

Explanatory Statement

Civil Aviation Safety Regulations 1998

Exemption — recency requirements for night flying (National Jet Systems Pty Ltd)

Legislation

Section 98 of the *Civil Aviation Act 1988* (the *Act*) empowers the Governor-General to make regulations.

Subregulation 5.109 (1) of *Civil Aviation Regulations 1988* (**CAR 1988**) provides that a commercial (aeroplane) pilot (the holder of a commercial aeroplane pilot licence) must not fly an aeroplane carrying another person unless the pilot satisfies the requirements set out in the subregulation. Subregulation 5.170 (1) provides that an air transport (aeroplane) pilot (the holder of an air transport aeroplane pilot licence) must not fly an aeroplane carrying another person unless the pilot satisfies the requirements set out in the subregulation.

Paragraphs 5.109 (1) (b) and 5.170 (1) (b) of CAR 1988 both mention certain requirements (**recency requirements**) that the pilot must have satisfied in the immediately preceding period of 90 days, being requirements relating to take-offs and landings at night. These requirements are that the pilot has, within the period, carried out at least 3 take-offs and 3 landings at night, while flying the aeroplane as pilot in command, or as pilot acting in command under supervision or in dual flying; alternatively, in that period the pilot must have satisfactorily completed an aeroplane proficiency check that was completed at night or passed a flight test that was conducted at night for the issue, or renewal, of an aeroplane pilot rating or (for paragraph 5.109 (1) (b) only) for the issue of an aeroplane pilot licence.

Subregulation 11.160 (1) of the *Civil Aviation Safety Regulations 1998* (**CASR 1998**) provides that, for subsection 98 (5A) of the Act, CASA may grant an exemption from a provision of the regulations, including CAR 1988, or a provision of the Civil Aviation Orders (the **CAOs**), in relation to a matter mentioned in that subsection. 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 11.205 (1) of CASR 1998, CASA may impose conditions on an exemption if this is necessary in the interests of the safety of air navigation. Under regulation 11.225 of CASR 1998, an exemption must be published on the Internet. Under subregulation 11.230 (1), an exemption ceases on the day specified within it (but no longer than 3 years after its commencement) or, if no day is specified, 3 years after commencement.

The exemption replaces a previous exemption (CASA EX33/11) and allows National Jet Systems Pty Ltd, trading as Cobham Aviation Services Australia – Airline Services (the **operator**) to use an approved flight simulator to satisfy recency requirements instead of relying on flights in a B717 aeroplane. It differs from paragraphs 5.109 (1) (b) and 5.170 (1) (b) of CAR 1988 in that it allows the recency requirement to be satisfied by 3 take-offs and 3 landings at night in the immediately preceding 90 days that have been carried out in an approved type simulator or an aircraft of the same type. Alternatively, it requires the pilot, in the immediately preceding 180 days, to have satisfactorily completed a proficiency check, related to carrying out night operations, in an approved type simulator.

The operator must have a current CASA approved training and checking organisation.

The exemption would allow the operator to rely on flight simulators to meet the recency requirements and would also allow the operator to rely on normal line flying and on its training and checking organisation, instead of requiring the pilot to undergo special flight tests as may be required by CASA.

Legislative Instruments Act

Under subparagraph 6 (d) (i) of the *Legislative Instruments Act 2003* (the **LIA**), an instrument is a legislative instrument for section 5 of the LIA if it is declared to be a disallowable instrument under legislation in force before the commencement of the LIA. The instrument is, therefore, a legislative instrument and it is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

Compatibility with human rights and freedoms

A statement of compatibility with human rights is at Attachment 1.

Consultation

Consultation within the aviation industry as a whole has not taken place. Any operator whose procedures and training and checking organisation is considered by CASA to make satisfactory provision for testing and training pilots for night flying operations would be granted an equivalent exemption. This exemption is a renewal of a previous exemption which expired at the end of February 2013.

Commencement and making

The exemption commences on 1 March 2013 and stops having effect at the end of February 2016.

The exemption has been made by a delegate of CASA relying on the power of delegation under subregulation 11.260 (1) of CASR 1998.

[Instrument number CASA EX22/13]

Statement of Compatibility with Human Rights

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

Exemption under regulation 11.160 — from recency requirements for night flying

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 legislative instrument permits the use of alternative means of satisfying recency requirements for night flying. The exemption is subject to conditions directed by CASA in the interest of safety.

The primary purpose of the legislative instrument is to allow pilots in command flying for the named operator to update their night recency requirements by using flight simulators. It allows the operator to rely on normal line flying and its training and checking organisation for that purpose, instead of requiring the pilot to undergo special flight tests as would otherwise be required under the Regulations.

Human rights implications

This legislative 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