

Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 20.18 Amendment Instrument 2015 (No. 2)

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.

Under subsection 33 (3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

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.

The above amendments were originally made by way of *Civil Aviation Order 20.18 Amendment Instrument 2015 (No. 1) (Amendment No. 1)*, which commenced on 17 March 2015. A transitional application provision in Amendment No. 1 provided that the amendments did not apply until 1 January 2016. Following the compilation preparation process, the Office of Parliamentary Counsel advised CASA that, since the amendments had commenced on 17 March 2015, the amendments should be incorporated into the compilation but not apply until 1 January 2016. However, if the compilation reflects the amendments being included before the intended effective date, then the compilation could misinform industry if the reader is unaware of the transitional application date.

Since the compilation should reflect the law as it currently stands, *Civil Aviation Order 20.18 Amendment Instrument 2015 (No. 2) (Amendment No. 2)* is an instrument that repeals Amendment No. 1 and remakes the same amendments to CAO 20.18, except that Amendment No. 2 provides that the amendments do not commence until 1 January 2016. This ensures that the amendments will not be reflected in the compilation until 1 January 2016.

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). Amendment No. 2 is, therefore, a legislative instrument. It is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

Consultation

The amendments to CAO 20.18 have been made in response to an ATSB investigation and have 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 repeal provision of Amendment No. 2 commences on the day of registration, with the remaining provisions commencing on 1 January 2016.

[Civil Aviation Order 20.18 Amendment Instrument 2015 (No. 2)]

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. 2)

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 and clarifies an earlier amendment made for this purpose (*Civil Aviation Order 20.18 Amendment Instrument 2015 (No. 1)* refers).

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