

Explanatory Statement

Civil Aviation Order 20.16.3 Amendment Order (No. 2) 2006

Legislation

Section 98 of the *Civil Aviation Act 1988* (the *Act*) empowers the Governor-General to make regulations for the Act and the safety of air navigation.

Under subregulation 208 (1) of the *Civil Aviation Regulations 1988 (CAR 1988)*, CASA may give directions about the number of operating crew members on an Australian aircraft. Under the definition in regulation 2 of CAR 1988, operating crew means any person on board with flying or safety duties and includes cabin attendants. Under subregulation 235 (7) of CAR 1988, CASA may give directions for the method of loading people and goods on aircraft. These various directions are contained in Civil Aviation Order 20.16.3 (*CAO 20.16.3*). Under subparagraph 6.1 (a) of CAO 20.16.3, all Australian aircraft engaged in charter or regular public transport (*RPT*) operations and carrying more than 15 but not more than 36 passengers must carry a cabin attendant.

Hot air balloon exemptions

This requirement had been made before the advent of the current large passenger balloons and is practically difficult to apply to them. Nevertheless, strictly speaking, the requirement applied to Australian manned balloons and hot air airships (*hot air balloons*) engaged in charter or RPT operations and carrying more than 15 passengers. For some years, on a case by case basis, CASA had issued directions to particular operators that were in effect exemptions to dispense with the requirement to carry a cabin attendant on balloons provided other safety conditions were met, including for loading and unloading passengers and for their location in the basket during flight.

Previous Civil Aviation Order (CAO) amendment

In *Civil Aviation Order 20.16.3 Amendment Order (No. 1) 2006*, CASA considered that it would be safe to amend CAO 20.16.3 to establish, in effect, a generic exemption from the requirement to carry a cabin attendant provided safety conditions were met.

Particular conditions of the previous CAO amendment

There were several conditions to be met, including that the number of passengers must not exceed 24. Among the other conditions were the following. Firstly, during passenger loading and launching operations, and as far as possible during landing and passenger unloading operations, 2 suitably trained ground crew must be available, with 1 at either end of the basket, to assist the pilot with the embarkation and disembarkation of the passengers. Secondly, the training for this ground crew must be approved by CASA and mentioned in the operator's operations manual.

Review of the previous CAO amendment

A review of the operation of the amendment has concluded that these 2 conditions are more restrictive than equivalent conditions in the former directions to operators.

Firstly, it was CASA's policy intention under the directions that during passenger loading and unloading operations if not more than 16 passengers were being carried, at least 1 suitably trained ground crew member had to assist the pilot. However, if more than 16 passengers were being carried, at least 2 suitably trained ground crew members had to assist.

Secondly, under the directions, while it was required that an appropriate ground crew training program be mentioned in the operator's operations manual, there was no requirement for CASA to specifically approve each training program.

Revised CAO amendment

The instrument, therefore, amends the previous CAO amendment to provide that 2 trained ground crew members are only required if more than 16 passengers are being carried, and the requirement for CASA to specifically approve the training programs is deleted. One trained ground crew member must assist if 16 or fewer passengers are being carried. A detailed statement of ground crew training and duties, and a system of record keeping for training, must be provided for in the operator's operations manual.

The CAO amendment provides that for passenger loading and launching operations, and "as far as possible" for landing and passenger unloading operations, ground crew must assist. The latter formulation is intentional. It is designed to impose a very high level of obligation on an operator to provide ground crew but not an absolutely strict obligation. Given the nature of ballooning, circumstances may arise where it is not physically possible for the ground crew to arrive at the point of landing before the balloon has actually landed. On the other hand, an operator who had failed to roster or properly train adequate and competent ground crew for this important role would clearly have failed to meet the "as far as possible" standard. The drafting formulation is one that attempts to recognise these competing factors. It requires from the operator an effort that would surmount foreseeable obstructive practicalities that might otherwise impede the presence of the ground crew at the landing.

Legislative Instruments Act

Under subregulation 235 (7) of CAR 1988, CASA is empowered to issue certain directions. Under subregulation 5 (1) of CAR 1988, CASA may do so in the form of a CAO. Under subsection 98 (5) of the Act, such a CAO (or amendment to it) is declared to be a disallowable instrument. Under subparagraph 6 (d) (i) of the *Legislative Instruments Act 2003* (the *LIA*), an instrument is a legislative instrument for section 5 of the LIA if it is declared to be a disallowable instrument under legislation in force before the commencement of the LIA. The revised CAO amendment is, therefore, a legislative instrument and is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

Consultation

Consultation under section 17 of the LIA has not been undertaken in this case as the revised CAO amendment is designed to slightly lessen 2 particular obligations that CASA considers are inconsistent with the policy behind past practice. This relaxation will not affect the safety of air navigation. The previous CAO amendment had been the subject of consultations through the Joint CASA/Industry Technical Committee on

Commercial Ballooning, and it had been intended that the previous CAO amendment should reflect the policy behind previous directions.

Office of Regulation Review (ORR)

The CAO amendment will not substantially alter existing arrangements and is regarded as being of a minor or machinery nature. The ORR had previously agreed that it may proceed without the preparation of a Regulation Impact Statement (ORR ID: 6315).

The instrument comes into effect on the day after it is registered.

The instrument has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 84A (2) of the Act.

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