

Jerry Swift
Treasurer



[By email]

24 September 2008

Robin Allan – CAA Legal Department

David Miller – Airspace Utilisation

JC McKenna – General Aviation SRG

Gentlemen

CAP 393 – interpretation in respect of kites

Could we request your review of the attached document. Whilst we appreciate that the only definitive guidance on the law is through the courts, you will be able to guide us on the intentions of CAP 393 and whether our interpretation is sufficiently in accord with your view that it may published on our website.

Our analysis has raised a number of issues on which we would appreciate your comments.

Guided by Robin Allan, in Appendix A we have attempted to identify all those Articles that might be relevant to kites. Article 164 excludes all kites under 2 kg (and by extension kite fliers) from much of the order. References either to ‘registered aircraft’, specific exclusions of kites or exclusions on ‘non-EASA kites’ exclude many more for all kites, irrespective of weight.

There are a number of clauses where we can find nothing that excludes them, but where logic suggests it would not be the CAA’s intention to include kites and kite fliers.

Article 52 For kites over 2 kg, pre-flight action by the ‘commander’ may apply as it is not excluded by either 3 (4) or 8 (2) (c). However, the article refers to everything except kites. Clauses (a), (c) and (d) might be applicable. *Was it CAA’s intention that this should be the case?*

Article 65 For kites over 2 kg, towing, picking up and raising of persons and articles might be deemed to be prohibited by this article without appropriate permissions. However the Article also talks only about registered aircraft.

Since there is no requirement to register kites (and we suspect CAA would not wish to require this), this Article appears to make it impossible to lift anything other than “instrument [s] required for experimental purposes”. *Was it CAA’s intention that kite lifting should be prohibited in all cases except for instruments for experimental purposes?*

- Article 66** Dropping of articles or animals. Prohibits the dropping of animals or objects, by parachute or otherwise, without an aerial application certificate in place. BKFA are seeking a permission for teddy parachuting from David Miller on the basis of a comprehensive risk assessment. *However, this clause also has the effect of prohibiting ‘sweet dropping’ without an aerial application certificate. Was this CAA’s intention?*
- Article 67** Dropping of persons and grant of parachuting permissions. Requires a parachuting permission to be in place before allowing parachuting from an aircraft, and requires an aircraft to have a certificate of airworthiness. *As kites are not so certificated, does this preclude parachuting from kites (not that we believe anyone has ever tried it)?*
- Article 68** Grant of aerial application certificates. We believe that this relates to Article 66. We note that by providing a specific list (agriculture, horticulture or forestry), it might be that teddy parachuting and sweet dropping are excluded from the requirements. *We would appreciate clarification of CAA’s intentions.*
- Article 69** Carriage of weapons and munitions of war. For kites weighing more than 2 kg, by virtue of (7) (a) (ii), we believe this Article would apply to any display where fireworks were suspended from kites. This would require written permission from CAA, which seems excessive. *What is the CAA’s intention here?*
- Article 70** Carriage of dangerous goods. Allows the Secretary of State to make regulations about the carriage of dangerous goods by aircraft. Is not specific about what they are but stipulates this is additional to Article 69. *How should this be interpreted for kites in relation to Article 69?*
- Article 80** Flying displays. For kites over 2 kg, as written, this Article would appear to apply to kites. This would mean any kite festival or display requiring an appropriate permission from the CAA. Clause (11) specifically excludes balloons and we suggest it would be appropriate to extend Clause 11 to include kites. *Could CAA confirm that such a change can be made?*
- Article 142** Mandatory reporting of occurrences. The mandatory element does not apply to kites but paragraphs (19) and (20) allow for voluntary reporting of occurrences that the reporter believes are actually or potentially hazardous. *Is it CAA’s intention that kite fliers should report such occurrences?*
- Article 143** Mandatory reporting of birdstrikes. The Article does not exclude kites. Although rare in our experience, birdstrikes have occurred. Is it appropriate that these should be reportable? *What is CAA’s intention in this respect?*

Your guidance on these issues to allow us to give clear guidance would be appreciated.

Yours sincerely

Jerry Swift

Dear Mr Swift

I have the following comments on the points you raise in your letter of 24 September.

I agree that article 52(a), (c) and (d) potentially apply to kites though they would appear to impose no real burden.

I agree that article 65(1) prohibits the use of kites for the purposes specified.

Article 67 prohibits parachuting from any aircraft without an appropriate certificate of airworthiness.

So far as your query about article 68 is concerned, essentially, article 66 imposes a general prohibition on dropping articles and animals from an aircraft. There are two exceptions to this general prohibition –

- dropping articles in accordance with article 66(2), and
- dropping articles under and in accordance with an aerial application certificate issued under article 68.

Article 70 – see the Air Navigation (Dangerous Goods) Regulations 2002 at Section 7 of CAP 393.

I will leave it to SRG and DAP to comment on the questions you raise about intentions and policy and the possibility of amending the ANO.

Yours sincerely

Robin Allan