

Explanatory Statement

Civil Aviation Safety Regulations 1998

Part 61 Manual of Standards Amendment Instrument 2021 (No. 2)

Purpose

The main purpose of the instrument is to amend Schedules 2 and 3 of the Part 61 Manual of Standards (**Part 61 MOS**) to clarify previous amendments made by *Part 61 Manual of Standards Amendment Instrument 2021 (No. 1)* (the **previous instrument**). The Part 61 MOS applies to flight training for pilots being instructed in, amongst other topics, the avoidance and control of stall and spin and controlled flight at critically low airspeed.

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 the *Civil Aviation Safety Regulations 1998* (**CASR**).

Flight training requirements

Part 61 of CASR contains regulations for flight crew licensing, including the various requirements for issuing flight crew licences, ratings and endorsements.

Under regulation 61.035 of CASR, the Civil Aviation Safety Authority (**CASA**) may issue a Manual of Standards for Part 61 that sets out matters relating to flight crew licences.

In particular, the Part 61 MOS may set out standards for the following:

- aeronautical and other knowledge required by Part 61 for the grant of a licence, rating or endorsement
- flight training
- other training and development requirements
- flight tests
- general operating competencies for:
 - aircraft of a particular class or type
 - activities authorised by operational ratings and endorsements
- competencies for glider pilot licences.

Under regulation 61.195 of CASR, an applicant for a flight crew licence, rating or endorsement must receive training in the specified units of competency mentioned in the Part 61 MOS for the licence, rating or endorsement and be assessed as competent.

Under regulation 61.235 of CASR, certain requirements, including flight training, must be satisfied by an applicant for a flight crew licence for the applicant to be eligible to attempt the flight test for the licence.

Under regulation 61.250 of CASR, the applicant must be assessed as satisfying the standards specified in the Part 61 MOS in order to be eligible for the flight crew licence.

Background

The Australian Transport Safety Bureau (*ATSB*) identified issues, relating to flight training, where aircraft that were not certified for certain manoeuvres related to advanced stalling and spinning were being used in training for those manoeuvres. This was in part caused by confusion concerning the meaning of the terms used to describe the manoeuvres, in particular in relation to what was involved in the inducing and control of what was referred to as “incipient spin”. As a result, the ATSB issued *Safety Advisory Notice AO-2017-096-SAN-012*.

Following detailed discussion, the previous instrument was issued. This instrument clarifies the effect of certain amendments that were made by the previous instrument.

Content of instrument

Section 1 names the instrument.

Section 2 sets out when the instrument commences.

Section 3 states that Schedule 1 amends Schedules 2 and 3 of the Part 61 MOS.

Schedule 1 amendments

Item 1 of Schedule 1 of the instrument replaces unit A5 (Aeroplane advanced manoeuvres) in Section 4 of Schedule 2 of the Part 61 MOS. This is done to ensure that clause 1, subclauses 2.3 and 2.4, and clauses 3 and 4 are not unintentionally omitted due to the framing of the original amendment of unit A5 in item [2] of Schedule 1 of the previous instrument.

Paragraph 2.2 (d) of unit A5 has been amended to clarify that the cross-reference to “5.1 (d)” is to paragraph (d) of subclause 2.1 (5.1 – Enter and recover from stall) of unit A5. Also, paragraph (f) has been renumbered as paragraph (e) so that the paragraphs are numbered consecutively. There are no other changes to the actual wording of the provisions contained in unit A5 as set out in the previous instrument.

Item 2 of Schedule 1 of the instrument substitutes a new subclause 2.8 for subclause 2.8 (Stalling, spinning and spiral dives) in unit 1.3.2 in Section 1.3 of Appendix 1 of Schedule 3 of the Part 61 MOS. The new subclause remedies an unintentional duplication of sub-subclauses 2.8.2 to 2.8.6 (inclusive) due to the framing of the original amendment of subclause 2.8 in item [20] of Schedule 1 of the previous instrument.

There are no changes to the actual wording of the provisions contained in subclause 2.8 as set out in the previous instrument.

Legislation Act 2003 (the LA)

Paragraph 98 (5A) (a) of the Act states that CASA may issue instruments in relation to matters affecting the safe navigation and operation, or the maintenance, of aircraft.

Also, paragraph 98 (5AA) (a) states that an instrument issued under paragraph 98 (5A) (a) is a legislative instrument if the instrument is expressed to apply in relation to a class of persons. The instrument contains provisions which apply to classes of person, including Parts 141 and 142 flight training operators, pilots seeking to engage in particular flight training or manoeuvres, and student pilots.

Paragraph 10 (1) (d) of the LA also provides that an instrument will be a legislative instrument if it includes a provision that amends another legislative instrument. The instrument amends the Part 61 MOS which is a legislative instrument.

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

Consultation under section 17 of the LA took place with the aviation industry regarding both the content of the CASA Advisory Circular *AC 61-16 v1.0* and the preparation of the amendments of the Part 61 MOS contained in the previous instrument.

Feedback was received from individuals and organisations, including Part 141 and 142 flight training operators, the Royal Aeronautical Society, Recreational Aviation Australia, the Gliding Federation of Australia and the Royal Federation of Aero Clubs of Australia. Inquiries were also made of the New Zealand Civil Aviation Authority.

The only changes to the text of the Part 61 MOS are the editorial changes described above in relation to Item 1 of Schedule 1 of the instrument.

In those circumstances, 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)

OBPR assessed the amendments made by the previous instrument as having no more than a minor regulatory impact and determined that a Regulation Impact Statement (*RIS*) was not required (OBPR id: 43407). The changes made by this instrument will not affect that determination.

Sector risk, economic and cost impact

Subsection 9A (1) of the Act states that, in exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration. Subsection 9A (3) states that, subject to subsection 9A (1), in developing and promulgating aviation safety standards under paragraph 9 (1) (c), CASA must:

- (a) consider the economic and cost impact on individuals, businesses and the community of the standards; and
- (b) take into account the differing risks associated with different industry sectors.

The cost impact of a standard refers to the direct cost (in the sense of price or expense) which a standard would cause individuals, businesses and the community to incur. The economic impact of a standard refers to the impact a standard would have on the production, distribution and use of wealth across the economy, at the level of the individual, relevant businesses in the aviation sector, and the community more broadly. The economic impact of a standard could also include the general financial impact of that standard on different industry sectors.

The changes that the instrument makes can be regarded as minor or machinery in nature. It simply clarifies the intended effect of the previous instrument. OBPR had also made an assessment that a RIS was not required for the previous instrument.

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 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 after it is registered.

Statement of Compatibility with Human Rights

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

Part 61 Manual of Standards Amendment Instrument 2021 (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

This legislative instrument amends Schedules 2 and 3 of the Part 61 Manual of Standards to clarify previous amendments made by *Part 61 Manual of Standards Amendment Instrument 2021 (No. 1)*. It applies to flight training for pilots being instructed in the avoidance and control of stall and spin and controlled flight at critically low airspeed.

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