replacement RASU for the Secretary's consideration at the same time as the review is submitted.
- 78 A review can confirm an existing RASU if there are no changes required to the existing RASU, the space requirements have not changed, and they are still being met. A RASU continues to remain in place until it is varied or replaced.
- 79 A variation or replacement will follow the same processes for developing and submitting an original or replaced RASU.

Compliance and enforcement

- 80 The Ministry will take a proportionate response to manage the RASU regime in a way that encourages willing compliance by airport operators and cooperation between agencies and airport operators.
- 81 The Ministry will use a range of tools to support, encourage and require airport operators to comply with the RASU requirements in the Act and with the contents of accepted RASUs. These include:
- providing information and resources to make it easy to comply
 - discussing any compliance issues with the airport operator
 - facilitating discussions between the airport operator and relevant agencies
 - writing to the airport operator to formally request that they comply
 - issuing a direction order
 - court action, if a direction order is not complied with.
- 82 The Ministry's approach to compliance and enforcement will be case-by-case depending on the circumstances. It takes into account:

⁴ 245(3).

- the potential impacts and risks of the non-compliance, including impacts on and risks to the objectives of the RASU regime and the wider Act
 - the airport operator's motivations, capability and patterns of behaviour (for example whether there is a pattern of non-compliance)
 - the public interest
 - the Ministry's operating environment.
 - The Ministry's Prosecution Policy
- 83 The Ministry will inform relevant agencies as appropriate when considering enforcement action, and about the outcome of any action.

Direction orders

- 84 If an airport operator is not complying with legislative requirements, the Secretary may consider issuing a direction order.
- 85 The Secretary will follow the Act's requirements in sections 247 and 248 about the process for and contents of a direction order.

247 Secretary may make direction orders

- (1) The Secretary may make an order under this section (a direction order) if satisfied on reasonable grounds that an airport operator has contravened, or is likely to contravene, a provision of this subpart or a regulatory airport spatial undertaking that is in effect in accordance with [section 244](#).
- (2) The direction order may—
- (a) direct the operator to comply with the provision or the undertaking;
 - (b) specify any reasonable steps that the operator must take in order to comply with the provision or undertaking, or to avoid or mitigate any actual or potential adverse effects of a contravention;
 - (c) specify a reasonable period within which the operator must comply with the provision or undertaking;
 - (d) require the operator to report to the Secretary stating how and when the provision or undertaking has been, or will be, complied with.
- (3) The Secretary may make a direction order under this section only if the Secretary first takes the following steps:
- (a) give the person to whom the direction order is proposed to be directed written notice—
 - (i) that the Secretary may make a direction order under this section; and
 - (ii) of the reasons why the Secretary is considering exercising that power; and
 - (b) give the notice referred to in paragraph (a) at least 5 working days before the Secretary makes the direction order; and
 - (c) give each person to whom notice of the direction order must be given, or the person's representative, an opportunity to make written submissions and to be heard on the matter within that notice period.

248 *Secretary must give notice of direction orders*

If the Secretary makes a direction order under [section 247](#), the Secretary—

- (a) must, as soon as is reasonably practicable, give written notice to the person to whom the direction order is directed of—
 - (i) the terms and conditions of the direction order; and
 - (ii) the reasons for the direction order; and
 - (iii) any other information the Secretary thinks relevant in the circumstances; and
- (b) may also make the notice or any part of the notice available on its Internet site; and
- (c) may also give notice to any other person of those matters.

- 86 The Ministry will monitor compliance with a direction order, for example by requiring the airport operator to report on progress as a part of the terms and conditions of the direction order.
- 87 The Ministry may publish a direction order on the Ministry website if we think publication would help achieve compliance and further the objectives of the Act. If we publish a direction order, we will also update our website when it has been resolved.
- 88 If an airport operator does not comply with a direction order, the Secretary will consider applying to the District Court for a court order under section 249, and/or prosecute the airport operator under section 250. The Ministry will use the Attorney General's guidelines for prosecution and our own Prosecution Guidelines when making decisions under these provisions.

Relationship to other legislation

- 89 RASUs summarise how airport operators will meet their obligations under other legislation to provide space for government agencies.
- 90 However, non-compliance with the RASU requirements in the Civil Aviation Act 2023 does not necessarily mean there is non-compliance with other legislation, and vice versa.
- 91 If the non-compliance relates only to the Civil Aviation Act 2023 (for example, an airport operator has not provided a RASU to the Secretary as required by s241), the Ministry is the lead agency and will consult other agencies to inform its actions.
- 92 Where there is possible non-compliance with the Civil Aviation Act requirements and one or more other Acts (for example not complying with a RASU that is in force, as required by s246, and requirements under legislation to provide space), the Ministry will consult other agencies to determine the best approach. This could lead to the Secretary enforcing the Civil Aviation Act or suggesting to another agency or agencies that they take action under their own legislation, or both.

- 93 The Secretary may consider:
- how many agencies are affected by the airport operator's non-compliance
 - whether the non-compliance is more closely related to the Civil Aviation Act requirements or the space requirements in the other legislation.
- 94 In the event that the enforcement action leads to the Secretary applying to the District Court for an order under s249, the Act specifically allows for proceedings to be brought under other legislation as well by the affected agency:

249 (3) This section does not prevent proceedings being brought for the contravention or alleged contravention of space requirements to which the regulatory airport spatial undertaking to which the direction order relates.

Exemptions

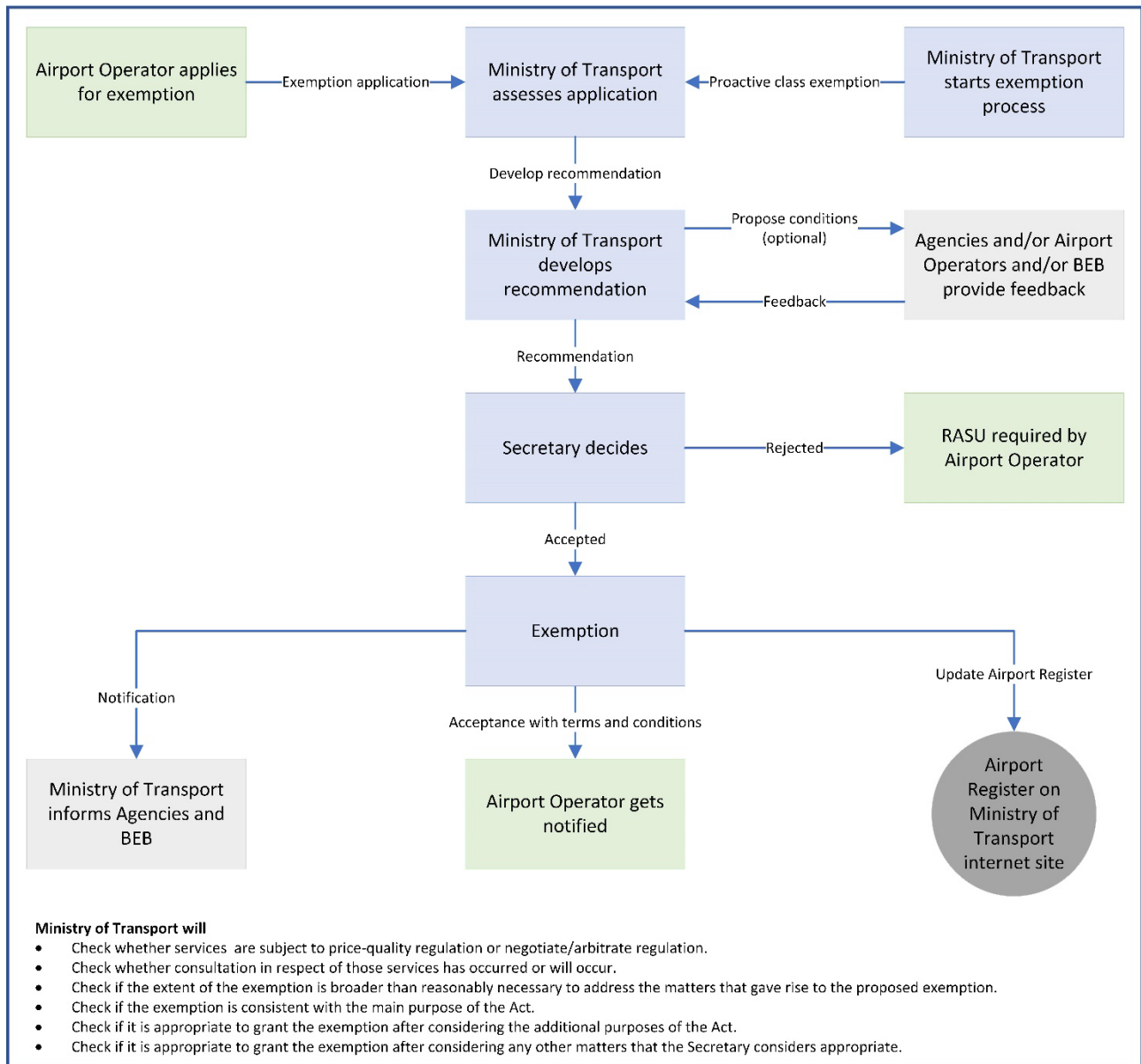
- 95 We expect airport operators to comply with requirements in the Act. Where this is not possible, reasonable, or practicable, airport operators may apply to the Secretary for an exemption under s251 for some or all of the requirements relating to RASUs.

What is an exemption?

- 96 An exemption gives legal permission for the airport operator to not comply with a specified legal requirement for a specified period of time.
- 97 Any exemption from RASU requirements has no impact on other legislation requiring airport operators to provide space for government agencies. Airport operators must still comply with other legislative requirements.

RASU exemption process

The flowchart below illustrates the RASU exemption process which is described in detail later in this section.



What an exemption application needs to cover

98 Exemption applications must:

- come from an eligible person (i.e. an airport operator required by s241 to develop a RASU)
- state the provision in the Act the airport operator is requesting an exemption from
 - the Act only allows exemptions from sections 241, 242, or 245

- these relate to the requirement to make a RASU, the timeframe to make a RASU, and reviewing a RASU
- explain the reasons why the airport operator is applying for an exemption
- note any actions the airport operator proposes to take to minimise/mitigate any negative impacts of an exemption (if granted)
- describe any impacts the exemption (if granted) would have on the main purpose and additional purposes of the Act
- describe the results of consultation with relevant government agencies
- describe any other consultation that has taken place, for example with substantial customers
- clearly identify any information that the airport operator considers is commercial in confidence.

251 *Exemptions from requirements of subparts 2 and 3*

(1) The Secretary may exempt an airport operator or any class of airport operators from all or any of the requirements of the following:

...

(d) [section 241](#) (giving of regulatory airport spatial undertaking by airport operator):

(e) [section 242](#) (consultation and timing requirements):

(f) [section 245](#) (review by airport operator of regulatory airport spatial undertaking).

(2) The Secretary must not grant an exemption under subsection (1) unless the Secretary is satisfied that—

(a) the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the proposed exemption; and

(b) the exemption is consistent with the main purpose of the Act; and

(c) it is appropriate to grant the exemption after considering—

(i) the additional purposes of the Act; and

(ii) any other matters that the Secretary considers appropriate in the circumstances.

...

(4) The Secretary may grant an exemption under subsection (1) on any terms and conditions that the Secretary thinks fit.

(5) A class exemption is secondary legislation (see [Part 3](#) of the Legislation Act 2019 for publication requirements).

(6) In this section, class exemption means an exemption granted under subsection (1) that relates to more than 1 airport operator.

How we will make decisions about exemptions

99 The Secretary may grant an exemption:

- in response to an application, or
- proactively, without the need for an application, provided the Secretary has sufficient information and knowledge about the circumstances.

100 The Secretary may grant a class exemption if there are multiple airport operators that need the same exemption. The Secretary will assess the following factors when considering whether to issue a class exemption:

- What is the scope and prevalence of the issues giving rise to the exemption request?
- Does the issue affect a group of airport operators in the same way and to a similar degree?
- What is the impact (positive or negative) on substantial customers at the airport?
- Are there equity issues? E.g. would it be unfair to grant an airport operator an individual exemption without also exempting other airport operators in a similar situation?
- Are we likely to receive other similar exemption requests?
- Can the group of airport operators that would be covered by a class exemption be clearly and unambiguously defined?
- Would a class exemption be consistent with the intent of the Act?

Principles for exemptions

101 We use the following principles when making exemption decisions:

We consider why compliance isn't possible, reasonable, or practicable

102 We assess whether there is a good reason why the airport operator shouldn't be required to comply. We know it may not always be possible, reasonable, or practicable to comply because:

- of unforeseen circumstances outside the airport operator's control
- the requirement doesn't allow for the airport operator's unique circumstances
- the requirement has significant unintended consequences
- what is needed to comply (for example, cost) is unreasonable compared to the risk associated with the non-compliance.

We grant exemptions that are only as broad as necessary

103 We ensure exemptions only address the reason they are required. We may think about:

- why compliance is not possible, reasonable, or practicable
- the gap between what's required and what the exemption would allow
- which aspects of the requirement it applies to

- the expected impact of the exemption, including any flow-on effects
- any conditions we intend to impose, and
- how long the exemption is likely to be needed.

We only grant exemptions that are consistent with the purposes of the Act

- 104 We are required under s 251 to only grant exemptions that are consistent with the main purpose of the Act.
- 105 We will also consider the other purposes of the Act as part of weighing up the overall appropriateness of the exemption.
- 106 Applicants should explain how they think their exemption application is consistent with the purposes of the Act. (The applicant should address the impact of their proposed exemption, not the impact of the RASU itself.)

We consider other relevant factors

- 107 We will consider:
- the views of agencies with space requirements
 - if an exemption is the most appropriate intervention to address the situation
 - the airport operator's circumstances, activities, and compliance history
 - the impact of the exemption on the regulatory environment, the administrative burden on the Ministry, and the level of regulatory risk it would pose to the Ministry
- 108 We may consider:
- the views of other stakeholders.
 - For a class exemption, this could include other airport operators who could be captured by the scope of the proposed exemption.

We consider what conditions are needed

- 109 We may put conditions on exemptions to:
- require specific controls or actions that achieve a similar outcome as full compliance
 - provide assurance that risks will be managed
 - limit the scope or period of the exemption, or
 - assist us to monitor the exemption and its implications.
- 110 We ensure conditions:
- are reasonable, proportionate, and fair for the exemption holder
 - can be monitored and enforced, and
 - only apply to matters within the scope of the exemption.
- 111 We identify what failure to comply with a condition means, and what actions we may take as a result.

After a decision

112 If an exemption is granted:

- the Ministry will record it on the airport register on the Ministry's website
- If the exemption is a class exemption, the Ministry will comply with the Legislation Act 2019 requirements for publishing the exemption and presenting it to the House (see s251)
- the Ministry will monitor compliance with any conditions of the exemption. The Ministry may revoke an exemption if conditions are not complied with.

113 If an exemption is declined, the Ministry will notify the airport operator of the decision and give reasons.

Document Control

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Name	Role	Date
Siobhan Routledge Director, Aviation	Senior Responsible Owner (on behalf of the Civil Aviation Act Implementation Governance Group)	03.12.2024

Distribution List

This table describes the people who have received this document.

Group/Team
This document is publicly available on the Ministry website.

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