

Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 95.4 Amendment Order (No. 1) 2010

Purpose

The purpose of *Civil Aviation Order 95.4 Amendment Order (No. 1) 2010* (the **CAO Amendment**) is to amend Civil Aviation Order 95.4 (**CAO 95.4**) consequential on the *Civil Aviation Amendment Regulations 2010 (No. 1)* (the **Amendment Regulations**). The Amendment Regulations modify certain safety rules in relation to operating on, and in the vicinity of, aerodromes.

Background — the Amendment Regulations

Commencing on 3 June 2010, new regulations 166A and 166B of the Amendment Regulations modify the safety rules for pilots of aircraft operated on the manoeuvring area of, or in the vicinity of, a non-controlled aerodrome, including for carrying out straight-in approaches. For such manoeuvring and flight, under new regulation 166C radio-qualified pilots of aircraft carrying VHF radios must make certain broadcasts on the relevant common traffic advisory frequency (**CTAF**).

Under new regulations 166D and 166E, with narrow exceptions, pilots of aircraft operated on the manoeuvring area of, or in the vicinity of, non-controlled (non-towered) aerodromes that are certified, registered, designated non-controlled, or military aerodromes, may commit an offence if the aircraft is not carrying a radio and the pilot is not radio-qualified.

New regulation 167 modifies the safety rules for pilots of aircraft that are part of the aerodrome traffic at controlled aerodromes. A pilot may commit an offence if he or she carries out certain manoeuvres without air traffic control (**ATC**) authorisation, or if he or she fails to observe certain turning and tracking rules.

CAO 95.4 — legislative background

Under subsection 98 (5) of the *Civil Aviation Act 1988* (the **Act**), the regulations may provide that CASA may issue a Civil Aviation Order (**CAO**) containing a direction, instruction, notification, permission, approval or authority. Under subregulation 5 (1) of the *Civil Aviation Regulations 1988* (**CAR 1988**), where CASA is empowered or required under CAR 1988 to issue any direction, instruction or notification, or to give any permission, approval or authority, CASA may do so by CAO.

Under paragraph 98 (5A) (a) of the Act, the regulations may, among other things, empower CASA to issue instruments in relation to matters affecting the safe navigation and operation of aircraft.

Under subregulation 308 (1) of CAR 1988, CASA may exempt 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) of CAR 1988, before making an exemption, CASA must take into account any relevant considerations relating to the interests of safety.

Under subregulation 308 (3) of CAR 1988, CASA may make an exemption subject to any condition specified in the exemption as being necessary in the interests of safety.

Under subregulations 308 (3A) and (3B), it is a strict liability offence to contravene a condition of an exemption that is being relied upon for an operation. Under subregulation 308 (4), an exemption is a disallowable instrument (and hence a legislative instrument).

CAO 95.4 — Gliders etc.

CAO 95.4 applies to gliders, powered sailplanes and power-assisted sailplanes for sporting and recreational purposes, or flight instruction under the Gliding Federation of Australia Operational Regulations (*relevant operations*).

Subsection 3 of CAO 95.4 has the effect of exempting relevant operations at non-controlled aerodromes from compliance with certain provisions of CAR 1988. Previously, subparagraph 3 (m) exempted from compliance with former paragraphs 166 (1) (c), (d), (f) and (g) of CAR 1988 (circuit pattern, turning, pre-landing descent and heading after take-off), provided that a relevant aircraft operating in the circuit area of a licensed aerodrome must, as far as practicable, make all turns in the established circuit direction.

Subparagraph 3 (u) of CAO 95.4 has the effect of exempting gliders specifically from subregulation 243 (1) of CAR 1988 (if radio-equipped, the pilot must maintain a listening watch) except in controlled airspace, in a mandatory broadcast zone (*MBZ*), or in a CTAF area around an aerodrome used for regular public transport (*RPT*) operations.

CAO Amendment

With the commencement of the Amendment Regulations, it is necessary to update in CAO 95.4 the references to regulations dealing with operating in the circuit area, and the listening watch requirements.

For this purpose, therefore, the CAO Amendment deletes the previous subparagraph 3 (m) in CAO 95.4, and inserts a new subparagraph providing that the relevant aircraft are exempt from paragraphs 166A (2) (d), (e) and (f) of CAR 1988 (circuit turns, turns on take-off, and maintaining track), but only provided that a relevant aircraft operating in the circuit area of a non-controlled aerodrome, as far as practicable, must make all turns in the established circuit direction.

The CAO Amendment also deletes the previous subparagraph 3 (u) in CAO 95.4, and inserts a new subparagraph providing that the glider is exempt from subregulation 243 (1) of CAR 1988 except when the glider is operating: “(i) in controlled airspace unless air traffic control has authorised the use of an alternative frequency [no change]; or (ii) in the vicinity of a non-controlled aerodrome that is a certified, registered, military or designated non-controlled, aerodrome;” [new].

The mention of MBZ is deleted as no longer relevant. The mention of a CTAF area around an aerodrome used for RPT operations as an exception from the exemption is also deleted as this exception is covered by the new sub-subparagraph 3 (u) (ii).

Legislative Instruments Act 2003 (*LIA*)

Under subregulation 308 (4) of CAR 1988, an exemption is declared to be a disallowable instrument. Under subparagraph 6 (d) (i) of 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.

Additionally, under subsection 98 (5AAA), a CAO is a legislative instrument. Also, under subsection 98 (5AA) of the Act, an instrument issued under regulations empowered by paragraph 98 (5A) (a) is a legislative instrument if the instrument is expressed to apply in relation to a class of persons, aircraft or aeronautical products rather than to a particular person, aircraft or aeronautical product.

On both bases, therefore, the CAO Amendment is 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 been carried out through the broader consultation process associated with making the Amendment Regulations which deal directly with changes to requirements at non-controlled aerodromes. The Amendment Regulations have been the subject of extensive industry consultation and review over the last 3 years, as described in more detail in section 3 of Notice of Proposed Rule Making (NPRM) 0908OS published for comment on 28 September 2009, and the Notice of Final Rule Making (NFRM) published on 9 April 2010.

Regulation Impact Statement (*RIS*)

The Office of Best Practice Regulation (*OBPR*) does not require preparation of a RIS in this case because the CAO Amendment is a minor machinery amendment consequential on the Amendment Regulations. The Amendment Regulations have been assessed as not being likely to add significantly to industry costs. OBPR has granted a RIS Exemption (reference 9691) for the changes made by the Amendment Regulations and the CAO Amendment, because of its purely consequential nature, is considered to be covered by that also.

Commencement and making

The CAO Amendment takes effect on 3 June 2010. It has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

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