

Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 82.0 Amendment Order (No. 1) 2018

Purpose

The purpose of this instrument is to amend provisions of *Civil Aviation Order 82.0 (CAO 82.0)*, relating to fuel on aircraft flying to remote islands, to take account of new provisions on the same topic in *CASA 29/18 — Civil Aviation (Fuel Requirements) Instrument 2018* [FRL ref: F2018L00644] (*CASA 29/18*).

Legislation

The *Civil Aviation Act 1988* (the *Act*) establishes the regulatory framework for maintaining, enhancing and promoting the safety of civil aviation, with emphasis on preventing aviation accidents and incidents.

Section 27 of the Act empowers the Civil Aviation Safety Authority (*CASA*) to issue air operators' certificates (*AOCs*). Paragraph 28BA (1) (b) of the Act provides that an AOC has effect subject to any conditions specified in the regulations or Civil Aviation Orders (*CAOs*).

Section 98 of 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)*.

Subsection 98 (4A) of the Act empowers CASA to issue CAOs, not inconsistent with the Act or the regulations, with respect to any matter in relation to which regulations may be made for the purposes of section 28BA of the Act.

Civil Aviation Order 82.0

CASA has issued CAO 82.0, which sets out conditions applicable to AOCs authorising aerial work operations, charter operations and regular public transport operations.

Subsection 2 of CAO 82.0 contains definitions of terms appearing in CAO 82.0. Together, paragraphs 2.3, 2.4 and 2.4.1 of CAO 82.0 define the amount of fuel that is the **minimum safe fuel** for an aeroplane undertaking a flight to a remote island and how that amount is to be worked out.

Paragraph 3A.1 of CAO 82.0 applies to AOCs that authorise medical transport operations or passenger-carrying charter or regular public transport operations. Those AOCs are subject to the condition that a passenger must not be carried under the AOC on a flight to a remote island unless specified requirements are met. Under subparagraph 3A.1 (g), it is a requirement that, when the flight commences, the aeroplane is carrying not less than the minimum safe fuel for the flight. Under subparagraph 3A.1 (h), it is a requirement that, during the flight, the pilot in command carries out in-flight fuel management to ensure that the aeroplane is always carrying sufficient fuel to enable it to reach its destination aerodrome as planned, or its nominated alternate aerodrome if necessary, with the required minimum fuel reserves intact.

Regulation 234 of CAR and fuel requirements

Regulation 234 of CAR relates to fuel requirements for aircraft. Subregulations 234 (1) and (2) contain strict liability offences requiring the pilot in command and operator of an aircraft to take reasonable steps to ensure that, when commencing a flight, the aircraft is carrying sufficient fuel and oil to enable the proposed flight to be undertaken in safety. Subregulation 234 (3) sets out matters that a court must take into account when determining whether fuel and oil carried on an aircraft in respect of a particular flight was sufficient within the meaning of subregulations (1) and (2). Those matters include any guidelines issued from time to time by CASA for the purposes of regulation 234.

The *Civil Aviation Amendment (Fuel and Oil Requirements) Regulations 2018* [FRL ref: F2018L00599] (the **Amendment Regulations**) will substitute a new regulation 234 of CAR when it commences on 8 November 2018. New regulation 234 of CAR will empower CASA to issue a legislative instrument that prescribes fuel-related requirements.

CASA has made CASA 29/18, which commences immediately after the commencement of the Amendment Regulations and is made under regulation 234 of CAR as in effect after it is amended by the Amendment Regulations. That instrument prescribes requirements relating to fuel for aircraft. In particular:

- sections 6 and 7 of CASA 29/18 will prescribe requirements for in-flight fuel management; and
- section 10 of CASA 29/18 will define the amount of fuel that is the **minimum safe fuel** for an aeroplane undertaking a flight to a remote island.

Powers to amend and incorporate matters by reference

Under subsection 33 (3) of the *Acts Interpretation Act 1901* (the **AI Act**), 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.

Subsection 98 (5D) of the Act provides that a legislative instrument made under the Act or the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time, even if the other instrument or writing does not yet exist when the legislative instrument is made.

Overview of instrument

In accordance with subsection 33 (3) of the AI Act, the instrument amends CAO 82.0 to omit provisions which are no longer required after the commencement of the Amendment Regulations and CASA 29/18.

Section 1 of the instrument provides that the name of the instrument is the *Civil Aviation Order 82.0 Amendment Order 2018 (No. 1)*.

Section 2 provides that the instrument commences immediately after the commencement of the Amendment Regulations. This is the same time as the commencement of CASA 29/18.

Section 3 provides that Schedule 1 amends CAO 82.0.

Schedule 1 contains 4 items that amend CAO 82.0.

Item 1 of Schedule 1 inserts a new definition of *minimum safe fuel* in paragraph 2.1 of CAO 82.0. It refers to the meaning given to that term by the legislative instrument issued by CASA under regulation 234 of CAR, as in force from time to time. At the time that this instrument commences, section 10 of CASA 29/18 will be the relevant provision of the legislative instrument under regulation 234 of CAR that contains that definition.

In accordance with subsection 98 (5D) of the Act, this instrument incorporates the definition of *minimum safe fuel* in the legislative instrument issued by CASA under regulation 234 of CAR, as in force from time to time.

Item 2 of Schedule 1 omits paragraphs 2.3, 2.4 and 2.4.1 of CAO 82.0. Those provisions are no longer required as a new definition of *minimum safe fuel* (inserted by item 1) and section 10 of CASA 29/18 will contain provisions on the same topic.

Item 3 of Schedule 1 is an editorial amendment to subparagraph 3A.1 (g) to take into account the omission of subparagraph 3A.1 (h) by item 4.

Item 4 of Schedule 1 omits subparagraph 3A.1 (h). That provision is no longer required because of the requirements in CASA 29/18 that relate to in-flight fuel management.

Legislation Act 2003 (the LA)

Paragraph 10 (1) (d) of the LA provides that an instrument will be a legislative instrument if it includes a provision that amends or repeals another legislative instrument. This instrument amends a legislative instrument (CAO 82.0) and is, therefore, also a legislative instrument. It is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Consultation

CASA consulted on the content of CASA 29/18 with the Operations Standards Subcommittee and Standards Consultative Committee (**SCC**), which were forums of aviation community and CASA participants, between 12 and 26 August 2015.

On 20 January 2016, CASA published a draft instrument with content like the content of CASA 29/18 and a summary of the key changes introduced by the instrument (ref: CD 1508OS – Fuel and oil quantity requirements). CASA also published a draft amendment to CAO 82.0 that included items 1 and 2 of Schedule 1 of this instrument. CASA invited responses from the public by 16 March 2016. The SCC and public consultation resulted in 63 responses. CASA took all the responses into account in finalising CASA 29/18 and this instrument.

In addition to the provisions in the 2016 consultation draft, this instrument omits subparagraph 3A.1 (h) of CAO 82.0. That provision is no longer required following the commencement of CASA 29/18.

In these circumstances, CASA is satisfied that no further consultation is appropriate or reasonably practicable for this instrument for section 17 of the LA.

Office of Best Practice Regulation (OBPR)

OBPR assessed that the proposed Amendment Regulations and CASA 29/18 will have minor impacts and that no further analysis in the form of a Regulation Impact Statement was required (OBPR ID: 21074). This instrument makes amendments that are consequential to the making of CASA 29/18. It merely omits provisions that duplicate those in CASA 29/18.

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 immediately after the commencement of the Amendment Regulations, which is scheduled to occur on 8 November 2018. It is automatically repealed in accordance with section 48A of the LA.

Statement of Compatibility with Human Rights

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

Civil Aviation Order 82.0 Amendment Order (No. 1) 2018

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

This legislative instrument amends *Civil Aviation Order 82.0* to omit provisions relating to the amount of fuel required to be carried, and the conduct of in-flight fuel management, on certain flights to remote islands.

The omission of those provisions is a consequence of the commencement of instrument *CASA 29/18 — Civil Aviation (Fuel Requirements) Instrument 2018*, which prescribes requirements on the same topic.

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