

Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 104.0 Amendment Instrument 2012 (No. 1)

Purpose

The purpose of *Civil Aviation Order 104.0 Amendment Instrument 2012 (No. 1)* (the **CAO amendment**) is to facilitate continuing transition to the new maintenance regulation environment established by the *Civil Aviation and Civil Aviation Safety Amendment Regulations 2010 (No. 1)* (which made amendments that came into effect on and from 27 June 2011).

Background

These amendments to the *Civil Aviation Safety Regulations 1998 (CASR 1998)* came into effect on and from 27 June 2011. They created, in particular, new Parts 66 and 145 of the CASR 1998. These new Parts provide, respectively, for the licensing of aircraft maintenance engineers (**AMEs**), and approved maintenance organisations (**AMOs**).

AMEs now hold, or train to hold, appropriate Part 66 licences. Depending on the training completed, Part 66 licences may be endorsed with ratings which permit certain kinds of maintenance. Ratings may, however, be issued subject to exclusions reflecting limitations in the scope of training completed.

AMEs working in AMOs can undergo intensive in-house or manufacturer training and assessment (known as “Permitted Training”) with a view to the removal of such exclusions on licence ratings.

During the continuing transition to the new maintenance regulation environment, certificate of approval (**COA**) holders under regulation 30 of the *Civil Aviation Regulations 1988 (CAR 1988)* remain active as maintenance organisations, pending their transition to be AMOs.

However, although their AMEs may hold Part 66 licences endorsed with ratings subject to exclusions, the AMO Permitted Training regime could not previously be offered by COA holders. This meant that, unlike AMEs in AMOs, AMEs of a COA holder could not have access to a Permitted Training regime for removal of their rating exclusions.

Legislation

Regulation 30 of CAR 1988 describes in detail how a person (a COA holder) engaged in the maintenance of aircraft must hold CASA’s certificate of approval for the activity.

Under subregulation 30 (3), CASA may, for safety purposes, include in such a COA an endorsement that the certificate is granted subject to conditions specified in the Civil Aviation Orders (**CAOs**). CAO 104.0 was made under subregulation 30 (3) of CAR 1988 for this purpose.

CAO amendment

The CAO amendment, therefore, inserts into CAO 104.0 three new subsections and replaces 2 appendices. Based on the high-level requirements of CASR Part 145 for Permitted Training, these insertions allow similar training and assessment regimes for AMEs working for COA holders. However, a series of requirements must be met.

Thus, the COA holder may issue a once-only, 6 month, certification authorisation to a relevant employee (an excluded system employee) allowing him or her to carry out maintenance on 1 or more of the excluded system mentioned in Appendix 1.

However, such an authorisation may only be issued after the COA holder has provided, and the employee has successfully completed, training and assessment in the excluded system. That training and assessment must be in accordance with the COA holder's CASA-approved quality control manual for training and assessment in the excluded system.

Before commencing the training and assessment, the COA holder must, in respect of the excluded system maintenance to be performed by the employee, be a CASA delegate or otherwise authorised to authorise a person (namely, the employee) to conduct specific maintenance.

The COA holder must give CASA, and the employee, a notice of completion of the training and assessment. This must be to the effect that the employee firstly, has successfully completed the training and assessment in the excluded system, and secondly, for 6 months after issue of the certification authorisation, has, under his or her certification authorisation, provided maintenance services, including maintenance certification, or issue of certificates of release to service. Receipt of this notice will enable CASA to consider removal of the relevant exclusion from the employee's rating.

Specific new subsections

New subsection 5 deals with the permitted training and assessment for excluded system employees, the excluded systems for which the permitted training may be provided by the COA being listed in a new Appendix 1.

New subsection 6 deals with the permitted training and assessment for excluded type employees, the excluded types for which the permitted training may be provided by the COA holder being listed in a new Appendix 2.

By means of annotation, the Appendix 2 list mentions some particular excluded type engines for which, in the interests of safety, delivery of permitted training is restricted to:

- a CASR Part 147 Maintenance Training Organisation (*MTO*); or
- the holder of a COA (that was in force before 27 June 2011) in respect of the training of candidates for, or the conducting of, examinations referred to in paragraph 31 (4) (e) of CAR 1988 as it was in force before 27 June 2011. The privileges of these COA holders relate specifically to training and they have the benefit of a 2-year transitional provision in subregulation 327 (2) of CAR 1988 which continues in force their CASA approval for such training until the earlier of either, the expiry of the approval or the end of 26 June 2013.

Subsection 7 deals with the permitted training and assessment that may be conducted, not by the COA holder itself, but by the manufacturer of the excluded type. Again, the excluded types, for which this permitted training may be provided by the manufacturer, are listed in new Appendix 2 (and again subject to mention of the particular excluded types for which, in the interests of safety, Permitted Training is only allowed in an MTO or a COA holder to whom regulation 327 of CAR 1988 applies).

The opportunity has also been taken to make some minor editorial amendments. Further details of the CAO amendment are in Attachment 1.

Legislative Instruments Act 2003 (the *LIA*)

Under paragraph 98 (5A) (a) of the *Civil Aviation Act 1988* (the *Act*), the regulations may empower CASA to issue instruments in relation to matters affecting the maintenance of aircraft. Under subsection 98 (5AA) of the Act, an instrument issued under paragraph 98 (5A) (a) is a legislative instrument subject to the LIA (other than Part 6 concerning sunseting) if it is expressed to apply in relation to a class of persons, aircraft or aeronautical products.

Under subsection 98 (5AB) of the Act, an instrument issued under paragraph 98 (5A) (a) is *not* a legislative instrument if it is expressed to apply in relation to a *particular* person, aircraft or aeronautical product.

Under subregulation 30 (3) of CAR 1988, CASA may make CAOs in relation to endorsements appearing on certificates of approval, to the effect that the approval is issued subject to conditions mentioned in the CAOs.

Made under subregulation 30 (3) of CAR 1988, the CAO amendment is an instrument affecting the maintenance of aircraft and is of general application. It is, therefore, a legislative instrument subject to registration, tabling and disallowance in the Parliament under sections 24, 38 and 42 of the LIA.

Consultation

Consultation under section 17 of the LIA was undertaken by posting a consultation draft of the proposed amendment on the CASA website, having earlier foreshadowed the proposed policy change. (The consultation draft was available to industry and the public for comment during the period 24 February to 9 March 2012.) CASA also provided details of the proposals in response to direct requests from industry. The Standards Consultative Committee, a joint CASA/aviation industry consultation forum, received briefings on the proposals throughout their development. CASA considered all consultation input before finalising the CAO amendment.

Statement of Compatibility with Human Rights

For Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*, the CAO amendment is considered compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The instrument is facilitative and advantageous for relevant persons and, therefore, does not engage any of the applicable rights or freedoms or raise any human rights issues.

Office of Best Practice Regulation (OBPR)

The instrument has only a nil to low impact on business. A regulatory impact statement (RIS) for the CAO amendment is not required for OBPR purposes because a preliminary assessment of business compliance costs indicates that the amendment will have only a nil to low impact on business.

Commencement and making

The CAO amendment commences on the day after registration.

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.

[Civil Aviation Order 104.0 Amendment Instrument 2012 (No. 1)]

Attachment 1

Details of the CAO amendment

1 Name of instrument

Under this subsection, the instrument is the *Civil Aviation Order 104.0 Amendment Instrument 2012 (No.1)*.

2 Commencement

Under this subsection, the instrument commences on the day after registration.

3 Amendment of Civil Aviation Order 104.0

Under this subsection, Schedule 1 amends Civil Aviation Order 104.0 (the *CAO*).

Schedule 1 Amendments

- [1] This amendment provides a new name for the CAO, namely, the *Civil Aviation Order 104.0 (Certificates of approval — application, grant and conditions)*.
- [2] This amendment provides that the CAO applies to persons holding, as well as seeking, certificates of approval.
- [3] This amendment inserts a range of new, relevant definitions, including *category B1 licence holder, category B2 licence holder, excluded system, excluded system employee, excluded type, and excluded type employee*.
- [4] This amendment omits a redundant provision, paragraph 3.3.
- [5] This amendment omits a redundant provision, paragraph 3.4.
- [6] This amendment inserts new subsection 5, *Excluded system employees — conditions for COA training and assessment*, which provides as follows.
 - 5.1 Under paragraph 5.1, a COA holder may issue a certification authorisation to an excluded system employee (the *employee*) for carrying out maintenance on an excluded system in accordance with this subsection.
 - 5.2 Under paragraph 5.2, a certification authorisation may only be issued once for the employee, and only for a period of 6 months.
 - 5.3 Under paragraph 5.3, before issuing the certification authorisation, the COA holder must provide, and the employee must successfully complete, training and assessment in the excluded system.
 - 5.4 Under paragraph 5.4, the training and assessment mentioned in paragraph 5.3 must be in accordance with the COA holder's quality control manual, as approved in writing by CASA for training and assessment in the excluded system.
 - 5.5 Under paragraph 5.5, before commencing the training and assessment mentioned in paragraph 5.3, the COA holder must be, in respect of maintenance on the excluded system to be performed by the employee:
 - (a) a CASA delegate who may authorise a person for certain maintenance; or

- (b) an authorised person who may authorise a person for certain maintenance.
- 5.6 Under paragraph 5.6, the COA holder must give a notice of completion of training and assessment (in the approved form) to the employee and to CASA as soon as the employee has done the following:
- (a) successfully completed the training and assessment in the excluded system; and
 - (b) provided maintenance services that include the performing of maintenance certification or the issuing of certificates of release to service for maintenance under his or her certification authorisation, for a period of 6 months after commencement of the authorisation.

A Note explains that receipt of the notice will enable CASA to consider removal of the relevant exclusion from the employee's rating.

Amendment 6 also inserts a new subsection 6, *Excluded type employees — conditions for COA training and assessment*, which is virtually identical to subsection 5 except that it relates to excluded types. New subsection 6 also provides that a COA holder must not issue a certification authorisation for any aircraft engine mentioned in Appendix 2 whose reference is annotated with the words "MTO or CAR 327 only". A related Note explains that annotated powerplants (engines) require CASA approved type training which may only be delivered by a CASR Part 147 MTO, or by a COA holder to whom regulation 327 of CAR 1988 applies.

Amendment 6 also inserts a new subsection 7, *Excluded type employees — manufacturer's training and assessment*, which is virtually identical to subsection 6 except that it provides that before issuing the certification authorisation, the COA holder must be satisfied that the employee has been successfully trained and assessed **by the manufacturer of the aircraft or the aircraft engine** to perform maintenance on the aircraft or the aircraft engine.

- [7] This amendment inserts a new Appendix 1, listing the excluded systems.
- [8] This amendment inserts a new Appendix 2, listing the excluded types of aircraft and helicopters. It also identifies the annotated powerplants (engines) that require CASA approved type training (which may only be delivered by a CASR Part 147 MTO) or a regulation 327 COA holder.