Explanatory Statement

Civil Aviation Regulations 1988

Civil Aviation Order 40.2.1 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 Act and the safety of air navigation.

Under subregulation 5.14 (1) of the Civil Aviation Regulations 1988 (CAR 1988), CASA may give directions in Civil Aviation Orders (the CAOs) setting out the requirements for issue of flight crew ratings.

Under subregulation 5.16 (1) of CAR 1988, CASA may issue flight crew ratings subject to conditions necessary in the interests of safety. Under paragraph 5.16 (2) (c), conditions can be set out in the CAOs made under regulation 303 of CAR 1988.

Under regulation 303 of CAR 1988 where CASA is empowered by regulations to issue, among other things, flight crew ratings subject to conditions, the conditions may be specified in CAOs of general application.

Under regulation 5.18 of CAR 1988 CASA may give directions in the CAOs setting out the authority given by, and the limitations of, a flight crew rating, and the requirements to be met for the authority to be exercised. Directions and conditions for flight crew instrument ratings are set out in CAO 40.2.1 which is amended by Civil Aviation Order 40.2.1 Amendment Order (No. 2) 2006 (the CAO Amendment).

The CAO Amendment

Regulation 2 of CAR 1988 defines a synthetic flight trainer as a flight simulator, a flight training device or a synthetic trainer. Under paragraph 9.2 of CAO 40.2.1, a synthetic flight trainer may be approved for accruing certain instrument time, and to meet flight test and recent experience requirements. Instrument rating credits applicable to an approved synthetic flight trainer are mentioned in Appendix II of CAO 40.2.1.

Paragraph 9.1 of CAO 40.2.1 states that the operational standards for synthetic flight trainers that may be approved are detailed in documents entitled FSD-1 Operational Standards and Requirements — Approved Flight Simulators (FSD-1), and FSD-2 Operational Standards and Requirements — Approved Synthetic Trainers (FSD2). However, the standards in FSD-1 were superseded by those contained in Manual of Standards (MOS) — Part 60 Synthetic Training Devices, made under Part 60 of the Civil Aviation Safety Regulations 1998 (CASR 1998). The reference to FSD-1 is, therefore, out-of-date. The CAO Amendment deletes the reference to FSD-1 and substitutes a reference to the MOS. The name of FSD2 is also corrected.
Appendix II of CAO 40.2.1 deals with the instrument rating credits for approved synthetic flight trainers. As a result of the MOS, the classification of approved flight simulators referred to in section 1 of Appendix II is out-of-date. The designation of the levels of classifications has changed and some classifications have been combined. The CAO Amendment, therefore, substitutes a new section 1 in Appendix II and modifies the Note to mention the MOS instead of FSD-1.

**Legislative Instruments Act**

Under subsection 98 (5) of the Act, where regulations provide for an instrument to be issued in the form of a CAO, the CAO is declared to be a disallowable instrument. 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. The CAO Amendment is, therefore, a legislative instrument. 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 because the amendments are of a minor or machinery nature designed to correct out-of-date references.

The CAO Amendment is consequential on Part 60 of CASR 1998 and the MOS made under it. Part 60 was the subject of Regulation Impact Statement CASA #0301 (the *RIS*) approved by the Office of Regulation Review. Paragraph 4.19 of the RIS foreshadowed this consequential amendment and no further RIS is required.

The instrument comes into effect 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.

[Civil Aviation Order 40.2.1 Amendment Order (No. 2) 2006]