

Explanatory Statement

Civil Aviation Regulations 1988

Direction under regulation 209 — conduct of parachute training operations

Legislation

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

Under subregulation 209 (1) of the *Civil Aviation Regulations 1988* (**CAR 1988**), the operator and the pilot in command of an aircraft engaged in a private operation must comply with the provisions of CAR 1988 and the *Civil Aviation Safety Regulations 1998* (**CASR 1998**) and with such additional conditions as CASA from time to time directs in the interest of safety (a CAR 209 direction).

Regulation 2 of CAR 1988 defines an **approved system of maintenance**, for an Australian aircraft, to mean a system of maintenance for the aircraft that has been approved under regulation 42M of CAR 1988, including any changes to the program that have been approved under regulation 42R. Approvals under regulations 42M and 42R are made by CASA or a person appointed by CASA.

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

The dropping of parachutists engaged in training operations is regarded by CASA as a private operation. These operations are regarded by CASA as being in a separate category from those operations involving parachuting as a sporting activity carried out by established clubs. The second category is carried out in accordance with authorisations and specifications, issued under regulation 152 of CAR 1988.

Since the first category of parachute operations was regarded as private, the aircraft involved were maintained to private operations status and only required to be inspected annually, with engines being operated on condition, meaning that they could be operated until a licensed aircraft maintenance engineer refused to sign off on the annual inspection for that aircraft with that engine in it. Additionally, pilots on those operations only required a private pilot licence.

In 2006, at Willowbank in Queensland, 5 occupants died when an aircraft engaged in a parachute training operation crashed on take-off. The subsequent Queensland coroner's report was critical of CASA's policy of classifying such operations as private operations.

Enhanced maintenance standards for parachute aircraft

In response to the investigation findings of the Willowbank accident and CASA's analysis of the appropriate maintenance standards for aircraft engaged in parachute operations, CASA required aircraft engaged in parachute training operations and all tandem descents to be maintained to charter aircraft standards rather than private aircraft standards. Other requirements have also been imposed. The conduct of some of those operations is subject to supervision by the Australian Skydiving Association Inc. (*ASA*), with CASA exercising overarching control.

This instrument contains directions relating to aircraft engaged in parachute training operations by organisations that are members of the ASA. This instrument repeals and replaces a previous direction (CASA 123/14) to address issues raised in relation to the requirements for operation in controlled airspace and remaining clear of a specified restricted area.

This instrument is similar to an instrument relating to operations by organisations that are members of the Australian Parachute Federation Incorporated, which supervises a number of other parachute training organisations in Australia (CASA 09/15).

Additional Requirements in controlled airspace

This instrument clarifies that Air Traffic Control (*ATC*) may assign to the pilot in control of a parachute jumping exercise the responsibility for remaining clear of an adjacent restricted area. This provides an acceptable level of safety as well as reducing ATC workload by removing the requirement for ATC to apply and monitor separation between the parachute aircraft and the restricted airspace boundaries.

Other amendments

Unless otherwise agreed between the jump operator and ATC, ATC may base air traffic services on the expectation that the jump aircraft will remain within 3 nautical miles (NM) of the drop zone (the aiming point for the landing).

Unless otherwise agreed between the jump operator and ATC, ATC may base air traffic services on the expectation that the parachutists will remain within 1 NM of the drop zone.

Legislative Instruments Act

The direction is considered to be a legislative instrument for section 5 of the *Legislative Instruments Act 2003* (the *LIA*). It is, therefore, subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

Consultation

Consultation has been undertaken with Airservices Australia, as the organisation responsible for air navigation services including ATC, and the ASA on this instrument. The ASA represents organisations and operators engaged in parachute training operations that are affected by this instrument. For this reason, it is CASA's view that it was not necessary or appropriate to undertake any further consultation under section 17 of the LIA.

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement (*RIS*) is not required because the direction is covered by a standing agreement between CASA and OBPR under which a RIS is not required for a direction (OBPR id: 14507).

Statement of Compatibility with Human Rights

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

Making and commencement

The instrument has been made by the Associate Director of Aviation Safety as a delegate of CASA under subregulation 11.260 (1) of CASR 1998.

The instrument commences on the day after registration and expires at the end of January 2017, as if it had been repealed by another instrument.

[Instrument number CASA 10/15]

Attachment 1**Statement of Compatibility with Human Rights**

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

Direction under regulation 209 — conduct of parachute training operations

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

This legislative instrument contains directions relating to aircraft engaged in parachute training operations by organisations that are members of the Australian Skydiving Association Inc.

The purpose of this legislative instrument is to significantly improve the safety of parachute training operations by directing compliance with conditions relating to maintenance of aircraft, conduct of operations, equipment, communication and air traffic control clearance.

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