Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 82.1 Amendment Order (No. 2) 2006

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

Under subregulation 217 (1) of the Civil Aviation Regulations 1988 (CAR 1988), the operator of an aircraft whose maximum take-off weight exceeds 5 700 kilograms must provide a training and checking organisation (a TCO) to ensure that the members of the aircraft’s operating crew maintain their competency.

Under subregulation 217 (2) of CAR 1988, the operator must ensure that the TCO provides 2 annual competency checks of each crew member.

Under subregulation 217 (3) of CAR 1988, the TCO, and its tests and checks, must be approved by CASA.

Under section 27 of the Act, CASA may issue Air Operators’ Certificates (AOCs) with respect to aircraft, for the purpose of safety regulation.

Under paragraph 28BA (1) (b) of the Act, an AOC has effect subject to any conditions specified in the regulations or the Civil Aviation Orders (the CAOs).

Part 82 of the CAOs specifies conditions on AOCs. CAO 82.1 contains conditions on those AOCs that authorise charter, or aerial work, operations.

Under paragraph 3.1 (a) of CAO 82.1 each charter, or aerial work, operator who is required to provide a TCO (i.e. who uses an aircraft whose maximum take-off weight exceeds 5 700 kilograms) must do so in accordance with Appendix 2 of that Order.

Under subclause 3.3 of Appendix 2, each operator may, with the approval of CASA, use flight simulators for TCO training and testing purposes. Under subclause 3.4, the flight simulators must be operated and maintained in accordance with procedures and standards prescribed by CASA.

Overseas trainers
For some sophisticated turbine and jet aircraft, operating crew competency checking cannot be supported by a suitable flight simulator in Australia. To complete their competency checks, therefore, the operators of these aircraft desire to use suitable flight simulators provided by flight simulator training organisations (trainers) in the US or Europe.
Although competency checks can be conducted in suitable aircraft in Australia, the flight simulator competency checks conducted by these overseas trainers is more extensive and safer to conduct. For safety reasons, therefore, and as a matter of administrative policy, CASA has allowed operators to use overseas trainers to conduct and assess 1 of the 2 annual competency checks. The second check, usually the instrument rating renewal, is completed in the aircraft in Australia.

This has been done as a matter of administrative policy because it is arguable that the provisions mentioned above (in particular subclauses 3.3 and 3.4 of Appendix 2 of CAO 82.1) extend to use of flight simulators overseas. However, that interpretation is not beyond doubt. CASA has decided the matter should be placed beyond doubt.

**CAO Amendment**
The CAO Amendment is designed, therefore, to place the administrative policy on a certain legal footing and ensure that overseas trainers and their flight simulator equipment (the equipment) and testing, meet the standards that would have to be met if the overseas flight simulator competency checks were to occur in Australia.

The CAO Amendment amends Appendix 2 of CAO 82.1 by providing that, for all or part of its flight crew competency checking (competency checking), an operator may use a trainer in an overseas ICAO contracting state (an overseas trainer) only if certain conditions are met.

For example, the national aviation authority of the state (the NAA) must have approved that trainer as a flight simulator training organisation for competency checking.

Also, the equipment used by the trainer must have a qualification certificate issued by the NAA and recognised by CASA.

A Note explains that, as advised by Advisory Circular AC 60-2 (0) (April 2003), CASA currently recognises the flight simulator qualification certificates issued by only some overseas ICAO contracting states, namely Canada, Hong Kong (Special Administrative Region of China), New Zealand, the United States of America, Germany, Finland, France, Ireland, the Netherlands, Denmark, Norway, Sweden, Switzerland and the United Kingdom.

In addition, the trainer must have a system for certifying successful completion of the checking by 1 of its employees who is also a delegate of the NAA for certifying flight crew competency of the kind checked.

Finally, the operator’s training and checking manual must include, for the equipment, details acceptable to CASA of the trainer’s relevant syllabus and completion standards.

**Legislative Instruments Act**
Under subparagraph 6 (d) (i) of the Legislative Instruments Act 2003 (the LIA), an instrument is a legislative instrument for section 5 of the LIA if it is declared to be a disallowable instrument under legislation in force before the commencement of the LIA. Under subsection 98 (4A) of the Act, CAOs made for the purposes of section 28BA of the Act are declared to be disallowable instruments. The CAO Amendment is, therefore,
a legislative instrument and it is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

Consultation under section 17 of the LIA has not been undertaken in this case. The CAO Amendment is beneficial for operators and will provide legal certainty and proper standards for a practice already allowed by CASA under administrative policy.

The CAO Amendment will not substantially alter existing arrangements and is regarded as being of a minor or machinery nature. The Office of Regulation Review has agreed, therefore, that it may proceed without the preparation of a Regulation Impact Statement.

The instrument commences on the day after it is registered.

The instrument has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 84A (2) of the Act.

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