Explanatory Statement

Civil Aviation Safety Regulations 1998

Exemption – carriage of flight data recorder – Pel-Air Aviation

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 regulation 207 of the *Civil Aviation Regulations 1988* (***CAR 1988***), CASA is empowered to issue directions relating to the instruments and equipment to be carried in aircraft engaged in certain kinds of air operation. In accordance with regulation 5 of CAR 1988, such directions may be issued in the form of a Civil Aviation Order (***CAO***).

CAO 20.18 sets out directions issued by CASA under regulation 207 in relation to the instruments and equipment to be carried on board aircraft. Paragraph 6.1 of CAO 20.18 requires, among other things, turbine engine aircraft with a maximum take-off weight (***MTOW****)* in excess of 5 700 kg to be fitted with an approved flight data recorder (***FDR***) and an approved cockpit voice recorder (***CVR***).

**Exemptions**

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, 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 (but no longer than 3 years after its commencement) or, if no day is specified, 3 years after commencement.

Under subsection 33 (3) of the *Acts Interpretation Act 1901*, 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.

**Purpose**

This instrument exempts Pel-Air Aviation Pty Limited (the ***operator***) from compliance with subregulation 207 (2) of CAR 1988, in respect of the requirements of paragraph 6.1 of CAO 20.18 in relation to the operation of 4 Hawker Beechcraft Corporation B200C Beech King aircraft.

These aircraft have been modified in accordance with a Supplemental Type Certificate (***STC***) to increase their gross weight to allow them to carry more fuel to enhance the range and operational flexibility of the kinds of operations for which the aircraft are used by the operator, including aeromedical operations conducted in support of the Royal Flying Doctor Service.

The increase in weight associated with the STC increased the MTOW of the aircraft from below 5 700 kg to in excess of that weight which, therefore, required each aircraft to comply with the requirements of paragraph 6.1 of CAO 20.18. Each of the aircraft is currently fitted with an approved CVR, but not an FDR.

The operator sought approval from CASA for a modular acquisition unit comprising both FDR and CVR. The operator was granted an exemption (CASA EX80/13) from the requirements of paragraph 6.1 of CAO 20.18 for a period of 6 months from 12 July 2013 to 31 December 2013, when the development and installation of the modular acquisition unit was expected to have been completed.

However, development of the modular acquisition unit is still continuing and is not expected to be available for installation in the operator’s aircraft until testing has been completed in 2014. As a result, the operator has sought an extension of the exemption for a further 12 months.

CASA has consulted further with the operator and considers that the exemption will have a minimal risk and preserve an acceptable level of aviation safety. This is coupled with the fact that existing modifications to each of the operator’s aircraft to increase its fuel capacity creates greater flexibility and options for flight crew to deal with unanticipated diversions due to weather or other unforeseen circumstances.

**Legislative Instruments Act**

Under subparagraph 6 (d) (i) of the *Legislative Instruments Act 2003* (the ***LIA***), an instrument is a legislative instrument for section 5 of the LIA if it is declared to be a disallowable instrument under legislation in force before the commencement of the LIA. Under regulation 5A of CAR 1988, if CASA has issued a CAO, and CASA later issues an exemption that affects the operation of the CAO, the later document is declared to be a disallowable instrument. This instrument affects the operation of paragraph 6.1 of CAO 20.18 and is, therefore, a legislative instrument.

As a legislative instrument, it is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the *Legislative Instruments Act 2003* (the ***LIA***).

**Consultation**

CASA consulted the operator regarding the terms of the exemption and its duration. The previous exemption (CASA EX80/13) was made with the expectation that development and installation of the ATSO-C1007a – Flight Data Recorder Interface Unit would be complete by 31 December 2013. However, it is apparent this timeframe would not be met and the operator has asked CASA for an extension of the exemption. CASA has also consulted the Australian Transport Safety Bureau (***ATSB***) to establish whether there was any objection to the extension of the exemption. The ATSB did not raise any objection. CASA considers that no further consultation is appropriate or necessary as the instrument applies only to this aircraft operator.

**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 1998.

The instrument commences on the day of registration and expires at the end of 31 December 2014, as if it had been repealed by another instrument.

[Instrument number CASA EX135/13]

**Attachment 1**

**Statement of Compatibility with Human Rights**

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

**Exemption – carriage of flight data recorder – Pel-Air Aviation**

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**

This legislative instrument exempts 4 Hawker Beechcraft Corporation B200C Beech King aircraft operated by Pel-Air Aviation Pty Ltd (the operator) from compliance with the requirement, under paragraph 6.1 of Civil Aviation Order 20.18, to be fitted with an approved flight data recorder.

The instrument expires at the end of 31 December 2014, by which time it is expected that the operator will have developed and installed on each aircraft a modular acquisition unit comprising both a flight data recorder and a cockpit voice recorder.

**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**