

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX89/18 — Naming of Alternate Key Personnel (Parts 141 and 142 Operators) Exemption 2018

Purpose

The purpose of the instrument is to exempt aircraft operators that provide flight training from having to name at least one person to carry out the responsibilities of a key personnel position when the holder of the position is absent or unable to carry out the responsibilities. The instrument aims to assist smaller operators and those who provide occasional flight training.

Legislation

Section 98 of the *Civil Aviation Act 1988* (the *Act*) empowers the Governor-General to make regulations for the Act and in the interests of the safety of air navigation. Relevantly, the Governor-General has made the *Civil Aviation Safety Regulations 1998 (CASR)* and *Civil Aviation Regulations 1988*.

Subpart 11.F of the CASR provides for the granting of exemptions from particular provisions of the regulations. Subregulation 11.160 (1) of CASR provides that, for subsection 98 (5A) of the Act, CASA may grant an exemption from a provision of the regulations.

Under subregulation 11.160 (2) of CASR, an exemption may be granted to a person or a class of persons.

Under Subpart 11.F of CASR, in deciding whether to grant an exemption on its own initiative, CASA will regard as paramount the preservation of at least an acceptable level of aviation safety.

Regulation 11.225 of CASR requires an exemption to be published on the Internet. Under subregulation 11.230 (1), the maximum duration of an exemption is 3 years.

Part 141 of CASR deals with the conduct of non-integrated recreational, private and commercial pilot flight training and provides for matters relating to Part 141 certificates. Subregulation 141.015 (3) of CASR defines a Part 141 operator as the holder of a Part 141 certificate. A Part 141 certificate is a certificate issued under regulation 141.060 of CASR.

Regulation 141.020 of CASR defines key personnel for a Part 141 operator. They are the persons that hold, or carry out the responsibilities of, the positions of chief executive officer and head of operations in the operator's organisation.

Regulation 141.260 of CASR sets out the matters that must be included in the operations manual of a Part 141 operator. Subparagraph 141.260 (1) (e) (iv) requires that the manual include, for each of the key personnel of the operator, the name of each person authorised to carry out the responsibilities of the position when the position holder is absent from the position or cannot carry out the responsibilities. Subparagraph 141.260 (1) (e) (v) requires that the manual include a description of how the operator will manage the responsibilities of the position in either of these circumstances. It is an offence under regulation 141.265 of CASR for a Part 141 operator to contravene a provision of its operations manual.

Part 142 of CASR deals with, among other things, the conduct of integrated and multi-crew pilot flight training and Part 142 authorisations. Subregulation 142.015 (4) of CASR defines a Part 142 operator as the holder of a Part 142 authorisation. Subregulation 142.020 (5) defines a Part 142 authorisation as an AOC that authorises a Part 142 activity in an aircraft or a certificate under Division 142.B.2 that authorises the conduct of a Part 142 activity in a flight simulation training device.

Regulation 142.025 of CASR defines key personnel for a Part 142 operator. They are the persons that hold, or carry out the responsibilities of, the positions of chief executive officer and head of operations and, if the operator conducts specified kinds of activities, safety manager and quality assurance manager.

Regulation 142.340 of CASR sets out the matters that must be included in the exposition of a Part 142 operator. Subparagraph 142.340 (1) (e) (iv) requires that the exposition include, for each of the key personnel of the operator, the name of each person authorised to carry out the responsibilities of the position when the position holder is absent from the position or cannot carry out the responsibilities. Subparagraph 142.340 (1) (e) (v) of CASR requires that the exposition include a description of how the operator will manage the responsibilities of the position in either of these circumstances. It is an offence under regulation 142.345 of CASR for a Part 142 operator to contravene a provision of its exposition.

Background

CASR requires the operations manual of a Part 141 operator and the exposition of a Part 142 operator to include, for each of the operator's key personnel, the name of each person authorised to carry out the responsibilities of the position when the position holder is absent from the position or cannot carry out its responsibilities. Some Part 141 and Part 142 operators who conduct flight training do not always have staff available to be nominated for these purposes.

Smaller operators that only conduct flight training on a part-time basis may only have a chief executive officer, a head of operations and one or two instructors who do not meet the requirements for a head of operations. An example of a smaller Part 141 operator is agriculture operators who may only train seasonally, for a few weeks each year, for the grant of aerial application ratings. Part 142 operators that conduct type rating training infrequently, or multi-crew cooperation training once or twice a year, may also benefit from the exemption from these CASR requirements.

The requirement in CASR for Part 141 operators to name in their operations manual, and for Part 142 operators to nominate in their exposition, alternate key personnel is preventing some current operators from transitioning from operating in accordance with Subpart 202.GA (Transitional provisions for Part 141) and Subpart 202.GB (Transitional provisions for Part 142), to operating under Parts 141 or 142 of CASR. The requirements are also preventing some new operators from being granted either a Part 141 certificate or a Part 142 authorisation under those Parts. Exempting operators from the relevant requirements mentioned above will remedy this issue until Parts 141 and 142 of CASR are amended.

Overview of instrument

The instrument provides exemptions for Part 141 and Part 142 operators, and persons who apply for a Part 141 certificate or a Part 142 authorisation, from compliance with the applicable requirement in CASR to name, for each of the operator's key personnel, a person

authorised to carry out the responsibilities of the position when the position holder is absent from the position or unable to carry out the position's responsibilities.

CASA has assessed the impact this instrument will have on aviation safety and is satisfied that it will have no impact. CASR requires an operator who does not nominate alternate key personnel in their operations manual or exposition to still provide, and comply with, a description of how the operator will manage the responsibilities of the position during the circumstances mentioned.

Content of instrument

Section 1 sets out the name of the instrument.

Section 2 sets out the duration of the instrument by providing that it commences on the day after the instrument is registered and is repealed at the end of 30 June 2021.

Section 3 sets out some definitions of terms used in the instrument.

Section 4 exempts specified persons from CASR requirements to name alternate key personnel. Subsection 4 (1) exempts a person who applies for a Part 141 certificate or who is a Part 141 operator from compliance with subparagraph 141.260 (1) (e) (iv) of CASR. That subparagraph requires the operations manual for an operator to include the names of each person authorised to carry out the responsibilities of each key personnel position when the holder of the position is absent or cannot carry out its responsibilities. Subsection 4 (2) exempts a person who is a Part 142 operator, or who applies for a Part 142 authorisation, from compliance with the requirement in subparagraph 142.340 (1) (e) (iv) of CASR to include this information in the exposition for the operator.

Section 4 also includes a note reminding operators that if they do not name alternate key personnel in their operations manual or exposition they must still describe in it, and follow, procedures for the management of the responsibilities of each key personnel position in the circumstances mentioned. The note makes it clear that a procedure may be that the operator will not conduct operations in those circumstances. A second note points out that it is an offence under CASR not to comply with a provision of an operations manual or exposition.

Legislation Act 2003 (the LA)

Paragraph 98 (5A) (a) of the Act provides that CASA may issue instruments in relation to matters affecting the safe navigation and operation, or the maintenance, of aircraft. Additionally, paragraph 98 (5AA) (a) of the Act provides that an instrument issued under paragraph 98 (5A) (a) is a legislative instrument if the instrument is expressed to apply in relation to a class of persons. This instrument exempts the following classes of persons from specified requirements of CASR: persons who are Part 141 or Part 142 operators or persons who apply for Part 141 certificates or Part 142 authorisations. The instrument is, therefore, a legislative instrument, and is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Consultation

The instrument will remove an unnecessary regulatory burden from small flight training operators and will assist current operators to transition to regulation under Parts 141 and 142 of CASR. CASA considers the exemption is necessary to address an unintended consequence of the CASR requirements to nominate alternate key personnel. CASA also considers there is

no safety risk in issuing the instrument as there are other safeguards in the CASR, such as the requirement for the operator to describe its procedures for managing key personnel responsibilities in their absence or inability to carry them out.

Consultation was undertaken by the CASA Part 61 Solutions Task Force and its Industry Advisory Panel in 2016. The panel, comprising industry representatives and CASA, supported the policy underpinning the instrument and a future amendment to the regulations. CASA is satisfied that no further consultation is appropriate or reasonably practicable for this instrument for section 17 of the LA.

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement (*RIS*) is not required in this case, as the exemption is covered by a standing agreement between CASA and OBPR under which a RIS is not required for approvals and exemptions (OBPR id: 14507).

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights at Attachment 1 has been 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 instrument has been made by the Acting Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

The instrument commences on the day after it is registered and is repealed at the end of 30 June 2021.

Statement of Compatibility with Human Rights

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

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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 exempts aircraft operators that provide flight training from the requirement of the *Civil Aviation Safety Regulations 1998* to name in their operations manual or exposition a person to carry out the responsibilities of each key personnel position of the operator when the holder of the position is absent or unable to carry out the responsibilities of the position. The instrument assists smaller operators who provide occasional flight training and do not have the staff to provide alternate key personnel.

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