Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX99/18 — Flight Reviews Exemption 2018

**Purpose**

This legislative instrument exempts the holders of certain aircraft class ratings and pilot type ratings from the requirement to complete particular kinds of flight reviews for each specific class rating and each specific pilot type rating held in order to exercise the privileges of the rating, provided the holder complies with conditions which require completion of a relevant alternative kind of flight review.

**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***) were so made. Part 61 of CASR (***CASR Part 61***) sets out flight crew licensing requirements. (References below to provisions prefixed by the numerals “61” are references to provisions in CASR Part 61.)

Regulation 61.745

Under subregulation 61.745 (1), the holder of an aircraft class rating is authorised to exercise the privileges of the rating only if the holder has a valid flight review *for the rating*. Under regulation 61.020, the classes of aircraft include single-engine aeroplane, multi-engine aeroplane and single-engine helicopter.

Under subregulation 61.745 (1A), the holder has a valid flight review for the rating during the period beginning when the holder successfully completes a flight review for the rating in accordance with subregulation (2), and ending at the end of the 24th month after the month in which the holder completes the review, or at the end of the 24th month after the validity of a relevant previous flight review expires.

Under subregulation 61.745 (2), the flight review must be conducted in an aircraft of the class covered by the rating, or in an approved flight simulator for the flight review.

Regulation 61.800

Under subregulation 61.800 (1), the holder of a pilot type rating is authorised to exercise the privileges of the rating as the pilot in command of an aircraft only if the holder has a valid flight review *for the rating*. As at 27 July 2018, the pilot type ratings are prescribed by CASA in the *Prescription of aircraft and ratings — CASR Part 61 (Edition 5) Instrument 2018*,with Federal Register of Legislation numberF2018L00660.

Under subregulation 61.800 (2), the holder has a valid flight review for the rating during the period beginning when the holder successfully completes a flight review for the rating in accordance with subregulation (3), and ending at the end of the 24th month after the month in which the holder completes the review, or at the end of the 24th month after the validity of a previous relevant flight review expires.

Under subregulation 61.800 (3), if the aircraft covered by the rating is not a prescribed type of single‑engine helicopter, the flight review must be conducted in an aircraft of the type covered by the rating or in an approved flight simulator for that type of aircraft. If the aircraft covered by the rating is a prescribed type of single‑engine helicopter, the flight review must be conducted in: a helicopter of the type covered by the rating; or an approved flight simulator for that type of helicopter; or a type of single‑engine helicopter prescribed as equivalent to the type covered by the rating; or an approved flight simulator for that type of helicopter.

**Legislation — exemptions**

Subpart 11.F of CASR 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 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 the grant or renewal of an exemption, on application by a person, CASA must regard as paramount the preservation of at least an acceptable level of safety. For making a decision on its own initiative, CASA is guided by the same test.

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 details of an exemption on the Internet. Under regulation 11.230, the maximum duration of an exemption is 3 years.

**Background**

One of the effects of the changes introduced by CASR Part 61 from 1 September 2014 was to increase the number of occasions on which a pilot is required to undergo a flight review, as compared to the pre-1 September 2014 situation under Part 5 of the *Civil Aviation Regulations 1988* (***CAR Part 5***). The flight review requirements were expanded to require periodic flight reviews for each *aircraft class rating* and each *pilot type rating* the privileges of which a pilot wished to exercise. Previously, a periodic licence-based flight review in an aircraft of the same category was sufficient.

Experience since September 2014, and feedback to CASA from the aviation industry, have identified some unforeseen effects arising from these new requirements. For example, there is a relatively small cohort of pilots in the aviation industry who fly more than 1 type or class of aircraft, although not, individually, a great variety of aircraft. However, there is a smaller cohort again who operate several different type-rated and class-rated aircraft.

These pilots are most likely completing both flight reviews and proficiency checks for operational ratings, and together these mitigate the risks that the CASR Part 61 flight review policy was addressing. Even those pilots who may not be completing both flight reviews and proficiency checks for operational ratings are, in any case, like all pilots, obliged to comply with the general competency rule in regulation 61.385 of CASR, which also addresses the maintenance of pilot competency.

The effect of the new CASR Part 61 requirements is, to a greater or lesser degree, to oblige pilots in each of these small cohorts to complete additional flight reviews for each class and type of aircraft flown, without any significant gains in aviation safety outcomes from the additional obligations.

Pilots working for holders of air operator certificates (***AOCs***) are, and will remain, subject to more frequent proficiency checks under other provisions of CASR Part 61 conducted under the auspices of the AOC holder.

Pending amendments to CASR Part 61, CASA made an exemption instrument (CASA EX97/16) to exempt pilots in the relevant cohorts from an unnecessary multiplicity of flight reviews. This legislative instrument renews the exemptions in CASA EX97/16, which expires on 31 August 2018.

**The exemption**

Who the exemption applies to

Under section 4, the exemption is expressed to apply to a person who holds 1 of the following aircraft class ratings or pilot type ratings under CASR Part 61:

(a) a single-engine aeroplane class rating;

(b) a multi-engine aeroplane class rating;

(c) a single-engine aeroplane pilot type rating;

(d) a multi-engine aeroplane pilot type rating;

(e) a single-engine helicopter class rating;

(f) a single-engine helicopter pilot type rating;

(g) a multi-engine helicopter pilot type rating.

Details of the 7 exemptions and the conditions which apply

Section 5 activates the Table that displays row by row the CASR Part 61 provision from which the holder of particular aircraft class rating or pilot type rating is exempted. Each of the provisions exempted from is a provision requiring 1 or other of a particular kind of flight review to have been completed for a particular period. The exemptions apply only to the extent that the pilot must have a prescribed valid flight review for the rating in column 1 of the Table. The exemptions are subject to the conditions and exclusions in section 6.

Each of items 1 to 7 of the Table is applied in the same way for the various class or type rating holders mentioned in paragraphs (a) to (g) above as follows:

Under item 1, the holder of a single-engine aeroplane **class** rating is exempted from the requirement under regulation 61.745 to have a prescribed valid flight review for that specific rating if the holder has a valid flight review under regulation 61.800 for ***any*** aeroplane **type** rating (and not specifically the flight review for the single-engine aeroplane class rating). A Note takes the reader to an explanation of how a pilot may operate a class-rated single-engine aeroplane under the privileges of a multi-engine aeroplane class rating.

Under item 2, the holder of a multi-engine aeroplane **class** rating is exempted from the requirement under regulation 61.745 to have a prescribed valid flight review for that specific rating if the holder has a valid flight review under regulation 61.800 for ***any*** multi-engine aeroplane pilot **type** rating (and not specifically the flight review for the multi-engine aeroplane class rating).

Under item 3, the holder of a single-engine aeroplane pilot **type** rating is exempted from the requirement under regulation 61.800 to have a prescribed valid flight review for that specific rating if the holder has a valid flight review under regulation 61.800 for ***any*** aeroplane pilot **type** rating, or under regulation 61.745 for ***any*** aeroplane **class** rating.

Under item 4, the holder of a multi-engine aeroplane pilot **type** rating is exempted from the requirement under regulation 61.800 to have a prescribed valid flight review for that specific rating if the holder has a valid flight review under regulation 61.800 for ***any*** multi-engine aeroplane pilot **type** rating, or under regulation 61.745 for the multi-engine aeroplane **class** rating.

Under item 5, the holder of a single-engine helicopter **class** rating is exempted from the requirement under regulation 61.745 to have a prescribed valid flight review for that specific rating if the holder has a valid flight review under regulation 61.800 for ***any*** helicopter pilot **type** rating.

Under item 6, the holder of a single-engine helicopter pilot **type** rating is exempted from the requirement under regulation 61.800 to have a prescribed valid flight review for that specific rating if the holder has a valid flight review under regulation 61.800 for ***any*** helicopter pilot **type** rating, or under regulation 61.745 for the single-engine helicopter **class** rating.

Under item 7, the holder of a multi-engine helicopter pilot **type** rating is exempted from the requirement under regulation 61.800 to have a prescribed valid flight review for that specific rating if the holder has a valid flight review under regulation 61.800 for ***any*** multi-engine helicopter pilot **type** rating.

A Note under the Table explains how, under subregulations 61.375 (3) and (4), the holder of a multi-engine aeroplane class rating who has a valid flight review for that rating is authorised to operate aeroplanes covered by the single-engine aeroplane class rating.

The effect of the exemption

The effect of the exemption is that a pilot who complies with the relevant requirements of the exemption for completing a flight review, rather than with the requirements of regulation 61.745 or 61.800 (as the case requires under the terms of the instrument) for the particular rating, would be authorised to exercise the privileges of the relevant aircraft class rating or pilot type rating under regulation 61.745 or 61.800 (as the case requires) during the relevant period.

Additional conditions — record keeping

Section 6 imposes additional conditions on the exemptions. Thus, under subsection 6 (1), relevant holders’ pilot licences must include a record that the holder has completed the applicable flight review required under the Table as the pre-condition to the application of the exemption.

Additional conditions — MU-2 single pilot multi-engine aeroplane

The MU-2 single pilot multi-engine aeroplane is recognised as an aircraft which has critical performance and handling characteristics that warrant type-specific and recent checks of competency.

Under instrument CASA 07/17, titled *Conditions on authorisations — flight crew licences and aircraft endorsements (Edition 2)* (the ***Conditions on authorisations instrument***),the holder of the MU-2 single pilot multi‑engine aeroplane type rating must not exercise the privileges of the rating as a pilot in command unless (among other things) the holder has, within the previous 12 months, satisfactorily completed a flight review or a proficiency check specifically *in an MU-2 aircraft*.

Under subsection 6 (2), for aviation safety, the exemptions are expressly stated as not to affect this particular flight review requirement.

Additional conditions — R22 and R44 helicopters

Also, Robinson R22 and R44 helicopters are recognised as having critical performance and handling characteristics that warrant specific and recent checks of competency.

Under the Conditions on authorisations instrument, the holder of a single-engine helicopter class rating must not conduct operations in an R22 or R44 helicopter unless (among other things) the holder has completed a flight review, in accordance with regulation 61.745, and the flight review was conducted in an R22 or R44 helicopter.

Once again, for aviation safety, under subsection 6 (3), the exemptions are expressly stated as not to affect this particular flight review requirement.

**Renewal of CASA EX97/16 and expected amendments to CASR**

The exemption is expressed to commence on 1 September 2018, which is immediately after the repeal of the previous exemption on this topic, CASA EX97/16.

The exemption is expressed to operate until it is repealed at the end of 31 August 2021. However, the exemption is an interim measure, pending substantive amendments to CASR Part 61 which will remove the need for the exemption. These amendments will be part of a larger set of amendments to CASR Part 61 for which CASA has provided drafting instructions to the Office of Parliamentary Counsel (***OPC***). It is expected that, subject to the capacity of OPC to produce them in the context of competing priorities arising from government drafting demands, the amendments will be made and in force within the next 12 months to 2 years.

***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. The instrument applies to classes of persons, being holders of specified aircraft class ratings and pilot type ratings. 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**

Since September 2014, CASA has received periodic feedback from the aviation industry critical of some of the flight review requirements in CASR Part 61. The issue was specifically discussed in December 2015 at the Part 61 Taskforce Industry Advisory Panel (a joint CASA/industry consultation forum for CASR Part 61). At this meeting there was agreement to the proposal to simplify the flight review requirements along the lines of the exemption instrument.

The specific proposal to change flight review requirements was posted to the Industry Advisory Panel website and the Standards Consultative Committee website on 9 May 2016 for members of those forums to provide review and comments. The Standards Consultative Committee is another, broader-based, joint CASA/industry consultation forum. The feedback received supported the proposal. A supplementary change to the proposal was posted to both forums on 19 May 2016 and again the proposal was supported.

CASA has not received any feedback from industry that the exemptions and the conditions on the exemptions are not appropriate. CASA understands that the exemptions remain appropriate for the aviation industry. 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 LA.

**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 exemptions (OBPR id: 14507).

**Statement of Compatibility with Human Rights**

The Statement in Attachment 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 instrument has been made by a delegate of CASA relying on the power of delegation under subregulation 11.260 (1) of CASR.

The instrument commences on 1 September 2018 and ceases when it is repealed at the end of 31 August 2021.

Attachment 1

**Statement of Compatibility with Human Rights**

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

CASA EX99/18 — Flight Reviews Exemption 2018

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 the holders of certain aircraft class ratings and pilot type ratings from the requirement to complete flight reviews for each specific class rating and each specific pilot type rating held in order to exercise the privileges of the rating, provided the holder complies with requirements for completion of a relevant alternative flight review.

**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**