I, JOHN FRANCIS McCORMICK, Director of Aviation Safety, on behalf of CASA, make this instrument under subregulations 5.11 (2) and 303 (1) of the Civil Aviation Regulations 1988.

John F. McCormick
Director of Aviation Safety
July 2010

Civil Aviation Order 20.6 Amendment Order (No. 1) 2010

1 Name of instrument
This instrument is the Civil Aviation Order 20.6 Amendment Order (No. 1) 2010.

2 Commencement
This instrument commences on the day after it is registered.

3 Amendment of Civil Aviation Order 20.6
Schedule 1 amends Civil Aviation Order 20.6.

Schedule 1 Amendments

[1] Title
substitute
Continuation of flight with 1 or more engines inoperative

[2] Before subsection 2
insert

1 Name of Order
This Order is Civil Aviation Order 20.6.

[3] Subsection 2, Application
substitute

2 Application
This Order applies as a condition on the flight crew licence of the pilot in command of an Australian aircraft.
[4] **Paragraph 3.1**

*omit*

shall

*insert*

must

[5] **Paragraph 3.2**

*omit*

the rotation thereof

*insert*

its rotation

[6] **Paragraph 3.2**

*omit*

These factors shall

*insert*

Relevant factors must

[7] **After subparagraph 3.2 (a)**

*insert*

(aa) the nature and extent of any city, town or populous area over which the aircraft is likely to fly;

[8] **Subparagraph 3.2 (h)**

*substitute*

(h) type of terrain, including whether the flight is likely to be over water;
Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 20.6 Amendment Order (No. 1) 2010

Purpose

Civil Aviation Order 20.6 Amendment Order (No. 1) 2010 (the CAO amendment), amends Civil Aviation Order 20.6 (the CAO) to make 2 small but important additions to the matters that a pilot in command of a multi-engine aircraft must take into account if, when an engine fails, the pilot intends to fly to his or her chosen aerodrome on the basis that it is safe and acceptable to do so rather than fly to the nearest suitable aerodrome.

Legislation

Section 98 of the Civil Aviation Act 1988 (the Act) empowers the Governor-General to make regulations for the purposes of the Act and the safety of air navigation.

Under subregulation 5.11 (1) of the Civil Aviation Regulations 1988 (CAR 1988), CASA may issue a flight crew licence subject to any condition that is necessary in the interests of the safety of air navigation. Under paragraph 5.11 (2) (c) of CAR 1988, one of the options for CASA is to set out the condition in a Civil Aviation Order made under regulation 303 of CAR 1988.

Under subregulation 303 (1) of CAR 1988, where CASA is empowered to issue a licence subject to conditions, CASA may, absent a contrary intention, specify in a Civil Aviation Order conditions of general application to a specified class of licences. Such conditions are then deemed to be conditions of every licence of that class.

Under subregulations 5.11 (3) and (3A) of CAR 1988, it is a strict liability offence to contravene such a condition.

The CAO

Civil Aviation Order 20.6 is a set of such conditions. Under subsection 2, it applies to all Australian aircraft.

Under paragraph 3.1, the CAO provides that when any aircraft engine fails in flight, or its rotation is stopped in flight to prevent possible damage, the pilot in command is to notify the nearest air traffic services unit with all relevant information.

Under paragraph 3.2, the CAO provides that the pilot in command of a multi-engine aircraft may proceed to an aerodrome of his or her choice, rather than to the nearest suitable aerodrome (known as “continuation of flight”), if the pilot deems such action to be safe and operationally acceptable after taking account of “all relevant factors”. Relevant factors are to include certain specified matters (the inclusions), namely, the nature of the engine malfunction and possible mechanical difficulties which may be encountered if the flight is continued; whether the inoperative engine is available to be used; the altitude, aircraft weight, and usable fuel at the time the engine stopped; the distance to be flown coupled with the performance availability should another engine fail; the relative characteristics of aerodromes available for landing; the weather conditions en route and at possible landing points; any air traffic congestion; the type of terrain; and the familiarity of the pilot with the aerodrome to be used.
The pilot’s obligation to take into consideration “all relevant factors” would undoubtedly require that he or she consider the nature and extent of any city, town or populous area over which the aircraft is likely to fly, as well as whether the flight is likely to be over water.

**The CAO amendment**

Nevertheless, CASA wishes to make explicit in the CAO that the pilot must take into account specific characteristics of the ground to be overflown en route to an aerodrome of choice with an engine out.

By adding relevant matter to the list of inclusions, the CAO amendment provides that the pilot in command must take into account the nature and extent of any city, town or populous area over which the aircraft is likely to fly, as well as whether the flight is likely to be over water.

**CAO title**

Another amendment changes the name of CAO 20.6 from “Continuation of flight by multi-engine aircraft with 1 or more engines inoperative”, to “Continuation of flight with 1 or more engines inoperative”. The mention of multi-engine aircraft in the title was misleading as aspects of the CAO also apply to any Australian aircraft. Details of this and of all amendments are set out in Appendix 1.

**Minor amendments**

Apart from the additional inclusions, CASA wishes the CAO to continue to have exactly the same meaning as it had before the CAO amendment. Therefore, without embarking on a wholesale redrafting of the CAO, the opportunity has also been taken to modernise some of its language, for example, by replacing “shall” with “must”.

**Legislative Instrument Act (LIA)**

Under subsection 98 (5) of the Act, the regulations may provide that CASA may issue a Civil Aviation Order containing a direction, instruction, notification, permission, approval or authority. The imposition of conditions on a flight crew licence constitutes a direction or instruction for compliance which may, therefore, be contained in a Civil Aviation Order if regulations so provide. Subregulations 5.11 (2) and 303 (1) of CAR 1988 provide that CASA may impose conditions on a flight crew licence by means of a Civil Aviation Order.

Under subsection 98 (5AAA) of the Act, any Civil Aviation Order made under regulations made under subsection 98 (5) of the Act is a legislative instrument.

It is considered that subsections 98 (5) and 98 (5AAA) of the Act do not exhaust the scope for making Civil Aviation Orders. Under paragraph 98 (5A) (a) of the Act, the regulations may empower CASA to issue “instruments” in relation to matters affecting the safe navigation and operation of aircraft. Under subsection 98 (5AA), such an instrument expressed to apply to a class of persons or aircraft (rather than to a single person or aircraft) is a legislative instrument.

Under both of these sets of provisions, therefore, the CAO amendment is a legislative instrument and is subject to registration under section 24, and tabling and disallowance in the Parliament under sections 38 and 42, of the LIA.
Consultation
Consultation under section 17 of the LIA has been carried out through the Standards Consultative Committee (SCC), the primary CASA/industry consultation forum. The SCC had no objections to the CAO amendment.

Office of Best Practice Regulation (OBPR)
OBPR does not require a Regulation Impact Statement because the CAO amendment is minor and technical, merely making explicit what was already implied in the previous form of the CAO. A preliminary assessment of business compliance costs, therefore, indicates that the CAO amendment will have only a nil to low impact on business.

Commencement and making
The CAO amendment has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act, and commences on the day after it is registered.

[Civil Aviation Order 20.6 Amendment Order (No. 1) 2010]
Appendix 1

Details of amendments to CAO 20.6

1  Name of Instrument
   This section names the CAO amendment as the Civil Aviation Order 20.6 Amendment Order (No. 1) 2010.

2  Commencement
   Under this section, the instrument commences on the day after it is registered.

3  Amendment of Civil Aviation Order 20.6
   Under this section, Schedule 1 amends Civil Aviation Order 20.6.

Schedule 1  Amendments

[1]  Title
   Under this amendment, the title of CAO 20.6 is amended to be:
   Continuation of flight with 1 or more engines inoperative.
   Previously, the title was “Continuation of flight by multi-engine aircraft with 1 or more engines inoperative”. However, this was misleading because only paragraph 3.2 of the CAO dealt with multi-engine aircraft. Paragraph 3.1 dealt with notifying air traffic services immediately of any engine failure etc.) and this rule applies for all aircraft, not only multi-engine aircraft.

[2]  Before subsection 2
   For compliance and clarity only, under this amendment, a new subsection 1 is inserted to formally name the Civil Aviation Order as Civil Aviation Order 20.6.

[3]  Subsection 2, Application
   Under this amendment, the application of the CAO is clarified from merely stating that it applies “to all Australian aircraft” to state that the Order “applies as a condition on the flight crew licence of the pilot in command of an Australian aircraft”. This more correctly aligns the CAO with its actual purpose which is to place a condition on certain flight crew licences under regulations 5.11 and 303 of CAR 1998.

[4]  Paragraph 3.1
   Under this amendment, the word “shall [notify]” to denote an imperative obligation is replaced by the more usual word “must [notify]”

[5]  Paragraph 3.2
   Under this amendment, the word “thereof” is removed to simplify the phrase in which it appeared.

[6]  Paragraph 3.2
   Under this amendment “factors” are more correctly named as “relevant factors”, and the word “shall [include]” to denote an imperative obligation is replaced by the more usual word “must [include]”
[7] **After subparagraph 3.2 (a)**
Under this amendment, a new relevant factor is added to the list of included relevant factors, namely, “(aa) the nature and extent of any city, town or populous area over which the aircraft is likely to fly;”

[8] **Subparagraph 3.2 (h)**
Under this amendment, the scope of a relevant factor in the list of included relevant factors is broadened to mention water and now reads “(h) type of terrain, including whether the flight is likely to be over water”.