

Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 82.5 Amendment Instrument 2012 (No. 1)

Purpose

The purpose of *Civil Aviation Order 82.5 Amendment Instrument 2012 (No. 1)* (the **CAO amendment**) is to correct an error that appeared in *Civil Aviation Order 82.5 Amendment Instrument 2011 (No. 3)* (the **previous CAO amendment**).

Legislative background

Under section 27 of the *Civil Aviation Act 1988* (the **Act**), CASA may issue Air Operators' Certificates (**AOCs**), with respect to aircraft, for the purpose of safety regulation.

Under section 28 of the Act, CASA must issue the AOC if satisfied that the applicant can comply with the requirements of Australian civil aviation safety legislation.

Under paragraph 28BA (1) (b) of the Act, an AOC has effect subject to any conditions specified in the regulations or the Civil Aviation Orders (the **CAOs**).

Part 82 of the CAOs specifies conditions on AOCs. Civil Aviation Order 82.5 (**CAO 82.5**) contains conditions on those AOCs that authorise regular public transport (**RPT**) operations in high capacity aircraft.

Subsection 10 of CAO 82.5 sets out obligations on operators who hold foreign aircraft AOCs for RPT operations in Australia. In particular, paragraph 10.8 provides that the operator of a foreign registered aircraft must ensure that it complies with the requirements (Directions) in Appendix 4 (and, in effect, Appendix 5) concerning automatic dependent surveillance – broadcast (**ADS-B**).

Appendix 5 contains standards for the GNSS position source equipment used to enable the ADS-B equipment to transmit geographical position. These standards differ depending on the date when the aircraft was manufactured. Appendix 5 also contains *alternative* approved equipment configuration standards — again depending on whether the aircraft was manufactured before or after a certain date.

Background

The previous CAO amendment was made to ensure that certain amended requirements, in relation to the use of ADS-B, applied to operators of *foreign* aircraft in Australian territory engaged in RPT operations in high capacity aircraft (the **relevant foreign aircraft**).

Under *Civil Aviation Order 20.18 Amendment Instrument 2011 (No. 2)* (the **CAO 20.18 amendment**), the amended requirements mentioned above applied to *Australian* aircraft. The previous CAO amendment, which commenced at the same time as the CAO 20.18 amendment, operated by imposing on relevant *foreign* aircraft the same requirements for ADS-B as are imposed on Australian aircraft by the CAO 20.18 amendment.

The CAO 20.18 amendment, among other things, modified the rules pertaining to aircraft ADS-B equipment to extend the compliance date by which newly-manufactured aircraft must meet a certain technical standard (the GNSS Selective Availability Aware (*SA Aware*) feature) if they are fitted with ADS-B equipment.

To bring this about, the previous CAO amendment was intended to omit from Appendix 5 mention of 28 June 2012 as the “manufactured-before” cut-off date and insert 8 December 2016 in order to extend the compliance date by which newly-manufactured aircraft must meet the standard for incorporation of the SA Aware feature in GNSS position source equipment used for ADS-B.

However, in 2 instances, the erroneous date of 12 December 2013 was inserted into Appendix 5 instead of 8 December 2016, namely in clause 3 and its heading relating to GNSS position source equipment.

The CAO amendment corrects this date error.

Legislative Instruments Act 2003 (the LIA)

Paragraph 28BA (1) (b) of the Act provides that an AOC has effect subject to any conditions “specified in the regulations or Civil Aviation Orders”.

Subsection 98 (4A) of the Act provides that CASA may issue CAOs with respect to any matter “in relation to which regulations may be made for the purposes of section 28BA”.

Under subsection 98 (4B) of the Act, a CAO issued under subsection 98 (4A) is stated to be a legislative instrument and is, therefore, subject to registration, and tabling and disallowance in the Parliament, under sections 24, and 38 and 42, of the LIA.

However, by providing that an AOC has effect subject to any conditions specified in the regulations or CAOs, paragraph 28BA (1) (b) of the Act is a separate head of power for the making of relevant CAOs. For section 5 of the LIA, such CAOs would be legislative instruments subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

The CAO amendment is made under paragraph 28BA (1) (b) of the Act and subsection 98 (4A) of the Act and is a legislative instrument.

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 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 CAO amendment is an amendment to correct a date error in the previous CAO amendment. The CAO amendment 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.

Consultation

The purpose of the CAO amendment is to correct a date error in the previous CAO amendment. The correction required no specific consultation. The substantive changes made by the previous CAO amendment were the subject of industry consultation in accordance with the normal processes used by CASA for regulatory developments, including Notice of Proposed Rule Making (NPRM) No. 1103AS.

Regulation Impact Statement (RIS)

The CAO amendment is merely technical and will not increase costs for, or impose any additional requirements on, aircraft operators. Therefore, a RIS is not required for the Office of Best Practice Regulation. The previous CAO amendment had already been the subject of a preliminary assessment of the business compliance costs indicating that it would have only a nil to low impact on business (OBPR Id. No. 13116).

Commencement and making

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

[Civil Aviation Order 82.5 Amendment Instrument 2012 (No. 1)]