

Explanatory Statement

Civil Aviation Safety Regulations 1998

Exemption — carriage of passengers on training flight

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

Subregulation 249 (1) of the *Civil Aviation Regulations 1988* (**CAR 1988**) provides that the pilot in command of an aircraft that carries a passenger must not engage in certain specified types of flying. In particular, paragraph 249 (1) (b) provides that the pilot in command must not engage in practice of emergency procedures in the aircraft, and paragraph 249 (1) (c) provides that he or she must not engage in low-flying practice.

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 or a Civil Aviation Order 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.

Under subsection 33 (3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Background

Following completion of a course of training, applicants for issue of a flight examiner rating or for approval as a check pilot in a training and checking organisation are assessed by CASA. The course of training may include training with an industry mentor or a training and checking captain. The training usually includes flights where the applicant observes the conduct of a flight test or proficiency check in which the control seats are occupied by the mentor or training and checking captain and another pilot undergoing a check or a flight test. These checks may include simulated emergency procedures or low-flying practice.

This practice is of great benefit to the observer. He or she is enabled to observe the techniques employed by an experienced flight examiner, or training and checking captain. However, the observer is a passenger for the purposes of regulation 2 of CAR 1988, which defines *passenger* as “any person who is on board an aircraft other than a member of the operating crew.” Being a passenger, the pilot in command would be in breach of subregulation 249 (1) of CAR 1988. An exemption is, therefore, required to allow this practice to take place.

Instrument

CASA EX74/15 is an instrument that repeals and replaces an exemption (CASA EX70/12) that was granted for the purpose of allowing flight examiner applicants to sit as observers on certain flights prohibited by subregulation 249 (1) of CAR 1988. CASA EX70/12 expired at the end of April 2015.

CASA EX74/15 exempts a pilot in command of an aeroplane, helicopter, gyroplane or airship from compliance with subregulation 249 (1) of CAR 1988. The exemption only extends to the carriage of a passenger while the pilot in command is undertaking a proficiency check or flight test on another pilot. The exemption is subject to a range of conditions, including that the passenger must be an applicant for a check pilot approval or flight examiner rating, or is otherwise a CASA officer who is undergoing training in connection with his or her employment to become a flight examiner or inspector. The pilot in command must ensure that the passenger does not interfere with the conduct of the proficiency check or flight test. The passenger must not occupy a control seat.

Legislative Instruments Act 2003 (the LIA)

For subsection 98 (5A) of the Act, CASA may, by instrument, grant an exemption from compliance with a provision of the regulations or Civil Aviation Orders. An instrument issued under paragraph 98 (5A) (a) of the Act is a legislative instrument if the instrument is expressed to apply to a class of persons or aircraft. The instrument applies to a class of persons undergoing training and is, therefore, legislative. As a legislative instrument, it is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

Consultation

At the request of industry, CASA EX74/15 continues CASA's exemption for flight examiner applicants to observe flight examinations as passengers (CASA EX70/12 refers). The exemption is beneficial to industry since flight examiner and check pilot applicants can learn from qualified flight examiners or training and checking captains on the conduct of flight tests and proficiency checks. It is CASA's view that it is not necessary or appropriate to conduct any further consultation under section 17 of the LIA.

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 (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 1998.

The exemption commences on 1 May 2015 and expires at the end of April 2018, as if it had been repealed by another instrument.

[Instrument number CASA EX74/15]

Attachment 1**Statement of Compatibility with Human Rights**

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

Exemption — carriage of passengers on training flight

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 the legislative instrument is to allow applicants for a flight examiner rating to observe, as a passenger, the conduct of a flight test or check where the aircraft control seats are occupied by a student pilot and a flight examiner or training and checking captain. The carriage of passengers during a training flight that simulates emergency procedures would be in contravention of subregulation 249 (1) of the *Civil Aviation Safety Regulations 1998*.

The instrument provides an exemption from that requirement and is subject to a range of conditions that CASA has imposed in the interests of aviation safety.

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