

Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 100.5 Amendment Instrument 2012 (No. 2)

Purpose

The purpose of *Civil Aviation Order 100.5 Amendment Instrument 2012 (No. 2)* (the **CAO amendment**) is to set out who may carry out maintenance of a general aviation recovery device (**GARD equipment**). GARD equipment is an airframe parachute system designed to control an aircraft's descent in an emergency such as engine failure or loss of aerodynamic control.

Legislation

Section 98 of the *Civil Aviation Act 1988* (the **Act**) empowers the Governor-General to make regulations for the Act and the safety of air navigation.

Under subregulation 38 (1) of the *Civil Aviation Regulations 1988 (CAR 1988)*, CASA may issue directions relating to the maintenance of Australian aircraft.

Under regulation 5 of CAR 1988, CASA may, among other things, issue a direction in Civil Aviation Orders (**CAOs**).

Civil Aviation Order 100.5 (**CAO 100.5**) contains general directions relating to the maintenance of Australian aircraft in respect of which an Australian certificate of airworthiness is in force.

CAO amendment

The CAO amendment inserts a new maintenance direction in the form of subsection 8A into CAO 100.5.

New paragraph 8A.2 provides that maintenance of GARD equipment must be carried out by a Part 145 organisation (within the meaning of the *Civil Aviation Safety Regulations 1998 (CASR 1998)*); or by the holder of a certificate of approval under regulation 30 of CAR 1988 for carrying out maintenance on aircraft, aircraft components or aircraft materials (**CAR 30 maintenance organisation**).

New paragraph 8A.3 provides that if maintenance of GARD equipment is carried out by a CAR 30 maintenance organisation, the organisation must ensure that only a **specialty qualified LAME**, employed by the organisation and who has completed an **approved course of training**, may perform the maintenance.

A Note reinforces the point that apart from the separate privileges of a CASR Part 145 organisation, maintenance of GARD equipment may only be carried out by a specialty qualified LAME employed by a CAR 30 maintenance organisation. Such maintenance may not, therefore, be carried out by a person referred to in paragraph 42ZC (4) (b) of CAR 1988, sometimes known as an independent LAME or a LAME employed by an independent LAME.

The meaning of **specialty qualified LAME** and **approved course of training** are each set out in key definitions.

Thus, a *specialty qualified LAME* means a licensed aircraft maintenance engineer who holds a category B1 licence, issued under Part 66 of CASR 1998, in a subcategory relevant to the aircraft on which the person performs work and who has successfully completed an approved course of training in the operation and maintenance of GARD equipment.

An *approved course of training* means a course of formal training, or a period of relevant practical experience, or both, that is approved in writing for the licence holder by his or her CAR 30 maintenance organisation. The course must be one that is designed to convey detailed knowledge of GARD equipment, and the aircraft controls, systems and precautions for use of such equipment. It must be designed so that, in the light of such knowledge, the holder of a relevant category B1 licence can safely perform the maintenance on GARD equipment.

Legislative Instruments Act 2003 (the LIA 2003)

Under subsections 98 (5) and 98 (5AAA) of the Act, where the regulations provide for certain instruments to be issued in the form of CAOs, such CAOs are legislative instruments. The CAO amendment is, therefore, a legislative instrument and it is subject to registration, and tabling and disallowance in the Parliament, under sections 24, and 38 and 42, of the LIA 2003.

Gazettal

Under subregulation 38 (2) of CAR 1988, a maintenance direction is not binding on a person unless it has been served on the person. Under subregulation 5 (3) of CAR 1988, when a direction to a person is contained in a CAO, it is taken to have been served on the person on the date on which the making of the CAO was notified in the *Gazette*.

Under subsection 56 (1) of the LIA 2003, if certain enabling legislation requires *the text of a legislative instrument, or particulars of its making*, to be published in the *Gazette*, such requirements are taken to be satisfied when the instrument is registered.

This facilitative provision for registration to take the place of gazettal does not appear to cover the specific case of the service requirements under subregulations 38 (2) and 5 (3) of CAR 1988. Therefore, to avoid doubt, the CAO amendment was also gazetted on the day on which it commenced, that is, on the day after registration.

Consultation

Consultation under section 17 of the LIA 2003 was undertaken as follows. During the period 20 December 2011 to 13 January 2012, the details of the CAO amendment were published on the CASA website and comment invited from interested persons. All comments received on the proposal were supportive of it. CASA accepted suggestions that additional guidance material be made available.

Office of Best Practice Regulation (OBPR)

The CAO amendment is intended to be facilitative with nil to low impact on business costs. OBPR assessed the impact of the proposed changes as minor and determined that a Regulation Impact Statement was not required (OBPR id: 13314).

Statement of Compatibility with Human Rights

The following Statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The CAO amendment sets out who may carry out maintenance of GARD equipment, that is an airframe parachute system designed to control an aircraft's descent in an emergency such as engine failure or loss of aerodynamic control.

The instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The instrument does not engage any of the applicable rights or freedoms, and is compatible with human rights, as it does not raise any human rights issues.

Making and commencement

The CAO amendment has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

The CAO amendment commences on the day after registration, on which date the making of the instrument was also notified in the gazette.

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