

Explanatory Statement

Civil Aviation Safety Regulations 1998

Exemption — from completion of an approved course of training in MCC

Purpose

This legislative instrument exempts certain pilot licence applicants and pilot licence holders from the requirement to complete an approved course of training in multi-crew cooperation (**MCC**) for the purposes of multi-crew operations. Various conditions are imposed which, in effect, require a similar level of competence as would otherwise be provided by an approved course of training in MCC.

Legislation — CASR Part 61

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 61 of CASR 1998 (**CASR Part 61**) sets out flight crew licensing requirements.

Under subparagraph 61.285 (f) (iii) of CASR 1998, a member or former member of the Australian Defence Force (**ADF**) is taken to meet the requirements under Part 61 for the grant of a flight crew licence, rating or endorsement, other than an examiner rating, if, for an air transport pilot licence (**ATPL**), the member completes, among other things, an approved course of training in MCC.

Under paragraph 61.700 (3) (e) of CASR 1998, a (non-ADF) applicant for an ATPL must have completed, among other things, an approved course of training in MCC.

Under subregulation 61.510 (1) of CASR 1998, on and after the transition date of 1 September 2015, the holder of a private pilot licence (**PPL**) is authorised to exercise the privileges of the licence in a multi-crew operation only if the holder has completed an approved course of training in MCC.

Under subregulation 61.575 (1) of CASR 1998, on and after the transition date of 1 September 2015, the holder of a commercial pilot licence (**CPL**) is authorised to exercise the privileges of the licence in a multi-crew operation only if the holder has completed an approved course of training in MCC.

Under paragraph 61.785 (1) (b) of CASR 1998, the holder of a single-pilot () type rating is authorised to exercise the privileges of the rating in a multi-crew operation only if the holder also has a multi-crew type rating and has completed an approved course of training in MCC.

Under regulation 61.010, an **approved course of training**, for a provision of CASR Part 61, means, among other things, a course of training for which the provider holds an approval under regulation 61.040 for the provision.

Under regulation 202.263, an old authorisation (that is, in effect, a PPL, a CPL or an SP type rating with a multi-crew type rating) that was in force immediately before 1 September 2014 is continued in force on and after 1 September 2014 according to its terms, and CASR Part 61 applies to the continued authorisation as if it were the equivalent new authorisation (that is, in effect, a PPL, CPL or an SP type rating issued under CASR Part 61).

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

Pilots wishing to conduct a multi-crew operation, or apply for an ATPL, are required to have completed an approved course of training in MCC. Training in MCC is a CASR Part 142 training activity delivered by Part 142 operators. It involves the acquisition of competency in human factors and non-technical skills (*HF&NTS*) which enhances the safety of multi-crew operations in which pilots must work together with high levels of mutual cooperation.

Under CASR Part 61, from 1 September 2014, all applicants for ATPLs (other than overseas conversions) must have completed an approved course of training in MCC.

Similarly, from 1 September 2015, all holders of PPLs and CPLs who are conducting multi-crew operations must have completed an approved course of training in MCC.

For transition purposes, PPL and CPL holders have not been required to complete MCC training if they had, prior to 1 September 2015, conducted a multi-crew operation.

From 1 September 2015, the holder of an SP type rating, who also holds a multi-crew type rating, must have completed an approved course of training in MCC if he or she is to exercise the privileges of the rating in a multi-crew operation.

There is, as yet, no provision in CASR Part 61 for any alternative means of compliance (**AMC**) with the existing MCC requirement, for example equivalent courses of training or experience. CASA considers that relevant applicants and pilots who comply with an AMC that delivers at least the same level of competence in MCC, should be exempt from having to complete an MCC training course under CASR Part 61. CASR Part 61 will in due course be amended to reflect this intent.

The exemption

To expedite the availability of effective AMC pending development of regulation amendments, CASA has issued an exemption from the existing MCC training requirements, subject to conditions that require relevant applicants and pilots to possess comparable training or experience.

ADF ATPL applicants

The alternative requirements for ADF applicants for an ATPL are that the applicant must have successfully completed a course of training conducted by the ADF for a multi-crew pilot operational conversion qualification. Compliance with this must be evidenced by giving CASA a copy of the relevant ADF qualification.

Non-ADF ATPL applicants, CPL and PPL holders, and holders of an SP type rating with a multi-crew type rating

The alternative requirements for non-ADF ATPL applicants, CPL and PPL holders, and holders of an SP type rating with a multi-crew type rating are set out in Schedule 1 of the exemption instrument. Thus, the following would be considered by CASA to be an AMC:

- (1) MCC training approved by EASA; or
- (2) the training required to qualify for an EASA type rating for a multi-crew certificated aircraft; or
- (3) the following:
 - (a) holding a type rating;
 - (b) having at least 50 hours' experience as a pilot in multi-crew operations conducted by an Australian air operator's certificate (**AOC**) holder engaged in regular public transport (**RPT**) operations in accordance with Civil Aviation Order (**CAO**) 82.3 or 82.5, being experience gained during the last 3 years — CAOs 82.3 and 82.5 impose pilot HF&NTS training obligations on relevant high capacity and low capacity RPT AOC holders through their mandatory safety management systems; or
- (4) the following:
 - (a) holding a type rating;
 - (b) having at least 100 hours' experience as a pilot in multi-crew operations conducted by an Australian AOC holder engaged in charter operations in accordance with CAO 82.1, being experience gained during the last 3 years;
 - (c) successful completion, within the last 3 years, of 2 operator proficiency checks which included assessment of HF&NTS competences — although CAO 82.1 for charter operations does not impose pilot HF&NTS training obligations on the AOC holder, the relevant operator proficiency checks constitute a component of this AMC and a Note explains that the assessment of HF&NTS competences should be guided by reference to civil aviation advisory publication (**CAAP**) SMS-3 (1) which is also the HF&NTS guidance document for RPT operations; or

- (5) training, qualifications or experience, or a combination of these, which CASA considers to be at least equivalent to any of the alternative requirements mentioned in items (1) to (4). It is important to note that CASA, not the applicant, the holder or the head of flying operations, makes the decision about equivalence, based on the evidence it receives and its assessment of the requirements of aviation safety. A person who relies on this must obtain the appropriate certificate from CASA — see below).

The expression “last 3 years” is defined in the instrument and means the 3 years immediately before:

- (a) in the case of an applicant for an ATPL — the date of the application; and
- (b) in any other case — the first flight for which a pilot relies upon this exemption instrument for non-compliance with a CASR Part 61 requirement to have completed an approved course of training in MCC.

Evidence of compliance

For non-ADF ATPL applicants, CPL and PPL holders, and holders of an SP type rating with a multi-crew type rating, the exemption instrument requires specific evidence of compliance with the AMC chosen from the list of items above. These evidence requirements and additional conditions are specified in Schedule 2 of the exemption instrument. Thus, the following applies:

- (1) For the AMC in item (1) of Schedule 1:
 - (a) a copy of a course completion certificate issued by the EASA-approved trainer; and
 - (b) a copy of the EASA approval held by the trainer that shows the approval is valid and current.
- (2) For the AMC in item (2) of Schedule 1:
 - (a) a copy of the person’s current EASA flight crew licence endorsed with the multi-crew type rating for a multi-crew certificated aircraft; and
 - (b) logbook evidence of the person having exercised the privileges of the rating following the grant of the rating.
- (3) For the AMC in item (3) of Schedule 1:
 - (a) a copy of the person’s current CASA flight crew licence endorsed with a multi-crew type rating; and
 - (b) logbook evidence of the person’s experience as a pilot in multi-crew operations for an Australian AOC holder engaged in RPT operations in accordance with CAO 82.3 or 82.5, being experience gained in the last 3 years.
- (4) For the AMC in item (4) of Schedule 1:
 - (a) a copy of the person’s current CASA flight crew licence endorsed with a multi-crew type rating; and
 - (b) logbook evidence of the person having at least 100 hours’ experience as a pilot in multi-crew operations for an Australian AOC holder engaged in charter operations in accordance with CAO 82.1, being experience gained in the last 3 years; and
 - (c) evidence of the successful completion, within the last 3 years, of 2 operator proficiency checks which included assessment of HF&NTS.
- (5) For the AMC in item (5) of Schedule 1:
 - (a) evidence of successful completion of training, qualifications or experience, or a combination of these; and

- (b) a CASA certificate of equivalence — this is a defined expression meaning a certificate, issued by CASA, stating that, for item (5) of Schedule 1 of the exemption instrument, a person’s successful completion of alternative training, or acquisition of qualifications, or possession of experience, or a combination of these, is equivalent to an AMC mentioned in items (1) to (4) of Schedule 1.
- (6) For each of the AMCs in items (1) to (5) of Schedule 1, evidence in logbooks or other documents, of:
 - (a) the exercise of relevant privileges; and
 - (b) the acquisition of experience as a pilot in multi-crew certificated aircraft in multi-crew operations; and
 - (c) the successful completion of operator proficiency checks; and
 - (d) the successful completion of equivalent training, qualifications and experience;
 must be endorsed by the head (however described) of the flying operations part of the relevant AOC holder or other operator (for example, a private operator of a corporate jet), to whom the logbook entries or other documents relate.
- (7) For each of the AMCs in items (1) to (5) of Schedule 1, the evidence must be supplied:
 - (a) in the case of an applicant for an ATPL — to CASA; and
 - (b) in the case of the holder of a PPL, a CPL, or a single-pilot type rating with a multi-crew type rating (as the case may be) conducting multi-crew operations — to the head (however described) of the flying operations part of the AOC holder or other operator for whom the pilot operates a multi-crew aircraft. (A person who relies on item (5) in Schedule 1 must first obtain from CASA, and supply to the head, the appropriate CASA certificate of equivalence — see above.)
- (8) For each of the AMCs in items (1) to (5) of Schedule 1, an applicant or a holder must, on written request, supply CASA with any information or documents CASA considers necessary to determine the appropriate application, or the continued application, of the exemption to the applicant or holder. A Note explains that, for example, in the interests of aviation safety, CASA may require proof of authenticity of copies of documents.

Duration

The exemption is expressed to operate until expiry at the end of 31 August 2018, being the final date by which pre-CASR Part 61 licences will, as continued authorisations under regulation 202.263 of CASR 1998, be physically converted to CASA Part 61 licences. For the exemption, this is a provisional date only and it is most likely that CASR Part 61 will have been amended to remove the need for the exemption which will be consequentially repealed before that date.

Legislative Instruments Act 2003 (the LIA)

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 classes of persons (the relevant ATPL applicants, and PPL, CPL and SP type rating holders) 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 LIA.

Consultation

Informal feedback was received from the aviation community that the CASR Part 61 MCC training requirement could be unnecessary in some cases where pilots may have completed equivalent training or had suitable qualifications.

In response to this, for section 17 of the LIA, CASA conducted consultation on a possible regulation amendment and an interim exemption, through the Flight Crew Licensing Subcommittee of the Standards Consultative Committee (a formal joint CASA/industry consultation forum). Details of the proposal were also posted on the CASA website on 2 July 2015 for public comment and 4 considered responses were received. None of the responses opposed the proposed measure. However, one counselled caution in relation to unintended consequences.

All of the comments were taken into account before CASA decided to issue the exemption instrument. The exemption is an optional avenue for ATPL applicants, and PPL, CPL and SP type rating holders, who are not prevented from completing an approved training course in MCC if, for example, they had concerns that their particular compliance with the AMC would not in the event be adequate to satisfy a flight examiner in a flight test, or if, in any particular case, an AOC holder or private operator required of a pilot the additional assurance of MCC course completion.

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement (*RIS*) is not required because the exemption instrument is covered by a standing agreement between CASA and OBPR under which a RIS is not required for an exemption (OBPR id: 14507).

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.

Making and commencement

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

The exemption commences on the day after registration and expires at the end of 31 August 2018, as if it had been repealed by another instrument.

[Instrument number CASA EX192/15]

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 — from completion of an approved course of training in MCC**

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 certain pilot licence applicants and pilot licence holders from the requirement to complete an approved course of training in multi-crew cooperation (*MCC*) for the purposes of multi-crew operations. Various conditions are imposed which, in effect, require a similar level of competence as would otherwise be provided by an approved course of training in MCC. 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