

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX41/20 — Part 145 Exposition (CAR Maintenance Activities) Exemption 2020

Purpose

CASA EX41/20 — Part 145 Exposition (CAR Maintenance Activities) Exemption 2020 (the *instrument*) applies to a person:

- (a) who has applied to the Civil Aviation Safety Authority (**CASA**), under regulation 145.025 of the *Civil Aviation Safety Regulations 1998 (CASR)*, for approval as a Part 145 organisation; and
- (b) whose application covers the undertaking of CAR maintenance activities; and
- (c) who has an exposition that CASA is satisfied complies with the requirements specified in the *Part 145 – Approved Maintenance Organisation (AMO) Technical Assessor Handbook* (the **Part 145 Assessor Handbook**) relating to CAR maintenance activities.

The purpose of the instrument is to exempt the person from compliance with certain provisions of CASR to the extent that they require the person to have an exposition that complies with the requirements specified in the Part 145 Manual of Standards (the **Part 145 MOS**) relating to CAR maintenance activities.

The instrument allows a Part 145 organisation to undertake CAR maintenance activities without the need to hold a certificate of approval (a **CAR 30 certificate**) issued under regulation 30 of the *Civil Aviation Regulations 1988 (CAR)*.

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 CASR and CAR.

Part 145 organisation is defined in Part 1 of the CASR Dictionary as meaning a person who holds an approval issued under regulation 145.030 of CASR that is in force.

Subregulation 145.025 (1) provides that a person may apply to CASA for approval as a Part 145 organisation. Subregulation 145.030 (1) provides that, subject to regulation 11.055 of CASR, CASA must approve the applicant as a Part 145 organisation if CASA is satisfied, amongst other matters, that the applicant has an exposition that complies with the requirements specified in the Part 145 MOS.

Part 145 Manual of Standards is defined in Part 3 of the CASR Dictionary as meaning the Manual of Standards issued by CASA under regulation 145.015 of CASR.

As far as is relevant, subregulation 145.010 (1) of CASR defines **exposition**, for a Part 145 organisation, as meaning the document that is approved by CASA under regulation 145.030 in relation to the organisation. A Part 145 organisation's exposition generally includes information about the organisation, and its personnel, facilities, policies, systems and procedures for providing maintenance services.

Part 3 of the CASR Dictionary defines *CAR maintenance activities* as meaning the following activities conducted under Part 4A of CAR:

- carrying out maintenance on a registered aircraft to which Part 42 of CASR does not apply, or on an aircraft component or aircraft material for an aircraft of that kind
- certifying the completion of maintenance carried out on an aircraft or aircraft component
- issuing a maintenance release for an aircraft
- endorsing a maintenance release for an aircraft
- issuing an authorised release certificate for an aircraft component.

For the above activities, for non-regular public transport operations, including charter, aerial work and private operations, a CAR 30 certificate is required.

Part 3 of the CASR Dictionary defines *maintenance services* as meaning the following:

- carrying out maintenance on an aircraft or an aeronautical product
- performing maintenance certification for maintenance carried out on an aircraft
- issuing a certificate of release to service for an aircraft or aeronautical product in relation to maintenance carried out on the aircraft or aeronautical product.

Subregulation 202.805 (1) of CASR provides that an application under regulation 145.025 may cover the undertaking of CAR maintenance activities. Subregulation 202.806 (1) of CASR provides that if the application covers the undertaking of CAR maintenance activities, CASA must approve the applicant as a Part 145 organisation only if CASA is satisfied, amongst other matters, that the applicant has an exposition that complies with the requirements specified in the Part 145 MOS relating to CAR maintenance activities.

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 compliance with 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. Subregulation 11.170 (3) of CASR provides that in deciding whether to grant an exemption, on application by a person, CASA must regard as paramount the preservation of at least an acceptable level of aviation safety. CASA has regard to the same consideration in deciding whether to grant an exemption on its own initiative.

Subregulation 11.175 (4) of CASR provides that in deciding whether to renew an exemption, on application by a person, CASA must regard as paramount the preservation of at least an acceptable level of aviation safety. CASA has regard to the same consideration in deciding whether to renew an exemption on its own initiative.

Regulation 11.205 of CASR provides that CASA may impose conditions on an exemption if necessary in the interests of the safety of air navigation. Under regulation 11.210 of CASR, it is a strict liability offence not to comply with the obligations imposed by a condition.

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.

Subsection 98 (5D) of the Act provides that 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 does not yet exist when the legislative instrument is made.

Background

A Part 145 organisation providing maintenance services under CAR is required to hold a CAR 30 certificate. However, some operators have aircraft that are regulated under both CAR and CASR, and in these cases it is beneficial to permit a Part 145 organisation to maintain both kinds of aircraft, rather than requiring the Part 145 organisation to also hold a CAR 30 certificate.

A Part 145 organisation is an ***approved maintenance organisation*** as defined in Part 3 of the CASR Dictionary. A Part 145 organisation is also sometimes referred to as a “Part 145 approved maintenance organisation” or a “Part 145 AMO”.

An approval as a Part 145 organisation in the past did not include an approval to carry out CAR maintenance activities. Under subregulations 42ZC (3) and (4) of CAR, to conduct such maintenance, the Part 145 organisation was required to also hold a CAR 30 certificate. Because of this, CASA was asked by the aviation industry to remove what is perceived to be an onerous dual-certificate obligation.

Under regulation 341 of CAR, which was made by the *Civil Aviation Legislation Amendment (Maintenance and Other Matters) Regulation 2013*, CASA introduced the ability for a Part 145 organisation to be approved to carry out CAR maintenance activities. Under subregulation 202.806 (1), if an application under regulation 145.025 covers the undertaking of CAR maintenance activities, the applicant must, amongst other matters, satisfy CASA that the applicant has an exposition that complies with the requirements specified in the Part 145 MOS relating to CAR maintenance activities.

However, the Part 145 MOS has not yet been amended to specify the exposition requirements relating to CAR maintenance activities. Instrument number CASA EX56/15, *Exemption — from compliance with Part 145 Manual of Standards requirements for Part 145 organisations undertaking CAR maintenance activities (CASA EX56/15)*, exempted a relevant applicant for approval as a Part 145 organisation from satisfying CASA about the matter mentioned in paragraph 202.806 (1) (a). That exemption was subject to the condition that the applicant must satisfy CASA that the applicant has met the requirements of *Temporary Management Instruction — TMI 2015-002 (the TMI)*, issued by CASA on 23 March 2015. The TMI expired in March 2017 and CASA EX56/15 was repealed at the end of April 2017. The relevant requirements that were in the TMI are now published in Appendix 2 of the Part 145 Assessor Handbook.

CASA EX56/15 did not include an exemption from compliance with paragraph 145.030 (1) (a). However, CASA now considers that such an exemption is appropriate, to the extent that the applicant must have an exposition that complies with the requirements specified in the Part 145 MOS relating to CAR maintenance activities.

In renewing the exemption in CASA EX56/15 and granting the additional exemption, CASA has regarded as paramount the preservation of at least an acceptable level of aviation safety.

Documents incorporated by reference

In accordance with subsection 98 (5D) of the Act, the Part 145 Assessor Handbook, as it exists from time to time, is incorporated into the instrument by reference. The Part 145 Assessor Handbook is a CASA-published document, that is used by CASA to determine if an applicant, under regulation 145.025, meets the requirements for the approval of the applicant as a Part 145 organisation.

The Part 145 Assessor Handbook is freely available on the CASA website. At the commencement of the instrument, the handbook could be accessed at <https://www.casa.gov.au/files/casr-part-145-approved-maintenance-organisation-technical-assessor-handbook>.

Content of instrument

Section 1 names the instrument.

Section 2 states the duration of the instrument.

Section 3 contains a definition of the term *Part 145 Assessor Handbook*.

Section 4 states that the instrument applies to a person:

- (a) who has applied to CASA, under regulation 145.025, for approval as a Part 145 organisation; and
- (b) whose application covers the undertaking of CAR maintenance activities; and
- (c) who has an exposition that CASA is satisfied complies with the requirements specified in the Part 145 Assessor Handbook relating to CAR maintenance activities.

Section 5 provides that the applicant is exempt from compliance with:

- (a) paragraph 145.030 (1) (a) to the extent that the applicant must have an exposition that complies with the requirements specified in the Part 145 MOS relating to CAR maintenance activities; and
- (b) paragraph 202.806 (1) (a).

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. Also, 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 exemptions in the instrument apply to a person who has applied, under regulation 145.025, for approval as a Part 145 organisation, and meets other prerequisites stated in section 4 of the instrument. 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

Similarly to CASA EX56/15, the instrument has been issued at the request of the aviation industry and is beneficial to that industry.

CASA has commenced a CASR amendment project to resolve the issue addressed by the instrument. CASA is reviewing Part 145 of CASR while working to complete the transition of the maintenance regulations from CAR to CASR. As part of this project, CASA is working with industry to develop both the proposed regulation amendments and the CAR maintenance activities' requirements to be specified in the Part 145 MOS.

In these circumstances, CASA does not believe that any further consultation, under section 17 of the LA, is necessary or appropriate.

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement (*RIS*) is not required in this case, as the exemptions in the instrument are 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 the day after it is registered, and will be repealed at the end of 28 February 2023.

Statement of Compatibility with Human Rights

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

CASA EX41/20 — Part 145 Exposition (CAR Maintenance Activities) 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 applies to a person:

- (a) who has applied to the Civil Aviation Safety Authority (*CASA*), under regulation 145.025 of the *Civil Aviation Safety Regulations 1998 (CASR)*, for approval as a Part 145 organisation; and
- (b) whose application covers the undertaking of CAR maintenance activities; and
- (c) who has an exposition that CASA is satisfied complies with the requirements specified in the *Part 145 — Approved Maintenance Organisation (AMO) Technical Assessor Handbook* relating to CAR maintenance activities.

The purpose of the instrument is to exempt the person from compliance with certain provisions of CASR to the extent that they require the person to have an exposition that complies with the requirements specified in the Part 145 Manual of Standards relating to CAR maintenance activities. *CAR maintenance activities* is defined in Part 3 of the CASR Dictionary.

Human rights implications

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

Conclusion

The legislative instrument is compatible with human rights as it does not raise any human rights issues.

Civil Aviation Safety Authority