

Explanatory Statement

Civil Aviation Safety Regulations 1998

Exemption — of approval holders from certain flight examiner rating and endorsement requirements

Purpose

The instrument is an exemption from particular provisions of Part 61 of the *Civil Aviation Safety Regulations 1998 (CASR 1998)*. Its purpose is to facilitate the transition of certain regulation 61.040 approval holders (**approval holders**) to be holders of the flight examiner rating (**FER**), and relevant flight examiner endorsement (**FEE**).

Legislation — exemptions

Details of legislation relating to exemptions are set out in Appendix 1. Briefly, under subregulation 11.160 (3), CASA may grant an exemption on application, or on its own initiative. For making a decision on its own initiative, CASA is guided by the requirement in subsection 9A (1) of the *Civil Aviation Act 1988* (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.

Legislation — CASR Part 61

Section 98 of the Act empowers the Governor-General to make regulations for the Act and the safety of air navigation.

The regulations in Part 61, which commenced on 1 September 2014, set out flight crew licensing requirements. (References below to provisions that commence with the number “61” are to Part 61 of CASR 1998.)

Regulation 61.040 deals with *Approvals by CASA for Part 61*. Under subregulation 61.040 (1), if a provision of Part 61 refers to a person or organisation holding an approval under the regulation, the person or organisation may apply to CASA for the approval. Under subregulation 61.040 (2), subject to application and safety requirements, CASA must grant the approval.

Under regulation 61.1270, *Limitations on exercise of privileges of flight examiner ratings — professional development*, an FER holder is authorised to exercise the privileges of his or her flight examiner rating only if the examiner has, during the previous 24 months, successfully completed (a) a professional development program (a **PDP**) conducted by CASA or (b) an approved course of professional development (an **ACPD**) conducted by the holder of an approval under regulation 61.040 to conduct the course.

Under subregulation 61.1285 (4), for the purposes of the exemption, an examiner proficiency check (**EPC**) is successfully completed if:

- (a) it is conducted in an aircraft or an approved flight simulation training device; and
- (b) a person mentioned in subregulation (5) assesses competency to conduct flight testing as meeting the standards mentioned in the Part 61 Manual of Standards for an FER; and
- (c) the person mentioned in subregulation (5) endorses the licence document to the effect that the EPC has been successfully completed.

Under subregulation 61.1285 (5), the relevant checking persons are CASA or the holder of an approval under regulation 61.040 to conduct the proficiency check.

Regulation 61.1290 deals with the *Requirements for grant of flight examiner ratings*. Under subregulation 61.1290 (1), an applicant for an FER must (a) hold a commercial pilot licence or an air transport pilot licence and (b) must meet the requirements for the grant of at least 1 FEE. Under subregulation 61.1290 (2), the applicant must also have (a) completed a particular course of training for the rating conducted by CASA or the holder of an approval under regulation 61.040, (b) passed the relevant flight test for the flight examiner rating and (c) successfully completed an interview conducted by CASA.

Regulation 61.1320 deals with the *Requirements for grant of flight examiner endorsements*. Under subregulation 61.1320 (1), an applicant for a particular FEE must (a) hold an FER and (b) hold the licences and endorsements mentioned in Table 61.1310 as being required for the particular FEE. Under subregulation 61.1320 (2), the applicant must also have (a) completed a particular course of training for the rating conducted by CASA or the holder of an approval under regulation 61.040 and (b) passed the relevant flight test for the FEE.

Regulation 61.1310 sets out in Table 61.1310 the kinds of FEE that are available and the licences and other endorsements that must be held to qualify for a particular FEE.

Background

The flight crew licensing system requires pilots to undertake knowledge and skill tests for the grant of licences and ratings, and to have regular checks of their proficiency. This is to ensure they remain capable of performing their licensing privileges. These testing and checking activities are called flight tests and proficiency checks. The pilots conducting flight tests are authorised to grant certain ratings and endorsements.

Before the commencement of Part 61 on 1 September 2014, only CASA had the authority to conduct flight tests and proficiency checks, and grant licences, ratings and endorsements. However, CASA delegated these functions to certain appropriately qualified and experienced pilots. These delegation holders were referred to as Approved Testing Officers (*ATOs*).

Separately, CASA approved certain pilots to perform regulatory functions which were similar to flight checks. However, these pilots only needed to hold a particular approval for those purposes.

To obtain an ATO delegation or become an approved pilot, a person had to complete training and be assessed as competent. ATOs were also required to complete a professional development program every 2 years. The training for an ATO was more comprehensive than that required for approved pilots.

Part 61 introduced a number of significant changes, including how a person would become qualified. One of the most important changes was the introduction of the FER. Part 61 also introduced a formal course of training and a professional development program (the *PDP*) for FER holders (sometimes referred to simply as flight examiners). The intention was, and continues to be, to transition the ATOs and approved pilots mentioned above to be FER holders.

Another significant change was the simplification of the licensing system so that all entry control requirements included a flight test. That function was assigned to the FER

holders. This removed the requirement to manage 2 systems, namely, the ATO delegation system for some entry control checks, and the approved pilot system for other entry control checks.

Transitional regulations were made to ensure holders of old authorisations, such as the ATO delegations and approvals, could continue performing those functions under Part 61. These delegates and approval holders are taken to hold the FER.

While these transitioned delegates and approval holders could continue performing testing and checking functions, new flight examiners wanting to obtain an FER, and existing flight examiners wanting to obtain an additional endorsement could only do so by completing the requirements prescribed in Part 61, including completion of a training course.

61.040 approvals and the implementation of Part 61

Regulation 61.040 made express provision for CASA to issue approvals for the purposes of particular regulations where the approval power was called up. The approval power is called up in various provisions which mention flight examiner privileges and which permit approval holders to also exercise those privileges. For example, under subregulation 61.245 (3), a flight test for a flight crew licence, rating or endorsement must be conducted by a flight examiner or by “the holder of an approval under regulation 61.040 to conduct the flight test”.

When Part 61 commenced, CASA had not finalised its FER course and, therefore, could not grant FERs and FEEs as such. To manage this, CASA granted 61.040 approvals to suitable pilots on the basis of their experience, and their training given by CASA in a similar way to the previous ATO training. The 61.040 approvals ensured that, on a transitional basis, flight examiners could continue performing their functions under Part 61 in the capacity of approval holders pending completion of the FER training courses.

The relevant approval holders, therefore, were, and are, pilots to whom CASA has issued relevant approvals since 2014 so that they might exercise flight examiner privileges during the transitional period.

The exemption instrument

The instrument applies to an *applicant*, a defined term meaning an approval holder who applies for (a) an FER *and* an FEE, or (b) an FEE *only*.

Some approval holders already hold an FER and related FEE, but have been granted a regulation 61.040 approval that is equivalent to an *additional FEE*. In those cases, it is the holding of that approval that is relevant for the exemption with respect to the *additional FEE* being sought.

In either case, in the instrument, relevant approval holders are defined as persons *who hold, or have held*, an approval under regulation 61.040 to exercise particular privileges equivalent to those of a particular flight examiner:

- (a) that is in force on or after the commencement of the instrument; or
- (b) that expired before, on or after the commencement of the instrument — provided that the approval is not one that has been, suspended, revoked or voluntarily surrendered to CASA.

These 61.040 approvals will progressively expire over the next 3 years. They will not be renewed as CASA is now in a position to issue FERs and FEEs. It is necessary, therefore, subject to safety conditions, to formally transition such of these approval holders who apply to continue in the examining role, into relevant FER, and/or related FEE, holders, to allow the continued exercise of their relevant privileges.

Given that these applicants would have been exercising what are essentially the privileges of a flight examiner, it would be unfair and, from an aviation safety perspective, unnecessary, to require them to apply to CASA for relevant FERs and FEEs as if they were *de novo* examiner applicants. The exemption instrument, therefore, exempts them from regulation 61.1270, and subregulations 61.1290 (2) and 61.1320 (2) to facilitate their transition.

Thus, while the approval holders must still apply for the relevant FER and FEE, they will be exempted from the requirements to (a) successfully complete a course of training for the FER, (b) pass a flight test and (c) be interviewed by CASA.

As required under paragraph 61.1320 (1) (b), an approval holder who applies for an FEE must meet the requirements for that FEE by holding the licences and endorsements specified for that FEE as mentioned in column 3 of Table 61.1310.

As soon as an approval holder's approval expires, he or she may not lawfully exercise flight examining privileges unless and until they have been granted the relevant FER and/or FEE. However, an approval holder whose approval has expired may still take advantage of the exemption in his or her application for the relevant FER and/or FEE. Approval holders who apply for an FER and FEE, or an FEE only, while their approvals are still current will be processed in such a way that, as far as practicable, their FER and FEE will be issued on or before the day their approval expires.

Conditions

The exemption is subject to important safety conditions. The exemption from the relevant FER and FEE course of training is subject to the condition that the applicant must have successfully completed the PDP for flight examiners, conducted by CASA under paragraph 61.1270 (a). The PDP is an on-line, eLearning program for flight examiners, developed by CASA and conducted through on-line delivery and assessment by CASA.

Exemption from the relevant FER and FEE flight tests is also subject to the condition that the applicant must have successfully completed an EPC.

The EPC must be one which is recorded against the approval holder within the CASA Flight Test Management system (formerly known as the Flight Test Notification System or FTNS). This is to record and confirm the validity of the EPC as one conducted by CASA on the approval holder.

The requirements to have successfully completed the PDP and the EPC before transition to the FER and FEE, or to an FEE only, are important safety conditions of the exemption applicable to all approval holders, but particularly to any whose approval may have expired and who, because of this, may not have exercised flight examining privileges in the recent period before their FER and FEE application.

Full details of the various elements of the exemption instrument, including the conditions, are set out in Appendix 2.

Duration

The exemption commences on the day of registration. It is expressed to operate until it is repealed at the end of 30 June 2020, coinciding, with the period over which the relevant Part 61 approvals will progressively expire.

Legislation Act 2003 (the LA)

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 clearly 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 from a particular person, aircraft or product).

The exemption applies to a class of persons (relevant approval holders) and is, therefore, a legislative instrument subject to registration, and tabling and disallowance in the Parliament, under sections 15G, and 38 and 42, of the LA.

Consultation

Under section 17 of the *Legislation Act 2003* CASA is to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument. The Explanatory Statement is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (see paragraphs 15J (2) (d) and (e)).

Although some elements of the relevant aviation industry know informally that the exemption is proposed, there has been no direct consultation in this case because of the urgency of the requirement to have the exemption in place.

The urgency arises from the fact that some approvals will expire in the near future and the holders require time to apply for relevant FERs and FEES. Applicants must first have successfully completed the on-line PDP and the relevant EPC, the latter following registration under the Flight Test Management system. CASA is satisfied that, in these circumstances, consultation is neither appropriate nor practicable.

However, this is, to some degree, mitigated by the fact that exemptions from regulatory requirements are 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 although, in compliance with section 17 above, it is CASA’s policy to consult 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 of the exemption. This has not been appropriate or practicable in this particular case because of the urgency of the matter.

Office of Best Practice Regulation (OBPR)

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

Statement of Compatibility with Human Rights

The Statement in Appendix 3 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 of registration and is repealed at the end of 30 June 2020.

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 EX121/17]

Legislation — exemptions

Subpart 11.F of CASR 1998 deals with exemptions. Under subregulation 11.160 (1), and for subsection 98 (5A) of the *Civil Aviation Act 1988* (the *Act*), CASA may, by instrument, grant an exemption from a provision of CASR 1998 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. 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 not more than 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.).

Exemption — of approval holders from certain flight examiner rating and endorsement requirements

1 Duration

Under this section, the instrument commences on the day of registration, and is repealed at the end of 30 June 2020.

2 Definitions

- (1) Under this subsection, significant words and phrases are defined. In particular: *applicant* means an approval holder who applies for (a) an FER and an FEE, or (b) an FEE only.

approval means an approval, under regulation 61.040, to exercise particular privileges equivalent to those of a particular flight examiner:

- (a) that is in force on or after the commencement of this instrument; or
 (b) that expired before, on or after the commencement of this instrument — provided that the approval is not one that has been suspended, revoked or voluntarily surrendered to CASA.

As a precaution, a Note explains that nothing in the instrument preserves the flight examiner-equivalent privileges of an approval *which has expired*.

approval holder means a person who holds, or has held, an approval.

EPC means an examiner proficiency check conducted in accordance with paragraphs 61.1285 (4) (a), (b) and (c), and subregulation 61.1285 (5).

PDP means the professional development program for flight examiners, conducted by CASA under paragraph 61.1270 (a).

A Note explains that the PDP is an on-line, eLearning program for flight examiners, developed by CASA and conducted through on-line delivery and assessment by CASA.

- (2) Under this subsection, words and phrases (other than those already defined) have the same meaning as in Part 61 of CASR 1998, unless the contrary intention appears.
- (3) Under this subsection, a numerical reference to a provision that includes the number 61 is a reference to the provision as contained in Part 61 of CASR 1998.

3 Application

Under this section, the instrument applies to an applicant (as defined).

4 Exemptions and conditions

- (1) Under this subsection, an applicant is exempted from paragraphs 61.1290 (2) (a) and 61.1320 (2) (a) [a full course of training for the FER], on condition that he or she has (a) successfully completed the PDP and (b) complied with the other requirements of this section.
- (2) Under this subsection, an applicant is exempted from paragraphs 61.1290 (2) (b) and 61.1320 (2) (b) [the relevant FER or FEE flight test], on condition that he or she has (a) completed a valid EPC and (b) complied with the other requirements of this section.
- (3) Under this subsection, the EPC must be one which is recorded against the approval holder within the CASA Flight Test Management system (formerly known as the Flight Test Notification System or FTNS).

A Note explains that this is to record and confirm the validity of the EPC as one conducted for the applicant by CASA.

- (4) Under this subsection, a relevant applicant is exempted from paragraph 61.1290 (2) (c) [CASA interview for the FER], on condition that he or she has complied with the other requirements of this section.
- (5) Under this subsection, to avoid doubt, an applicant who, in reliance on this instrument, applies for an FEE mentioned in column 1 of Table 61.1310 must hold the licences and endorsements mentioned in column 3 of the Table for the FEE.

A Note explains that this is a requirement of subregulation 61.1320 (1) and it is not the subject of an exemption.

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 — of approval holders from certain flight examiner rating and endorsement requirements

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 instrument is an exemption from particular provisions of Part 61 of the *Civil Aviation Safety Regulations 1998 (CASR 1998)*. Its purpose is to facilitate the transition of certain regulation 61.040 approval holders to be flight examiner rating (**FER**), and/or flight examiner endorsement (**FEE**), holders.

The approvals of the relevant approval holders will progressively expire over the next 3 years and will not be renewed. It is necessary, therefore, to formally transition such of these approval holders as wish to continue in the examining role, into relevant FER and related FEE holders to allow the continued exercise of these examining privileges.

Human rights implications

The exemption in the legislative instrument is beneficial in purpose and content and 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