Explanatory Statement

Civil Aviation Safety Regulations 1998

Exemption — temporary relief from requirement to carry serviceable ADS‑B transmitting equipment when operating in defined exempted airspace

**Purpose**

This instrument exempts certain aircraft operators, for a limited period of 2 years only, from a specific requirement under Civil Aviation Orders (***CAOs***), to carry automatic dependent surveillance – broadcast (***ADS-B***) transmitting equipment.

ADS-B avionics is a modern aircraft surveillance system for air traffic control (***ATC***) using ground stations to receive radio signals transmitted by ADS-B equipped aircraft. Using ADS-B avionics, an aircraft is able to broadcast its identity, position, altitude, velocity and many other flight parameters with a degree of accuracy, integrity and reliability that is better than more conventional secondary surveillance radar (***SSR***).

**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.

**Exemptions**

Subpart 11.F of the *Civil Aviation Safety Regulations 1998* (***CASR 1998***) deals with exemptions. Under subregulation 11.160 (1), and for subsection 98 (5A) of the Act, CASA may, by instrument, grant an exemption from a provision of the *Civil Aviation Regulations 1988*, CASR 1998 or a CAO in relation to a matter mentioned in subsection 98 (5A).

Under subregulation 11.160 (2) of CASR 1998, an exemption may be granted to a person or a class of persons. Under subregulation 11.160 (3), CASA may grant an exemption on application, or on its own initiative. For an application for an exemption, CASA must regard as paramount the preservation of an acceptable level of safety.

For making a decision on its own initiative, CASA is guided by the requirement in subsection 9A (1) of the Act that in exercising its powers and functions CASA must regard the safety of air navigation as the most important consideration.

Under regulation 11.205, 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 regulation 11.225, CASA must, as soon as practicable, publish on the Internet details of all exemptions under Subpart 11.F.

Under subregulation 11.230 (1), an exemption (but not an exceptional circumstances exemption for regulation 11.185 about major emergencies) may remain in force for 3 years or for a shorter period specified in the instrument.

Under subregulation 11.230 (3), an exemption in force in relation to a particular aircraft owned by a particular person, ceases to be in force when the aircraft ceases to be owned by that person. Under regulation 11.235, an exemption is not transferable (as between operators, aircraft etc.).

**Background**

Under paragraph 9B.8 of CAO 20.18, on and after 12 December 2013, if an aircraft operates at or above flight level (***FL***) 290 (that is at or above an altimeter height of 29 000 feet at international standard atmosphere (ISA)), it must carry serviceable ADS‑B transmitting equipment that complies with the approved equipment configuration specified in Appendix XI of the CAO.

The same ADS-B carriage requirement applies to the aircraft of foreign operators in Australia as follows:

* for the aircraft of an operator who holds a foreign registered aircraft AOC issued by CASA for *charter operations or aerial work operations* (under clause 7 in Appendix 3 of CAO 82.)
* for the aircraft of an operator who holds a foreign registered aircraft AOC issued by CASA *for regular public transport operations in other that high capacity aircraft* (under clause 7 in Appendix 6 of CAO 82.3)
* for the aircraft of an operator who holds a foreign registered aircraft AOC issued by CASA for *regular public transport operations in high capacity aircraft* (under clause 7 in Appendix 4 of Civil Aviation Order 82.5) and
* for foreign registered aircraft engaged in private operations in Australian territory (under clause 7 in Schedule 1 of CASA 521/09).

This Australian mandate for the carriage of ADS-B equipment will improve the safety and efficiency of air traffic management (***ATM***). It will enable ATM to better manage both increasing air traffic in upper airspace, and increased use of flexible routing for trans-continental flights. Thus, in time, ADS-B will become the primary surveillance system for flight over much of the Australian continent.

However, for some time to come, SSR will remain the primary surveillance system used by Airservices Australia (***AA***) in controlled terminal areas, and in the special east-coast radar area (the ***radar J-curve area***, extending from 200 nautical miles north of Cairns to 200 west of Adelaide). In addition, most of the Australian-administered airspace outside Australian territory (with the exception of the airspace over the Great Australian Bight, some of Bass Strait and the Gulf of Carpentaria) will remain without surveillance. The air traffic separation service will continue to be provided procedurally in that airspace.

Although the 12 December 2013 mandate date is rapidly approaching, several of the major overseas manufacturers of business jet aircraft have advised that there will be delays in providing factory supported supplemental type certificates (STCs) for the installation of ADS-B equipment. Manufacturers have been urged to speed-up the availability of installation kits.

For a number of aircraft types, particularly those with highly integrated avionics suites, it is evident that operators may not be able to meet the 12 December 2013 compliance date.

To assist in the management of this contingency, and following consultations with AA, CASA decided to issue a geographically limited exemption from the relevant ADS-B carriage requirement to cover both Australian and foreign aircraft operators, subject to compliance with requirements and conditions of the exemption. This would enable non‑ADS-B equipped aircraft to operate at or above FL 290 in certain restricted areas of airspace, pending availability and installation of ADS-B equipment.

**The exemption**

Subject to certain flight planning conditions, the exemption would exempt relevant operators from the *requirement to carry serviceable ADS-B transmitting equipment* in *exempted airspace* provided the operation was an *exempted operation* occurring during the *exemption period*. Each of the expressions in italics is defined in the exemption instrument.

The *exemption period* is 12 December 2013 to 11 December 2015 and will not be extended. A 2 year duration has been chosen to allow sufficient time for all relevant aircraft to become equipped. (Some of the major airframe manufacturers of business jets will not have original equipment manufacturer (OEM) modifications available before the end of 2014. However, AA will continue SSR for ATM in the J-curve area until at least 2016.)

An *exempted operation* means one or more aircraft operations of which CASA has been notified in writing by the operator, not less than 14 days before the operation commences, of the operator’s intention to operate in exempted airspace during the exemption period. The type, model, and nationality and registration marks of each aircraft must be included in the notification.

*Exempted airspace* is Australian-administered airspace at or above FL 290 in the SSR radar J-curve area; airspace over external territories or outside the territorial seas. Airspace is not exempted over most of mainland Australia (and Tasmania) or within the 12 mile territorial limit (except the radar J-curve); or over specific parts of the Gulf of Carpentaria, Bass Strait and the Great Australian Bight.

The *requirement to carry serviceable ADS-B transmitting equipment* means the requirement imposed on operators under the provisions of CAO 20.18, 82.1, 82.3, 82.5 and the Direction, as mentioned above.

The specific technical details of the exemption are summarised in Appendix 1.

***Legislative Instruments Act 2003* (the *LIA*)**

As noted above, exemptions under Subpart 11.F of CASR 1998 are “for subsection 98 (5A)” of the Act, that is, for regulations which empower the issue of certain instruments, like exemptions, in relation to “(a) matters affecting the safe navigation and operation, or the maintenance, of aircraft”, and “(b) the airworthiness of, or design standards for, aircraft”.

The exemption is one in relation to matters affecting the safe navigation and operation of aircraft. Under subsection 98 (5AA) of the Act, an exemption issued under paragraph 98 (5A) (a), for such matters, is a legislative instrument if expressed to apply in relation to a class of persons, a class of aircraft or a class of aeronautical products (as distinct form a particular person, aircraft or product).

The exemption applies to classes of aircraft and is, therefore, a legislative instrument subject to registration, and tabling and disallowance in the Parliament, under sections 24, and 38 and 42 of the LIA.

**Consultation**

For section 17 of the LIA, CASA consulted with AA and the Australian Strategic Air Traffic Management Group (ASTRA) (an industry group) in the preparation of the exemption. On 26 August 2013, CASA also published the proposed exemption on its website for public information and comment by close of business on 20 September 2013.

By the closing date, CASA had received 12 responses from industry. Some respondents requested further information. Some respondents objected to an exemption being made to suit non-compliant operators’ convenience. Some respondents objected to the time‑limited nature of the exemption and the narrowness of its scope. Having considered all of the comments in detail, CASA decided that they did not give rise to the need to modify the proposed exemption except in regard to its proposed commencement date. This was brought forward to give operators intending to use the exemption on and from 12 December 2013, a reasonable time within which to plan to notify CASA of their intended operations by not later than 13 November 2013. The comments are summarised as follows:

**Summary of industry responses to the CASA’s proposed ADS-B class exemption**

| **No.** | **Respondent** | **Brief Summary of the Response** |
| --- | --- | --- |
| 1 | Pacific Avionics | Objected to the application of the exemption to those operators for whom there were no supply barriers to properly equipping themselves. |
| 2 | A private individual | Objected to the exemption as jeopardising the integrity of the national airspace. |
| 3 |  | Request for further information only. |
| 4 | Cobham Aviation Services | Suggested that the exemption could reasonably have a broader aircraft application. |
| 5 | Aviation Maintenance Repair and Overhaul Business Association | Raised a question concerning the applicability of other aviation legislation to exempted aircraft. |
| 6 |  | Request for further information only. |
| 7 | Cessna Aircraft Company | Suggested that the exemption could reasonably have a broader application. |
| 8 | Executive Airlines Essendon, | Suggested that the 12 December 2013 ADS-B mandate implementation date be deferred. |
| 9 | Qantas | Exemption proposal agreed to. |
| 10 | Australian Business Aircraft Association (ABAA) | Objected to the time-limited nature of the exemption as being potentially too short, and to the scope of the exemption as being too narrow. |
| 11 | Westwind II Pty Ltd | Objected to the time-limited nature of the exemption as being potentially too short. |
| 12 | Australian Aircraft Rentals | Objected to the exemption as a means of suiting the convenience of non-compliant operators and potentially giving rise to aviation safety risks. |

**Office of Best Practice Regulation (*OBPR*)**

A Regulation Impact Statement is not required for OBPR in this case because the exemption is covered by a standing agreement between CASA and OBPR under which a RIS is not required for exemptions (OBPR id: 14507).

**Statement of Compatibility with Human Rights**

The Statement in Appendix 2 is 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.

**Commencement and making**

The exemption commences on the day after registration and stops having effect at the end of 11 December 2015, as if it had been repealed by another instrument. The exemption as such takes effect on and from 12 December 2013. In accordance with the definition of an ***exempted operation***, toobtain the benefit of the exemption, operators must notify CASA not less than 14 days before their intended operations commence.

However, existing operators wishing to have the benefit of the exemption on and from 12 December 2013, must notify CASA by not later than 27 November 2013 (i.e. not less than 14 days before 12 December 2013) of their intended operations. Commencement on the day after registration, therefore, provides an administrative lead time to facilitate such operators.

The exemption has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

[Instrument number CASA EX113/13]

Appendix 1

Summary details of exemption — temporary relief period from requirement to carry serviceable ADS-B transmitting equipment when operating in defined exempted airspace

1 Duration

Under this section, the instrument commences on the day after registration and stops having effect at the end of 11 December 2015, as if it had been repealed by another instrument.

2 Definitions

In this section, important words and phrases are defined. For example:

***exempted airspace*** means the Australian-administered airspace, at or above FL 290, described in paragraphs (a), (b) and (c), but **EXCLUDING** the airspace, at or above FL 290, described in paragraph (d).

Thus the exempted airspace is:

(a) airspace within the **radar J-curve —** this is airspace defined by specific lateral limits in Schedule 1 of the instrument and depicted by an aeronautical chart in Attachment 1 to Schedule 1 (the ADS-B Mandate Radar Coverage Map); and

(b) airspace beyond the limits of the territorial sea; and

(c) airspace over an external territory or Lord Howe Island, or over the territorial sea of an external territory or Lord Howe Island.

But the following is excluded from being exempted airspace:

(d) airspace that is the following:

(i) airspace inside the territory of Australia and within its territorial sea, other than the radar J-curve area;

(ii) the airspace:

(A) of ATS Route B598; and

(B) over the sea and any islands lying south of ATS Route B598;

(A Note explains, for general guidance only, that this excluded area is part of the Gulf of Carpentaria.)

(iii) the airspace:

(A) of ATS Route H20; and

(B) over the sea and any islands lying between ATS Route H20 and the eastern boundary of the Australian east coast SSR coverage area;

(A Note explains, for general guidance only, that this excluded area is part of the Bass Strait.)

(iv) the airspace:

(A) of ATS Route L513 west of waypoint HB (***part ATS Route L513***); and

(B) over the sea and any islands lying north of part ATS Route L513;

(A Note explains, for general guidance only, that this excluded area is part of the Great Australian Bight.)

(v) the airspace:

(A) of ATS Route Q27; and

(B) over the sea and any islands lying north of ATS Route Q27.

(A Note explains, for general guidance only, that this excluded area is part of the Great Australian Bight.)

A Note to paragraph (d) of the definition of exempted airspace (dealing with areas EXCLUDED from the scope of the exemption) explains that for general guidance only, EXCLUDED areas and exempted areas are depicted on the map in Attachment 2 to Schedule 1. Thus, the pink continental and pink sea areas are excluded from the scope of the exemption. The turquoise J-curve area, and the green oceanic area are within the scope of the exemption. (The light blue archipelago areas are outside Australian administered Airspace.)

***exempted operation*** means one or more aircraft operations of which CASA has been notified in writing by the operator, not less than 14 days before the operation commences, of the following:

(a) the operator’s intention to operate aircraft in exempted airspace during the ***exemption period***;

(b) the type, model, and nationality and registration marks of each aircraft which will operate in exempted airspace during the exemption period.

3 Application

Under this section, the instrument applies to the operator of an aircraft operated in exempted airspace which, but for this exemption, would be required to carry ADS-B transmitting equipment.

4 Exemption

Under this section, with effect from 12 December 2013, the operator of an aircraft is exempted from the requirement to carry serviceable ADS-B transmitting equipment for an exempted operation in exempted airspace.

A Note explains that the maps of ***exempted airspace*** in Attachments 1 and 2 in Schedule 1 are merely to provide a general indication of exempted airspace (and non-exempted airspace).

5 Conditions

Under this section, the exemption is subject to the following conditions:

(a) the exempted operations must be confined to exempted airspace;

(b) the flight plan for each exempted operation must include the following details at item 18 of the plan: RMK/ADSB EXEMPT.

A Note explains that the exemption does not mean that appropriate air traffic control (***ATC***) clearance is automatic or guaranteed. ATC makes clearance decisions subject to prevailing air traffic and operational conditions at the time of the flight.

Schedule 1 East coast secondary surveillance radar coverage area

This schedule contains the lateral limits which define the radar J curve area.

Attachment 1 to Schedule 1 depicts the radar J-curve area in a chart for general guidance only.

Attachment 2 to Schedule 1 depicts exempted and excluded areas for general guidance only.

Appendix 2

**Statement of Compatibility with Human Rights**

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

Civil Aviation Safety Regulations 1998

Exemption — temporary relief from requirement to carry serviceable ADS-B transmitting equipment when operating in defined exempted airspace

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**

Under Civil Aviation Orders and a related Direction instrument, by 12 December 2013, Australian and foreign registered aircraft in Australian-administered airspace must carry serviceable ADS-B transmitting equipment when operating at or above flight level 290 (that is at or above an altimeter-related height of 29 000 feet). This is to improve the safety and efficiency of air traffic management.

There are uncontrollable delays associated with the overseas manufacture and supply of some relevant ADS-B equipment and, as a result, some Australian and foreign registered aircraft operators may not be able to meet the 12 December 2013 compliance date.

To assist in the management of this contingency, and following consultations with Airservices Australia (***AA***) and others, CASA has issued a geographically limited exemption from the relevant ADS-B carriage requirement to cover both Australian and foreign aircraft operators, subject to compliance with the requirements and conditions of the exemption.

As an exemption, the instrument is entirely beneficial, although safety conditions are attached, for example, timely operational notification to CASA.

Secondary surveillance radar (***SSR***) (which ADS-B will in time replace) will remain the primary surveillance system used by AA in controlled terminal areas, and in a defined east-coast radar area. Most of the Australian-administered airspace outside Australian territory (with some exceptions) will remain without surveillance. The areas in which exemption from the ADS-B carriage requirement applies are, therefore, restricted and defined in terms of continuing availability of SSR or procedural air traffic separation.

The exemption instrument commences on the day after registration and its effective duration is from 12 December 2013 to 11 December 2015. The earlier commencement is to facilitate a transitional notification period to CASA, to enable existing operators to notify CASA, on or before 27 November 2013, of their intent to use the exemption and thereby qualify for the exemption on and from 12 December 2013.

**Human rights implications**

The exemption in 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*. The 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**