

Explanatory Statement

Acts Interpretation Act 1901

Civil Aviation Safety Regulations 1998

Part 131 MOS Amendment Instrument 2024

Purpose

The *Part 131 (Balloons and Hot Air Airships) Manual of Standards 2024* (the **MOS**) sets out the operational standards for lighter-than-air aircraft to which Part 131 of the *Civil Aviation Safety Regulations 1998* (**CASR**) applies.

Empowered by CASR, the MOS, which commences on 12 November 2024, consolidates the existing rules of the air and contains some new rules to enhance operational flexibility and improve aviation safety.

The *Part 131 MOS Amendment Instrument 2024* (the **MOS amendment**) amends the MOS to make a small number of corrections in preparation for that commencement.

Background

The following explains the 8 amendments in the MOS amendment. The details of amendments are set out in Appendix 1 of this Explanatory Statement.

Amendment 1 consequentially supports amendment 2. For more, see below.

Amendment 2 is consequential on the effects of recent Civil Aviation Orders. Under subparagraph 5.01(1)(c)(ii) of the MOS, flight crew members on all flights of a Part 131 aircraft (that is balloons and hot air airships) must carry their **Part 131 pilot authorisation**. Under the CASR Dictionary, a Part 131 pilot authorisation means:

- (a) a commercial pilot (balloon) licence (**CP(B)L**); or
- (b) a CAR certificate of validation; or
- (c) *an authorisation from a Part 131 self-administering aviation organisation (an ASAO) that authorises the holder to operate a Part 131 aircraft; or*
- (d) flight radiotelephone operator licence.

There is currently no ASAO for Part 131 aircraft. The Australian Ballooning Federation (the **ABF**) previously performed this role but no longer does so and CASA assumed the administration responsibilities under *Civil Aviation Order 95.54 (Part 131 Recreational Activity and Specialised Balloon Operations) Instrument 2021 (CAO 95.54 2021)*.

Under CAO 95.54 2021, the various aviation certificates issued by the ABF were preserved in force as **relevant permits**, and CASA was given power to issue similar permits, including student pilot (balloon) permits, private pilot (balloon) permits, radio operator (balloon) permits, instructor private pilot (balloon) permits Grade 2, instructor private pilot (balloon) permits Grade 1, examiner private pilot (balloon) permits, and related endorsements.

These arrangements are continued under the revised *Civil Aviation Order 95.54 (Part 131 Recreational Activity and Specialised Balloon Operations) Instrument 2024 (CAO 95.54 2024)* which commences on 12 November 2024.

As a consequence of the above Civil Aviation Order changes, subparagraph 5.01(1)(c)(ii) of the MOS is amended (by **amendment 2** of the MOS amendment) to replace mention of the **Part 131**

pilot authorisation with mention of whichever of the following is required for the flight crew member to operate the Part 131 aircraft for the flight:

- (a) a CP(B)L;
- (b) a certificate of validation issued under Part 5 of the *Civil Aviation Regulations 1988 (CAR)*;
- (c) **a relevant permit to operate** the aircraft, including the **relevant endorsements** applicable for the flight.

Amendment 1 in context now, consequentially supports amendment 2. It amends subsection 1.06(5), Definitions, etc in the MOS to provide that **relevant permit to operate** has the meaning given by CAO 95.54 2024. A second related definition provides that a **relevant endorsement** has the meaning given by CAO 95.54 2024.

Amendment 3 corrects a typographical error in subsection 12.02(1) of the MOS which deals with flight preparation (weather assessments) requirements. Under subsection (1), the pilot in command of a Part 131 aircraft must study relevant weather forecasts, reports and information. However, this requirement is expressed to be subject to “subsections (2), (3) and (4)”. There is no subsection (4).

Amendment 4 corrects a typographical error in subsection 26.23(8), concerning the operation of surveillance equipment, including transponders, required to be fitted to, or carried on, a Part 131 aircraft. Under subsection (8), if an emergency situation described in Table 26.23 (9) occurs during a flight, a pilot of the aircraft for the flight must set the prescribed Transponder Mode A. The reference should be to Table 26.23 (8).

Amendment 5 repeals subsection 27.11(3) which is causing confusion. Subsection 27.11(2) deals with recurrent training and checking requirements for a balloon transport operation, including emergency-related training under subsection 27.09(2). However, under subsection 27.11(3), the *recurrent training and checking* for the general emergency training involving emergency operation of an inflation fan (paragraph 27.09(2)(d)) does not need to include an in-water element. The reference to paragraph 27.09(2)(d) is erroneous and it should have been to paragraph 27.09(2)(c) concerning locating, accessing, and using the emergency equipment and survival equipment on the aircraft. Notwithstanding that, there is no requirement that the *initial training* (as distinct from the recurrent training) whether for the operation of an inflation fan, or for the use of emergency and survival equipment, be conducted with an in-water element. Hence, subsection 27.11(3) mandating an in-water requirement for recurrency is not necessary and is repealed.

Amendment 6 corrects a drafting error. Subsection 27.11(2) deals with recurrent training and checking requirements for a balloon transport operation, including emergency-related training under subsection 27.09(2). Under subsection 27.11(4), to facilitate that the bi-annual due date for the recurrent training does not alter from year to year, this training and checking is deemed to have been completed on the due date if the check is successfully completed within the 90 days “before or after the due date”. The mention of 90 days “after” the due date conveys the erroneous impression that the due date may be bi-annually extended by a further 90 days beyond the due date. Amendment 6 therefore deletes the mention of “or after”.

Amendment 7 removes an unnecessary provision from section 28.02. Under section 28.01, Division 28.1 deals with the training and checking requirements that must be met by each member of a balloon transport operator’s ground support personnel who is operational safety-critical personnel for a flight. Under subsection 28.02(1), a person who carries out ground support for a balloon, without the direct supervision of a person qualified under section 28.03 as a

relevant trainer and checker, must have successfully completed induction training and a relevant check of competency. Under subsection 28.02(4), as soon as practicable after the person has successfully completed the check of competency, the balloon transport operator must give them a certificate of competency stating the date on which it expires, being the date that is 24 months after the day the check was conducted. However, under subsection 28.02(5), an operator must retain a record of the names of the ground support personnel who have undertaken the check of competency and the dates and results of all checks so undertaken. These records must be retained by the operator while the person is employed and for 12 months after the person's employment ceases. A certificate, which is not transferable to a different operator, recording the date on which it expires, adds no level of extra certainty or assurance to the requirement under subsection 28.02(5) and is an unnecessary administrative overhead for operators.

Amendment 8 removes a misleading Note. Section 28.03 deals with the requirements for individuals conducting training and checking. Under subsection 28.03(2), the relevant training and checking must be conducted and assessed by the operator's relevantly qualified head of flying operations, or by an individual authorised by Part 5 of CAR to conduct a balloon flight review, or by a person specifically appointed by the operator to conduct training and checking of ground support personnel. A Note adds that guidance on the recommended competencies and training of persons appointed by the operator to conduct training and checking of ground support personnel is on the CASA website. However, CASA does not intend such guidance to be at a specific location on the website. Relevant guidance will be published in dedicated guidance documents for operators.

Legislation Act 2003 (the LA)

Under subsection 8(4) of the LA, an instrument is a legislative instrument if it is made under a power delegated by the Parliament, and any provision determines the law or alters the content of the law, and it has the direct or indirect effect of affecting a privilege or interest, imposing an obligation, creating a right, or varying or removing an obligation or right. The MOS satisfies these requirements. Under paragraph 10(1)(d) of the LA, an instrument that amends or repeals another legislative instrument, as is the case here, is itself also a legislative instrument.

Under paragraphs 98(5A)(a) and (5AA)(a) of the Act, an instrument made under regulations is a legislative instrument if it is issued in relation to matters affecting the safe navigation and operation of aircraft and is expressed to apply to classes of persons.

Based on each of these criteria, the MOS is a legislative instrument subject to registration, and tabling and disallowance in the Parliament, under sections 15G, and 38 and 42, of the LA.

Sunsetting

Under paragraph 54(2)(b) of the LA, Part 4 of Chapter 3 of the LA (sunsetting of legislative provisions) does not apply in relation to a legislative instrument if the legislative instrument is prescribed by regulation for the purposes of the paragraph. The table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* sets out particular legislative instruments that are not subject to sunsetting for paragraph 54(2)(b). As far as is relevant, item 15 of the table specifies that an instrument relating to aviation safety made under CASR is not subject to sunsetting. Accordingly, the MOS is not subject to sunsetting.

The MOS deals with aviation safety matters which require a risk response or treatment plan. Accordingly, the MOS is intended to have enduring operation, and it would not be appropriate for the MOS to be subject to sunsetting.

The exclusion from sunsetting affects parliamentary oversight by not requiring the MOS to be remade and tabled before the end of the sunsetting period stated in Part 4 of Chapter 3 and,

thereby, avoiding exposure to disallowance in the Parliament. In any event, the MOS is subject to tabling and disallowance in the Parliament, as are later amendments to it, such as the MOS amendment. The MOS amendment is spent as soon as it commences on 12 November 2024 and takes effect to amend the MOS. The MOS amendment is then automatically repealed under subsection 48A(1) of the LA in accordance with the time scheme under subsection 48A(2).

Incorporations by reference

Under subsection 98(5D) of the Act, the MOS may apply adopt or incorporate any matter contained in any instrument or other writing. A non-legislative instrument may be incorporated into a legislative instrument made under the Act, as that non-legislative instrument exists or is in force at a particular time or from time to time (including a non-legislative instrument that does not exist when the legislative instrument is made).

Under paragraph 15J(2)(c) of the LA, the Explanatory Statement must contain a description of the incorporated documents and indicate how they may be obtained.

The Explanatory Statement for the MOS explained the basis for a number of corporations and these are neither affected by, nor added to, by the MOS amendment.

Consultation

Under regulation 11.280 of CASR, if CASA intends to issue a Manual of Standards, it must, in effect, engage in public consultation on the draft Manual of Standards for at least 28 days. This requirement also applies to an instrument that amends a Manual of Standards.

No consultation — minor or machinery amendments

However, under paragraph 11.275(1)(d) of CASR, CASA is not obliged to consult on provisions of a Manual of Standards if the Director of Aviation Safety (the *Director*) determines that they are of “a minor or machinery nature that do not substantially alter existing arrangements”. In such circumstances, under subregulation 11.275(2), CASA must publish the determination, and a statement of reasons for it, on the internet within 28 days after making the determination.

For the provisions in the MOS amendment, the Director has made such a determination under *CASA 62/24 — Determination for the Part 131 MOS Amendment Instrument 2024*.

The Determination and an accompanying Statement of Reasons for making the Determination are published on the CASA website within 28 days after the Determination is made in accordance with subregulation 11.275(2) of CASR.

There has been some informal consultation with the relevant aviation industry in the course of developing the minor or machinery amendments in the MOS amendment. There has been industry feedback to CASA via multiple communication channels, for example, directly from individuals or from various operators and industry working groups pointing out anomalies and matters requiring correction or clarification.

Office of Impact Analysis (OIA)

An Impact Analysis is not required for a MOS amendment that is of a minor or machinery nature (OIA23-06250).

Sector risk, economic and cost impact

Subsection 9A(1) of the Act states that, in exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration.

Subsection 9A(3) of the Act states that, subject to subsection (1), in developing and promulgating aviation safety standards under paragraph 9(1)(c) of the Act, CASA must:

- (a) consider the economic and cost impact on individuals, businesses and the community of the standards; and
- (b) take into account the differing risks associated with different industry sectors.

The cost impact of a standard refers to the direct cost (in the sense of price or expense) which a standard would cause individuals, businesses and the community to incur. The economic impact of a standard refers to the impact a standard would have on the production, distribution and use of wealth across the economy, at the level of the individual, relevant businesses in the aviation sector, and the community more broadly. The economic impact of a standard could also include the general financial impact of that standard on different industry sectors.

The amendments in the MOS amendment are of a minor or machinery nature that will have a clarificatory effect and will not have a cost impact on Part 131 aircraft operators.

Sector risk

The MOS amendment relates exclusively to balloons and hot air airships.

Whilst the instrument will apply to individuals or businesses located in regional or rural areas, the impact on these individuals or businesses is small and positive, as mentioned above.

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is at Appendix 1. This concludes that the MOS amendment, being for minor or machinery amendments, is compatible with human rights and raises no human rights issues.

Commencement and making

The MOS amendment commences on 12 November 2024 at the same time as the MOS that it amends.

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

Details of:**Part 131 MOS Amendment Instrument 2024**

1 Name of instrument

This section names the instrument.

2 Commencement

Under this section, the instrument commences on 12 November 2024.

3 Amendment of the Part 131 Manual of Standards

Under this section, Schedule 1 amends the *Part 131 (Balloons and Hot Air Airships) Manual of Standards 2024*.

Schedule 1 Amendments**[1] Subsection 1.06(5), Definitions, etc.**

This section defines *relevant endorsement* and *relevant permit to operate* for amendment 2.

[2] Subparagraph 5.01(1)(c)(ii)

Consequential on separate Civil Aviation Order changes, this amendment replaces mention of the **Part 131 pilot authorisation** with mention of whichever of the following is required for the flight crew member to operate the Part 131 aircraft for the flight:

- (a) a CP(B)L;
- (b) a certificate of validation issued under Part 5 of CAR;
- (c) **a relevant permit to operate** the aircraft, including the **relevant endorsements** applicable for the flight.

[3] Subsection 12.02(1)

This amendment corrects a typographical error.

[4] Subsection 26.23(8)

This amendment corrects a typographical error.

[5] Subsection 27.11(3)

This amendment repeals an inconsistent provision that provides for an in-water element of certain recurring training that is not required for the same initial training.

[6] Subsection 27.11(4)

This amendment corrects a drafting error.

[7] Subsection 28.02(3)

This amendment removes an administrative requirement to issue a certificate that has little purpose.

[8] Paragraph 28.03(2)(c), the Note

This amendment repeals a misleading Note.

Statement of Compatibility with Human Rights

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

Part 131 MOS Amendment Instrument 2024

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 *Part 131 (Balloons and Hot Air Airships) Manual of Standards 2024* (the **MOS**) sets out the operational standards for lighter-than-air aircraft to which Part 131 of the *Civil Aviation Safety Regulations 1998 (CASR)* applies.

Empowered by CASR, the MOS, which commences on 12 November 2024, consolidates the existing rules of the air and contains some new rules to enhance operational flexibility and improve aviation safety.

The *Part 131 MOS Amendment Instrument 2024* (the **MOS amendment**) amends the MOS to make a small number of corrections in preparation for that commencement.

Thus, the MOS amendment adds 2 definitions, replaces an expression that industry changes have made redundant, corrects typographical and drafting errors, removes an inconsistency between provisions, and deletes mention of an unnecessary certificate and a misleading Note.

Human rights implications

The MOS amendment does not engage any human rights issues.

Conclusion

The MOS amendment is a legislative instrument that is compatible with human rights.

Civil Aviation Safety Authority