

Explanatory Statement

Civil Aviation Regulations 1988

Civil Aviation Safety Regulations 1998

Instructions and exemption — RNAV (RNP-AR) approaches and departures (Jetconnect)

Legislation

Subsection 98 (1) of the *Civil Aviation Act 1988* (the *Act*) provides that the Governor-General may make regulations for the Act and the safety of air navigation. 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.

Under subregulation 178 (1) of the *Civil Aviation Regulations 1988* (**CAR 1988**), the pilot in command of an aircraft must not fly along a route segment at a height lower than the published lowest safe altitude (LSALT) for that segment. Under subregulation 178 (2), if there is no LSALT, the pilot must not fly lower than the LSALT calculated by a method determined by CASA. Contravention of either of these 2 provisions is an offence of strict liability attracting 50 penalty units.

However, paragraph 178 (4) (c) of CAR 1988 provides an exception from these requirements if the flight is during an authorised instrument approach procedure (**IAP**) or an authorised instrument departure procedure (**IDP**). An authorised IAP and an authorised IDP are defined in subregulation 178 (7) of CAR 1988 as being procedures that are designed and published by a certified designer.

Under subregulation 179A (1) of CAR 1988, CASA may issue instructions in relation to Instrument Flight Rules (**IFR**) flights specifying the method by which an aircraft is to be navigated when in such flight. Under subregulation 179A (3A) of CAR 1988, an instruction issued under subregulation 179A (1) that is not issued in the form of a Civil Aviation Order is a disallowable instrument.

Civil Aviation Order 20.7.1B (**CAO 20.7.1B**) deals with aeroplane weight and performance limitations. Among other things, paragraph 3.1 defines **RNP-capable aeroplane** as an aeroplane that is approved for area navigation (**RNAV**). Subparagraph 12.1.1 (b) and paragraph 12A.5 also deal with approved RNP operations for RNP-capable aeroplanes with specific take-off area requirements.

Subregulation 11.160 (1) of the *Civil Aviation Safety Regulations 1998* (**CASR 1998**) provides that, for subsection 98 (5A) of the Act, CASA may grant an exemption from a provision of the regulations or a Civil Aviation Order, in relation to a matter mentioned in that subsection. Under subregulation 11.160 (2), an exemption may be granted to a person, or to a class of persons, and may specify the class by reference to membership of a specified body or any other characteristic.

Under subregulation 11.205 (1) of CASR 1998, CASA may impose conditions on an exemption if this is necessary in the interests of the safety of air navigation. Under regulation 11.225 of CASR 1998, an exemption must be published on the Internet. Under subregulation 11.230 (1), an exemption ceases on the day specified within it (but no longer than 3 years after its commencement) or, if no day is specified, 3 years after commencement.

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.

Instrument

Between March 2012 and February 2015, Jetconnect Limited (the **operator**) operated its B737-800 aircraft using authorised RNAV (RNP-AR) IAP or IDP under trial conditions in Australia. These are sophisticated, computer-assisted RNAV operations with particular performance requirements for which CASA authorisation is required. Use of RNAV (RNP-AR) can enable accurate navigation and obstacle avoidance in instrument meteorological conditions (**I.M.C.**) under the I.F.R. This can significantly reduce the likelihood of accidents involving controlled flight into terrain (**CFIT**). CFIT can be more likely in complex, non-precision approaches which lack vertical guidance and which impose a high mental work load on the flight crew.

The approach and departure procedures were designed by Naverus Inc, a United States based RNP-AR procedure specialist. A previous instrument issued to the operator (CASA 104/12 refers) instructed the operator's pilots in command to only use authorised RNAV (RNP-AR) IAP or IDP in accordance with the trial. Conditions included that approaches may not be conducted below defined heights and departures must use a defined RNP type in accordance with the aircraft flight manual.

The operator's trial use of RNAV (RNP-AR) IAP and IDP has been successful and the operator has requested that CASA issue an instrument to allow RNAV operations to continue in B737-800 aircraft. This instrument continues the instructions and exemption issued to the operator for the purpose of RNAV operations. A pilot in command of the operator's aircraft is exempt from compliance with subregulations 178 (1) and (2) of CAR 1988, which means that the pilot may fly at a height lower than the published LSALT for a route segment, but subject to the instructions in Schedule 1 that require the pilot in command to use the authorised RNAV (RNP-AR) IAP or IDP, and subject to the conditions in Schedule 2.

The conditions include that the RNAV (RNP-AR) approach or departure may only be conducted in an operator's B737-800 aircraft that is RNP-AR capable, and in accordance with the operations specification issued by the Civil Aviation Authority of New Zealand. A number of new conditions have been imposed, including that the operator must ensure that all RNAV approaches are monitored by its Flight Operations Qualify Assurance Program, in accordance with requirements in ICAO Doc 9613. Additional requirements are placed on the pilot in command, including that the pilot in command must ensure the approved aircraft GNSS receivers are operational, and that the approach is flown in accordance with the approved navigation database setting out that approach.

Legislative Instruments Act 2003 (the LIA)

Under subregulation 179A (3A) of CAR 1988, an instruction issued under subregulation 179A (1) that is not issued in the form of a Civil Aviation Order is a disallowable instrument. The instrument contains 2 instructions, issued under subregulation 179A (1) of CAR 1988, dealing with the operation of the operator's B737-800 aircraft on RNAV (RNP-AR) IAP and IDP. The instrument is, therefore, subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

Consultation

The instrument has been issued at the request of the operator. The instrument repeals and replaces similar instructions issued to the operator for trial purposes (CASA 104/12 refers). Similar instruments have been issued to other operators subject to CASA being satisfied on aviation safety issues. It is CASA's view that it is not necessary or appropriate to conduct any further consultation under section 17 of the LIA.

Statement of Compatibility with Human Rights

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

Office of Best Practice Regulation (OBPR)

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

Making and commencement

The instrument has been made by a delegate of CASA relying on the power of delegation under subregulation 11.260 (1) of CASR 1998.

The instrument commences on the day of registration and expires at the end of February 2018, as if it had been repealed by another instrument.

[Instrument number CASA 17/15]

Statement of Compatibility with Human Rights

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

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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 allows Jetconnect Limited (the *operator*) to conduct computer-assisted area navigation operations in B737-800 aircraft for approaches and departures. The instrument has been issued after the operator demonstrated successful results after a trial period. The instrument contains conditions, in the interests of aviation safety, that are applicable to the operator and pilots in command of the operator's aircraft.

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