I, PHILIPPA JILLIAN SPENCE, Director of Aviation Safety, on behalf of CASA, make this instrument under regulations 138.020 and 201.025 of the *Civil Aviation Safety Regulations 1998.*

**[Signed P. Spence]**

Pip Spence
Director of Aviation Safety

22 December 2022

Part 138 MOS Amendment Instrument 2022 (No. 1)

1 Name of instrument

This instrument is the *Part 138 MOS Amendment Instrument 2022 (No. 1)*.

*Note*   MOS is short for Manual of Standards.

2 Commencement

This instrument commences on the day after it is registered.

3 Amendment of Part 138 Manual of Standards

Schedule 1 amends the *Part 138 (Aerial Work Operations) Manual of Standards 2020*.

Schedule 1 Amendments

[1] Subsection 1.04 (6), Definitions

insert

***line*** means a rope, cable, or similar item suitable for use in rappelling.

***rappelling*** means any of the following:

(a) a person lowering themselves from an airborne rotorcraft by going down a line hanging from the rotorcraft;

(b) a person being lowered from an airborne rotorcraft by controlled release from the rotorcraft of a line to which the person is securely attached;

(c) a person lowering themselves down a line hanging from an airborne rotorcraft, with descent of the person controlled by a person on the ground;

(d) a person coming down from, or going up to, an airborne rotorcraft by using a flexible ladder hanging from the rotorcraft.

[2] After subsection 1.04 (7)

insert

 Equivalent qualifications required to crew a foreign registered aircraft

 (8) If the aircraft for an aerial work operation, or a limited aerial work operation, is a foreign registered aircraft, any reference in this MOS (however formulated):

(a) to a person holding, or being required to hold, a qualification for or under Part 61 for the operation; or

(b) to a person having, or being required to have, any authorisation for or under Part 61 for the operation; or

(c) to a person meeting, or being required to meet, any other requirement for or under Part 61 for the operation;

 must be read as a requirement for the person to hold the equivalent qualification, or have the equivalent authorisation, or meet the equivalent requirement, of the NAA of the aircraft’s State of registry, for the equivalent operation.

[3] Before subsection 1.06 (1)

insert

 (1AA) This section only applies to OEI operations.

[4] Section 3.01

repeal and substitute

3.01 Other operations excluded from definition of *aerial work operation*

 For paragraph 138.010 (5) (g), the following operations are not included within the definition of ***aerial work operation***:

(a) an operation in which an aircraft tows a thing, and the pilot in command of the aircraft meets the requirement mentioned in paragraph 91.210 (2) (a);

*Note*   Paragraph 91.210 (2) (a) refers to a towing approval.

(b) an operation that is a flight test for an experimental aircraft conducted under an experimental certificate;

(c) an operation that is a maintenance test flight;

(d) an operation where a person undertaking a parachute descent in accordance with Part 105 of CASR causes a thing to be dropped:

 (i) from the aircraft before the descent; or

 (ii) during the descent;

(e) an operation that is aerial spotting, carried out in a weight-shift-controlled aeroplane type certificated in the primary category whose operation is administered by a sport aviation body.

[5] After section 4.02

insert

4.03 Voluntary extension of a mandatory training and checking system

 (1) For paragraph 138.020 (b), this section applies to an aerial work operator who conducts operations in an aeroplane or a rotorcraft if the operator is required, under regulation 138.125, to have a training and checking system (the ***operator’s T&CS***) for an operation (a ***prescribed operation***).

 (2) The operator may voluntarily elect to extend the requirements of the operator’s T&CS to 1 or more of the operator’s operations to which regulation 138.125 does not apply (a ***relevant operation***).

 (3) However, an election mentioned in subsection (2), may only take effect on and from the day that CASA approves the operator’s voluntary extension under regulation 138.025.

 (4) An approval under subsection (3) must be based on the operator’s safety case and any other information that CASA considers relevant.

 (5) The operator’s safety case must describe:

(a) the nature, size, scope, complexity, and purpose of, and the aircraft to be used in, the relevant operation; and

(b) how and why the extension of the operator’s T&CS to both prescribed operations and relevant operations will not have an adverse effect of the safety of either kind of operation.

 (6) It is a condition of an approval that:

(a) the requirements of regulations 138.130 and 138.135 must be complied with for the relevant operation as if they applied to the operation under regulation 138.125; and

(b) the operator’s operations must contain procedures for the safe and effective extension of the operator’s T&CS to the relevant operation.

4.04 Voluntary adoption of a training and checking system for nominated operations

 (1) For paragraph 138.020 (b), this section applies to an aerial work operator who conducts operations in an aeroplane or a rotorcraft if the operator is not required, under regulation 138.125, to have a training and checking system for the operator’s operations.

 (2) The operator may voluntarily adopt a training and checking system for the operator’s nominated operations (a ***voluntary T&CS***).

 (3) However, adoption of a voluntary T&CS may only take effect on and from the day that CASA approves the operator’s voluntary extension under regulation 138.025.

 (4) An approval under subsection (3) must be based on the operator’s safety case and any other information that CASA considers relevant.

 (5) The operator’s safety case must describe:

(a) the nature, size, scope, complexity, and purpose of, and the aircraft to be used in, the nominated operations; and

(b) how and why the application of a voluntary T&CS to the operations will not have an adverse effect on aviation safety.

 (6) It is a condition of an approval that:

(a) the requirements of regulations 138.130 and 138.135 must be complied with for the nominated operations as if they applied to the operations under regulation 138.125; and

(b) the operator’s operations must contain procedures for the safe and effective extension of the operator’s T&CS to the nominated operations.

[6] Paragraph 8.03 (1) (a)

repeal and substitute

(a) must be the subject of:

 (i) a type certificate in the transport category, whether issued by CASA or by another NAA; and

 (ii) a certificate of airworthiness, or an authorisation (however described) issued by the NAA of a Contracting State that is equivalent to a certificate of airworthiness; and

[7] After paragraph 9.15 (a)

insert

*Note*   For a flight of a foreign registered aircraft, subsection 1.04 (8) of this MOS permits foreign equivalencies to CASR Part 61 requirements.

[8] After paragraph 11.04 (3) (b)

insert

*Note*   For a flight of a foreign registered aircraft, subsection 1.04 (8) of this MOS permits foreign equivalencies to CASR Part 61 requirements.

[9] Paragraph 11.05 (b)

repeal and substitute

(b) for a day VFR operation — the aircraft’s certificate of airworthiness, or authorisation (however described) issued by the NAA of a Contracting State that is equivalent to a certificate of airworthiness, must state that the certificate or authorisation (as the case requires) is issued in the transport category; and

[10] After subparagraph 11.06 (2) (a) (ii)

insert

*Note*  Regulations 91.265, 91.267, 91.277 and 91.305 are minimum height regulations. However, under Chapter 9 of the MOS, they do not apply for certain flights if the Chapter 9 flight conditions are complied with. This is the context for the expression “**as and when** [those minimum height regulations] **apply to the flight**”.

[11] Section 11.07

repeal and substitute

11.07 Carriage of 1 or more aerial work passengers over water

 (1) For subparagraph 138.305 (2) (c) (iv), for any stage of a rotorcraft flight with passengers that is conducted over water, 1 or more suitable forced landing areas must be available and usable by the rotorcraft.

 (2) For subsection (1), an area of water is a suitable forced landing area only if subsections 1.06 (2), (3) and (4) of this MOS are satisfied.

 (3) Subsection (1) does not apply to a multi-engine rotorcraft if the rotorcraft:

(a) is operated in accordance with paragraphs (b) and (c) of the definition of ***OEI accountability*** for the flight of a multi-engine rotorcraft; and

(b) after the failure of an engine, is:

 (i) able to continue to fly OEI to a suitable forced landing area available and usable on land; or

 (ii) able to safely land and shut down on a vessel to which the rotorcraft has been operating.

 (4) Subsection (1) does not apply to a rotorcraft conducting the phase of a flight that is an ESO operation at an ESO operating site.

[12] Subsection 12.03 (1), paragraph (b) of the definition of *IFR capable*

omit

who meet

insert

, each member of which meets

[13] After the definition of *IFR capable* in subsection 12.03 (1)

insert

*Note*   For a flight of a foreign registered aircraft, subsection 1.04 (8) of this MOS permits foreign equivalencies to CASR Part 61 requirements.

[14] After the definition of *NVFR capable* in subsection 12.03 (1)

insert

*Note*   For a flight of a foreign registered aircraft, subsection 1.04 (8) of this MOS permits foreign equivalencies to CASR Part 61 requirements.

[15] Subsection 12.03 (1), definition of *NVIS pilot*

repeal and substitute

 ***NVIS pilot***, for an NVIS operation, means a pilot who holds each of the licences, ratings, and endorsements required for NVIS flight by Part 61 of CASR.

*Note*   For a flight of a foreign registered aircraft, subsection 1.04 (8) of this MOS permits foreign equivalencies to CASR Part 61 requirements. For foreign jurisdictions which do not issue or grant licenses, ratings, or endorsements for NVIS flight, equivalency may arise if the pilot has been authorised by the aircraft’s State of registry to pilot the aircraft in NVIS flight.

[16] Section 12.09, the Note

omit

*Note*   On ceasing

insert

*Note 1*   On ceasing

[17] After section 12.09, Note 1

insert

*Note 2*   Section 12.09 applies despite subsection 26.24 (2) of the Part 91 MOS which is disapplied by subsection 26.24 (3) of the Part 91 MOS.

[18] Sub-subparagraph 13.09 (5) (b) (ii) (A)

repeal and substitute

(A) be at or above 500 ft; and

[19] Subsection 14.02 (4), including the Note

repeal and substitute

 (4) Subsections (2) and (3) do not apply for a Class D external load operation when a person is:

(a) exiting or entering a rotorcraft in flight using a line or flexible ladder attached to the rotorcraft (rappelling) — provided that the requirements of subsection 15.06 (6) are complied with; or

*Note*   The operation must be an ESO conducted by trained ESO personnel, or ESO personnel training: see subsection 15.06 (6).

(b) making a hover entry or exit — provided that the requirements of subsection 15.06 (7) are complied with.

*Note*   See subsection 15.06 (7) for the meaning of hover entry or exit.

[20] Section 15.04, the heading

omit

Operational

insert

Equipment

[21] Subsection 15.04 (1)

repeal and substitute

 (1) For subregulations 138.410 (2) and 138.465 (2), for a Class D external load operation the requirement mentioned in subsection (2) applies to the operator and the pilot in command.

[22] Subsection 15.06 (1)

omit

on section 15.05

insert

in section 15.05

[23] Subparagraph 15.06 (2) (c) (iii)

omit

is not

insert

subject to subsection (2A), is not

[24] After subsection 15.06 (2)

insert

Class D external loads — winching over water for recovery of unserviceable rotorcraft

 (2A) If an operation, to which paragraph (2) (c) would otherwise apply, is over water for the sole purpose of assisting in the recovery of an unserviceable rotorcraft from the deck of a vessel or an off-shore platform, then the following requirements, additional to those mentioned in paragraph (2) (c), must be met:

(a) the rotorcraft must be a multi-engine rotorcraft;

(b) the rotorcraft must be fitted with an emergency flotation system;

(c) each crew member for the flight (including each task specialist) must be current in underwater escape training, in accordance with this MOS.

[25] Paragraphs 15.06 (4) (b) and (c)

renumber as (a) and (b), respectively

[26] Section 15.10

repeal and substitute

15.10 External load operations over an AWZ

 An aerial work certificate holder must not conduct an external load operation in an AWZ over a populous area unless the aircraft is permitted to operate over a populous area by:

(a) its certificate of airworthiness; or

(b) an authorisation (however described), issued by the NAA of a Contracting State, that is equivalent to a certificate of airworthiness.

*Note*   A limited aerial work operator is not permitted to conduct an external load operation over an AWZ that is over a populous area: see regulation 138.030.

[27] Paragraph 16.06 (2) (a)

omit

, or an equivalent qualification granted by an NAA

[28] Paragraph 16.06 (2) (b)

omit

, or the equivalent requirements of the NAA

[29] Subsection 16.06 (2)

repeal and substitute

 (2) The pilot in command of a helicopter for the operation must:

(a) hold a Grade 1 NVIS endorsement under Part 61 of CASR; and

(b) satisfy the relevant instrument proficiency and recency requirements under Part 61 of CASR.

*Note*   For a flight of a foreign registered aircraft, subsection 1.04 (8) of this MOS permits foreign equivalencies to CASR Part 61 requirements.

[30] Paragraph 17.02 (2) (c)

omit

before commencing

insert

subject to subsections (2A) and (2B), before commencing

[31] Paragraph 17.02 (2) (c)

omit

in the class

insert

in the type or class

[32] Paragraph 17.02 (2) (d)

repeal and substitute

 (2A) For paragraph (2) (c):

(a) at least 60 hours of the 100 hours must have been training as PICUS with the training pilot; and

(b) the remaining hours may be either of the following, in the discretion of the training pilot:

 (i) as PICUS with the training pilot; or

 (ii) solo under the detailed personal direction of the training pilot.

 (2B) Paragraph (2) (c) does not apply to the pilot in command of a type or class of rotorcraft in which proposed aerial mustering will be carried out below 500 ft if, in the 12 months immediately before 2 December 2021, the pilot had conducted aerial mustering in the same type or class of rotorcraft.

[33] Subsection 17.02 (3)

omit

For subsection (1),

insert

For subsection (2A),

[34] Paragraph 17.02 (3) (a)

omit

in the class

insert

in the type or class

[35] Subparagraph 17.02 (3) (b) (ii)

omit

experience and

insert

experience; and

[36] Section 17.07, the heading

repeal and substitute

17.07 Additional requirements — discharge of firearms

[37] Subsection 17.07 (9)

omit

Subject to subsection (10)

insert

Subject to subsections (10) and (11A)

[38] After subsection 17.07 (11)

insert

 (11A) Subsection (9) does not apply to an aerial work operation if:

(a) the operation involves the discharge of a firearm from an aircraft (***shooting***) by a shooter for the purpose of training for police aerial shooting operations from rotorcraft (a ***shooting training operation***); and

(b) the shooter is a task specialist who is a member of 1 of the following:

 (i) a State or Territory police service;

 (ii) the Australian Federal Police;

 (iii) the Australian Defence Force (***ADF***); and

(c) the shooting training operation is conducted at a place that is, under the laws of the relevant State or Territory, a dedicated shooting range; and

(d) the shooting range has been risk assessed by both of the following (the ***relevant parties***):

 (i) the relevant police service, the AFP or the ADF (as applicable);

 (ii) the operator of the rotorcraft;

 to be a safe place for the proposed operation to occur; and

(e) the relevant parties have devised such location-specific operating procedures and limitations as are necessary to ensure the safe conduct of the operation; and

(f) a record of the risk assessment, and the location-specific operating procedures and limitations, are included in the operator’s operations manual.

[39] Section 17.08

omit

An operation under this Division

insert

(1) Subject to subsection (2), an operation under this Division

[40] After subsection 17.08 (1) and the Note

insert

 (2) Subsection (1) does not apply to an operation under this Division that involves the discharge of a firearm from an aircraft, or training for such a discharge, if:

(a) the shooter is a task specialist who is a member of 1 of the following:

 (i) a State or Territory police service;

 (ii) the Australian Federal Police;

 (iii) the Australian Defence Force (ADF); and

(b) the aerial work operator’s operations manual contains alternative procedures for communication between the task specialist, and the flight crew members and the air crew members.

*Note*For example, the operations manual might contain procedures describing how specific hand signals may be used for communication.

[41] Paragraph 22.07 (2) (c)

repeal and substitute

(c) an intercommunication system, compliant with the requirements of, or approved under, Part 21 of CASR, that permits continuous communication between all flight crew members, air crew members, and task specialists on board the rotorcraft during the operation.

[42] After subsection 22.07 (2)

insert

 (2A) Despite paragraph 22.07 (2) (c), the intercommunication system is not required to permit continuous communication between all flight crew members, air crew members, and a task specialist (a ***relevant task specialist***) who is:

(a) in the rotorcraft, or outside the aircraft, and about to be, or in the process of being, winched; or

(b) about to rappel, or in the process of rappelling; or

(c) in the aircraft, but for whom the safe performance of their function does not require such continuous communication;

provided that the operator’s operations manual has procedures to be followed for effective communication between the flight crew members, the air crew members and the relevant task specialist.

[43] Section 23.04, the Note

omit

*Note*   An FCM’s

insert

*Note 1*   An FCM’s

[44] After section 23.04, Note 1

insert

*Note 2*   For differences training for a flight of a foreign registered aircraft, subsection 1.04 (8) of this MOS permits foreign equivalencies to CASR Part 61 requirements.

[45] Paragraph 23.10 (1) (b)

*repeal and substitute*

(b) another individual who:

 (i) satisfies the operator’s requirements to perform a training or a competency assessment role; and

 (ii) holds 1 of the following, authorising conduct of the training or competency assessment:

(A) a flight instructor rating;

(B) a flight examiner rating;

(C) a relevant approval under regulation 61.040 of CASR; or

*Note*For training or competency assessment in a foreign registered aircraft, subsection 1.04 (8) of this MOS permits foreign equivalencies to CASR Part 61 authorisations.