

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX55/20 — Maintenance on Limited Category and Experimental Aircraft Exemption 2020

Purpose

Instrument *CASA EX55/20 — Maintenance on Limited Category and Experimental Aircraft Exemption 2020* (the **instrument**) allows for the conduct of certain kinds of maintenance on a limited category or experimental aircraft, regardless of whether the maintenance is covered by a design standard. The exemption in the instrument alleviates a burden on industry where, for a unique limited category or experimental aircraft, no design standard exists for the maintenance, such that but for the exemption, maintenance on such aircraft would not be able to be carried out. The instrument is a reissue of instrument number CASA EX43/17, which expired on 31 March 2020.

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.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, the Civil Aviation Safety Authority (**CASA**) may grant an exemption from a provision of the regulations.

Under subregulation 11.160 (2) of CASR, an exemption may be granted to a person or a class of persons, and may specify the class by reference to membership of a specified body or any other characteristic.

Under subregulation 11.160 (3) of CASR, an exemption may be granted on application by a person or on CASA's own initiative.

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. CASA has regard to the same test when deciding whether to grant an exemption on its own initiative.

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.

Under subsections 98 (5A) and (5AA) of the Act, the regulations may empower CASA to issue instruments in relation to matters affecting the safe navigation and operation of aircraft which, if applicable to a class of persons, would be legislative instruments.

Under regulations 21.189 and 21.195A of CASR, aircraft are not required to meet design standards in order to qualify for the issue of special certificates of airworthiness in the limited category or experimental certificates.

Regulation 42U of CAR provides that a person may modify or repair an Australian aircraft only if the design of the modification or repair has been approved, or taken to be approved, and the modification or repair is in accordance with that design. Paragraphs 42W (2) (b) and (4) (a) and (c) of CAR require a replacement component to be designed, manufactured and modified or repaired in compliance with a design standard.

Background

The provisions of regulations 42U and 42W of CAR have created problems for limited category aircraft and aircraft issued with an experimental certificate of airworthiness (*exempted aircraft*).

Under regulation 42U of CAR, a person may only modify an aircraft if the modification is approved. The nature of an experimental aircraft is that a modification will normally not be approved or approvable until an aircraft has been test flown under a certificate issued for the purpose of paragraph 21.191 (a) of CASR (research and development) or paragraph 21.191 (b) of CASR (showing compliance with regulations). Upon satisfactory completion of a flight test program, including testing of any further modification requirements that were revealed during the flight test program, a modification may then be approved.

For an amateur-built experimental aircraft, there are no design standards against which a modification can be approved.

Paragraph 42W (2) (b) of CAR prescribes requirements for when a replacement component may be installed in an aircraft. In the case of an experimental aircraft, the requirements are not always able to be satisfied as the component being replaced may be part of an experimental design which is not yet approved. In the case of an amateur-built experimental aircraft, there are no applicable design standards against which a component could be approved and if the original builder is no longer the owner or contactable, then no manufacturer approval is available.

In the case of limited category aircraft, particularly warbirds, replacement components are usually salvaged components or military disposal stock. In either case, no design standard or manufacturer approval may be available.

Paragraph 42W (4) (a) of CAR requires a certification of maintenance, and refers to a component manufactured in the course of maintenance (*MITCOM*). The certification effectively certifies that any component installed meets the requirements of subregulation 42W (2), which is not always feasible for exempted aircraft due to the non-existence of approved components that provide a model for a MITCOM component.

Paragraph 42W (4) (c) of CAR requires any component that is fitted to an aircraft, and to which a modification has been made, to have been modified in accordance with approved data. In relation to exempted aircraft, this is not always possible because there are frequently no known design standards against which a modification may be approved.

CASA intends eventually to incorporate the exemption in the instrument into CASR. CASA has completed some preliminary consultation but has not commenced drafting any amendments on the subject.

Overview of instrument

The instrument exempts the registered operator of an exempted aircraft and persons carrying out specified maintenance on exempted aircraft from compliance with the requirements of regulation 42U and paragraphs 42W (2) (b) and (4) (a) and (c) of CAR. The instrument does not apply in relation to the following maintenance activities:

- (a) maintenance of aircraft instruments and equipment specifically required by CASR, CAR or the Civil Aviation Orders;
- (b) maintenance to comply with a condition on the special certificate of airworthiness or experimental certificate for the aircraft;
- (c) maintenance specified in an airworthiness directive or a direction issued by CASA applicable to the aircraft;
- (d) maintenance to comply with an instruction specified in the aircraft's approved maintenance data;
- (e) modifications to the exempted aircraft if it is administered by a limited category organisation as defined for Part 132 of CASR.

Any elevated safety risk that may arise as a consequence of the exemptions is mitigated by the operational limitations applied by regulation 262AP of CAR and Part 132 of CASR and the conditions imposed by the instrument. The conditions include a requirement that if maintenance is a "major design change" (as defined in the instrument) to the exempted aircraft, the registered operator must not allow the aircraft to be operated until:

- (a) information prescribed by the instrument has been provided to a person mentioned in the instrument; and
- (b) the person has informed the registered operator in writing that the modification or repair is acceptable.

Legislation Act 2003 (the LA)

Paragraph 98 (5A) (a) of the Act provides that the regulations may empower CASA to issue an instrument in relation to matters affecting the safe navigation and operation, or the maintenance, of aircraft. Relevantly, subsection 98 (5AA) provides that an instrument made under paragraph (5A) (a) is a legislative instrument if the instrument is expressed to apply in relation to a class of persons or a class of aircraft.

The instrument exempts a class of registered operators of exempted aircraft, and persons carrying out exempted aircraft maintenance. Accordingly, the instrument is a legislative instrument and is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Consultation

Consultation under section 17 of the LA has not been undertaken in this case.

The instrument is provided to remove unnecessary burden on industry in relation to the exempted requirements and substantially reflects the effect of CASA EX43/17 that expired on 31 March 2020. There are no new requirements applicable under the instrument, although some conditions related to the scheme in Part 21 of CASR for the issue of certificates of

airworthiness have been omitted in favour of allowing the relevant regulations to operate according to their terms. CASA is continuing to work with industry to develop regulatory provisions that resolve the issues caused by the provisions of CAR that are the subject of the exemption.

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

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 exemptions (OBPR id: 14507).

Making and commencement

The instrument has been made by a delegate of CASA relying on the power of delegation under regulation 11.260 of CASR.

The instrument commences the day after it is registered and is repealed at the end of 31 March 2023.

Statement of Compatibility with Human Rights

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

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The 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 carrying out maintenance on limited category or experimental aircraft from compliance with some of the requirements of the *Civil Aviation Regulations 1988* relating to modification and repair of the aircraft and the installation and use of aircraft components. In the interest of safety, the exemption is subject to conditions and its application does not include certain maintenance activities.

The primary effect of the instrument is to avoid the imposition of impractical requirements relating to the maintenance of limited category and experimental aircraft.

Human rights implications

The legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

The legislative instrument is compatible with human rights as it does not raise any human rights issues.

Civil Aviation Safety Authority