

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA 44/19 — Temporary Prohibition of Operations (GippsAero GA8 Airvan) Direction 2019

Purpose

The purpose of this instrument is to prohibit aircraft operators and other persons from operating any variant of the GA8 Airvan aircraft within Australian territory, or, if the aircraft is Australian registered, outside of Australian territory, for a period of 15 days. The prohibition is due to concerns regarding the safety of GA8 Airvan aircraft.

Legislation

Section 98 of the *Civil Aviation Act 1988* (the *Act*) empowers the Governor-General to make regulations for the Act and in the interests of the safety of air navigation. Relevantly, the Governor-General has made the *Civil Aviation Safety Regulations 1998* (*CASR*) and *Civil Aviation Regulations 1988* (*CAR*).

Subpart 11.G of CASR provides for the Civil Aviation Safety Authority (*CASA*) to issue directions in relation to matters affecting the safety of air navigation. Under paragraph 11.245 (1) (a) of CASR, for subsection 98 (5A) of the Act, 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 for a person to contravene a direction under regulation 11.245.

Subsection 26 (2) of the Act, read with section 14 of the *Air Navigation Act 1920* (*ANA*), has effect to permit a person to operate a foreign registered aircraft into Australia, and land in Australia, in a non-scheduled flight. However, in giving effect to the Convention on International Civil Aviation (*Chicago Convention*), section 14 of the ANA is subject to clause 9 (b) of the Chicago Convention which preserves for contracting States the right to temporarily prohibit flying over its territory, provided that the prohibition applies without restriction to aircraft of all States.

Background

The GA8 Airvan aircraft is manufactured in Australia by GippsAero Pty Ltd at Latrobe Valley Airport in Victoria. The aircraft and its variants have been type certificated by CASA under Part 21 of CASR.

On 14 July 2019, a GA8-TC 320 aircraft being operated in parachuting operations lost control and impacted terrain near Umea in Sweden. The aircraft was destroyed and the 9 occupants were all fatally injured.

In the wake of the accident Swedish aviation authorities, with assistance from the aviation authorities of other countries including Australia, have commenced to investigate the causes of the accident.

Based on their initial enquiries, the Swedish aviation authorities have been sufficiently concerned about the possible causes of the accident to suspend operations of the GA8 Airvan aircraft in Swedish airspace.

In order to understand the nature of the concerns which have led to this decision, and to safeguard the interests of air safety in the meantime, CASA has determined to suspend operations of GA8 Airvan aircraft within Australian territory for a period of 15 days as a precaution.

It is anticipated that this time period will provide sufficient time for CASA to liaise with the Swedish authorities to determine whether any further action is required in the interests of safety in order to ensure the immediate safety of GA8 Airvan aircraft operating within Australia.

Overview of instrument

The instrument is a direction under regulation 11.245 of CASR that prohibits a person from operating a GA8 Airvan aircraft in Australian territory, or, if the aircraft is Australian registered, outside of Australian territory.

The concept of “operate” covers both an actual flight of an aircraft by a pilot and the organisation of a flight of an aircraft by a person. A person may be either a natural person or a corporate entity.

CASA has assessed the impact the instrument will have on aviation safety and is satisfied that the short term suspension is a reasonable and proportionate response to the legitimate concerns regarding the safety of the aircraft which arise from the decision of the Swedish authorities to suspend operations of the aircraft in Swedish airspace.

Content of instrument

Section 1 of the instrument sets out the name of the instrument.

Section 2 of the instrument sets out the duration of the instrument. The instrument commenced on the day it was registered and is repealed at the end of 15 days from the day it was registered. A note to the section explains that, for regulation 11.250 of CASR, the direction ceases to be in force on the day the instrument is repealed.

Section 3 sets out a direction. The direction is that a person must not operate a GA8 Airvan aircraft variant in Australian territory, or, if the aircraft is Australian registered, outside Australian territory. A note under this section points out that Australian territory has the meaning as defined in section 3 of the Act.

Section 3 of the Act defines *Australian territory* as meaning the territory of Australia and of every external Territory, the territorial sea of Australia and of every external Territory, and the airspace over any such territory or sea.

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 is a direction, made for subsection 98 (5A) of the Act, prohibiting all persons from operating GA8 Airvan aircraft in Australian territory, or, if the aircraft is Australian registered, outside of Australian territory. 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 would not be appropriate in this instance given the seriousness of the concerns that have given rise to the urgent precautionary action taken by CASA in issuing this instrument. Given the decision of the Swedish authorities to ground GA8 Airvan aircraft operations in Sweden, and the need to act swiftly in the interests of safety in light of that decision, CASA is satisfied that no 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 exemption is covered by a standing agreement between CASA and OBPR under which a RIS is not required for directions (OBPR id: 14507).

Statement of Compatibility with Human Rights

The instrument is compatible with human rights. A Statement of Compatibility with Human Rights is at Attachment 1.

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 commenced on the day it was registered and is repealed at the end of 15 days after the day it was registered.

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 instrument is a direction under regulation 11.245 of CASR that prohibits a person from operating a GA8 Airvan aircraft variant in Australian territory, or, if the aircraft is Australian registered, outside Australian territory.

Human rights implications

The instrument potentially engages negatively with the right to work, as by prohibiting GA8 Airvan aircraft from being operated in Australian territory it has the effect of preventing Australians working on or in such aircraft, whether as crew members or ground crew. The instrument also engages positively with rights at work by ensuring that no person works in Australia as a crew member on aircraft that may be unsafe, on the basis of the recent fatal accident in Sweden and the safety action now taken by the Swedish aviation authorities. Any limitation on human rights is reasonable, necessary and proportionate given the need to protect the safety of air navigation, prevent aircraft accidents and protect human life.

Conclusion

This legislative instrument is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Civil Aviation Safety Authority