Explanatory Statement

Civil Aviation Order 40.7 Amendment Order (No. 1) 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 5.23 (1) of the Civil Aviation Regulations 1988 (CAR 1988), CASA may give directions in Civil Aviation Orders (the CAOs) setting out the requirements for the issue of aircraft endorsements.

For balloons, these directions are contained in Civil Aviation Order 40.7 (CAO 40.7). Under subsection 3 of CAO 40.7, endorsements are prescribed as class 1 to class 5.

Endorsements
Paragraph 12.5 of CAO 40.7 sets out the requirements for the issue of a class 2 endorsement. Sub-subparagraph 12.5 (a) (i) sets out certain aeronautical experience requirements. Sub-subparagraph 12.5 (a) (ii) sets out the requirements to hold a class 1 endorsement and undertake at least 6 hours of flying training in a class 2 balloon with a flight instructor who holds a class 2 endorsement.

Paragraph 12.6 of CAO 40.7 sets out the requirements for the issue of a class 3 endorsement. Under sub-subparagraph 12.6 (a) (ii), the requirements include holding a class 2 endorsement and undertaking at least 6 hours of flying training in a class 3 balloon with a flight instructor who holds a class 3 endorsement; or alternatively, holding a class 1 endorsement and undertaking at least 10 hours of flying training in a class 3 balloon with a flight instructor who holds a class 3 endorsement.

When the 4 class endorsements based on balloon size were first introduced, it had been intended that use of the alternative method of qualifying for a class 3 endorsement would also qualify a person for the class 2 endorsement. However, this was not possible on the wording of sub-subparagraph 12.5 (a) (ii).

The Amendment Order rectifies this by providing in a new sub-subparagraph 12.5 (a) (ii) that, subject to meeting the aeronautical experience requirements, holding a class 3 endorsement is an alternative method of qualifying for a class 2 endorsement.

Ratings
Under subregulation 5.17 (3) of CAR 1988, CASA may give directions in the CAOs setting out the period for which a flight crew rating, or grade of flight crew rating, remains in force.

Paragraph 16.3 of CAO 40.7 provides that for subregulation 5.17 (3) a flight instructor (balloon) rating remains in force for 1 year from the day on which the rating was issued, or for 2 years from the day on which the rating was renewed. Each of these dates was taken to be the day of the actual flight test for the respective ratings. For administrative flexibility, the Amendment Order modifies this so that a flight instructor (balloon) rating will remain in force for 1 year from the last day of the month in which the rating was issued, or 2 years from the last day of the month in which the rating was renewed.

A new paragraph 16.4A provides, in effect, a definition of renewed. If the flight test for renewal has been passed within the 90 days before the rating would have expired,
the flight instructor (balloon) rating is taken to be renewed on the day the rating would have expired. In any other case, the rating is taken to be renewed on the day on which the flight test was passed.

In the 90 day option, the 1 day overlap of the renewal with the previous rating is necessary because otherwise, given the terms of new paragraph 16.3 (b) mentioned above, back-to-back renewals could result in a monthly creep in the duration of the rating. For example, if the expiry of a rating were on the last day of a month, and its renewal were on the first day of the next month this would result in the renewed rating remaining in force until the end of 2 years from the last day of that new month.

These changes bring the CAO provisions for balloons into line with comparable provisions in CAO 40.1.7 for the duration and renewal of flight instructor (aeroplane) ratings.

**Legislative Instruments Act**
Under subregulation 235 (7) of CAR 1988, CASA is empowered to give directions. Under regulation 5 of CAR 1988, where CASA is empowered to give directions it may do so in the form of a CAO. Also, under subregulation 5.17 (3) of CAR 1988, CASA is empowered to give directions in the form of CAOs. 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. An amendment to the CAO is similarly disallowable.

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 Amendment Order is, therefore, a legislative instrument and 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 Amendment Order merely brings the provisions of CAO 40.7 for flight instructor (balloon) rating durations and renewals into line with existing provisions for flight instructor (aeroplane) ratings.

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

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.

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