

Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 40.1.0 Amendment Instrument 2013 (No. 1)

Purpose

Civil Aviation Order 40.1.0 (CAO 40.1.0) includes provisions to give primacy to the use of qualified synthetic training devices (*QSTDs*) (like flight simulators) for conversion training in certain aeroplanes. Certain types of conversion training in an aeroplane give rise to significant safety risks whereas the same training in a QSTD represents a significant safety enhancement.

The purpose of *Civil Aviation Order 40.1.0 Amendment Instrument 2013 (No. 1)* (the **CAO amendment**) is to repeal a time-limited direction to those approved to give the relevant aeroplane conversion training (that such training may only be conducted in a QSTD) and replace it with an opened-ended condition on their approvals to the same effect.

The CAO amendment also provides that this condition does not apply in relation to relevant aeroplane conversion training for a *co-pilot endorsement*. This corrects an inconsistency that arose from another provision of CAO 40.1.0 to the effect that CASA may *issue* certain co-pilot endorsements without the applicant necessarily having qualified solely through QSTD conversion. The manoeuvres required for relevant co-pilot conversion training do not represent such a significant risk as to justify mandatory and exclusive QSTD training.

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.

CAO 40.1.0 — legislative background

Under subregulation 5.21 (1) of the *Civil Aviation Regulations 1988 (CAR 1988)*, CASA may approve a person who holds an aeroplane (or helicopter) pilot licence to give aeroplane (or helicopter) conversion training.

Under subregulation 5.22 (1) of CAR 1988, CASA may give directions in Civil Aviation Orders (the **CAOs**) prescribing the aircraft endorsements that must be held, in particular, by a flight crew licence holder to carry out the duties authorised by the licence in a type or class of aircraft.

Under subregulation 5.23 (1) of CAR 1988, CASA may give directions in CAOs setting out *the requirements for issue* of an aircraft endorsement to, in particular, the holder of a flight crew licence.

CAO 40.1.0 contains these directions to, in particular, the holders of flight crew licences. Subregulations 5.22 (1) and 5.23 (1) of CAR 1988 do not apply to holders of conversion training approvals and, therefore, new requirements added to CAO 40.1.0 for holders of conversion training approvals require an appropriate, different head of power.

Under regulation 11.245 of the *Civil Aviation Safety Regulations 1998 (CASR 1998)*, CASA may, by instrument (such as a CAO if the direction is to apply to more than one person), issue directions necessary for the safe navigation and operation of aircraft.

Under regulation 11.250 of CASR 1998, a direction specifying a date on which it is to cease to be in force, ceases on that date. (Directions without a cease-by date would cease to be in force after 1 year.) Under regulation 11.255, contravention of a direction is a strict liability offence.

Under subregulation 11.068 (1) of CASR 1998, for subsection 98 (5A) of the Act, CASA may issue a legislative instrument that imposes a condition relating to (in effect) aviation safety on a specified class of authorisations.

Under regulation 11.077 of CASR 1998, contravention of such a condition is a strict liability offence with a penalty similar to that for contravention of a direction under regulation 11.245.

Under regulation 11.015 of CASR 1998, for Part 11 of CASR 1998 generally, **authorisation** includes most forms of **civil aviation authorisation** (a **CAA**).

Under section 3 of the Act, a **CAA** means an authorisation, under the Act or the regulations, to undertake a particular activity. An approval to conduct conversion training is, therefore, a CAA, and in turn an authorisation for Part 11, and, as a specified class of authorisations, open to the imposition, by a legislative instrument, of a class-wide condition under subregulation 11.068 (1) of CASR 1998. A CAO (particularly a CAO applying to more than 1 person) is, by definition, a legislative instrument under which such class-wide conditions may be imposed.

Conversion training

There are always safety risks associated with the conduct of training in aircraft. For this reason, CASA mandates the use of flight simulators or flight training devices for certain aeroplane conversion training rather than use of an aeroplane as such.

This was achieved by *Civil Aviation Order 40.1.0 Amendment Instrument 2012 (No. 2)* directing, under regulation 11.245 of CASR 1998, that the training may not be conducted in an aeroplane if a QSTD for the training is available in Australia or in a recognised foreign State. Because such directions are time-limited, this direction was expressed to expire on 31 March 2016.

Since it was intended that the new requirements would be an ongoing arrangement, it was not ideal to have such an expiry within a CAO and requiring eventual renewal.

Using the power under regulation 11.068 of CASR 1998, the CAO amendment places a condition on the class of CASA approvals which authorise the giving of certain conversion training, to the effect that it is a condition on the approval of a person approved by CASA under paragraph 5.21 (1) (a) of CAR 1988 to give aeroplane conversion training, that the person may only give the training in accordance with paragraph 2B.3 of CAO 40.1.0.

Under new paragraph 2B.3, subject to paragraph 2B.4, the conversion training must not be conducted in an aeroplane but must be conducted in a QSTD in certain circumstances.

The CAO amendment does not change these circumstances which are as follows:

- (a) for a multi-engine aeroplane with a passenger seating capacity of not less than 10, and not more than 19, seats — if a QSTD for the aeroplane type is available in Australia;
- (b) for an aeroplane with a passenger seating capacity of not less than 20 seats, or, for an aeroplane with a maximum take-off weight (MTOW) exceeding 8 618 kg — if a QSTD for the aeroplane type is available in Australia or in a recognised foreign State.

Under new paragraph 2B.4, paragraph 2B.3 does not apply for aeroplane conversion training for the issue of a co-pilot endorsement provided the conversion training is in accordance with the requirements of the syllabus in a relevant Appendix of the Order and involves no other manoeuvres.

The requirement does not apply generally to the issue of a co-pilot endorsement because the syllabus of training for a co-pilot endorsement does not contain what CASA considers to be high-risk exercises. However, where a pilot with a co-pilot endorsement operates certain aeroplanes for an AOC holder under Civil Aviation Order 82.0 (*CAO 82.0*), the pilot will require additional training, conducted in a QSTD, as outlined in CAO 82.0.

Under the previous amendments made by *Civil Aviation Order 40.1.0 Amendment Instrument 2012 (No. 2)*, CASA could *issue* certain co-pilot endorsements without the applicant necessarily having qualified solely through QSTD conversion. However, this exception had not also been expressed in relation to the direction given to conversion approval holders, creating an inconsistency. The exception regarding co-pilots has now been included in the CAO amendment as a condition on conversion approval holders.

Legislative Instruments Act 2003 (the LIA)

Under subregulation 5.22 (1) of CAR 1988, CASA may give directions in CAOs prescribing aircraft endorsements. Under subsections 98 (5) and 98 (5AAA) of the Act, such a CAO is a legislative instrument for the LIA. The CAO amendment is, therefore, a legislative instrument. It is subject to registration, and tabling and disallowance in the Parliament, under sections 24, and 38 and 42, of the LIA.

Consultation

The CAO amendment is essentially a machinery one which does not make a substantive change to the law. It provides relief to those approval holders conducting conversion training for an applicant's co-pilot endorsement, which was the original intent of *Civil Aviation Order Amendment 40.1.0 Instrument 2012 (No. 2)*. Consultation under section 17 of the LIA has been carried out by referring the proposal to the Standards Consultative Committee (*SCC*), a joint CASA/industry consultation group. The SCC had no objections to the proposal.

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement (the *RIS*) was prepared for the mandating of certain flight simulator training, which was implemented in part by *Civil Aviation Order Amendment 40.1.0 Instrument 2012 (No. 2)*. The RIS was assessed as adequate by OBPR (OBPR id: 13510). This CAO amendment further implements the requirements outlined in the RIS. Therefore, CASA has met the OBPR requirements for this CAO amendment by preparing the aforementioned RIS.

Statement of Compatibility with Human Rights

The Statement in Appendix 2 is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. 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.

Commencement and making

The CAO amendment commences on the day of registration. This will be simultaneously with a related amendment to CAO 40.3.0 in relation to helicopters. It 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 40.1.0 Amendment Instrument 2013 (No. 1)]

Appendix 1

Details of *Civil Aviation Order 40.1.0 Amendment Instrument 2013 (No. 1)*

1 Name of instrument

Under this section, the instrument is the *Civil Aviation Order 40.1.0 Amendment Instrument 2013 (No. 1)*.

2 Commencement

Under this section, the instrument commences on the day of registration.

3 Amendment of Civil Aviation Order 40.1.0

Under this section, Schedule 1 amends Civil Aviation Order 40.1.0.

Schedule 1 Amendment

[1] Paragraph 2B.1

substitute

- 2B.1 This paragraph indicates that subsection 2B is for regulation 11.068 of CASR 1998.
- 2B.2 Under this paragraph, it is a condition on the approval of a person approved by CASA under paragraph 5.21 (1) (a) of CAR 1988 to give aeroplane conversion training, that the person may only give the training in accordance with paragraph 2B.3.
- 2B.3 Under this paragraph, subject to paragraph 2B.4, conversion training for certain aeroplanes must not be conducted in the aeroplane but must be conducted in a QSTD if such a device for the aeroplane type is available either in Australia (for multi-engine aeroplanes with 10 to 19 seats), or in Australia or in a recognised foreign State (for any aeroplane with 20 or more seats or a maximum take-off weight above 8 618 kg).
- 2B.4 Under this paragraph, paragraph 2B.3 does not apply for aeroplane conversion training for the issue of a co-pilot endorsement if the conversion training is conducted wholly in accordance with the training syllabus in Appendix V of this Order, and no other training or flight manoeuvre is conducted during a flight for the conversion training.

[2] Paragraph 2B.2, Note 1 and Note 2

Under this amendment, a new Note replaces the previous 2 Notes. It explains that subsection 2B constitutes a condition on the approval of a person to conduct aeroplane conversion training, adding that it is intended to ensure that conversion training is not conducted in an aeroplane, but rather in a QSTD, in the circumstances to which subsection 2B applies.

[3] Paragraph 2B.2

This amendment merely provides for the consequential renumbering of the paragraph.

Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the
Human Rights (Parliamentary Scrutiny) Act 2011*

Civil Aviation Regulations 1988

Civil Aviation Order 40.1.0 Amendment Instrument 2013 (No. 1)

This legislative instrument 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*.

Overview of the legislative instrument

The CAO amendment repeals a time-limited direction to those approved to give relevant aeroplane conversion training (that such training may only be conducted in a qualified synthetic training device (a *QSTD*)), and replaces it with an opened-ended condition to the same effect imposed on all relevant approval holders as a class. Since it was intended that the new requirements would be an ongoing arrangement, it was not ideal to have such an expiry within a CAO and requiring eventual renewal using another CAO amendment. Thus, the outcome is the same as before, including as to the potential penalties for contravening the requirements. The CAO amendment also provides that this particular condition on all relevant approval holders as a class does not apply in relation to relevant aeroplane conversion training for co-pilot conversion endorsement where the same risks do not arise provided the conversion training is in accordance with the requirements of the syllabus in the relevant Appendix of the Order and involves no other manoeuvres.

Since the purpose of the CAO amendment is to make these machinery amendments and corrections to CAO 40.1.0, it 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 CAO amendment 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.

Human rights implications

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 does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

Civil Aviation Safety Authority

[Civil Aviation Order 40.1.0 Amendment Instrument 2013 (No. 1)]