

Explanatory Statement

Civil Aviation Regulations 1988

Civil Aviation Order 100.96 Instrument 2015

Legislation

Subsection 98 (4A) of the *Civil Aviation Act 1988* (the **Act**) empowers CASA to issue Civil Aviation Orders (the **CAOs**) not inconsistent with the Act or the regulations.

Subsection 98 (5A) of the Act provides that the regulations may empower CASA to issue instruments in relation to matters affecting the safe navigation and operation of aircraft.

Subregulation 5 (1) of the *Civil Aviation Regulations 1988* (**CAR 1988**) provides that where CASA is empowered to issue certain instruments such as permissions, approvals or directions, it may do so in a CAO.

Under subregulation 235 (1) of CAR 1988, CASA may give directions setting out the method for estimating the weight of an aircraft (including persons, goods and fuel on board) and the aircraft's centre of gravity. Under subregulation 235 (2A) of CAR 1988, it is an offence to contravene a direction issued under subregulation 235 (1), attracting 50 penalty units.

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

Background

Civil Aviation Order 100.96 (**CAO 100.96**) sets out the requirements for the periodic weighing of balloons and the weighing procedures for balloons. The procedures encompass initial weighing, weight control and recording of current and altered empty weight. Historically, weighing of a balloon has been conducted by an appropriately authorised person, having a Weight Control Authority.

For subregulations 5 (1) and 235 (1) of CAR 1988, CAO 100.96 was made on 19 December 2004 as *Civil Aviation Order 100.96 Instrument 2007* (the **2007 CAO**), also known as F2007L04936, and registered on the Federal Register of Legislative Instruments. Schedule 1 of the 2007 CAO contained the entire section 100.96 of the CAOs (also referred to as CAO 100.96).

In late 2014, discussions between CASA and the Office of Parliamentary Counsel (OPC) revealed that the existence of CAOs in schedules rather than in its own substantive instrument could create legislative ambiguity and was not best practice drafting methodology. To rectify this issue, CASA has decided to repeal the 2007 CAO and remake CAO 100.96 in its entirety by way of issuing the *Civil Aviation Order 100.96 Instrument 2015* (the **2015 CAO**).

The 2015 CAO also includes changes to minimise the regulatory burden on amateur-built balloon owners, builders and operators who have found that compliance with the balloon weighing requirements to be cost and time prohibitive. The requirements of the 2015 CAO compared to the 2007 CAO, as amended, have not otherwise changed.

Should subsequent legislative amendments be made to CAO 100.96, those changes would be made to the 2015 CAO itself, rather than a schedule contained in the 2007 CAO.

Instrument

The 2015 CAO contains a number of changes to relieve the aircraft weighing compliance burden on amateur-built balloon owners, builders or operators following industry consultation on weighing requirements. The 2015 CAO also contains changes to standardise the referencing of provisions to be consistent with other CAOs and the civil aviation regulations, as well as removing archaic terminology.

The definition of ***Civil Aviation Legislation*** has been removed since this is already defined in the Act. The note after paragraph 2.2 that stated that operational weight must not exceed the MTOW has also been removed since it is redundant.

Paragraph 3.4 has been substituted with a new provision that now enables owners, builders or operators, who satisfy the relevant requirements, to conduct and certify weighing activities for their balloon. Broadly, the person (who is not a weight control officer) must have successfully completed a balloon weighing procedures course approved by CASA in the last 2 years; must weigh the balloon on scales approved by CASA; and comply with any other condition that CASA deems necessary. Other provisions in the 2015 CAO that refer to who may conduct weighing now reflect that maintenance authority holders, weight control officers, and persons referred to in paragraph 3.4 may conduct weighing activities.

Legislative Instruments Act 2003 (the LIA)

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 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 legislative instrument under subsection 98 (5AAA). The 2015 CAO is, therefore, a legislative instrument. It is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

Consultation

The 2015 CAO expands the scope of persons who are authorised to weigh balloons to include persons who are owners, builders or operators of amateur-built aircraft. CASA released draft amendments to CAO 100.96 for industry consultation on 24 March 2015 and received 14 responses. Industry comments have been incorporated into the 2015 CAO or have been otherwise resolved through discussions. It is CASA's view that further consultation under section 17 of the LIA is not necessary or appropriate.

Office of Best Practice Regulation (OBPR)

OBPR assessed the proposed amendments as minor and that no further analysis in the form of a Regulation Impact Statement was required (OBPR ID: 18189).

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is at Attachment 1.

Making and commencement

The 2015 CAO 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 on the day of registration.

[Civil Aviation Order 100.96 Instrument 2015]

Statement of Compatibility with Human Rights

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

Civil Aviation Order 100.96 Instrument 2015

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

CASA has decided to reissue Civil Aviation Order (**CAO**) 100.96 by repealing *Civil Aviation Order 100.96 Instrument 2007* and making the *Civil Aviation Order 100.96 Instrument 2015*. CAO 100.96 has been remade in substantially similar terms, with amendments to expand the scope of persons who may conduct the weighing of balloons to amateur balloon owners, builders or operators who satisfy the relevant criteria. The remake also standardises the language and terminology used to be consistent with civil aviation legislation.

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