

Explanatory Statement

Civil Aviation Regulations 1988

Determination — non-application of part of CAO 100.5

Purpose

This instrument determines that the periodic checking of Automatic Direction Finding (**ADF**) systems and VHF Omni-directional Radio Range (**VOR**) systems is not required for those Australian aircraft which are governed by Civil Aviation Order 100.5 (**CAO 100.5**) and operate under the visual flight rules (the **V.F.R.**).

CAO 100.5 applies to Australian aircraft in respect of which an Australian certificate of airworthiness is in force, but does not apply to aircraft involved in regular public transport (**RPT**) operations (to which Part 42 of CASR 1998 applies) or other aircraft that have been voluntarily transitioned to Part 42. The periodic checking of ADF and VOR systems is currently prescribed under clauses 18 and 19 of Appendix 1 to CAO 100.5 respectively.

These periodic checks are not considered necessary or appropriate for aircraft that are operating under the V.F.R., as these navigation systems are not required for V.F.R. flights. While these systems may be used during a V.F.R. flight if they are installed and working, they may not be relied upon as the primary means of navigation — pilots operating a flight under the V.F.R. must be able to navigate by visual reference to the ground.

Instrument

Section 98 of the *Civil Aviation Act 1988* (the *Act*) empowers the Governor-General to make regulations for the Act and the safety of air navigation.

Under subregulation 38 (1) of the *Civil Aviation Regulations 1988* (**CAR 1988**), CASA may give directions relating to the maintenance of Australian aircraft for the purpose of ensuring the safety of air navigation. Under subregulation 5 (1), where CASA has power to issue directions, it may do so in Civil Aviation Orders (the **CAOs**).

Part 42 of the *Civil Aviation Safety Regulations 1998* (**CASR 1998**) prescribes the continuing airworthiness and maintenance requirements for aircraft involved in RPT operations. CAO 100.5 provides alternative directions for those Australian aircraft which are not governed by the provisions of Part 42 of CASR 1998, and to which an Australian certificate of airworthiness is in force.

Paragraph 11.2 of CAO 100.5 provides that the registered operators of Australian aircraft that do not have their own approved system of maintenance must comply with the maintenance requirements set out in Appendix 1 as applicable to the aircraft. In particular, clauses 18 and 19 of Appendix 1 to CAO 100.5 contain directions specifying the periodic testing of ADF and VOR systems of Australian aircraft to which CAO 100.5 applies.

Under paragraph 1.2 of CAO 100.5, CASA may issue a determination which provides that a provision of CAO 100.5 does not apply to specific aircraft or classes of aircraft

to which CAO 100.5 applies. Under paragraph 1.3 of CAO 100.5, before making a determination, CASA must take into account any relevant safety considerations.

Using this power, CASA has determined in the instrument that clauses 18 and 19 of Appendix 1 to CAO 100.5 do not apply to Australian aircraft conducting flights under the V.F.R. The existing provisions of subsection 5 (2) within the table to Part 2 of Schedule 5 to CAR 1988 adequately deal with the periodic inspection of navigation equipment for those Australian aircraft which operate under the V.F.R. in accordance with Division 3 of Part 12 of CAR 1988.

CASA does not consider that the determination will have a detrimental effect on the safety of air navigation.

Legislation Act 2003 (the LA)

Paragraph 98 (5A) (a) of the Act provides that CASA may issue instruments in relation to matters affecting the safe navigation and operation, or the maintenance, of aircraft. Subsection 98 (5AA) provides that an instrument issued under paragraph 98 (5A) (a) is a legislative instrument if the instrument is expressed to apply to a class of aircraft. The instrument applies to a class of aircraft, being Australian aircraft which are governed by CAO 100.5 and operate under the V.F.R.

Under section 57A of the LA, an instrument is a legislative instrument for section 8 of the LA if it is declared to be a disallowable instrument under legislation in force before 1 January 2005. Under regulation 5A of CAR 1988 (which was in force before 1 January 2005), if CASA has issued a CAO that is not an airworthiness directive, and CASA later issues a direction that affects the operation of the CAO, the direction is declared to be a disallowable instrument. This instrument affects the operation of CAO 100.5.

The instrument is, therefore, a legislative instrument and is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Consultation

Members of the aviation industry approached CASA to advise that the periodic checking of ADF and VOR navigation systems required under Appendix 1 to CAO 100.5 had the potential to place an unnecessary burden on the operators and maintenance personnel of aircraft operating under the V.F.R.

CASA consulted with these members to confirm that the periodic checking of ADF and VOR navigation systems of aircraft operating under the V.F.R. was not necessary. CASA proposed that an instrument could be made to provide that these periodic checking requirements did not apply to aircraft to which CAO 100.5 applies that operate under the V.F.R. These members of the aviation industry endorsed CASA's proposed approach, and the proposed non-application of these periodic checking requirements has been given effect in this instrument. In addition, amendments are planned for CAO 100.5 to confirm the intended application of the periodic checking requirements for ADF and VOR systems.

It is CASA's view that no further consultation under section 17 of the LA is appropriate or reasonably practicable for this instrument.

Statement of Compatibility with Human Rights

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

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).

Making and commencement

This instrument 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 and expires at the end of April 2019, as if it had been repealed by another instrument.

[Instrument number CASA 47/16]

Statement of Compatibility with Human Rights

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

Determination — non-application of part of CAO 100.5

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 this instrument is to determine that the periodic checking of Automatic Direction Finding (*ADF*) systems and VHF Omni-directional Radio Range (*VOR*) systems is not required for those Australian aircraft which are governed by Civil Aviation Order 100.5 and operate under the visual flight rules (the *V.F.R.*).

The instrument reflects the existing CASA policy and industry expectation that it is neither necessary nor appropriate to periodically check the ADF and VOR systems on aircraft which operate under the V.F.R., as these systems are not required for V.F.R. flights.

The instrument does not change CASA's existing policy and regulations requiring the inspection of other navigation systems used by aircraft operating under the V.F.R. The navigation equipment of aircraft operating under the V.F.R. are also subject to other periodic inspections (see, for example, the inspections contained within the CASA maintenance schedule under subsection 5 (2) of Part 2 of Schedule 5 to the *Civil Aviation Regulations 1988*).

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