



Australian Government

Civil Aviation Safety Authority

Instrument number CASA EX85/21

I, PHILIPPA JILLIAN SPENCE, Director of Aviation Safety, on behalf of CASA, make this instrument under regulations 11.160, 11.205 and 11.245 of the *Civil Aviation Safety Regulations 1998*.

[Signed P. Spence]

Pip Spence
Director of Aviation Safety

1 October 2021

CASA EX85/21 – Part 135, Subpart 121.Z and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2021

Part 1 Preliminary, Definitions and Application

1 Name

This instrument is *CASA EX85/21 – Part 135, Subpart 121.Z and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2021*.

2 Duration

This instrument:

- (a) commences on 2 December 2021 (the ***commencement date***); and
- (b) is repealed at the end of 1 December 2024 (thereby, for paragraph 11.250 (a) of CASR, ceasing to be in force on and from the beginning of 2 December 2024).

3 Definitions

- (1) In this instrument:

aerial work (air ambulance) operation has the same meaning as in regulation 202.405 of CASR.

Australian air transport operation has the meaning given by regulation 119.010 of CASR.

Australian air transport operator has the meaning given by subregulation 119.015 (2).

CAR means the *Civil Aviation Regulations 1988*, as in force immediately before 2 December 2021, and any mention of a provision of CAR refers to that provision as so in force.

CASR means the *Civil Aviation Safety Regulations 1998*.

civil aviation legislation has the meaning given by section 3 of the *Civil Aviation Act 1988*.

early applicant, for a particular AOC or AOC variation, means a person:

- (a) who at least 90 days before the commencement date — applied for the AOC or AOC variation under the civil aviation legislation in force on the date of the application; but
- (b) whose application was still under consideration by CASA on the commencement date.

minimum equipment list or **MEL** has the meaning given by regulation 91.925.

Part 135 operation means an operation mentioned in regulation 135.005.

private operation has the meaning given by the CASR Dictionary.

scheduled air transport operation has the meaning given by the CASR Dictionary.

State, for an operator, has the meaning given by the CASR Dictionary.

State of the operator has the same meaning as **State**, for an operator.

Subpart 121.Z operation means an operation mentioned in subregulation 121.005 (2)

the Act means the *Civil Aviation Act 1988*.

- (2) To avoid doubt, in this instrument, unless a contrary intention appears words and expressions have the same meaning as in Part 135 of CASR, the CASR Dictionary and the Act, as applicable.
- (3) To avoid doubt, in this instrument, unless a contrary intention appears, mention of a provision with one of the following prefixes is a reference to that provision as contained in the Part of CASR that uses the same prefix in its title:
“135.”, “121.”, “91.”.
- (4) To avoid doubt, any document incorporated into this instrument is so incorporated as it is in force from time to time.

4 Application

This instrument applies, according to its terms.

Part 2 Exemptions from Part 135

5 Application of Part 135 – Australian air transport operations in foreign countries – exemption

- (1) This section applies to the operator, and the pilot in command, of an aeroplane for a flight that is a Part 135 operation, or a Subpart 121.Z operation, conducted in a foreign country.
- (2) The operator, and the pilot in command, are each exempted from compliance from each provision of Part 135 but only to the extent that the provision is inconsistent with a provision of the law of the foreign country.
- (3) Each exemption in subsection (2) is subject to the condition that the operator, and the pilot in command, must each comply with each applicable provision of Part 135, except that if a law of the foreign country applies to the operation of the aeroplane in that country, the law of the foreign country prevails to the extent of any inconsistency.
- (4) For subsection (3), a provision of a law of a foreign country for a flight is taken not to be inconsistent with a provision of Part 135 for the flight to the extent that the provisions are capable of operating concurrently.

6 Minimum equipment list for Part 135 operations — exemption

- (1) This section applies to the operator of an aeroplane for a flight that is a Part 135 operation or a Subpart 121.Z operation, if, immediately before 2 December 2021, the operator held an AOC, or was an early applicant for an AOC or an AOC variation, that:
 - (a) authorised charter operations, or aerial work (air ambulance) operations, in the aeroplane; and
 - (b) did not authorise regular public transport operations in the aeroplane.
- (2) The operator is exempted from compliance with regulation 135.045 with respect to the aeroplane.
- (3) The exemption in subsection (2) is subject to the condition that the operator must not commence using the aeroplane for scheduled air transport operations.
- (4) This section ceases to have effect at the earliest of the following:
 - (a) the day the operator commences using the aeroplane for scheduled air transport operations;
 - (b) the day an approval, under regulation 91.935, of a MEL for the aeroplane takes effect;
 - (c) the end of 3 December 2023.

7 Journey log – recording time flight begins – exemption

- (1) This section applies to the operator, and the pilot in command, of an aeroplane for a flight that is a Part 135 operation or a Subpart 121.Z operation.
- (2) The operator, and the pilot in command, are each exempted from compliance with subregulation 135.085 (2), but only to the extent of the information for the flight mentioned in subparagraph 135.085 (3) (d) (ii).
- (3) Each exemption in subsection (2) is subject to the condition that the time the flight begins must be recorded in one of the following, not later than as soon as reasonably practicable after the flight ends:
 - (a) the journey log that is prepared under subregulation 135.085 (1);
 - (b) another document kept by the operator, or that is readily available to the operator from another source.

Note An example for paragraph (b) is an operational flight plan kept by the operator for the flight.

8 Journey log – recording flight information – exemption

- (1) This section applies to the operator, and the pilot in command, of an aeroplane for a flight that is a Part 135 operation or a Subpart 121.Z operation.
- (2) The operator, and the pilot in command, are each exempted from compliance with subregulation 135.085 (4), but only to the extent of the information for the flight mentioned in paragraphs 135.085 (5) (a) and (e).
- (3) The exemptions in subsection (2) are subject to the condition that the information for the flight mentioned in paragraphs 135.085 (5) (a) and (e) must be recorded in one of the following, not later than as soon as reasonably practicable after the flight ends:
 - (a) the journey log that is prepared under subregulation 135.085 (1);
 - (b) another document kept by the operator, or that is readily available to the operator from another source.

Note An example for paragraph (b) is an operational flight plan kept by the operator for the flight.

9 VFR flights at night – instrument rating – exemption

- (1) This section applies to the operator of an aeroplane for a flight that is both:
 - (a) a Part 135 operation; and
 - (b) a passenger transport operation or a medical transport operation, that is a VFR flight at night.
- (2) The operator is exempted from compliance with the following:
 - (a) subregulation 135.235 (1), but only to the extent of the requirement under paragraph 135.235 (2) (c);
 - (b) subregulation 135.380 (1), but only to the extent of the requirement under paragraph 135.380 (2) (d).
- (3) Each exemption in subsection (2) is subject to the condition that at least one flight crew member for the flight must be authorised, as follows, to pilot the aeroplane under the IFR:
 - (a) if the aeroplane is an Australian aircraft — under Part 61 of CASR; and
 - (b) if the aeroplane is a foreign-registered aircraft — under the law of:
 - (i) the aeroplane's State of registry; or
 - (ii) the State of the operator of the aeroplane.

Part 3 Exemptions from Part 91 and related directions

10 Use of Part 135 flight-related documents instead of Part 91 flight-related documents — exemption and direction

- (1) This section applies to the operation of an aeroplane that is both of the following (the *operation*):
 - (a) a private operation using an aeroplane mentioned in regulation 135.005 or subregulation 121.005 (2);
 - (b) conducted by an Australian air transport operator whose AOC operations specifications include the aeroplane (the *operator*).
- (2) For the operation, the operator and the pilot in command of the aeroplane (as applicable) are each exempted from compliance with each provision in Division 91.C.3 of CASR, but only if the operator and the pilot in command (as applicable) each comply with the directions in subsections (3) and (4).

Directions

- (3) The operator must ensure that, for the operation:
 - (a) the requirements of each provision in Division 135.C.3 are complied with for the operation (subject to the exemptions in sections 7 and 8 of this instrument in relation to regulation 135.085); and
 - (b) the operator's exposition provides for compliance with the requirements.
- (4) The pilot in command must comply with any requirements arising under subsection (3) that are applicable to the pilot in command.

11 Application of Part 135 fuel requirements instead of Part 91 fuel requirements — exemption and direction

- (1) This section applies to the operation of an aeroplane that is both of the following (the *operation*):
 - (a) a private operation using an aeroplane mentioned in regulation 135.005 or subregulation 121.005(2);
 - (b) conducted by an Australian air transport operator whose AOC operations specifications include the aeroplane (the *operator*).
- (2) For the operation, the pilot in command of the aeroplane is exempted from compliance with regulation 91.455 but only if the operator and the pilot in command (as applicable) each comply with the directions in subsections (3) and (4).

Directions

- (3) The operator must ensure that, for the operation:
 - (a) the requirements of regulation 135.215 are complied with; and
 - (b) the operator's exposition provides for compliance with the requirements.
- (4) The pilot in command must comply with any requirements arising under subsection (3) that are applicable to the pilot in command.

12 Application of Part 135 fuelling requirements instead of Part 91 fuelling requirements — exemption and direction

- (1) This section applies to the operation of an aeroplane that is both of the following (the *operation*):
 - (a) a private operation using an aeroplane mentioned in regulation 135.005 or subregulation 121.005(2);
 - (b) conducted by an Australian air transport operator whose AOC operations specifications include the aeroplane (the *operator*).
- (2) For the operation, the pilot in command of the aeroplane is exempted from compliance with regulation 91.510 but only if the operator and the pilot in command (as applicable) each comply with the directions in subsections (3) and (4).

Directions

- (3) The operator must ensure that, for the operation:
 - (a) the requirements of regulation 135.220 are complied with; and
 - (b) the operator's exposition provides for compliance with the requirements.
- (4) The pilot in command must comply with any requirements arising under subsection (3) that are applicable to the pilot in command.

13 Application of Part 135 passenger safety briefings, instructions and demonstrations requirements instead of Part 91 safety briefing and instructions requirements — exemption and direction

- (1) This section applies to the operation of an aeroplane that is both of the following (the *operation*):
 - (a) a private operation using an aeroplane mentioned in regulation 135.005 or subregulation 121.005(2);
 - (b) conducted by an Australian air transport operator whose AOC operations specifications include the aeroplane (the *operator*).

- (2) For the operation, the pilot in command of the aeroplane is exempted from compliance with regulation 91.565 but only if the operator and the pilot in command (as applicable) each comply with the directions in subsections (3) and (4).

Directions

- (3) The operator must ensure that, for the operation:
 - (a) the requirements of regulation 135.280 are complied with; and
 - (b) the operator's exposition provides for compliance with the requirements.
- (4) The pilot in command must comply with any requirements arising under subsection (3) that are applicable to the pilot in command.

14 Application of Part 135 performance requirements instead of Part 91 performance requirements — exemption and direction

- (1) This section applies to the operation of an aeroplane that is both of the following (the *operation*):
 - (a) a private operation using an aeroplane mentioned in regulation 135.005 or subregulation 121.005(2);
 - (b) conducted by an Australian air transport operator whose AOC operations specifications include the aeroplane (the *operator*).
- (2) For the operation, the operator and the pilot in command of the aeroplane are each exempted from compliance with each provision in Subpart 91.F (as applicable) but only if the operator and the pilot in command each comply with the directions in subsections (3) and (4).

Directions

- (3) The operator must ensure that, for the operation:
 - (a) the requirements of each provision in Subpart 135.F are complied with; and
 - (b) the operator's exposition provides for compliance with the requirements.
- (4) The pilot in command must comply with any requirements arising under subsection (3) that are applicable to the pilot in command.

15 Application of Part 135 weight and balance requirements instead of Part 91 weight and balance requirements — exemption and direction

- (1) This section applies to the operation of an aeroplane that is both of the following (the *operation*):
 - (a) a private operation using an aeroplane mentioned in regulation 135.005 or subregulation 121.005(2);
 - (b) conducted by an Australian air transport operator whose AOC operations specifications include the aeroplane (the *operator*).
- (2) For the operation, the pilot in command of the aeroplane is exempted from compliance with each provision in Subpart 91.J, but only if the operator and the pilot in command (as applicable) each comply with the directions in subsections (3) and (4).

Directions

- (3) The operator must ensure that, for the operation:
 - (a) the requirements of each provision in Subpart 135.J are complied with; and

- (b) the operator's exposition provides for compliance with the requirements.
- (4) The pilot in command must comply with any requirements arising under subsection (3) that are applicable to the pilot in command.

16 Application of Part 135 equipment requirements instead of Part 91 equipment requirements — exemption and direction

- (1) This section applies to the operation of an aeroplane that is both of the following (the *operation*):
 - (a) a private operation using an aeroplane mentioned in regulation 135.005 or subregulation 121.005 (2);
 - (c) conducted by an Australian air transport operator whose AOC operations specifications include the aeroplane (the *operator*).
- (2) For the operation, the operator, the pilot in command and any crew member of the aeroplane (as applicable) are each exempted from compliance with each provision in Subpart 91.K, but only if the operator, the pilot in command and the crew member (as applicable) each comply with the directions in subsections (3) and (4).

Directions

- (3) The operator must ensure that, for the operation:
 - (a) the requirements of each provision in Subpart 135.K are complied with; and
 - (b) the operator's exposition provides for compliance with the requirements.
- (4) The pilot in command and the crew member must each comply with any requirements arising under subsection (3) that are applicable to the pilot in command or the crew member.

17 Seating for crew members other than flight crew members — exemption and direction

- (1) This section applies to a crew member (other than a flight crew member) (the *crew member*) for the operation of an aeroplane (the *operation*) that is both:
 - (a) a Part 135 operation, or a Subpart 121.Z operation as applicable; and
 - (b) a medical transport operation.
- (2) For the operation, the crew member is exempted from compliance with regulation 91.555.
- (3) The exemption in subsection (2) is subject to the condition that the requirements (including the definitions) set out in subsections (4) to (9) are complied with.
- (4) For subsections (5) to (9):

equipment means a safety harness and a restraint strap.

restrained, for a relevant crew member during an operation in an aeroplane, means that the relevant crew member wears the equipment instead of a seatbelt.

- (5) The member must be restrained as follows:
 - (a) for a VFR flight by day — when the aeroplane flies below 1 000 ft AGL;
 - (b) for a VFR flight at night, or IFR flight — when the aeroplane flies below the minimum height required by the civil aviation legislation for a route segment of the flight;
 - (c) for an aeroplane flying above 1 000 ft AGL, or when on the ground at an aerodrome — when the pilot in command of the aircraft, acting in

accordance with the operator's exposition, directs that the relevant crew member be restrained.

- (6) Before the operation commences, the operator must ensure that:
 - (a) the equipment to be worn by the crew member is always available on the aeroplane; and
 - (b) each relevant crew member:
 - (i) has been trained in the use of the equipment; and
 - (ii) has been assessed as competent to use the equipment.
- (7) Before the operation commences:
 - (a) the operator must ensure that the equipment:
 - (i) is fit for the particular purpose of the operation; and
 - (ii) meets the requirements of, or is approved under, Part 21 of CASR; and
 - (iii) is serviceable; and
 - (b) a crew member who may fit the equipment to another person for the operation must, in accordance with procedures in the operator's exposition, ensure that no defects or other hindrances will prevent the proper fitting of the equipment to the person at the relevant time.
- (8) The crew member must comply with the requirements in the operator's exposition about wearing of the equipment.
- (9) Without limiting subsection (8), before the operation commences, and during the operation, the crew member must ensure the equipment is:
 - (a) correctly fitted, worn, and adjusted, to prevent injury to the crew member or other person who is wearing the equipment; and
 - (b) correctly adjusted to prevent the crew member, while wearing the equipment, from completely exiting the aircraft; and
 - (c) secured, using the restraint strap, to a hard point of the aircraft in accordance with the relevant approved data.

Direction

- (10) The operator must ensure that a crew member who takes advantage of the exemption under subsection (2), complies with the condition mentioned in subsection (3) as it applies to the crew member.

Part 4 Directions to Part 135 operators and Subpart 121.Z operators

18 Compliance before and after flight with flight manual instructions — direction

- (1) This section applies to the operator of an aeroplane for a Part 135 operation or a Subpart 121.Z operation.
- (2) The operator must ensure that any activity in relation to the flight:
 - (a) that occurs before or after the flight; and
 - (b) that is required, under the aircraft flight manual instructions for the aeroplane, to be carried out before or after the flight;is carried out in compliance with any relevant requirement or limitation that:
 - (c) is set out in the aircraft flight manual instructions for the aeroplane; and
 - (d) relates to the operation of the aeroplane.

19 Taking off from and landing on narrow runways — direction

- (1) This section applies to the operator of an aeroplane for a Part 135 operation or a Subpart 121.Z operation.
- (2) For the operation, the operator and the pilot in command of the aeroplane must comply with the requirements under regulation 121.220 (including the related requirements under Chapter 6 of the Part 121 MOS) as if:
 - (a) the aeroplane were an aeroplane mentioned in subregulation 121.220 (1); and
 - (b) subregulations 121.220 (1) to (4), and the related requirements under Chapter 6 of the Part 121 MOS, applied to the operator and the pilot in command for the operation.

Note The requirements under regulation 121.220 apply only to an aeroplane with a maximum certificated take-off weight (MCTOW) of more than 5,700 kg.

20 Fuelling safety procedures — direction

- (1) This section applies to the operator of an aeroplane for a Part 135 operation or a Subpart 121.Z operation.
 - (2) The operator must ensure that its exposition includes the procedures to be followed by any crew member for the flight (other than any cabin crew, or flight crew member on duty in the cockpit) in relation to the safety of passengers for a flight of the aeroplane who are embarking or disembarking, or are on board, the aeroplane during fuelling, including the normal, emergency and communication procedures.
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