

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX74/24 – Part 121 – Single Pilot Aeroplane (MOPSC 10-13) Operations – Exemptions and Directions Instrument 2024

Purpose

The purpose of *CASA EX74/24 – Part 121 – Single Pilot Aeroplane (MOPSC 10-13) Operations – Exemptions and Directions Instrument 2024* (the ***exemption instrument***) is to continue the operation of certain exemptions from obligations under Part 121 of the *Civil Aviation Safety Regulations 1998* (***CASR***) that were granted to operators and pilots in command of certain aeroplanes by earlier instruments made by the Civil Aviation Safety Authority (***CASA***).

This is achieved by continuing the policy effect of the exemptions and directions granted by *CASA EX97/22 – Part 121 – Single Pilot Aeroplane (MOPSC 10-13) Operations – Exemptions Repeal, Remake, and Direction Instrument 2022* (the ***repealed instrument***) which is repealed at the end of 1 December 2024. The repealed instrument allowed Australian air transport operators to conduct single-pilot operations under the visual flight rules (***VFR***) or the instrument flight rules (***IFR***), using single and multi-engine aeroplanes with a maximum operational passenger seat configuration (***MOPSC***) of 10 to 13, under Part 135 of CASR instead of under Part 121 and included related directions to notify CASA of certain matters.

As those exemptions and directions are still required to ensure short-term certainty of regulatory requirements for the aviation industry, this instrument continues their operation on an interim basis, from 2 December 2024 to the end of 1 December 2027. If the policy objectives of the trial of alleviating certain aircraft from operating under Part 121 of CASR are to become permanent, it is expected that, before the exemptions and directions in the exemption instrument cease to apply, appropriate substantive amendments will be made to CASR and the exemption instrument will no longer be required.

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 CASR.

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 compliance with 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 11.170(3) of CASR, in deciding whether to grant an exemption, CASA must regard as paramount the preservation of at least an acceptable level of aviation safety. 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 (with a penalty of 50 penalty units) 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.

Directions

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. Subregulation 11.245(2) of CASR provides that CASA may issue such a direction 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 (with a penalty of 50 penalty units) to contravene a direction under regulation 11.245.

Documents incorporated by reference

Under subsection 14(1) of the *Legislation Act 2003* (the **LA**), a legislative instrument may make provision in relation to matters by applying, adopting or incorporating provisions of an Act or disallowable legislative instrument as in force at a particular time or as in force from time to time. A legislative instrument may also make provision in relation to matters by applying, adopting or incorporating any matter contained in any other instrument or writing as in force at, or before, the time the legislative instrument commences. Under subsection 14(2) of the LA, unless the contrary intention appears, the legislative instrument may not make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time. However, subsection 98(5D) of the Act provides that, despite section 14 of the LA, 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 issue that gave rise to the need to grant exemptions and issue directions

Part 135 of CASR applies to aeroplanes with a maximum take-off weight (**MTOW**) less than or equal to 8 618 kg, and a MOPSC of up to 9 (smaller aeroplanes).

Part 121 of CASR, except Subpart 121.Z, applies to aeroplanes with a MTOW greater than 8 618 kg, or a MOPSC of more than 9 (larger aeroplanes) (**Part 121 operations**).

In addition to many other differences from the Part 135 rules, Part 121 operations are required to be conducted under the IFR (no VFR flights are permitted) and to have a minimum of 2 pilots.

Part 121 operations must use a considerably different set of rules relating to when an alternative aerodrome must be planned for a flight, and the flight crew training and checking requirements are considerably more prescriptive and specific.

Subpart 121.Z applies to *single-engine aeroplanes* with a MTOW less than or equal to 8 618 kg, and a MOPSC of more than 9 (**Subpart 121.Z operations**). Subpart 121.Z operations must be conducted in accordance with the Part 135 rules and some additional requirements.

Thus, for Subpart 121.Z operations, IFR flights carrying more than 9 passengers must have 2 pilots, flights at night operating under the VFR are prohibited, flights conducted by day under the VFR must have an automatic engine monitoring system (IFR and night VFR flights must have such systems by virtue of the Part 135 prescribed single-engine aeroplane rules). A terrain awareness and warning system (**TAWS**)-Class A is required for turbine-powered aeroplanes and TAWS-Class A or B is required for piston-engine aeroplanes. It should be noted that *CASA EX71/24 – Part 135, Subpart 121.Z and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2024 (CASA EX71/24)* section 24 contains exemptions in relation to these TAWS requirements for Subpart 121.Z operations.

Air transport operations in *multi-engine aeroplanes* with a MOPSC of more than 9 are Part 121 operations which, in certain circumstances, requires a higher standard than Part 135. Under CASR, discounting the exemption instrument and repealed instrument, *multi-engine aeroplanes* with a MOPSC of more than 9 are Part 121 operations that must comply with Part 121 (except for Subpart 121.Z) and *single-engine aeroplanes* with a MOPSC of more than 9 and a MTOW of 8618kg or less are Subpart 121.Z operations that must comply with Subpart 121.Z and Part 135.

There are a significant number of aeroplanes with a type certificate allowing single-pilot operations with seating configurations of 10 to 13 inclusive. However, Part 121 requires 2 pilots in these aeroplanes. With the addition of specific operator and aeroplane safety mitigators, the requirement to have a second pilot for these specific aeroplanes can be removed while preserving an acceptable level of aviation safety.

Exemptions previously granted by CASA to deal with the issue

CASA issued *CASA EX137/21 – Part 121 – Single Pilot Aeroplane (MOPSC 10-13) Operations – Exemptions Instrument 2021 (CASA EX137/21)* to permit AOC holders to operate certain 10-13 passenger seat aeroplanes in Part 135 of CASR instead of Part 121. CASA EX137/21 would have ceased the effect of the exemptions if transitional operators did not submit to CASA, before 2 June 2022, their proposed exposition changes showing how the operator would comply with the safety conditions mentioned in Schedule 1 of CASA EX137/21, conditions which would take effect for those operators on and from 2 December 2022.

When CASA EX137/21 expired in 2022, CASA continued the operation of the exemptions by making the repealed instrument, which contains the specific operator and aeroplane safety mitigators, and compliance with these mitigating conditions is required at different times depending on whether the operator is classified as a transitional operator, an expanded transitional operator, or new operator. They allowed an Australian air transport operator to conduct VFR and IFR single-pilot operations, using single and multi-engine aeroplanes with a MOPSC of 10 to 13, under Part 135 of CASR instead of Part 121, provided that safety mitigation conditions were satisfied.

The repealed instrument applied to an operator (a ***transitional operator***) of a relevant aeroplane if, immediately before 2 December 2021, the operator held an AOC, or was an early applicant for an AOC or an AOC variation, that authorised charter operations or regular public transport operations, or both kinds of operations, in a particular kind of relevant aeroplane.

Following informal consultation with, and feedback from, the affected industry sector, CASA agreed that relevant transitional operators could be given further time to prepare for compliance with the Schedule 1 conditions, particularly relating to TAWS. The repealed instrument was amended to provide an additional 12 months for transitional operators to comply: see *CASA EX61/23 — Amendment of CASA EX97/22 (Extension of Time) Instrument 2023 (No 1)*. That period ended at the end of 1 December 2024.

Overview of instrument

The exemption instrument continues the operation of certain exemptions from obligations in Part 121 of CASR granted to operators and pilots in command of certain aeroplanes by the repealed instrument

Those exemptions allowed an Australian air transport operator to conduct single-pilot operations under the VFR or the IFR, using single and multi-engine aeroplanes with a maximum operational passenger seat configuration of 10 to 13, under Part 135 of CASR instead of under Part 121, provided that safety mitigation conditions were satisfied in accordance with a timeframe.

To ensure continuity of operations in the aviation industry on and from 2 December 2024, the exemption instrument reissues the exemptions and directions in the repealed exemption instrument in substantially the same form, with changes only relating to the commencement and repeal of the exemption instrument, the removal of spent provisions that expired in June 2024, the removal of redundant definitions and the updating of references to instruments that have expired and been remade. The exemption instrument retains the same numbering to the extent possible to assist industry stakeholders so they need not update related documentation solely due to changes to numbering. CASA would also not have to update its related guidance material for the same reason.

Document incorporated by reference

An aeroplane's flight manual is the only document incorporated by reference by the exemption instrument. One aspect of the definition of ***relevant aeroplane*** in section 3 of the exemption instrument is that it is an aeroplane whose flight manual provides that the flight crew of the aeroplane may be constituted by a single pilot (see paragraph (e) of the definition).

In accordance with paragraph 15J(2)(c) of the LA, the following is a description of how the document is incorporated, the organisation responsible for the document and how it may be obtained.

An aeroplane's flight manual is a document containing the information required to safely operate the specific aircraft. Paragraph 37(1)(b) of Part 2 of the Dictionary to CASR provides that a reference to an aeroplane's flight manual includes each amendment to the flight manual that is approved by CASA or by certain persons or organisation, that is made at the direction of CASA under Subpart 11.G or that relates to certain foreign type certificates.

An aeroplane's flight manual is available to the aircraft operator from the relevant aircraft manufacturer but may not be publicly or freely available as it is proprietary to the aircraft manufacturer who creates it and owns its intellectual property, and it may include commercial in confidence information.

CASA has incorporated information from an aeroplane's flight manual in the exemption instrument because aviation safety requires the use of the information by aircraft operators and pilots and because there are no freely available documents serving the relevant purpose.

The cost of obtaining a copy of an aeroplane's flight manual is a matter for the manufacturer of the aircraft. CASA has no effective control over those costs. However, where practicable, by prior arrangement with CASA, copies of an aeroplane's flight manual can be made available for viewing free of charge at any office of CASA. CASA considers it extremely unlikely that the owner of the document would sell CASA the copyright, so that CASA could make the document freely available, at a price that would be an effective and efficient use of CASA funds.

Content of instrument

Section 1 sets out the name of the exemption instrument: *CASA EX74/24 – Part 121 – Single Pilot Aeroplane (MOPSC 10-13) Operations – Exemptions and Directions Instrument 2024*.

Section 1A provides that the exemption instrument commences on 2 December 2024.

Section 2 provides that the exemption instrument is repealed at the end of 1 December 2027.

Section 3 sets out definitions for the exemption instrument. The key definition is ***relevant aeroplane***, which is defined to mean an aeroplane:

- (a) to which subregulation 121.005(1) or (2) of CASR would apply were it not for the exemption instrument; and
- (b) that has a MOPSC of at least 10 but not more than 13; and
- (c) that has a maximum take-off weight of no more than 8 618 kg; and
- (d) that is certificated to be operated by a single pilot in accordance with the type certificate data sheet; and
- (e) whose flight manual provides that the flight crew of the aeroplane may be constituted by a single pilot.

Section 4 provides that the exemption instrument applies to:

- (a) the operator of a relevant aeroplane; and
- (b) the pilot in command of the operator of a relevant aeroplane.

Section 5 creates exemptions for operators and pilots in command of a relevant aeroplane.

Subsection 5(1) provides that the operator of a relevant aeroplane is exempt from compliance with each provision of Part 121, and the Part 121 Manual of Standards, that would, but for the exemption instrument, apply to the operator.

Subsection 5(2) provides that the pilot in command of the operator of a relevant aeroplane is exempt from compliance with each provision of Part 121, and the Part 121 Manual of Standards, that would, but for the exemption instrument, apply to the pilot in command.

Section 6 sets out the basic conditions, applicable to all operators of a relevant aeroplane and all pilots in command of the operator of a relevant aeroplane, to which the exemptions in section 5 are subject.

Subsection 6(1) provides that each exemption under section 5 is subject to the condition that the operator and the pilot in command, while taking the benefit of the exemption instrument, will not, with respect to a relevant aeroplane, take the benefit of any exemption under *CASA EX69/24 – Part 121 and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2024*. (This condition was formerly located in section 8 of the repealed instrument.)

Subsection 6(2) provides that each exemption under section 5 is subject to the condition that the operator and the pilot in command must each comply (as the case requires) with Part 135 of CASR, and the Part 135 Manual of Standards, as if they applied instead of a provision of Part 121 or the Part 121 Manual of Standards. In those circumstances, Part 135 of CASR and the Part 135 Manual of Standards are required to be complied with as if CASA EX71/24 also applied.

Thus, the relevant operator and pilot in command must comply with Part 135 of CASR and the Part 135 MOS, instead of Part 121 and the Part 121 MOS, as if Part 135 applied. In doing so, they must not take the benefit of a specific Part 121 exemption instrument, but may take the benefit of a specific Part 135 exemption instrument.

Section 10 contains a direction to the operator of a relevant aeroplane.

Subsection 10(1) requires the operator to notify CASA of the similar types of aeroplanes intended to be operated under the exemption instrument, before commencing the operation of the similar types. The form that must be used depends on whether or not the operator's operations under the exemption instrument constitute a significant change.

Subsection 10(2) provides that the direction does not apply if the operator previously notified CASA that they were operating, or intended to operate, a similar type of aeroplane under the provisions of the repealed instrument.

Schedule 1 contains additional conditions to which the exemptions in section 5 are subject. Those conditions focus, in effect, on safety equipment additives (autopilot, TAWS, weather radar) that are required to ease the workload on the pilot in single-pilot operations.

Legislation Act 2003

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. Additionally, paragraph 98(5AA)(a) of the Act provides that an instrument issued under paragraph 98(5A)(a) is a legislative instrument if the exemption instrument is expressed to apply in relation to a class of persons. The exemption instrument applies to the operator of a relevant aeroplane and the pilot in command of an operator of a relevant aeroplane (see section 4). The exemption instrument is, therefore, a legislative instrument, and is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Sunsetting

Part 4 of Chapter 3 of the LA (the ***sunsetting provisions***) does not apply to the exemption instrument, because the exemption instrument relates to aviation safety and is made under CASR (item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

However, the exemption instrument will be repealed at the end of 1 December 2027, which will occur before the sunseting provisions would have repealed the exemption instrument if they had applied. Any renewal of the exemption instrument will be subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA. Therefore, the exemption from sunseting does not affect parliamentary oversight of the exemption instrument.

Consultation

Under section 16 of the Act, in performing its functions and exercising its powers, CASA must consult government, commercial, industrial, consumer and other relevant bodies and organisations insofar as CASA considers such consultation to be appropriate.

Under section 17 of the LA, before a legislative instrument is made, CASA must be satisfied that it has undertaken any consultation it considers appropriate and practicable in order to draw on relevant expertise and involve persons likely to be affected by the proposals.

Exemptions from regulatory requirements are considered to be beneficial for those to whom they apply, who voluntarily elect to take advantage of them, and who comply with their conditions. It is, therefore, rarely necessary to engage in extensive public consultation on a proposed exemption. However, it is CASA's policy to consult, where possible, in an appropriate way with those parts of the aviation industry most likely to avail themselves of, or be affected by, an exemption so that they may have the opportunity to comment on the possible or likely terms, scope and appropriateness of the exemption.

In 2021, for the purposes of granting the exemptions in the repealed instrument, CASA consulted the aviation community by providing a description of the exemptions to the implementation Technical Working Group (**TWG**) of the Aviation Safety Advisory Panel (**ASAP**) for comment. ASAP is the primary advisory body through which CASA directs its engagement with industry and seeks input on current and future regulatory and associated policy approaches. CASA considered all TWG input in finalising the exemption instrument and advised the TWG of its responses and comments regarding all input from the TWG.

The exemption instrument is a remake of the repealed exemption instrument with only minor or machinery changes and effects.

There has, however, been informal consultation with industry whose members have made representations to CASA about the logistical and resource issues complicating their ability to meet the conditions and directions in the exemption instrument.

Sector risk, economic and cost impact

Subsection 9A(1) of the Act states that, in exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration.

Subsection 9A(3) of the Act states that, subject to subsection (1), in developing and promulgating aviation safety standards under paragraph 9(1)(c), CASA must:

- (a) consider the economic and cost impact on individuals, businesses and the community of the standards; and
- (b) take into account the differing risks associated with different industry sectors.

The cost impact of a standard refers to the direct cost (in the sense of price or expense) which a standard would cause individuals, businesses and the community to incur. The economic impact of a standard refers to the impact a standard would have on the production, distribution and use of wealth across the economy, at the level of the individual, relevant businesses in the aviation sector, and the community more broadly. The economic impact of a standard could also include the general financial impact of that standard on different industry sectors.

As the exemption instrument replaces an expiring instrument with the same (or largely the same) provisions and conditions, there will be no change of economic costs on individuals, businesses or the community.

The economic and cost impact of the exemption instrument has been determined by:

- (a) the identification of individuals and businesses affected by the exemption instrument;
- (b) consideration of how the requirements to be imposed on individuals and businesses under the exemption instrument will be different compared to existing requirements;
- (c) a valuation of the impact, in terms of direct costs on individuals and businesses affected by the exemption instrument to comply with the different requirements. This valuation is consistent with the principles of best practice regulation of the Australian Government;
- (d) a valuation of the impact the different requirements would have on the production, distribution and use of wealth across the economy, at the level of the individual, relevant businesses in the aviation sector, and the community more broadly; and
- (e) consideration of community impacts, beyond those direct impacts on individuals and businesses affected by the exemption instrument, that are relevant if the exemption instrument were to result in flow-on effects to other aviation businesses, or local non-aviation businesses that experience a change in their activity due to the exemption instrument.

The exemption instrument will not require the individuals or businesses that benefit from it to meet new requirements and will be cost neutral.

Impact on categories of operations

The exemption instrument is likely to have a beneficial effect on the aviation industry by lowering the cost of conducting operations in the relevant aeroplanes encompassed by the exemption instrument.

Impact on regional and remote communities

There are no identified rural and regional impacts that differ in any material way from the general economic and cost impacts, or sector risks described above.

However, smaller operators, more likely to be located in rural and regional areas, will also obtain cost deferral benefits.

Office of Impact Analysis (OIA)

An Impact Analysis (*IA*) is not required in this case, as the exemption is covered by a standing agreement between CASA and OIA under which an IA is not required for exemptions (OIA id: OIA23-06252).

Statement of Compatibility with Human Rights

The Statement in Attachment 1 is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Making and commencement

The exemption instrument has been made by a delegate of CASA relying on the power of delegation under subregulation 11.260(1) of CASR.

The exemption instrument commences on 2 December 2024 and is repealed at the end of 1 December 2027.

Statement of Compatibility with Human Rights

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

CASA EX74/24 – Part 121 – Single Pilot Aeroplane (MOPSC 10-13) Operations – Exemptions and Directions Instrument 2024

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 purpose of the legislative instrument is to continue the operation of certain exemptions from obligations under Part 121 of the *Civil Aviation Safety Regulations 1998 (CASR)* that were granted to operators and pilots in command of certain aeroplanes by earlier instruments made by the Civil Aviation Safety Authority (*CASA*).

This is achieved by continuing the policy effect of the exemptions and directions granted by *CASA EX97/22 – Part 121 – Single Pilot Aeroplane (MOPSC 10-13) Operations – Exemptions Repeal, Remake, and Direction Instrument 2022* (the **repealed instrument**) which is repealed at the end of 1 December 2024. The repealed instrument allowed Australian air transport operators to conduct single-pilot operations under the visual flight rules or the instrument flight rules using single and multi-engine aeroplanes with a maximum operational passenger seat configuration of 10 to 13, under Part 135 of CASR instead of under Part 121 and included related directions to notify CASA of certain matters.

As those exemptions and directions are still required to ensure short-term certainty of regulatory requirements for the aviation industry, this instrument continues their operation on an interim basis, from 2 December 2024 to the end of 1 December 2027. If the policy objectives of the trial of alleviating certain aircraft from operating under Part 121 of CASR are to become permanent, it is expected that, before the exemptions and directions in the legislative instrument cease to apply, appropriate substantive amendments will be made to CASR and the legislative instrument will no longer be required.

Human rights implications

This legislative instrument allows existing exemptions and directions to continue for a longer period. Those exemptions and directions themselves engage with the following human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*:

- the right to life under Article 6 of the International Covenant on Civil and Political Rights
- the right to safe and healthy working conditions under Article 7 of the International Covenant on Economic, Social and Cultural Rights (the **ICESCR**)
- the right to work under Article 6 of the ICESCR.

Although this legislative instrument contains exemptions from Part 121 of CASR, it does so in the context of substitute, and acceptable, conditions in the interests of aviation safety. To the extent that the conditions are expected to play a critical part in the avoidance of accidents and incidents, the legislative instrument may reasonably be said to support the right to life, and to contribute to safe and healthy working conditions on board the relevant aeroplanes.

By reducing some short-term costs, it may support the right to work. To the extent that the exemptions relieve some operators and pilots in command of immediate overhead additional costs, the legislative instrument may improve the viability of the operator or pilot in command and, in doing so, promote the right to work.

This engagement is in the context of CASA's statutory purpose. The aim of CASA and its regulatory framework is to uphold aviation safety by prescribing the conduct of individuals and organisations involved in civil aviation operations, including flight operations. It is, therefore, a threshold requirement for all CASA legislative instruments that they preserve, promote and enhance aviation safety and, in doing so, contribute to safe and healthy working conditions for crew and ground staff.

Human rights implications

This legislative instrument is compatible with human rights and to the extent that it may engage certain rights it does so in a way that promotes the right to life, the right to work, and safe and healthy working conditions on board relevant aircraft through ensuring the continuing safety of relevant operations

The legislative instrument achieves these likely outcomes in a way that is reasonable, necessary and proportionate in the context of aviation safety.

Conclusion

This legislative instrument is compatible with human rights.

Civil Aviation Safety Authority