

Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 20.21 Instrument 2015

Legislation

Subsection 98 (4A) of the *Civil Aviation Act 1988* (the *Act*) empowers CASA to issue Civil Aviation Orders (*CAOs*) not inconsistent with the Act or the regulations. Subsection 98 (5A) of the Act provides that the regulations may empower CASA to issue instruments in relation to matters affecting the safe navigation and operation of aircraft.

Subregulation 5 (1) of the *Civil Aviation Regulations 1988* (*CAR 1988*) provides that where CASA is empowered to issue certain instruments such as permissions, approvals or directions, it may do so in a CAO.

Subregulation 157 (1) of CAR 1988 provides that the pilot in command of an aircraft must not fly the aircraft over any city, town or populous area at a height lower than 1 000 feet, or any other area at a height lower than 500 feet. Paragraph 157 (4) (b) of CAR 1988 provides that subregulation 157 (1) does not apply if the aircraft is engaged in private operations or aerial work operations, being operations that require low flying, and the owner or operator of the aircraft has received a general permit or specific permit from CASA for the flight to be made at a lower height during such operations. A general permit issued by CASA under this paragraph 157 (4) (b) is an authorisation for agricultural operations mentioned in an air operator's certificate.

Subregulation 235 (7) of CAR 1988 empowers CASA to give directions with respect to the method of loading of persons and goods (including fuel) on aircraft for the purpose of ensuring the safety of air navigation.

Regulation 308 of CAR 1988, which was repealed on 27 June 2011, allowed CASA to exempt aircraft or persons from compliance with specified provisions of CAR 1988. Despite the repeal of regulation 308 of CAR 1988, an exemption is continued in force by regulation 202.011 of the *Civil Aviation Safety Regulations 1998* (*CASR 1998*).

Subregulation 11.160 (1) of CASR 1998, which replaced regulation 308 of CAR 1988, provides that, for subsection 98 (5A) of the Act, CASA may grant an exemption from a provision of the regulations or a CAO in relation to a matter mentioned in that subsection. Under subregulation 11.160 (2), an exemption may be granted to a person, or to a class of persons, and may specify the class by reference to membership of a specified body or any other characteristic.

Under subregulation 11.205 (1) of CASR 1998, CASA may impose conditions on an exemption if this is necessary in the interests of the safety of air navigation. Under regulation 11.225 of CASR 1998, an exemption must be published on the Internet. Under subregulation 11.230 (1), an exemption ceases on the day specified within it (but no longer than 3 years after its commencement) or, if no day is specified, 3 years after commencement.

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.

Instrument

For paragraph 157 (4) (b), subregulation 235 (7) and regulation 308 of CAR 1988, CAO 20.21 was made on 2 December 2004 as *Civil Aviation Amendment Order (No. R20) 2004* (the **2004 CAO**), also known as F2005B00804, and was registered on the Federal Register of Legislative Instruments. Schedule 1 of the 2004 CAO contained the entire section 20.21 of the CAOs (also referred to as CAO 20.21). Subsequent amendments to the 2004 CAO, up to and including the *Civil Aviation Order (Flight Crew Licensing) Repeal and Amendment Instrument 2014 (No. 1)* (the **Flight Crew Licensing Amendment**) made in August 2014, were made under the abovementioned provisions of the Act, CAR 1988 and CASR 1998.

In late 2014, discussions between CASA and the Office of Parliamentary Counsel revealed that the existence of CAO 20.21 in a schedule to the 2004 CAO could create legislative ambiguity and was not best practice drafting methodology. To rectify this issue, CASA has decided to repeal the 2004 CAO and remake CAO 20.21 in its entirety by way of issuing the *Civil Aviation Order 20.21 Instrument 2015* (the **2015 CAO**).

Separately, the Flight Crew Licensing Amendment inadvertently broadened the applicability of CAO 20.21 due to changes in terminology from agricultural operations to aerial application operations. This resulted in all aerial application operations conducted by an aircraft falling within the scope of CAO 20.21. To rectify this issue, and to revert the applicability of CAO 20.21 to before the making of the Flight Crew Licensing Amendment, the 2015 CAO is expressed to only apply to rotorcraft engaged in agricultural operations, being the “broadcasting of chemicals, seeds, fertilizers and other substances from aircraft for agricultural purposes, including purposes of pest and disease control” as defined in subregulation 2 (1) of CAR 1988.

The 2015 CAO also includes a new subsection 8 that requires a pilot in command of a rotorcraft conducting agricultural operations to hold an aerial application rating and an aerial application endorsement in accordance with current flight crew licensing requirements set out in Part 61 of CASR 1998. This compares to the previous requirement to hold an agricultural (helicopter) rating issued under CAO 40.6 which was repealed following the making of Part 61. A trainee pilot may also undertake agricultural operations in a rotorcraft in accordance with Part 61 and the 2015 CAO. The requirements of the 2015 CAO compared to the 2004 CAO, as amended, have not otherwise changed.

Should subsequent legislative amendments be made to CAO 20.21, those changes would be made to the 2015 CAO itself, rather than a schedule contained in the 2004 CAO.

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). The 2015 CAO 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 consequential amendments made to CAO 20.21 by the Flight Crew Licensing Amendment resulted in CAO 20.21 applying to a broader class of operations and aircraft than was intended. The 2015 CAO rectifies this situation by narrowing applicability only to agricultural operations conducted by rotorcraft. CASA's policy on agricultural operations or rotorcraft has not changed and industry will not be disadvantaged by what is otherwise an administrative amendment. 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 2015 CAO does not substantially alter existing arrangements and is of a minor or machinery nature. The underlying provisions of CAO 20.21 have not changed, rather, the scope of the provisions have been limited to rotorcraft conducting agricultural operations. An additional provision has been introduced that reflects the requirement for rotorcraft pilots to hold an aerial application rating and an aerial application endorsement in order to conduct agricultural operations. This is not a new requirement, but merely restates the existing pilot licensing requirements under Part 61 of CASR 1998. A Regulation Impact Statement (*RIS*) is not required because the instrument is covered by a standing agreement between CASA and OBPR under which a RIS is not required (OBPR id: 14507).

Making and commencement

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

The 2015 CAO commences on the day of registration.

Subsection 7 of the 2015 CAO, which is an exemption from requirements mentioned in CAR 1988, will expire at the end of August 2017, by which time it is expected that regulatory requirements for rotorcraft agricultural operations will be incorporated into CASR 1998.

[*Civil Aviation Order 20.21 Instrument 2015*]

Statement of Compatibility with Human Rights

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

Civil Aviation Order 20.21 Instrument 2015

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

CASA has decided to reissue Civil Aviation Order (*CAO*) 20.21 by repealing *Civil Aviation Amendment Order (No. R20) 2004*, as amended and making the *Civil Aviation Order Instrument 2015*. CAO 20.21 has been made in substantially similar terms, however, its scope has been narrowed to only apply to agricultural operations conducted in rotorcraft since other regulatory provisions in the *Civil Aviation Safety Regulations 1998 (CASR 1998)* cover aerial application operations conducted by aeroplanes. While work is being undertaken to include rotorcraft operations in CASR 1998, the reissued CAO 20.21 will clarify the regulatory requirements.

The remake also ensures that any ambiguity in the interpretation of CAO 20.21 with the advancement of drafting practice since 2004 will be avoided.

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