

Explanatory Statement

Civil Aviation Safety Regulations 1998

Exemption from paragraph 61.115 (a) — dual flight checks before solo flights

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 1998**) commenced on 1 September 2014 and deals with flight crew licencing requirements.

Under regulation 61.065 of CASR 1998, the holder of a flight crew licence commits an offence if the holder conducts an activity mentioned in Part 61 while piloting a registered aircraft and the holder is not authorised under that Part to conduct the activity.

Under paragraph 61.115 (a) of CASR 1998, a student pilot is authorised to conduct a solo flight in an aircraft only if the student pilot has, within the previous 14 days and in the same type of aircraft, completed a dual flight check. Under the equivalent provisions in the *Civil Aviation Regulations 1988*, the applicant was only required to have conducted a flight check within the previous 30 days. It has been decided that the reduction should not have been made.

As a result, this exemption has been issued to apply the previous requirement of 30 days. The exemption is from regulation 61.065 in respect of paragraph 61.115 (a).

In CASR 1998, **dual flight check** means an in-flight assessment by a flight instructor of the competency of a student pilot to conduct a solo training flight.

Subregulation 11.160 (1) of CASR 1998 provides that, for subsection 98 (5A) of the Act, CASA may grant an exemption from a provision of the regulations or the Civil Aviation Orders. 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.

Exemption

The exemption applies to all student pilots.

Legislative Instruments Act 2003 (the LIA)

Subregulation 11.160 (1) of CASR 1998 provides that CASA may grant an exemption from a provision of the regulations or Civil Aviation Orders, for subsection 98 (5A) of the Act. An instrument issued under paragraph 98 (5A) (a), in relation to matters affecting the safe navigation and operation, or the maintenance, of aircraft 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 student pilots. The instrument is, therefore, legislative and subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

Consultation

The exemption has been issued by CASA after the effect of paragraph 61.115 (1) (a) was brought to its notice. Advice was provided by the aviation industry, including from flight training schools at the 17 December Part 61 Forum. Following this advice, the flight crew licensing subcommittee recommended that the requirement be changed to reflect the previous rule under CAR 1988 which was 30 days between flight checks. A study of equivalent regulation policy supported the change back to the 30 day rule, with New Zealand applying that time period. Other countries do not stipulate recent experience standards for student pilots for instance Canada and the U.S.A and European countries.

The exemption is of beneficial effect and correctly states CASA's preferred policy, having regard to that of other countries, pending amendment of regulation 61.115.

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 LIA.

Statement of Compatibility with Human Rights

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

Making and commencement

The exemption has been made by the Director of Aviation Safety, on behalf of CASA, relying on subsection 73 (2) of the Act.

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

[Instrument number CASA EX78/15]

Statement of Compatibility with Human Rights

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

Exemption from paragraph 61.115 (a) — dual flight checks before solo flights

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 instrument applies to all student pilots. It allows a student pilot to undertake a solo flight up to 30 days after the pilot has undergone a dual flight check. This follows representations made by the aviation industry. It makes the applicant's obligation to undergo a dual flight check less onerous.

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