Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 82.6 Amendment Order (No. 1) 2007

Background

Night vision goggles (NVG) are a head mounted night vision enhancement device. They use image intensifying technology to amplify the available ambient light sufficiently for images to be seen through the NVG eyepieces as a monochromatic green image.

NVG technology evolved mainly in advanced military forces, including in Australia. In certain strictly controlled circumstances, the use of NVG can enhance crew situational awareness and improve overall flight safety under night visual flight rules (NVFR). As a result of helicopter industry demand and overseas developments in the use of NVG for civilian helicopter operations, CASA established a trial to facilitate the use of NVG in certain public interest helicopter operations.

Civil Aviation Order 82.6 (CAO 82.6) supports the trial by providing for operational and airworthiness standards and approval requirements for the use of NVG in specialised helicopter aerial work operations, namely search and rescue, law enforcement, aerial fire fighting, aerial fire fighting support, emergency medical services, marine pilot transfers, training for any of these, and demonstration and positioning flights.

CAO 82.6 makes unlawful any non-approved use of NVG as a primary means of terrain avoidance for safe air navigation by means of visual surface reference external to an aircraft.

Purpose of amendment

Civil Aviation Order 82.6 Amendment Order (No. 1) 2007 (the CAO Amendment) amends CAO 82.6 to provide CASA with greater flexibility in recognising the training and experience of overseas and ex-military NVG flying instructors. This, in turn, enables CASA to qualify such instructors to commence initial NVG flying training, subject to the other requirements of CAO 82.6.

Legislation

The legislative basis for CAO 82.6 is set out in attachment A. The CAO Amendment is made under the same legislative framework.

Back to the CAO Amendment

Subclause 15.4 of Appendix 3 of CAO 82.6 sets out the minimum qualifications and experience that a person must have for eligibility to be approved as an NVG flight instructor. These are:

(a) the minimum qualification requirements of an NVG pilot in command; and
(b) a current grade 1 or grade 2 flight instructor (helicopter) rating; and
(c) a night training approval (or recognised overseas equivalent); and
(d) an NVG training approval issued by CASA; and
(e) at least 250 hours of helicopter flight instruction; and
(f) after receiving an NVG qualification — at least 40 hours of NVG flight as 1 or more of the following:
   (A) an NVG pilot in command;
   (B) an NVG pilot in command under supervision (known as ICUS);
   (C) an NVG pilot under post initial qualification dual instruction by an NVG flight instructor; and
(g) the minimum experience requirements of the Civil Aviation Orders (the CAOs) to give flight instruction on the relevant aircraft type; and
(h) successful completion of an NVG flight instructor flight test conducted by an NVG testing officer, or an NVG FOI, appointed to conduct such tests.

Overseas and ex-military instructors
NVG are most extensively used in the military environment, both in Australia and overseas. The United States is also further advanced than other States in the safe civilian use of NVG. For these reasons, it is expected that overseas, or overseas-trained NVG flying instructors, and ex-military flying instructors, will play an important role in the initial training of NVG pilots, and hence in the start-up activities for the NVG trial.

However, it has been realised that the requirements of subclause 15.4 may have the unintended effect of unnecessarily delaying, or excluding, the involvement of such instructors in the Australian industry, because, although highly trained and qualified in overseas or military qualifications, they lack compliance with the Australian requirements.

CASA has decided to allow itself greater flexibility in assessing the suitability of overseas and ex-military NVG flying instructors as follows.

The CAO Amendment
The CAO Amendment qualifies the requirements in paragraphs 15.4 (a), (e), (f), (g) and (h) (for NVG qualifications, helicopter flight instruction, NVG flight time, aircraft type endorsements and flight tests), by inserting the words “unless CASA approves otherwise in writing”. This will enable CASA to waive 1 or more of the particular requirements if a person can demonstrate that he or she offers some equally safe equivalent qualification, training or experience.

The CAO Amendment modifies the requirements in paragraphs 15.4 (b) and (c) (for flight instructor ratings and night training approvals) to allow recognition of “an overseas or military equivalent approved by CASA”. This will enable CASA to accept some equally safe equivalent overseas or military rating or approval.
**Legislative Instruments Act**
Under subsection 98 (4A) of the *Civil Aviation Act 1988* (the *Act*), CAOs made for the purposes of section 28BA of the Act are declared to be disallowable instruments.

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**
Consultation under section 17 of the LIA has not been undertaken. By increasing CASA’s flexibility in recognising equally safe alternative qualifications for NVG flight instructors, the CAO Amendment is considered to be of only beneficial effect to industry. It is required as soon as possible to enable recognition of overseas, overseas-trained and ex-military NVG flying instructors whose involvement in the start-up phase of the NVG trial is essential.

For the making of CAO 82.6, there was extensive consultation with the specialised helicopter aviation industry, particularly the Helicopter Association of Australia. A joint CASA/industry panel was also established to monitor the 12 month trial and the CAO Amendment will be reported to the panel.

**Regulation Impact Statement**
The Office of Best Practice Regulation (*OBPR*) advised that CAO 82.6 may proceed without the preparation of a Regulation Impact Statement (*RIS*). The CAO Amendment is intended to provide CASA with greater flexibility under CAO 82.6 in recognising the qualifications and experience of overseas, overseas-trained and ex-military NVG flying instructors.

*OBPR* does not require a RIS for the CAO Amendment because a preliminary assessment of the business compliance costs indicates that the amendment will have only a low impact on business.

**Commencement and making**
The instrument comes into effect on the day after it is registered. The amended instrument, CAO 82.6, stops having effect at the end of July 2008 when the NVG trial is due to end.

The instrument has been made by the Acting Director of Aviation Safety, on behalf of CASA, in accordance with subsection 84A (2) and section 90 of the Act.

[Civil Aviation Order 82.6 Amendment Order (No. 1) 2007]
Legislative basis for CAO 82.6 and amendments to it

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.

CAR 1988
Under subregulation 5 (1) of the Civil Aviation Regulations 1988 (CAR 1988), where CASA is empowered to issue certain instruments, it may do so in a CAO.

Under subregulation 157 (1) of CAR 1988, the pilot in command of an aircraft must not fly over a city, town or populous area at a height lower than 1 000 feet, or over any area at a height lower than 500 feet.

Under subregulation 174B (1) of CAR 1988, except for take-off and landing, the pilot in command of an aircraft must not fly it at night under the visual flight rules (VFR) at a height of less than 1 000 feet above the highest obstacle within 10 miles.

Under subregulation 195 (1) of CAR 1988, at night and in conditions of poor visibility, the operator and pilot in command of an aircraft must comply with the rules in Part 13 of CAR 1988 about the lights to be displayed for the aircraft.

Under subregulation 207 (2) of CAR 1988, a person must not use an Australian aircraft in a class of operation if the aircraft is not fitted with the instruments and equipment approved and directed by CASA. In approving or directing, CASA may have regard only to the safety of air navigation.

Under subregulation 215 (3) of CAR 1988, CASA may give directions requiring an operator to include, revise or vary information, procedures or instructions in the operations manual (operating procedures).

Under subregulations 217 (1) and (3) of CAR 1988, CASA may specify operators who must provide an approved training and checking organisation (a TCO) to ensure that members of the operator’s operating crews maintain their competency.

Under subregulation 308 (1) of CAR 1988, in relation to particular aircraft or categories of aircraft, CASA may exempt the aircraft, or persons in, on, or otherwise associated with the operation of, the aircraft, from compliance with specified provisions of CAR 1988. Under subregulation 308 (2), before making an exemption, CASA must take relevant safety considerations into account. Under subregulation 308 (3), CASA may make an exemption subject to necessary safety conditions.

Under section 27 of the Act, CASA may issue Air Operators’ Certificates (AOCs) for its functions. Under subsections 27 (2) and (9) of the Act, an aircraft operator must hold an AOC in order to operate for certain prescribed purposes. Paragraph 206 (1) (a) of CAR 1988, prescribes aerial work purposes of various kinds, including aerial spotting,
flying training, ambulance functions, and purposes that are *substantially similar* to these. Substantially similar purposes are generally taken to include search and rescue, law enforcement, aerial fire fighting and marine pilot transfers.

Under paragraph 28BA (1) (b) of the Act, an AOC has effect subject to, among other things, conditions specified in the CAOs.