

Explanatory Statement

Civil Aviation Regulations 1988

Civil Aviation Order 20.16.1 Amendment Instrument 2018 (No. 1)

Purpose

The purpose of the *Civil Aviation Order 20.16.1 Amendment Instrument 2018 (No. 1)* (the **instrument**) is to amend *Civil Aviation Order 20.16.1* (the **CAO**) by:

- (a) clarifying the operation of provisions of the CAO; and
- (b) omitting a superfluous provision; and
- (c) making minor, and drafting-style, amendments of provisions of the CAO.

Legislation

Section 98 of the *Civil Aviation Act 1988* (the **Act**) empowers the Governor-General to make regulations for the Act and in the interests of the safety of air navigation. Relevantly, the Governor-General has made the *Civil Aviation Regulations 1988* (**CAR**) and the *Civil Aviation Safety Regulations 1998* (**CASR**).

Under subregulation 235 (7) of CAR, the Civil Aviation Safety Authority (**CASA**) may, for the purpose of ensuring the safety of air navigation, give directions with respect to the method of loading of persons and goods (including fuel) on aircraft.

Under regulation 5 of CAR, if CASA is empowered or required under the regulations to issue a direction, instruction or notification, or give a permission, approval or authority, it may, unless the contrary intention appears in the regulation conferring the power or function or imposing the obligation or duty, issue the direction, instruction or notification, or give the permission, approval or authority, in a Civil Aviation Order.

Instrument

Section 1 gives the instrument its name.

Section 2 provides that the instrument commences on the day after it is registered.

Section 3 provides that the CAO is amended as stated in Schedule 1 of the instrument.

Items 1, 3, 4 and 8 of Schedule 1 make minor, and drafting-style, amendments of provisions of the CAO.

Item 2 of Schedule 1 inserts the definition **empty weight**, of an aircraft, in subsection 2 of the CAO.

Item 5 of Schedule 1 clarifies the operation of subparagraph 5.3 (e) of the CAO by making a clear reference to the term “empty weight” of an aircraft. A definition of the term is inserted in subsection 2 of the CAO by Item 2 of Schedule 1, which defines the term as having the meaning given by subsection 2 of Civil Aviation Order 100.7.

Item 6 of Schedule 1 amends sub-subparagraph 5.3 (f) (iv) of the CAO by omitting the reference to “oil”, as this is included as part of an aircraft’s empty weight for subparagraph 5.3 (e) of the CAO.

Item 7 of Schedule 1 omits subsection 6 of the CAO. This amendment is made because the subsection is superfluous. The direction contained in the subsection is encompassed in the obligations of an aircraft's operator, in relation to the carriage of dangerous goods on the aircraft, stated in regulation 92.025 of CASR. In particular, under subparagraph 92.025 (2) (b) (xi) of CASR, the operator must comply with the requirements of the Technical Instructions about giving information to the aircraft's crew.

Legislation Act 2003 (the LA)

Paragraph 10 (1) (d) of the LA provides that an instrument is a legislative instrument if it includes a provision that amends or repeals another legislative instrument. The instrument amends the CAO, which was registered as a legislative instrument. The instrument is, therefore, a legislative instrument, and is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Consultation

Given that the amendments of the CAO are of a minor or machinery nature and do not affect the effect of the directions in the CAO, CASA is satisfied that no consultation is appropriate or necessary for the instrument under section 17 of the LA.

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement (*RIS*) is not required in this instance, as the directions in the CAO are covered by a standing agreement between CASA and OBPR, under which a RIS is not required for directions (OBPR id: 14507).

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights at **Attachment 1** has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The instrument does not engage any of the applicable rights or freedoms and is compatible with human rights, as it does not raise any human rights issues.

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 instrument commences on the day after it is registered.

Statement of Compatibility with Human Rights

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

Civil Aviation Order 20.16.1 Amendment Instrument 2018 (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 legislative instrument

The purpose of this legislative instrument is to amend *Civil Aviation Order 20.16.1* (the **CAO**) by:

- (a) clarifying the operation of provisions of the CAO; and
- (b) omitting a superfluous provision; and
- (c) making minor, and drafting-style, amendments of provisions of the CAO.

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