

Explanatory Statement

Civil Aviation Regulations 1988

Civil Aviation Order 100.7 Amendment Instrument 2018 (No. 1)

Purpose

The purpose of this legislative instrument is to clarify the arrangements for the calibration of scales used to weigh aircraft, correct an error in the *Civil Aviation Order 100.7 Instrument 2015 (CAO 100.7)* and to make minor editorial changes to CAO 100.7 to reflect current drafting styles.

Legislation

Section 98 of the *Civil Aviation Act 1988* (the *Act*) empowers the Governor-General to make regulations for the Act and in the interests of the safety of air navigation. Relevantly, the Governor-General has made the *Civil Aviation Safety Regulations 1998* and *Civil Aviation Regulations 1988 (CAR)*.

Subregulation 5 (1) of CAR 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, 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, 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.

Subsection 98 (5D) of the Act provides that a legislative instrument made under the Act or the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time, even if the other instrument or writing does not yet exist when the legislative instrument is made.

Background

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 weight control officers (*WCOs*) who hold an appropriate and valid airworthiness authority granted under paragraph 33B (1) (e) of CAR. 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.

After CAO 100.7 came into effect on 9 July 2015, industry provided feedback to CASA advising that the National Measurement Institute (*NMI*), which was created in 2009 to perform the functions that were previously in the remit of the State Weights and Measures Authority, is not accredited with the National Association of Testing Authorities Australia (*NATA*) or the International Laboratory Accreditation Cooperation (*ILAC*). Other aviation

industry equipment calibrating organisations may use various standards that may be traced to NATA, but those organisations are also not accredited. Consequently, weighing organisations and individuals in the aviation industry, whose primary business is to provide aircraft weighing services, are unable to weigh aircraft to which CAO 100.7 applies (**CAO 100.7 aircraft**) using equipment that complies with CAO 100.7 until such time that NMI or other calibrating organisations receive NATA or ILAC accreditation.

CASA issued exemption CASA EX135/15 to exempt WCOs and persons referred to in paragraph 4.1A of CAO 100.7 from compliance with the requirements of paragraph 4.3 of CAO 100.7. That exemption expired on 30 June 2017, and was replaced by CASA EX73/17. CASA has now amended CAO 100.7 to give permanent effect to the exemptions.

Overview of instrument

In accordance with subsection 33 (3) of the *Acts Interpretation Act 1901*, the legislative instrument amends CAO 100.7 by incorporating into it more flexible arrangements under which organisations may calibrate scales used to weigh aircraft, consistent with the arrangements in the exemption instruments mentioned above. In addition, the instrument corrects 2 errors in CAO 100.7 that, respectively, incorrectly prioritise the triggers for the reweighing of rotorcraft, and omit a guidance note that CASA considers remains pertinent to the implementation of the CAO. The instrument also makes minor changes to clarify and update the drafting of CAO 100.7.

Content of instrument

Section 1 states the instrument name.

Section 2 states the commencement of the instrument. The instrument will be repealed in accordance with section 48A of the *Legislation Act 2003*.

Section 3 provides that CAO 100.7 is amended as set out in Schedule 1.

The amendments to CAO 100.7 are set out in Schedule 1. There are 9 items.

Item 1 repeals and remakes the application subsection 1 of CAO 100.7. The subsection has been redrafted to state the aircraft to which the CAO does not apply, rather than by excluding the relevant kinds of aircraft from the term ‘aircraft’ as defined. This amendment does not intend to change the effect of the subsection.

In accordance with subsection 98 (5D) of the Act, the amended subsection incorporates by reference procedures for weighing aircraft that, when accepted or approved by CASA, will be stated in documents of **sport aviation bodies** (defined in the CASR Dictionary). For the purposes of CAO 100.7, the documents will be:

- RAA Technical Manual, which is defined in *Civil Aviation Order 95.32* and *Civil Aviation Order 95.55*;
- GFA Manual of Standard Procedures, mentioned in subparagraph 3.1 (aa) of *Civil Aviation Order 95.4 Instrument 2011*;
- HGFA Operations Manual, which is defined in *Civil Aviation Order 95.8 Instrument 2011* and *Civil Aviation Order 95.32*; and
- ASRA Operations Manual, which is defined in *Civil Aviation Order 95.12 Instrument 2011* and *Civil Aviation Order 95.12.1 Instrument 2011*.

Each of these documents is the appropriate repository of procedures for the weighing of aircraft to which the relevant Civil Aviation Order applies because they are the documents given regulatory effect by the relevant Civil Aviation Order.

In accordance with subsection 98 (5D) of the Act, the procedures in each of the documents mentioned above are incorporated into the legislative instrument in the form that is accepted or approved by CASA at the time the aircraft is weighed. The provision has no application in relation to an aircraft until procedures are accepted or approved by CASA for the aircraft.

Each of the documents are freely available on the website of the sport aviation body that owns the document.

Items 2, 3 and 4 amend CAO 100.7 to reflect use of the terms **CAR** and **CASR** as defined in the CASR Dictionary, rather than relying on the terms **CAR 1988** and **CASR 1998** specially defined for the CAO.

Item 5 repeals paragraph 4.3 that deals with who can calibrate a scale used to weigh aircraft. The item remakes paragraph 4.3 with an expanded list of organisations.

The revised list includes any organisation that uses a reference standard to calibrate the scales if there is a valid certificate of calibration for the reference standard and the certificate has been issued by an **accredited organisation**, which term is defined in new subparagraph 4.3A (b).

The revised list also includes any organisation that uses a reference standard to calibrate the scales if there is a valid certificate of verification for the reference standard issued under the *National Measurement Regulations 1999*.

The calibration of the scales must have been conducted within the 12 month period preceding the weighing of the aircraft.

New subparagraph 4.3A (a) states that a certificate of calibration or certificate of verification is valid during any period of effect stated on the certificate or any date stated on the certificate by which the reference standard must be recalibrated or reverified. The intention is to capture any period of effect of such certificates, whether the period be expressed as a duration or by reference to an expiry date.

Item 6 repeals paragraph 5.2 (3) of CAO 100.7, including the following note, and remakes the paragraph with only the first sentence of the repealed paragraph. CASA ceased a role in the preparation, maintenance, approval and issue of flight manuals and flight manual supplements with the introduction of the new flight manual regulations in August 1999. With that change to CASA's role, the deleted text of the paragraph became superfluous.

Item 7 amends sub-subparagraph 6.3 (b) (ii) by correcting an error in the triggers for reweighing rotorcraft. The amendment replaces "greater" with "lesser", so that the lower of the 2 centre of gravity changes mentioned in the provision triggers a reweighing of the aircraft.

Item 8 amends paragraph 7.1 by reinserting a note at the end of the paragraph that was omitted when CAO 100.7 was made in 2015.

Legislation Act 2003 (the LA)

Paragraph 10 (1) (d) of the LA provides that an instrument will be a legislative instrument if it includes a provision that amends or repeals another legislative instrument. Since this instrument amends CAO 100.7, it is a legislative instrument subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Consultation

For section 17 of the LA, CASA consulted the public on these proposed changes over a two-week period from 5 April to 19 April 2018 following CASA project (CD 1603OS). The incorporation of the matters in instrument CASA EX73/17 into CAO 100.7, and other minor or machinery changes in the instrument, were met with a positive industry response and are included in the amendment.

CASA also consulted on a change to increase the calibration interval of weighing scales, given initial industry feedback that the requirement in the CAO was too burdensome. From the consultation feedback, CASA is aware that the industry requires relief from the 12-month calibration requirement. However, from the consultation that has taken place, a time-based extension (from 1 year to 2 years) would not take into account many other factors that determine a reasonable calibration time, such as usage or equipment type. For that reason, CASA is not extending the calibration interval to 2 years at this point in time, but will remain cognisant of the issue.

Some non-editorial amendments were made to subsection 1 after the consultation process, principally to ensure that paragraph (c) of subsection 1 was limited in scope to aircraft that are both registered with a sports aviation body, as defined in the CASR Dictionary, and that are weighed in accordance with the accepted or approved procedures of that body. These changes are consistent with CAO 100.7 as in force before the commencement of this legislative instrument. In this circumstance, CASA considers that no further consultation is necessary for section 17 of the LA.

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement (*RIS*) is not required in this case as OBPR considered that the amendments did not require a RIS (OBPR id: 20549).

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights at Attachment 1 has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The instrument does not engage any of the applicable rights or freedoms, and is compatible with human rights, as it does not raise any human rights issues.

Making and commencement

The 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 1 July 2018.

Statement of Compatibility with Human Rights

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

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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

This legislative instrument amends *Civil Aviation Order 100.7 Instrument 2015 (CAO 100.7)* by incorporating into it more flexible arrangements under which organisations may calibrate scales used to weigh aircraft, consistent with the arrangements in the exemption instruments mentioned above. In addition, the instrument corrects 2 errors in CAO 100.7 that, respectively, incorrectly prioritise the triggers for the reweighing of rotorcraft, and omit a guidance note that CASA considers remain pertinent to the implementation of the CAO. The instrument also makes minor changes to clarify and update the drafting of CAO 100.7.

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