



Australian Government

Civil Aviation Safety Authority

Instrument number CASA EX86/18

I, ANDREW MELVIN SPARROW, Acting Executive Manager, National Operations & Standards Division, Aviation Group, a delegate of CASA, make this instrument under subregulations 99AA (3) and 174A (3) of the *Civil Aviation Regulations 1988* and regulations 11.056, 11.160, 11.205 and 11.245 of the *Civil Aviation Safety Regulations 1998*.

[Signed A. Sparrow]

Andrew Sparrow

Acting Executive Manager, National Operations & Standards Division
Aviation Group

11 July 2018

CASA EX86/18 — Use of Class A Airspace by Gliders Exemption 2018

1 Name

This instrument is *CASA EX86/18 — Use of Class A Airspace by Gliders Exemption 2018*.

2 Duration

This instrument:

- (a) commences on the day it is registered; and
- (b) is repealed at the end of 30 June 2021.

3 Definitions

Note In this instrument certain terms and expressions have the same meaning as they have in the *Civil Aviation Act 1988* and the regulations. These include *AIP*, *ATS provider*, *flight level 290* and *NOTAMS*.

In this instrument:

AA means Airservices Australia, ARN 202210, in its capacity as an ATS provider.

ADS-B means automatic dependent surveillance - broadcast.

CAO 20.18 means the *Civil Aviation Order 20.18 (Aircraft equipment — basic operational requirements) Instrument 2014*.

CFI means the person designated in writing as the chief flying instructor of a GFA affiliate, or a person exercising delegated authority of the chief flying instructor.

CFI directions means written requirements for the flight of a glider issued by a CFI, as the CFI directions exist at the time of the flight.

Class A airspace means the volumes of airspace determined as being Class A in the legislative instrument *Determination of airspace and controlled aerodromes*

etc made under regulation 5 of the *Airspace Regulations 2007*, as in force from time to time.

duty instructor for a gliding operation to be held in Class A airspace covered by an LOA means the person who is:

- (a) authorised in writing by the CFI of the GFA affiliate that is coordinating the gliding operation; and
- (b) responsible for the safe and efficient conduct of the operation.

GFA means The Gliding Federation of Australia, ARN 217932.

GFA affiliate means a gliding club or association that is affiliated with the GFA.

LOA means a letter of agreement signed by AA and the GFA, or by AA and a GFA affiliate that:

- (a) is in effect on the day of, or in relation to, glider operations; and
- (b) describes the area within which glider operations may be conducted in Class A airspace; and
- (c) specifies the limitations and conditions (however described) on which AA agrees to the conduct of glider operations in Class A airspace within the area mentioned in the agreement.

4 Application

This instrument applies in relation to the operation of a glider in Class A airspace covered by an LOA, if:

- (a) the pilot in command of the glider is a member of the GFA; and
- (b) before entering the Class A airspace — the pilot in command has confirmed with the CFI or duty instructor that the operation in the Class A airspace is covered by the LOA and has been cleared by AA.

5 Approval

- (1) For subregulation 99AA (3) of CAR, the pilot in command of a glider is approved to engage in a V.F.R. flight in the glider in Class A airspace.
- (2) For regulation 11.056 of CASR, the approval is subject to the conditions mentioned in section 8.

6 Permission

- (1) For subregulation 174A (3) of CAR, the pilot in command of a glider that is not equipped with a serviceable secondary surveillance transponder is permitted to fly the glider in Class A airspace under the V.F.R.
- (2) For regulation 11.056 of CASR, the permission is subject to the conditions mentioned in section 8.

Note Instrument DADR 2/1994, issued under subregulation 174A (1), requires aircraft operating under the V.F.R. in controlled airspace to carry a secondary surveillance transponder.

7 Exemptions

- (1) For regulation 11.160 of CASR, a person operating a glider in a flight in Class A airspace above flight level 290 is exempt from compliance with subregulation 207 (2) of CAR and subsection 9B.8 of CAO 20.18, to the extent that the subsection requires the glider to carry ADS-B transmitting equipment.
- (2) For regulation 11.160 of CASR, a person operating a glider in Class A airspace is exempt from compliance with subregulation 207 (2) of CAR and subsection 9E.2 of CAO 20.18, to the extent that the subsection requires the glider to carry Mode S transponder equipment.

- (3) For regulation 11.205 of CASR, the exemptions are subject to the conditions mentioned in section 8.

8 Conditions

- (1) The pilot in command of the glider must conduct the operation in the Class A airspace in accordance with:
 - (a) the CFI directions that are issued in relation to the operation; and
 - (b) the conditions and limitations for the operation in the Class A airspace that are mentioned in the LOA that covers the Class A airspace; and
 - (c) any other requirements for the safe conduct of the operation in Class A airspace communicated to the pilot during the briefing mentioned in subsection (2).
- (2) Before operating a glider in Class A airspace under the V.F.R., the pilot in command of the glider must, on the day of the operation, receive a briefing from the CFI or duty instructor about:
 - (a) the matters mentioned in paragraphs (1) (a) and (b); and
 - (b) any other requirements for the safe conduct of the operation in Class A airspace.
- (3) The pilot in command of the glider must:
 - (a) when operating in Class A airspace, carry and use a serviceable VHF radio to communicate with other aircraft in accordance with any directions issued by CASA under regulation 99A of CAR; and
 - (b) exit Class A airspace as quickly as is safely practicable if the pilot becomes aware that the VHF radio is not functioning correctly.

Note Directions issued under regulation 99A of CAR are published in the AIP or NOTAMS.

9 Direction

For regulation 11.245 of CASR, I direct the CFI of a GFA affiliate that is coordinating the operation of a glider in Class A airspace to ensure that the pilot in command of the glider is provided with:

- (a) the CFI directions that are issued in relation to the flight; and
 - (b) the LOA that covers glider operations in the Class A airspace.
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Explanatory Statement

Civil Aviation Safety Regulations 1998

Civil Aviation Regulations 1988

CASA EX86/18 — Use of Class A Airspace by Gliders Exemption 2018

Purpose

Gliders do not normally use Class A airspace. However, with the approval of Airservices Australia (*AA*) and CASA, they do so occasionally for high altitude flight in wave soaring areas in Class A airspace. Before pilots conduct high altitude flights, The Gliding Federation of Australia (*GFA*), or a GFA affiliate, must request clearance from AA. If AA is agreeable, it can make the relevant airspace available to gliders.

The instrument facilitates the activity.

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.

Subsection 98 (5A) of the Act provides that the regulations may empower CASA to issue instruments in relation to the following:

- (a) matters affecting the safe navigation and operation, or the maintenance, of aircraft; or
- (b) the airworthiness of, or design standards for, aircraft.

Subregulation 11.160 (1) of the *Civil Aviation Safety Regulations 1998* (*CASR*) provides that, for subsection 98 (5A) of the Act, CASA may grant an exemption from a provision of the Civil Aviation Orders, 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, 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, an exemption must be published on the Internet. Under subregulation 11.230 (1), the maximum duration of an exemption is 3 years.

Subpart 11.G of 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, 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.

Subregulation 99A (1) of CAR states that the pilot in command of an aircraft commits an offence if he or she engages in a Visual Flight Rules (*V.F.R.*) flight in Class A airspace without CASA's approval.

Paragraph 174A (1) (c) of CAR authorises CASA to issue instructions specifying the secondary surveillance radar transponder (*SSRT*) equipment that must be carried on an aircraft before it undertakes a V.F.R. flight. Subregulation 174A (3) of CAR states that the pilot in command of an aircraft must not fly the aircraft under the V.F.R. if the aircraft is not carrying equipment required by CASA. By instrument DADR 2/1994, issued under subregulation 174A (1), aircraft operating under the V.F.R. in controlled airspace are required to carry a SSRT. However, subregulation 174A (3) enables CASA to give permission, subject to any conditions it considers necessary, for aircraft not carrying the requisite equipment to fly the aircraft under the V.F.R.

Civil Aviation Order 20.18 (*CAO 20.18*) specifies some of the equipment that must be carried on an aircraft. Subsection 9B.8 of CAO 20.18 requires aircraft operating at or above flight level 290 to carry serviceable automatic dependent surveillance - broadcast (*ADS-B*) transmitting equipment.

Subsection 98 (5D) of the Act provides that a legislative instrument made under the Act or the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time, even if the other instrument or writing does not yet exist when the legislative instrument is made.

Background

The instrument facilitates the use of Class A airspace by glider pilots and thereby enables them to operate in wave-soaring areas in that airspace. It permits them to do so without carrying SSRT equipment despite the requirement in DADR 2/1994 that aircraft operating under the V.F.R. in controlled airspace carry such equipment. Historically the permission was needed because gliders did not have an adequate power source and the use of power for SSRT purposes would deplete power needed for other vital equipment.

Although SSRT and ADS-B equipment is now available that is suitable for use in gliders, the cost of such equipment is a disincentive for widespread fitment. The V.F.R. ADS-B project (Project AS 16/06) will consider alternative equipment technologies that are likely to be suitable for gliding operations in Class A airspace constrained within a defined airspace dimension. The project is estimated for completion in 2019/2020. For that reason, the instrument continues to exempt pilots from the requirement to carry the ADS-B equipment which is normally required by paragraph 9B.8 of CAO 20.18.

The previous instrument, CASA 07/15, expired on 31 December 2017. The GFA has requested that the instrument be remade.

Content of instrument

Section 1 names the instrument in a way that allows it to be identified by its name alone, while retaining the ability to search for the instrument using the Federal Register of Legislation using the CASA instrument number.

Under section 2 the instrument commences on the day of registration and is repealed on 30 June 2021.

Section 3 contains definitions, including of the terms *CFI* and *duty instructor*, each being persons associated with the management of gliding operations. The section also defines *CFI directions* as written directions of a CFI in relation to the flight of gliders. *LOA* is defined as a letter of agreement between AA and The Gliding Federation of Australia (*GFA*), or a GFA affiliate, that specifies the conditions on which AA will permit the operation of gliders in Class A airspace.

Section 4 states the application of the instrument. The instrument applies in relation to the operation of a glider in Class A airspace covered by an LOA if the pilot is a member of the GFA and the pilot has confirmed with the CFI or duty instructor that the operation is covered by the LOA and has been cleared by AA.

Section 5 grants an approval for subregulation 99AA (3) of CAR for a glider pilot to whom the instrument applies to operate in Class A airspace under the V.F.R.

Section 6 gives permission for subregulation 174A (3) of CAR for the glider pilot to whom the instrument applies to operate in Class A airspace under the V.F.R. without an SSRT.

Section 7 grants exemptions, under regulation 11.160 of CASR, to the operator of the glider from requirements to carry ADS-B equipment while operating above flight level 290, and to carry Mode S transponder equipment while operating in Class A airspace.

Each of sections 5, 6 and 7 state that the relevant approval, permission and exemptions are subject to the conditions in section 8.

Subsection 8 (1) requires the pilot to conduct the operation in accordance with:

- the CFI directions that have been issued in relation to the flight; and
- the conditions and limitations mentioned in the LOA that covers the Class A airspace; and
- any other requirements for the safe conduct of the operation communicated to the pilot during the briefing mentioned in subsection 8 (2).

The instrument incorporates by reference CFI directions and a relevant LOA.

CFI directions are directions to glider pilots given in relation to glider operations coordinated by the GFA affiliate organisation for which the CFI is performing the CFI role. Accordingly, there are different CFI directions for different GFA affiliate organisations. For subsection 98 (5D) of the Act, CFI directions in relation to a glider operation are incorporated as they exist at the time of the operation, and may not yet exist when the legislative instrument is made. For section 15J of the *Legislation Act 2003* (the *LA*), CFI directions are made available, free of charge, to glider pilots by the relevant CFI or GFA affiliate organisation, and are required to be given to a glider pilot proposing to operate in Class A airspace pursuant to the direction in section 9.

For the purpose of this instrument, an LOA is a letter of agreement between AA on the one hand, and GFA or a GFA affiliate organisation on the other hand, that governs the use of Class A airspace, managed by AA, by glider pilots. A separate LOA is made for each volume of Class A airspace in which gliders operate, and a copy is held by the GFA, or GFA affiliate, that is a party to the LOA. For subsection 98 (5D) of the Act, each LOA is incorporated by reference for a glider pilot as the LOA exists on the day of a flight by the pilot in Class A airspace. For section 15J of the LA, an LOA is made available, free of charge, to glider pilots by the relevant CFI or GFA affiliate organisation that is a party to the LOA, and is required to be given to a glider pilot proposing to operate in Class A airspace pursuant to the direction in section 9.

Subsection 8 (2) makes it a condition for the pilot, before operating a glider in Class A airspace, to receive a briefing from the CFI or duty instructor on the matters mentioned in subsection 8 (1).

Subsection 8 (3) states that the pilot must carry and use a VHF radio to communicate with other aircraft in accordance with any directions issued by CASA under regulation 99A of CAR.

Section 9 gives directions for regulation 11.245 of CASR that ensures that a glider pilot operating in Class A airspace is given access to the CFI directions and LOA that are relevant to the operation and that must be complied with under the terms of the legislative instrument.

Legislation Act 2003

Subsection 98 (5AA) of the Act states that an instrument issued under paragraph 98 (5A) (a) is a legislative instrument if it applies to a class of persons or a class of aircraft. This exemption applies to a class of person and so is a legislative instrument. As a legislative instrument, it is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Consultation

The instrument is issued at the request of the GFA, and AA has indicated support for the remaking of the instrument. This instrument is of the same effect as CASA 07/15, which has not been the subject of any adverse feedback to CASA.

In these circumstances, CASA is satisfied that no further consultation on the instrument is necessary or appropriate.

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 exemption is covered by a standing agreement between CASA and OBPR under which a RIS is not required for exemptions or directions (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.

The instrument commences on the day that it is registered and is repealed at the end of 30 June 2021.

Statement of Compatibility with Human Rights

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

CASA EX86/18 — Use of Class A Airspace by Gliders Exemption 2018

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 allows gliders to use Class A airspace. They do not usually do so, but, under the supervision of The Gliding Federation of Australia, the instrument allows them to carry out high altitude flight in wave-soaring areas.

The instrument is subject to compliance with a letter of approval issued by Airservices Australia and other conditions imposed by CASA in the interest of air safety.

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