

## **Explanatory Statement**

### **Civil Aviation Act 1988**

#### **Civil Aviation Order 20.18 Amendment Instrument 2015 (No. 1)**

##### **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 207 (2) of the *Civil Aviation Regulations 1988 (CAR 1988)*, a person must not use an Australian aircraft in a class of operation if the aircraft is not fitted with the instruments and equipment approved and directed by CASA. In approving or directing, CASA may have regard only to the safety of air navigation.

Under subregulation 5 (1) of CAR 1988, where CASA is empowered to issue certain instruments such as approvals or directions, it may do so in a Civil Aviation Order (*CAO*).

For subregulation 207 (2) of CAR 1988, CASA made CAO 20.18 setting out the approval and directions for aircraft instruments and equipment to meet basic operational requirements.

##### **Background**

In 2013, an Australian Transport Safety Bureau (*ATSB*) investigation report into flight conducted under the visual flight rules (*V.F.R.*) in dark night conditions (that is, no moonlight or significant ground lightning to aid aircraft orientation) found that such conditions are effectively the same as instrument meteorological conditions.

There is a significant difference between a helicopter's certification requirements for visual meteorological conditions (*V.M.C.*) and instrument meteorological conditions (*I.M.C.*) which centres on both the static and dynamic longitudinal stability of the helicopter. Unlike most aeroplanes, in V.M.C. a helicopter can be certified with highly unstable static longitudinal stability characteristics provided it can comply with basic requirements for correct control sense of motion criteria.

However, in I.M.C., where there is reduced external visual cues available for orientation, the certification standards provide for further longitudinal stability requirements, both statically and dynamically. This is significant in the reduced visual cue environment as experienced in dark night conditions which effectively constitutes I.M.C. In order to operate a helicopter in such an environment requires the helicopter to be capable of meeting the additional I.M.C. stability requirements.

##### **CAO amendment**

Paragraph 3.2 of CAO 20.18 permitted a helicopter to be operated under V.F.R. (by day or by night) if it was equipped with instruments specified in Appendix VI and any other instruments and indicators specified in the helicopter's flight manual. Paragraph 3.2 has been amended to clarify that a helicopter may only be operated under V.F.R. by day if equipped in compliance with the paragraph.

A new paragraph 3.2A has been inserted to clarify that a helicopter may only be operated under V.F.R. at night if equipped with: the instruments specified in Appendix VIII; and any other instruments and indicators specified in the helicopter's flight manual; and if the

helicopter's attitude cannot be maintained by visual external surface cues, the helicopter must be equipped in accordance with subparagraph 4.2 (d) of CAO 20.18 regarding an automatic pilot or automatic stabilisation system, or be operated by a qualified 2 pilot crew.

Subparagraph 4.2 (d) of CAO 20.18 has been amended to omit text that has been incorporated into the new paragraph 3.2A.

***Legislative Instruments Act 2003 (the LIA)***

Under subregulation 5 (1) of CAR 1988, if CAR 1988 empowers CASA to issue instruments such as approvals or directions, CASA may do so in the form of CAOs. Under subsection 98 (5) of the Act, where regulations provide for an instrument to be issued in the form of a CAO, the CAO so made is declared to be a legislative instrument under subsection 98 (5AAA). This CAO amendment is, therefore, a legislative instrument. It is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

**Consultation**

This CAO amendment is in response to an ATSB investigation and has been prepared in accordance with the report's recommendations. CASA has conducted internal and external consultations during the preparation of the CAO amendment, with external consultations closing on 21 November 2014. It is CASA's view that it is not necessary or appropriate to undertake any further consultation under section 17 of the LIA.

**Statement of Compatibility with Human Rights**

A Statement of Compatibility with Human Rights is at Attachment 1.

**Regulation Impact Statement**

The Office of Best Practice Regulation assessed the proposed amendment as minor and that no further analysis in the form of a Regulation Impact Statement was required (OBPR ID: 18508).

**Making and commencement**

This instrument has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

The CAO amendment commences on the day after registration, with the amendments mentioned in Schedule 1 not applying until 1 January 2016.

[Civil Aviation Order 20.18 Amendment Instrument 2015 (No. 1)]

## **Statement of Compatibility with Human Rights**

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

### **Civil Aviation Order 20.18 Amendment Instrument 2015 (No. 1)**

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 legislative instrument**

Under subregulation 207 (2) of the *Civil Aviation Regulations 1988*, a person must not use an Australian aircraft in a class of operation if the aircraft is not fitted with the instruments and equipment approved and directed by CASA. In approving or directing, CASA may have regard only to the safety of air navigation.

CASA made Civil Aviation Order 20.18 (**CAO 20.18**) setting out the approval and directions for aircraft instruments and equipment to meet basic operational requirements. In 2013, an Australian Transport Safety Bureau (**ATSB**) investigation report into visual flight rules flight conducted in dark night conditions found that dark night visual meteorological conditions are effectively the same as instrument meteorological conditions. This instrument amends CAO 20.18 in accordance with the recommendations of the ATSB report.

#### **Human rights implications**

This legislative instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

**Civil Aviation Safety Authority**