

Explanatory Statement

Civil Aviation Safety Regulations 1998

Part 21 Manual of Standards Amendment Instrument 2017 (No. 1)

Purpose

The purpose of the *Part 21 Manual of Standards Amendment Instrument 2017 (No. 1)* (the **amendment instrument**) is to:

- extend the date for the repeal of 2 sections of the *Part 21 Manual of Standards Instrument 2016* (the **Part 21 MOS**)
- make editorial amendments to the Part 21 MOS to provide consistent references to particular aircraft design standards.

Legislation

Under subsection 98 (1) of the *Civil Aviation Act 1988* (the **Act**), the Governor-General may, among other things, make regulations prescribing matters required, permitted, necessary or convenient for the Act and in the interests of the safety of air navigation.

Under subsection 98 (5A) of the Act, the regulations may empower CASA to issue instruments in relation to design standards for aircraft, airworthiness of aircraft and matters affecting the safe navigation and operation, or the maintenance, of aircraft.

Under subsection 98 (5D) of the Act, a legislative instrument made under the Act or the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing at a particular time or as in force or existing from time to time.

Civil Aviation Safety Regulations 1998 (CASR)

Part 21 of CASR deals with certification and airworthiness requirements for aircraft. Regulation 21.010D of CASR allows CASA, for subsection 98 (5A) of the Act, to issue a Manual of Standards (**MOS**) prescribing matters:

- required or permitted by the regulations to be prescribed by the Part 21 MOS
- necessary or convenient to be prescribed for carrying out or giving effect to Part 21 of CASR.

Subpart 21.H (regulations 21.171 to 21.201) of CASR prescribes requirements for the issue of certificates of airworthiness (**CofA**) (except provisional certificates) and special flight permits.

Regulation 21.172 defines the term **LSA standards** to include the standards prescribed by the Part 21 MOS for the design, performance or continuing airworthiness of light sport aircraft.

Regulation 21.175 provides that a **special certificate of airworthiness** means a CofA issued for certain aircraft, including an aircraft type certificated in the primary or intermediate category or a particular light sport aircraft.

Regulation 21.176 provides that, subject to regulation 11.055, CASA, a limited category organisation or an authorised person must issue a CofA to an applicant if the applicant: is eligible to apply for the CofA; applies for the CofA in accordance with

Subpart 21.H; is entitled under Subpart 21.H to the CofA and otherwise complies with Part 21.

Regulations 21.184 and 21.184A of CASR set out the requirements that an applicant would have to meet to be entitled to a special CofA in relation to a primary or intermediate category aircraft and set out the requirements for a number of different kinds of primary and intermediate category aircraft. In particular, under subregulations 21.184 (4) and 21.184A (2), an applicant for a special CofA for an aircraft in the primary or intermediate category is entitled to the certificate if, amongst other things, the aircraft complies with the requirements prescribed by the Part 21 MOS.

Subpart 21.O (regulations 21.601 to 21.621) of CASR prescribes requirements for issuing an Australian Technical Standard Order (*ATSO*) authorisation. Under paragraph 21.601 (2) (a) of CASR, an ATSO is a minimum performance standard prescribed by the Part 21 MOS for specified articles used on civil aircraft.

Under regulation 21.605 of CASR, an article manufacturer may apply to CASA for an ATSO authorisation for the article. Subject to regulation 11.055, CASA must issue an ATSO authorisation for the article if CASA is satisfied that the design of the article complies with the applicable ATSO and the applicant has established and can maintain a quality system to ensure that each article manufactured by the applicant will comply with the applicable ATSO.

The Part 21 MOS

The Part 21 MOS commenced on 1 June 2016.

Subsection 1.5 (2) of the Part 21 MOS provides that sections 8.5 and 13.1 of the Part 21 MOS are repealed at the end of 31 May 2017.

Section 1.10 of the Part 21 MOS contains definitions of the design standards for light sport aircraft that are incorporated by reference in section 8.1 of the Part 21 MOS.

Section 8.1 of the Part 21 MOS prescribes standards for various classes of light sport aircraft for the definition of *LSA standards* in regulation 21.172 of CASR.

Civil Aviation Order 101.55 (*CAO 101.55*) is set out in Schedule 1 to the *Civil Aviation Amendment Order (No. R94) 2004*. It provides requirements for an applicant to be entitled to a special CofA in relation to particular kinds of primary category and intermediate category aircraft. For subregulations 21.184 (4) and 21.184A (2) of CASR, section 8.5 of the Part 21 MOS incorporates CAO 101.55 by reference into the Part 21 MOS. Therefore, CAO 101.55 continues to be the source of requirements.

Section 13.1 of the Part 21 MOS is made under paragraph 21.601 (2) (a) of CASR. It prescribes the minimum performance standard for specified articles by prescribing the existing ATSOs that apply to those articles. Incorporating an ATSO by reference in the Part 21 MOS means that the ATSOs by operation of law form part of the MOS.

In accordance with subregulation 98 (5D) of the Act, the Part 21 MOS incorporates matters contained in CAO 101.55 and the ATSOs as in force immediately before 1 June 2016.

In the absence of the amendment instrument, sections 8.5 and 13.1 of the Part 21 MOS would be repealed at the end of 31 May 2017. It was intended that, by that day, the Part 21 MOS would be amended to replicate the requirements of CAO 101.55 and the ATSOs with appropriate changes to clarify, streamline and simplify the requirements.

Amendment instrument — explanation of provisions

Section 1 provides that the name of the instrument is the *Part 21 Manual of Standards Amendment Instrument 2017 (No. 1)*.

Section 2 provides that the instrument commences on the date of registration.

Section 3 provides that the Part 21 MOS is amended as set out in Schedule 1 of the instrument.

Item 1 of Schedule 1 amends subsection 1.5 (2) of the Part 21 MOS so that sections 8.5 and 13.1 of the Part 21 MOS will be repealed at the end of 30 November 2017, instead of 31 May 2017. The extension of the date of repeal will allow further time for the drafting of, and consultation on, amendments to the Part 21 MOS to include requirements and standards that are contained in the instruments currently incorporated in sections 8.5 and 13.1 by reference.

Items 2 to 5 of Schedule 1 make editorial amendments to definitions in section 1.10 of the Part 21 MOS to provide consistency with the names of the standards as listed in section 8.1 of the Part 21 MOS.

Legislative instrument

Under subsections 98 (5AA) to (5BA) of the Act, an instrument issued under subsection 98 (5A) is a legislative instrument unless it is expressed to apply in relation to a particular person, aircraft or aeronautical product. The provisions of the Part 21 MOS, issued under subsection 98 (5A) of the Act, are expressed to apply in relation to various classes of persons, aircraft or aeronautical products. Therefore, the Part 21 MOS is a legislative instrument.

Also, under subsection 8 (5) and paragraph 10 (1) (c) of the *Legislation Act 2003* (the *LA*), an instrument is a legislative instrument if it includes a provision that amends another legislative instrument. This instrument amends the Part 21 MOS.

Therefore, this instrument is a legislative instrument within the meaning of the LA.

Consultation

For section 17 of the LA and regulation 11.280 of CASR, CASA conducted the following consultation for the instrument.

On 11 May 2017, CASA published a consultation draft of the amendment instrument, and a Summary of Proposed Changes (*SPC*) explaining the proposed content of the instrument, on the CASA website (reference: CD 1706MS). On the same day, an email was sent to relevant stakeholders alerting them to the publication of the SPC and the draft instrument on the CASA website. CASA sought comments from the public on the draft instrument by 25 May 2017.

Regulation 11.280 of CASR requires CASA to publish a notice of its intention to issue or amend a MOS and to specify the period during which comments on the draft MOS may be lodged. For a proposed MOS amendment that is of a minor or machinery nature, subregulation 11.280 (4) requires the period during which comments may be lodged to be reasonable in the circumstances, but not less than 14 days. Due to the minor and machinery nature of the amendments proposed in this instrument, CASA accepted consultation feedback received up to 14 days after the notice was published.

CASA did not receive any comments on the amendment instrument.

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement (*RIS*) is not required because the instrument is covered by a standing agreement between CASA and OBPR under which a RIS is not required for amendments to Manuals of Standards (OBPR id: 14507 and 18533).

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (see Attachment A).

Making and commencement

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

The instrument commences on the day of registration. Under section 48A of the LA, the instrument is repealed on the day after the commencement of the instrument.

[Part 21 Manual of Standards Amendment Instrument 2017 (No. 1)]

Statement of Compatibility with Human Rights

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

Part 21 Manual of Standards Amendment Instrument 2017 (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

Part 21 of *Civil Aviation Safety Regulations 1998 (CASR)* deals with certification and airworthiness requirements for aircraft. The *Part 21 Manual of Standards Instrument 2016* (the **Part 21 MOS**) prescribes matters:

- required or permitted by the regulations to be prescribed by the Part 21 MOS
- necessary or convenient to be prescribed for carrying out or giving effect to Part 21 of CASR.

The purpose of the legislative instrument is to amend the Part 21 MOS to:

- extend the date for the repeal of sections 8.5 and 13.1 of the Part 21 MOS
- make editorial amendments to the Part 21 MOS to provide consistent references to particular design standards.

The extension of the date of repeal of sections 8.5 and 13.1 of the Part 21 MOS maintains existing arrangements. It will allow further time for the drafting of, and consultation on, amendments to the Part 21 MOS to include requirements and standards that are contained in instruments currently incorporated by reference in those sections.

Human rights implications

The 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*. It 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