

Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 20.18 Amendment Instrument 2016 (No. 2)

Purpose

The purpose of the instrument is to clarify the requirements for fitting particular kinds of transmission and navigation equipment to Australian registered aircraft.

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

Civil Aviation Order 20.18 (Aircraft equipment — basic operational requirements) Instrument 2014 (as amended) (CAO 20.18) sets out requirements for equipment and instruments to be fitted to Australian registered aircraft engaged in regular public transport, charter, aerial work or private operations.

Background

Paragraphs 9C.7 and 9C.9 of CAO 20.18 require aircraft first registered in Australia before a particular date, or on or after a particular date to have particular kinds of Mode S transponder equipment. The requirements came into effect on 14 January 2012 in accordance with the *Civil Aviation Order 20.18 Amendment Instrument 2011 (No. 2)*.

The following provisions of CAO 20.18 require Australian registered aircraft to carry particular kinds of ADS-B, GNSS and Mode S transponder equipment, if the aircraft is first registered before a particular date, or on or after a particular date:

- paragraph 9B.9
- paragraph 9B.10
- paragraph 9D.3
- paragraph 9D.4
- paragraph 9D.5
- paragraph 9D.6
- paragraph 9D.7
- paragraph 9D.8
- paragraph 9E.2.

These requirements came into effect on 23 August 2012 in accordance with the *Civil Aviation Order 20.18 Amendment Instrument 2012 (No. 1)*. Subsequently, CASA received feedback from industry stakeholders that it is unclear about which requirements apply to what kind of aircraft.

The instrument

Item 1 of Schedule 1 to the instrument has the effect that the equipment requirements apply depending on when an aircraft is manufactured rather than when it is first registered in Australia. Using the date of manufacture to “trigger” the equipment requirements will better give effect to the intention that the equipment requirements are proportionate to, and

consistent with, the age of the aircraft. The intended effect is that aircraft of similar type and vintage imported into Australia at different dates should be able to have similar equipment configurations. Alternatively, an aircraft imported into Australia after a particular date should not have to be “retro-fitted” with equipment if this equipment is not required for a similar aircraft imported into Australia at an earlier date.

Item 2 of Schedule 1 to the instrument is a consequential amendment that would remove the definition of “registered” from subsection 9D of CAO 20.18 because the term is no longer used in the subsection.

Legislative instrument

This instrument would amend CAO 20.18 which is a legislative instrument.

Paragraph 10 (1) (c) of the *Legislation Act 2003* provides that an instrument that includes a provision amending or repealing another legislative instrument is a legislative instrument. Accordingly, this instrument is a legislative instrument.

Consultation

Consultation for the original ADS-B, GNSS and Mode S fitment requirements took place under CASA Project AS 10/13. CASA published Notice of Proposed Rule Making (NPRM) 1103AS – *Standards for Aircraft Mode S Transponders and minor changes to existing standards for Aircraft Automatic Dependent Surveillance – Broadcast (ADS-B) equipment* on 7 October 2011. This NPRM was followed by NPRM 1105AS – *CNS/ATM Plan for this decade – Aircraft avionics equipage mandates for satellite-based IFR navigation, Mode S/ADS-B transponders and forward fitment of TCAS II version 7.1* – on 31 January 2012 to invite public comment on the proposed aircraft avionics equipment mandates. Both NPRMs made reference to fitment requirements for new aircraft and existing aircraft according to several key dates.

The instrument would implement technical amendments to CAO 20.18 to clarify the original policy intention set out in the *Civil Aviation Order 20.18 Amendment Instrument 2011 (No. 2)* and *Civil Aviation Order 20.18 Amendment Instrument 2012 (No. 1)*. The amendments are in response to industry feedback about uncertainty in relation to the operation of the provisions and would give better effect to the original policy intention. For these reasons, CASA has not undertaken further specific consultation in relation to this instrument.

Statement of Compatibility with Human Rights

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

Regulation Impact Statement

For the changes made under NPRM 1103AS, the Office of Best Practice Regulation (*OBPR*) assessed the impacts of the proposed changes as minor and determined that a Regulation Impact Statement (*RIS*) was not required (OBPR ID: 13116).

For the changes made under NPRM 1105AS, CASA submitted a RIS to OBPR. The RIS received OBPR approval (Reference No. ID:13017).

Making and commencement

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

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Statement of Compatibility with Human Rights

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

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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

The purpose of the instrument is to clarify the requirements for fitting particular kinds of transmission and navigation equipment to Australian registered aircraft.

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