

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA 69/20 — Prescription and Approval of United Kingdom and Japan as Recognised Foreign States Instrument 2020

Purpose

The purpose of *CASA 69/20 — Prescription and Approval of United Kingdom and Japan as Recognised Foreign States Instrument 2020* (the **instrument**) is to approve and prescribe United Kingdom and Japan as recognised foreign States for the purposes of *Civil Aviation Order 82.0 Instrument 2014 (CAO 82.0)* and the *Civil Aviation Safety Regulations 1998 (CASR)*, so that United Kingdom continues to be a recognised foreign State after it ceases to be a member of the European Union Aviation Safety Agency (**EASA**), and so that Australian operators can apply to use flight simulation training devices located in Japan. Other similar flight simulation training devices located in recognised foreign States in Europe are unavailable due to COVID-19 restrictions.

Legislation

Section 98 of the *Civil Aviation Act 1988* (the **Act**) empowers the Governor-General to make regulations for the Act and in the interests of the safety of air navigation. Relevantly, the Governor-General has made CASR and *Civil Aviation Regulations 1988 (CAR)*.

Part 61 of CASR sets out the licensing scheme for pilots of registered aircraft. The scheme includes provisions for pilots to gain aeronautical experience and conduct proficiency checks using an **approved flight simulation training device**. Under subregulation 61.880 (6), instrument proficiency checks must be conducted in a relevant aircraft or an approved flight simulation training device.

Under regulation 61.010, **approved flight simulation training device** is defined to include a flight simulation training device that is qualified and approved for a purpose by the national authority of a recognised foreign State. **Recognised foreign State** is defined to include a list of named States, including “the following EASA member States”, in which United Kingdom is named. Under regulation 61.047, CASA may, by legislative instrument, prescribe foreign countries as recognised foreign States for paragraph 98 (5A) (a) of the Act.

CAO 82.0 contains provisions for when an operator must use a qualified synthetic training device for the purpose of its training and checking obligations under regulation 217 of CAR. Subsection 7 sets out various requirements to use a qualified synthetic training device for training, if such a device is available for use in Australia or a recognised foreign State. Under paragraph 7.1, a **recognised foreign State** is defined as “a foreign State approved by CASA for this subsection” and includes a list of named foreign States, including a list of EASA member States, in which United Kingdom is named.

Background

United Kingdom is currently a recognised foreign State by virtue of being named in a list of EASA member States. As a result of Brexit, United Kingdom will cease to be an EASA member State. CASA considers it necessary for the United Kingdom to continue to be a recognised foreign State for the purposes of CASR and CAO 82.0.

Several aircraft operators have indicated their need to have access to a flight simulation training device for Embraer 170 aircraft (an ***Embraer simulator***) between now and April 2021, when a locally-based Embraer simulator is expected to be available at the Ansett Training Centre in Melbourne.

The operators had previously used EASA state-qualified Embraer simulators located in Europe. These (and all other off-shore devices) are unavailable or impracticable due to COVID-19 restrictions. The only device available is an Embraer simulator located at Flight Safety International's Tokyo facility. However, Japan is not recognised under CASR or CAO 82.0 for the purposes of FSTD qualification and due to COVID-19 travel restrictions CASA is unable to qualify the device under the provisions of Part 60 of CASR.

Overview of instrument

The instrument prescribes each of United Kingdom and Japan as a recognised foreign State for regulation 61.047 of CASR and approves each of United Kingdom and Japan as a recognised foreign State for subsection 7 of CAO 82.0.

CASA has assessed the operators' submission for the prescription and approval of Japan as a recognised foreign State and is satisfied this has no impact on the safety of the operators' operations.

Content of instrument

Section 1 sets out the name of the instrument.

Section 2 sets out the duration of the instrument, which commences on the day after it is registered. Subsections 3 (2) and 4 (2), which prescribe and approve Japan as a recognised foreign State, are repealed at the end of 30 June 2021.

Section 3 prescribes each of United Kingdom and Japan as a recognised foreign State for regulation 61.047 of CASR.

Section 4 approves each of United Kingdom and Japan as a recognised foreign State for subsection 7 of CAO 82.0.

Legislation Act 2003 (the LA)

Regulation 61.047 of CASR provides that, for paragraph 98 (5A) (a) of the Act, CASA may, by legislative instrument, prescribe foreign countries as recognised foreign States.

The instrument is, therefore, a legislative instrument, and is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Consultation

CASA consulted with each of the operators affected in relation to the Embraer simulators regarding the prescription of Japan as a recognised foreign State. Consultation was not undertaken in the case of the United Kingdom being prescribed as a recognised foreign State, as CASA considers it to be a matter of preserving current arrangements rather than changing or imposing additional regulatory burden.

CASA is satisfied that no further consultation is appropriate or reasonably practicable for this instrument for section 17 of the LA.

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement (*RIS*) is not required in this case, as the instrument is covered by a standing agreement between CASA and OBPR under which a RIS is not required for approvals (OBPR id: 14507).

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights at Attachment 1 has been 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.

Making and commencement

The instrument has been made by a delegate of CASA relying on the power of delegation under subregulation 11.260 (1) of CASR.

The instrument commences on the day after it is registered and subsections 3 (2) and 4 (2) are repealed at the end of 30 June 2021.

Statement of Compatibility with Human Rights

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

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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 instrument prescribes each of United Kingdom and Japan as a recognised foreign State for regulation 61.047 of the *Civil Aviation Safety Regulations 1998* and approves each of United Kingdom and Japan as a recognised foreign State for subsection 7 of *Civil Aviation Order 82.0 Instrument 2014*.

The effect of the instrument is to:

- (a) maintain United Kingdom's current status as a recognised foreign State, after it ceases to be a member of the European Aviation Safety Agency as a result of Brexit; and
- (b) include Japan as a recognised foreign State for the purposes of enabling operators to have access to a flight simulation training device for Embraer 170 aircraft, located in Tokyo, between now and April 2021, when a locally-based Embraer simulator is expected to be available at the Ansett Training Centre in Melbourne.

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