

Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 100.5 Amendment Instrument 2012 (No. 1)

Purpose

The purpose of *Civil Aviation Order 100.5 Amendment Instrument 2012 (No. 1)* (the **CAO amendment**) is to allow certain persons in a CAR 30 maintenance organisation to carry out composite maintenance on specific composite structure aircraft if they are specially qualified persons, within the meaning of the amendment. The persons involved are persons who on or before 26 June 2011 would have been entitled to carry out the maintenance but who lost that entitlement in the technicalities of the transition to the new maintenance suite.

The CAO amendment would extend the effect of the *Civil Aviation Order 100.5 Amendment Instrument 2011 (No. 1)* to some categories of “specially qualified persons” who had been omitted from it, namely, those affected by the transitional provisions in regulations 202.342, 202.343 and 202.344 of the *Civil Aviation Safety Regulations 1998 (CASR 1998)*. The CAO amendment would not alter the list of specific composite structure aircraft mentioned in that previous amendment.

Legislation

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.

Under subregulation 38 (1) of the *Civil Aviation Regulations 1988 (CAR 1988)*, CASA may issue directions relating to the maintenance of Australian aircraft.

Under regulation 5 of CAR 1988, CASA may, among other things, issue a direction in Civil Aviation Orders (**CAOs**).

Civil Aviation Order 100.5 (**CAO 100.5**) contains general directions relating to the maintenance of Australian aircraft in respect of which an Australian certificate of airworthiness is in force.

CAO amendment

The CAO amendment substitutes subsection 7A in CAO 100.5. The subsection contains directions for the maintenance of certain specified composite structure aircraft (that is, certain aircraft containing fibre reinforced plastic composite structures).

The purpose of the direction is to allow maintenance on composite structures in certain light aircraft (specified in Table 1 of the subsection) to continue to be carried out by previous holders of the Airframe Group 7 rating in a CAR 30 maintenance organisation.

The Airframe Group 7 rating qualification was provided for in Civil Aviation Order 100.91 (and AAC 9-91) which dealt with the qualification and the work that it entitled holders to perform.

CAO 100.91 was revoked on the introduction of the new maintenance suite contained in Parts 42, 66, 145 and 147 of CASR 1998 which commenced on 27 June 2011. However, the holders of this rating are specialists in this type of composite maintenance and CASA considers that it is safe and appropriate that they should continue to be able to carry out maintenance in accordance with their Airframe Group 7 rating qualification.

Therefore, paragraph 7A.2 of the CAO amendment provides that composite maintenance on a specified aircraft must be carried out by a Part 145 organisation or by a CAR 30 maintenance organisation.

Paragraph 7A.3 then provides that if composite maintenance is carried out on a specified aircraft by a CAR 30 maintenance organisation, the organisation must ensure that only a ***specially qualified person***, employed by the organisation, may perform the maintenance.

A ***specially qualified person*** is defined in paragraph 7A.1 as, *essentially*, a person who holds a category B1 licence issued under Part 66 of CASR 1998, and is also a person who at any time before 27 June 2011 was a Group 7 LAME whose licence had not been cancelled by CASA. A Group 7 LAME is defined in paragraph 7A.1 as the holder of CAR 31 licence endorsed with the Airframe Group 7 rating. (Holders of CAR 31 licences on 26 June 2011 were taken to meet the requirements for an equivalent Part 66 licence.)

However, the definition of ***specially qualified person*** is necessarily somewhat more complex than this because of the need to take account of firstly, the effect of transitional provisions contained in the *Civil Aviation and Civil Aviation Safety Amendment Regulations 2010 (No. 1)* (which contained the new ***maintenance suite*** amendments), and, secondly, to continue the recognition of certain acceptable overseas ratings.

Thus, a ***specially qualified person*** is fully defined in paragraph 7A.1 as a person who:

- (a) holds a category B1 licence issued under Part 66 of CASR 1998; and
- (b) is also 1 of the following:
 - (i) a person who at any time before 27 June 2011 was a Group 7 LAME, provided that the person's licence had not been cancelled by CASA; or
 - (ii) a person to whom regulation 202.342 of CASR 1998 applies, who would have been a person mentioned in subparagraph (b) (i) but for the suspension of his or her licence on or before 26 June 2011, provided that the suspension has been revoked by CASA — regulation 202.342 is a transitional provision to entitle a CAR 31 licence holder under suspension on 27 June 2011 to an equivalent Part 66 licence provided the suspension was revoked on or after that date; or
 - (iii) a person for whom CASA determines under regulation 202.343 or 202.344 of CASR 1998 that it would have issued an aircraft maintenance engineer licence under regulation 31 of CAR 1988, endorsed with a category airframes Group 7 rating as described in CAO 100.91 — regulations 202.343 and 202.344 are transitional regulations to entitle certain late applicants for a CAR 31 licence to be eligible instead for an equivalent Part 66 licence; or
 - (iv) a person who holds at least 1 of the following:
 - (A) AQF qualification MEA405B;
 - (B) a Transport Canada AME licence endorsed with an “S” rating;
 - (C) a New Zealand AME licence endorsed with an aeroplane Group 4 rating;
 - (D) another qualification approved in writing by CASA as an appropriate qualification for performing composite maintenance.

A Note explains that, apart from the separate privileges of a Part 145 organisation, composite maintenance of a specified aircraft may only be performed by a qualified person employed by a CAR 30 maintenance organisation. Therefore, such maintenance may **not** be carried out by a person referred to in paragraph 42ZC (4) (b) of CAR 1988, sometimes known as an independent LAME or a LAME employed by an independent LAME.

The specified aircraft in relation to which the provisions of subsection 7A apply are set out in Table 1 as follows:

Table 1 — Specified composite structure aircraft

Aerodesign Pulsar	Extra 300/300S	Quickie Q1/Q2 Series
Buchanan BAC 204	Grob 520 Egrett	Quickie 200
Cirrus SR20/SR22	Grob G115	Rand KR2
CoZ Cosy	Gyroflug SCO1B-160	Rutan Defiant
Diamond DA 40	HOAC DV 20 Katana/ Diamond DA 20A1	Rutan Long Eze
Diamond DA 42	III SkyArrow 650	Rutan Vari Eze
Diamond DV22/DA22	Jabiru LSA	Stoddard Hamilton Glasair Series
Diamond HK-36	Lancair/Columbia Series	Stoddard Hamilton Glastar
Eagle X/XTS Series	Liberty XL2	

Legislative Instruments Act 2003 (the LIA 2003)

Under subsections 98 (5) and 98 (5AAA) of the Act, where the regulations provide for certain instruments to be issued in the form of CAOs, such CAOs are legislative instruments. The CAO amendment is, therefore, a legislative instrument and it is subject to registration, and tabling and disallowance in the Parliament, under sections 24, and 38 and 42, of the LIA 2003.

Gazettal

Under subregulation 38 (2) of CAR 1988, a maintenance direction is not binding on a person unless it has been served on the person. Under subregulation 5 (3) of CAR 1988, when a direction to a person is contained in a CAO, it is taken to have been served on the person on the date on which the making of the CAO was notified in the *Gazette*.

Under subsection 56 (1) of the LIA 2003, if certain enabling legislation requires *the text of a legislative instrument, or particulars of its making*, to be published in the *Gazette*, such requirements are taken to be satisfied when the instrument is registered.

This facilitative provision for registration to take the place of gazettal does not appear to cover the specific case of the service requirements under subregulations 38 (2) and 5 (3) of CAR 1988. Therefore, to avoid doubt, the CAO amendment was also gazetted on the day on which it commenced, that is, on the day after registration.

Avoidance of doubt provision

The subsection 7A of CAO 100.5 that is to be replaced by the CAO amendment was originally inserted in CAO 100.5 by the *Civil Aviation Order Amendment Instrument 2011 (No. 1)*.

As a result of a typographical error, this amendment instrument was made under regulation 308 of CAR 1988, instead of regulation 38. It is considered that the amendment instrument is valid notwithstanding the error because of the availability of a relevant head of power (namely, regulation 38), although not expressly invoked due to the typographical error.

However, the matter is not beyond doubt, raising the possibility that subsection 7A was not, originally, effectively inserted in CAO 100.5 and, therefore, may not legally exist to be replaced. Subsection 3 (2) is intended to overcome this problem and remove any doubt that new subsection 7A is as stated in amendment number 1 in Schedule 1 of the CAO amendment.

Consultation

The issue of the CAO amendment is consequential on the introduction of the maintenance suite and is intended to facilitate a smooth transition to the standards of Parts 66 and 145. To this end, consultation under section 17 of the LIA 2003 was undertaken as follows. During the period 8 to 22 December 2011, the details of the CAO amendment were published on the CASA website and comment invited from interested persons. No comments were received on the proposal.

Office of Best Practice Regulation

A Regulation Impact Statement is not required because the CAO amendment is merely of a minor or machinery nature.

Statement of Compatibility with Human Rights

The following Statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The CAO amendment 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*.

The instrument allows certain persons in a CAR 30 maintenance organisation, who might not otherwise be permitted to do so, to carry out composite maintenance on specific composite structure aircraft if they are *specialty qualified persons* within the meaning of the amendment.

The instrument does not engage any of the applicable rights or freedoms and is compatible with human rights as it does not raise any human rights issues.

Making and commencement

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

The CAO amendment commences on the day after registration, on which date the making of the instrument was also notified in the *Gazette*.

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