Explanatory Statement

Civil Aviation Safety Regulations 1998

Exemption – Parts 141 and 142 – CASA approval of kinds of aircraft

**Purpose**

This legislative instrument exempts holders of certain authorisations which permit the conduct of flight training, from the requirement to obtain CASA’s approval when the holders add to their fleet of training aircraft, aircraft that are, in effect, the same kind, or similar in kind, to the aircraft with which they are already conducting the training.

However, the exemption does not apply where the additional or other aircraft are of a more specialised or sophisticated kind, or of a kind new to the operator.

**Legislation — CASR Part 141**

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. The *Civil Aviation Safety Regulations 1998* (***CASR 1998***) were so made.

Part 141 of CASR 1998 deals with the conduct of recreational, private and commercial pilot flight training, other than certain integrated training courses. It also deals with the issue of Part 141 certificates to persons who then become Part 141 operators.

Part 141 flight training is training, in an aircraft, or in a flight simulation training device (***FSTD***), for certain pilot licences, ratings or endorsements. Authorised Part 141 flight training is such training as is mentioned in a Part 141 operator’s Part 141 certificate. The exemption instrument concerns only aircraft and does not apply in relation to FSTDs.

Under subparagraph (ix) of the definition of ***significant change*** in paragraph 141.025 (a) of CASR 1998, a significant change for a Part 141 operator includes a change to the “kinds of aircraft” used by the operator to conduct training.

Under subparagraph 141.070 (1) (i) of CASR 1998, it is a condition of a Part 141 certificate that the Part 141 operator must comply with each provision of Part 141 of CASR 1998 that applies to the operator. This would include complying with requirements to obtain CASA’s approval for a significant change to the “kinds of aircraft” used by the operator to conduct training.

Under subregulation 141.085 (1) of CASR 1998, a Part 141 operator commits an offence if the operator makes a significant change to its operations and CASA has not approved that significant change, including a change to the “kinds of aircraft” used by the operator to conduct training.

Under subregulation 141.090 (1) of CASR 1998, CASA must approve a significant change for a Part 141 operator if satisfied, in effect, that it would be safe and appropriate to do so, including a change to the “kinds of aircraft” used by the operator to conduct training.

Under subregulation 141.095 (1) of CASR 1998, a Part 141 operator commits an offence if the operator makes a change (including a significant change) to its operations and the change is not made in accordance with the processes for making changes described in the operator’s operations manual. This would include a change to the “kinds of aircraft” used by the operator to conduct training.

As mentioned above, under subparagraph (ix) of the definition of ***significant change*** in regulation 141.025 of CASR 1998, a significant change for a Part 141 operator includes a change to the “kinds of aircraft” used by the operator to conduct training.

In the Dictionary, under regulation 1.004 of CASR 1998, ***kind***, of an aircraft, means: (a) for an aircraft that is covered by an aircraft type rating — the aircraft type rating; and (b) for an aircraft that is not covered by an aircraft type rating — the type of aircraft. This is, intentionally, a very broad definition.

However, when viewed in relation to “significant changes” for a Part 141 operator, who is adding aircraft to its training fleet, it has the unintended consequence that the operator must obtain formal CASA approval for the addition of the aircraft, in effect, regardless of what “kind” the aircraft is, and regardless of whether the operator is, or is not, already using that kind of aircraft in its training operations.

**Legislation — CASR Part 142**

Part 142 of CASR 1998 deals with the conduct of integrated and multi-crew pilot flight training, contracted recurrent training and contracted checking, and makes provision for Part 142 authorisations (which are air operator certificates (***AOCs***) or other certificates that deal with such training and checking). The other certificates are to authorise training in an FSTD. However, the exemption instrument concerns only aircraft and does not apply in relation to FSTDs.

Under subparagraph (xi) of the definition of ***significant change*** in paragraph 142.030 (a) of CASR 1998, a significant change for a Part 142 operator includes a change to the “kinds of aircraft” used by the operator to conduct training.

Under paragraph 142.100 (1) (a) of CASR 1998, it is a condition of an AOC that authorises the conduct of Part 142 activities in an aircraft, that the operator must comply with each obligation imposed by CASA under a provision of (among other things) CASR 1998. This would include complying with requirements to obtain CASA’s approval for a significant change to the “kinds of aircraft” used by the operator to conduct training.

Under subregulation 141.140 (1) of CASR 1998, a Part 142 operator commits an offence if the operator makes a significant change to its operations and CASA has not approved that significant change, including a change to the “kinds of aircraft” used by the operator to conduct training.

Under subregulation 142.145 (1) of CASR 1998, CASA is to approve a significant change for a Part 142 operator if satisfied that, among other things, the operator’s exposition complies with regulation 142.340 of CASR 1998. Under subparagraphs 142.340 (1) (l) (i) and (ii), the exposition must include the kinds of aircraft flown into, out of, or outside Australia in the course of conducting Part 142 activities, or that are foreign registered aircraft. Thus, CASA is to approve the kinds of aircraft when the exposition is changed to include other or additional aircraft.

Under subregulation 142.150 (1) of CASR 1998, a Part 142 operator commits an offence if the operator makes a change (including a significant change) to its operations and the change is not made in accordance with the processes for making changes described in the operator’s operations manual. This would include a change to the “kinds of aircraft” used by the operator to conduct training.

As mentioned above, under subparagraph (xi) of the definition of ***significant change*** in paragraph 142.030 (a) of CASR 1998, a significant change for a Part 142 operator includes a change to the “kinds of aircraft” used by the operator to conduct training.

As noted earlier, in the Dictionary, under regulation 1.004 of CASR 1998, ***kind***, of an aircraft, means: (a) for an aircraft that is covered by an aircraft type rating — the aircraft type rating; and (b) for an aircraft that is not covered by an aircraft type rating — the type of aircraft. This is, intentionally, a very broad definition.

However, when viewed in relation to “significant changes” for a Part 142 operator, who is adding aircraft to its training fleet, it has the unintended consequence that the operator must obtain formal CASA approval for the addition of the aircraft, in effect, regardless of what “kind” the aircraft is, and regardless of whether the operator is, or is not, already using that kind of aircraft in its training operations.

**Legislation — exemptions**

Subpart 11.F of CASR 1998 deals with exemptions. Under subregulation 11.160 (1), and for subsection 98 (5A) of the Act, CASA may, by instrument, grant an exemption from a provision of CASR 1998 in relation to a matter mentioned in subsection 98 (5A). Subsection 98 (5A) matters are, in effect, those affecting the safety, airworthiness or design of aircraft.

Under subregulation 11.160 (2), an exemption may be granted to a person or a class of persons. Under subregulation 11.160 (3), CASA may grant an exemption on application, or on its own initiative. For an application for an exemption, CASA must regard as paramount the preservation of an acceptable level of safety.

For making a decision on its own initiative, CASA is guided by the requirement in subsection 9A (1) of the Act that in exercising its powers and functions CASA must regard the safety of air navigation as the most important consideration.

Under regulation 11.205, CASA may impose conditions on an exemption if necessary in the interests of the safety of air navigation. Under regulation 11.210, it is a strict liability offence not to comply with the obligations imposed by a condition. Under regulation 11.225, CASA must, as soon as practicable, publish on the Internet details of all exemptions under Subpart 11.F.

Under subregulation 11.230 (1), an exemption (but not an exceptional circumstances exemption for regulation 11.185 about major emergencies) may remain in force for 3 years or for a shorter period specified in the instrument.

Under subregulation 11.230 (3), an exemption in force in relation to a particular aircraft owned by a particular person, ceases to be in force when the aircraft ceases to be owned by that person. Under regulation 11.235, an exemption is not transferable (as between operators, aircraft etc.).

**Background**

The current legislative requirement imposed on Part 141 operators and Part 142 operators to have or obtain CASA’s approval for a significant change to their operations in the form of using other or additional aircraft, takes no account of whether the other or additional aircraft are of a “kind”, or similar to a kind, that the operator is already using in its training operations. In such cases, the requirement for formal CASA approval imposes administrative and cost obligations on an operator, without any off-setting justification in terms of enhancing aviation safety.

However, if the other or additional kinds of aircraft that constitute the significant change are of a more specialised or sophisticated kind, or of a kind new to the operator, thereby increasing aviation safety risk, then CASA’s statutory safety mandate, to regard the safety of air navigation as the most important consideration, requires it to ensure that the proposed operations remain safe. Therefore, CASA approval of the change remains essential for the perseveration of an acceptable level of aviation safety.

**The exemption**

To address this issue, the exemption, exempts Part 141 and Part 142 operators from the requirements in Parts 141 and 142 of CASR 1998 to obtain CASA’s approval of significant changes in the form of introducing other or additional kinds of aircraft to the operations. However, to ensure continuing aviation safety, the exemption **does not apply, and CASA approvals continue to be required**, in relation tothe following kinds of aircraft:

(a) a type rated aircraft prescribed in a legislative instrument made under paragraph 61.055 (1) (a) or 61.060 (1) (a) of CASR 1998;

(b) a variant model of a type rated aircraft mentioned in paragraph (a) that requires differences training;

(c) an aircraft covered by a class rating, being the first aircraft of that class to be used by the operator in authorised Part 141 flight training or a Part 142 activity;

(d) a type of aircraft prescribed in an instrument under regulation 61.062 of CASR 1998;

(e) a pressurised aircraft, being the first pressurised aircraft to be used by the operator in authorised Part 141 flight training or a Part 142 activity;

(f) a turbine-engined aircraft, being the first turbine-engined aircraft to be used by the operator in authorised Part 141 flight training or a Part 142 activity.

**Duration**

The exemption is expressed to operate until expiry at the end of 30 June 2017, as if it had been repealed by another instrument. It is expected that, before the exemption expires, appropriate amendments will be made to Parts 141 and 142 of CASR 1998 to reflect the intent of the exemption and, thereby, make its continuation unnecessary.

***Legislative Instruments Act 2003***

As noted above, exemptions under Subpart 11.F of CASR 1998 are “for subsection 98 (5A)” of the Act, that is, for regulations which empower the issue of certain instruments, like exemptions, in relation to “(a) matters affecting the safe navigation and operation, or the maintenance, of aircraft”, and “(b) the airworthiness of, or design standards for, aircraft”.

The exemption is clearly one in relation to matters affecting the safe navigation and operation of aircraft. Under subsection 98 (5AA) of the Act, an exemption issued under paragraph 98 (5A) (a), for such matters, is a legislative instrument if expressed to apply in relation to a class of persons, a class of aircraft or a class of aeronautical products (as distinct from a particular person, aircraft or product).

The exemption applies to a class of persons (all Part 141 and Part 142 operators conducting training in aircraft) and is, therefore, a legislative instrument subject to registration, and tabling and disallowance in the Parliament, under sections 24, and 38 and 42 of the *Legislative Instruments Act 2003* (the ***LIA***).

**Consultation**

For section 17 of the LIA, in May 2015, CASA consulted the Flight Crew Licensing Subcommittee of the Standards Consultative Committee (a long-standing CASA/industry consultation forum). The Subcommittee generally supported the proposal for an exemption from relevant significant change approval requirements. Following the meeting, and taking into account the representations made, CASA decided to formulate the proposals now embodied in the exemption. There will be further consultation in due course when CASA comes to amend the relevant provisions of Part 141 and Part 142 of CASR 1998.

**Office of Best Practice Regulation (*OBPR*)**

A Regulation Impact Statement is not required for OBPR in this case because the exemption is of beneficial effect to those who fall within its scope and comply with its conditions. A preliminary assessment of business compliance costs in the context of the nature of the instrument indicates that it will have a nil negative impact on business.

**Statement of Compatibility with Human Rights**

The Statement in Appendix 1 is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The instrument does not engage any of the applicable rights or freedoms, and is compatible with human rights, as it does not raise any human rights issues.

**Commencement and making**

The exemption commences on the day after registration and expires at the end of 30 June 2017, as if it had been repealed by another instrument.

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

[Instrument number CASA EX126/15]

Appendix 1

**Statement of Compatibility with Human Rights**

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

Civil Aviation Safety Regulations 1998

Exemption – Parts 141 and 142 – CASA approval of kinds of aircraft

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 legislative instrument exempts holders of certain authorisations which permit the conduct of flight training, from the requirement to obtain CASA’s approval when the holders add to their fleet of training aircraft, aircraft that are, in effect, the same kind, or similar in kind, to the aircraft with which they are already conducting the training.

However, the exemption does not apply where the additional or other aircraft are of a more specialised or sophisticated kind, or of a kind new to the operator.

The exemption is a beneficial instrument for those to whom it applies who comply with its terms.

**Human rights implications**

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*. The 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**