

Explanatory Statement

Acts Interpretation Act 1901

Civil Aviation Safety Regulations 1998

Part 133 Manual of Standards Amendment Instrument 2021 (No. 1)

Purpose

The *Part 133 Manual of Standards Amendment Instrument 2021 (No. 1)* (the **MOS amendment**) amends the *Part 133 Manual of Standards* (the **MOS**).

The MOS, which commences on 2 December 2021, sets out the standards for the commercial operation of operators of helicopters, gyroplanes or powered-lift aircraft. The MOS was made under regulation 133.020 of Part 133 of the *Civil Aviation Safety Regulations 1998 (CASR)*. It consolidates the existing rules and contains some new rules to enhance operational flexibility, improve aviation safety, and bring Australian requirements more in line with the Standards and Recommended Practices of the International Civil Aviation Organization (**ICAO**).

The MOS amendment, which commences at the time it is registered, is necessary to make a number of miscellaneous minor or machinery amendments to the MOS to make a range of corrections and updates to the MOS. These amendments do not substantially alter the existing arrangements as provided for by the MOS with effect on and from 2 December 2021.

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 (CAR)* and CASR are made under the Act.

The *Civil Aviation Safety Amendment (Part 133) Regulations 2018 (Part 133 of CASR)* were registered on 6 December 2018 and amended by the *Civil Aviation Legislation Amendment (Flight Operations—Miscellaneous Amendments) Regulations 2020* registered on 21 October 2020. Part 133 of CASR commences on 2 December 2021. Under regulation 133.020 of CASR, the Civil Aviation Safety Authority (**CASA**) may issue a Manual of Standards for Part 133 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 133. This power is complemented by other provisions, throughout Part 133, which empower CASA to prescribe specific matters in the MOS.

Section 4 of the *Acts Interpretation Act 1901* (the **AIA**) as applied by section 13 of the *Legislation Act 2003* (the **LA**) provides, among other things, that if an Act (including a regulation) is enacted and at a time after its enactment (the **start time**) the Act will confer power to make an instrument, that power may be exercised before the start time as if the relevant commencement had occurred. However, in general terms, the exercise of this power does not confer a power or right to impose an obligation on a person before the relevant commencement. Using section 4 of the AIA, the MOS is made under regulation 133.020 of CASR, a regulation that will not commence until 2 December 2021.

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 “133.” is a reference to that provision in Part 133 of CASR.

More details about the amendments are set out in Appendix 2 of this Explanatory Statement.

Legislation Act 2003

Under subsection 8 (4) of the LA, an instrument is a legislative instrument if it is made under a power delegated by the Parliament, and any provision 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 satisfied these requirements and, consequentially, the MOS amendment also does so.

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

On each of these criteria, the MOS is a legislative instrument subject to registration, and tabling and disallowance in the Parliament, under sections 15G, and 38 and 42, of the LA. Consequentially, the same provisions and conclusions apply to the MOS amendment.

Incorporations 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, the 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.

The MOS amendment incorporates the matters set out in the following table.

Name of instrument or document	Description	Manner of incorporation	Source
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Name of instrument or document	Description	Manner of incorporation	Source
<i>Civil Aviation Order 20.11 (Emergency & life saving equipment & passenger control in emergencies (02/12/2004))</i>	<p>This instrument provides requirements relating to emergency and life saving equipment and passenger control in emergencies for Australian registered aircraft.</p> <p>This document is incorporated by subsection 7.01(4), inserted by item [9] of the MOS amendment, and is transitional in nature. The incorporation will self-repeal at the end of 1 December 2022.</p> <p>(Existing sections 11.45 and 11.50 had incorporated this instrument, as in force immediately before the commencement of the MOS).</p>	As in force immediately before the commencement of the MOS, being 2 December 2021.	The instrument is freely available on the Federal Register of Legislation.
<i>EASA CS ACNS Certification Specifications and Acceptable Means of Compliance for Airborne Communications, Navigation and Surveillance CS-ACNS</i>	<p>This document provides the Certification Specifications and acceptable means of compliance for Airborne Communications, Navigation and Surveillance.</p> <p>The document was initially incorporated by section 11.52 of the MOS as in force or existing from time to time. Item [44] amends the incorporation such that the version dated 17 December 2013, and any later version, is incorporated</p>	<p>The version dated 17 December 2013, and any later version is incorporated.</p> <p>Incorporated by reference pursuant to subsection 98 (5D) of the Act.</p>	<p>This document is available for free at https://www.easa.europa.eu/sites/default/files/dfu/Annex%20I%20to%20ED%20Decision%202019-011-R%20-%20CS%20ACNS%20Issue%20.pdf</p>

Consultation

Under regulation 11.280 in Subpart 11.J of CASR, if CASA intends to issue a MOS, CASA must, in effect, engage in public consultation on the draft MOS. This requirement also applies to a MOS amendment.

However, under paragraph 11.275 (1) (d), CASA is not obliged to consult if the Director of Aviation Safety (the **Director**) determines that the MOS is of a minor or machinery nature that does 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. The Director has made such a determination because the purpose of the MOS amendment is to make a range of corrections and updates to the MOS.

The amendments do not substantially alter the existing arrangements as provided for by the MOS with effect on and from 2 December 2021.

There has, nevertheless, been considerable informal consultation with the aviation industry in the course of preparation of the amendments. Many of the amendments have arisen due to extensive feedback from the aviation industry to CASA via multiple communication channels, both individual direct feedback, and collective feedback from various working groups.

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), 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 this instrument are minor or machinery in nature and are designed to avoid imposing additional costs on operators. It is considered by CASA that these matters are adequately encompassed by the RIS prepared by CASA for the new Part 133 regulations and the MOS previously mentioned and that 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).

Regulation Impact Statement

A Regulation Impact Statement (**RIS**) was prepared by CASA for the new Part 133 regulations and this RIS also covered the MOS and the MOS amendment which the regulations empowered. The RIS was assessed by 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 the new Part 133 regulations ([Civil Aviation Safety Amendment \(Part 133\) Regulations 2018 \(legislation.gov.au\)](#)).

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is at Appendix 1 of this Explanatory Statement. This concludes that the MOS amendment, as a set of minor or machinery amendments, is compatible with human rights.

Commencement and making

The MOS amendment commences at the time it is registered. The empowerment for the MOS amendment, contained in Part 133 of CASR, in particular regulation 133.020 had not commenced when the MOS amendment was made. However, this is permitted under section 4 of the AIA which authorises the anticipatory making of a subordinate instrument in these circumstances, provided the instrument does not commence until (or after) the delayed empowering instrument has itself commenced.

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

Statement of Compatibility with Human Rights

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

Part 133 Manual of Standards Amendment Instrument 2021 (No. 1)

This 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 Disallowable Legislative Instrument

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Human rights implications

When it was made, the Explanatory Statement for the MOS explained that, of their very nature in addressing aviation safety issues, its provisions may engage the following human rights:

- the right to life under Article 6 and the right to privacy and reputation under Article 17 of the International Covenant on Civil and Political Rights
- the right to work under Article 6 (1) and the right to safe and healthy working conditions under Article 7 of the International Covenant on Economic, Social and Cultural Rights (the ICESCR).

That earlier Explanatory Statement concluded that the MOS was a legislative instrument that was compatible with human rights and, to the extent that it may also limit human rights, the limitations were reasonable, necessary and proportionate to ensure the safety and the integrity of the aviation safety system upon which all aviation operations rely.

The MOS amendment is also a legislative instrument but it contains only minor or machinery amendments as explained above, and these do not, of themselves, directly engage human rights, nor do they increase any engagement with human rights already recorded in the Explanatory Statement for the MOS as amended. The instrument is, in itself, therefore, compatible with human rights.

Conclusion

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

Details of the Part 133 Manual of Standards Amendment Instrument 2021 (No. 1)

1 Name of instrument

This section provides for the naming of the *Part 133 Manual of Standards Amendment Instrument 2021 (No. 1)* (the **MOS amendment**).

2 Commencement

This section provides for the commencement of the MOS amendment on its registration.

3 Amendment of Part 133 Manual of Standards

This section provides that Schedule 1 amends the Part 133 Manual of Standards (the **MOS**).

Schedule 1 Amendments

[1] Section 1.05

Item 1 provides a new definition for a *medical transport operating site* for a rotorcraft.

[2] Subsection 3.01(1), Note 2

Item 2 corrects an editorial error. Note 2 incorrectly refers to an example of a document relating to ‘disinfection’ (using an agent to destroy pathogens on surfaces). The correct term should be ‘disinsection’ (using an airborne agent to destroy insects as required by the *Biosecurity Act 2015*).

[3] Section 3.04, Table 3.04, Item 2

Item 3 removes the requirement for signalling devices to be only pyrotechnic in nature. There are now non-pyrotechnic devices available on the market that an operator could use. If this term is retained in item 2 of Table 3.04, the operator would not be required to have the information for these devices available for a rescue centre. Non-pyrotechnic signalling devices are not yet in widespread use, but a better future safety outcome would be achieved if operators must have the information on these devices available.

[4] Paragraph 5.10(3)(c)

Item 4 removes the requirement for the pilot in command to have received confirmation that the area in which the rotorcraft is to operate is clear of obstructions and obstacles that may endanger the rotorcraft before descending. Instead, the pilot in command must, before descent, be satisfied that the area in which the rotorcraft is to operate is clear of obstructions and obstacles that may endanger the rotorcraft.

[5] Subsections 5.12(5) and (6)

Item 5 removes superfluous requirements. As air transport winching is no longer a Part 133 operation, the specific safety requirements in subsections 5.12(5) and (6) are unnecessary. New subsection 5.12(5) provides for a more outcome-based requirement that the rotorcraft must be operated so that it does not create a hazard to a person, or property, on the ground or water under the rotorcraft’s flight path in the event of an engine failure or other emergency.

[6] Section 6.02, definition of *final reserve fuel*, Table, Items 2 and 3

Item 6 removes a superfluous table item to consolidate the final reserve fuel requirements for VFR flights.

[7] Section 6.02, definition of *MSL*

Item 7 removes the definition of the term MSL. This definition was incorrectly included in the definitions for Chapter 6; however, the term is not used in that chapter or elsewhere in the MOS.

[8] Subsection 7.01(1)

Item 8 facilitates the amendment provided for in item 9.

[9] Section 7.01

Item 9 provides that an operator who held an AOC authorising charter operations or regular public transport operations prior to 2 December 2021 can continue to use their existing safety briefing card until 2 December 2022.

[10] Chapter 9, heading

Item 10 provides for a more accurate chapter heading.

[11] Subsection 9.01(1)

Item 11 recasts the application of the exemption in section 9.01 to apply to ‘crew members’.

[12] Section 9.01

Item 12 provides that the exemption in section 9.01 does not apply to an air crew member who is assigned duties, during the flight, requiring the air crew member to occupy a crew station in the rotorcraft’s cockpit.

[13] Subsection 9.01(2)

Item 13 is consequential on item 12.

[14] Sections 9.02 to 9.04

Item 14 substitutes sections 9.02 to 9.04 with new sections 9.02 to 9.05. The intent is to align these sections with provisions in the Part 91 MOS and replace specifications for a person to wear a ‘seat belt’ to instead be ‘restrained’.

New section 9.02 prescribes directions for the purposes of regulation 11.245 of CASR that sets out the circumstances in which each person on a flight of a rotorcraft must be restrained. The directions cease at the end of 1 December 2024.

New section 9.03 provides that a passenger of a rotorcraft for a flight is taken to comply with section 9.02 if the passenger fastens the passenger’s seatbelt or shoulder harness, and keeps it fastened, during the period the passenger must be restrained under the section.

New section 9.04 sets out the circumstances and associated requirements in which a medical patient, a person who is one of the medical personnel, or certain kinds of crew member on a flight of a rotorcraft that is a medical transport operation is taken to comply with section 9.02 of the MOS by being restrained. Relevantly, subsections 9.04(6) and (7) further stipulate that the requirements in subsections 9.04(2) to (5) are directions for the purposes of regulation 11.245 of CASR. Such directions cease at the end of 1 December 2024.

New section 9.05 sets out the circumstances in which a crew member, other than a flight crew member or an air crew member who is assigned duties, during the operation, requiring the air crew member to occupy a crew station in the rotorcraft's cockpit, is taken to comply with section 9.02 of the MOS by wearing a safety harness and restraint strap during the period the crew member must be restrained. Subsections 9.05(2) to (9) set out the requirements that must be met, which are directions for the purposes of regulation 11.245 of CASR. Such directions cease at the end of 1 December 2024.

[15] Section 10.01, definition of *helicopter clearway*

Item 15 removes a superfluous definition.

[16] Section 10.01, definition of *take-off distance available – rotorcraft*

Item 16 amends the definition of *take-off distance available – rotorcraft* to include any additional area in relation to an aerodrome, rather than limiting the take-off distance available to the space available on the aerodrome itself and any helicopter clearway provided by the aerodrome operator, to now allow the take-off distance available to include the space available on the aerodrome and other areas which can be safely used for this purpose.

[17] Subsection 10.06(1)

Item 17 adds the take-off and initial climb stage to subsection 10.06(1) which permits the relevant section of this stage to be considered when determining if a multi- engine rotorcraft is flown in performance class 2 with exposure.

[18] Section 10.09, definition of *PC2WE flight*

Item 18 adds a mention of take-off stage into the definition of PC2WE flight to ensure that this definition includes both the take-off stage and the take-off and initial climb stage.

[19] Paragraphs 10.11(1)(a) and (b)

Item 19 adds a new paragraph mentioning take-off stage to ensure that this stage, in addition to the take-off and initial climb stage and the approach and landing, or baulked landing stage is included within the requirements related to maximum permitted exposure time for a PC2WE flight.

[20] Subsection 10.11(2)

Item 20 facilitates the amendments as provided for in item 19.

[21] Subsection 10.11(3)

Item 21 facilitates the amendments as provided for in item 19.

[22] Subparagraph 10.18(2)(b)(ii)

Item 22 adds the abbreviation for NAA to mean national aviation authority.

[1] Subsection 10.33(7), definition of *elevated aerodrome*

Item 23 clarifies that elevated aerodrome means an aerodrome situated on a raised structure. This new definition removes an unnecessary limitation that the aerodrome be situated on a raised structure erected on land.

[2] Paragraph 11.02(4)(d)

Item 24 facilitates the addition of paragraph 11.02(4)(e) in item 25.

[3] At the end of section 11.02(4)

Item 25 inserts a new paragraph 11.02(4)(e) to set out the additional requirements relating to the fitment and non- fitment of equipment to a rotorcraft. Increasingly, optional surveillance equipment is available for aviation users. The requirement in the new paragraph is intended to

ensure that any optional surveillance equipment used by the aircraft is subject to an overarching requirement to not affect the safety of other aircraft or the proper functioning of ATS surveillance systems. This requirement is in line with existing policy that arose after the MOS was consulted associated with the VFR ADS-B project.

[4] Section 11.04

Item 26 substitutes a new section 11.04 to provide further clarity relating to the fitment and non- fitment of equipment to a rotorcraft. Section 11.04 as previously written incorrectly constrained the effect of the definition of ‘permissible unserviceability’ to only that power contained in regulation 21.007 of CASR, when the definition also refers to CAR 37. This change ensures that existing industry and CASA practices in relation to the power to issue a permissible unserviceability are unchanged.

[5] Subsection 11.08(1)

[6] Subsection 11.08(1)

[7] Subsection 11.08(2)

Items 27 to 29 correct editorial errors and clarify provisions.

[30] Paragraph 11.08(3)(b)

Item 30 substitutes a new paragraph 11.08(3)(b) to provide clarity on the additional radiocommunication systems required for communicating with ATS when VHF communications with ATS are not available. The item reflects existing provisions granted to allow operators to fit certain radiocommunications equipment, as an alternative to an HF radio, that can send a message from the pilot directly to company operations or a third party approved by the operator in the event of an emergency occurring. Operators or these third parties would then be required to contact certain agencies to respond to the emergency situation. It also reflects an existing provision permitting direct contact with the operator for the flight in lieu of contact with ATS in certain circumstances. This carries across existing provisions in a more outcome-based manner and allows for future technological advancements.

[8] Subsection 11.08(4)

Item 31 is consequential on item 30.

[9] Section 11.09, after heading

Item 32 adds an explanatory Note to inform the reader of a navigation equipment related requirement in the Part 91 Manual of Standards, and applicable generally.

[10] Section 11.10

Item 33 recasts section 11.10 to clarify the circumstances in which a rotorcraft must be fitted with an automatic pilot or automatic stabilisation system.

[11] Section 11.12, heading

Item 34 provides for a more accurate section heading.

[12] Subsection 11.12(3)

Item 35 recasts subsection 11.12(3) to align with the equivalent subsections in the Parts 121 and 135 Manuals of Standards. Item 35 provides that if natural light does not adequately illuminate the items of equipment and documents mentioned in paragraphs (2)(a) and (b), cockpit lighting equipment of a rotorcraft operating by day must illuminate the items of equipment and documents and be compatible with each item of equipment that may be used by a flight crew member.

[13] Subsection 11.15(1)

Item 36 removes the requirement for navigation lights to be fitted to an aircraft operating in poor visibility. The phrase ‘poor visibility’ was a carryover from regulation 195 of CAR. If an aircraft is not intended to fly at night, then the only practical way this requirement could be met is if the navigation lights are permanently fitted. This amendment ensures the rule can be reasonably complied with.

[14] Section 11.23

Item 37 clarifies that one flight data recorder must be fitted to a rotorcraft with MTOW of more than 5 700 kg and is either turbine powered or is of a type first certificated in its country of manufacture on, or after, 1 July 1965.

[15] Paragraph 11.24(a)

Item 38 clarifies that one cockpit voice recorder must be fitted to a rotorcraft with MTOW of more than 5 700 kg and is either turbine powered or is of a type first certificated in its country of manufacture on, or after, 1 July 1965.

[16] Section 11.37(2)(a)

Item 39 corrects the unintended exclusion of foreign registered aircraft that do not hold an Australian certificate of airworthiness from being required to comply with this provision. The paragraph is revised to include pressurised rotorcraft that, instead of holding an Australian certificate of airworthiness, instead hold an authorisation equivalent to a certificate of airworthiness issued by the national aviation authority of a Contracting State of ICAO.

[40] Subsection 11.38(4)

Item 40 removes an incorrect requirement for protective breathing equipment to be compatible with the use of a megaphone. This is an incorrect requirement not in accordance with either current policy or equivalent international regulatory positions.

[41] Section 11.48, heading

Item 41 provides for a more accurate section heading, consequential on item 42.

[42] Paragraph 11.48(1)(a)

Item 42 removes references to ‘amphibian’ aircraft. The definition of *amphibian* does not apply to rotorcraft and is therefore inappropriate for use in the MOS. Instead, section 11.48 applies to a flight of a rotorcraft if the rotorcraft is designed to take-off from, and land on, land or water.

[17] Subsections 11.51(1) and (2)

Item 43 provides clarity as to the circumstances in which emergency flotation equipment is required to be fitted to a rotorcraft.

[44] Section 11.52, definition EASA CS-ACNS

Item 44 amends the incorporation of the document EASA CS-ACNS so that the version dated 17 December 2013, plus any later versions of the document, are incorporated. Previously the document was incorporated as in force or existing from time to time, which would have the result that a later version would supersede an earlier one. This was the wrong policy result.

[18] Section 11.52, definition of NIC

Item 45 corrects a referencing error.

[19] Subsections 11.55(1) and (2)

Item 46 corrects an editorial error and refers correctly to ATS to encompass all air traffic services, not just ATC.

[20] Section 11.58, at the end

Item 47 adds an explanatory Note to direct the reader to other relevant provisions.

[21] Section 12.08

Item 48 clarifies the policy intent carried through from CAO 20.11 Appendix IV with regard to in-water practical training in the use of life jackets and life rafts. The intent is that the initial flight crew member general emergency check of competency assesses the in-water elements of life jacket use, and life raft use, if life rafts are required to be carried. The subsequent recurrent training and checking requirement for life jackets and life rafts was not intended to require an in-water component. The previous wording of the provision inferred that the in-water component was required for recurrent training.

[22] Chapter 12, Division 4, heading**[50] Section 12.13, heading****[51] Subsections 12.13(2), (4) and (5)****[52] Subsection 12.13(6), definition of *available*****[53] Subsection 12.13(6), definition of *qualified***

Items 49, 50, 51, 52 and 53 recast Division 4 of Chapter 12 to refer to ‘approved’ rather than ‘qualified’ flight simulators. This aligns with the drafting of other CASR Parts and the definition of *approved flight simulator*.

[523] Section 14.08

Item 54 replicates the amendments made by item 48 in the case of air crew members for the same reasons as articulated in item 48.

[55] Paragraph 15.04(2)(d)

Item 55 corrects an editorial error.

[56] Section 15.08

Item 56 replicates the amendments made by item 48 in the case of medical transport specialists for the same reasons as articulated in item 48.