

Explanatory Statement

Civil Aviation Safety Regulations 1998

Civil Aviation Order 20.91 Amendment Instrument 2017 (No. 1)

Purpose

The purpose of the *Civil Aviation Order 20.91 Amendment Instrument 2017 (No. 1)* (the **instrument**) is to extend the date (the **expiry date**) for the expiry of anything in *Civil Aviation Order 20.91 (Instructions and directions for performance-based navigation) Instrument 2014 (CAO 20.91)* that is a direction under regulation 11.245 of the *Civil Aviation Safety Regulations 1998 (CASR)*. The expiry date is extended from 30 November 2017 to 30 November 2024.

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. Relevantly, the Governor-General has made CASR and the *Civil Aviation Regulations 1988 (CAR)*.

Subpart 11.G of CASR provides for CASA to issue directions in relation to matters affecting the safety of air navigation. Under paragraph 11.245 (1) (a) of CASR, CASA may, by instrument, issue a direction about any matter affecting the safe navigation and operation of aircraft.

Under subregulation 5 (1A) of CAR, CASA may, unless the contrary intention appears in the regulation conferring the power to issue a direction, issue the direction in a Civil Aviation Order.

Under paragraph 11.250 (a) of CASR, a direction under regulation 11.245 ceases to be in force on the day specified in the direction.

In the absence of the instrument, under paragraph 3.2 of CAO 20.91, anything in the Order that is a direction under regulation 11.245 of CASR would cease to be in force on 30 November 2017.

When CAO 20.91 was made, it was anticipated that, before 30 November 2017, the replacement Part 91 of CASR and the Part 91 Manual of Standards would be made to replicate anything in CAO 20.91 that is a direction under regulation 11.245 of CASR. An extension of CAO 20.91 is required while CASA completes its work on the Part 91 documents.

Instrument

Section 1 provides that the name of the instrument is *Civil Aviation Order 20.91 Amendment Instrument 2017 (No. 1)*.

Section 2 provides that the instrument commences on the day after registration.

Section 3 provides that CAO 20.91 is amended as set out in Schedule 1 of the instrument.

Item 1 of Schedule 1 amends paragraph 3.2 of CAO 20.91 so that anything in the Order that is a direction under regulation 11.245 of CASR would cease to be in force on 30 November 2024 instead of 30 November 2017. The extension of the expiry date will allow further time for the drafting of, and consultation on, new Part 91 of CASR and the Part 91 Manual of Standards, which instruments are proposed to replace the directions in CAO 20.91 made under regulation 11.245 of CASR.

Legislation Act 2003 (the LA)

Paragraph 10 (1) (d) of the LA provides that an instrument is a legislative instrument if it includes a provision that amends or repeals another legislative instrument. The instrument amends CAO 20.91, which was registered as a legislative instrument. The instrument is, therefore, a legislative instrument, and is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Consultation

CASA is satisfied that no consultation is appropriate or reasonably practicable for the instrument under section 17 of the LA.

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement (*RIS*) is not required in this instance, as the directions in CAO 20.91 are covered by a standing agreement between CASA and OBPR under which a RIS is not required for directions (OBPR id: 14507).

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights at **Attachment 1** has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The instrument does not engage any of the applicable rights or freedoms, and is compatible with human rights, as it does not raise any human rights issues.

Making and commencement

The instrument 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 after registration.

[*Civil Aviation Order 20.91 Amendment Instrument 2017 (No. 1)*]

Statement of Compatibility with Human Rights

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

Civil Aviation Order 20.91 Amendment Instrument 2017 (No. 1)

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

The purpose of this legislative instrument is to extend the date (the ***expiry date***) for the expiry of anything in *Civil Aviation Order 20.91 (Instructions and directions for performance-based navigation) Instrument 2014 (CAO 20.91)* that is a direction under regulation 11.245 of the *Civil Aviation Safety Regulations 1998 (CASR)* from 30 November 2017 to 30 November 2024. The extension of the expiry date maintains existing arrangements.

The extension of the expiry date will allow further time for the drafting of, and consultation on, the replacement Part 91 of CASR and the Part 91 Manual of Standards, which instruments are proposed to replace CAO 20.91.

Human rights implications

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*. It 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