

Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 82.3 Amendment Instrument 2014 (No. 1)

Purpose

The purpose of *Civil Aviation Order 82.3 Amendment Instrument 2014 (No. 1)* (the **CAO 82.3 amendment**) is to mandate the carriage of serviceable automatic dependent surveillance – broadcast (**ADS-B**) avionics equipment in foreign registered aircraft when operating under the Instrument Flight Rules (**I.F.R.**) in Australian territorial airspace. The change will be effective from 2 February 2017, and brings the requirements for foreign registered aircraft into line with those applying in Australian territory to Australian registered aircraft.

Legislative background

Under section 27 of the *Civil Aviation Act 1988* (the **Act**), CASA may issue Air Operators' Certificates (**AOCs**) with respect to aircraft, for the purpose of safety regulation.

Under sections 27AB, 27AC and 27AD of the Act, applicants must, in particular circumstances, provide CASA with certain manuals and other information, and undertake proving flights, tests and demonstrations. Under section 27AE of the Act, CASA may require an applicant for a foreign aircraft AOC to provide additional information.

Under section 28 of the Act, CASA must issue the AOC if satisfied that the applicant can comply with the requirements of Australian civil aviation safety legislation. Under paragraph 28BA (1) (b) of the Act, an AOC has effect subject to any conditions specified in the regulations or the Civil Aviation Orders (the **CAOs**).

Part 82 of the CAOs specifies conditions on AOCs. Civil Aviation Order 82.3 (**CAO 82.3**) contains conditions on those AOCs that authorise regular public transport (**RPT**) operations in other than high capacity aircraft. High capacity aircraft are defined in subsection 2 of CAO 82.0 as aircraft certified as having a maximum seating capacity exceeding 38 seats or a maximum payload exceeding 4 200 kilograms.

Subsection 10 of CAO 82.3 sets out conditions in the form of obligations on operators who hold foreign aircraft AOCs for RPT operations in Australia — the relevant foreign operators. In particular, paragraph 10.8 provides that the operator of a foreign registered aircraft must ensure that it complies with the requirements (directions) in Appendix 6 concerning ADS-B equipment.

ADS-B avionics is a modern aircraft surveillance system for air traffic control using ground stations to receive radio signals transmitted by ADS-B equipped aircraft. Using ADS-B avionics, an aircraft is able to broadcast its identity, position, altitude, velocity and many other flight parameters with a degree of accuracy, integrity and reliability that is better than secondary surveillance radar.

Under Appendix 6 of CAO 82.3, since 12 December 2013 if a foreign registered aircraft operates at or above flight level (**FL**) 290, it must carry serviceable ADS-B transmitting equipment that complies with an approved equipment configuration,

unless the aircraft owner, operator or pilot has written authorisation otherwise from CASA.

Appendix 6 of CAO 82.3 operates in conjunction with provisions of *Civil Aviation Orders 20.18, 82.1 and 82.5* for domestic and foreign aircraft engaged in aerial work, charter and RPT operations. Appendix 6 also operates in conjunction with a direction under regulation 209 of the *Civil Aviation Regulations 1988* to foreign aircraft engaged in private operations flying into or out of, or operating in, Australian territory. In this way, the ADS-B requirements apply (according to their terms) to all Australian and foreign registered aircraft operating in compliance with their AOCs or otherwise within the scope of the Act.

Policy background

CASA has decided to enhance the safety and efficiency of air traffic management provided by the national air traffic service provider, Airservices Australia, by mandating the carriage in Australian territorial airspace of serviceable ADS-B avionics equipment in foreign registered aircraft operating under the I.F.R. in any classification of airspace and at any altitude. The change will be effective from 2 February 2017.

This change is in addition to the existing mandate, in effect from 12 December 2013, for carriage of serviceable ADS-B by both Australian and foreign registered aircraft when operating at or above FL 290. That mandate remains unaffected by this change. The new mandate brings the requirements for foreign registered aircraft into line with those applying to Australian registered aircraft.

In practice, the change affects turboprop and piston-engine foreign registered aircraft, which do not normally operate at or above FL 290 and hence would not otherwise be captured by the existing mandate.

CAO amendment

The CAO amendment, therefore, inserts a new clause 7A into Appendix 6 of CAO 82.3 to the effect that, on and after 2 February 2017, a foreign registered aircraft that is operated under the I.F.R. must carry serviceable ADS-B equipment that complies with an approved equipment configuration (see Attachment 1).

Legislative Instruments Act 2003 (the LIA)

Paragraph 28BA (1) (b) of the Act provides that an AOC has effect subject to any conditions “specified in the regulations or Civil Aviation Orders”.

Subsection 98 (4A) of the Act provides that CASA may issue CAOs with respect to any matter “in relation to which regulations may be made for the purposes of section . . . 28BA”.

Under subsection 98 (4B) of the Act, a CAO issued under subsection 98 (4A) is stated to be a legislative instrument and is, therefore, subject to registration, and tabling and disallowance in the Parliament, under sections 28, and 38 and 42, of the LIA.

However, by providing that an AOC has effect subject to any conditions specified in regulations or CAOs, paragraph 28BA (1) (b) of the Act is a separate head of power for the making of relevant CAOs. For section 5 of the LIA, such CAOs would be

legislative instruments subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

The CAO amendment is made under both paragraph 28BA (1) (b) and subsection 98 (4A) of the Act and is a legislative instrument.

Consultation

Consultation was undertaken as follows. On 5 November 2013, CASA published for public comment a Notice of Proposed Rule Making (**NPRM**) for carriage, from 2 February 2017, of ADS-B avionics in foreign registered aircraft operating in Australian territory. By the closing date of 10 January 2014, CASA had received 2 responses to the NPRM.

One respondent indicated full agreement with the proposal. The other respondent indicated support for the proposal if it allowed for an acceptable alternative US FAA standard (FAA TSO-C106) for relevant altitude source equipment. CASA considers that, by legislatively deeming CAO-required imported equipment to have been approved by CASA if it complies with certain “recognised country” manufacturing standards, paragraph 21.502 (1) (a) of the *Civil Aviation Safety Regulations 1998* already makes relevant altitude source equipment that complies with such an FAA standard (FAA TSO-C106) another equivalent system in effect authorised in writing by CASA in accordance with paragraph 5 (b) of Appendix 7 of CAO 82.3. The guidance material detailed in Advisory Circular (AC) 21.45 has been amended to clarify this.

There has also been on-going consultation with the Australian Strategic Air Traffic Management Group (ASTRA), an industry representative body specialising in Air Traffic Management issues, which agrees with the proposals.

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement (**RIS**) is not required for OBPR in this case because OBPR assessed the proposed amendments and determined that they will have minor impacts only. Therefore, no further analysis in the form of a RIS was required (OBPR ID: 15265).

Statement of Compatibility with Human Rights

The 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*. A Statement of Compatibility with Human Rights is at Attachment 2.

Commencement and making

The CAO amendment commences on the day after registration but will not take effect until 2 February 2017. It is expected that this long lead-in time will enable all relevant operators of foreign registered aircraft to equip their aircraft with compliant ADS-B avionics in time to meet the terms of the safety mandate.

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 82.3 Amendment Instrument 2014 (No. 1)*]

Attachment 1**Details of CAO 82.3 amendment****1 Name of instrument**

Under this section, the instrument is the *Civil Aviation Order 82.3 Amendment Instrument 2014 (No. 1)*.

2 Commencement

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

3 Amendment of CAO 82.3

Under this section, Schedule 1 amends CAO 82.3.

Schedule 1 Amendments**1 Appendix 6, after clause 7**

Under this amendment, a new clause 7A is inserted in Appendix 6 to the effect that, subject to clause 8, on and after 2 February 2017, an aircraft that is operated under the I.F.R. must carry serviceable ADS-B equipment that complies with an approved equipment configuration.

2 Appendix 6, clause 8

Under clause 8 of Appendix 6, the prior mandate to carry serviceable ADS-B equipment at or above FL 290 does not apply if CASA issues an authorisation, or, subject to certain conditions, the equipment becomes unserviceable. Under amendment No. 2, a consequential change is made to clause 8 to mention new clause 7A so that clause 8 also applies for the new mandate.

Statement of Compatibility with Human Rights

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

Civil Aviation Act 1988

Civil Aviation Order 82.3 Amendment Instrument 2014 (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 purpose of *Civil Aviation Order 82.3 Amendment Instrument 2014 (No. 1)* is to mandate the carriage of serviceable automatic dependent surveillance – broadcast (**ADS-B**) avionics equipment in certain foreign registered aircraft when operating under the Instrument Flight Rules in Australian territorial airspace. The aircraft are those engaged in low capacity regular public transport operations. The change will be effective from 2 February 2017, and brings the requirements for foreign registered aircraft into line with those already applying in Australian territory to Australian registered aircraft.

Australian registered aircraft are already subject to the same mandate. All foreign registered aircraft, operating under conditional air operator's certificates issued by CASA under the *Civil Aviation Act 1988* (the *Act*), will be subject to the same mandate through this and related Civil Aviation Order (**CAO**) amendments being made at the same time, and a direction will cover foreign registered aircraft when operating in private operations. The related package of instruments, therefore, achieves uniformity in the application of the ADS-B mandate within Australia's aviation jurisdiction.

ADS-B avionics is a modern aircraft surveillance system for air traffic control using ground stations to receive radio signals transmitted by ADS-B equipped aircraft. Using ADS-B avionics, an aircraft is able to broadcast its identity, position, altitude, velocity and many other flight parameters with a degree of accuracy, integrity and reliability that is better than secondary surveillance radar.

The mandate embodied in the CAO amendment and the related package of instruments is a reasonable and proportionate response to technological developments in airspace management which enhance aviation safety.

In practice, the change affects turboprop and piston-engine foreign registered aircraft, which do not normally operate at or above flight level 290 and hence would not otherwise be captured by the already existing ADS-B safety equipment mandate.

The mandate operates as a condition on the operator's air operator certificate (*AOC*). Under the Act, an AOC is required by operators who wish to engage in specified types of aviation operation, and such AOCs may be made subject to aviation safety conditions.

Human rights implications

The 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*. 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