

Explanatory Statement

Civil Aviation Safety Regulations 1998

Part 42 Manual of Standards Amendment Instrument 2013 (No. 1)

Purpose

The purpose of *Part 42 Manual of Standards Amendment Instrument 2013 (No. 1)* (the **MOS amendment**) is to amend the Part 42 Manual of Standards (the **MOS**) made under Part 42 of the *Civil Aviation Safety Regulations 1998 (CASR 1998)*. The MOS specifies matters affecting maintenance and airworthiness of aircraft for the purposes of Part 42 of CASR 1998. The MOS amendment would list Singapore in the MOS in support of the operation of a Technical Arrangement (about mutual recognition of approved maintenance organisations in each country) between Australia and Singapore. The MOS amendment would also formally recognise long-standing arrangements for recognition of maintenance performed on aeronautical products for Australian aircraft in foreign countries — but now specifically expressed as a permission to carry out maintenance on an aeronautical product rather than by recognition of the relevant countries' aeronautical products via the countries' authorised release certificates.

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, and CASR 1998 was made under this power. Under subsections 98 (5A) and (5AA) of the Act, regulations may empower CASA to issue legislative instruments in relation to the airworthiness and maintenance of aircraft. For the purposes of subsection 98 (5A), subregulation 42.020 (1) in Part 42 of CASR 1998 empowers CASA to issue a MOS for Part 42 that specifies matters affecting maintenance and airworthiness of aircraft. Subregulation 42.020 (2) of CASR 1998 lists the matters that the MOS may specify, which, amongst other things, includes listed countries for regulations 42.301 and 42.306 of CASR 1998.

Regulation 42.301 of CASR 1998 provides permission, under the Act, for maintenance organisations to carry out maintenance on an Australian aircraft (to which Part 42 applies) outside Australian territory if the following conditions are met:

- the organisation is approved by the National Aviation Authority (**NAA**) of the foreign country to carry out the maintenance
- there is an agreement between CASA and the NAA that permits the organisation to carry out the maintenance
- the country is specified in the MOS
- the maintenance is carried out in accordance with the agreement.

Regulation 42.306 of CASR 1998 provides permission, under the Act, for maintenance organisations approved under the law of a foreign country to carry out maintenance on aeronautical products for Australian aircraft (to which Part 42 applies) outside Australian territory if the country is listed in the MOS.

The content of the MOS amendment

The MOS is divided into chapters that deal with different subject matters. A number of chapters have been reserved for future use. The proposed amendment would insert content into Chapters 6 and 7 to list countries for the purpose of regulations 42.301 and 42.306 of CASR 1998.

CASA has recently signed such an agreement with the Civil Aviation Authority of Singapore in the form of a Technical Arrangement. Singapore would be listed for the purposes of regulation 42.301 of CASR 1998. Singapore, Brazil, Canada, EASA member countries, New Zealand, and the United States would be listed for the purpose of regulation 42.306 of CASR 1998.

Legislative Instruments Act 2003 (the LIA)

Under paragraph 98 (5A) (a) of the Act, regulations may empower CASA to issue instruments in relation to the maintenance of aircraft. Under subsection 98 (5AA) of the Act, such an instrument is a legislative instrument for the LIA if it is expressed to apply to classes of persons, aircraft or aeronautical products rather than to individual persons, or individual aircraft or products. The MOS amendment is expressed to have general application to those persons, aircraft and products falling within its terms. The MOS amendment is, therefore, a legislative instrument subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

How consultation was carried out

CASA considered that its normal public and industry consultation process should be followed for this MOS amendment, that is, publication of proposals on its website, involvement of the joint CASA/industry Standards Consultative Committee (SCC), analysis of comments received, and adjustment of its proposals, as appropriate for aviation safety, after taking all of the comments into account. CASA considers that written comments actually received represent an important source of evaluation and feedback from interested parties who may be affected by the proposals.

Consultation on the proposed instrument commenced on the 24 April 2013 with the public announcement, via the frequently and widely-accessed CASA website, of a proposal to amend the MOS to address the changes to the regulation. The principal target audience was the interested public accessing the site, the aviation sector generally, and, more specifically, the membership of the SCC and its committees.

Specific consultation drafts of the MOS amendment were developed and made publicly available for comment on 7 May 2013 through the same website and forum mechanisms. The comment period closed on 21 May 2013. Given that the amendment to the MOS was a machinery response to give effect changes made to the regulation, the comment period was set at 14 days as per subregulation 11.180 (4) of the CASR 1998.

Who responded?

The following organisations responded directly in writing to the proposed amendment:

- Qantas Airways Limited
- Tiger Airways Australia Pty Ltd
- Express Freighters Australia
- Paper Planes Australian Aircraft Certification Service
- Aviation Maintenance, Repair and Overhaul Business Association
- Paspaley Pearling Co. Corporate Aviation Department.

Most of those responding were considered to have particular interest in, and knowledge of, the issues being addressed by the instrument and they were representative of persons in the aviation community likely to be affected by the proposals.

The nature of the issues raised in consultation

Most of the comments related to incorrect understanding of the regulation underpinning the MOS amendment. CASA responded to them individually by providing clarification of the regulation and they were all satisfied.

Three organisations, expressed their concerns about the limited availability of maintenance organisation in foreign countries that are permitted to carry out maintenance on Australian registered aircraft affected by Part 42 of CASR 1998. Their concerns are related to private and business aircraft operating outside Australia. However, the existing Part 42 of CASR 1998 only applies to Regular Public Transport (*RPT*) aircraft at the moment and as such these concerns are not directly related to the amendment of the MOS.

CASA response to the issues raised during consultation

The consultation process did not highlight any deficiency in the proposed amendments to the MOS. CASA has noted the concerns of certain organisations regarding limited availability, in future, of maintenance providers for private and business aircraft in foreign countries. The work to amend CASR 1998 for these aircraft has begun with the publication in December 2012 of discussion papers on key policy issues. These concerns will be considered as CASA finalises the policies in relation to who is permitted to carry out maintenance on non-RPT aircraft outside Australia.

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is at Attachment 1.

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement (*RIS*) was prepared for an associated amendment of Part 42 of CASR 1998 regulation — now in effect. OBPR assessed that the amendment would result in only minor impacts and that no further analysis in the form of a RIS would be required (OBPR Id: 14704). Given the MOS amendment directly relates to the Part 42 amendment, a RIS is not required for the MOS amendment.

Commencement

The MOS amendment is expressed to commence on the day after registration.

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Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the
Human Rights (Parliamentary Scrutiny) Act 2011*

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This legislative 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*.

Overview of the legislative instrument

The purpose of *Part 42 Manual of Standards Amendment Instrument 2013 (No. 1)* (the **MOS amendment**) is to amend the Part 42 Manual of Standards (the **MOS**) made under Part 42 of the *Civil Aviation Safety Regulations 1998 (CASR 1998)*. The MOS specifies matters affecting maintenance and airworthiness of aircraft for the purposes of Part 42 of CASR 1998. The MOS amendment would list Singapore in the MOS in support the operation of Technical Arrangement (about mutual recognition of approved maintenance organisations in each country) between Australia and Singapore. The MOS amendment would also formally recognise long-standing arrangements for recognition of aeronautical product for Australian aircraft — but now specifically expressed as a permission to carry out maintenance on aeronautical product rather than by recognition of the relevant countries' aeronautical products via the countries' authorised release certificates.

Human rights implications

The MOS 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 instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

Civil Aviation Safety Authority