



WORKING PAPER

ASSEMBLY — 40TH SESSION

EXECUTIVE COMMITTEE

Agenda Item 19: Increasing the efficiency and effectiveness of ICAO

STRUCTURE RECOMMENDED FOR THE TEXT OF SARPS AMENDMENTS, WITH DIFFERENT CONTENT APPLICABILITY DATES, ADOPTED BY THE ICAO COUNCIL

(Presented by Cuba, and sponsored by Argentina, Aruba, Belize, Bolivia, Brazil, Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic and the Bolivarian Republic of Venezuela)

EXECUTIVE SUMMARY

The purpose of this working paper is to recommend a structural improvement to the text of amendments adopted by the ICAO Council on Standards and Recommended Practices (SARPS) described in the Annexes to the Convention on International Civil Aviation, when the content of the amendments becomes applicable on different dates.

Action: The Assembly is invited to recommend that ICAO structure the text of SARPS amendments adopted by the ICAO Council, should each requirement become applicable on a different date, by dividing the content into parts (A, B, C, etc.), by applicability date, as in the specific case shown in paragraph 1.6.1(a) of this paper.

<i>Strategic Objectives:</i>	This working paper relates to all Strategic Objectives.
<i>Financial implications:</i>	None.
<i>References:</i>	State letters on the adoption of SARPS Amendments (AN 10/1.1-16/17 – <i>Adoption of Amendment 77 to Annex 3</i> (2016); and AN 12/1.1.23-18/11 – <i>Adoption of Amendment 175 to Annex 1</i> (2018)).

¹ Spanish version provided by Cuba.

1. INTRODUCTION

1.1 Article 37 of the Convention on International Civil Aviation (“the Convention”) provides that each contracting State undertakes to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation, and stipulates that the Organization shall adopt and amend international standards and recommended practices and procedures.

1.2 Furthermore, Article 38 provides that any State which finds it impracticable to comply in all respects with any such international standard or procedure, or to bring its own regulations or practices into full accord with any standard, or which deems it necessary to adopt regulations or practices differing in any particular respect from those established by an international standard, shall give notification to ICAO of the differences between its own practice and that established by the standard.

1.3 Moreover, Article 90 of the Convention provides that the adoption and amendment of the Annexes to the Convention shall require the vote of two-thirds of the Council at a meeting called for that purpose and shall then be submitted by the Council to each contracting State. Any such Annex or any amendment of an Annex shall become effective within three months after its submission to the contracting States or at the end of such longer period of time as the Council may prescribe, unless in the meantime a majority of the contracting States register their disapproval with the Council.

1.4 In accordance with the above, when the Council adopts amendments each year to the Annexes to the Convention, it accordingly informs the contracting States by means of State letters, requesting that they register their disapproval of any part of the adopted amendments, if they so wish, and that they give notification of any differences between their national regulations and the provisions of the whole of each Annex, by using the Electronic Filing of Differences (EFOD) System.

1.5 The State letters specify the date set by the Council on which each amendment becomes effective, except for any part concerning which a majority of Contracting States have registered their disapproval before that date. They also specify the date on which each amendment, to the extent that it becomes effective, will become applicable and, in relation to this, the date on which the contracting States must give notification of their differences.

1.6 In some instances, the entire text of an amendment has the same applicability date and, consequently, a single date for the notification of differences; in others, there are differing dates for applicability and for notification of differences for the various parts of the text, and this difference is reflected in the State letter in a variety of ways. In some cases, the amendment text is subdivided into parts (A, B, C, etc.) according to the date on which each part becomes applicable (as in the amendments adopted, for example, in 2016 in the specific case shown in paragraph (a) below). In other cases, footnotes with numbers or symbols (such as asterisks) reflected in the text are used (as in the amendments adopted, for example, in 2018 in the specific case shown in paragraph (b) below).

1.7 As particular examples, passages from State letters on adopted amendments are quoted below to permit a comparison between the structures used in 2016 and 2018:

- a) Subdivision of the text into parts (A, B, C, etc.):

TEXT OF AMENDMENT No. 77-A

“The amendment to Annex 3 contained in this document was adopted by the Council of ICAO on **22 February 2016**. Such parts of this amendment as have not been disapproved by more than half of the total number of Contracting States on or before **11 July 2016** will become effective on that date and will become applicable on **10 November 2016** as specified in the Resolution of Adoption.”

TEXT OF AMENDMENT No. 77-B

“The amendment to Annex 3 contained in this document was adopted by the Council of ICAO on 22 February 2016. Such parts of this amendment as have not been disapproved by more than half of the total number of Contracting States on or before 11 July 2016 will become effective on that date and will become applicable on **5 November 2016** as specified in the Resolution of Adoption.”

- b) Use of footnotes with numbers of symbols reflected in the text:

Ref.: AN 12/1.1.23-18/11 *Adoption of Amendment 175 to Annex 1* (2018).

“Dual instruction time.††† Flight time during which a person is receiving flight instruction from a properly authorized pilot on board the aircraft.

Dual instruction time.†††† Flight time during which a person is receiving flight instruction from a properly authorized pilot on board the aircraft, or from a properly authorized remote pilot using the remote pilot station during a remotely piloted aircraft flight.

...

Flight simulation training device.†††

...

††† Applicable until **2 November 2022**.

†††† Applicable as of **3 November 2022**.”

2. ANALYSIS

2.1 With regard to the way in which the content of adopted SARPS amendments is reflected, it is important first to consider that an amendment text containing differing applicability dates requires States both to incorporate different substantive parts of the same amendment into their national regulations and to give notification of differences in respect to each part on different dates. This includes, of course, action targeting or taken by the aviation industry to implement the amendment efficiently and effectively. As a result, planning, implementation and control are more complicated than when the entire amendment becomes applicable on the same date. It is therefore crucial to structure or organize in an appropriate manner those matters that are to be regulated.

2.2 On the basis of these considerations and the comparison of the various ways in which the content of adopted amendments containing several applicability dates has been reflected, as described in paragraph 1.6.1 above, it stands to reason that the better structure consists in dividing the text into parts (A, B, C, etc.), as in the particular case shown in paragraph 1.6.1(a). Even in references to the

amendment, a clearer distinction can be made by placing a hyphen and the applicable part in question after the number (for example, “Amendment 77-A to Annex 3” or “Amendment 77-B to Annex 3”). By contrast, when numbers or symbols are inserted in a general text, as in the specific case shown in paragraph 1.6.1(b), the various applicability and implementation periods are not as clearly structured, since the content of the amendment is presented as an intermingled whole.

2.3 Moreover, the division of the amendment into parts facilitates use of the EFOD System template for notification of differences, as the information entered covers content applicable as at the notification date. However, when numbers or symbols are used in a general amendment text, the content is reflected in its entirety in the notification, and “Not applicable” must be marked against the parts for which the applicability date has not yet arrived. This can make it difficult for ICAO itself to interpret the notification, as it leads to ambiguity about whether the State’s notification concerns a specific Category C difference or merely that the State will incorporate the requirement in its national regulations appropriately, by the date on which ICAO expects the requirement to be applied.

2.4 Content structured into parts (A, B, C, etc.) is advantageous both to contracting States and to ICAO, as it permits:

- a) better distinction of the requirements that apply in each period;
- b) better reference to the adopted amendment (number and letter of the applicable part);
- c) simplification of the notification of differences; and
- d) clearer interpretation of the differences notified for each applicability period.

3. **RECOMMENDATION**

3.1 It is recommended that that ICAO structure the text of SARPS amendments adopted by the ICAO Council, should each requirement become applicable on a different date, by dividing the content into parts (A, B, C, etc.), by applicability date, as in the specific case shown in paragraph 1.6.1(a) of this paper.

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