

Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 100.23 Amendment Order (No. 1) 2009

Purpose

Civil Aviation Order 100.23 Amendment Order (No. 1) 2009 (the **CAO amendment**), amends Civil Aviation Order (**CAO**) 100.23, concerning the issue by CASA of aircraft maintenance engineer examiner authorities, by adding a new subsection 6 to the effect that such examiner authorities are not required for persons who are already knowledge examiners under CAO 100.66.

Legislation

Section 98 of the *Civil Aviation Act 1988* (the **Act**) empowers the Governor-General to make regulations for the purposes of the Act and the safety of air navigation.

CAR 30

Under subregulation 30 (1) of the *Civil Aviation Regulations 1988* (**CAR 1988**), a person who engages in, among other things, the training or examining of candidates for the issue of an aircraft maintenance engineer licence, must hold a certificate of approval issued by CASA (**CAR 30 organisation**).

CAR 33B

Under subregulation 33B (1) of CAR 1988, CASA may, in writing, and in accordance with the CAOs, issue different types of airworthiness authorities, including “(c) authorities to conduct examinations required to be passed for the issue of aircraft maintenance engineer [**AME**] licences;” (**examiner authority**). Thus, a CAR 30 organisation engaged in training or examining must have examiners who hold examiner authorities.

Under subregulation 33B (2), an airworthiness authority (including an examiner authority) may be issued subject to conditions specified in the authority or in a CAO, or in both.

CAO 100.23

The general requirements for the issue of standard airworthiness authorities, including examiner authorities, are set out in CAO 100.23. Subsection 1 sets out the classes of authority. Subsection 2 describes the forms to be completed and the criteria to be met in terms of age, qualifications, experience and other abilities. Subsection 3 sets out the examination requirements. Subsection 4 deals with the duration of an authority and the requirement not to exercise the privileges of an authority if the holder has a disability that is likely to affect his or her technical skill or judgment. Subsection 5 concerns the withdrawal or cancellation of an authority.

CAO 100.26

CAO 100.26 applies only if an examiner authority is required. Subsection 1 in CAO 100.26 sets out specific requirement for the issue of an examiner authority in terms of employment (by a CAR 30 organisation), knowledge and examining ability. A Note makes it clear that the holder of an aircraft maintenance engineer licence (an **AME licence**), suitably rated for the work, would normally meet the knowledge requirement. Subsection 2 sets out the 4 privileges of an examiner authority holder.

These privileges are the preparation and maintenance of an examination question library; the marking of candidates' specific type examinations; the review and analysis of examination results; and the approval of examination results.

CAO 100.66

Requirements for the issue of new EASA-like airworthiness authorities are set out in CAO 100.66. Under CAO 100.66, candidates trained and examined by a recognised organisation (an **RO**) may be issued with a maintenance authority enabling them to carry out types of aircraft maintenance.

An organisation becomes an RO by meeting a series of criteria set out in CAO 100.66 and operating in accordance with an "exposition". An exposition is both part of the application for approval as an RO and also a detailed and documented operating system that ensures operations remain in accordance with the requirements to be met for an approval. These requirements are set out in Appendix 5 of CAO 100.66.

Clause 7 in Appendix 5, deals with personnel requirements. Under subclause 7.6, the applicant's exposition must set out the minimum qualifications and experience standards it requires for, among other things, a knowledge examiner. Under subclause 7.7, an RO must ensure that, at least every 24 months, each knowledge examiner undergoes professional development relevant to current technology, practical skills, human factors and the latest training techniques appropriate to the role of the person. Under subclause 7.8, an RO must ensure that a person may only carry out the role of a knowledge examiner if the person meets the standards mentioned in subclause 7.6 for the role. Under subclause 7.9, an RO must ensure that each employee has ready access to the part of the exposition that relates to his or her duties.

Clause 8 in Appendix 5 of CAO 100.66 deals with record requirements. Under subclause 8.1, an RO must maintain a record of all knowledge examiners including their experience and qualifications, training history and any subsequent training undertaken. Under subclause 8.2, the organisation must prepare a statement of duties and responsibilities for each knowledge examiner.

Dual CAR 30/RO organisations

Some organisations are dual CAR 30 organisations and ROs. They perform training and examining in both roles, using the same personnel but under the 2 different sets of legislative arrangements. CASA wishes to rationalise these arrangements so that for dual organisations only there would no longer be a requirement for the CAR 30 organisation examiners to hold examiner authorities provided they meet the requirements for a knowledge examiner under Appendix 5 of CAO 100.66.

Knowledge examiner duties and examiner authority privileges

Under paragraph 2.1 of CAO 100.66 (definitions), the duties of a knowledge examiner of an RO are to do 1 or more of the following for the RO: prepare examination questions; conduct examinations; mark examination answers; approve examination results; and conduct recognised prior learning (RPL) evaluations. These are similar to the privileges of an examiner authority holder, namely, the preparation and maintenance of an examination question library; the marking of candidates' specific type examinations; the review and analysis of examination results; and the approval of examination results.

Of course, both the duties and the privileges are subject to the scope of any relevant limitations or ratings respectively. Apart from that, any difference between them can be covered by a requirement on the organisation to ensure that knowledge examiners are fully aware of the marginal differences between their duties and examiner authority privileges. These differences would be minimal in the circumstances of dual approval holders.

Common expertise

CASA's requirements for approving an exposition in respect of knowledge examiners are essentially the same as CASA's requirements for the issue of an examiner authority (for example an appropriately rated AME licence). Knowledge examiners under CAO 100.66 would in law or practice meet the threshold requirements for an examiner authority under subclause 2.3 of CAO 100.23 (age, English language ability). For the experience, examination and rating requirements of an examiner authority, knowledge examiners must have the knowledge and ability to examine in the subject matter, usually evidenced by an appropriately rated AME licence or its equivalent.

Thus, CASA is guided in determining the experience and examination requirements for examiner authorities by reference to the same criteria as it uses in assessing those parts of an RO's exposition dealing with knowledge examiners. It is expected that, in practice, a person who meets the requirements of an RO knowledge examiner will, thereby, meet the requirements of an examiner authority. However, no assumptions are permitted and the person must actually meet both sets of requirements.

Therefore, under the requirements of the CAO amendment, for safety purposes there must be equivalence of expertise between knowledge examiners and examiner authority holders within dual organisations. On this basis, then, the requirement to actually hold and renew examiner authorities is removed. Details of the CAO amendment are set out in Attachment 1.

Rationale for CAO amendment

The CAO amendment removes the requirement for an RO's appropriately trained knowledge examiners under CAO 100.66 to hold CAO 100.23 examiner authorities when exercising examiner privileges for the same organisation in its CAR 30 capacity. The CAO amendment will, thereby, facilitate the effective and efficient deployment of relevant examiners, at optimal cost-benefit to the organisation, without affecting the safety or integrity of the examining function. The CAO amendment will also remove a perceived barrier to increased use of dual approvals in the transition to eventual use of EASA-like authorities only.

Legislative Instrument Act

Under subsections 98 (5) and 98 (5AAA) of the Act, if the regulations provide that CASA may issue a CAO containing a direction, instruction, notification, permission, approval or authority, such CAOs are legislative instruments. Subregulation 33B (1) of CAR 1988 provides that CASA may issue airworthiness authorities in accordance with a CAO.

It is not considered that subsections 98 (5) and 98 (5AAA) of the Act exhaust the scope for making CAOs as such. Thus, in addition, under subsection 98 (5A) of the Act, the regulations may empower CASA to issue "instruments" in relation to matters affecting, among other things, the maintenance of aircraft. Under subsection

98 (5AA), such an instrument expressed to apply to a class of persons, aircraft or aeronautical products is a legislative instrument.

Under both sets of provisions, therefore, the CAO amendment is a legislative instrument and is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

Consultation

The instrument is being made to facilitate the effective deployment of examining staff in dual approval organisations i.e. organisations that hold certificates of approval under regulation 30 of CAR 1988 and approvals as recognised organisations under CAO 100.66. The instrument is, therefore, beneficial for those organisations and examiners who chose to observe its requirements. Consultation under section 17 of the LIA has been undertaken with a number of organisations who would be affected by the CAO amendment. Details of the proposal were also posted on the website of the joint CASA/ industry Standards Consultative Committee (SCC). No objections were received concerning the proposal.

Office of Best Practice Regulation (OBPR)

OBPR does not require a Regulation Impact Statement because the CAO amendment is beneficial by relieving of an obligation. A preliminary assessment of business compliance costs in the context of the nature of the instrument indicates that it will have only a nil to low impact on business.

Commencement and making

The Order has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 84A (2) of the Act. The instrument commences on the day after it is registered.

[Civil Aviation Order 100.23 Amendment Order (No. 1) 2009]

Details of amendment instrument

1 Name of instrument

Under this section, the instrument is described as the *Civil Aviation Order 100.23 Amendment Order (No. 1) 2009*.

2 Commencement

Under this section, the instrument commences on the day after it is registered.

3 Amendment of Civil Aviation Order 100.23

Under this section, Schedule 1 of the instrument amends Civil Aviation Order (CAO) 100.23.

Schedule 1 Amendment

[1] After subsection 5

This amendment inserts a new subsection 6 into CAO 100.23 after subsection 5. The new subsection is titled:

6 Examiner authorities in dual holders of CAR 30 and recognised organisation approvals

- 6.1 Under this paragraph of the new subsection, unless the contrary intention appears, the following words and phrases have the same meaning as in CAO 100.66:

employee; exposition; knowledge examiner; recognised organisation.

For ease of reference, these definitions are set out in Attachment 2.

- 6.2 Under this paragraph of the new subsection, the new subsection 6 applies only to an employee (**CAR 30 examiner**) of an organisation that holds a current certificate of approval under regulation 30 of CAR 1988 (**CAR 30 holder**) provided the organisation is also a current recognised organisation (**RO**).
- 6.3 Under this paragraph, for paragraph 6.2, the certificate of approval under regulation 30 of CAR 1988 must be one that is for, or includes, approval to engage in the conduct of the examinations referred to in paragraph 31 (4) (e) of CAR 1988.
- 6.4 Under this paragraph of the new subsection, if the employee meets the requirements of this subsection, he or she is not required to hold an aircraft maintenance engineer examiner authority in order to exercise the following privileges (**examiner privileges**):
- (a) the preparation and maintenance of an examination question library;
 - (b) the marking of candidates' specific type examinations;
 - (c) the review and analysis of examination results;
 - (d) the approval of examination results.
- A Note indicates that these are the privileges mentioned in subparagraphs 2 (a), (c), (d) and (e) of CAO 100.26.
- 6.5 Under this paragraph of the new subsection, where a CAR 30 examiner purports to act under this subsection, each examiner privilege may only be exercised in accordance with this subsection.

- 6.6 Under subparagraph (a) of the new subsection, for the exercise of an examiner privilege for a particular type or series of airframe, engine, system or installation, the CAR 30 examiner must be a person who meets the relevant standards for a knowledge examiner for the same or a similar privilege as set out in the RO's exposition under subclause 7.6 of Appendix 5 of CAO 100.66.

Under subparagraph (b), the CAR 30 examiner must also be a person who meets the relevant requirements for an examiner authority for the privilege, as mentioned in subsection 1 of CAO 100.26, including the requirements for a relevant rating for the privilege, as mentioned in paragraph 3.2 of CAO 100.26.

A Note explains that the requirements of both subparagraph (a) and subparagraph (b) must be met.

Under subparagraph (c), the CAR 30 examiner must have been informed by the CAR 30 holder of the differences between the duties and responsibilities of a knowledge examiner under CAO 100.66, and the privileges and responsibilities of a person who holds an aircraft maintenance engineer examiner authority for CAR 30 under regulation 33B of CAR 1988, CAO 100.23 and CAO 100.26.

A Note explains that although described differently, for practical purposes it is expected that there are no significant differences between the duties and responsibilities of a knowledge examiner and the privileges and responsibilities of an examiner authority holder.

Under subparagraph (d), the CAR 30 examiner must also be a person who, within the 24 months before exercising the examiner privilege, has undergone the professional development that a knowledge examiner would undergo under subclause 7.7 of Appendix 5 of CAO 100.66 that is relevant to the same or a similar privilege.

Under subparagraph (e), the CAR 30 examiner must be a person who has ready access to each part of the exposition mentioned in subclauses 7.6, 7.7 and clause 14 of Appendix 5 of CAO 100.66 that relate to the requirements of this subsection.

Under subparagraph (f), the CAR 30 examiner must have a written statement from the organisation of his or her duties and responsibilities as a CAR 30 examiner, including any conditions, restrictions or limitations on the nature and scope of the examiner privileges that arise from the requirements of the relevant standards for a knowledge examiner.

Under subparagraph (g), the CAR 30 examiner must exercise his or her examiner privileges in accordance with the written statement mentioned above.

Under subparagraph (h), the CAR 30 examiner must be someone who is listed, in a record held by the organisation, as an employee who is both a CAR 30 examiner and a knowledge examiner of the organisation, and as having the experience, qualifications and training included in the record.

- 6.7 Under this paragraph of the new subsection, a CAR 30 examiner who has a disability that is likely to affect his or her exercise of technical skill or judgment as an examiner, must not exercise examiner privileges. This is equivalent to the existing requirement imposed on a person who holds an examiner authority (paragraph 4.4 of CAO 100.23) and it would otherwise be lost in a measure which removes the requirement to hold the authority.

Details of definitions from CAO 100.66

employee includes a person who performs duties under a contract for services.

Note An employee is employed under a contract of service. An independent contractor is retained under a contract for services.

examiner, or knowledge examiner, means an employee of a recognised organisation who is appointed by the recognised organisation to do 1 or more of the following for the recognised organisation:

- (a) prepare examination questions;
- (b) conduct examinations;
- (c) mark examination answers;
- (d) approve examination results;
- (e) conduct RPL evaluations.

exposition means the document mentioned in clause 14 of Appendix 5 of CAO 100.66.

recognised organisation means a maintenance training organisation approved by CASA and operating in accordance with Appendix 5 of CAO 100.66.