

Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 82.0 Amendment Instrument 2014 (No. 2)

Legislation

Subsection 28BA (1) (b) of the *Civil Aviation Act 1988* (the *Act*) provides that an air operator's certificate (*AOC*) has effect subject to any conditions specified in the regulations or Civil Aviation Orders (*CAOs*). Subsection 98 (4A) of the Act empowers CASA to issue CAOs not inconsistent with the Act or the regulations.

Subregulation 209 (1) of the *Civil Aviation Regulations 1988* (*CAR 1988*) provides that the operator and the pilot in command of an aircraft engaged in private operations shall comply with the provisions of the regulations and such additional conditions as CASA directs from time to time in the interest of safety. Regulation 5 of CAR 1988 provides, among other things, that if CASA is empowered to issue a direction, instruction or notification, or to give a permission, approval or authority, CASA may do so by way of issuing CAOs.

For each of the abovementioned provisions, CASA has issued Civil Aviation Order 82.0 (*CAO 82.0*) (and its amendments) which sets out conditions applicable to AOCs authorising aerial work operations, charter operations and regular public transport operations. The conditions limit the types of passenger-carrying operations that may be conducted by aircraft depending on engine configurations and set out requirements for extended diversion time operations (*EDTO*), including aeroplane eligibility, fuel load and flight crew training.

Under subsection 33 (3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Background

Civil Aviation Order 82.0 Amendment Order (No. 3) 2007 (the **2007 amendment**) amended CAO 82.0 so that the then-existing threshold time for extended range operations (for which CASA approval was required) was changed from 60 minutes to 90 minutes. This change was made in anticipation that the International Civil Aviation Organization (*ICAO*), the New Zealand Civil Aviation Authority (*NZCAA*) and other major aviation regulatory authorities would also be moving in this direction. However, subsequent consensus was not reached and neither the NZCAA or other civil aviation authorities will be altering their 60 minute threshold times for extended range operations in twin-engined aeroplanes to 90 minutes.

Consequently, CASA decided to re-evaluate its EDTO policy and amend CAO 82.0 to return to the previous threshold time of 60 minutes. *Civil Aviation Order 82.0 Amendment Instrument 2014 (No. 1)* was registered on 12 December 2014, with the instrument commencing on 1 January 2015 (F2014L01693 refers). However, the transitional application provisions set out in sections 4 and 5 of that instrument referred to the incorrect Schedule 1 amendment numbers. *Civil Aviation Order 82.0 Amendment Instrument 2014 (No. 2)* (the **CAO amendment**) repeals *Civil Aviation Order 82.0 Amendment Instrument 2014 (No. 1)* and makes the necessary changes to CAO 82.0 to give effect to

CASA's change in EDTO policy, as well as harmonising EDTO standards for 3 and 4 engined aeroplanes with international best practice.

CAO amendment

The CAO amendment makes 65 changes to CAO 82.0. The changes mean that an operation beyond 75 minutes from an adequate aerodrome without an aeroplane having met the appropriate type design and without CASA approval is no longer permitted. The changes also ensure that twin turbine-engined aeroplanes certificated to carry more than 19 passengers, or having a maximum payload capacity exceeding 3 410 kg, will be limited to a distance equivalent to 60 minutes at the 1 engine inoperative cruise speed from an adequate aerodrome (assuming still air and ISA conditions), unless operating under EDTO approval. The new EDTO operational standards will apply on 1 July 2015.

The CAO amendment also harmonises CAO 82.0 requirements with ICAO Annex 6 and international best practice, by mandating that aeroplanes with more than 2 turbine engines will have a maximum threshold time of 180 minutes. Operations with a maximum diversion time exceeding 180 minutes threshold time must be conducted in accordance with EDTO operations. The maximum diversion time is determined by the most time-limited EDTO significant system, if any, identified in the AFM or OEM operations manual. This maximum diversion time will be reduced by an operational safety margin of not less than 15 minutes.

For aeroplanes with more than 2 turbine engines, the cargo fire suppression system will be treated as the time-limited EDTO significant system if there is no specified EDTO time-limited system.

Legislative Instruments Act 2003 (the LIA)

Under subregulation 5 (1) of CAR 1988, if CAR 1988 empowers CASA to issue instruments such as approvals or directions, CASA may do so in the form of CAOs. Under subsection 98 (5) of the Act, where regulations provide for an instrument to be issued in the form of a CAO, the CAO so made is declared to be a legislative instrument under subsection 98 (5AAA). This CAO amendment is, therefore, a legislative instrument. It is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

Consultation

In March 2010, the Director of Aviation Safety wrote to all operators of twin turbine-engined aeroplanes certified to carry more than 19 passengers, or having a payload capacity exceeding 3 410 kg, regarding the proposed change of threshold time back to 60 minutes. CASA then issued a notice of proposed rulemaking (*NPRM*) on 6 June 2013 which was open for industry comment until 2 August 2013. This CAO amendment has been drafted in accordance with the *NPRM* in conjunction with comments provided by industry. It is CASA's view that it is not necessary or appropriate to undertake any further consultation under section 17 of the LIA.

Statement of Compatibility with Human Rights

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

Regulation Impact Statement

The Office of Best Practice Regulation assessed that the CAO amendment will have minor impact and that no further analysis in the form of a Regulation Impact Statement was required.

Making and commencement

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

Section 2A of the CAO amendment, which repeals *Civil Aviation Order 82.0 Amendment Instrument (No. 1)*, commences on the day of registration of the CAO amendment.

The other provisions of the CAO amendment commence on 1 January 2015, but will not apply to an Air Operator's Certificate authorising the operation of an aeroplane with more than 2 engines until 1 July 2015. The amended definition of ***threshold time*** from 90 minutes to 60 minutes and the omission of paragraphs 3BC.5 to 3BC.8 will also not apply until 1 July 2015.

[*Civil Aviation Order 82.0 Amendment Instrument 2014 (No. 2)*]

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

After a review of domestic and international industry practice and ICAO standards, CASA has decided to re-evaluate its extended diversion time operations (**EDTO**) policy by amending the definition of **threshold time** contained in Civil Aviation Order 82.0 from 90 minutes to 60 minutes. This means that operators of twin turbine-engined aeroplanes previously permitted to conduct extended range operations for a distance equivalent of 90 minutes (without requiring CASA approval), will only be able to conduct extended range operations for a distance equivalent of 60 minutes.

This instrument also harmonises EDTO standards for 3 and 4 engined aeroplanes with international best practice and specifies that aeroplanes with more than 2 turbine engines have a maximum threshold time of 180 minutes.

Human rights implications

This legislative 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