

Explanatory Statement

Civil Aviation Order 20.16.3 Amendment Order (No. 1) 2006

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 208 (1) of the *Civil Aviation Regulations 1988* (**CAR 1988**), CASA may give directions about the number of operating crew members on an Australian aircraft. Under the definition in regulation 2 of CAR 1988, operating crew means any person on board with flying or safety duties and, therefore, includes cabin attendants. Under subregulation 235 (7) of CAR 1988, CASA may give directions for the method of loading people and goods on aircraft.

Directions about these matters are included in Civil Aviation Order 20.16.3 (**CAO 20.16.3**). Under subparagraph 6.1 (a) of CAO 20.16.3, all Australian aircraft engaged in charter or regular public transport (**RPT**) operations and carrying more than 15 but not more than 36 passengers must carry a cabin attendant.

Exemption for manned balloons and hot air airships

This requirement was made before the advent of the current large passenger balloons and is practically difficult to apply to them. Nevertheless, strictly speaking, the requirement applies to Australian manned balloons and hot air airships engaged in charter or RPT operations and carrying more than 15 passengers.

For some years now, on a case by case basis, CASA has issued exemptions to dispense with the requirement to carry a cabin attendant on balloons provided other safety conditions were met, including for loading and unloading passengers and for their location in the basket during flight.

CASA considers that, provided safety conditions are met, it is safe to amend CAO 20.16.3 to establish, in effect, a generic exemption from the requirement to carry a cabin attendant on Australian manned balloons and hot air airships engaged in charter or RPT operations and carrying more than 15 passengers.

Conditions

Under the conditions, the operator's operations manual (the *manual*) must mention the duties and responsibilities of the pilot in command for the briefing and control of passengers. If the number of passenger compartments exceeds 2, the pilot in command must have a separate compartment centrally located among the passenger compartments. During the operations, the number of passengers must not exceed 24. An approximately equal weight of passengers must be located in each of the passenger compartments. Not more than 6 passengers may be located in each passenger compartment. The passengers must always be in a position to hear any instructions given by the pilot in command. During passenger loading and launching operations, and as far as possible during landing and passenger unloading operations, 2 suitably trained ground crew must be available, with 1 at either end of the basket, to assist the pilot with the embarkation and disembarkation of the passengers. The training for this ground crew must be approved by CASA and mentioned in the manual. The balloon

operations must be conducted in accordance with all other relevant requirements of CAO 20.16.3.

The opportunity has also been taken to implement a recommendation of the Senate Standing Committee on Regulations and Ordinances to use a more appropriate word in the definition of *handicapped person* in subsection 2 of CAO 20.16.3.

Legislative Instruments Act

Under subregulation 235 (7) of CAR 1988, CASA is empowered to issue directions. Under regulation 5 of CAR 1988, where CASA is empowered to issue directions it may do so in the form of a Civil Aviation Order (*CAO*). Under subsection 98 (5) of the Act, where regulations provide for an instrument to be issued in the form of a CAO, the CAO is declared to be a disallowable instrument. An amendment to the CAO is similarly disallowable. 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. The Amendment Order is, therefore, a legislative instrument and is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

Consultation under section 17 of the LIA has been undertaken through the Joint CASA/Industry Technical Committee on Commercial Ballooning, and the Amendment Order will facilitate ballooning operations for operators who observe its conditions.

Because the Amendment Order is designed to replace the previous practice of issuing individual exemptions under regulation 308 of CAR 1988, the Amendment Order will not substantially alter existing arrangements and is regarded as being of a minor or machinery nature. The Office of Regulation Review has agreed that it may proceed without the preparation of a Regulation Impact Statement.

The instrument comes into effect 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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