

Explanatory Statement

Civil Aviation Safety Regulations 1998

Part 121 Manual of Standards Amendment Instrument 2024

Purpose

The *Part 121 Manual of Standards Amendment Instrument 2024* (the **MOS amendment**) amends the *Part 121 (Australian Air Transport Operations—Larger Aeroplanes) Manual of Standards 2020* (the **MOS**).

The MOS sets out the standards for the operation of larger aeroplanes for an Australian air transport operation. It was made under regulation 121.015 of Part 121 of the *Civil Aviation Safety Regulations 1998 (CASR)*. It consolidates the detailed standards and requirements associated with the conduct of Part 121 operations by Australian air transport operators.

Part 121 of CASR prescribes requirements for the conduct of Australian air transport operations in the following:

- multi-engine aeroplanes that have a maximum operational passenger seating configuration (**MOPSC**) of more than 9 or a maximum take-off weight of more than 8 618 kg
- single-engine aeroplanes that have a MOPSC of more than 9 and a maximum take-off weight of 8 618 kg or less. (The MOS does not currently contain any provisions applicable to these single-engine aeroplanes.)

Air transport operations include passenger transport, cargo transport and medical transport that is conducted for hire or reward.

The MOS amendment, which commences on the day after it is registered, makes minor or machinery amendments to the MOS which do not substantially alter the existing arrangements under the MOS as in effect immediately before 2 December 2024.

Legislation

The *Civil Aviation Act 1988* (the **Act**) establishes the regulatory framework for maintaining, enhancing and promoting the safety of civil aviation, with particular emphasis on preventing aviation accidents and incidents.

Subsection 98(1) of the Act provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act. The *Civil Aviation Regulations 1988* and CASR are made under the Act.

The *Civil Aviation Safety Amendment (Part 121) Regulations 2018 (Part 121 of CASR)* were registered on 18 December 2018 and amended by the *Civil Aviation Legislation Amendment (Flight Operations—Miscellaneous Amendments) Regulations 2020* registered on 6 October 2020. Part 121 of CASR commenced on 2 December 2021.

Under regulation 121.015 of CASR, the Civil Aviation Safety Authority (**CASA**) may issue a Manual of Standards for Part 121 of CASR that prescribes matters required or permitted by that Part to be prescribed, or necessary or convenient for carrying out or giving effect to Part 121 of CASR. This power is complemented by other provisions, throughout Part 121 of CASR, which empower CASA to prescribe specific matters in the MOS.

Under subsection 33(3) of the *Acts Interpretation Act 1901* (in effect) where regulations empower the making of a Manual of Standards, the power includes a parallel power to amend the Manual

of Standards. The MOS amendment is made under the same head of power, and on the same basis, as the MOS itself.

For convenience in this Explanatory Statement, unless a contrary intention appears, mention of a provision with the prefix “121.” is a reference to that provision in Part 121 of CASR.

Instrument

The minor or machinery amendments are described below in general terms:

- 3 provisions have editorial changes to correctly enable the intended outcomes
- under the MOS, extended diversion time operations (*EDTO*) alternate aerodromes within Australia that are used from 2 December 2024 are required to have RFF CAT 4 capability. However, a further impact and policy discussion with the operators conducting EDTO is needed before implementing this requirement. Hence, the MOS amendment postpones the requirement for a further 1 year until 1 December 2025
- under the MOS, the lateral boundaries of the terrain and obstacle after take-off area that needs to be assessed under the performance rules has an alleviation to use either the new rules or the old rules. This alleviation would end on 2 December 2024. However, a further impact and policy discussion with Part 121 operators is needed before removing this alleviation. Hence, the MOS amendment extends the alleviation for a further 1 year until the end of 1 December 2025.

The details of the MOS amendments are set out in Appendix 2 of this Explanatory Statement.

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, any provision of it 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 amendment satisfies these requirements.

Under paragraphs 98(5A)(a) and 98(5AA)(a) of the Act, an instrument made under the 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 in relation to a class of persons.

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

Under paragraph 10(1)(d) of the LA, an instrument that includes a provision that amends another legislative instrument is itself a legislative instrument. The MOS amendment is, therefore, a legislative instrument.

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. This also applies to the MOS amendment.

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 sunseting. This also applies to the MOS amendment.

The exclusion from sunseting affects parliamentary oversight by not requiring the MOS to be remade and tabled before the end of the sunseting period stated in Part 4 of Chapter 3 and, thereby, avoiding exposure to disallowance in the Parliament. In any event, any amendments of the MOS that are made, including the amendments in the current MOS amendment, are subject to tabling and disallowance in the Parliament. The MOS amendment will be repealed almost immediately after registration in accordance with section 48A of the LA.

Incorporation 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, an Explanatory Statement must contain a description of the incorporated documents and indicate how they may be obtained. A table was included in the Explanatory Statement for the MOS, listing and explaining the various incorporated documents.

References to provisions of legislation or other legislative instruments are taken to be as they are in force from time to time, by virtue of paragraph 13(1)(c) of the LA. CASR and MOSs are freely available online on the Federal Register of Legislation.

The MOS amendment as such does not incorporate any documents.

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

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 64/24 — Determination for Part 121 Manual of Standards Amendment Instrument 2024*.

There has, nevertheless, been informal consultation with the aviation industry in the course of developing these minor and machinery amendments. There has been industry feedback to CASA via multiple communication channels, either directly from individuals, or from various working groups.

Office of Impact Analysis

An Impact Analysis was prepared by CASA for the new Part 121 of CASR (in the form of the then utilised Regulatory Impact Statement or RIS) and this RIS also covered the MOS and the minor and machinery items of the MOS amendment which the regulations empowered.

The RIS was assessed by the Office of Best Practice Regulation (**OBPR**) as compliant with the Best Practice Regulation requirements and contained a level of analysis commensurate with the likely impacts (OBPR id: 24505). A copy of the RIS was included in the Explanatory Statement for Part 135 of CASR Federal Register of Legislation - Civil Aviation Safety Amendment (Part 135) Regulations 2018.

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 requirements in the MOS amendment that are minor or machinery in nature are designed to avoid imposing additional costs on operators. It is considered by CASA that these matters are adequately covered by the RIS.

Sector risk

The MOS is specifically designed to regulate Australian air transport operations in larger aeroplanes and has effect only with respect to such operations. The MOS amendment, like the MOS, takes into account the differing risks associated with this industry sector. The minor or machinery amendments of the MOS amendment do not increase any particular safety risks.

Environmental impact

Under subsection 9A(2) of the Act, while regarding the safety of air navigation as the most important consideration, CASA must exercise its powers and perform its functions in a manner that ensures that, as far as practicable, the environment is protected from the effects and associated effects of the operation and use of aircraft.

It is not anticipated there will be any negative environmental impacts as a result of the MOS amendments, as compared to the baseline that existed on 1 December 2021 before the MOS was made, since the amendments do not create any new or material environmental impacts arising from relevant flight operations.

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is at Appendix 2 of this Explanatory Statement. This concludes that the MOS amendment is compatible with human rights.

Making and commencement

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

The MOS amendment commences on the day after it is registered.

Details of the Part 121 Manual of Standards Amendment Instrument 2024

1 Name of instrument

This section provides for the naming of the MOS amendment.

2 Commencement

This section provides that the MOS amendment commences on the day after it is registered.

3 Amendment of the Part 121 Manual of Standards

This section provides that Schedule 1 of the MOS amendment amends the MOS.

Schedule 1 Amendments

[1] Paragraph 4.19(2)(d)

Section 4.19 contains the rules for the selection of an extended diversion time operations (*EDTO*) alternate aerodrome. During the portion of a Part 121 flight subject to the EDTO rules, operators must have sufficient fuel to reach an aerodrome known as an EDTO alternate aerodrome. Previously, on and from 2 December 2024, all EDTO alternate aerodromes, whether located in Australia or overseas, were expected to have a minimum rescue and firefighting capability (*RFF*). A further 12 months is needed to achieve the RFF goal.

[2] Paragraph 9.04(2A)(b)

This amendment corrects an editorial error where there was not an opening bracket at the beginning of the formula contained in this paragraph.

[3] Subsection 9.04(3)

This amendment corrects an editorial error where subsection (2) was cross-referenced instead of subsection (2A).

[4] Subsection 9.04(4)

This amendment corrects an editorial error where subsection (2) was cross-referenced instead of subsection (2A).

[5] Subsection 9.04(5)

Under the MOS, for the purposes of calculating certain distances in relation to flight path obstacles for subsection 9.04(2), a particular relevant distance is that which does not exceed a distance calculated in accordance with subsection 12A of Civil Aviation Order 20.7.1B, as in force immediately before 2 December 2021. However, use of this calculation methodology would otherwise cease at the end of 1 December 2024. CASA and industry need a further 12 months to consult on amendments for operators with advanced capabilities to the lateral obstacle assessment area boundaries. This amendment, therefore, extends the use of the calculation methodology until the end of 1 December 2025.

Statement of Compatibility with Human Rights

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

Part 121 Manual of Standards Amendment Instrument 2024

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*.

Overview of the Legislative Instrument

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alleviation. Hence, the MOS amendment extends the alleviation for a further 1 year until the end of 1 December 2025.

Human rights implications

The MOS which the MOS amendment modifies, engaged with the following human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*:

- the right to life under Article 6 of the International Covenant on Civil and Political Rights (the *ICCPR*)
- the right to safe and healthy working conditions under Article 7 of the International Covenant on Economic, Social and Cultural Rights (the *ICESCR*)
- the right to work under Article 6 of the ICESCR.

Right to life under the ICCPR

Right to safe and healthy working conditions under the ICESCR

Right to work under the ICESCR

This engagement was in the context of CASA's statutory purpose. The aim of CASA and its regulatory framework is to uphold aviation safety by prescribing the conduct of individuals and organisations involved in civil aviation operations, including flight operations. It is, therefore, a threshold requirement for all CASA legislative instruments that they preserve, promote and enhance aviation safety and, hence, promote the right to life and the right to safe and healthy working conditions, and this was the case for the MOS.

The MOS amendment, however, comprises minor or machinery amendments as described above. These minor or machinery amendments as such do not give rise to any human rights issues, nor do human rights issues arise from their effect on the MOS.

Conclusion

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

Civil Aviation Safety Authority