

Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 100.5 Amendment Instrument 2013 (No. 2)

Purpose

The purpose of *Civil Aviation Order 100.5 Amendment Instrument 2013 (No. 2)* (the **CAO amendment**) is to avoid unintended consequences of 2 amendments in *Civil Aviation Order 100.5 Amendment Instrument 2013 (No. 1)* (the **earlier amendment**). The earlier amendment was to commence on 1 August 2013, and the CAO amendment commences immediately before it.

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 (the **CAOs**).

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.

Background

The earlier amendment consolidated in a single CAO (for aircraft other than those involved in regular public transport operations), uniform maintenance requirements for barometric altimeters, and modified versions of existing testing requirements for these and other similar instruments, including pitot-static systems, air data computers, airspeed indicators, and fuel quantity gauges.

The earlier amendment also stated the time-life maintenance requirements for an aircraft and its aeronautical products. Thus, using regulation 38 of CAR 1988, paragraph 9.1 directed the registered operator of an Australian aircraft to comply with the time-life maintenance requirements “as established under the approved design for the aircraft or product”.

However, this did not take into account acceptable alternatives to the approved design as contained in Airworthiness Directives under Part 39 of the *Civil Aviation Safety Regulations 1998*. To ensure that maintenance is conducted in accordance with the appropriate range of requirements, subsection 9 is given a new heading – Mandatory maintenance requirements – and reformulated to provide that, for subregulation 38 (1) of CAR 1988, CASA directs the registered operator of an Australian aircraft to comply with the mandatory maintenance requirements identified in the aircraft’s approved design as 1 or both of the following: the Certification Maintenance Requirements (**CMR**); airworthiness limitations (**AWL**).

The amendment also defines **CMR** as the required scheduled maintenance tasks which were established during the design certification of an aircraft as operating limitations of the aircraft’s type certificate (TC) or supplemental type certificate (STC).

The CMR and AWL contain the specific maintenance requirements for an aircraft and its aeronautical products.

Also, in paragraph 12.2 of the transitional provisions for determining when the first pressure altimeter tests were required under Airworthiness Directive AD/INST8 Amdt 4, and Airworthiness Directive AD/INST9 Amdt 6, the earlier amendment took account of one, but not the other, of *alternative interval requirements* of 24 months and 36 months, (applicable depending on the specific “Requirements” of the test procedures adopted). This is corrected by inserting mentions of the relevant “Requirement 1” into the proposed paragraph 12.2 to reference the existing 24 month procedure, and by inserting mentions of “Requirement 2 a.” into a new proposed paragraph 12.2A to reference the omitted 36 month procedure.

CAO amendment

The CAO amendment, therefore, substitutes a new subsection 9 into the earlier amendment to provide that for subregulation 38 (1) of CAR 1988, CASA directs the registered operator of an Australian aircraft to comply with the mandatory maintenance requirements identified in the aircraft’s approved design as 1 or both of the following: (a) the Certification Maintenance Requirements (CMR); (b) the Airworthiness Limitations (AWL). A Note explains that *Approved design* is defined in subregulation 42.015 of CASR 1998 and that contravention of a CASA maintenance direction under this subsection is a strict liability offence.

The CAO amendment also modifies paragraph 12.2 of the transitional provisions and inserts a new paragraph 12.2A as described above.

The CAO amendment commences on 1 August 2013. Paragraphs 9.1 and 12.2 in the earlier amendment were intended to commence on 1 August 2013 but having been replaced immediately before they were to commence, they never took effect and subsection 9 and new paragraphs 12.2 and 12.2A in the CAO amendment are the operative amendments.

Legislative Instruments Act 2003 (LIA 2003)

As noted above, under regulation 5 of CAR 1988, CASA may issue regulation 38 directions in CAOs. 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 1 August 2013.

Consultation

Consultation under section 17 of the LIA was not undertaken. The earlier amendment was the subject of extensive consultation, including a Notice of Proposed Rule Making (NPRM). The CAO amendment is a machinery correction to the earlier amendment.

Statement of Compatibility with Human Rights

The Statement in Appendix 1 is prepared in accordance with Part 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.

Office of Best Practice Regulation (OBPR)

OBPR assessed that the earlier amendment would have minor impacts only and no further analysis in the form of a Regulation Impact Statement was required (OBPR ID: 14831). The same analysis applies to the machinery amendment in the CAO amendment.

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 1 August 2013, immediately before the commencement of *Civil Aviation Order 100.5 Amendment Instrument 2013 (No. 1)*.

[Civil Aviation Order 100.5 Amendment Instrument 2013 (No. 2)]

Statement of Compatibility with Human Rights

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

Civil Aviation Regulations 1988

Civil Aviation Order 100.5 Amendment Instrument 2013 (No. 2)

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 *Civil Aviation Order 100.5 Amendment Instrument 2013 (No. 2)* (the **CAO amendment**) is to correct unintended consequences of 2 amendments in *Civil Aviation Order 100.5 Amendment Instrument 2013 (No. 1)* (the **earlier amendment**).

Paragraph 9.1 in the earlier amendment restated the time-life maintenance requirements for an aircraft and its aeronautical products to be “as established under the approved design for the aircraft or product”. However, this did not take into account acceptable alternatives to the approved design as contained in Airworthiness Directives under Part 39 of the *Civil Aviation Safety Regulations 1998*. Paragraph 9.1 in the earlier amendment is, therefore, replaced with a new subsection 9 headed – Mandatory maintenance requirements – which provides that the registered operator of an Australian aircraft must comply with the mandatory maintenance requirements identified in the aircraft’s approved design as 1 or both of the following: the Certification Maintenance Requirements (**CMR**); airworthiness limitations (**AWL**).

The amendment also defines CMR as the required scheduled maintenance tasks which were established during the design certification of an aircraft as operating limitations of the aircraft’s type certificate (TC) or supplemental type certificate (STC).

The CMR and AWL contain the specific maintenance requirements for an aircraft and its aeronautical products.

Also, in paragraph 12.2 of the transitional provisions for determining when the first pressure altimeter tests were required under Airworthiness Directive AD/INST8 Amdt 4, and Airworthiness Directive AD/INST9 Amdt 6, the earlier amendment took account of one, but not the other, of *alternative interval requirements* of 24 months and 36 months, (applicable depending on the specific “Requirements” of the test procedures adopted). This is corrected by inserting mentions of the relevant “Requirement 1” into the proposed paragraph 12.2 to reference the existing 24 month procedure, and by inserting mentions of “Requirement 2 a.” into a new proposed paragraph 12.2A to reference the omitted 36 month procedure.

The CAO amendment commences on 1 August 2013. Paragraphs 9.1 and 12.2 in the earlier amendment were intended to commence on 1 August 2013 but having been replaced immediately before they were to commence, they never took effect and subsection 9 and paragraphs 12.2 and 12.2A in the CAO amendment are the operative amendments.

Human rights implications

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 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.