

Explanatory Statement

Civil Aviation Regulations 1988

Civil Aviation Order 100.7 Instrument 2015

Legislation

Subsection 98 (4A) of the *Civil Aviation Act 1988* (the **Act**) empowers CASA to issue Civil Aviation Orders (the **CAOs**) not inconsistent with the Act or the regulations.

Subsection 98 (5A) of the Act provides that the regulations may empower CASA to issue instruments in relation to matters affecting the safe navigation and operation of aircraft.

Subregulation 5 (1) of the *Civil Aviation Regulations 1988* (**CAR 1988**) provides that where CASA is empowered to issue certain instruments such as permissions, approvals or directions, it may do so in a CAO.

Under subregulation 235 (1) of CAR 1988, CASA may give directions setting out the method for estimating the weight of an aircraft (including persons, goods and fuel on board) and the aircraft's centre of gravity. Under subregulation 235 (2A) of CAR 1988, it is an offence to contravene a direction issued under subregulation 235 (1), attracting 50 penalty units.

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 100.7 (**CAO 100.7**) sets out the requirements for the periodic weighing of aircraft to establish their weight and centre of gravity. Historically, this has been conducted by an appropriately authorised person, having a Weight Control Authority. CAO 100.7 sets out the weighing intervals for aircraft, dependent on maximum take-off weight, and the requirements for recording aircraft weight and weight change in logbooks and load data sheets. The weighing procedure is also specified, including prescribing who may carry out the weighing.

For subregulations 5 (1) and 235 (1) of CAR 1988, CAO 100.7 was made on 12 December 2004 as *Civil Aviation Amendment Order (No. R85) 2004* (the **2004 CAO**), also known as F2005B00929, and registered on the Federal Register of Legislative Instruments. Schedule 1 of the 2004 CAO contained the entire section 100.7 of the CAOs (also referred to as CAO 100.7). Subsequent amendments to the 2004 CAO, up to and including *Civil Aviation Order 100.7 Amendment Order (No. 2) 2007* made in December 2007, were made under the abovementioned provisions of CAR 1988.

In late 2014, discussions between CASA and the Office of Parliamentary Counsel (OPC) revealed that the existence of CAOs in schedules to Civil Aviation Amendment Orders could create legislative ambiguity and was not best practice drafting methodology. To rectify this issue, CASA has decided to repeal the 2004 CAO and remake CAO 100.7 in its entirety by way of issuing the *Civil Aviation Order 100.7 Instrument 2015* (the **2015 CAO**).

The 2015 CAO also includes changes to minimise the regulatory burden on amateur-built aircraft owners, builders and operators who have found that compliance with the aircraft

weighing requirements to be cost and time prohibitive. The requirements of the 2015 CAO compared to the 2004 CAO, as amended, have not otherwise changed.

Should subsequent legislative amendments be made to CAO 100.7, those changes would be made to the 2015 CAO itself, rather than a schedule contained in the 2004 CAO.

Instrument

The 2015 CAO contains a number of changes to relieve the aircraft weighing compliance burden on amateur-built aircraft owners, builders and operators following industry consultation on weighing requirements. The 2015 CAO also contains changes to standardise the referencing of provisions to be consistent with other CAOs and the civil aviation regulations, as well as removing archaic terminology.

The application provision of the 2015 CAO now reflects that the CAO applies to all aircraft other than balloons, airships, or aircraft that have been weighed in accordance with the approved procedures of an approved self-administering aviation organisation. The 2004 CAO, as amended, only provided that the CAO does not apply to a balloon. Narrowing the applicability of the CAO, therefore, excludes amateur-built aircraft owners, builders and operators from complying with the weighing procedures and record-keeping requirements set out in the CAO, subject to conducting weight and balance activities in accordance with approved procedures.

New definitions for the acronyms CAR 1988 and CASR 1998 have been inserted, since there is now a need to differentiate between the 2 regulations after inclusion of CASR 1998 amendments. A number of references to maximum take-off weight and maximum TOW have been standardised to MTOW to ensure consistency both within the document and with other legislation.

A person who may conduct aircraft weighing, under subsection 4 of the 2015 CAO, has been expanded from weight control officers to persons who satisfy the criteria in paragraph 4.1A. Broadly, the person (who is not a weight control officer) must have successfully completed an aircraft weighing procedures course approved by CASA in the last 2 years; must have had practical experience in setting up the aircraft for the purpose of conducting symmetry checks, rigging angles and control surface travels; must weigh the aircraft on scales approved by CASA; and, for experimental aircraft, must ensure flight tests are conducted in accordance with subregulation 262AP (3) of CAR 1988 regarding the prohibition of carriage of non-essential crew. The new provision will allow amateur-built aircraft owners, builders or operators who satisfy the requirements to conduct and certify weight and balance activities for their aircraft.

Consistent with current best practice, paragraph 4.3 has been amended to reflect weighing scale calibration by a laboratory that is accredited with the National Association of Testing Authorities (Australia) within a period of 1 year before the weighing of any aircraft. The provisions previously referred to calibration by the State Weights and Measures Authority.

The note after paragraph 7.1 for current empty weight has been omitted since it is no longer applicable due to the changes made to CAO 100.7.

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). The 2015 CAO 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 2015 CAO expands the scope of persons who are authorised to weigh aircraft and conduct balance activities to include persons who are owners, builders or operators of amateur-built aircraft. CASA released the draft amendments to CAO 100.7 for industry consultation on 24 March 2015 and received 14 responses. Industry comments have been incorporated into the 2015 CAO or have been otherwise resolved through discussions. It is CASA's view that further consultation under section 17 of the LIA is not necessary or appropriate.

Office of Best Practice Regulation (OBPR)

OBPR assessed the proposed amendments as minor and that no further analysis in the form of a Regulation Impact Statement was required (OBPR ID: 18189).

Statement of Compatibility with Human Rights

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

Making and commencement

The 2015 CAO has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

The instrument commences on the day of registration.

[Civil Aviation Order 100.7 Instrument 2015]

Statement of Compatibility with Human Rights

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

Civil Aviation Order 100.7 Instrument 2015

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

CASA has decided to reissue Civil Aviation Order (**CAO**) 100.7 by repealing *Civil Aviation Amendment Order (No. R85) 2004*, as amended, and making the *Civil Aviation Order 100.7 Instrument 2015*. CAO 100.7 has been remade in substantially similar terms, with amendments to expand the scope of persons who may conduct the weighing of aircraft to amateur-built aircraft owners, builders or operators who satisfy the relevant criteria. The remake also standardises the language and terminology used to be consistent with civil aviation legislation.

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