Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 95.8 Amendment Order (No. 1) 2006

Section 98 of the Civil Aviation Act 1988 (the Act) empowers the Governor-General to make regulations for the purposes of the Act and in the interests of the safety of air navigation.

Regulation 5 of the Civil Aviation Regulations 1988 (CAR 1988) empowers CASA to issue any direction or notification or give permission, approval or authority in Civil Aviation Orders (CAOs).

Under subregulation 308 (1) of CAR 1988, CASA may exempt aircraft, or persons in, on, or otherwise associated with the operation of the aircraft, from compliance with specified provisions of CAR 1988.

Under subregulation 308 (3), the exemptions may be granted subject to conditions. A condition that is imposed on the majority of sports aviation aircraft is that they are not allowed to be flown inside controlled airspace. ICAO definition of controlled airspace includes Class E airspace. However, Class E airspace is different from other classes of controlled airspace in that control is only exercised over aircraft that are operating to the Instrument Flight Rules, so that no A.T.C. clearance is required for an aircraft to operate under the Visual Flight Rules in visual meteorological conditions. The amendment is to allow sport and recreational aircraft operations under V.F.R. to be flown in Class E airspace in V.M.C.

Legislative Instruments Act

Under subparagraph 6 (d) (i) of the Legislative Instruments Act 2003 (the LIA), an instrument is a legislative instrument for section 5 of the LIA if it is declared to be a disallowable instrument under legislation in force before the commencement of the LIA. Under subsection 95 (5) of the Act, CAOs are declared to be disallowable instruments. The amendment Order is, therefore, a legislative instrument and it is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

Consultation

Consultations under section 17 of the LIA have not been undertaken as the amendment is minor and of a machinery nature.

For the same reason, the Office of Regulation Review does not require a Regulation Impact Statement as the amendment is minor and of a machinery nature.

The instrument commences on the day after it is registered.

The instrument has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 84A (2) of the Act.

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