

Explanatory Statement

Civil Aviation Regulations 1988

Civil Aviation Order 20.18 Amendment Instrument 2012 (No. 2)

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.

Under subregulation 207 (2) of the *Civil Aviation Regulations 1988* (**CAR 1988**), a person must not use an Australian aircraft in a class of operation if the aircraft is not fitted with the instruments and equipment approved and directed by CASA. In approving or directing, CASA may have regard only to the safety of air navigation.

Under subregulation 5 (1) of CAR 1988, where CASA is empowered to issue certain instruments such as approvals or directions, it may do so in a *Civil Aviation Order* (**CAO**).

Subregulation 207 (2) of CAR 1988 requires that a person must not use an Australian aircraft in a class of operations if the aircraft is not fitted with instruments and fitted with, or carrying, equipment, including emergency equipment, that CASA has approved and directed. For subregulation 207 (2), CASA made CAO 20.18 setting out the approval and directions for aircraft instruments and equipment to meet basic operational requirements. Subsections 3 and 4 and the Appendixes to the CAO set out the requirements for flight and navigation equipment.

This CAO amendment relieves light sport aircraft and amateur-built experimental aircraft from compliance with subsections 3 and 4, insofar as they would otherwise apply. CASA considers that such aircraft, if Australian registered, could be considered liable to comply with the requirements of CAO 20.18 in relation to flight and navigation equipment. This is not intended. These aircraft are intended to operate under a separate regime with respect to their equipment and other airworthiness requirements. They are subject to special regulatory control under regulations 21.186 and 21.191 of the *Civil Aviation Safety Regulations 1998* (**CASR 1998**), and regulations 262APA and 262AP of CAR 1988 which set out operational limitations. As a result, these amendments of CAO 20.18 set out alternate requirements for the flight and navigation equipment for these aircraft, when operating under the V.F.R. or I.F.R.

In addition, the new paragraph 3A.4 makes it unnecessary for an Australian registered aircraft to comply with the flight and navigation equipment requirements of CAO 20.18 if it meets an equivalent level of safety as determined by the type certifying authority (**TCA**) for the aircraft. The TCA has to be a recognised authority as defined. An aircraft may use flight and navigation instrumentation fitted as required by a recognised authority. The flight and navigation equipment must meet an equivalent level of safety to that required under CAO 20.18, taking into consideration the intended operation of the aircraft.

Legislative Instruments Act

Under subregulation 5 (1) of CAR 1988, if CAR 1988 empowers CASA to issue instruments such as approvals or directions, CASA may do so in the form of Civil Aviation Orders (**CAOs**). Under subsection 98 (5) of the Act, where regulations provide for an instrument to be issued in the form of a CAO, the CAO so made is declared to be a disallowable instrument. 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 CAO amendment is, therefore, a legislative instrument. It is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

Consultation

Consultation under section 17 of the LIA has been undertaken through discussions with the relevant industry sectors. The question of making the amendments was raised by industry delegates. In addition the amendment relating to Australian registered aircraft using navigation equipment approved by an authority has been the subject of a periodically renewed exemption (CASA EX74/12), which expires at the end of December 2012 and will be replaced by these amendments.

Compatibility with human rights and freedoms

This 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* as it does not raise any human rights issues. It does not engage any of the applicable rights or freedoms. It provides aircraft operators with more flexibility in satisfying the requirements of CAO 20.18 in relation to the carriage of flight and navigation equipment.

OPBR

The Office of Best Practice Regulation assessed that the proposed amendments will have minor impact and no further analysis in the form of a Regulation Impact Statement was required (OBPR ID: 14521).

Commencement and making

The CAO amendment takes effect on the day after registration. It has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

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