

Explanatory Statement

Civil Aviation Safety Regulations 1998

Manual of Standards Part 66 Amendment Instrument 2016 (No. 4)

Purpose

The purpose of the *Manual of Standards Part 66 Amendment Instrument 2016 (No. 4)* (the **No. 4 Amendment**) is to amend the Part 66 Manual of Standards (**Part 66 MOS**) to include the Eurocopter MBB-BK 117 D2 aircraft type. The No. 4 Amendment is being made to avoid doubt since it is unclear, due to drafting ambiguities, whether the *Manual of Standards Part 66 Amendment Instrument 2016 (No. 2)* (the **No. 2 Amendment**) or the *Manual of Standards Part 66 Amendment Instrument 2016 (No. 3)* (the **No. 3 Amendment**) were able to give effect to the intention of inserting the new aircraft type in the Part 66 MOS.

Legislation

Under section 9 of the *Civil Aviation Act 1988* (the **Act**), CASA has the function of conducting the safety regulation of a range of matters, including under paragraph 9 (1) (c), developing and promulgating appropriate, clear and concise aviation safety standards.

Under subsection 98 (1) of 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 the *Civil Aviation Safety Regulations 1998 (CASR 1998)*. Within CASR 1998, Part 66, *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, regulation 66.015 of CASR 1998 empowers CASA to issue a Manual of Standards that specifies matters affecting the maintenance or airworthiness of aircraft.

Under subsection 33 (3) of the *Acts Interpretation Act 1901* (the **AIA**), 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.

Instrument

The No. 2 Amendment was registered on the Federal Register of Legislation on 17 March 2016 (F2016L00390 refers). However, item 3 of Schedule 1 of the No. 2 Amendment incorrectly identified the place in the Part 66 MOS for insertion of the MBB-BK 117 D2 aircraft type. The reference in the No. 2 Amendment stated:

[3] Appendix IX, Table 5

after

MBB-BK 117 C2

EC145

Eurocopter MBB-BK 117 C2
(Turbomeca Arriel 1)^{Note 1, Note 3, Note 6}

Table 5 of Appendix IX of the Part 66 MOS refers to **MBB-BK 117 C2 EC145 Eurocopter MBB-BK 117 C2 (Turbomeca Arriel)**^{Note 2}, and does not refer to “Note 1, Note 3, Note 6” as mentioned in the No. 2 Amendment. Accordingly, the insertion of the new MBB-BK 117 D2

aircraft type was not able to be given effect to for the reason that the place of insertion was inaccurately described.

The No. 3 Amendment was registered on the Federal Register of Legislation on 18 April 2016 (F2016L00532 refers). It amended item 3 of Schedule 1 of the No. 2 Amendment, so that the No. 2 Amendment accurately referenced the place of insertion for the new MBB-BK 117 D2 aircraft type. However, it is doubtful whether amending the No. 2 Amendment would have any effect on the Part 66 MOS since the No. 2 Amendment was itself repealed on 31 March 2016, which was the day after registration in accordance with section 48A of the *Legislation Act 2003*, before the No. 3 Amendment was made.

To avoid doubt, the No. 4 Amendment is being made to insert the new MBB-BK 117 D2 aircraft type in Table 5 of Appendix IX of the Part 66 MOS.

Legislation Act 2003 (the LA)

Under paragraph 98 (5A) (a) of the Act, the regulations may empower CASA to issue instruments in relation to the maintenance of aircraft. The Part 66 MOS was issued under regulation 66.015 of CASR 1998, which empowers CASA to issue a Manual of Standards for subsection 98 (5A) of the Act. Under subsection 98 (5AA) of the Act, such an instrument is a legislative instrument for the LA if it is expressed to apply to classes of persons, aircraft or aeronautical products rather than to individual persons, or individual aircraft or products. The Part 66 MOS is a legislative instrument since it applies to a class of persons being maintenance engineers.

Under subsection 33 (3) of the AIA, the relevant power of making for the No. 4 Amendment must be exercisable in a like manner to the instrument being amended, in this case, the Part 66 MOS. Therefore, the No. 4 Amendment is also a legislative instrument, subject to tabling and disallowance in the Parliament, under sections 38 and 42 of the LA.

Consultation

The No. 4 Amendment is minor or machinery in nature. It only makes 1 change in order to give effect to insertion of the new MBB-BK 117 D2 aircraft type in the Part 66 MOS as intended. The inclusion of this aircraft type in the Part 66 MOS was specifically requested by Airbus Group Australia Pacific Limited (*Airbus Group*) in anticipation of maintenance services being provided for an operator in Papua New Guinea. Broader consultation with industry has not been conducted since the effect of the amendment only concerns Airbus Group. The Director of Aviation Safety issued an instrument of determination on 17 March 2016 under paragraph 11.275 (1) (d) of CASR 1998 that determined that the No. 2 Amendment, and each of the amendments contained within it (including the amendment in the No. 4 Amendment), did not substantially alter existing arrangements and did not require consultation. It is CASA's view that no further consultation under section 17 of the LA is necessary or appropriate.

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement (*RIS*) is not required because the instrument is covered by a standing agreement between CASA and OBPR under which a RIS is not required (OBPR id: 14507).

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*.

Commencement and making

The No. 4 Amendment has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

The No. 4 Amendment commences on the day of registration.

[Manual of Standards Part 66 Amendment Instrument 2016 (No. 4)]

Statement of Compatibility with Human Rights

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

Manual of Standards Part 66 Amendment Instrument 2016 (No. 4)

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 *Manual of Standards Part 66 Amendment Instrument 2016 (No. 2)* (the **No. 2 Amendment**) was to, among other things, amend the Manual of Standards Part 66 (**Part 66 MOS**) to insert a new MBB-BK 117 D2 aircraft type which is relevant to maintenance personnel working for Airbus Group Australia Pacific Limited. The No. 2 Amendment inaccurately described the place for insertion of the new aircraft type. The *Manual of Standards Part 66 Amendment Instrument 2016 (No. 3)* amended the No. 2 Amendment on 18 April 2016 to correct the referencing error. However, it is unclear whether amending the No. 2 Amendment, which was itself repealed on 31 March 2016, would result in the intended change to the Part 66 MOS.

Accordingly, the *Manual of Standards Part 66 Amendment Instrument 2016 (No. 4)* is being made to insert the new MBB-BK 117 D2 aircraft type in Table 5 of Appendix IX of the Part 66 MOS.

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