

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX15/20 — Aeronautical Experience Requirements for Grant of Commercial Pilot Licence (Aeroplane Category) Exemption 2020

Purpose

This instrument continues to exempt certain applicants for a commercial pilot licence with the aeroplane category rating (**CPL(A)**) who have not completed the related integrated training course from meeting the aeronautical experience requirement in paragraph 61.610 (1) (b) of the *Civil Aviation Safety Regulations 1998 (CASR)*. Also, this instrument continues to instead allow those applicants for a CPL(A) to have a reduced amount of flight time (a total of at least 60 hours) as pilot in command of an aeroplane.

The reduced amount of flight time (a total of at least 60 hours) restores the amount of flight time mentioned in paragraph 5.113 (1) (a) of the *Civil Aviation Regulations 1988* before it was repealed when Schedule 2 to the *Civil Aviation Legislation Amendment Regulation 2013 (No. 1)* commenced on 4 December 2013.

Legislation — exemptions

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 CASR.

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, the Civil Aviation Safety Authority (**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 a class of persons, and may specify the class by reference to membership of a specified body or any other characteristic.

Under subregulation 11.160 (3), an exemption may be granted on application by a person or on CASA's own initiative.

Under subregulation 11.175 (4) of CASR, in deciding whether to renew an exemption, CASA must regard as paramount the preservation of at least an acceptable level of aviation safety. CASA has regard to the same test when deciding whether to renew an exemption on its own initiative.

Regulation 11.225 of CASR requires an exemption to be published on the Internet. Under subregulation 11.230 (1) of CASR, the maximum duration of an exemption is 3 years.

Legislation – flight crew licensing requirements – CASR Part 61

Part 61 of CASR sets out flight crew licensing requirements.

A CPL(A) is a kind of commercial pilot licence. Therefore, paragraph (a) of the definition of **flight crew licence** and paragraph (b) of the definition of **pilot licence**, both in regulation 61.010 of CASR, have the combined effect of including a CPL(A) within the definition of **flight crew licence**.

Division 61.I.3 of CASR sets out the aeronautical experience requirements that apply to applicants for commercial pilot licences who have not completed an integrated training course. Regulation 61.605 of CASR states that Division 61.I.3 “applies to an applicant for a commercial pilot licence who has not completed an integrated training course for the licence and the associated aircraft category rating”.

Regulation 61.610 of CASR sets out the aeronautical experience prerequisites for licence applications for, relevantly, applicants for a CPL(A) who have not completed an integrated training course for a CPL(A). Subregulation 61.610 (1) requires an applicant for a CPL(A) who has not completed the related integrated training course to have at least 200 hours of aeronautical experience that includes, in paragraphs 61.610 (1) (b) to (e), various kinds of flight time for at least the related number of hours. Under paragraph 61.610 (1) (b), the amount of aeronautical experience mentioned in the preceding sentence must include at least 100 hours of flight time as pilot in command of an aeroplane.

Background

On 6 February 2015, CASA made instrument number CASA EX22/15, *Exemption – aeronautical experience requirements for grant of commercial pilot licences – aeroplane category (CASA EX22/15)*, granting an initial exemption to relevant applicants for a CPL(A) from the aeronautical experience requirements in paragraph 61.610 (1) (b). CASA EX22/15 was registered on the Federal Register of Legislation on 11 February 2015 (F2015L00130 refers), commenced on the same date, and was repealed on 31 December 2017.

As the Explanatory Statement for CASA EX22/15 mentions, CASA EX22/15 was issued after an applicant for a CPL(A) brought the unintended effect of paragraph 61.610 (1) (b) to CASA’s attention. The Explanatory Statement for instrument number CASA EX22/15 also mentions that CASA EX22/15 “is of beneficial effect to all such applicants and correctly states CASA’s preferred policy, pending amendment of the regulation”.

CASA EX22/15 was repealed on 31 December 2017. Because the instrument that renewed the exemption (*CASA EX172/17 — Aeronautical Experience Requirements for Grant of Commercial Pilot Licences (Aeroplane Category) Exemption 2017 (CASA EX172/17)*) will be repealed on 31 January 2020, this instrument continues to grant the exemption from 1 February 2020.

Overview of instrument

This instrument is intended to continue to exempt certain applicants for a CPL(A) who have not completed the related integrated training course from meeting the aeronautical experience requirement in paragraph 61.610 (1) (b). Also, this instrument is intended to continue to instead allow those applicants for a CPL(A) to have a reduced amount of flight time (a total of at least 60 hours) as pilot in command of an aeroplane.

CASA has assessed that:

- (a) there is no safety reason underpinning the increase from 60 to 100 hours of flight time as pilot in command of an aeroplane required for a CPL(A); and
- (b) without the exemption, the impact on applicants for a CPL(A) would be disproportionate to the safety risk involved.

Content of instrument

Section 1 names the instrument.

Under section 2, the instrument commences on 1 February 2020 and is repealed at the end of 31 January 2023.

Section 3 contains definitions, along with a note that lists certain terms and expressions in the instrument that have the same meaning as they have in the Act and the regulations.

Section 4 exempts an applicant for a CPL(A) who has not completed the integrated training course related to a CPL(A) from the aeronautical experience requirements in paragraph 61.610 (1) (b) of CASR if the applicant:

- (a) holds a commercial pilot licence, or air transport pilot licence, with the helicopter category rating; and
- (b) has a total of at least 100 hours of flight time as pilot in command of any of the aircraft mentioned in the definition of **qualifying aircraft** in section 3; and
- (c) has, as part of the total hours of flight time mentioned in paragraph (b), a total of at least 60 hours, but less than 100 hours, of flight time as pilot in command of an aeroplane.

Therefore, an applicant for a CPL(A) who has not completed the related integrated training course is eligible to apply for a CPL(A) if the applicant can make up the remaining hours of flight time as pilot in command of any qualifying aircraft that is not an aeroplane.

Example 1

An applicant for a CPL(A) who has not completed the related integrated training course holds a commercial pilot licence with the helicopter category rating. The applicant has 65 hours of flight time as pilot in command of an aeroplane, 80 hours of flight time as pilot in command of a recognised helicopter and 20 hours of flight time as pilot in command of a recognised gyroplane. The applicant has met the requirement for a total of at least 100 hours of flight time as pilot in command of a qualifying aircraft mentioned in paragraph (b) of the definition of **exempt CPL(A) applicant** in section 3. The applicant has also met the requirement for a total of at least 60 hours of the flight time mentioned in paragraph (b) of that definition as pilot in command of an aeroplane. Therefore, the applicant is eligible to apply for a CPL(A).

Example 2

An applicant for a CPL(A) who has not completed the related integrated training course holds an air transport pilot licence with the helicopter category rating. The applicant has 40 hours of flight time as pilot in command of an aeroplane, 200 hours of flight time as pilot in command of a registered helicopter and 60 hours of flight time as pilot in command of a recognised gyroplane. The applicant has met the requirement for a total of at least 100 hours of flight time as pilot in command of a qualifying aircraft mentioned in paragraph (b) of the definition of **exempt CPL(A) applicant** in section 3. However, the applicant has not met the requirement for a total of at least 60 hours of the flight time mentioned in paragraph (b) of that definition as pilot in command of an aeroplane. Therefore, the applicant is not eligible to apply for a CPL(A).

Example 3

An applicant for a CPL(A) who has not completed the related integrated training course holds a commercial pilot licence with the helicopter category rating. The applicant has 60 hours of flight time as pilot in command of an aeroplane and 35 hours of flight time as pilot in command of a registered helicopter. The applicant has not met the requirement for a total of at least 100 hours of flight time as pilot in command of a qualifying aircraft mentioned in

paragraph (b) of the definition of *exempt CPL(A) applicant*. Therefore, although the applicant has met the requirement for a total of at least 60 hours of the flight time mentioned in paragraph (b) of that definition as pilot in command of an aeroplane, the applicant is not eligible to apply for a CPL(A).

The exemption is not subject to any conditions. The condition that was included in Schedule 1 to CASA EX22/15 is no longer necessary because:

- (a) it was relocated to paragraphs (b) and (c) of the definition of *exempt CPL(A) applicant* in CASA EX172/17; and
- (b) that change has been retained in this instrument.

Legislation Act 2003 (the LA)

Paragraph 98 (5A) (a) of the Act provides that CASA may issue instruments in relation to matters affecting the safe navigation and operation or the maintenance of aircraft. Additionally, paragraph 98 (5AA) (a) provides that an instrument issued under paragraph 98 (5A) (a) is a legislative instrument if the instrument is expressed to apply in relation to a class of persons. The instrument exempts applicants for a CPL(A) who meet particular licence and aeronautical experience requirements from complying with the aeronautical experience requirements in paragraph 61.610 (1) (b) of CASR. The instrument is, therefore, a legislative instrument, and is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Consultation

Consultation under section 17 of the LA has not been undertaken in this case. This instrument replaces a previous instrument (CASA EX172/17) that will be repealed at the end of 31 January 2020, and is made in substantially similar terms. The exemption is beneficial to industry and maintains the status quo until regulatory amendments of CASR are introduced to remove the need for the exemption. In these circumstances, CASA is satisfied that no further consultation is appropriate, or reasonably practicable, for this instrument for section 17 of the LA.

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement (*RIS*) is not required in this case, as the exemption is covered by a standing agreement between CASA and OBPR under which a RIS is not required for exemptions (OBPR id: 14507).

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*.

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 February 2020 and is repealed at the end of 31 January 2023.

Statement of Compatibility with Human Rights

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

CASA EX15/2020 — Aeronautical Experience Requirements for Grant of Commercial Pilot Licence (Aeroplane Category) Exemption 2020

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*.

Overview of the legislative instrument

The legislative instrument continues to exempt certain applicants for a commercial pilot licence with the aeroplane category rating (*CPL(A)*) who have not completed the related integrated training course from meeting the aeronautical experience requirement in paragraph 61.610 (1) (b) of the *Civil Aviation Safety Regulations 1998*. Also, the instrument continues to instead allow those applicants for a *CPL(A)* to have a reduced amount of flight time (a total of at least 60 hours) as pilot in command of an aeroplane.

Human rights implications

The right to work, contained in Article 6 (1) of the International Covenant on Economic, Social and Cultural Rights, 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 positively engaged because the exemption from the requirement to comply with paragraph 61.610 (1) (b) in certain circumstances gives an applicant for a *CPL(A)* who has not completed the related integrated training course more flexibility in meeting the aeronautical experience requirements related to a *CPL(A)*. Therefore, the exemption promotes the right to work of a *CPL(A)* applicant with relevant aeronautical experience.

The legislative instrument does not otherwise engage any of the applicable rights or freedoms.

Conclusion

The legislative instrument is compatible with human rights as it does not adversely affect any human rights.

Civil Aviation Safety Authority