

Explanatory Statement

Civil Aviation Safety Regulations 1998

Authorisation and exemption — aircraft operating without ADS-B transmitting equipment and carriage of Mode S transponder equipment (Virgin Australia Regional Airlines)

Legislation

Section 98 of the *Civil Aviation Act 1988* (the *Act*) empowers the Governor-General to make regulations for the safety of air navigation.

Subregulation 207 (2) of the *Civil Aviation Regulations 1988* (**CAR 1988**) provides that a person must not use an Australian aircraft in a class of operation if it is not fitted with such instruments, or is not fitted with or carrying such equipment, as CASA has approved and directed. Under subregulation 5 (1) of CAR 1988, where CASA may issue directions under CAR 1988, it may do so in the form of a Civil Aviation Order (**CAO**).

CAO 20.18 sets out directions issued by CASA under regulation 207 of CAR 1988 in relation to the instruments and equipment to be carried on board aircraft.

Paragraph 9B.11 of CAO 20.18 provides that, on or after 4 February 2016, an aircraft that is operated under instrument flight rules (**I.F.R.**) in airspace that is: Class A, B, C or E; and within the arc of a circle that starts 500 nautical miles true north from Perth aerodrome and finishes 500 nautical miles true east from Perth aerodrome (the **Perth quadrant**); must carry serviceable automatic dependent surveillance – broadcast (**ADS-B**) transmitting equipment that complies with specified standards. Paragraph 9B.12 states that paragraphs 9B.8 to 9B.11 do not apply if, under subparagraph (a), CASA has issued a written authorisation to the aircraft owner, operator or pilot for the operation of the aircraft without the ADS-B transmitting equipment based on a safety case.

Separately, paragraph 9E.4 of CAO 20.18 also provides that, on or after 4 February 2016, an aircraft operating at Brisbane, Sydney, Melbourne or Perth aerodrome must carry a serviceable Mode S transponder that meets specified standards.

Under subregulation 11.160 (1) of the *Civil Aviation Safety Regulations 1998* (**CASR 1998**), for subsection 98 (5A) of the Act, CASA may grant an exemption from a provision of a CAO in relation to matters affecting the safe navigation and operation of aircraft.

Under regulation 11.225 of CASR 1998, an exemption must be published on the Internet. Under subregulation 11.230 (1), an exemption ceases on the day specified within it (but no longer than 3 years after its commencement) or, if no day is specified, 3 years after commencement.

Background

Virgin Australia Regional Airlines Pty Ltd (the **operator**) operates a fleet of Fokker F50 aircraft and will be retiring this fleet of aircraft in early 2016. ADS-B requirements and ADS-B compatible Mode S transponder requirements mandated by CAO 20.18 come into effect on 4 February 2016. However, due to the cost of complying with these requirements for a fleet that will no longer be in operation as of early 2016, the operator has requested a short-term exemption from the ADS-B and Mode S transponder requirements.

CASA and Airservices Australia have assessed the operator's safety case and consider that the short duration of the exemption is acceptable in principle, subject to safety measures such as the aircraft remaining within radar coverage while in ADS-B mandated airspace. While operating in this airspace, each aircraft must have an operative transponder (Mode A/C) and must have an I.F.R. flight plan. Each of the aircraft is already equipped with a Mode A/C transponder.

The requirement that aircraft operating at Brisbane, Sydney, Melbourne or Perth aerodrome be equipped with ADS-B capable Mode S transponders is being introduced to enable Airservices Australia to use the Advanced Surface Movement Guidance and Control System (*ASMGCS*) being installed at these aerodromes. Even if not equipped with Mode S transponders, the aircraft specified in the instrument could be handled without significant operational impact.

Instrument

CASA 08/16 applies to the 8 Fokker F50 aircraft mentioned in Schedule 1 of the instrument. The instrument has 2 purposes. Firstly, it authorises the operator to operate the aircraft without carrying ADS-B transmitting equipment while operating within the Perth quadrant. Secondly, it exempts a person using the aircraft from compliance with the requirement in paragraph 9E.4 of CAO 20.18 to carry a serviceable Mode S transponder that is compatible with ADS-B.

The authorisation and the exemption are subject to the condition that a person using the aircraft must ensure that all I.F.R. flight plans in Australian airspace are annotated with the words "RMK/CASA ADSB EXEMPT" at Item 18 of the flight plan. A note has been inserted to advise that the Airservices Australia automated systems will reject a flight plan lodged for these aircraft without this annotation.

Legislative Instruments Act 2003 (the LIA)

Under regulation 5A of CAR 1988, if CASA has issued a CAO, and CASA later issues an exemption that affects the operation of the CAO, the later document is declared to be a disallowable instrument. Under subparagraph 6 (d) (i) of the LIA, an instrument is a legislative instrument for section 5 of the LIA if it is declared to be a disallowable instrument under legislation in force before the commencement of the LIA. CAR 1988 was in force before the commencement of the LIA.

This instrument affects the operation of paragraph 9E.4 of CAO 20.18 and is, therefore, a legislative instrument subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

Consultation

The operator has requested this instrument and has provided CASA with reasons. In addition, CASA has consulted with Airservices Australia, which is responsible for air traffic control at Brisbane, Sydney, Melbourne and Perth aerodromes. In these circumstances, it is CASA's view that no further consultation under section 17 of the LIA 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 instrument is covered by a standing agreement between CASA and OBPR under which a RIS is not required for exemptions (OBPR id: 14507).

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 4 February 2016, when the requirements in paragraph 9B.11 and paragraph 9E.4 of CAO 20.18 start to apply. The instrument has been made in advance to provide certainty to the operator. The exemption expires at the end of April 2016, as if it had been repealed by another instrument.

[Instrument number CASA 08/16]

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

The legislative instrument exempts persons using 8 Fokker F50 aircraft operated by Virgin Australia Regional Airlines Pty Ltd (the *operator*) from compliance with paragraph 9E.4 of *Civil Aviation Order 20.18* which, from 4 February 2016, requires aircraft to carry a Mode S transponder. The instrument also authorises the operator to operate the aircraft without carriage of ADS-B transmitting equipment. The instrument expires at the end of April 2016.

The purpose of the instrument is to allow the operator and persons using the aircraft to continue to operate the aircraft without meeting the new ADS-B requirements pending retirement of the aircraft.

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