

Explanatory Statement

Civil Aviation Safety Regulations 1998

Part 66 Manual of Standards Amendment Instrument 2015 (No. 1)

Purpose

The purpose of the *Part 66 Manual of Standards Amendment Instrument 2015 (No. 1)* (the **MOS amendment**) is to enable the continued use of the scheme previously available under the now repealed regulation 31 of the *Civil Aviation Regulations 1988 (CAR 1988)*, as a means of (a) qualifying for an aircraft engineer licence and rating under Part 66 of the *Civil Aviation Safety Regulations 1998 (CASR 1998)*, and (b) qualifying for the removal of exclusions placed on the licence or rating.

Legislation

Under subsection 98 (1) of the *Civil Aviation Act 1988* (the **Act**), the Governor-General may make regulations for the Act and in the interests of the safety of air navigation. The relevant regulations are CASR 1998.

Part 66 of CASR 1998, *Continuing airworthiness – aircraft engineer licences and ratings*, deals with licences and ratings for the performance of maintenance certifications and issuing certificates of release to service for aircraft.

Under subsection 98 (5A) of the Act, the regulations may empower CASA to issue instruments in relation to the maintenance or airworthiness of aircraft.

For subsection 98 (5A) of the Act, subregulation 66.015 (1) of CASR 1998 empowers CASA to issue a Manual of Standards (the **MOS**) that “specifies matters affecting” the maintenance or airworthiness of aircraft. In particular, under subregulation 66.015 (2) of CASR 1998, the MOS may specify the training and experience requirements for the grant of an aircraft engineer licence (an **AEL**).

Grant of licences

Under subregulations 66.025 (1) and (3), CASA must grant an AEL to an applicant if, among other things, the applicant meets the requirements of sections 66.A.25 and 66.A.30 of the Part 66 MOS for the licence applied for.

Section 66.A.25 of the Part 66 MOS specifies the basic knowledge and competency requirements for the grant of an AEL. Section 66.A.30 specifies the basic practical experience requirements for the grant of an AEL.

Under paragraph 66.026 (1) (d) of CASR 1998, CASA must grant an AEL subject to an exclusion of an aircraft system or a subset of a system if, among other things, the applicant meets the requirements of sections 66.A.25 and 66.A.30 of the Part 66 MOS for the licence applied for except the requirements specified in the Part 66 MOS for the excluded aircraft or system.

Under regulation 66.072 of CASR 1998, the holder of an AEL may apply for the removal of an exclusion. For this purpose, under subregulation 66.072 (3), CASA must receive evidence from a maintenance training organisation under Part 147 of CASR 1998 (an **MTO**) that the holder has successfully completed the training and assessment that is required for the aircraft system or subset of the system under section 66.A.25 of the MOS.

Grant of ratings

Under regulation 66.075 of CASR 1998, a person may apply for a rating for a type rated aircraft type. Under regulation 66.080, CASA must grant the rating if, among other things, the requirements in subregulation 66.080 (2) or (3) are met for either: aircraft type training (defined in Part 3 of the CASR Dictionary as training by an MTO); or training provided by a training organisation under Part 145 of CASR 1998.

Under subregulations 66.095 (1) and (2) of CASR 1998, CASA must grant a rating subject to an exclusion for an aircraft system or subset of a system if, among other things, CASA is satisfied that the applicant meets the requirements mentioned in subregulation 66.080 (2) or (3) except for the requirements for the excluded aircraft system or subset.

Under regulation 66.100 of CASR 1998, if CASA grants a rating subject to an exclusion CASA must decide what training may be necessary to enable removal of the exclusion (whether that of an MTO, a Part 145 organisation, or either), and whether practical experience is necessary.

Under regulation 66.110 of CASR 1998, the holder of a rating subject to an exclusion may apply to have it removed. Under paragraph 66.110 (2) (a), CASA must remove it on the basis of appropriate evidence of successful training from an MTO or a Part 145 organisation.

Background

Regulation 31 scheme

Before 27 June 2011, training and assessment to qualify for an aircraft maintenance engineer (*AME*) licence and ratings was conducted in accordance with the requirements of regulations 31 and 31C of CAR 1988 and an associated series of Civil Aviation Orders (the *CAOs*) made for the purposes of regulation 31.

Under the CAOs, Specification instruments were issued prescribing the examination requirements for the grant of a particular category of licence and for the grant of a particular Group rating for the category of licence.

Schedules of Experience were also prescribed for completion in relation to the acquisition of sufficient relevant practical experience in an appropriate training environment.

Each CAO was to be read in conjunction with a relevant Airworthiness Advisory Circular (*AAC*), in effect prescribing requirements for the grant of licences and ratings.

In practical terms, this regulation 31 scheme involved:

- (a) extensive self-study for CASA examinations in accordance with the Specification instruments; and
- (b) the accumulation of training and practical experience, as documented in a Schedule of Experience, through work within a CASR Part 145 maintenance organisation or within an organisation holding a CASA approval to carry out maintenance under regulation 30 of CAR 1988 (a CAR 30 certificate of approval holder, or *COA holder*).

Repeal and transition

Effective from 27 June 2011, regulations 31 and 31C, and their associated legislative architecture for training and assessment to qualify for an AME licence and ratings, were repealed by the *Civil Aviation and Civil Aviation Safety Amendment Regulations 2010 (No. 1)* and new arrangements substituted, including Part 66 of CASR 1998 and its associated Part 66 MOS.

However, Subpart 202.CG was inserted in CASR 1998 to provide transitional arrangements, in particular for existing holders of AME licences and ratings to be granted equivalent AEL and ratings, for AME licence applications to continue to be made on or after 27 June 2011, and for removal of exclusions from AELs granted on the basis of the operation of the transitional provisions. The transitional provisions expire at the end of 26 June 2015.

The transitional provisions operated by preserving the availability of regulations 31 and 31C, and their associated legislative architecture until the expiry date.

Retention of regulation 31 scheme

Pending the revision of Part 66 of CASR 1998 as part of an ongoing post-implementation review (PIR) in respect of small aircraft licensing under Part 66, CASA wishes to integrate into the Part 66 MOS the continuing availability of regulation 31 as an avenue through which a diminishing number of applicants may qualify for an AEL or for the removal of an exclusion on an AEL in respect of small aircraft. The numbers are diminishing in proportion to the continuing take up of the provisions of CASR 1998 for MTO or Part 145 organisation status.

Consequent on the expiry of the interim transitional arrangements under Subpart 202.CG of CASR 1998, the MOS amendment is made to achieve the objective of this integration until the CASR 1998 revisions are made.

The MOS amendment

The MOS amendment amends 4 existing sections of the MOS, and adds 3 new sections, including 1 dealing with exemptions.

1. Section 66.5 Definitions

Because the objective is to continue the availability of the comprehensive licensing and rating qualification scheme that was in place under the repealed regulations 31 and 31C of CAR 1988, the MOS amendment inserts a key definition of **regulation 31** into section 66.5 of the MOS.

Thus, **regulation 31** means paragraphs 31 (4) (b), (c) and (e) of CAR 1988, as in force immediately before the repeal of regulation 31 on 27 June 2011. Under paragraphs 31 (4) (b), (c) and (e) as then in force, an applicant for an AME licence must satisfy CASA that he or she has requisite knowledge and practical experience, and has passed relevant examinations, as required by relevant CAOs.

The definition of **regulation 31** also includes regulation 31C of CAR 1988, as in force immediately before 27 June 2011. Under regulation 31C as then in force, CASA could endorse an AME licence with a rating if the relevant practical experience had been acquired and the relevant examinations had been passed, as provided for in relevant CAOs.

The definition of **regulation 31** also includes reference to the relevant CAOs made for regulation 31, as in force immediately before 27 June 2011.

The definition of **regulation 31** also includes reference to Specification instruments made under each relevant CAO, as in force or existing immediately before 27 June 2015.

The relevant CAOs provided for rating examinations to be specified in Specification instruments. Relevant Specification instruments were made under the CAOs in August 2014.

Although, by virtue of the 2011 repeal of the actual regulation 31 and its related regulations, the relevant CAOs lapsed, they were still available for use under the transitional provisions in Subpart 202.CG.

It was considered in August 2014 that the continuing transitional existence of these CAOs enabled Specification instruments to be made under them for transitional purposes. Thus, for example, under transitional subregulation 202.344 (2A) of CASR 1998, broad wording was used to the effect that the CAOs may “apply in relation to” paragraphs 31 (4) (c) and (e) of CAR 1988. This was arguably sufficient empowerment to allow the specifications under the CAOs to be updated and re-issued in August 2014.

However, to avoid any doubt, the Specifications now included within the definition of **regulation 31** are expressed to be those “as in force **or existing**” immediately before 27 June 2015, which covers the August 2014 instruments which, at least, were in existence if not in force.

The definition of **regulation 31** also includes a series of AACs with which the relevant CAOs were expressly stated to be read, as those AACs existed immediately before 27 June 2015.

Regulation 31 is defined in this comprehensive way to provide access to the previous AME licence and rating qualification scheme.

For section 12 of the *Legislative Instruments Act 2003* (the **LIA**), no prejudicial retrospectivity is involved in the application of the definition.

The MOS amendment does not take effect before the date it is registered. Regulations 31 and 31C are merely invoked *as they were in force* immediately before 27 June 2011. The relevant CAOs are merely invoked *as they were in force* immediately before 27 June 2011. The Specifications and AACs are those at least in existence immediately before 27 June 2015.

In any event, the application of the definition of **regulation 31** is entirely beneficial for an applicant for an AEL or rating by prolonging the availability of the regulation 31 scheme for such an applicant to qualify for an AEL.

No person is disadvantaged, or has liabilities imposed on them, as a result of the preservation of the regulation 31 scheme.

2. Section 66.A.25

The MOS amendment amends section 66.A.25 of the MOS (which specifies the *basic knowledge and competency* requirements for the grant of an AEL and which, under subregulations 66.025 (1) and (3) of CASR 1998, must be complied with for the grant of an AEL).

The amendment inserts a new paragraph into section 66.A.25 of the MOS to the effect that a person who, if regulation 31 were still in force, would meet the requirements of regulation 31 for the issue of an AME licence in a category, is taken to meet the requirements of section 66.A.25 for the issue of the Part 66 licence that is equivalent to the licence that would have been issued for the category if regulation 31 were still in force.

A separate paragraph lists the various relevant licence categories, being airframes, engines, radio, electrical and instruments.

3. Section 66.A.30

The MOS amendment amends section 66.A.30 of the MOS (which specifies the *practical experience* requirements for the grant of an AEL and which, under subregulations 66.025 (1) and (3) of CASR 1998, must be complied with for the grant of an AEL).

The amendment inserts a new paragraph into section 66.A.30 of the MOS to the effect that a person who, if regulation 31 were still in force, would meet the requirements of regulation 31 for the issue of an AME licence in a category, is taken to meet the requirements of section 66.A.30 for the issue of the Part 66 licence that is equivalent to the licence that would have been issued for the category if regulation 31 were still in force.

A separate paragraph lists the various relevant licence categories, being airframes, engines, radio, electrical and instruments.

4. Section 66.A.45

The MOS amendment amends section 66.A.45 of the MOS (which specifies the requirements for the *grant of a rating*).

The amendment inserts a new paragraph into section 66.A.45 of the MOS to the effect that a person who, if regulation 31 were still in force, would meet the requirements of regulation 31 for the issue of a Group rating for a category of AME licence in a category, is taken to meet the requirements of section 66.A.45 for the issue of the Part 66 rating that is equivalent to the Group rating that would have been issued for the category if regulation 31 were still in force.

A separate paragraph lists the various relevant licence categories, being airframes, engines, radio, electrical and instruments, and the various Group ratings (from Group 1 to Group 22) that may be obtained with respect to a particular licence category.

A Group 21 or Group 22 rating will restrict maintenance activity to an engine fitted to a small aircraft. **Small aircraft** is defined in Part 3 of the Dictionary in CASR 1998. Part 3 contains definitions for Part 66 of CASR 1998. Under paragraph 66.5 (a) of the MOS, words and phrases generally have the same meaning as in Part 66. The other Groups mentioned in the section 66.A.45 amendment for licence categories are all, by the nature of their scope, also restricted to small aircraft.

Part 3 of the CASR Dictionary defines a small aircraft as the following (in general terms):

- (a) an aeroplane — with a maximum take-off weight (**MTOW**) of not more than 5 700 kg (except certain specified types and models); or
- (b) an aeroplane — with an MTOW of more than 5 700 kg, and that is of a type and model specified as a small aircraft; or
- (c) a helicopter — that has only 1 engine (except certain specified types and models); or
- (d) a helicopter — that has more than 1 engine, and that is of a type and model specified as a small aircraft.

5. New section 66.A.56

A new section 66.A.56 is inserted into the MOS to enable exclusions imposed on an AEL to be removed by the licence holder qualifying for their removal under the regulation 31 scheme.

The section applies to a person who holds a Part 66 licence that is subject to the exclusion of a particular aircraft system or a subset of an aircraft system. The Part 66 licence holder also includes a person who holds a Part 66 licence subject to a particular exclusion as a result of the

operation of the amendments made to incorporate regulation 31 processes into sections 66.A.25 and 66.A.30 of the MOS.

Thus, if the Part 66 licence holder would meet the requirements of regulation 31 for the issue of a category of AME licence without a particular exclusion, were regulation 31 still in force, then the holder is taken to meet the requirements of sections 66.A.25 and 66.A.30 of the MOS for the issue of the Part 66 licence without the particular exclusion.

6. New section 66.A.57

A new section 66.A.57 is inserted into the MOS to enable exclusions imposed on a rating endorsed on an AEL to be removed by the rating holder qualifying for their removal under the regulation 31 scheme.

The section applies to a person who holds a Part 66 rating that is subject to the exclusion of a particular aircraft system or a subset of an aircraft system. The Part 66 rating holder also includes a person who holds a Part 66 rating subject to a particular exclusion, as a result of the operation of the amendments made to incorporate regulation 31 processes into section 66.A.45 of the MOS.

Thus, if the Part 66 rating holder would meet the requirements of regulation 31 for the issue of a Group rating on a category of AME licence without the particular exclusion, were regulation 31 still in force, then the holder is taken to meet the requirements of section 66.A.45 of the MOS for the issue of the Part 66 rating without the particular exclusion.

7. New section 66.A.58 — Exemptions

As noted above, under subregulation 66.072 (3) of CASR 1998, before removing an exclusion from an AEL, CASA must receive evidence from an MTO that the holder has successfully completed the training and assessment that is required for the aircraft system or subset under section 66.A.25 of the Part 66 MOS.

Also, as noted above, under Part 66 of CASR 1998, to obtain a rating on an AEL requires the formal involvement of an MTO or a Part 145 organisation.

Thus, before CASA may grant a rating, the requirements in subregulation 66.080 (2) or (3) of CASR 1998 must be met, that is, for either: aircraft type training (defined in Part 3 of the CASR Dictionary as training by an MTO); or training provided by a training organisation under Part 145 of CASR 1998.

Under subregulations 66.095 (1) and (2) of CASR 1998, before granting a rating subject to an exclusion, CASA must be satisfied that the applicant meets the requirements mentioned in subregulations 66.080 (2) or (3) except for the requirements for the excluded aircraft system or subset.

Under regulation 66.100 of CASR 1998, if CASA grants a rating subject to an exclusion, CASA must decide whether MTO or Part 145 organisation training is necessary before its removal.

Under paragraph 66.110 (2) (a), CASA must remove an exclusion only on the basis of appropriate evidence of successful training from an MTO or a Part 145 organisation.

Thus, unless a person is exempted from these requirements, it is not possible to use the regulation 31 scheme to obtain a rating qualification. The MOS amendment, therefore, contains a number of exemptions.

Under subregulation 11.160 (1), CASA may grant an exemption from a provision of CASR 1998 affecting the safety, airworthiness or design of aircraft. Under subregulation 11.160 (2), an exemption may be granted to a person or a class of persons. Under subregulation 11.160 (3), CASA may grant an exemption on application, or on its own initiative. For making a decision on its own initiative, CASA is guided by the requirement in subsection 9A (1) of the Act that in exercising its powers and functions CASA must regard the safety of air navigation as the most important consideration. Under subregulation 11.230 (1), an exemption (but not an exceptional circumstances exemption for regulation 11.185 about major emergencies) may remain in force for 3 years or for a shorter period specified in the instrument.

The exemptions are included in the MOS amendment itself for completeness and ease of reference. This is possible, first, because the making words of the MOS amendment invoke regulation 11.160 as the relevant head of power. Secondly, under subregulation 66.015 (1) of CASR 1998, CASA may issue a MOS “that specifies matters affecting the maintenance or airworthiness of aircraft”. It is considered that this formula is a broad empowerment that enables the inclusion within the MOS amendment instrument itself of an exemption. The exemptions involved are matters, they are specified, and they affect the maintenance or airworthiness of aircraft.

Details of exemptions

Thus, a new section 66.A.58 is inserted into the MOS. Under paragraph 66.A.58 (a), a person to whom paragraph 66.A.25 (i), paragraph 66.A.30 (f) or section 66.A.56 of this MOS applies (that is, a person making use of the regulation 31 scheme to obtain an AEL or obtain the removal of an exclusion from an AEL) is exempt from subregulation 66.072 (3) of CASR 1998 (evidence of successful training by an MTO).

Under paragraph 66.A.45 (j), a person to whom paragraph 66.A.45 (j) or section 66.A.57 of this MOS applies (that is, a person making use of the regulation 31 scheme to obtain a rating on an AEL or to obtain the removal of an exclusion from a rating) is exempt from each of the following provisions of CASR 1998: paragraph 66.080 (1) (b) and subregulations 66.080 (2) and (3) (evidence of successful training by an MTO or Part 145 organisation); paragraphs 66.095 (1) (c) and (2) (d) (evidence of successful training by an MTO or Part 145 organisation); regulation 66.100 (involvement of an MTO or Part 145 organisation to remove an exclusion); and paragraph 66.110 (2) (a) (evidence of successful training by an MTO or Part 145 organisation).

An exemption may remain in force for 3 years or such lesser period as is specified in the instrument of exemption. The exemptions in this case are expressed to expire at the end of 26 June 2017. Before that date, it is expected that Part 66 of CASR 1998 will have been amended to appropriately regulate relevant aspects of the regulation 31 scheme such that the exemptions and the MOS amendments may no longer be required.

These exemptions are from the formal requirements provided for by the relevant provisions of Part 66 of CASR 1998. They do not affect the nature and content of the training, experience and CASA examinations that an applicant must undertake under the auspices of a COA holder or a Part 145 organisation, as described above, in order to qualify under the regulation 31 scheme for an AEL, a rating or the removal of an exclusion.

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 subsections 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 particular persons, aircraft or products. The MOS amendment

is made under subregulation 66.015 (1) of CASR 1998, “for subsection 98 (5A) of the Act”. It is expressed to have general application and is, therefore, a legislative instrument subject to registration, and tabling and disallowance in the Parliament, under sections 24, and 38 and 42, of the LIA.

Consultation

Consultation under section 17 of the LIA was undertaken as follows. On 27 May 2015, details of the MOS amendment were published for comment on the CASA website, circulated to the relevant subcommittee of the Standards Consultative Committee (a joint CASA/industry consultation forum), and distributed, through an established CASA email listing, to a wide range of interested parties. Consultation closed 28 days later on 24 June 2015. There were 5 responses to the invitation for comment, all supporting the proposals, with 4 requesting clarification (which was given and accepted). There being no adverse comment on the proposals, CASA proceeded to finalise the MOS amendments.

Office of Best Practice Regulation (OBPR)

Having assessed proposals of this nature as not requiring the preparation of a Regulation Impact Statement, OBPR has provided a RIS exemption for the MOS amendment (OBPR ID: 18846).

Statement of Compatibility with Human Rights

The Statement in Appendix 2 is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The MOS amendment does not directly engage any of the applicable rights or freedoms, and is compatible with human rights, as it does not directly raise any human rights issues.

Commencement and making

The MOS amendment commences on 27 June 2015. It has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

[Part 66 Manual of Standards Amendment Instrument 2015 (No. 1)]

Statement of Compatibility with Human Rights

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

Civil Aviation Safety Regulations 1998

Part 66 Manual of Standards 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 the *Part 66 Manual of Standards Amendment Instrument 2015 (No. 1)* is to enable the continued use of the scheme previously available under the now repealed regulation 31 of the *Civil Aviation Regulations 1988*, as a means of (a) qualifying for an aircraft engineer licence and rating under Part 66 of the *Civil Aviation Safety Regulations 1998*, and (b) qualifying for the removal of exclusions placed on the licence or rating.

Human rights implications

The 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*. 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