

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX70/18 – EPC Requirements for ATOs Transitioning to the FER – Exemption 2018

Purpose

The purpose of this instrument is to use an exemption from certain provisions of Part 61 of the *Civil Aviation Safety Regulations 1998 (CASR)* to extend the time within which certain flight examiner rating (*FER*) holders, who have the privilege of conducting flight tests and proficiency checks, must themselves complete an examiner proficiency check (*EPC*).

The FER holders are those persons who held a CASA delegation as approved testing officers (*ATOs*) and who were granted an FER under subregulation 202.272 (2) of CASR, to take effect on 1 September 2018. Subregulation 202.272 (2) was a transitional provision to enable the conversion of old authorisations, like ATO delegations, into new authorisations, like FERs, granted under Part 61 of CASR.

The instrument also applies to a small number of former ATO delegation holders who had been granted an earlier FER but for a set of privileges different from those granted under the FER that takes effect on 1 September 2018.

Legislation — exemptions

Subpart 11.F of CASR 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 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 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 — 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 numerals “61” are to Part 61.) Prior to 1 September 2014, flight tests and rating renewals for the various flight crew licences and ratings were conducted by CASA delegates known as ATOs.

Under regulation 202.261 of CASR 1998, a delegation, issued to a person before 1 September 2014, to give a permission to conduct a flight activity such as flight testing, was described as an *old authorisation*, for example, an ATO delegation.

Under regulation 202.261 of CASR 1998, a *new authorisation* means a flight crew licence, rating or endorsement granted under Part 61.

Under subregulation 202.263 (1) of CASR 1998, an old authorisation that was in force immediately before 1 September 2014, is continued in force on and after 1 September 2014, according to its terms. It is known as a *continued authorisation*.

Under subregulation 202.263 (2) of CASR 1998, Part 61 applies to a continued authorisation “as if it were the equivalent new authorisation”. The Part 61 equivalent to an ATO delegation is an FER.

Examiner proficiency checks

Under subregulation 61.1285 (1), the holder of an FER is authorised to exercise the privileges of the rating (or delegation) only if the holder has a valid EPC.

Under subregulation 61.1285 (2), the holder is taken to have a valid EPC during the following periods:

- (a) the period from when the holder passes the flight test for the rating to the end of the 24th month after the month in which the holder passes the flight test;
- (b) if:
 - (i) the holder passes the flight test for a flight examiner endorsement; and
 - (ii) the flight test is conducted more than 6 months after the holder passes the flight test for the rating;

the period from when the holder passes the flight test for the endorsement to the end of the 24th month after the month in which the holder passes the flight test for the endorsement;
- (c) if the holder successfully completes an examiner proficiency check — the period from when the holder successfully completes the check to the end of the 24th month after the month in which the holder successfully completes the check;
- (d) if:
 - (i) the holder is taken to have a valid examiner proficiency check under any of paragraphs (a) to (c) (the *existing check*); and

- (ii) within 3 months before the validity of the existing check expires, the holder successfully completes an examiner proficiency check; the period from when the validity of the existing check expires to the end of the 24th month after the validity of the existing check expires.

Under subregulation 61.1285 (4), for paragraphs (2) (c) and (d), the holder successfully completes an examiner proficiency check if:

- (a) the examiner proficiency check is conducted in an aircraft or an approved flight simulation training device for the proficiency check; and
- (b) a person mentioned in subregulation (5) assesses the holder's competency to conduct flight testing as meeting the standards mentioned in the Part 61 Manual of Standards for a flight examiner rating; and
- (c) the person endorses the holder's licence document to the effect that the holder has completed the examiner proficiency check on the date stated.

Under subregulation 61.1285 (5), for paragraph (4) (b), the persons are:

- (a) CASA; and
- (b) the holder of an approval under regulation 61.040 to conduct the proficiency check.

Transitional arrangements for ATO delegation holders

For the purposes of Part 61 of CASR, an ATO delegation is treated as if it were its equivalent authorisation under Part 61, that is, as if it were an FER. However, for ATO delegations, the requirements just set out for an FER holder to have a specified EPC before he or she may conduct a flight test, are transitionally modified.

Under subregulation 202.267 (6) of CASR, despite Part 61, the holder of the old authorisation (an ATO delegation) *is taken to meet the proficiency check* requirements (the EPC) for the equivalent new authorisation (the FER) *at a particular time*.

The particular time is determined under subregulation 202.267 (5) of CASR which provides that subregulation (6) applies *at a particular time* if:

- (a) an old authorisation that is continued in force was, before the commencement of the amendments creating Part 61, a time-limited authorisation; and
- (b) the old authorisation *would have remained in force at that time if the amendments had not been made*.

The effect of this is that as long as the ATO delegations are in force, the EPC requirement is in abeyance for ATO delegation holders.

CASA 55/16 extensions of ATO delegations

Under instrument CASA 55/16, dated 17 June 2016, as amended by CASA 73/16, CASA 74/16, CASA 98/16, CASA 38/17, CASA 115/17 and CASA 41/18, relevant ATO delegations that were still in force on 1 September 2014, were extended (progressively) from 30 June 2016 to expire instead at the end of 31 August 2018. The latter is the date on which the legislated transitional arrangements for Part 61 finally expire. Thus, under regulation 202.272 of CASR, the holders of continued authorisations like ATO delegations must be transitioned by CASA to be equivalent FER holders not later than 31 August 2018.

Under section 5 of CASA 55/16, the various extensions of the ATO delegations did not apply to any ATO delegation whose holder had been granted an FER as the equivalent of the ATO delegation.

There is, however, a cohort of some 290 ATO delegation holders who have not yet been transitioned by CASA to be FER holders. This includes a small number of ATO delegation holders who had been granted an earlier FER but for a set of privileges different from those granted under the ATO delegation that they continued to hold.

It is planned to transition all of these persons in the capacity they retain as ATO delegation holders so that, effective on and from 1 September 2018, they will all be FER holders. For the small number of ATO delegation holders mentioned in the previous paragraph, their new FER, effective on 1 September 2018, will merge their ATO delegation privileges into their existing FER so that all of their privileges will be exercisable under an FER.

The issue which gives rise to the need for an exemption instrument is that the effect of subregulation 61.1285 (1) would be that immediately on transition, any of the new FER holders *who had not completed an EPC in the preceding 2 years*, would be required to obtain an EPC **before** they could continue to exercise the privileges of the FER — privileges which, the day before, they would have been entitled to exercise.

These circumstances have arisen from the interaction of the effects of the transitional provisions and the progressive extensions of the ATO delegations. Therefore, exemption arrangements are necessary.

From its commencement, the exemption instrument will apply to exempt the particular group of transitioned ATO delegation holders from the immediate EPC requirement that applies to them as new FER holders, but subject to the condition that the EPC must be completed *in accordance with the extended time frame* provided for by the exemption instrument. The new time frame involves a spread or stagger mechanism to allow a smooth and rolling program of completions of the EPC.

Spread or stagger mechanism for ATO delegation holders

Thus, the spread or stagger mechanism is based on matching an FER holder's birthday month in an odd or even year with a designated date between 30 September 2018 and 31 August 2020, as the last date *by which* he or she must complete the EPC.

In deciding on an exemption for this cohort of FER holders, and in determining the spread or stagger mechanism, aviation safety is, of course, the most important consideration. CASA is satisfied that, despite the inevitable delays inherent in the spread or stagger mechanism, the proposal preserves a level of aviation safety that is acceptable specifically in the context of the status and experience of the particular transitioning ATOs.

Schedule 1 of the exemption instrument contains the mechanism and the relevant table. Thus, for an FER holder whose birthday occurs during a month mentioned in a row of column 1 of the Table, the holder must complete an EPC by not later than the corresponding date depending on whether the holder's year of birth was an odd or even number. For a holder whose date of birth occurred on 29 February, the holder must complete an EPC by not later than 31 March 2020.

The exemption instrument does not apply to a relevant FER holder who, in 2 years immediately before 1 September 2018, successfully completed an EPC. A Note explains that for relevant FER holders who completed an EPC during the 2 years before 1 September 2018, the requirements of regulation 61.1285 are to apply to ensure that the requisite frequency cycle of EPCs set in motion at that time is maintained for the FER holder.

For a birthday that occurs in the month of:	an EPC must be completed by not later than:	
	for a year of birth that is an uneven number (for example 1969, 1971):	for a year of birth that is an even number (for example 1970, 1972):
January	31 January 2019	31 January 2020
February	28 February 2019	28 February 2020
March	31 March 2019	31 March 2020
April	30 April 2019	30 April 2020
May	31 May 2019	31 May 2020
June	30 June 2019	30 June 2020
July	31 July 2019	31 July 2020
August	31 August 2019	31 August 2020
September	30 September 2019	30 September 2018
October	31 October 2019	31 October 2018
November	30 November 2019	30 November 2018
December	31 December 2019	31 December 2018

Duration

The exemption commences on 1 September 2018. It is expressed to operate until it is repealed at the end of 31 August 2020, thus allowing for a 24-month spread or stagger period.

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 (the particular FER 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

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 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.

The exceptions to this are when matters are urgent, and when CASA considers that the relevant state of affairs as well as informal feedback suggests that consultation would add little if anything to the proposed solution but would delay its promulgation to those who need to plan to take advantage of it.

In this case, CASA considers that no consultation is required because of the necessity to promulgate, as soon as possible, the fact of the exemption and the proposed stagger dates (the first of which expires on 30 September 2018) so that those wishing to gain the benefit of the exemption can plan accordingly.

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 1 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 1 September 2018 and is repealed at the end of 31 August 2020.

The exemption has been made by the Acting 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*

Civil Aviation Safety Regulations 1998

CASA EX70/18 – EPC Requirements for ATOs Transitioning to the FER – Exemption 2018

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 use an exemption from certain provisions of Part 61 of the *Civil Aviation Safety Regulations 1998 (CASR)* to extend the time within which certain flight examiner rating (**FER**) holders, who have the privilege of conducting flight tests and proficiency checks, must themselves complete an examiner proficiency check.

The FER holders are those persons who held a CASA delegation as approved testing officers (**ATOs**) and who were granted an FER under subregulation 202.272 (2) of CASR, to take effect on 1 September 2018. Subregulation 202.272 (2) was a transitional provision to enable the conversion of old authorisations, like ATO delegations, into new authorisations, like FERs, granted under Part 61 of CASR.

The instrument also applies to a small number of former ATO delegation holders who had been granted an earlier FER but for a set of privileges different from those granted under the FER that take effect on 1 September 2018.

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*. 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