Civil Aviation Safety Regulations 1998

CASA 14/20 – Determination – for Proposed Manual of Standards (MOS) – Part 139 Aerodromes Amendment Instrument 2020 (No. 1)

Statement of reasons for making the Determination

Legislation
Subsection 9 (1) of the *Civil Aviation Act 1988* (the Act) provides that CASA has the function of conducting the safety regulation, in accordance with the Act and the regulations, of civil air operations in Australian territory and of the operation of Australian aircraft outside Australian territory. Section 98 of the Act empowers the Governor-General to make regulations for the Act and the safety of air navigation.

Under regulation 11.280 in Subpart 11.J of the *Civil Aviation Safety Regulations 1998* (CASR), if CASA intends to issue a Manual of Standards (a MOS) CASA must publish a notice of its intention to do so on the Internet. This requirement also applies to an amendment of a MOS.

The purpose of such publication is to facilitate consultation with, and seek comments from, interested parties. The notice must describe the draft MOS or MOS amendment, how it may be obtained, how comments on it may be made and lodged, and the time frame within which such comments may be lodged (to be not less than 28 days from posting on the Internet). Under regulation 11.290 of CASR, before issuing the final MOS, CASA must consider any comments received, and may consult with any person on issues arising from those comments. Under subregulation 11.295 (1) of CASR, a failure to comply with the procedures in Subpart 11.J of CASR does not affect the validity of the MOS in question.

However, under paragraph 11.275 (1) (d) of CASR, CASA is not obliged to comply with the publication requirements of regulation 11.280 before issuing a MOS or a MOS amendment if the Director of Aviation Safety (the Director) determines that the MOS is of a minor or machinery nature that does not substantially alter existing arrangements.

Under subregulation 11.275 (2) of CASR, if the Director does make such a Determination, CASA must publish the Determination, and a statement of reasons for it, on the Internet within 28 days after making the Determination.

Why the proposed MOS amendment is of a minor or machinery nature
The *Manual of Standards (MOS) — Part 139 Aerodromes Amendment Instrument 2020 (No. 1)* (the old MOS amendment) amends the *Manual of Standards (MOS) — Part 139 Aerodromes* (the old MOS) to allow for the early optional adoption, by some aerodrome operators, of new aerodrome visual aids and inset runway lights, not otherwise due to commence until 13 August 2020.

The purpose of the old MOS amendment is to permit some existing aerodrome operators to adopt some of the new standards relating to aerodrome visual aids and inset runway lights, as currently contained in Chapter 8 and 4 sections of Chapter 9, respectively, of the *Part 139 (Aerodromes) Manual of Standards 2019* (the new MOS), earlier than would otherwise be required. Compliance would otherwise have been required only on and after 13 August 2020.

Making use of the anticipatory instrument-making powers under section 4 of the *Acts Interpretation Act 1901*, the new MOS was made on 5 September 2019 under the *Civil Aviation Safety Amendment (Part 139) Regulations 2019* (the new regulations) which were expressed to commence on 22 August 2020.
By virtue of the Civil Aviation Legislation Amendment (Part 139 Aerodromes — Transitional Provisions and Consequential Amendments) Regulations 2020, the new regulations and the new MOS will commence on 13 August 2020.

However, by amending the old MOS, the new standards relating to aerodrome visual aids and inset runway lights, as currently contained in Chapter 8 and 4 sections of Chapter 9 of the new MOS, may be incorporated into the old MOS as alternative, optional, standards under the old MOS, thereby accelerating their application to those aerodrome operators who wish to voluntarily adopt them prior to 13 August 2020.

This early adoption option is likely to be of considerable benefit to some aerodrome operators who, for cyclical reasons, are currently engaged in updating or replacing their aerodrome visual aids and may wish to more readily install inset runway lights, both of which would otherwise have to comply with the old MOS standards and restrictions.

Since the old MOS standards are going to be modified by the new MOS on and from 13 August 2020, this would have resulted in aerodrome visual aids having to be upgraded or replaced again, out of cycle, on and from 13 August 2020, to comply with the new MOS, and would also have meant restrictions on the use of inset runway lights. The old MOS amendment allows relevant aerodrome operators to avoid this outcome.

The old MOS amendment does not substantially alter existing arrangements under the old MOS but only allows for the early voluntary adoption of future standards currently contained in the new MOS which will not commence until 13 August 2020.

This proposal will affect only a limited number of aerodrome operators who are currently engaged in upgrading or replacing relevant aerodrome visual aids and inset runway lights, and it will affect them only to the extent that they choose to be affected by notifying CASA to that effect.

The proposal may, therefore, be said to be of a minor or machinery nature.

**Determination**

The Determination, therefore, provides that the proposed old MOS amendment, which amends the old MOS is of a minor or machinery nature that does not substantially alter existing arrangements under the old MOS.

The effect of this to relieve CASA of the obligation under Subpart 11.J of CASR to consult again, for a further 4 weeks, on the early voluntary opt-in scheme for Chapters 8 and 9. A copy of the Determination and these Reasons are on the CASA website (see below).

**Legislative Instruments Act 2003**

The Determination is not a legislative instrument.

**Consultation**

In view of the minor or machinery nature of the old MOS amendments noted above, consultation is not warranted. There is no adverse effect on the level of aviation safety, and to the extent of relevant aerodrome operators’ voluntary uptake of the option to comply early with the future standards, there will be an improvement in safety standards.

That said, there has in fact been quite extensive consultation on the early opt-in proposal. A transition strategy for implementation of the new regulations and the new MOS was the subject
of public and industry consultation from 3 February to 2 March 2020. One of the implementation policy proposals included in this consultation was whether to bring forward for early adoption the Chapter 8 and selected Chapter 9 MOS provisions. There were 16 responses to this consultation and in regard to this particular aspect of the proposed implementation policy, and 15 favourable responses (with 1 respondent not answering the question). Thus, public and industry consultation was conducted and it supports the early opt-in provisions for Chapters 8 and 9 of the new MOS.

**Commencement and making**

The Determination commences on the date of signature.

The Determination has been made by the Director of Aviation Safety in accordance with paragraph 11.275 (1) (d) of CASR.

The Determination and this Statement of Reasons for making the Determination are published on the CASA website within 28 days after the Determination is made in accordance with subregulation 11.275 (2) of CASR.