

Explanatory Statement

Civil Aviation Regulations 1988

Direction — number of cabin attendants for Fokker F70 and Fokker F100 aircraft

Legislation

Subsection 98 (1) of the *Civil Aviation Act 1988* (the **Act**) provides that the Governor-General may make regulations for the Act and in the interests of the safety of air navigation.

Under regulation 208 of the *Civil Aviation Regulations 1988* (**CAR 1988**), CASA may give directions as to the operating crew required to be carried on an aircraft having regard to the safety of air navigation. Subparagraph 6.1 (b) of Civil Aviation Order (**CAO**) 20.16.3 was made under regulation 208 and provides that aircraft carrying more than 36 and not more than 216 passengers must carry a cabin attendant for each unit of 36 passengers or part of that number.

The requirements in subparagraph 6.1 (b) of CAO 20.16.3 have remained in the same form since 1960 and as such represent a 52 year gap since a reassessment of cabin attendant numbers against a criterion of allowable seating rather than passenger numbers.

Certification of the aircraft relates to the design of the floor plan and the seating configuration in relation to the location of exits. CASA does not call for a re-evaluation of the aircraft design; instead, CASA accepts the design criterion. CASA does require operators to demonstrate the safety procedures that are specific to the operator, which are evaluated, thus there is a distinction between the certification criterion and an operator-imposed safety procedure which may, or may not, enhance the evacuation of the aircraft in an emergency evacuation. CASA has increased passenger awareness and capability for passengers seated at self-help exit rows in a manner equivalent to, or better than, that achieved when the Fokker F28 MK 0100 and Fokker F28 MK 0070 satisfied the Joint Aviation Authorities (Europe), now European Aviation Safety Agency, standards.

CASA is satisfied that the evacuation of a full complement of passengers for the aircraft is able to be achieved in a time of 90 seconds. CASA is also satisfied that the evacuation procedures adopted by Alliance Airlines Pty Limited (the **operator**) to support its application to operate with the certification criterion for the number of cabin attendants have been demonstrated successfully. For Fokker F28 MK 0100 aircraft, the certification criterion is 2 cabin attendants to a maximum of 100 passenger seats fitted to the aircraft. For Fokker F28 MK 0070 aircraft, the certification criterion is 2 cabin attendants to a maximum of 85 passenger seats fitted to the aircraft. The maximum permitted time of 90 seconds is set out as a condition in Schedule 1 of the instrument.

The other conditions include a requirement that the briefing of passengers in self-help exit rows must be as approved by CASA and in the manner set out in the operator's operations manual.

Legislative Instruments Act

Under subparagraph 6 (d) (i) of the *Legislative Instrument 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 regulation 5A of CAR 1988, if CASA has issued a CAO, and CASA later issues a direction that affects the operation of the CAO, the later document is declared to be a disallowable instrument. The instrument affects the operation of subparagraph 6.1 (b) of CAO 20.16.3. As a legislative instrument, it is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

Consultation

This instrument renews instrument CASA 28/12 which expires at the end of July 2012. CASA consulted both internally and with the operator before issuing earlier instruments that had the same effect. This instrument is similar to instruments issued to other operators that have been the subject of consultation within CASA and with other bodies.

Senate Regulations and Ordinances Committee concerns

This direction provides for the particular operator to meet a new standard for cabin crew numbers. The new standard differs from that currently promulgated in CAO 20.16.3 but it is considered to be a safe standard, consistent with international safety standards and practice.

The direction is 1 of a number of such instruments issued to, or renewed for, several operators pending CASA's development of considered amendments to bring CAO 20.16.3 into line with new internationally recognised standards for cabin crew ratios (at least 1 cabin crew attendant for every 50 passenger seats, and 1 attendant for any incomplete part of that number).

The development and preparation of suitable CAO amendments is a more intensive and involved process than the evaluation and consideration of directions for a particular named operator. While such evaluation and consideration for an individual operator is itself detailed, and guided by the requirements of safety and prudence, it has not required extensive consultation with the broader industry.

Pending the finalisation of the project team's work on the CAO, it is essentially unavoidable that CASA will issue or renew individual directions to operators on the same basis as has previously been done. The instrument is issued for a period of 12 months only, pending resolution of the wider issues involved.

Human Rights Compatibility

This legislative instrument does not engage any of the applicable rights or freedoms. It is compatible with human rights as it does not raise any human rights issues.

The instrument commences on 1 August 2012 and stops having effect at the end of July 2013.

The direction has been issued by a delegate of CASA under subregulation 11.260 (1) of the *Civil Aviation Safety Regulations 1998*.

[Instrument number CASA 239/12]