Explanatory Statement

Civil Aviation Safety Regulations 1998

Exemption – from standard take-off and landing minima – Royal Brunei Airlines

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

Under subregulation 257 (1) of the Civil Aviation Regulations 1988 (CAR 1988), CASA may determine the meteorological minima, that is the visibility requirements for landing or take-off at an aerodrome. Under subregulation 257 (2), the determination must be published in AIP or NOTAMS. Under subregulations 257 (3) and (4), it is an offence for an aircraft to take-off or land if an element of the meteorological minima for that operation is less than that determined for the aircraft at the aerodrome.

The determination of standard meteorological minima for take-off and landing was made in instrument CASA 70/11. The minima are also set out in AIP En Route 1.5, section 4. If conditions are met, the minimum visibility for take-off inside or outside Australian territory is 550 metres. If conditions are met, the minimum visibility for landing inside or outside Australian territory is 800 metres, or 550 metres runway visual range. An exemption would be required to operate with lower minimum visibility (low visibility operations or LVO).

Subregulation 11.160 (1) of the Civil Aviation Safety Regulations 1998 (CASR 1998) provides that, for subsection 98 (5A) of the Act, CASA may grant an exemption from a provision of the regulations, including CAR 1988, or a provision of the Civil Aviation Orders (the CAOs), in relation to a matter mentioned in that subsection. Under subregulation 11.160 (2), an exemption may be granted to a person, or to a class of persons, and may specify the class by reference to membership of a specified body or any other characteristic.

Under subregulation 11.205 (1) of CASR 1998, CASA may impose conditions on an exemption if this is necessary in the interests of the safety of air navigation. 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 or, if no day is specified, 3 years after commencement.

The exemption has been issued for Royal Brunei Airlines Sdn Bhd of Bandar Seri Begawan, Brunei Darussalam (Royal Brunei Airlines) for the conduct of LVO in Australia. The exemption states the minima for the various aeroplanes, as well as the conditions for their use. For instance, the use of the lower minima will require a higher standard of runway lighting (see clause 7 in Schedule 2).

In essence, Royal Brunei Airlines must ensure that specified visibility standards are met for take-offs and landings. These may be performed only at aerodromes properly equipped to support the LVO conducted under the exemption.
Legislative Instruments Act
For subsection 98 (5A) of the Act, CASA may, by instrument, grant an exemption from compliance with a provision of the Regulations or the CAOs. An instrument issued under paragraph 98 (5A) (a) of the Act is a legislative instrument if the instrument is expressed to apply to a class of persons or aircraft. The exemption applies to a class of aircraft employed by the operator. The exemption is, therefore, a legislative instrument subject to tabling and disallowance in the Parliament under sections 38 and 42 of the Legislative Instrument Act 2003 (the LIA).

Consultation
The operator has requested the instrument to replace the exemption in CASA EX35/11, which expired at the end of 31 March 2013. Consultation under section 17 of the LIA has not been undertaken with the aviation industry as a whole in this case. The exemption applies to a single operator. The original exemption, CASA EX35/11, was granted taking into account the equipment and flight crew training of Royal Brunei Airlines, and applying standards applicable to all airlines. Royal Brunei Airlines holds an approval to conduct low visibility operations issued by the Department of Civil Aviation, Brunei Darussalam. This exemption would not be granted if it did not.

Royal Brunei Airlines has operated into a number of Australian airports without incident over the previous exemption’s duration. The instrument is required by Royal Brunei Airlines to enable low visibility take-offs and CAT II and CAT III landings inside Australia consistent with the standards and requirements specified in the instrument which are not considered prejudicial to the interests of safety. It will avoid delays due to low visibility and low cloud.

Compatibility with human rights and freedoms
A Statement of Compatibility with Human Rights is at Attachment 1.

Commencement and making
The instrument commences on the day of registration and stops having effect at the end of 31 March 2016 as if it had been repealed by another instrument.

The exemption has been made by a delegate of CASA relying on the power of delegation under subregulation 11.260 (1) of CASR 1998.

[Instrument number CASA EX40/13]
Statement of Compatibility with Human Rights

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

Exemption under regulation 11.160 – from standard take-off and landing minima – Royal Brunei Airlines

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 permits the operator to use minima lower than the standard take-off and landing minima determined by CASA. The exemption is subject to conditions directed by CASA in the interest of safety.

The primary purpose of the legislative instrument is to allow pilots in command flying for the named operator to land and take-off using reduced visibility minima specified in the exemption. Use of the minima is subject to compliance with the stated conditions.

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