Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA 26/21 – Direction – Australian Aircraft and Foreign Registered Aircraft in Australian-administered Airspace Instrument

Purpose

The purpose of this direction instrument is to make new rules governing the use of certain airspace (***relevant airspace***) in Australian-administered airspace outside Australian territory. International airspace is allocated to Australia for the purposes of airspace administration.

The Chicago Convention does not permit Australia to enforce any flight restriction on foreign registered aircraft in such international airspace. However, the relevant airspace is also used by Australia for military exercises and military flying, presenting threats, or potential dangers, to unwitting and uncontrolled aviation in the relevant airspace unless appropriate precautions are taken.

Previously, Australia had sought to protect aviation in relevant airspace through an unenforceable statement, embodied in an otherwise enforceable bi-annual *Designation of Prohibited, Restricted and Danger Areas – Declaration and Determination (Permanent PRDs) Instruments*, that the airspace was a restricted area, access to which was subject to permission from controlling authorities, or a danger area with open access but subject to cautionary advice. It is now considered that this unenforceable but precautionary announcement is not in conformity with the requirements of the Convention which mandates absolutely free access.

Therefore, before the end of 2022, the *Airspace Regulations 2007* (the ***AsR***) will be amended to remove any reference to the relevant airspace being "restricted" areas, and will redesignate these areas as danger areas, which will include military exercise areas and military training areas.

Pending the development and making of such regulations, the Direction will have the legal effect that, for foreign registered aircraft, references in the periodic *Designation of Prohibited, Restricted and Danger Areas – Declaration and Determination (Permanent PRDs) Instruments* to so much of the restricted areas and danger areas as lie in Australian-administered airspace outside Australian territory will be read down so that these areas are treated as if they were not restricted areas or danger areas but rather areas in which it is *strongly recommended* that what would otherwise be the requirements of such areas should be adhered to.

However, Australian aircraft, and foreign registered aircraft operated under an Australian air operator's certificate (an ***AOC***) or a Part 141 (flight training) certificate (***foreign registered but Australian-operated aircraft***) are directed to comply with the requirements as if the areas were enforceable restricted areas or danger areas. This extra safety measure for such aircraft in the relevant airspace is considered necessary for aviation safety and not inconsistent with the Chicago Convention.

It is expected that although the legal arrangements have been modified, actual aviation practices will not alter as the direction instrument seeks to preserve the same operational level of aviation safety in the relevant airspace as previously existed.

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 11.245 (1) of the *Civil Aviation Safety Regulations 1998* (***CASR***), for subsection 98 (5A) of the Act, the Civil Aviation Safety Authority (***CASA***) may, by instrument, issue a direction about, among other things, any matter affecting the safe navigation and operation of aircraft. Under subregulation 11.245 (2), CASA may issue such a direction: only if CASA is satisfied that it is necessary to do so in the interests of the safety of air navigation; and only if the direction is not inconsistent with the Act; and only for the purposes of CASA's functions. Under regulation 11.250 of CASR, a direction under regulation 11.245 ceases to be in force — if it specifies a day on which it ceases to be in force (which is the case here) — on the specified day.

Background
Every 6 months, CASA issues an instrument entitled *Designation of Prohibited, Restricted and Danger Areas — Declaration and Determination (Permanent PRDs) Instrument*, (the ***Declaration Instrument***) made under regulations 6, 7 and 9 of the AsR.

These instruments declare areas in Australian-administered airspace that are, relevantly, restricted areas or danger areas. Australian-administered airspace is airspace allocated to Australia by the International Civil Aviation Organization (***ICAO***) under the Chicago Convention and for which Australia has accepted responsibility. Australian-administered airspace includes the airspace over Australian territory and large masses of international airspace around Australia. Australian territory includes external Territories, territorial seas and related airspace.

Under subregulation 6 (3) of the AsR, CASA must not declare an area to be a restricted area unless it is necessary, for safety, security or environmental reasons, to restrict the flight of aircraft over the area to aircraft flown in accordance with specified conditions. A common critical condition for access to a restricted area is the granting of permission to enter the area given by a Controlling Authority. One reason for creating restricted areas is to allow military flying training to occur in the airspace, in which case the Controlling Authority is a relevant part of the Australian Defence Force (the ***ADF***).

Under subregulation 6 (4) of the AsR, CASA must not declare an area to be a danger area unless there exists within or over the area an activity that is a potential danger to aircraft flying over the area. However, access to the airspace is not restricted as such, though preliminary liaison with a prescribed Contact for the area is strongly recommended. One reason for creating danger areas areas is to allow military flying training to occur in the area, in which case the prescribed Contact is a relevant part of the ADF.

Under subregulation 6 (5) of the AsR, a declaration must specify an area by reference to its boundaries, and may specify the boundaries of an area to extend to a volume of airspace.

The bi-annual Declaration Instruments are based on numerous volumetric delineations of would-be restricted areas and danger areas throughout Australian-administered airspace,

made in the advisory Designated Airspace Handbook (the ***DAH***) issued by Airservices Australia. The DAH is part of the suite of aviation safety *advisory material* contained in the Aeronautical Information Publication (the ***AIP***). CASA's Declaration Instruments support this advisory material by enabling the conditions required for access to restricted areas to be legally enforced, and infringements penalised.

However, under the empowerment in subregulation 6 (1) of the AsR, this enforcement capability against both Australian aircraft and foreign registered aircraft only extends to *Australian territory* and not to the boundaries of Australian-administered airspace beyond that.

Foreign registered aircraft

Thus, although areas outside Australian territory are advised and described in the Declaration Instruments as restricted areas (and danger areas), they are not legally enforceable as such against foreign registered aircraft. However, the long-standing practice of announcing, albeit non-enforceable, restricted areas and danger area over international waters has been identified by ICAO as non-compliant with Australia's international obligations under the Chicago Convention and the United Nations Convention for the Law of the Sea (***UNCLOS***). In 2019, ICAO (through the Air Traffic Management Steering Group) raised a deficiency against Australia (SAIOACG 9 (29/03/2019)), requiring rectification.

The long-term solution will involve amendments to the AsR, expected to be in place by 30 June 2022 (although a contingency date of 1 December 2022 is expressed for the repeal of the direction instrument). In the meantime, CASA has issued a direction to clarify the status of so-called restricted areas and danger areas in Australian-administered airspace outside Australian territory, in a way that is consistent with Australia's international obligations while at the same time endeavouring to preserve the highest possible operational level of aviation safety for foreign registered aircraft in relation to areas where military flying training may be occurring.

Australian aircraft

A further consequence of Australian-administered areas outside Australian territory being described in the Declaration Instruments as restricted areas (and danger areas) for advisory purposes, although not legally enforceable as such, is that compliance with the conditions for access to restricted areas where military flying training is occurring cannot be enforced against *Australian aircraft.*

In this case, the concern is not for international comity but for the interests of aviation safety in relation to such Australian aircraft.

Once again, the long-term solution will involve amendments to the AsR, expected to be in place by 30 June 2022. In the meantime, CASA has issued a direction to, in effect, require operators and pilots in command of Australian aircraft to comply with the requirements of declared restricted areas and danger areas in Australian-administered areas outside Australian territory. The direction also applies to foreign registered aircraft operated under an Australian AOC or a Part 141 certificate.

It is not expected that operations by foreign registered aircraft, or Australian aircraft, or foreign registered but Australian-operated aircraft will be significantly impacted by the direction. The vast majority of operators and pilots in command comply with the

requirements of restricted areas and danger areas without any need for penal enforcement because observance of the requirements of the areas ensures safe passage in, near or through the airspace without risk from military flying training.

Direction instrument
Because of its technical nature, details of the direction instrument are set out in Appendix 1. The following is a summary of the main elements.

As noted above, there is no issue of legal enforceability for Declaration Instruments in relation to restricted areas and danger areas, or so much of such, *as lies in Australian territory*. The object of the direction instrument is to create appropriate enforcement potential for Australian aircraft, and foreign registered but Australian-operated aircraft, and a suitable advisory regime for foreign registered aircraft, in respect of restricted areas and danger areas lying in Australian-administered airspace that is outside Australian territory.

Declaration Instruments, as in force form time to time, relevantly comprise 2 Schedules — Schedule 1 for restricted areas and Schedule 2 for danger areas. Insofar as areas inside Australian-administered airspace but outside Australian territory are concerned, the areas factually exist as identified volumes of airspace for which access conditions are expressed although not legally enforceable as restricted areas and danger areas. The direction instrument harnesses this factual identification of relevant areas.

For Australian aircraft, foreign registered but Australian-operated aircraft, and foreign registered aircraft, the direction instrument accepts the factual and ascertainable existence of these areas and relevantly classifies and renames them as Schedule 1 OAAA areas and Schedule 2 OAAA areas (short for other Australian-administered airspace).

Under subsection 4 (2), the pilot in command of an Australian aircraft is directed not fly over a Schedule 1 OAAA area except in accordance with the conditions expressed in Schedule 1 of the Declaration Instrument as if they applied for permitted flight over the area.

Under subsection 4 (3), the pilot in command of an Australian aircraft is directed that, if flying over a Schedule 2 OAAA area, the pilot in command must take such precautions, and make such contacts, as a reasonable pilot, in the same circumstances, would take and make for an area within or over which exists an activity that is a potential danger to aircraft flying over the area.

Under subsection 5 (2), the pilot in command of a foreign registered but Australian-operated aircraft is directed not to fly over a Schedule 1 OAAA area except in accordance with the conditions expressed in Schedule 1 of the Declaration Instrument, as if they applied for permitted flight over the area.

Under subsection 5 (3), the pilot in command of a foreign registered but Australian-operated aircraft is directed that, if flying over a Schedule 2 OAAA area, the pilot in command must take such precautions, and make such contacts, as a reasonable pilot, in the same circumstances, would take and make for an area within or over which exists an activity that is a potential danger to aircraft flying over the area.

Under subsection 6 (2), the pilot in command of a foreign registered aircraft is directed that, if flying over a Schedule 1 OAAA area, the pilot in command of the aircraft must take such

precautions, and make such contacts, as a reasonable pilot, in the same circumstances, would take and make for an area within or over which exist threats to the safe navigation of aircraft flying over the area.

Under subsection 6 (3), the pilot in command of a foreign registered aircraft is directed that, if flying over a Schedule 2 OAAA area, the pilot in command must take such precautions, and make such contacts, as a reasonable pilot, in the same circumstances, would take and make for an area within or over which exists an activity that is a potential danger to aircraft flying over the area.

The Declaration Instrument is sometimes supplemented by temporary restricted area instruments and temporary danger area instruments of not more than 3 months duration. Under section 7, the direction instrument will apply to any relevant restricted areas or danger areas *temporarily declared* for Australian-administered airspace outside Australian territory, in the same way as it applies for such areas under sections 4, 5 and 6.

Incorporation
The Declaration Instruments, as in force from time to time, are non-legislative instruments that are incorporated into the direction instrument (as permitted under subsection 98 (5D) of the Act, including in respect of future Declaration Instruments not yet in existence) and must be read subject to the direction instrument. The Declaration Instrument is freely available on the CASA website.

Legislation Act 2003 (the *LA*)
As noted above, directions under subregulation 11.245 (1) of CASR are "for subsection 98 (5A)" of the Act, that is, for regulations which empower the issue of certain instruments, like directions, in relation to "(a) matters affecting the safe navigation and operation, or the maintenance, of aircraft", and "(b) the airworthiness of, or design standards for, aircraft".

The direction is clearly one in relation to matters affecting the safe navigation and operation of aircraft. Under subsection 98 (5AA) of the Act, a direction issued under paragraph 98 (5A) (a), for such matters, is a legislative instrument if expressed to apply in relation to a class of persons, a class of aircraft or a class of aeronautical products (as distinct from a particular person, aircraft or product).

The direction applies to the class of aircraft operators and pilots in command who may fly in Australian-administered airspace outside Australian territory and it is, therefore, a legislative instrument subject to registration, and tabling and disallowance in the Parliament, under sections 15G, and 38 and 42, of the LA.

Consultation
Under section 16 of the Act, in performing its functions and exercising its powers CASA must consult government, industrial, commercial, consumer and other relevant bodies and organisations insofar as CASA considers such consultation to be appropriate.

Under section 17 of the LA, before a legislative instrument is made, CASA must be satisfied that it has undertaken any consultation it considers appropriate and practicable, in order to draw on relevant expertise and involve persons likely to be affected by the proposals.

CASA does not consider that consultation as such is practicable or appropriate, and is satisfied that, in the context of its planned information and communication initiatives directed towards the relevant aviation industry sector, such consultation is unnecessary.

As mentioned above, CASA is responding to ICAO's identified non-compliance with Australia's international obligations under the Chicago Convention and UNCLOS. The long-term solution to this identified deficiency will involve amendments to the AsR which will, in the usual course of development, be the subject of aviation industry consultation. This temporary solution is a technical solution to the identified problem in a way that enables Australia to achieve conformity with the Convention while maintaining and promoting the essentially safe aviation practices that had previously pertained, though in a form that was not in treaty conformity.

It is not expected that, in the relevant international airspace, relevant foreign registered aircraft or Australian aircraft will depart from the previously safe navigation practices that had pertained. In the case of relevant foreign registered aircraft, the aircraft operators and pilots in command will be compelled by the commonsense requirements of aviation safety to observe and act upon the threats and potential dangers to safe navigation that may arise from time to time due to military exercises and military training.

It is also considered urgent and necessary to make the direction instrument as soon as practicable to enable the Australian Defence Force, in particular the Royal Australian Air Force, to have the certainty required to begin the process of assessing procedures and practices, and consulting with both CASA and Airservices Australia, before the planned regulation amendments commence in June 2022.

Office of Best Practice Regulation (*OBPR*)
Consistent with Office of Best Practice Regulation Guidance, a RIS is not required for the direction instrument because it is a machinery direction which does not substantially alter existing arrangements and is required under the Act and the relevant regulations for the purposes of, and in the course of, their administration by CASA (OBPR id: 14507).

Statement of Compatibility with Human Rights
The Statement in Appendix 2 is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (the ***HR Act***). The direction instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the HR Act and, to the extent that it engages relevant rights, it does so in a reasonable, necessary and proportionate way to promote relevant rights to life, to work and to safe and healthy working conditions.

Commencement and making
The direction instrument commences on 15 April 2021 and is repealed at the end of 30 November 2022 (thereby ceasing to be in force on and from the beginning of 1 December 2022). A note in the instrument explains that the instrument may be sooner repealed following the commencement of substitute regulations currently under development.

Appendix 1

Details of the direction

CASA 26/21 – Direction – Australian Aircraft and Foreign Registered Aircraft in Australian-administered Airspace Instrument 2021

1 Name

Under this section, the instrument is entitled *CASA 26/1 – Direction – Australian Aircraft and Foreign Registered Aircraft in Australian-administered Airspace Instrument 2021*.

2 Commencement

Under this section, the instrument commences on 15 April 2021 and is repealed at the end of 30 November 2022 (thereby ceasing to be in force on and from the beginning of 1 December 2022).

3 Definitions

Under this section, the instrument creates key definitions for its operation. In particular:

Declaration Instrument means the bi-annual CASA instrument titled *Designation of Prohibited, Restricted and Danger Areas — Declaration and Determination (Permanent PRDs) Instrument*, made under regulations 6, 7 and 9 of the *Airspace Regulations 2007*.

Schedule 1 means Schedule 1 of the Declaration Instrument for restricted areas.

Schedule 2 means Schedule 2 of the Declaration Instrument for danger areas.

Schedule 1 OAAA area means so much of an area, described in Schedule 1, as lies outside Australian territory in other Australian-administered airspace.

Schedule 2 OAAA area means so much of an area, described in Schedule 2, as lies outside Australian territory in other Australian-administered airspace.

temporary danger area declaration instrument means a temporary CASA instrument made under regulations 6, 7 and 9 of the *Airspace Regulations 2007* referring to areas expressed to be danger areas.

temporary restricted area declaration instrument means a temporary CASA instrument made under regulations 6, 7 and 9 of the *Airspace Regulations 2007* referring to areas expressed to be restricted areas.

4 Direction – Australian aircraft – restricted areas and danger areas

This section applies to the operator and the pilot in command of an *Australian aircraft* in relation to:

(a) a Schedule 1 OAAA area; or

(b) a Schedule 2 OAAA area.

The pilot in command must not fly over a Schedule 1 OAAA area [previously declared restricted areas] except in accordance with the conditions expressed in Schedule 1 of the Declaration Instrument for permitted flight over the area.

If flying over a Schedule 2 OAAA area [previously declared danger areas], the pilot in command must take such precautions, and make such contacts, as a reasonable

pilot, in the same circumstances, would take and make for an area within or over which exists an activity that is a potential danger to aircraft flying over the area.

The operator of the Australian aircraft must ensure that the pilot in command complies.

5 Direction — foreign registered aircraft operated under an Australian AOC or by a Part 141 operator — restricted areas and danger areas

This section applies to the operator and the pilot in command of a foreign registered aircraft that is operated under an Australian AOC or a Part 141 certificate, in relation to:

(a) a Schedule 1 OAAA area; and

(b) a Schedule 2 OAAA area.

The detail in this section is required to cover a range of flight options into and out of Australia depending on whether or not a putative restrictive area in international airspace is, or is not, contiguous with Australian territory. Thus, the pilot in command must not fly:

(a) into Australian territory:

(i) from a Schedule 1 OAAA area; or

(ii) having, during the flight, flown in a Schedule 1 OAAA area; or

(b) from Australian territory:

(i) into a Schedule 1 OAAA area; or

(ii) on a flight that flies into a Schedule 1 OAAA area;

unless the flight in the Schedule 1 OAAA area was or is conducted in accordance with the conditions expressed in Schedule 1 of the Declaration Instrument as if they applied for permitted flight over the area.

Similarly, for putative danger areas, the pilot in command may fly:

(a) into Australian territory:

(i) from a Schedule 2 OAAA area; or

(ii) having, during the flight, flown over a Schedule 2 OAAA area; or

(b) from Australian territory:

(i) into a Schedule 2 OAAA area; or

(ii) on a flight that flies into a Schedule 2 OAAA area;

provided that the pilot in command takes such precautions, and makes such contacts, as a reasonable pilot, in the same circumstances, would take and make for an area within or over which exists an activity that is a potential danger to aircraft flying over the area.

The operator of the aircraft must ensure that the pilot in command complies.

6 Direction – foreign registered aircraft – restricted areas and danger areas

This section applies to the operator and the pilot in command of a *foreign registered aircraft* in relation to:

(a) a Schedule 1 OAAA area; or

(b) a Schedule 2 OAAA area.

If flying over a Schedule 1 OAAA area [previously declared restricted areas], the pilot in command of the aircraft must take such precautions, and make such contacts, as a reasonable pilot, in the same circumstances, would take and make for an area within or over which exist *threats* to the safe navigation of aircraft flying over the area.

If flying over a Schedule 2 OAAA area [previously declared danger areas], the pilot in command must take such precautions, and make such contacts, as a reasonable pilot, in the same circumstances, would take and make for an area within or over which exists an activity that is a potential danger to aircraft flying over the area.

(4) The operator of the foreign registered aircraft must ensure that the pilot in command complies.

7 Direction – Australian and foreign aircraft – temporary restricted areas and temporary danger areas

This section applies to:

(a) the operator and the pilot in command of an Australian aircraft; and

(b) the operator and the pilot in command of a foreign registered aircraft.

The directions in sections 4 and 5 of the instrument are expressed to also apply, *mutatis mutandis*, to the relevant operator and pilot in command for aircraft flight in relation to an area:

(a) expressed in a temporary restricted area declaration instrument to be a temporary restricted area; or

(b) expressed in a temporary danger area declaration instrument to be a temporary danger area;

as if, in this direction instrument:

(c) references to a Schedule 1 OAAA area — were to an area described in the temporary restricted area declaration instrument as a restricted area, outside Australian territory in other Australian-administered airspace; and

(d) references to a Schedule 2 OAAA area — were to an area described in the temporary danger area declaration instrument as a danger area, outside Australian territory in other Australian-administered airspace.

Appendix 2

Statement of Compatibility with Human Rights

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

CASA 26/21 – Direction – Australian Aircraft and Foreign Registered Aircraft in Australian-administered Airspace Instrument

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 purpose of this direction instrument is to make new rules governing the use of certain airspace (***relevant airspace***) in Australian-administered airspace outside Australian territory. International airspace is allocated to Australia for the purposes of airspace administration.

The Chicago Convention does not permit Australia to enforce any flight restriction on foreign aircraft in such international airspace. However, the relevant airspace is also used by Australia for military exercises and military flying, presenting threats, or potential dangers, to unwitting and uncontrolled aviation in the relevant airspace.

Previously, Australia had sought to protect aviation in relevant airspace through an unenforceable statement, embodied in an otherwise enforceable bi-annual *Designation of Prohibited, Restricted and Danger Areas – Declaration and Determination (Permanent PRDs) Instruments*, that the airspace was a restricted area, access to which was subject to permission from controlling authorities, or a danger area with open access but subject to cautionary advice. It is now considered that this unenforceable but precautionary announcement is not in conformity with the requirements of the Convention which mandates absolutely free access.

Therefore, before the end of 2022, the *Airspace Regulations 2007* will be amended to remove any reference to the relevant airspace being "restricted" areas, and will redesignate these areas as danger areas, which will include military exercise areas and military training areas.

Pending the development and making of such regulations, the direction will have the legal effect that, for foreign registered aircraft, references in the periodic *Designation of Prohibited, Restricted and Danger Areas – Declaration and Determination (Permanent PRDs) Instruments* to so much of the restricted areas and danger areas as lie in Australian-administered airspace outside Australian territory will be read down so that these areas are treated as if they were not restricted areas or danger areas but rather areas in which it is *strongly recommended* that what would otherwise be the requirements of such areas should be adhered to. However, Australian aircraft, and foreign registered but Australian-operated aircraft, are directed to comply with the requirements as if the areas were restricted areas or danger areas. This extra safety measure for Australian aircraft, and foreign registered but Australian-operated aircraft in the relevant airspace is considered necessary for aviation safety and not inconsistent with the Chicago Convention.

It is expected that although the legal arrangements have been modified, actual aviation practices will not alter as the direction seeks to preserve the same level of operational aviation safety in the relevant airspace as previously existed.

Human rights implications
The direction instrument may engage the following human rights:

- the right to life under Article 6 of the International Covenant on Civil and Political Rights (the ***ICCPR***);
- the right to work under Article 6 (1) and the right to safe and healthy working conditions under Article 7 of the International Covenant on Economic, Social and Cultural Rights (the ***ICESCR***).

Right to life under the ICCPR
Right to work and to safe and healthy working conditions under the ICESCR
The direction may engage these rights. This engagement is in the context of CASA's statutory purpose. The aim of CASA and its regulatory framework, including in the direction, is to uphold aviation safety by prescribing appropriate safety rules and practices.

It is, therefore, a threshold requirement for all CASA legislative instruments that they preserve, promote and enhance aviation safety. The direction promotes the right to life under Article 6 of the ICCPR by legislating for the safe use of threatened or potentially dangerous airspace, but through a different legal arrangement than was the case before. Australian aircraft, and foreign but Australian operated aircraft, are subject to the direction's requirements in the interests of safety. For other foreign registered aircraft, the previous arrangement was an unenforceable announcement in the bi-annual *Designation of Prohibited, Restricted and Danger Areas – Declaration and Determination (Permanent PRDs) Instruments.* This is replaced, in effect, with strong recommendations intended to preserve the same level of aviation safety as pertained before. It is expected that there will be no change in actual aviation practices and the direction instrument will, therefore, continue to minimise the risk of accidents and prevent accidental death in the relevant airspace.

As a consequence of the foregoing, for Article 7 of the ICESCR, the direction instrument will also promote the right to safe and healthy working conditions for pilots of aircraft in the relevant airspace.

For the right to work under Article 6 (1) of the ICESCR, the enforceable direction instrument will require aircraft operators and pilots in command to observe the restricted airspace requirements which previously, strictly speaking, were unenforceable. However, this is reasonably required in the interests of aviation safety and it is not expected to result in any change of actual flying practices from those previously followed.

Human rights implications
The direction 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. To the extent that the instrument does engage any of the applicable rights or freedoms it does so positively to promote the right to life under the ICCPR and the right to safe and healthy working conditions under the ICESCR, and insofar

as it affects the right to work, the direction is reasonable, necessary and proportionate to the risks it seeks to address.

Conclusion

This legislative instrument is compatible with human rights, and to the extent that it engages relevant rights, it does so in a reasonable, necessary and proportionate way.

Civil Aviation Safety Authority