



# SUMMARY OF CONSULTATION



## Proposed Part 139 (aerodromes) transitional strategy

Manual of Standards (MOS) - Part 139 Aerodromes Amendment Instrument 2020 (No. 1)

Civil Aviation Legislation Amendment (Part 139 Aerodromes—Transitional Provisions and Consequential Amendments) Regulations 2020

Part 139 (Aerodromes) Manual of Standards Amendment Instrument 2020 (No. 1)

<b>Date</b>	July 2020
<b>Project number</b>	AS 14/24
<b>File ref</b>	D20/83158

## Overview

As part of the post-implementation review of Part 139 of CASR - Aerodromes, a revised Part 139 of CASR was made in February 2019 and a revised Part 139 MOS was made in September 2019. The new rules commence in August 2020. This consultation asked people to consider, where new regulatory requirements were being introduced, a number of transition strategies to assist current certified and registered aerodrome operators, and applicants for new aerodromes, to transition to the new rules. The consultation has now closed, and a summary of the feedback is provided below.

## Respondents

We received a total of 16 submissions. Fourteen respondents consented to having their comments published on the CASA website.

## Key feedback

The transition proposals were:

- Bring forward the commencement date of the new rules to 13 August 2020 to align with the Aeronautical Information Publication (AIP) publication date.
- Bring forward Part 139 MOS chapter 8 (visual aids) and chapter 9 (in relation to use of inset runway edge lights) to commence as soon as the CATS regulations are made.
- Apply grandfathering provisions for active infrastructure projects and funding applications prior to commencement of the new rules.
- Deem all certified and registered aerodromes to be certified from 13 August 2020.
- Delay the requirement for submission of a revised aerodrome manual by certified aerodrome operators until 6 months after commencement of the new rules.
- Delay the requirement for submission of a new aerodrome manual by registered aerodrome operators until 18 months after commencement of the new rules.
- Delay new requirements for safety management systems (SMS), risk management plans, aerodrome emergency plans and exercises plus aerodrome technical inspections for 12 or 24 months.

## Proposal 1 - New commencement date

Seven of the respondents disagreed with bringing forward the commencement date citing the amount of planning being undertaken by aerodrome operators in preparation for the commencement of the new regulations. The same response was provided by four respondents indicating a coordinated response. It was also noted that these four respondents thought the change to the commencement date was an Airservices initiative.

## CASA response

As the new date is only 9 days earlier than the original, this is not expected to create a significant impact on aerodrome operators. Additionally, with the remaining transition strategies, where regulatory impacts have been identified, industry has been provided with a significant amount of time to comply with the new regulatory requirements. Also, all existing aerodrome

facilities, including runways and their associated OLS, runway strips and visual aids can be grandfathered. CASA considers 13 August 2020 as the more appropriate commencement date to coincide with the AIP publication and therefore enables the AIP-ERSA to be an up-to-date listing of certified aerodromes.

Since the public consultation, Australia has been dealing with the COVID-19 pandemic and CASA has provided pilots and operators with temporary alleviation from some regulatory requirements. On 15 April 2020, the Australian Airports Association (AAA) wrote to CASA requesting a 12-month postponement of the commencement of the new MOS due to difficulties expressed by some registered aerodrome operators in engaging aerodrome technical inspectors and aerodrome consultants to assist with preparation of new aerodrome manuals.

As some aerodrome operators, or applicants for new aerodromes, are likely already to be in the process of adopting the new standards in the design and construction of aerodrome facilities, a 12-month deferral would unduly prejudice them. However, in light of these concerns, CASA has considered it appropriate to provide an additional 3 months to the timeframes for the transitional periods.

### **Proposal 2 - Bringing forward visual aids elements in chapters eight and nine of the new Part 139 MOS**

Fifteen of the 16 respondents agreed to this proposal with three providing comments about changing the commencement date, grandfathering of existing facilities and the transition period.

#### **CASA response**

Bringing forward the Chapter 8 and 9 provisions, which came into effect on 25 March 2020, does not require aerodrome operators to comply with the new standards immediately, but provides the flexibility to introduce the new standards should they choose. Visual aids facilities that are compliant with the existing standards will be covered under the grandfathering provisions.

### **Proposal 3 - Application of grandfathering provisions for active infrastructure projects and funding applications**

Seven of the 16 respondents agreed and 6 'agreed with changes' to this proposal, while 2 disagreed. The same response was provided by five respondents who 'agreed with changes', indicating a coordinated response. The main theme of the responses was it would be unreasonable to require building or funding approvals to have been completed, or applied for, prior to 6 September 2019 and that approvals in progress until commencement of the regulations i.e. 22 August 2020 should be subject to the grandfathering arrangements. Another theme was that the building approval and completion timeframes were too short and consideration of the Airport Master Plan process, which can take up to 5 years, has previously been communicated to the AAA.

#### **CASA response**

Without grandfathering or transitional arrangements, aerodrome operators would need to comply with the new regulations in August 2020. Therefore, if aerodromes were planning new infrastructure projects which were compliant with the old MOS and not the new MOS they should be in contact with CASA seeking regulatory relief due to the significant expense and planning involved with these new projects. The cut-off date for new infrastructure project approvals and

applications of 6 September 2019 was considered appropriate as this coincided with the new MOS becoming publicly available, though not due to commence until August 2020. Aerodrome operators have had sufficient notice of the new standards and should be taking appropriate steps to ensure any future aerodrome facility projects comply with new rules coming into effect. It is appropriate that, in order to take advantage of the grandfathering provisions, aerodrome facility construction and development needs to have either commenced or reached a prescribed stage of planning or funding maturity by 6 September 2019. CASA has communicated this to aerodrome operators who have requested advice from CASA.

During its presentations to the AAA, CASA has always advised of a transition period being provided where new regulatory requirements were being introduced. CASA's transition communications have not forecast a 5 year 'grace' period for Airport Master Plans. However, CASA would consider applications for an enduring approval from aerodrome operators who can reasonably demonstrate a building approval has been provided outside of the regulatory transitional requirements.

#### **Proposal 4 - Deeming all existing certified and registered aerodromes as 'certified' aerodromes**

Six of the 16 respondents agreed and 4 'agreed with changes' to this proposal, while 3 disagreed. Three of the 4 that 'agreed with changes' requested the commencement date of the new regulations to remain the same. The remaining response which 'agreed with changes' was in relation to grandfathering of existing facilities and how the deeming provisions are linked to acceptance by CASA of the aerodrome manual. The respondents who disagreed were of the view that deeming current registered aerodromes created a safety risk due to a lack of serviceability or safety inspections.

#### **CASA response**

Numerous regulatory safeguards will be in place in relation to the deeming of existing certified and registered aerodromes.

Current certified and registered aerodromes are required to comply with the existing regulations and MOS unless an exemption, approval, authorisation or determination has been issued. Under the deeming provisions, existing certified and registered aerodromes are deemed to hold a transitional aerodrome certificate. This deeming as a 'certified' aerodrome also requires existing certified and registered aerodromes to comply with all provisions of the new MOS unless transitional arrangements are in place. The deeming is linked to submission of an aerodrome manual to CASA which has been provided with an additional 3 months in addition to the 6- and 18-month periods included in the consultation. Therefore, the aerodrome manual submission date for certified aerodromes is 13 May 2021 and for registered aerodromes is 13 May 2022. The deeming will cease:

- when CASA assesses the aerodrome manual as compliant with the new MOS and a new aerodrome certificate is issued
- if an aerodrome manual is not submitted by the due date
- if the manual is assessed as not being compliant with the new MOS
- if the deemed aerodrome certificate is cancelled.

The transitional arrangements also provide for appeals to the Administrative Appeals Tribunal (AAT).

### **Proposal 5 - Submission date for revised aerodrome manuals by existing Certified Aerodromes**

Six of the 16 respondents agreed and 7 'agreed with changes' to this proposal, while 2 disagreed. Five of the 7 that 'agreed with changes' requested the commencement date of the new regulations to remain the same. The remaining responses which 'agreed with changes' were in relation to CASA assessing the manuals within 6 months and the Aerodrome Manual AC being available. One of the respondents that disagreed wanted certified and registered aerodromes to be allowed an additional 6 months for submission of their manuals i.e. 12 months and 24 months respectively, and the other respondent stated the timeframes were unrealistic.

#### **CASA response**

The timeframes for submission of revised and new aerodrome manuals by certified and registered aerodrome operators has been increased to 9 and 21 months respectively. The sample aerodrome manual, the Manual Assessment & Authoring Tool (MAAT), which is an online tool that may be used to assist in the development of an aerodrome manual, and a supporting AC were made available in May 2020. This is well in advance of the deadline for aerodrome manuals to be submitted to CASA.

Certified aerodromes are already required to have an aerodrome manual and the new Part 139 of CASR and the MOS does not require significant changes to an existing manual, therefore 9 months is an adequate timeframe. With the additional resources to support registered aerodromes in developing their new aerodrome manuals, 21 months is considered an appropriate timeframe.

The transitional arrangements no longer include a timeframe for assessment by CASA. The transitional aerodrome certificate will remain in place until a decision is made by CASA on the suitability of the submitted aerodrome manual.

### **Proposal 6 - Submission date for new aerodrome manuals by existing Registered Aerodromes**

Two of the 16 respondents agreed and 6 'agreed with changes' to this proposal, while none disagreed. Seven respondents stated it was not applicable to them and 1 respondent did not answer the question. Four of the 6 that 'agreed with changes' requested the commencement date of the new regulations to remain the same. The remaining responses which 'agreed with changes' were in agreement that this was a more realistic timeframe but 'compliance aspects' needed to be defined and one stated that 24 months should be provided after commencement of the new rules for submission of the aerodrome manuals.

#### **CASA response**

The transitional regulations will require submitted aerodrome manuals to be compliant with the new MOS. As with the CASA response to proposal 5, with the additional resources to support registered aerodromes in developing their new aerodrome manuals 21 months is considered an appropriate timeframe.

## **Proposal 7 - Delayed commencement of aerodrome technical inspections and management systems for applicable Registered Aerodromes**

This proposal was divided into two questions:

**Existing registered aerodrome operators, whose passenger or aircraft movement rates are above the trigger criteria, are provided a further 24 months to comply with new requirements for SMS, risk management plans, aerodrome emergency plans and exercises and wildlife hazard management plans**

One of the 16 respondents agreed to this proposal while 6 disagreed. 8 respondents stated it was not applicable to them and 1 respondent did not answer the question. The same response was provided by 4 respondents who 'disagreed with changes', indicating a coordinated response. Four of the 6 respondents that 'disagreed with changes' suggested documents that form part of the aerodrome manual should be required in accordance with the same timeframe for submission of the aerodrome manual. One response which disagreed with the proposal believed enough time had already been provided in relation to consultation and publication of the new rules and triggers and aerodrome operators should be prepared to implement the new requirements at commencement. The other response which disagreed with the proposal believed that aerodrome technical inspections (ATIs) should be required to be undertaken during the preparation of the aerodrome manual.

### **CASA response**

The new aerodrome manual for registered aerodromes can be submitted any time until 13 May 2022, therefore the aerodrome manual should be ready well in advance of the time being allowed for completion of SMS and risk management plans etc which is 13 November 2022. It is appropriate to allow this additional time to develop, document and implement these new SMS and risk management etc procedures. The requirement for ATIs is addressed under the next question.

**Existing registered aerodrome operators, whose passenger or aircraft movement rates are above the trigger criteria, are provided a further 24 months to comply with new requirements for ATIs**

Three of the 16 respondents agreed to this proposal while 5 disagreed. Seven respondents stated it was not applicable to them and 1 respondent did not answer the question. The same response was provided by 4 respondents who 'disagreed with changes', indicating a coordinated response. Four of the 5 that 'disagreed with changes' believed that providing 24 months to conduct ATIs was extending a current safety risk for busy regional aerodromes and that requiring an annual inspection for aerodromes that had conducted a safety inspection in the previous 12 months was penalising those aerodromes that had voluntarily conducted a safety inspection. One response which disagreed with the proposal believed aerodrome operators could opt-in to the requirements and that ATIs should be conducted sooner than the transition required. The other response which disagreed with the proposal believed that ATIs should be required to undertaken during the preparation of the aerodrome manual.



## CASA response

CASA considers that conducting an ATI is not a current requirement for these registered aerodromes and, therefore, the deferral does not create an additional safety risk. A registered aerodrome which had carried out a safety inspection, due to the presence of air transport operations by aircraft with more than 9 seats, in the year prior to commencement of the new MOS will be required to complete the ATI within 15 months of commencement of the new MOS.

## General feedback on the Part 139 transition strategy proposals

Seven of the 16 respondents provided further comments. These related to:

- updated and new guidance material being available
- priority for development of LED lighting standards
- delaying commencement to the next ERSA publication date in November 2020
- ambiguities with the deeming period dates; availability of the sample aerodrome manual
- approval of aerodrome infrastructure (e.g. visual aids) where no standard exists
- focussing on registered aerodromes rather than placing pressure on certified aerodromes to meet the regulatory timeframes
- the lack of a sample aerodrome manual and ACs.

## CASA response

CASA has developed the new aerodrome regulatory risk-based framework over a number of years and throughout that time has engaged and consulted with the aerodrome industry through project teams and technical working groups and public consultation documents. The regulations and MOS are based on international standards and recognise new technologies, including new standards for chromaticity of solid state (LED) lights. An aerodrome operator seeking to install infrastructure where no standards exists needs to discuss this with CASA. The availability of a sample aerodrome manual, MAAT and supporting AC were made available in May 2020 along with some of the critical ACs, with the remaining ACs being published in later in 2020 and 2021. The commencement date of 13 August 2020 is considered appropriate due to the deeming, grandfathering and transitional provisions provided.

## Priorities for transition to the new Part 139 and MOS

Industry was asked to provide comments on the three matters considered most important. The comments provided were varied but mainly were in relation to the respondents being prepared for the new rules in relation to their own aerodromes and specific circumstances.

## Notice of final rulemaking

*Manual of Standards (MOS) – Part 139 Aerodromes Amendment Instrument 2020 (No. 1)* came into effect on 26 March 2020 and brought forward all the visual aids provisions of Chapter 8 of the new MOS and the provisions related to use of inset runway edge lights in Chapter 9. CASA informed industry of the instrument being made by notification to the consultation and rulemaking mailing list.

*Civil Aviation Legislation Amendment (Part 139 Aerodromes—Transitional Provisions and Consequential Amendments) Regulations 2020* was registered on the Federal Register of Legislation (FRL) on 15 July 2020 and commences on 13 August 2020. This instrument will amend the new regulation to commence on 13 August 2020 and allow current certified and registered aerodromes to be deemed to hold a transitional aerodrome certificate on that date. Additionally, this instrument will include provisions for applications for aerodrome certification and registration, and not finalised by 13 August 2020, to still be considered under the old regulations and MOS. This instrument will also preserve existing exemptions and approvals until their expiry date.

*Part 139 (Aerodromes) Manual of Standards Amendment Instrument 2020 (No. 1)* was registered on the FRL on 22 July 2020 and commences on 13 August 2020. This instrument provides the transitional arrangements for certified aerodromes with scheduled international air transport operations and registered aerodromes where they meet the applicable passenger or aircraft number triggers. In order not to be retrospective the financial year for the applicable triggers is defined to be the passenger numbers and aircraft movements in the financial year commencing on 1 July 2020. Also, some editorial amendments have been made to correct errors. The transitional provisions will be as follows:

- Certified aerodromes with scheduled international air transport operations are provided until 13 November 2021 to comply with additional SMS requirements in Section 25.04 of the new MOS which are based on ICAO Annex 19 Appendix 2.
- Registered aerodromes required to have an aerodrome technical inspection are provided until 13 November 2022, unless a safety inspection has been conducted in the previous 12 months in which case they are provided until 13 November 2021.
- Registered aerodromes required to have an SMS, a risk management plan, an aerodrome emergency plan and exercises or a wildlife hazard management plan are provided until 13 November 2022.
- Registered aerodromes will have 12 months after CASA issues a new aerodrome certificate i.e. after the aerodrome manual submitted to CASA has been accepted, to conduct their first aerodrome manual validation. The AIP currency and accuracy check is still required to be conducted annually.
- Grandfathering of aerodrome facility construction, building planning and funding approvals under the old rules will have timelines mandated based on the date the new MOS became available which is 6 September 2019. The timelines for completion of construction projects will be extended by 3 months along with all the other transitional arrangements i.e. 13 November 2021, if construction commenced before 6 September 2019 and 13 November 2022 if construction has commenced on and after 6 September 2019.

## Future direction

CASA will monitor the effectiveness of the new Part 139 of CASR and the MOS Part 139 with a view for further revision if required based on industry feedback and safety outcomes. A post-implementation review is planned for after the end of the transition period which is 13 August 2022.