

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA 93/21 — Training and Checking (CASR Part 135 and Subpart 121.Z) Determination 2021

Purpose

The purpose of *CASA 93/21 — Training and Checking (CASR Part 135 and Subpart 121.Z) Determination 2021* (the **instrument**) is to facilitate implementation of Part 135 and Subpart 121.Z of the *Civil Aviation Safety Regulations 1998 (CASR)*, which commences on 2 December 2021. The instrument sets out transitional arrangements for flight crew member, air crew member, and medical transport specialist training and checking requirements under Part 135 of CASR. The instrument provides that certain “training and checking events” that were undertaken by commercial aircraft operators for operating crew under the legislation being replaced by Part 135 of CASR are taken to meet the requirements of Part 135 of CASR, for specific periods of time or indefinitely. This provides for a smooth transition from the former legislation to the training and checking requirements of Part 135 of CASR.

Legislation

The *Civil Aviation Act 1988* (the **Act**) establishes the regulatory framework for maintaining, enhancing and promoting the safety of civil aviation, with particular emphasis on preventing aviation accidents and incidents.

Section 98 of 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 CASR and *Civil Aviation Regulations 1988 (CAR)*.

The *Civil Aviation Safety Amendment (Part 135) Regulations 2018 (Part 135 of CASR)* were made on 18 December 2018 and amended by the *Civil Aviation Legislation Amendment (Flight Operations—Miscellaneous Amendments) Regulations 2020*, made on 6 October 2020. Part 135 of CASR commences on 2 December 2021. At that time, most flight operations regulations contained in the CAR will be repealed.

Part 202 of CASR contains transitional provisions for the CASR. In 2021, the *Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions) Regulations 2021* were made to address transitional issues arising from the making and commencement of the new flight operations regulations, which includes Part 135 of CASR.

These amendments included insertion of a new Subdivision 202.EAA.1.14 of CASR that includes regulation 202.418, which authorises CASA to make an instrument (a “determination”) to establish transitional arrangements in relation to a **training or checking event**. This term is defined in subregulation 202.418 (4) of CASR to include any of the following:

- (a) satisfactory completion of training or education (however described);
- (b) successful completion of a check, a test, a flight review or an assessment of competency (however described);
- (c) obtaining a qualification or certificate;
- (d) completing experience;
- (e) completing a flight or series of flights;

- (f) successfully participating in a training and checking system (however described).

Subregulation 202.418 (3) provides that CASA may make a written determination for the purposes of the regulation.

Section 4 of the *Acts Interpretation Act 1901* (the *AIA*) as applied by section 13 of the *Legislation Act 2003* (the *LA*) provides, among other things, that if an Act (including a regulation) is enacted and at a time after its enactment (the *start time*) the Act will confer power to make an instrument, that power may be exercised before the start time as if the relevant commencement had occurred. However, in general terms, the exercise of this power does not confer a power or right to impose an obligation on a person before the relevant commencement. Using section 4 of the *AIA*, the instrument is made under regulation 202.418 of CASR, that commences on 2 December 2021.

Overview of instrument

The instrument sets out transitional arrangements for flight crew member, air crew member and medical transport specialist training and checking requirements under Part 135 of CASR. Under the instrument, certain training and checking events that were undertaken by these operator personnel under the legislation being replaced by Part 135 of CASR, are taken to meet the requirements of Part 135 of CASR, for specific periods of time or indefinitely. This provides for a smooth transition from the former legislation to the training and checking requirements of Part 135 of CASR. The Part 135 rules also apply Subpart 121.Z of CASR operations.

CASA is satisfied that the instrument preserves an acceptable level of aviation safety.

Documents incorporated by reference

Under subsection 14 (1) of the *LA*, a legislative instrument may make provision in relation to matters by applying, adopting or incorporating provisions of an Act or disallowable legislative instrument as in force at a particular time or as in force from time to time. A legislative instrument may also make provision in relation to matters by applying, adopting or incorporating any matter contained in any other instrument or writing as in force at, or before, the time the legislative instrument commences. Under subsection 14 (2) of the *LA*, unless the contrary intention appears, the legislative instrument may not make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time. However, subsection 98 (5D) of the *Act* provides that, despite section 14 of the *LA*, 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 from time to time, even if the other instrument or writing (including a non-legislative instrument) does not yet exist when the legislative instrument is made.

In accordance with paragraph 15J (2) (c) of the *LA*, the following table contains a description of the documents incorporated by reference in the instrument and how they may be obtained. The table also states how the document is incorporated.

Document	Description	Manner of incorporation	Source
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Document	Description	Manner of incorporation	Source
Part 61 of CASR	<p>Part 61 sets out the requirements and standards for the issue of flight crew licences and ratings, and their privileges.</p> <p>This document is mentioned in the table in Schedule 1 that is referenced in section 6 of the instrument.</p>	As in force or existing from time to time.	This document is available for free on the Federal Register of Legislation.
Part 135 of CASR	<p>Part 135 sets out the requirements and standards for the conduct of air transport operations using smaller aeroplanes.</p> <p>Provisions of this document are mentioned in the table in Schedule 1 that is referenced in section 6 of the instrument.</p>	As in force or existing from time to time.	This document is available for free on the Federal Register of Legislation.
Part 135 Manual of Standards	<p>The Part 135 Manual of Standards sets out standards for Part 135 of CASR.</p> <p>Provisions of this document are mentioned in the table in Schedule 1 that is referenced in section 6 of the instrument.</p>	As in force or existing from time to time.	This document is available for free on the Federal Register of Legislation.
Subpart 121.Z of CASR	<p>Subpart 121.Z sets out the requirement and standards for the conduct of air transport operations using certain larger aeroplanes.</p> <p>This Subpart of CASR is mentioned in the definition of <i>relevant flight</i> in section 3 of the instrument.</p>	As in force or existing from time to time.	This document is available for free on the Federal Register of Legislation.

Document	Description	Manner of incorporation	Source
Regulation 217 of the <i>Civil Aviation Regulations 1998</i>	<p>Regulation 217 of CAR prescribes matters relating to air transport operators ensuring their operating crews continue to maintain the required level of competency.</p> <p>This regulation is mentioned in the table in Schedule 1 that is referenced in section 6 of the instrument.</p>	As in force immediately before the commencement of the instrument.	This document is available for free on the Federal Register of Legislation.
<i>Civil Aviation Order 20.11 Instrument 2007</i>	<p>CAO 20.11 sets out the standards for emergency and lifesaving equipment and passenger control in emergencies.</p> <p>This document is mentioned in the definitions and in the table in Schedule 1 that is referenced in section 6 of the instrument.</p>	As in force immediately before the commencement of the instrument.	This document is available for free on the Federal Register of Legislation.
<i>Civil Aviation Order 82.0 Instrument 2014</i>	<p>CAO 82.0 set out conditions and standards for AOC holders who conduct aerial work operations, charter operations and regular public transport operations.</p> <p>This document is mentioned in the definitions and in the table in Schedule 1 that is referenced in section 6 of the instrument.</p>	As in force immediately before the commencement of the instrument.	This document is available for free on the Federal Register of Legislation.

Document	Description	Manner of incorporation	Source
Operator's training and checking manual	<p>A manual or set of documents for the use and guidance of the operations personnel of an operator.</p> <p>This document or set of documents is mentioned in the definitions and in the table in Schedule 1 that is referenced in section 6 of the instrument.</p> <p>The manual may include relevant text in the operator's operations manual — see subsection 3 (4) of the instrument.</p>	As the manual or set of documents exists from time to time	Held by the operator.

In accordance with subsection 98 (5D) of the Act, the operator's training and checking manual is incorporated by reference as it exists from time to time. The manual is developed by a specific operator to outline their operations and compliance with applicable legislation. As such, a manual is commercial in confidence and therefore not freely available.

Each operator will have access to their manual as necessary for compliance with the instrument. The operator also makes their training and checking manual available to their operating crew who are the subject of the instrument.

CASA has incorporated the operator's training and checking manual in the instrument because aviation safety requires the use of the information and data in manual by aircraft operators and crew and because there are no freely available documents serving the relevant purpose.

Content of instrument

Section 1 provides for the naming of the *CASA 94/21 — Training and Checking (CASR Part 135 and Subpart 121.Z) Determination 2021* instrument.

Section 2 provides for the commencement of the instrument on 2 December 2021.

Section 3 provides definitions for the instrument. A key defined term is ***relevant flight***, which is defined to mean a flight, for an operator, of an aeroplane in relation to which Part 135 of CASR or Subpart 121.Z of CASR applies. A note is included explaining that regulation 135.005 provides that Part 135 of CASR applies in relation to the operation of an aeroplane for an Australian air transport operation if the aeroplane has a maximum operational passenger seat configuration of not more than 9 and a maximum take-off weight of not more than 8 618 kg. An additional note explains that subregulation 121.005 (2) of CASR provides that Subpart 121.Z applies to the operation of a single-engine aeroplane for an Australian air transport operation if the aeroplane has a maximum operational passenger

seat configuration of more than 9 and a maximum take-off weight of not more than 8 618 kg. Reference is also made to regulation 121.760 of CASR for the application of Part 135 of CASR to the operation of certain single-engine aeroplanes to which Subpart 121.Z applies.

Section 4 provides that the instrument is a determination in relation to the transitional requirement for flight training and checking under subregulation 202.418 (3) of CASR.

Section 5 provides that the instrument applies in relation to a relevant flight.

Section 6 prescribes the transitional requirements for flight training and checking events that are required under Part 135 of CASR, by reference to the table in Schedule 1 of the instrument. A table contains detailed requirements of:

- the new training and checking events under Part 135 of CASR for nominated persons (column 1);
- the “old” training and checking events under the *Civil Aviation Regulations 1988* and Civil Aviation Orders that are determined to satisfy the new training and checking events (column 2); and
- for how long the old event is deemed to be valid (column 3).

Items 1 to 5 of the table address training and checking transitional arrangements for flight crew members.

Items 6 to 11 of the table address training and checking transitional arrangements for air crew members.

Items 12 to 17 of the table address training and checking transitional arrangements for medical transport specialists.

Legislation Act 2003

Subsection 8 (4) of the LA provides that an instrument is a legislative instrument if it is made under a power delegated by the Parliament, and any provision determines the law or alters the content of the law, and it has the direct or indirect effect of affecting a privilege or interest, imposing an obligation, creating a right, or varying or removing an obligation or right.

Additionally, paragraph 98 (5AA) (a) of the Act provides 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 applies in relation to classes of persons, namely flight crew members and air crew members, as well as medical transport specialists who have completed nominated training and checking activities and who therefore are not required to complete additional training and checking activities otherwise required under Part 135 of CASR. 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.

As the instrument relates to aviation safety and is made under CASR, Part 4 of Chapter 3 of the LA (the ***sunsetting provisions***) does not apply to the instrument (item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

However, most items the table will be spent after 1, 2 or 3 years after the commencement date, in accordance with column 3 of the table.

Some items of the table, however, are of enduring nature. General emergency training, conversion training and line training and checking for a flight crew member, as addressed in items 1 to 3 of the Table, will endure indeterminately for a flight crew member who remains employed with same operator. General emergency training, conversion training, line training and checking and differences training for an air crew member, as addressed in items 6 to 9 of the Table, will endure indeterminately for an air crew member who remains employed with same operator. General emergency training, conversion training, line training and checking and differences training for a medical transport specialist, as addressed in items 12 to 15 of the Table, will endure indeterminately for a medical transport specialist who remains employed with same operator.

The instrument deals with aviation safety matters that, once identified, require a risk response or treatment plan. As such, aspects of the instrument have enduring operation and it would not be appropriate for it to be subject to sunseting. The exemption from the sunseting provisions affects parliamentary oversight by not requiring the instrument to be remade and subject to further tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Consultation

CASA consulted the public on its proposed flight operations regulations transition policies in 2020. Relevantly, CASA issued a policy proposal document in June 2020 which advised that things done or actions taken (e.g. training completed or flying experience gained) under the existing legislation, would generally be “saved”, if the flight operations CASR Parts contained a provision that corresponded to the provision of the existing legislation under which a thing was done or action taken.

Although formal consultation for the instrument has not been conducted, on-going discussions between CASA and operators informed specific provisions of the instrument. CASA is satisfied that no further consultation is appropriate or reasonably practicable for this instrument for section 17 of the LA.

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) of the Act states that, subject to subsection (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.

As the instrument extends the periods of validity of “old” training and checking events under the existing legislation, there will be no new economic or cost impact on individuals, businesses or the community. There will instead be cost savings, by virtue of deeming certain old events to meet the new requirements, thereby eliminating new costs that would otherwise be imposed by the new requirements.

Air transport operators operating under Part 135 is one industry sector. Air transport operators operating under Subpart 121.Z is another industry sector. The impact on the two sectors is the same.

Office of Best Practice Regulation (OBPR)

This instrument is consequential to the making of Parts 135 and 121 of CASR for which a Regulation Impact Statement was published (OBPR ID: 24505).

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*.

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 2 December 2021.

Statement of Compatibility with Human Rights

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

CASA 94/21 — Training and Checking (CASR Part 135 and Subpart 121.Z) Determination 2021

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 Disallowable Legislative Instrument

Part 202 of the *Civil Aviation Safety Regulations 1998 (CASR)* contains transitional provisions for the CASR. In 2021, the *Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions) Regulations 2021* were made to address transitional issues arising from the making and commencement of the new flight operations regulations, which includes Part 135 of CASR, which contains the operational rules for Australian air transport operations— Australian Air Transport Operations—Smaller Aeroplanes).

These amendments included insertion of a new Subdivision 202.EAA.1.14 of CASR that includes regulation 202.418, which authorises CASA to make an instrument (a “determination”) to establish transitional arrangements in relation to a **training or checking event**. This term is defined in subregulation 202.418 (4) of CASR to include any of the following:

- (a) satisfactory completion of training or education (however described);
- (b) successful completion of a check, a test, a flight review or an assessment of competency (however described);
- (c) obtaining a qualification or certificate;
- (d) completing experience;
- (e) completing a flight or series of flights;
- (f) successfully participating in a training and checking system (however described).

The instrument facilitates the implementation of Part 135 of the CASR which commences on 2 December 2021. The instrument sets out transitional arrangements for flight and air crew members, as well as medical transport specialist training and checking requirements under Part 135 of CASR. The instrument provides that certain “training and checking events” that were undertaken by commercial aircraft operators for crew under the legislation being replaced by Part 135 of CASR, are taken to meet the requirements of Part 135 of CASR, for specific periods of time or indefinitely. This provides for a smooth transition from the former legislation to the training and checking requirements of Part 135 of CASR. The instrument also facilitates the implementation of Subpart 121.Z of CASR. The Part 135 rules apply to operations under Subpart 121.Z.

Human rights implications

The instrument engages the right to work and rights at work under Article 6 of the International Covenant on Economic, Social and Cultural Rights (*ICESCR*).

This right under the ICESCR includes the right of everyone to the opportunity to gain their living by work which they freely choose or accept. The instrument does not directly address the right to work. However, the transitional provisions in the instrument provide for flight and air crew members, as well as medical transport specialist of regulated operators to be taken to meet

training and checking requirements in Part 135 of CASR that commences on 2 December 2021. The instrument will promote the right to work to provide for a seamless or orderly transition for air operators to Part 135 of CASR.

Conclusion

The amendment instrument is compatible with human rights and does not limit human rights.

Civil Aviation Safety Authority