

Civil Aviation Legislation Amendment (Part 139 Aerodromes—Transitional Provisions and Consequential Amendments) Regulations 2020

I, General the Honourable David Hurley AC DSC (Retd), Governor‑General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 09 July 2020

David Hurley

Governor‑General

By His Excellency’s Command

Michael McCormack

Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development

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1 Name

This instrument is the *Civil Aviation Legislation Amendment (Part 139 Aerodromes—Transitional Provisions and Consequential Amendments) Regulations 2020*.

2 Commencement

(1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
| --- | --- | --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table | The day after this instrument is registered. | 16 July 2020 |
| 2. Schedule 1 | The day after this instrument is registered. | 16 July 2020 |
| 3. Schedules 2 and 3 | Immediately after the *Civil Aviation Safety Amendment (Part 139) Regulations 2019* commence. | 13 August 2020 |

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

(2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the following:

(a) the *Civil Aviation Act 1988*;

(b) the *Environment Protection and Biodiversity Conservation Act 1999*;

(c) the *Transport Safety Investigation Act 2003*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments commencing day after registration

Civil Aviation Safety Amendment (Part 139) Regulations 2019

1 Subsection 2(1) (table)

Repeal the table, substitute:

| Commencement information | | |
| --- | --- | --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this instrument | 13 August 2020. | 13 August 2020 |

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

Schedule 2—Transitional provisions

Civil Aviation Safety Regulations 1998

1 Subpart 202.FY

Repeal the Subpart, substitute:

Subpart 202.FY—Transitional provisions for Part 139 (Aerodromes)

Division 202.FY.1—Amendments made by the Civil Aviation Safety Amendment (Part 139) Regulations 2019

202.700 Definitions for this Division

In this Division:

***certificate transition period***: see subregulation 202.702(10).

***commencement time*** means the time the *Civil Aviation Safety Amendment (Part 139) Regulations 2019* commence.

Note: The *Civil Aviation Safety Amendment (Part 139) Regulations 2019* commence on 13 August 2020.

***end time***, for a transitional instrument: see subregulation 202.704(3).

***new manual***: see subregulation 202.702(5).

***new manual day***: see subregulation 202.702(6).

***new Part 139 Manual of Standards*** means the Part 139 Manual of Standards.

Note: For the ***Part 139 Manual of Standards***, see the Dictionary.

***new Part 139 Regulations*** means these Regulations as amended by the *Civil Aviation Safety Amendment (Part 139) Regulations 2019*.

Note: The *Civil Aviation Safety Amendment (Part 139) Regulations 2019* amended these Regulations to repeal Subparts 139.A to 139.F of Part 139 and substitute new Subparts 139.A to 139.E.

***old Part 139 Manual of Standards*** means the *Manual of Standards Part 139—Aerodromes*, as in force immediately before the commencement time.

***old Part 139 Regulations*** means these Regulations as in force immediately before the commencement time.

Note: These Regulations as so in force included Part 139 as in force immediately before the commencement time.

***transitional aerodrome certificate***: see subregulation 202.701(1).

***transitional instrument***: see subregulation 202.704(1).

202.701 Transitional aerodrome certificates

What is a **transitional aerodrome certificate**?

(1) Each of the following is a ***transitional aerodrome certificate***:

(a) an aerodrome certificate continued in force under subregulation (2);

(b) an aerodrome certificate granted as mentioned in paragraph (3)(b);

(c) an aerodrome certificate taken to have been granted as mentioned in subregulation (4);

(d) an aerodrome certificate granted under paragraph (5)(b).

Certified aerodromes

(2) If, immediately before the commencement time, the operator of an aerodrome was the holder of an aerodrome certificate for the aerodrome, the certificate continues in force as if it had been granted to the operator under regulation 139.030 of the new Part 139 Regulations, subject to regulation 202.702.

(3) If, before the commencement time, a person had made an application in accordance with regulation 139.045 of the old Part 139 Regulations for an aerodrome certificate, but CASA had not made a decision on the application immediately before that time:

(a) Subpart 139.B of the old Part 139 Regulations, and the old Part 139 Manual of Standards, continue to apply in relation to the application and CASA’s decision on the application; and

(b) CASA may grant an aerodrome certificate for the aerodrome to the person accordingly under regulation 139.050 of the old Part 139 Regulations; and

(c) an aerodrome certificate granted to the person as mentioned in paragraph (b) has effect as if it had been granted under regulation 139.030 of the new Part 139 Regulations, subject to regulation 202.702.

Registered aerodromes

(4) If, immediately before the commencement time, a registration under regulation 139.265 of the old Part 139 Regulations was in force for an aerodrome, an aerodrome certificate for the aerodrome is taken to have been granted to the operator of the aerodrome under regulation 139.030 of the new Part 139 Regulations, subject to regulation 202.702.

(5) If, before the commencement time, a person had made an application in accordance with regulation 139.260 of the old Part 139 Regulations for the registration of an aerodrome, but CASA had not made a decision on the application immediately before that time:

(a) Subpart 139.C of the old Part 139 Regulations, and the old Part 139 Manual of Standards, continue to apply in relation to CASA’s consideration of the application; and

(b) if CASA is satisfied that the application is in accordance with the old Part 139 Regulations, CASA must grant an aerodrome certificate for the aerodrome to the applicant; and

(c) an aerodrome certificate granted under paragraph (b) has effect as if it had been granted under regulation 139.030 of the new Part 139 Regulations, subject to regulation 202.702.

202.702 Transitional aerodrome certificates—effect

Scope

(1) This regulation applies in relation to an aerodrome while a transitional aerodrome certificate is in force for the aerodrome (see regulation 202.701).

Application of the Regulations

(2) During the certificate transition period for the aerodrome:

(a) the transitional aerodrome certificate has effect for the aerodrome, unless it is sooner suspended or cancelled, and subject otherwise to the new Part 139 Regulations; and

(b) the new Part 139 Regulations apply in relation to the aerodrome as if the certificate had been granted to the operator of the aerodrome under regulation 139.030 of the new Part 139 Regulations (subject to subregulations (3) and (4) of this regulation); and

(c) in the case of a transitional aerodrome certificate mentioned in paragraph 202.701(1)(a)—any conditions applying to the certificate immediately before the commencement time continue to apply in relation to the certificate, subject to the new Part 139 Regulations.

(3) In the case of a transitional aerodrome certificate mentioned in paragraph 202.701(1)(a) or (b), during the certificate transition period:

(a) Division 139.B.2 of the old Part 139 Regulations applies to the operator of the aerodrome; and

(b) Division 139.C.1 of the new Part 139 Regulations does not apply to the operator of the aerodrome; and

(c) a reference in the new Part 139 Regulations to a provision of Division 139.C.1 (which includes regulations 139.045 to 139.060) is taken to be a reference to the corresponding provision of Division 139.B.2 of the old Part 139 Regulations.

Note: Those Divisions deal with requirements in relation to aerodrome manuals for certified aerodromes.

(4) In the case of a transitional aerodrome certificate mentioned in paragraph 202.701(1)(c) or (d), during the certificate transition period the following provisions of the new Part 139 Regulations do not apply to the operator of the aerodrome:

(a) paragraph 139.035(1)(b);

(b) Division 139.C.1.

New aerodrome certificate—requirement for new manual

(5) The operator of the aerodrome may give CASA a proposed new aerodrome manual (a ***new manual***) for the aerodrome prepared for the purpose of compliance with the requirements mentioned in regulation 139.045 of the new Part 139 Regulations before the new manual dayfor the aerodrome.

(6) The ***new manual day***, for the aerodrome, is:

(a) in the case of an aerodrome for which a transitional aerodrome certificate mentioned in paragraph 202.701(1)(a) or (b) is in force—13 May 2021; or

(b) in the case of an aerodrome for which a transitional aerodrome certificate mentioned in paragraph 202.701(1)(c) or (d) is in force—13 May 2022.

(7) If the operator of the aerodrome gives CASA a new manual under subregulation (5), CASA must:

(a) if the new manual complies with the requirements mentioned in regulation 139.045 of the new Part 139 Regulations—grant a new aerodrome certificate to the operator; or

(b) in any other case—refuse to grant a new aerodrome certificate to the operator.

Note: Under regulation 201.004, an application may be made to the Administrative Appeals Tribunal for review of:

(a) a decision refusing to grant a new aerodrome certificate; or

(b) a decision imposing a condition on a new aerodrome certificate.

(8) Without limiting the application of any other provisions of Part 11, the following provisions of Part 11 apply (or do not apply) as follows in relation to the decision under subregulation (7) to grant, or to refuse to grant, a new aerodrome certificate to the operator of an aerodrome:

(a) Subpart 11.B (applications for authorisations) does not apply;

(b) regulation 11.055 (grant of authorisation) does not apply;

(c) regulation 11.056 (authorisation may be granted subject to conditions) applies;

(d) regulation 11.060 (notice of decision) applies as if the operator, by giving the new manual to CASA, had made an application for an aerodrome certificate under the new Part 139 Regulations;

(e) regulation 11.065 (when authorisation comes into effect) applies;

(f) regulations 11.067 to 11.077 (provisions relating to conditions) apply;

(g) regulation 11.080 (authorisations not transferable) applies.

(9) A decision to refuse to grant a new aerodrome certificate to a person under paragraph (7)(b) comes into effect when the time for making an application for review by the Administrative Appeals Tribunal of the decision has elapsed, subject to any order of the Tribunal or of a court staying the effect of the decision.

Note: An application for review of a decision by the Administrative Appeals Tribunal must generally be made within 28 days after the applicant is notified of the decision (see section 29 of the *Administrative Appeals Tribunal Act 1975*). For stay orders by the Tribunal, see section 41 of that Act.

Certificate transition period

(10) The ***certificate transition period***, in relation to a transitional aerodrome certificate, is the period starting at the commencement time or when it was granted or taken to have been granted (whichever is later), and ending:

(a) if the operator of the aerodrome fails to give CASA a new manual before the end of the new manual day—at the end of the new manual day; or

(b) if CASA grants a new aerodrome certificate to the operator under paragraph (7)(a)—when the certificate comes into effect (see regulation 11.065); or

(c) if CASA makes a decision, under paragraph (7)(b), to refuse to grant a new aerodrome certificate to the operator—when the decision comes into effect (see subregulation (9)); or

(d) if CASA cancels the certificate before the occurrence of any of the events mentioned in paragraphs (a) to (c)—when the cancellation comes into effect.

202.703 Certified air/ground radio services and operators

Air/ground radio services

(1) If, immediately before the commencement time, a certification of an air/ground radio service was in force for an aerodrome for the purposes of Division 139.F.3 of the old Part 139 Regulations then, at and after that time:

(a) the operator of the aerodrome is taken to hold an approval granted for the purposes of regulation 139.155 of the new Part 139 Regulations for that service:

(i) subject to any conditions in force for the certification immediately before the commencement time; and

(ii) for the period (if any) during which the certification would otherwise have remained in force, unless the approval taken to be held is sooner suspended or cancelled; and

(iii) subject otherwise to the new Part 139 Regulations; and

(b) the new Part 139 Regulations otherwise apply in relation to the service.

(2) If, before the commencement time, a person had made a request to CASA in accordance with regulation 139.410 of the old Part 139 Regulations for the certification of an air/ground radio service, but CASA had not made a decision on the request immediately before that time:

(a) Division 139.F.3 of the old Part 139 Regulations, and the old Part 139 Manual of Standards, continue to apply in relation to the request and CASA’s decision on the request; and

(b) CASA may certify the service accordingly under regulation 139.410 of the old Part 139 Regulations; and

(c) such a certification has effect as if it were an approval granted for the purposes of regulation 139.155 of the new Part 139 Regulations; and

(d) the new Part 139 Regulations otherwise apply in relation to the service.

Operators of air/ground radio services

(3) If, immediately before the commencement time, a certification of a person as the operator of an air/ground radio service was in force for an aerodrome for the purposes of Division 139.F.3 of the old Part 139 Regulations then, at and after that time:

(a) the operator of the service is taken to hold an approval granted for the purposes of regulation 139.160 of the new Part 139 Regulations to operate the service:

(i) subject to any conditions in force for the certification immediately before the commencement time; and

(ii) for the period (if any) during which the certification would otherwise have remained in force, unless the approval taken to be held is sooner suspended or cancelled; and

(iii) subject otherwise to the new Part 139 Regulations; and

(b) the new Part 139 Regulations otherwise apply in relation to the approval.

(4) If, before the commencement time, a person had made an application to CASA in accordance with regulation 139.430 of the old Part 139 Regulations for certification as the operator of an air/ground radio service for an aerodrome, but CASA had not made a decision on the application immediately before that time:

(a) CASA must (subject to regulation 11.055) grant an approval to the applicant under regulation 139.010 of the new Part 139 Regulations for the purposes of regulation 139.160 of the new Part 139 Regulations, if CASA is satisfied that the person meets the requirements for operating a certified air/ground radio service prescribed by the new Part 139 Manual of Standards as in force immediately after the commencement time; and

(b) subregulation 11.055(1B) applies to the granting of the approval.

(5) At and after the commencement time, a person who holds, or who is, under this regulation, taken to hold, an approval granted for the purposes of regulation 139.160 of the new Part 139 Regulations to operate an air/ground radio service for an aerodrome is taken also to be approved for the purposes of paragraph 120(1)(b) of CAR (weather reports not to be used if not made with authority).

202.704 Transitional authorisations

Scope

(1) This regulation applies if:

(a) an instrument (the ***transitional instrument***) was made under these Regulations for the purposes of Part 139 or the old Part 139 Manual of Standards, or under the old Part 139 Manual of Standards, before the commencement time; and

(b) the transitional instrument was in force immediately before the commencement time, or is expressed to commence at a later time; and

(c) the transitional instrument would (apart from the amendments made by Schedule 1 to the *Civil Aviation Safety Amendment (Part 139) Regulations 2019*, and the repeal of the old Part 139 Manual of Standards) have had the effect, on or after the commencement time, of authorising or allowing a person, in particular circumstances, to do a thing in relation to an aerodrome that the person would not otherwise have been authorised or allowed to do because of Part 139 of the old Part 139 Regulations or the old Part 139 Manual of Standards.

Example: *CASA EX128/19—Approved VASIS (Charter Operations—Relevant Runway Ends for Certified Aerodromes) Exemption 2019*. This transitional instrument was made under regulation 11.160, and exempted the aerodrome operators of certified aerodromes from compliance with subregulation 139.190(1) of the old Part 139 Regulations in relation to runway ends in particular specified circumstances. Immediately before the commencement time, the instrument had the effect that such operators were allowed not to provide an approved visual approach slope indicator system (VASIS) for runway ends in those circumstances.

Authorisation

(2) On and after the commencement time, or the time the transitional instrument is expressed to commence, whichever is later, until the end time for the transitional instrument, the person is authorised or allowed to do that thing in those circumstances:

(a) despite any provision to the contrary in the new Part 139 Regulations or the new Part 139 Manual of Standards; but

(b) subject to any conditions provided in the transitional instrument.

(3) The ***end time*** for a transitional instrument is the earliest of the following times:

(a) if the instrument is, by its own terms, expressed to be repealed, or to cease to have effect, at a particular time—that time;

(b) if paragraph (a) does not apply—the end of 31 December 2021;

(c) in any case:

(i) if the instrument is repealed—the time the repeal takes effect; or

(ii) if the instrument cannot be repealed because it lapsed at the commencement time—a time determined for the instrument by a determination under subregulation (4).

(4) CASA may, by legislative instrument, determine a time for an instrument for the purposes of subparagraph (3)(c)(ii).

(5) This regulation does not apply to an instrument that is:

(a) an aerodrome certificate; or

(b) a certification of an air/ground radio service; or

(c) a certification of a person as the operator of an air/ground radio service.

Schedule 3—Consequential and other amendments

Civil Aviation (Fees) Regulations 1995

1 Part 18 of Schedule 1

Repeal the Part, substitute:

Part 18—Aerodromes

| Item | Service | Fee |
| --- | --- | --- |
| 18.1 | Certification of an aerodrome—processing and consideration of application | HR |
| 18.2 | Approval under regulation 139.010 of CASR for the purposes of Part 139 of CASR—processing and consideration of application | HR |
| 18.3 | Certification of a person or an organisation as an ARFFS provider—processing and consideration of application | HR |

Civil Aviation Regulations 1988

2 Regulations 90 and 91

Repeal the regulations.

3 Paragraph 92(1)(a)

Repeal the paragraph.

4 Paragraph 92(1)(b)

Repeal the paragraph, substitute:

(b) the place is a certified aerodrome;

5 Paragraph 92(1)(d)

Omit “(a),”.

6 Subregulations 92A(1) and (2)

Omit “licensed aerodrome”, substitute “certified aerodrome”.

7 Subregulations 92A(4) and (4A)

Omit all the words after “an aerodrome” (not including the penalties), substitute “that is not a certified aerodrome, unless the aerodrome operator has arrangements to warn the aircraft operator or pilot in command of any change or occurrence of the kind required to be reported for the purposes of regulation 139.085 of CASR”.

8 Subregulations 92A(5) and (5A)

Repeal the subregulations.

9 Paragraphs 96(1)(a) and (b)

Repeal the paragraphs, substitute:

(b) a certified aerodrome; or

10 Subregulation 96(2)

Omit “notice in the *Gazette*”, substitute “notifiable instrument”.

11 Regulation 166E (heading)

Repeal the heading, substitute:

166E Requirements for operating on or in the vicinity of certified, military or designated non‑controlled aerodromes

12 Subparagraph 166E(1)(a)(iii)

Repeal the subparagraph.

13 Subregulation 166E(1) (note 1)

Omit “the definitions of ***certified aerodrome*** and ***registered aerodrome***”, substitute “the definition of ***certified aerodrome***”.

14 Paragraph 297(3)(e)

Repeal the paragraph, substitute:

(e) a place was or was not any of the following:

(i) a certified aerodrome;

(ii) an aerodrome registered under Part 139 before the commencement of the *Civil Aviation Safety Amendment (Part 139) Regulations 2019*;

(iii) licensed for use as an aerodrome;

(iv) authorised for use as an aerodrome;

Civil Aviation Safety Regulations 1998

15 Regulation 1.005

Repeal the regulation.

16 Regulation 13.375 (table 13.375, cell at item 11, column 2)

Repeal the cell, substitute:

|  |
| --- |
| a certificate issued under Subpart 139.B of CASR |

17 Paragraph 64.045(3)(c)

Repeal the paragraph.

18 Subregulation 99.010(1) (paragraph (a) of the definition of *aerodrome testing area*)

Omit “or a registered aerodrome”.

19 Subregulation 99.010(1) (paragraphs (b) and (c) of the definition of *aerodrome testing area*)

Omit “or registered aerodrome”.

20 Subregulation 99.010(1) (paragraph (d) of the definition of *aerodrome testing area*)

Omit “or a registered aerodrome”.

21 Paragraph 99.030(2)(c)

Omit “granted under regulation 139.050”.

22 Paragraph 99.030(2)(h)

Repeal the paragraph.

23 Paragraph 139.055(2)(b)

Repeal the paragraph, substitute:

(b) the non‑compliance is necessary to ensure the safety of aircraft, aircraft operations or individuals using the aerodrome; and

24 Subregulation 171.010(1) (definition of *certified air/ground radio service*,or *CA/GRS*)

Repeal the definition.

25 Subregulation 171.010(1) (definition of *frequency confirmation system*)

Repeal the definition.

26 Regulation 172.010 (definition of *certified air/ground radio service*,or *CA/GRS*)

Repeal the definition.

27 Paragraph 175.140(1)(a)

Repeal the paragraph, substitute:

(a) who is responsible for aeronautical data or aeronautical information about an aerodrome that is not a certified aerodrome; and

28 Paragraph 175.480(b)

Omit “the obstacle limitation surface”, substitute “an obstacle limitation surface”.

29 Subregulation 201.004(2) (table 201.004, item 23)

Repeal the item.

30 Subregulation 201.004(2) (table 201.004, item 24)

Repeal the item, substitute:

|  |  |
| --- | --- |
| 24 | under regulation 139.125, refusing to impose, or to vary, a condition on an aerodrome certificate in relation to the operation of an aerodrome ground surveillance system |

31 Subregulation 201.004(2) (table 201.004, item 25)

Repeal the item.

32 Part 1 of the Dictionary (definition of *aerodrome marking*)

Repeal the definition.

33 Part 1 of the Dictionary (definition of *aerodrome operator*)

Repeal the definition, substitute:

***aerodrome operator*** means:

(a) for a certified aerodrome—the person who holds the aerodrome certificate for the aerodrome; or

(b) otherwise—the person who is responsible for the operation and maintenance of the aerodrome.

34 Part 1 of the Dictionary

Repeal the following definitions:

(a) definition of ***aerodrome serviceability inspection***;

(b) definition of ***aerodrome technical inspection***;

(c) definition of ***AIP‑ERSA***;

(d) definition of ***registered aerodrome***.

Environment Protection and Biodiversity Conservation Regulations 2000

35 Subregulation 12.58(1)

Repeal the subregulation, substitute:

(1) A person commits an offence if, in or over a Commonwealth reserve, the person:

(a) taxis an aircraft, except in a landing area; or

(b) lands an aircraft, except in a landing area; or

(c) causes an aircraft to take off, except from a landing area; or

(d) operates an aircraft (including as mentioned in paragraph (a), (b) or (c)) in contravention of a determination made by the Director under subregulation (4).

Penalty: 30 penalty units.

36 Dictionary (paragraphs (a) and (b) of the definition of *landing area*)

Repeal the paragraphs, substitute:

(a) an aerodrome certificate under the *Civil Aviation Safety Regulations 1998*; or

(b) a determination made by the Director under subregulation 12.58(4) of these Regulations.

Transport Safety Investigation Regulations 2003

37 Paragraph 2.4(2)(i)

Omit “licensed”, substitute “certified”.