

Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 82.0 Amendment Instrument 2015 (No. 1)

Purpose

The purpose of *Civil Aviation Order 82.0 Amendment Instrument 2015 (No. 1)* (the **CAO amendment**) is to rectify the transitional application provision dealing with extended diversion time operations (**EDTO**) requirements for aeroplanes with more than 2 turbine engines, so that those requirements do not apply until 1 July 2015 in accordance with intended policy. The CAO amendment also makes 2 other corrections to *Civil Aviation Order 82.0 Instrument 2014*, also cited as Civil Aviation Order 82.0 (**CAO 82.0**), to remove a duplicated definition and to change a reference from aircraft to aeroplane.

CAO 82.0 — legislative background

Section 27 of the *Civil Aviation Act 1988* (the **Act**) empowers CASA to issue air operators' certificates (**AOCs**). Paragraph 28BA (1) (b) of 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 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 EDTO, including aeroplane eligibility, fuel load and flight crew training.

CAO amendment

Civil Aviation Order 82.0 Amendment Instrument 2014 (No. 2) (the **previous CAO amendment**) commenced on 1 January 2015 and amended CAO 82.0 for the purpose of changing the threshold time for extended range operations (for which CASA approval is required) from 90 minutes to 60 minutes. Provisions dealing with EDTO requirements do not apply until 1 July 2015.

As part of the EDTO project, CAO 82.0 itself, which commenced on 12 December 2014, contains a transitional application provision that delays the application of 3 provisions dealing with threshold time and EDTO requirements until 1 July 2015. One of these provisions, paragraph 1D (b), refers to paragraph 3BC.9 of CAO 82.0 as not applying until 1 July 2015.

As part of CASA's review processes and during the preparation of the compilation for CAO 82.0 and its amendments, it was identified that Item 20 of Schedule 1 of the previous CAO amendment had substituted paragraph 3BC.9 with a new

paragraph 3BC.4. Paragraph 3BC.4 is substantially the same as paragraph 3BC.9, but the provision was renumbered due to the omission of paragraphs 3BC.5 to 3BC.8 by Item 19 of Schedule 1 of the previous CAO amendment. Consequently, the transitional application provision in paragraph 1D (b) of CAO 82.0, which was made in December 2014, refers to a provision that no longer exists as of 1 January 2015.

The intended effect of the transitional application provision is that the renumbered paragraph 3BC.4 applies on 1 July 2015. Therefore, Item 1 of Schedule 1 of this CAO amendment corrects the transitional application provision reference to paragraph 3BC.4, instead of paragraph 3BC.9.

The CAO amendment also removes a duplicated reference to the definition for aircraft flight manual (*AFM*), since the definition of AFM already exists in CAO 82.0 but was also inserted in Item 10 of Schedule 1 of the previous CAO amendment.

Finally, the CAO amendment omits the reference to “aircraft” in paragraph 2.4 (a) of CAO 82.0 and inserts in its place the word “aeroplane”. Item 12 of Schedule 1 of the previous CAO amendment had removed the first reference to aircraft in favour of aeroplane, but did not account for the second reference to aircraft in that paragraph. This CAO amendment ensures that the remaining reference to aircraft in that paragraph is changed to aeroplane.

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

The CAO amendment corrects the application of CASA policy on EDTO, in line with consultations held in 2013 on the notice of proposed rulemaking and further consultations in 2014. Industry is aware of the EDTO requirement changes, commencing on 1 July 2015, and the CAO amendment ensures the EDTO requirements do not apply before then. It is CASA’s view that it is not necessary or appropriate to undertake any further consultation under section 17 of the LIA.

Office of Best Practice Regulation (OBPR)

The Office of Best Practice Regulation assessed that the previous CAO amendment had minor impact and did not require a Regulation Impact Statement. This CAO amendment does not change the intended regulatory approach of the previous CAO amendment.

Statement of Compatibility with Human Rights

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

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.

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Statement of Compatibility with Human Rights

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

Civil Aviation Order 82.0 Amendment Instrument 2015 (No. 1)

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 82.0 Amendment Instrument 2015 (No. 1)* (the **CAO amendment**) is to rectify the transitional application provision dealing with extended diversion time operations (**EDTO**) requirements for aeroplanes with more than 2 turbine engines, so that those requirements do not apply until 1 July 2015. This is in line with the intended effect of the EDTO changes, which were not captured due to a renumbering of a provision to which the transitional application provision applied. The CAO amendment also makes 2 other corrections to *Civil Aviation Order 82.0 Instrument 2014* to remove a duplicated definition and to change 1 reference from aircraft to aeroplane.

Human rights implications

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

Conclusion

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

Civil Aviation Safety Authority