

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX83/21 – Part 121 and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2021

Purpose

The purpose of this instrument is to make a number of exemptions and directions in relation to Part 121 and Part 91 of the *Civil Aviation Safety Regulations 1998 (CASR)*.

Background

Part 121 applies to larger aeroplanes used in Australian air transport operations. Part 121 works with Part 91 to provide a comprehensive code of safety rules for air transport operations using larger aeroplanes.

Part 121 is a part of the suite of CASA's new Flight Operations Regulations (**FOR**). The FOR includes new Parts 91, 119, 121, 133, 135 and 138 of CASR, each of which commences on 2 December 2021.

The instrument will facilitate implementation of Part 121 in accordance with CASA's transition policies for the FOR.

There were some technical errors and omissions in Part 121 which give rise to unintended obligations. These will be rectified in the next set of amendments to the Part but, in the meantime, until those amendments are made, it is necessary to use exemptions to provide relief from having to comply with certain requirements and directions to ensure safety compliance.

The exemptions and directions in this instrument variously require operator oversight of the actions of operator personnel and otherwise are intended to maintain current regulatory requirements where the regulations inappropriately failed to reflect requirements of the regulations that the FOR is replacing. The instrument provides exemptions from certain requirements of the FOR where this is considered appropriate, including exemptions against provisions of Part 91 of CASR for private operations, on condition that the operator complies with the related requirements of Part 121 of CASR.

Legislation — exemptions

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.

Subpart 11.F of CASR 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 CASR in relation to a matter mentioned in subsection 98 (5A). Subsection 98 (5A) matters are, in effect, those affecting the safety, airworthiness or design of aircraft.

Under subregulation 11.160 (2), 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. Under subregulation 11.170 (3), 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 this is 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 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.).

Legislation — directions

Under paragraph 11.245 (1) (a) of CASR, for subsection 98 (5A) of the Act, CASA may, by instrument, issue a direction about any matter affecting the safe navigation and operation of aircraft. Under subregulation 11.245 (2), CASA may issue such a direction only if CASA is satisfied that it is necessary in the interests of safety, only if the direction is not inconsistent with the Act, and only for the purposes of CASA's functions.

Under regulation 11.250, a direction ceases to be in force on a day specified in the instrument or, if no day is specified, 1 year after the instrument commences. Under subregulation 11.255 (1), it is an offence to contravene a direction under regulation 11.245 that is applicable to the person.

Description of supplementary exemptions and supplementary directions

Part 1 — Preliminary, Definitions and Application

Section 2 — Duration provides that the instrument commences on 2 December 2021 and is repealed at the end of 1 December 2024.

Section 3 — Definitions provides definitions for the instrument.

Section 4 — Application provides that the instrument applies according to its terms.

Part 2 — Exemptions from Part 121

Section 5 — Application of Part 121 – Australian air transport operations in foreign countries – exemption

This section applies to a “Part 121 operation” which is defined in the instrument to exclude a “Subpart 121.Z operation”.

A “Part 121 operation” is the operation of a *multi-engine* aeroplane for an Australian air transport operation if either or both of the following apply in relation to the aeroplane:

(a) it has a maximum operational passenger seat configuration of more than 9; (b) it has a maximum take-off weight of more than 8,618 kg.

A “Subpart 121.Z operation” is the operation of a *single-engine* aeroplane for an Australian air transport operation if both of the following apply in relation to the aeroplane: (a) it has a maximum operational passenger seat configuration of more than 9; (b) it has a maximum take-off weight of *not* more than 8,618 kg.

For operations in a foreign country, this section exempts the operator and the pilot command from complying with a provision of Part 121 to the extent that the provision is inconsistent with a law of the foreign country. The law of the foreign country prevails to the extent it is inconsistent with a provision of Part 121. There is no inconsistency, however, if the provision of Part 121 and the law of the foreign country can operate concurrently.

Section 6 — Minimum equipment list for Part 121 operations – exemption

This section applies to a “Part 121 operation” which is defined in the instrument to exclude a “Subpart 121.Z operation”.

This section provides an exemption to the operator from complying with the requirement of regulation 121.060 that there must be a minimum equipment list (**MEL**) for an aeroplane. The exemption applies to an operator who immediately before 2 December 2021 held an Air Operator’s Certificate (**AOC**) or was an early applicant for an AOC that authorised charter operations or aerial work (air ambulance) operations in the aeroplane but did not authorise regular public transport operations in the aeroplane.

It is a condition of the exemption that the operator must not commence using the aeroplane for scheduled air transport operations.

The exemption ceases to have effect the earliest of:

- (a) the day the operator commences using the relevant aeroplane for scheduled air transport operations; and
- (b) the day an approval of a MEL for the aeroplane, under regulation 91.935, takes effect; and
- (c) the end of 3 December 2023.

Section 7 — Journey log – recording time flight begins – exemption

This section applies to a “Part 121 operation” which is defined in the instrument to exclude a “Subpart 121.Z operation”.

This section exempts the operator and pilot in command from complying with the requirement of subregulation 121.105 (2), to record in the journey log, at the time the flight begins, the actual time the flight begins as specifically required under subparagraph 121.105 (3) (d) (ii). The exemption is subject to the condition that the actual time the flight begins must be recorded in the journey log, or another readily available document kept by the operator, not later than as soon as reasonably practicable after the flight ends.

Section 8 — Journey log – recording flight information – exemption

This section applies to a “Part 121 operation” which is defined in the instrument to exclude a “Subpart 121.Z operation”.

This section exempts the operator and pilot in command from complying with the requirements of subregulation 121.105 (4), to record in the journey log, as soon as practicable after the flight ends, the place of arrival and incidents and observations (if any) relevant to the flight as specifically required under paragraphs 121.105 (5) (a) and (e). The exemption is subject to the condition that these entries must be recorded in the journey log, or another readily available document kept by the operator, not later than as soon as reasonably practicable after the flight ends.

Section 9 — Aerodrome requirements – approach slope indicator systems – exemption

This section applies to a “Part 121 operation” which is defined in the instrument to exclude a “Subpart 121.Z operation”.

This section exempts the operator and the pilot in command from complying with the approved visual approach indication system requirements mentioned in subregulation 121.205 (4). This subregulation indicates that the system must meet the prescribed standards under Part 139 of CASR. This would not be the case at a foreign aerodrome. It is a condition of the exemption that the runway at the foreign aerodrome must be equipped with analogous equipment, namely, a T-VASIS, AT-VASIS or PAPI visual approach indicator system that meets the relevant standards in Annex 14 to the Chicago Convention, as in force from time to time.

Section 10 — Procedures for information about aerodromes – water aerodromes – exemption

This section applies to a “Part 121 operation” which is defined in the instrument to exclude a “Subpart 121.Z operation”.

This section exempts the operator from compliance with paragraph 121.210 (1) (a) (about exposition content), but only to the extent that the operator’s exposition must contain information for the location of the aerodrome’s windsocks, as mentioned in paragraph 121.210 (2) (e). Water aerodromes may not have a windsock. It is a condition of the exemption that the operator’s exposition must contain procedures by which flight crew can determine wind conditions at a water aerodrome.

Section 11 — Procedures for loading aeroplanes – weight of crew, passengers and their baggage – exemption

This section applies to a “Part 121 operation” which is defined in the instrument to exclude a “Subpart 121.Z operation”.

This section exempts the operator from compliance with the requirements of subregulation 121.440 (2), about procedures to determine the weight of crew members, passengers, and carry-on baggage for a flight. The subregulation provides 3 options for the operator in this regard. The exemption provides a 4th option, specifically the use of standard weights derived from a regular survey program established by the operator and detailed in the operator’s exposition. If the weight of a crew member, passenger or carry-on baggage is demonstrably greater than the standard weight, the operator must use an applicable weight that is more representative of the actual weight, derived from a methodology detailed in the operator’s exposition.

Section 12 — Flight crew composition, number, qualifications and training – exemption

This section applies to a “Part 121 operation” which is defined in the instrument to exclude a “Subpart 121.Z operation”.

Subsection 12 (2) provides an exemption for operators against subregulations 121.475 (1) and (5) in relation to the requirements mentioned in paragraphs 121.475 (h) to (m), inclusive. These provisions relate to flight crew member experience and training. The exemption is conditional on a flight crew member successfully participating in the operator’s training and checking system, and the operator holding a CASA approval that the training and checking system adequately addresses all of the matters mentioned in the exempted paragraphs.

Subsection 12 (4) provides an exemption for operators against subregulations 121.475 (1) and (5) in relation to paragraph 121.475 (2) (f) to the effect that a reference in the paragraph to regulation 121.490 should instead be considered a reference to regulation 121.505. A condition of the exemption is that, in relation to regulations 121.500 and 121.505, each co-pilot and cruise co-pilot, when performing supervised line flying, must do so in accordance with the operator’s training and checking system.

Section 13 — Requirements for valid proficiency check – exemption

This section applies to a “Part 121 operation” which is defined in the instrument to exclude a “Subpart 121.Z operation”.

This section provides operators with a technical exemption against the requirements of subregulations 121.475 (1) and (5) in relation to the validity period of a proficiency check mentioned in subparagraph 121.575 (1) (b) (iii) that is designed to ensure that the subparagraph works as intended. The exemption clarifies that if a Part 121 proficiency check mentioned in subparagraph 121.575 (1) (b) (iii) is completed within 30 days before or after the end of the 12-month period beginning on the day the most recent of the previous checks was successfully completed, the day that is the end of the 12-month period remains the applicable day for subparagraph 121.575 (1) (b) (iii).

Section 14 — Cabin crew – recent experience requirements – exemption

This section applies to a “Part 121 operation” which is defined in the instrument to exclude a “Subpart 121.Z operation”.

This section provides operators with an exemption against the requirements of paragraph 121.640(2) (a) and subregulation 121.640 (5) in relation to the cabin crew requirements mentioned in regulation 121.705. The purpose of the exemption is to recognise that a cabin crew member can perform duties under supervision during a first flight on a new type of aeroplane, without having the prescribed prior experience on that type of aeroplane.

Part 3 — Exemptions from Part 91 and related directions

Section 15 — Use of Part 121 flight-related documents instead of Part 91 flight-related documents – exemption and direction

This section provides for exemptions against the requirements of Division 91.C.3 (Flight related documents) when an Australian air transport operator conducts a private

operation using an aeroplane referred to in subregulation 121.005 (1) and included in the operator's operations specifications, provided the requirements of Division 121.C.3 are complied with and the operator's exposition provides for this instead.

The term ***private operation*** is defined in the CASR Dictionary to include operations which are not conducted under an AOC, Part 138 certificate or Part 141 certificate, and are not other specified operations.

Directions require appropriate exposition content and that the pilot in command comply with any relevant requirements.

Section 16 — Application of Part 121 flight preparation (Part 121 alternate aerodromes) requirements instead of Part 91 flight preparation (alternate aerodromes) requirements – exemption and direction

This section provides for exemptions against the requirements of regulation 91.235 (Flight preparation (alternate aerodromes) requirements) when an Australian air transport operator conducts a private operation using an aeroplane referred to in subregulation 121.005 (1) and included in the operator's operations specifications. The requirements of regulation 121.170, in relation to flight preparation and alternate aerodromes, must be complied with and the operator's exposition must provide for this instead.

Directions require appropriate exposition content and that the pilot in command comply with any relevant requirements.

Section 17 — Application of Part 121 fuel requirements instead of Part 91 fuel requirements – exemption and direction

This section provides for exemptions against the requirements of regulation 91.455 (Fuel requirements) when an Australian air transport operator conducts a private operation using an aeroplane referred to in subregulation 121.005 (1) and included in the operator's operations specifications.

The fuel requirements under regulation 121.235 must be complied with instead.

Directions require appropriate exposition content and that the pilot in command comply with any relevant requirements.

Section 18 — Application of Part 121 fuelling requirements instead of Part 91 fuelling requirements – exemption and direction

This section provides for exemptions against the requirements of regulation 91.510 (Fuelling requirements) when an Australian air transport operator conducts a private operation using an aeroplane referred to in subregulation 121.005 (1) and included in the operator's operations specifications.

The fuelling requirements under regulation 121.240 must be complied with instead.

Directions require appropriate exposition content and that the pilot in command comply with any relevant requirements.

Section 19 — Application of Part 121 passenger safety briefings, instructions and demonstrations requirements instead of Part 91 safety briefings and instructions requirements – exemption and direction

This section provides for exemptions against the requirements of regulation 91.565 (Passengers — safety briefings and instructions) when an Australian air transport operator conducts a private operation using an aeroplane referred to in subregulation 121.005 (1) and included in the operator's operations specifications.

The safety briefings, instructions and demonstrations requirements under regulation 121.285 must be complied with instead.

Directions require appropriate exposition content and that the pilot in command comply with any relevant requirements.

Section 20 — Application of Part 121 stowage of baggage and passenger service equipment requirements instead of Part 91 restraint and stowage requirements – exemption and direction

This section provides for exemptions against the requirements of regulations 91.590 (Restraint and stowage of carry-on baggage) and 91.595 (Restraint and stowage of certain aircraft equipment) when an Australian air transport operator conducts a private operation using an aeroplane referred to in subregulation 121.005 (1) and included in the operator's operations specifications.

The carry-on baggage and stowage of passenger service equipment requirements under regulations 121.255 and 121.265 must be complied with instead.

Directions require appropriate exposition content and that the pilot in command comply with any relevant requirements.

Section 21 — Application of Part 121 performance requirements instead of Part 91 performance requirements – exemption and direction

This section provides for exemptions against the requirements of Subpart 91.F (Performance) when an Australian air transport operator conducts a private operation using an aeroplane referred to in subregulation 121.005 (1) and included in the operator's operations specifications.

The performance requirements under Subpart 121.F of CASR must be complied with instead.

Directions require appropriate exposition content and that the pilot in command comply with any relevant requirements.

Section 22 — Application of Part 121 weight and balance requirements instead of Part 91 weight and balance requirements – exemption and direction

This section provides for exemptions against the requirements of Subpart 91.J (Weight and balance) when an Australian air transport operator conducts a private operation using an aeroplane referred to in subregulation 121.005 (1) and included in the operator's operations specifications.

The performance requirements under Subpart 121.J of CASR must be complied with instead.

Directions require appropriate exposition content and that the pilot in command comply with any relevant requirements.

Section 23 — Application of Part 121 instruments, indicators, equipment and systems requirements instead of Part 91 equipment requirements – exemptions and direction

This section provides for exemptions against the requirements of Subpart 91.K (Equipment) when an Australian air transport operator conducts a private operation using an aeroplane referred to in subregulation 121.005 (1) and included in the operator's operations specifications.

The equipment requirements under Subpart 121.K of CASR must be complied with instead.

Directions require appropriate exposition content and that the pilot in command and any crew member comply with any relevant requirements.

Section 24 — Application of Part 121 cabin crew requirements instead of Part 91 cabin crew requirements – exemption and direction

This section provides for exemptions against the requirements of Subpart 91.P (Cabin crew) when an Australian air transport operator conducts a private operation using an aeroplane referred to in subregulation 121.005 (1) and included in the operator's operations specifications.

The cabin crew requirements under Subpart 121.P of CASR must be complied with instead.

Directions require appropriate exposition content and that the pilot in command and cabin crew members comply with any relevant requirements.

Part 4 — Directions to Part 121 operators

Section 25 — Compliance before and after flight with flight manual instructions – direction

This section applies to a "Part 121 operation" which is defined in the instrument to exclude a "Subpart 121.Z operation".

The operator must ensure that any activity, in relation to the flight, that occurs whether before or after the flight and that is required, under the aircraft flight manual (*AFM*) instructions for the aeroplane, to be carried out before or after the flight, is carried out in compliance with any relevant requirements and limitations under the AFM instructions.

Section 26 — Fuelling safety procedures – direction

This section applies to a "Part 121 operation" which is defined in the instrument to exclude a "Subpart 121.Z operation".

This section requires operators to include in their exposition procedures to be followed by crew members for the safety of passengers for the flight who, during fuelling, are embarking or disembarking, or are on board, the aeroplane. The procedures must include the normal, emergency and communication procedures.

“Crew member” in this context does not include cabin crew members or flight crew members on duty in the cockpit of the aeroplane.

Section 27 — Passengers in emergency exit rows – direction

This section applies to a “Part 121 operation” which is defined in the instrument to exclude a “Subpart 121.Z operation”.

This section requires an operator to ensure that the pilot in command is satisfied, at the beginning of a flight, that a person sitting in an emergency exit row or adjacent to an emergency exit is a “suitable person” who can assist with the evacuation of the aircraft, or is accompanied or assisted by a suitable person who can access the emergency exit and provide such assistance.

The term *suitable person* is defined in the CASR Dictionary.

The section applies to the operator of an aeroplane with a maximum certificated passenger seating capacity of 19 or less, for a flight that is a Part 121 operation. This is a Part 121 operation for which a cabin crew member is not required.

Part 5 Composition and experience of Part 121 flight crew

Section 28 Operator pairing procedures and requirements — exemption

This section applies to the operator of an aeroplane for a flight that is a Part 121 operation if, immediately before 2 December 2021, the operator: was involved in authorised regular public transport, charter, or aerial work (air ambulance) operations; and was required to provide a training and checking (*T&C*) organisation; and had an operations manual, or a T&C manual, with operator pairing procedures or requirements designed to avoid the flight crew being composed only of similarly less experienced flight crew members.

The operator is exempted from compliance with regulation 121.475 (1) (an offence provision) to the extent of the otherwise mandatory requirement under paragraph 121.475 (2) (c). This paragraph would otherwise require at least one pilot to have the additional flying experience prescribed under paragraph 121.480 (1) (b).

The exemption is subject to the condition that the operator must continue to comply with its existing operator pairing procedures or requirements, and must place them, unaltered, in its exposition (unless CASA approves changes).

Section 29 Directions and cessation

Under this section the operator, either from the day they cease to take advantage of the section 28 exemption, or from 2 March 2023 (whichever is first) must include in its exposition the information, procedures and instructions required to comply with paragraph 121.475 (2) (c) in relation to the previously exempted pilot experience requirements. Section 28 ceases to have effect at the end of 1 March 2023.

Incorporation 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, 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.

Annex 14 to the Chicago Convention (***Annex 14***) is incorporated by reference in the exemption instrument which, based on the foregoing provisions, states that it is incorporated as in force from time to time.

The Annex is available for purchase from the International Civil Aviation Organization at <https://store.icao.int/>. However, CASA will make it publicly available for inspection, by prior arrangement, at any of its offices.

Legislation Act 2003

The exemptions and directions in this instrument are for the safe navigation and operation of aircraft and apply to classes of persons. The instrument is a legislative instrument under the Act and the LA and subject to registration, and tabling and disallowance in the Parliament, under sections 15G, and 38 and 42, of the LA.

Consultation

Under section 16 of the Act, in performing its functions and exercising its powers CASA must consult government, industrial, commercial 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.

For this instrument, from 16 July to 6 August 2021, CASA consulted the aviation community by providing descriptions of the exemptions and directions, and, subsequently, advice about their practical operation, 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. This included advice on the practical application of certain sections of the instrument.

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement (**RIS**) is not required because the instruments are covered by a standing agreement between CASA and OBPR under which a RIS is not required for Exemption or Direction instruments (OBPR id: 14507).

Statement of Compatibility with Human Rights

The Statement in Appendix 1 is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The exemption instrument is compatible with human rights: with its aviation safety focus, it promotes both the right to life, and the right to safe and healthy working conditions. To the extent that it engages with the right not to be discriminated against on the grounds of disability, it does so with minimal practical impact on relevantly disabled persons and in a way that is reasonable, necessary and proportionate in the context of aviation safety.

Commencement and making

The new exemption instrument commences on the day after it is registered and is repealed at the end of 1 December 2024.

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

Statement of Compatibility with Human Rights

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

CASA EX83/21 – Part 121 and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2021

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 this instrument is to make a number of exemptions and directions for Part 121 and Part 91 of the *Civil Aviation Safety Regulations 1998 (CASR)*.

Background

Part 121 of CASR applies to larger aeroplanes used in Australian air transport operations. Part 121 works with Part 91 to provide a comprehensive code of safety rules for air transport operations using larger aeroplanes.

Part 121 is a part of the suite of CASA's new Flight Operations Regulations (**FOR**). The FOR includes new Parts 91, 119, 121, 133, 135 and 138 of CASR, each of which commences on 2 December 2021.

The instrument will facilitate implementation of Part 121 in accordance with CASA's transition policies for the FOR.

There were some technical errors and omissions in Part 121 which give rise to unintended obligations. These will be rectified in the next set of amendments to the Part but, in the meantime, until those amendments are made, it is necessary to use exemptions to provide relief from having to comply with certain requirements and directions to ensure safety compliance.

The exemptions and directions in this instrument variously require operator oversight of the actions of operator personnel and otherwise are intended to maintain current regulatory requirements where the regulations inappropriately failed to reflect requirements of the regulations that the FOR is replacing. The instrument provides exemptions from certain requirements of the FOR where this is considered appropriate, including exemptions against provisions of Part 91 of CASR for private operations, on condition that the operator complies with the related requirements of Part 121 of CASR.

Human rights implications

The legislative instrument engages 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*:

- rights under Article 3 of the Convention on the Rights of Persons with Disabilities, and protections against unlawful discrimination under the *Disability Discrimination Act 1992*
- 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 direction in section 27 of the instrument requires a person sitting in an emergency exit row or adjacent to an emergency exit to be a “suitable person”. This is defined in the CASR Dictionary to mean a person who is:

- (a) reasonably fit, strong and able to assist with the rapid evacuation of the aircraft in an emergency; and
- (b) would not, because of a condition or disability, including an inability to understand instructions, hinder:
 - (i) other passengers during an evacuation of the aircraft in an emergency; or
 - (ii) the aircraft’s crew in carrying out their duties in an emergency.

In the event of an emergency on board the aircraft, the rapid evacuation of the aircraft is invariably critical to the safety of persons on board. For this reason, it would not always be appropriate for a person who was not a “suitable person”, in terms of the definition, to be seated in an emergency exit row or adjacent to an emergency exit, unless they are accompanied or assisted by a suitable person. This is both reasonable and necessary, and is also proportionate in that the person who was not a “suitable person”, within the terms of the definition, could be seated elsewhere on the aircraft.

The *Civil Aviation Act 1988* provides for the making of regulations that contain provisions that are inconsistent with the *Disability Discrimination Act 1992* if necessary for the safety of air navigation. The *Disability Discrimination Regulations 2019* further provide that provisions comparable to those in section 27 of the instrument do not constitute unlawful discrimination.

Although the instrument contains exemptions from various provisions in Part 121 of CASR, it does so in the context of substitute conditions and directions in the interests of aviation safety. To this extent, it contributes to safe and healthy working conditions on board Part 121 aircraft and, ultimately, supports the right to life.

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*.

Conclusion

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 is reasonable, necessary and proportionate in the interests of aviation safety.

Civil Aviation Safety Authority