

Explanatory Statement

Civil Aviation Safety Regulations 1998

Manual of Standards Part 139 Amendment Instrument 2013 (No. 1)

Subsection 98 (1) of the *Civil Aviation Act 1988* (the *Act*) provides that the Governor-General may make regulations for the Act and in the interests of the safety of air navigation.

Some of these regulations are contained in the *Civil Aviation Safety Regulations 1998* (**CASR 1998**). Part 139 of CASR 1998 deals with the operation of aerodromes, including rules about the certification of aerodromes and the requirements that apply to the operators of certified aerodromes. Under regulation 139.015 of CASR 1998, the standards for aerodromes are those set out in the Manual of Standards (MOS) — Part 139 Aerodromes (**MOS Part 139**). MOS Part 139 sets out the necessary technical standards.

Background

In Chapter 11 of MOS 139, there are standards for siting and clearance areas for airways facilities on airports. Airways facilities at an airport include aeronautical telecommunication and radionavigation facilities for communication, navigation and surveillance (**CNS facilities**). These airways facilities are used for aircraft guidance and for air traffic control and thus are classified as safety critical services. Some of the facilities, in particular those for precision approach navigation, need to be positioned in precise geometric relativity to runways. Most of the CNS facilities have an associated site clearance area surrounding the site location to ensure proper operation of the facility.

Paragraphs 11.1.6 to 11.1.15.3 in Chapter 11 set out the standards for siting requirements, including the clearance areas and the dimensions of restricted areas for CNS facilities. They take the form of specified siting requirements and the dimensions of restricted areas around the sites to ensure that radio transmissions are not unacceptably affected by other aerodrome infrastructure, buildings, hangars, vehicles, personnel or other obstacles.

Airservices Australia is the sole Part 171 approved service provider.

The standards for the CNS facilities are generic in that they are based on known areas for acceptable operation at all locations under normal conditions. However, it is known by the Part 171 provider of the CNS facilities that, depending on the location and the type of facility and the proposed airport development, the dimensions of some of the restricted areas may be infringed without having an unacceptable technical or operational affect on the functional performance of the facility.

Issue

The instrument amends Chapter 11 of MOS Part 139 to permit any proposed development to proceed with the written authorisation of CASA. For that authorisation, CASA must request the Part 171 approved service provider to undertake an assessment of the effect of the proposed aerodrome development on the CNS facility. CASA must give its authorisation if the proposed development is shown to be acceptable on the basis of the assessment by the Part 171 service provider.

The new scheme is subject to compliance with Chapter 7 of MOS Part 139, *Obstacle Restriction and Limitation*. Failure to do so will result in the appropriate exemptions having to be issued by CASA to allow the proposed aerodrome development to take place. An

approval under the *Airports (Protection of Airspace) Regulations 1996* must also be obtained, if necessary, for the development to take place.

Legislative Instruments Act

Under subsections 98 (5AA) and (5AB) of the Act, an instrument issued under a regulation made under paragraph 98 (5A) (a) of the Act, is a legislative instrument for the *Legislative Instruments Act 2003* (the **LIA**) if it relates to the safe operation of aircraft and applies more broadly than to a particular aircraft or person. The MOS Amendment is of general application and is, therefore, a legislative instrument subject to registration, and tabling and disallowance in the Parliament, under sections 24, and 38 and 42, of the LIA.

Consultation

Consultation under section 17 of the LIA was undertaken as follows. There was initial consultation with Airservices Australia in 2012 which led to the publication of project AS 12/38. CASA then produced a Notice of Proposed Change (NPC No. 139/07) which was formally published by CASA on 19 March 2013 on its website inviting comments from the public and aviation industry. 3 responses to the Notice were received from the Department of Infrastructure and Transport, Sydney Airport and Airservices Australia. CASA took note of the comments made and modified the original proposal and the amendment.

Office of Best Practice Regulation

OBPR assessed that the proposed amendments will have minor impact and that no further analysis in the form of a Regulation Impact Statement was required (OBPR Id: 15264).

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is at Attachment 1.

Making and commencement

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

The instrument commences on the day after registration.

[Manual of Standards Part 139 Amendment Instrument 2013 (No. 1)]

Attachment 1**Statement of Compatibility with Human Rights**

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

Manual of Standards Part 139 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

This instrument enables an aerodrome operator to proceed with a proposed aerodrome development that infringes any of the standards for communication and navigation services (CNS) facilities set out in the Manual of Standards referred to above if the aerodrome operator has the written authorisation of CASA. CASA must request the provider of the CNS facilities to undertake an assessment of the impact of the proposed aerodrome development on the performance of CNS facilities. CASA must authorise the development if it is shown to be acceptable on the basis of the assessment.

Human rights implications

This legislative 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