

Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 82.6 Amendment Instrument 2014 (No. 2)

Purpose

Civil Aviation Order 82.6 (**CAO 82.6**) established operational and airworthiness standards and approval requirements for the use of night vision goggles (**NVG**) in specialised helicopter aerial work operations. The CAO had, and has, the effect of making unlawful any unapproved use of NVG as a primary means of terrain avoidance for safe air navigation by means of visual surface reference external to an aircraft.

Civil Aviation Order 82.6 Amendment Instrument 2014 (No.1) amended CAO 82.6 to take account of new language and certain substantive changes arising from the new Parts 61, 141 and 142 of the *Civil Aviation Safety Regulations 1998 (CASR 1998)* that had an impact on CAO 82.6 and the use of NVG. The key language change was that references to NVG were replaced by references to NVIS, or night vision imaging system.

In this exercise, it was intended, as far as practicable, that no significant changes were made to the existing requirements for NVG operations under CAO 82.6 except to the extent that they may arise from the making of Parts 61, 141 and 142 of CASR 1998.

Two of the changes as drafted had unintended effects and needed to be modified. Details are as follows.

Appendix 3 to CAO 82.6 was amended to state that the pilot in command of a helicopter in an NVIS positioning flight may fly below the relevant LSALT (that is, the lowest safe altitude) only if the pilot holds a Grade 1 NVIS endorsement. This prevents holders of Grade 2 NVIS endorsements from conducting such flights, even though they were previously permitted to do so. The amendment of clause 5.1 will reinstate the right of those pilots to conduct flights below the relevant LSALT if they are in accordance with the new paragraph 5.1 (aa).

Appendix 3 to CAO 82.6 was also amended to include a new clause 23AA.2. The clause states that an NVIS CCF (that is, capability check flight) for an NVIS aircrew member must be conducted by the chief pilot, the senior NVIS pilot or the NVIS training pilot or NVIS checking pilot of the operator's TCO (that is, training and checking organisation).

This changed the previous requirement which was that CCF may be conducted by an appropriately qualified and experienced person appointed by the operator's TCO to conduct an NVG CCF or, if the operator did not have a TCO, an appropriately qualified and experienced person appointed by a TCO to conduct NVG CCF.

The new provision was not appropriate for all aircrew members, accordingly clause 23AA.2 is amended to restore the previous procedure.

Legislation

A wide range of statutory powers was required in order to make CAO 82.6.

Under section 27 of the *Civil Aviation Act 1988* (the **Act**), CASA may issue Air Operators' Certificates (**AOCs**) for its functions. Under subsections 27 (2) and (9) of the Act, an aircraft operator must hold an AOC in order to operate for certain prescribed purposes.

Under paragraph 28BA (1) (b) of the Act, an AOC has effect subject to any conditions specified in the regulations or Civil Aviation Orders (the **CAOs**).

Under subsection 98 (4A) of the Act, CASA may issue CAOs, not inconsistent with the Act, in respect to any matter in relation to which regulations may be made for the purposes of section 28BA of the Act (conditions on AOCs).

Under subregulation 5 (1) of the *Civil Aviation Regulations 1988* (**CAR 1988**), where CASA is empowered to issue certain instruments, it may do so in a Civil Aviation Order.

Under subregulations 217 (1) and (3) of CAR 1988, CASA may specify operators who must provide an approved training and checking organisation (a **TCO**) to ensure that members of the operator's operating crews maintain their competency.

The NVIS operational rules in CAO 82.6 are intended to govern the NVIS operations of AOC holders. Relevant Part 142 operators who become responsible for integrated and multi-crew NVIS flight training and contract NVIS recurrent training and checking will be AOC holders. However, Part 141 operators responsible for all other initial NVIS training will not be AOC holders.

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 to tabling and disallowance in the Parliament, under sections 24, and 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 under section 17 of the LIA has not been considered necessary for the CAO 82.6 amendments because it is entirely consequential on the making of Parts 61, 141 and 142 of CASR 1998 which were themselves the subject of previous extensive public consultation. It corrects 2 provisions that had unintended consequences although they were themselves subject to detailed consultation as follows.

The proposals for the amendments were presented to the NVG Industry Forum meeting held on 25 June 2014. The industry members who were present, indicated support for the amendments. A Notice of Proposed Rule Making (**NPRM**) 1412MS describing the proposals was subsequently published for public comment on

6 August 2014. Two responses were received to the NPRM neither of which objected to the proposals. Suggestions for minor changes to improve clarity were acted on.

Office of Best Practice Regulation (OBPR)

The *Civil Aviation Order 82.6 Amendment Instrument 2014 (No.1)* was in most respects consequential on the amendment regulations which were made to Parts 61, 141 and 142. CASA prepared a Regulation Impact Statement for those amendment regulations which was assessed as adequate by OBPR and, thereby, covers the consequential CAO amendments (OBPR id: 2777). These additional amendments to the CAO are minor in nature and have no impact on business compliance costs, restoring earlier less stringent requirements.

Statement of Compatibility with Human Rights

The Statement in Appendix 1 is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The legislative instrument does not directly engage any of the applicable rights or freedoms.

Commencement and making

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

[*Civil Aviation Order 82.6 Amendment Instrument 2014 (No. 2)*]

Statement of Compatibility with Human Rights

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

Civil Aviation Order 82.6 Amendment Instrument 2014 (No. 2)

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 82.6 Amendment Instrument 2014 (No. 2)* is to amend 2 provisions in Appendix 3 to Civil Aviation Order 82.6 (**CAO 82.6**), the making of which had unintended consequences. No significant changes are made to CAO 82.6.

Human rights implications

The legislative instrument does not engage any of the applicable rights or freedoms. It restores what were previously applicable and less demanding requirements.

Conclusion

The legislative instrument is compatible with human rights and to the extent that it may also limit human rights, those limitations are reasonable, necessary and proportionate to protect aviation safety in the operation of aircraft.

Civil Aviation Safety Authority