

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX82/24 — Recording of Time-in-service (Class A Aircraft) Exemption 2024

Purpose

The purpose of this instrument is to exempt each owner, operator and pilot in command of a class A aircraft from the requirement in subregulation 43B(1) of the *Civil Aviation Regulations 1988 (CAR)* to record total time-in-service of the class A aircraft after each completed day of flying operations. The Civil Aviation Safety Authority (**CASA**) considers that these requirements are not necessary or appropriate for class A aircraft, the continuing airworthiness requirements for which are managed through the aircraft maintenance control manual.

Legislation

Section 98 of the *Civil Aviation Act 1988* (the **Act**) empowers the Governor-General to make regulations for the Act and in the interests of the safety of air navigation. Relevantly, the Governor-General has made the *Civil Aviation Safety Regulations 1998 (CASR)* and CAR.

Under subregulation 43B(1) of CAR, it is an offence if, on completion of a day's flying operations, the owner, operator or pilot in command of the aircraft fails to record on the maintenance release the total time-in-service of the aircraft on that day.

Regulation 42ZY of CAR provides for the preparation of, and compliance with, a maintenance control manual for class A aircraft and includes the matters that must be included in the manual.

Class A aircraft is defined in regulation 2 of CAR as meaning an Australian aircraft, other than a balloon, that satisfies either or both of the following paragraphs:

- (a) the aircraft is certificated as a transport category aircraft;
- (b) the aircraft is being used, or is to be used, by the holder of an Australian air transport AOC which authorises the use of that aircraft in scheduled air transport operations.

Subpart 11.F of CASR provides for the granting of exemptions from particular provisions of the regulations. Subregulation 11.160(1) of CASR provides that, for subsection 98(5A) of the Act, CASA may grant an exemption from a provision of the regulations.

Under subregulation 11.160(2) of CASR, an exemption may be granted to a person or a class of persons.

Under subregulation 11.175(4) of CASR, in deciding whether to reissue an exemption on an application by a person, CASA must regard as paramount the preservation of at least an acceptable level of aviation safety. CASA takes the same consideration into account when renewing an exemption on its own initiative.

Under subregulation 11.205(1) of CASR, CASA may impose conditions on an exemption 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 of CASR, an exemption must be published on the internet. Under subregulation 11.230(1), the maximum duration of an exemption is 3 years.

Background

Operators of class A aircraft are required to have an approved system of maintenance and a maintenance control manual to ensure the management of the continuing airworthiness of the aircraft. In larger operators, maintenance is often managed through computerised systems. In many cases, these systems and manuals do not require the recording of the time-in-service of an aircraft on the maintenance release document for the aircraft.

Regulation 43B of CAR is incompatible with the arrangements used for maintenance of most class A aircraft to the extent that the regulation requires the recording of the time-in-service of aircraft on the maintenance release.

Further, in the context of the arrangements for managing the continuing airworthiness of class A aircraft, CASA does not consider there to be any safety imperative to requiring the time-in-service of a class A aircraft to be recorded on the maintenance release.

The instrument replaces instrument *CASA EX141/21—Recording of Time-in-service (Class A Aircraft) Exemption 2021* that expired on 30 November 2024.

Instrument

Section 1 of the instrument sets out the name of the instrument.

Section 2 of the instrument sets out the duration of the instrument.

Section 3 of the instrument sets out a definition of ***maintenance control manual*** for the instrument. This term has the same meaning as in regulation 42ZY of CAR.

Section 4 of the instrument exempts the owner, operator and pilot in command of a class A aircraft from the specific time-in-service recording requirements of subregulation 43B(1) of CAR.

Subsection 5(1) of the instrument imposes a condition on the exemption that requires the operator of the aircraft to include, in its maintenance control manual, procedures relating to the recording of the time-in-service of a class A aircraft. The procedures must be sufficient to ensure that the continuing airworthiness requirements of the aircraft are met, and the time-in-service information is kept up to date.

Subsection 5(2) of the instrument imposes a condition on the exemption that requires the operator of the aircraft to ensure that, at the completion of flying operations on each day that the aircraft is flown, time-in-service information for the aircraft is recorded in accordance with the procedures required under subsection (1).

CASA has assessed the impact the instrument will have on aviation safety and considers that the exemption will preserve a level of safety that is at least acceptable.

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, despite section 14 of the LA, 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 (including a non-legislative instrument) does not yet exist when the legislative instrument is made.

In accordance with paragraph 15J(2)(c) of the LA, the instrument incorporates an aircraft operator's maintenance control manual. In accordance with subsection 98(5D) of the Act, this manual is incorporated as it exists from time to time. The manual is developed by a specific operator to outline their operations and compliance with applicable legislation. As such, a manual is commercial in confidence and therefore not freely available. CASA does not consider it necessary to make the operator's manual publicly available as each operator will have access to their manual as necessary for compliance with the instrument. The operator makes their manual available to their operating personnel.

Legislation Act 2003

For subsection 98(5A) of the Act, CASA may, by instrument, grant an exemption from compliance with a provision of the regulations. 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 persons, in respect of a class of aircraft. The exemption is, therefore, a legislative instrument and is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Sunsetting

As the instrument relates to aviation safety and is made under CASR, Part 4 of Chapter 3 of the LA (the ***sunsetting provisions***) does not apply to the instrument (item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

This instrument will be repealed at the end of 31 October 2027, which will occur before the sunsetting provisions would have repealed the instrument if they had applied. Any renewal of the instrument will be subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA. Therefore, the exemption from sunsetting does not affect parliamentary oversight of this instrument.

Consultation

Consultation under section 17 of the LA has not been undertaken in this case. There have been similar instruments on this subject, most recently CASA EX141/21. Previous instruments have been widely accepted by owners, operators and pilots in command of class A aircraft and have not been the subject of adverse feedback. The original instrument of this kind was requested by industry, and the instrument remains beneficial to industry by

providing more flexibility to record time-in-service for class A aircraft other than on the maintenance release as required under subregulation 43B(1) of CAR.

CASA has been unable to progress amendments to CAR to render the exemption unnecessary due to other legislative priorities. However, the aviation industry has continued to operate satisfactorily under the terms of the iterations of the exemption.

In these circumstances CASA is satisfied that no further consultation is appropriate or necessary for this instrument for section 17 of the LA.

Sector risk, economic and cost impact

Subsection 9A(1) of the Act states that, in exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration.

Subsection 9A(3) of the Act states that, subject to subsection (1), in developing and promulgating aviation safety standards under paragraph 9(1)(c), CASA must:

- (a) consider the economic and cost impact on individuals, businesses and the community of the standards; and
- (b) take into account the differing risks associated with different industry sectors.

The cost impact of a standard refers to the direct cost (in the sense of price or expense) which a standard would cause individuals, businesses and the community to incur. The economic impact of a standard refers to the impact a standard would have on the production, distribution and use of wealth across the economy, at the level of the individual, relevant businesses in the aviation sector, and the community more broadly. The economic impact of a standard could also include the general financial impact of that standard on different industry sectors.

As the instrument replaces an expiring instrument with the same provisions and conditions, there will be no change of economic or cost impact on individuals, businesses or the community.

Impact on categories of operations

The instrument will have a beneficial impact on the operations of class A aircraft because it permits the aviation industry to continue its current practices relating to the recording of time-in-service of class A aircraft.

Impact on regional and remote communities

The instrument will have a beneficial impact on operators of class A aircraft that are based in regional and remote areas for the reasons stated above.

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights at Attachment 1 has been 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.

Office of Impact Analysis (OIA)

An Impact Analysis (*IA*) is not required in this case, as the instrument is covered by a standing agreement between CASA and OIA under which an IA is not required for exemptions (OIA reference number: OIA23-06252).

Making and commencement

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

The exemption commences on 1 December 2024 and is repealed at the end of 31 October 2027.

Statement of Compatibility with Human Rights

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

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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 exempt each owner, operator and pilot in command of a class A aircraft from the requirement in subregulation 43B(1) of the *Civil Aviation Regulations 1988* to record total time-in-service of the aircraft after each completed day of flying operations. The Civil Aviation Safety Authority (**CASA**) considers that these requirements are not necessary or appropriate for class A aircraft, the continuing airworthiness requirements for which are managed through the aircraft maintenance control manual.

The instrument is subject to conditions that CASA has imposed in the interests of aviation safety. The conditions ensure that appropriate procedures for the recording of the time-in-service of class A aircraft are included in the maintenance control manual, which manual is required to be prepared for such aircraft.

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