

Explanatory Statement

Civil Aviation Safety Regulations 1998

Exemption – RNP 1 and RNP 2 alternate means of compliance – foreign registered 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*.

Paragraph 98 (5A) (a) of the Act provides that the Regulations may empower CASA to issue instruments in relation to matters affecting the safe navigation and operation, or the maintenance, of aircraft.

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.

Under subsection 33 (3) of the *Acts Interpretation Act 1901 (AIA)*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Civil Aviation Order 20.91 (Instructions and directions for performance-based navigation) Instrument 2014 (CAO 20.91) provides directions given under regulation 11.245 of CASR for performance-based navigation (**PBN**) of aircraft. Under paragraph 4.1 of CAO 20.91, the abbreviation **RNAV** is defined to mean Area Navigation and the abbreviation **RNP** is defined to mean Required Navigation Performance. It is an offence under subregulation 11.255 (1) of CASR for a person to breach a direction.

Subsection 6 of CAO 20.91 states that the instructions and directions in CAO 20.91 apply to the operation of an Australian aircraft that uses PBN under the instrument flight rules (**I.F.R.**), and to foreign registered aircraft, where expressed to do so. It states that CAO 20.91 contains instructions to pilots in command for I.F.R. flights, specifying the method by which an aircraft engaged in PBN is to be navigated, and directions to pilots in command and operators in relation to the conduct of I.F.R. flight using a PBN navigation specification mentioned in subsection 7.

Under paragraph 7.1 of CAO 20.91, the instructions and directions in CAO 20.91 apply to the operation of an Australian aircraft that uses 1 or more specified PBN navigation specifications, including RNP 2, RNP 1, and RNAV 1 and RNAV 2, in I.F.R. flight. The RNP 2 and RNP 1 instructions and directions are given in Appendices 3 and 4 respectively.

Under paragraph 7.2, foreign registered aircraft operating into or out of, and within, the Brisbane or Melbourne Flight Information Regions are directed to have authorisations equivalent to those for Australian registered aircraft under CAO 20.91

issued by the national aviation authority (*NAA*) of their State of registration or State of the operator, as applicable (the *applicable NAA*).

Subsection 8 of CAO 20.91 gives instructions and directions for aircraft and pilots using a PBN mentioned in subsection 7 to comply with the requirements in the CAO, including the appendices, relevant to the specification.

Exemptions

Subpart 11.F of CASR provides for the granting of exemptions from particular provisions of the Regulations. Subregulation 11.160 (1) of CASR provides that, for subsection 98 (5A) of the Act, CASA may grant an exemption from a provision of the Regulations or a Civil Aviation Order.

Under subregulation 11.160 (2) of CASR, an exemption may be granted to a person or a class of persons. Under subregulation 11.175 (4) of CASR, in deciding whether to reissue an exemption, CASA must regard as paramount the preservation of at least an acceptable level of aviation safety.

Regulation 11.205 provides that CASA may impose conditions on an exemption if necessary in the interests of the safety of air navigation. Under regulation 11.210, it is a strict liability offence not to comply with the obligations imposed by a condition.

Regulation 11.225 of CASR requires an exemption to be published on the Internet. Under subregulation 11.230 (1), the maximum duration of an exemption is 3 years.

Background

Historically, aircraft navigation specifications have been specified directly in terms of sensors, being navigation beacons and waypoints. A navigation specification that includes an additional requirement for on-board navigation performance monitoring and alerting is referred to as an “RNP” specification. A specification not requiring an on-board navigation performance monitoring and alerting is referred to as an “RNAV” specification.

Aircraft RNP and RNAV systems performance requirements are defined in terms of accuracy, integrity, availability, continuity, and functionality required for the proposed operations in the context of a particular airspace, when supported by the appropriate navigation infrastructure.

From 4 February 2016, Global Navigation Satellite System (*GNSS*) navigation equipment became mandatory for all I.F.R. operations in Australia. From 26 May 2016, the Back-Up Navigation Network became available with consequential route and procedure changes effective from that date. Among other changes, RNP 2 became the standard navigation specification for continental en route operations and RNP 1 became the standard navigation specification for terminal instrument flight procedures.

CASA has become aware of administrative difficulties for some foreign operators in obtaining the required navigation authorisations for RNP 1 and RNP 2 from the applicable NAA. These difficulties arise for various reasons, including that the European Aviation Safety Agency has not published airworthiness standards for RNP 2 and, therefore, aircraft manufacturers are not able to include RNP 2 in the aircraft flight manual list of navigation specifications for which the aircraft is

compliant. Also, many State regulators do not have RNP 2 regulations in place upon which to base the issue of a navigation authorisation, or they are not able to issue an authorisation because the aircraft flight manual does not list RNP 2.

RNP 2 is a relatively new navigation specification, which is why it is not yet included in the current regulations of many States. It is expected that, over time as more applications of RNP 2 emerge, the situation will resolve itself.

CASA conducted an analysis in which the RNAV 1 and RNAV 2 navigation specification was compared with the RNP 1 and RNP 2 navigation specifications. The analysis showed that, the performance and functional requirements of RNP 1 and RNP 2 are the same as the performance and functional requirements of RNAV 1 and RNAV 2 if the radio (rather than GNSS) updating function of the RNAV 1 and RNAV 2 specification, as well as the optional functions of the RNP 1 and RNP 2 specifications, are disregarded.

Instrument CASA EX06/16 (the *old instrument*) was a legislative instrument (F2016L00059) that commenced on 22 January 2016 to permit use of RNAV 1 and RNAV 2 specifications based on GNSS as the primary navigation sensor for Australian RNP 1 approach procedures and RNP 2 routes. CASA subsequently identified that the old instrument does not cater for the alternative equivalent authorisations described in subclause 1.3 and paragraph 3.3 (b) of Appendix 2, and subclause 1.3 of Appendix 3, to CAO 20.91.

Clarifying that these additional navigation authorisations provide an equivalent level of authorisation will provide more options for foreign operators to show compliance as well as assisting operators with self-assessment of compliance.

Instrument

Under subsection 33 (3) of the AIA, the instrument repeals the old instrument and reissues the exemption on amended terms.

The instrument exempts the operator of an “exempted foreign aircraft” from the requirement in paragraph 7.2 of CAO 20.91 to have an RNP 1 or RNP 2 authorisation granted by an applicable NAA, and from the offence provision in subregulation 11.255 (1) of CASR for breach of a direction, if the aircraft is covered by a “substitute authorisation” issued by an “applicable NAA”.

Exempted foreign aircraft is defined to mean a foreign registered aircraft that is conducting an RNP 1 terminal instrument flight procedure within the Brisbane or Melbourne Flight Information Regions when the aircraft does not have an RNP 1 authorisation from an applicable NAA, or foreign registered aircraft that is operating on an RNP 2 route into, out of or within the Brisbane or Melbourne Flight Information Regions when the aircraft does not have an RNP 2 authorisation from an applicable NAA.

Substitute authorisation is defined in subsection 4 (2) of the instrument to be any of the combinations of authorisations mentioned in the paragraphs of the definition. It is sufficient for the aircraft to be covered by any 1 of the combinations in the definition in order for the operator of the aircraft to rely on the exemption to conduct both Australian RNP 1 approach procedures and to fly Australian RNP 2 routes.

The definition of **applicable NAA** covers the national aviation authorities mentioned in paragraph 7.2 of CAO 20.91. Other terms used in the instrument are stated to have the same meaning as they have in CAO 20.91.

The exemption is subject to conditions imposed in the interests of the safety of air navigation. The operator of the aircraft must notify CASA, using the specified CASA form, of its intention to operate on an RNP 2 route or conduct an RNP 1 terminal instrument flight procedure using a substitute authorisation. The notice must be provided at least 7 days before the operator first uses a particular type of aircraft in reliance on the exemption. Notice is not required for subsequent uses of the same type of aircraft, but is required if the operator intends to use a new type of aircraft in reliance on the exemption.

In addition, the flight plan for the operation must include a remark specified in the instrument that indicates that the flight is conducted utilising a CASA approved alternative means of compliance for the RNP authorisation requirement in CAO 20.91.

In applying the exemption to the circumstances of paragraph 7.2 of CAO 20.91, the instrument adopts references to the Melbourne and Brisbane Flight Information Regions that are defined in the instrument *Determination of airspace and controlled aerodromes etc* (the **Determination**) made under the regulation 5 of the *Airspace Regulations 2007*. The Determination is a legislative instrument that prescribes various volumes of airspace, including the Melbourne and Brisbane Flight Information Regions, that regulate the area of airspace under Australian regulatory control.

In accordance with subsection 98 (5D) of the Act, the meanings of the Flight Information Regions are adopted in the instrument as they exist from time to time under the Determination. The Determination is freely available on the Federal Register of Legislation and, at the commencement of the present instrument, is instrument CASA OAR 072/17, FRL reference F2017L01364.

The instrument requires notification about operations relying on the exemption using the CASA form 0667. In accordance with subsection 98 (5D) of the Act, that requirement is applied as the form is published by CASA from time to time. The form seeks information about the operation of foreign registered aircraft relying on the exemption that is relevant to CASA's regulatory oversight of the operations. The form is freely available on the CASA website.

Legislation Act 2003 (the LA)

Paragraph 10 (1) (d) of the LA provides that an instrument will be a legislative instrument if it includes a provision that amends or repeals another legislative instrument. This instrument repeals instrument CASA EX06/16 that was registered as a legislative instrument and is, therefore, also a legislative instrument, subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Consultation

Before making the old instrument, CASA liaised on the relevant issues with a number of foreign operators, the International Air Transport Association that is the trade association for the world's airlines, and Airservices Australia. The approach in the old instrument was supported.

The present instrument extends the range of alternative authorisations previously mentioned in the old instrument that operators of foreign aircraft can rely on if they do not have RNP 1 or RNP 2 authorisations. CASA has made this instrument as a continuation of an interim measure to facilitate operations by foreign operators that do not have such authorisations, providing a further period for the implementation of RNP 1 and RNP 2 by foreign NAAs.

There is no adverse impact on Australian operators as CASA has the ability to assess aircraft, determine compliance with the RNP 1 and RNP 2 requirements and issue RNP 1 and RNP 2 authorisations for Australian aircraft.

In these circumstances, it is CASA's view that it is not necessary or appropriate to undertake any further consultation under section 17 of the LA.

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights at Attachment 1 has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The instrument does not engage any of the applicable rights or freedoms, and is compatible with human rights, as it does not raise any human rights issues.

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 exemption 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 1 December 2017 and is repealed at the end of 30 November 2020.

[Instrument number CASA EX158/17]

Statement of Compatibility with Human Rights

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

Exemption – RNP 1 and RNP 2 alternate means of compliance – foreign registered aircraft

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, to a limited extent, foreign registered aircraft from the requirement to comply with the direction in paragraph 7.2 of *Civil Aviation Order 20.91 (Instructions and directions for performance-based navigation) Instrument 2014 (CAO 20.91)*.

Under paragraph 7.2 of CAO 20.91, foreign registered aircraft operating on Required Navigation Performance (**RNP**) 2 routes in Australian controlled airspace, and conducting RNP 1 terminal instrument flight procedures in Australian controlled airspace, are required to have RNP 2 and RNP 1 authorisations issued by a foreign national aviation authority with responsibility for the aircraft or the operator (**applicable NAA**). The applicable NAA authorisations are required to be equivalent to the authorisations required for Australian aircraft under CAO 20.91.

The legislative instrument permits foreign registered aircraft to operate on Australian RNP 2 routes and conduct Australian RNP 1 procedures without the required equivalent authorisations for the RNP specifications if the operations are covered by specified “substitute authorisations” issued by an applicable NAA. The substitute authorisations ensure comparable navigation performance.

The exemption is subject to conditions imposed in the interests of the safety of air navigation. An operator must notify CASA of its intention to operate on an RNP 2 route or conduct an RNP 1 procedure using a substitute authorisation. The flight plan for the operation must also contain a remark indicating that the flight is conducted utilising the alternative means of compliance provided by this instrument.

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