

Explanatory Statement

Civil Aviation Safety Regulations 1998

Direction — interception of civil aircraft in Australian territory

Purpose

This direction enables the enforcement of procedural requirements established by international agreement to be followed by the pilot in command of any aircraft operating in Australian territory, in the event of an aircraft interception by the Defence Force or Australian Federal Police acting under authority of the Commonwealth.

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.

Section 3A of the *Air Navigation Act 1920* provides for the approval of ratification of the *Convention on International Civil Aviation* (**Chicago Convention**) of 1944.

Section 22 of the Act provides for the interception of an aircraft registered in Australia or operated by an Australian operator that is in flight over the territory of a foreign country.

Subpart 11.G of the *Civil Aviation Safety Regulations 1998* (**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. Subregulation 11.245 (2) of CASR provides that CASA may issue such a direction if CASA is satisfied that it is necessary to do so in the interests of the safety of air navigation, if the direction is not inconsistent with the Act, and for the purposes of CASA's functions.

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. Under regulation 11.255 it is an offence of strict liability to contravene a direction under regulation 11.245.

Instrument

Provisions relating to the interception of civil aircraft in section 22 of the Act apply only to Australian aircraft, or aircraft operated by an Australian operator, flying over the territory of a foreign country. The effect of the instrument is to enforce compliance with the procedural requirements related to the interception of civil aircraft flying in Australian territory. These procedures, standardised by international agreement and subject to regular review, are set out in the document AIP ENR 1.12 *Interception of Civil Aircraft*, published by Airservices Australia. Without the making of the instrument, those provisions in the AIP are not enforceable.

In accordance with subsection 98 (5D) of the Act, the procedures contained in AIP ENR 1.12 are incorporated as they exist from time to time. The document is freely available at no cost within the Aeronautical Information Package produced by Airservices Australia, which is accessible via the Internet on the following webpage:

<https://www.airservicesaustralia.com/aip/current/aip/enroute.pdf>

Legislation Act 2003 (the LA)

Paragraph 98 (5A) (a) of the Act provides that CASA may issue instruments in relation to matters affecting the safe navigation and operation or the maintenance of aircraft. Additionally, paragraph 98 (5AA) (a) of the Act provides that an instrument issued under paragraph 98 (5A) (a) is a legislative instrument if the instrument is expressed to apply in relation to a class of persons. The instrument directs a class of persons, being the pilot in command of an Australian aircraft or a foreign registered aircraft, to comply with interception procedures. 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

Consultation under section 17 of the LA has not been undertaken in this case.

The direction ensures Australia meets its international obligations under the Chicago Convention by having in place comprehensive legislative instruments regarding the interception of civil aircraft. The direction does not alter the AIP interception procedures but provides a mechanism for the enforcement of those procedures. For these reasons, CASA is satisfied that no further consultation is appropriate or reasonably practicable for this instrument for section 17 of the LA.

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement (*RIS*) is not required in this case, as the direction is covered by a standing agreement between CASA and OBPR under which a RIS is not required for exemptions (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 and is repealed at the end of 31 July 2022.

[Instrument number CASA 73/17]

Statement of Compatibility with Human Rights

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

Direction — interception of civil aircraft in Australian territory

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 instrument enables the enforcement of procedural requirements established by international agreement to be followed by the pilot in command of any aircraft operating in Australian territory, in the event of an aircraft interception by the Defence Force or Australian Federal Police acting under authority of the Commonwealth.

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