

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX101/18 — Foreign Cadet Pilots (Medical Certificate for CPL Flight Test) Exemption 2018

Purpose

This legislative instrument allows foreign cadet pilots to take a flight test for a commercial pilot licence (*CPL*) without holding a class 1 medical certificate, provided that they comply with specified conditions, including that the pilot holds a current class 2 medical certificate and has met the class 1 medical standard in the pilot's country of residence.

Legislation

Section 98 of the *Civil Aviation Act 1988* (the *Act*) provides that the Governor-General may make regulations for the Act and the safety of air navigation.

Part 61 of the *Civil Aviation Safety Regulations 1998* (*CASR*) commenced on 1 September 2014 and deals with flight crew licensing requirements for aeroplanes, helicopters, powered-lift aircraft, gyroplanes and airships.

Under paragraph 61.580 (2) (c) of CASR, an applicant for a CPL must have passed the flight test mentioned in the Part 61 Manual of Standards for the CPL and the associated category rating. Under subregulation 61.580 (3), the flight test for the CPL must be conducted in an aircraft. Under regulation 61.240, an applicant for a flight crew licence is taken not to have passed the flight test if, when the applicant took the flight test, the applicant was not eligible under regulation 61.235 to take the flight test.

Under paragraph 61.235 (2) (c) of CASR, an applicant is eligible to take a flight test for a CPL only if the applicant holds a current medical certificate of the class required for the exercise of the privileges of the licence, or a medical exemption for the exercise of the privileges of the licence. Under regulation 61.415 of CASR, the holder of a CPL is authorised to exercise the privileges of the licence only if the holder also holds a current class 1 medical certificate, or a medical exemption for the exercise of the privileges of the licence. Therefore, under paragraph 61.235 (2) (c), an applicant is eligible to take a flight test for a CPL only if the applicant holds a current class 1 medical certificate, or a medical exemption for the exercise of the privileges of the licence.

Under subregulation 61.415 (2) of CASR, the holder of a CPL is authorised to exercise the privileges of the licence in an activity that would be authorised by a private pilot licence if the holder also holds a current class 2 medical certificate.

Subpart 67.C of CASR sets out the medical standard that must be met by a person to obtain a class 1, 2 or 3 medical certificate. The standard in relation to respiratory function, diabetes mellitus, hearing and distant visual acuity is higher for a class 1 medical certificate than for a class 2 medical certificate.

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), an exemption may be granted to a person, or to a class of persons, and may specify the class by reference to membership of a specified body or any other characteristic. Under subregulation 11.175 (4), in making its decision as to whether to renew an exemption on application by a person, CASA must regard as paramount the preservation of a level of aviation safety that is at least acceptable. In renewing an exemption on its own initiative, CASA applies the same test.

Under subregulation 11.205 (1) of CASR, CASA may impose conditions on an exemption if this is necessary in the interests of the safety of air navigation. Under regulation 11.225, an exemption must be published on the Internet. Under subregulation 11.230 (1), the maximum duration of an exemption is 3 years.

Instrument

CASA EX117/14 was issued in September 2014 to provide foreign student applicants for a CPL with a transitional period of 12 months during which they were permitted to take a flight test for a CPL without holding a class 1 medical certificate. CASA EX117/14 expired at the end of August 2015 and CASA EX156/15 continued the exemption for another 3 years. This instrument, CASA EX101/18, continues the exemption for a further 3 years during which time CASA intends to review the policy on medical certificate requirements for CPL foreign student applicants.

The exemption only applies to foreign cadet pilots. A foreign cadet pilot is a person who is not a citizen or permanent resident of Australia, and who is undertaking training for a CPL, under sponsorship of a foreign aircraft operator, as a student of an operator that conducts flight training in accordance with Part 141 or 142 of CASR.

The instrument is subject to conditions set out in section 6. They include a condition that foreign cadet pilots must hold a class 2 medical certificate and have met the class 1 medical standard in the pilot's country of residence. The requirement to hold a class 2 medical certificate reflects the requirement that was in regulation 5.07 of the *Civil Aviation Regulations 1988* before the commencement of Part 61 of CASR. It is expected that, prior to receiving sponsorship from an airline, the cadet pilot will have completed medical checks to meet the class 1 medical standard in their home country, consistent with the requirement of the instrument.

It is also a condition of the exemption that the flight test must be organised by the training provider as part of the pilot's registration with the training provider.

The instrument does not affect the requirement for the foreign cadet pilot, following successful completion of the flight test for a CPL, to hold all relevant permissions, approvals, ratings, endorsements and medical certificates in accordance with Part 61 of CASR before the pilot flies a registered aircraft in any operation. For example, under regulation 61.415, if the pilot holds a current class 2 medical certificate, but not a class 1 medical certificate, the pilot may only conduct an activity that would be authorised by a private pilot licence.

The purpose of the exemption is to allow foreign cadet pilots, who have a class 2 medical certificate, to take a flight test for a CPL without having to obtain a class 1 medical certificate in Australia. This recognises that requiring a current Australian class 1 medical certificate is an unnecessary cost to operators or foreign cadet pilots when they will not seek to exercise the privileges of a CPL in Australia.

Renewal of CASA EX156/15 and expected amendments to CASR

The exemption is expressed to commence on 1 September 2018, which is immediately after the repeal of the previous exemption on this topic, CASA EX156/15.

The exemption is expressed to operate until it is repealed at the end of 31 August 2021. However, the exemption is an interim measure, pending substantive amendments to Part 61 of CASR which will remove the need for the exemption. These amendments will be part of a larger set of amendments to Part 61 of CASR for which CASA has provided drafting instructions to the Office of Parliamentary Counsel (**OPC**). It is expected that, subject to the capacity of OPC to produce them in the context of competing priorities arising from government drafting demands, the amendments will be made and in force within the next 12 months to 2 years.

Legislation Act 2003 (the LA)

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. An instrument issued under paragraph 98 (5A) (a) 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, being foreign cadet pilots, as defined in section 4 of the instrument. The instrument is, therefore, subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Consultation

CASA EX117/14 was issued at the request of industry. CASA EX156/15 continued the exemption after feedback from industry that the exemption had been beneficial to student pilots and had reduced medical testing administrative delays and costs. CASA EX101/18 continues the exemption in CASA EX156/15, on the basis that the exemption remains beneficial to industry without unduly compromising aviation safety.

CASA has not received any feedback from industry that the exemption and the conditions on the exemption are not appropriate. In these circumstances, it is CASA's view that it is not necessary or appropriate to undertake any further consultation under section 17 of the LA.

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is at Attachment 1.

Office of Best Practice Regulation (OBPR)

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

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 instrument commences on 1 September 2018 and ceases when it is repealed at the end of 31 August 2021.

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

This legislative instrument allows foreign cadet pilots to take a flight test for a commercial pilot licence (*CPL*) without holding a class 1 medical certificate.

The exemption in the instrument is subject to conditions, including a condition that the pilot must hold a class 2 medical certificate and have met the class 1 medical standard in the pilot's country of residence.

The medical standard for a class 1 medical certificate is higher than for a class 2 medical certificate.

The purpose of the legislative instrument is to allow foreign cadet pilots who have a class 2 medical certificate to take a flight test for a CPL without having to obtain a class 1 medical certificate in Australia. This recognises that requiring a current Australian class 1 medical certificate is an unnecessary cost to operators or foreign cadet pilots when they will not seek to exercise the privileges of a CPL in Australia.

Human rights implications

The legislative instrument engages the following rights:

- The right to work (Article 6 (1) of the International Covenant on Economic, Social and Cultural Rights (*ICESCR*)); and
- The rights to equality and non-discrimination (Article 26 of International Covenant on Civil and Political Rights (*ICCPR*)).

Right to work

The right to work in Article 6 (1) of ICESCR includes the right of everyone to the opportunity to gain their living by work which they freely choose or accept. The right to work is engaged by the exemption from the requirement for an Australian class 1 medical certificate before a foreign cadet pilot can take a flight test for a CPL. It increases the opportunity for these foreign cadet pilots to obtain an Australian CPL, which is used to obtain a CPL in the foreign cadet pilots' home country where they have the potential to work as a pilot. The exemption, therefore, promotes the right to work of the affected pilots.

Rights to equality and non-discrimination

The rights to equality and non-discrimination in Article 26 of ICCPR provide that all persons are equal before the law and are entitled without any discrimination to the equal protection of the

law. In this respect, laws should not discriminate on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The rights to equality and non-discrimination are engaged by this instrument, as the benefit that it provides does not apply to people who are citizens or permanent residents of Australia. While foreign cadet pilots will be able to take a flight test for a CPL while holding a class 2 medical certificate, citizens and permanent residents of Australia will require a class 1 medical certificate.

Under Annex 1, *Personnel Licensing*, to the Convention of International Civil Aviation (the **Chicago Convention**), the class 1 medical standard applies to the holder of, or an applicant for, a CPL for an aeroplane or a helicopter. Consequently, by limiting the application of the exemption to foreign cadet pilots, the legislative instrument supports Australia's compliance with its obligations under the Chicago Convention by requiring citizens and permanent residents of Australia to hold a class 1 medical certificate before taking a flight test for a CPL.

The CPL is indirectly linked to the entitlement to work as a pilot. Pilots holding permanent residence or citizenship are entitled to work, so retaining the requirement for a class 1 medical certificate for a CPL flight test reduces the risk to pilots of granting them a CPL when they might not ever hold a class 1 medical certificate.

The exception for cadet pilots who are not citizens or permanent residents of Australia is reasonable. Foreign cadet pilots may have obtained a class 2 medical certificate, rather than incurring the additional cost of obtaining a class 1 medical certificate, at the time that they commenced their training. Unlike holders of a CPL who are citizens and permanent residents of Australia, the foreign cadet pilots will not be exercising the privileges of the CPL in Australia. In order to exercise the privileges of the CPL in Australia, the foreign cadet pilot, like other pilots, will require a class 1 medical certificate. Therefore, the exemption does not discriminate between the foreign cadet pilots and Australian pilots in relation to work in Australia.

Conclusion

The legislative instrument is compatible with human rights and, to the extent that it may also limit human rights, those limitations are reasonable, necessary and proportionate to comply with international obligations.

Civil Aviation Safety Authority