

EXPLANATORY STATEMENT

CIVIL AVIATION ACT 1988

CIVIL AVIATION ORDERS

CIVIL AVIATION ORDER 40.1.7 AMENDMENT ORDER (NO. 1) 2005

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.

Subregulation 5.09 (1) of the *Civil Aviation Regulations 1988* (***CAR 1988***) provides that CASA must issue a flight crew licence if an applicant “is qualified to hold” it.

Subregulation 5.104 sets out when a person “is qualified to hold” a commercial pilot (aeroplane) licence for the purposes of subregulation 5.09 (1).

Subregulation 5.14 (1) provides that CASA may give directions in Civil Aviation Orders (***CAOs***) setting out requirements for the issue of a flight crew rating, or grade of rating.

Subregulation 5.16 (1) and (2) provide that CASA may issue or renew a flight crew rating, or grade of rating, subject to conditions that must be set out in, among other things, the CAOs.

Regulation 5.18 provides that CASA may give directions in the CAOs setting out the authority given by, and the limitations of, a flight crew rating, or grade of rating, and the flight tests to be passed to exercise that authority.

First amendment

For flight instructor (aeroplane) ratings these directions and conditions are contained in CAO 40.1.7. Subparagraph 4.1 (a) and paragraph 4.1A of CAO 40.1.7 provide that an applicant for the issue of a flight instructor (aeroplane) rating grade 3 must complete, at a flying school, flight instruction that includes at least 50 hours of flight time.

Subparagraph 4.1.2 (a) excludes from the computation of that 50 hours, any flight training undertaken before “the issue of” a commercial pilot (aeroplane) licence or an equivalent overseas qualification.

A person may become eligible to be issued with a commercial pilot (aeroplane) licence, i.e. “qualified to hold” it within the requirements of regulation 5.104, several weeks before the licence is actually issued. There are administrative reasons for this — the licence cannot be issued until appropriate security clearance is obtained. CASA has no control over the timing of this.

During this time, however, flight training by the person cannot be counted towards achieving the required 50 hours. This represents a major disincentive for overseas students undertaking intensive full-time courses with Australian flying schools. Having qualified for their commercial pilot (aeroplane) licence, they cannot immediately commence flight training for a flight instructor (aeroplane) rating grade 3 but must wait several weeks, significantly, albeit indirectly, increasing the overall cost of the training offered by the Australian flying schools.

There is no risk to the interests of the safety of air navigation for trainee flying instructors who have satisfied all the requirements for issue of their commercial pilot (aeroplane) licence, to commence eligible flight training pending formal issue of the licence when security clearance is obtained.

The Amendment, therefore, amends subparagraph 4.1.2 (a) of CAO 40.1.7 to provide that the prescribed 50 hours of flight time may not include training undertaken before the trainee has met the requirements “to qualify for” a commercial pilot (aeroplane) licence mentioned in regulation 5.104 of the *Civil Aviation Regulations 1988* (the **Regulations**).

The reference in the former subparagraph 4.1.2 (a) of CAO 40.1.7 to overseas pilot qualifications is no longer necessary. The amendment would apply to exclude from the computation of the prescribed 50 hours, training undertaken by overseas pilots before they meet the requirements of subregulation 5.104 (3) to “to qualify for” a commercial pilot (aeroplane) licence.

Second amendment

Subparagraph 4.3 (a) of CAO 40.1.7 provides that an applicant for a flight instructor (aeroplane) rating grade 1 must have held a flight instructor (aeroplane) rating grade 2 during the 12 months immediately preceding the date of the application.

The strictness of this requirement causes significant difficulties where a person has held a flight instructor (aeroplane) rating grade 2 but has let it lapse.

The other requirements in paragraph 4.3 of CAO 40.1.7 for the issue of a flight instructor (aeroplane) rating grade 1, which include 750 hours instructional experience, the chief flying instructor’s recommendation and a flight test, are sufficiently stringent that the requirement to hold the grade 2 rating for the 12 months immediately before the application for the grade 1 rating is unnecessary.

The Amendment amends subparagraph 4.3 (a) of CAO 40.1.7 to provide that an applicant for a flight instructor (aeroplane) rating grade 1 must have held the grade 2 rating for a period of at least 12 months without stipulating when it must be held.

Legislative Instruments Act

Under subsection 98 (5) of the Act, CAOs which contain directions under the Regulations 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 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

Consultation under section 17 of the LIA has not been undertaken in this case because the Amendments are entirely beneficial with no adverse impacts on operators, pilots or trainee flying instructors.

The Amendments are considered to be minor or machinery in nature and will not substantially alter existing arrangements except in a beneficial way. For this reason, the Office of Regulation Review does not require a Regulation Impact Statement.

The instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

The CAO 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 40.1.7 Amendment Order (No. 1) 2005]