

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### **CASA EX69/20 – EPC Requirements for ATOs Transitioning to the FER (Extensions of Time Due to COVID-19) – Exemption Amendment Instrument 2020 (No. 1)**

##### **Purpose**

The purpose of this instrument, *CASA EX69/20 – EPC Requirements for ATOs Transitioning to the FER (Extensions of Time Due to COVID-19) – Exemption Amendment Instrument 2020 (No. 1)* (**CASA EX69/20**), is to amend an existing exemption from certain provisions of Part 61 of the *Civil Aviation Safety Regulations 1998* (**CASR**) to accommodate recent impacts from the effects of the COVID-19 pandemic.

The original exemption was a facilitative mechanism to allow former approved testing officers (**ATOs**) who had transitioned to the new (equivalent) status of flight examiner rating (**FER**) holder, to complete a required examiner proficiency check (**EPC**) according to a staggered timetable. However, for the last remaining cohort of some 50 transitioned FER holders, the social distancing rules required to be observed during the COVID-19 pandemic make completion of their EPC impracticable within the original timeframe.

Consequently, CASA has amended the original exemption instrument to extend the relevant dates by 3 months to new specific completion dates.

##### **Legislation — exemptions**

Subpart 11.F of CASR deals with exemptions. Under subregulation 11.160 (1), and for subsection 98 (5A) of the *Civil Aviation Act 1988* (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. Under subregulation 11.170 (3), 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.).

### **Legislation — CASR Part 61**

Section 98 of the Act empowers the Governor-General to make regulations for the Act and the safety of air navigation.

The regulations in Part 61, which commenced on 1 September 2014, set out flight crew licensing requirements. (References below to provisions that commence with the numerals “61” are to Part 61.) Prior to 1 September 2014, flight tests and rating renewals for the various flight crew licences and ratings were conducted by CASA delegates known as ATOs.

Under regulation 202.261 of CASR 1998, a delegation, issued to a person before 1 September 2014, to give a permission to conduct a flight activity such as flight testing, was described as an *old authorisation*, for example, an ATO delegation.

Under regulation 202.261 of CASR 1998, a *new authorisation* means a flight crew licence, rating or endorsement granted under Part 61.

Under subregulation 202.263 (1) of CASR 1998, an old authorisation that was in force immediately before 1 September 2014, is continued in force on and after 1 September 2014, according to its terms. It is known as a *continued authorisation*.

Under subregulation 202.263 (2) of CASR 1998, Part 61 applies to a continued authorisation “as if it were the equivalent new authorisation”. The Part 61 equivalent to an ATO delegation is an FER.

### **Examiner proficiency checks**

Under subregulation 61.1285 (1), the holder of an FER is authorised to exercise the privileges of the rating (or delegation) only if the holder has a valid EPC.

Under subregulation 61.1285 (2), the holder is taken to have a valid EPC during the following periods:

- (a) the period from when the holder passes the flight test for the rating to the end of the 24<sup>th</sup> month after the month in which the holder passes the flight test;
- (b) if:
  - (i) the holder passes the flight test for a flight examiner endorsement; and
  - (ii) the flight test is conducted more than 6 months after the holder passes the flight test for the rating;
 the period from when the holder passes the flight test for the endorsement to the end of the 24<sup>th</sup> month after the month in which the holder passes the flight test for the endorsement;
- (c) if the holder successfully completes an examiner proficiency check — the period from when the holder successfully completes the check to the end of the 24<sup>th</sup> month after the month in which the holder successfully completes the check;

- (d) if:
  - (i) the holder is taken to have a valid examiner proficiency check under any of paragraphs (a) to (c) (the ***existing check***); and
  - (ii) within 3 months before the validity of the existing check expires, the holder successfully completes an examiner proficiency check; the period from when the validity of the existing check expires to the end of the 24<sup>th</sup> month after the validity of the existing check expires.

Under subregulation 61.1285 (4), for paragraphs (2) (c) and (d), the holder successfully completes an examiner proficiency check if:

- (a) the examiner proficiency check is conducted in an aircraft or an approved flight simulation training device for the proficiency check; and
- (b) a person mentioned in subregulation (5) assesses the holder's competency to conduct flight testing as meeting the standards mentioned in the Part 61 Manual of Standards for a flight examiner rating; and
- (c) the person endorses the holder's licence document to the effect that the holder has completed the examiner proficiency check on the date stated.

Under subregulation 61.1285 (5), for paragraph (4) (b), the persons are:

- (a) CASA; and
- (b) the holder of an approval under regulation 61.040 to conduct the proficiency check.

## Background

The original exemption instrument (*CASA EX70/18 – EPC requirements for ATOs transitioning to the FER – Exemption 2018 (CASA EX70/18)*) extended the time within which certain FER holders, who have the privilege of conducting flight tests and proficiency checks, must themselves complete an EPC.

The FER holders were those persons who held a CASA delegation as ATOs and who were granted an FER under subregulation 202.272 (2) of CASR, to take effect on 1 September 2018. Subregulation 202.272 (2) was a transitional provision to enable the conversion of old authorisations, like ATO delegations, into new authorisations, like FERs, granted under Part 61 of CASR.

The instrument also applied to a small number of former ATO delegation holders who had been granted an earlier FER but for a set of privileges different from those granted under the FER that took effect on 1 September 2018.

CASA EX70/18 was designed to manage the transition of these FER holders by creating a regular cycle for completion of their EPCs. The transition was to be over a 2-year period that would have ended in August 2020.

A “calendar” spread or stagger mechanism was used in CASA EX70/18, matching an FER holder's birthday month in an odd or even year with a designated date between 30 September 2018 and 31 August 2020, as *the last date by which* he or she must complete their EPC.

Thus, Schedule 1 of CASA EX70/18 contained a “calendar” whose effect was that for an FER holder whose birthday occurs during a month mentioned in the Table, the

holder must complete an EPC by not later than a corresponding date depending on whether the holder's year of birth was an odd or even number.

However, the social distancing rules and consequential aviation impacts due to the COVID-19 pandemic now make practical adherence to that timeframe by the remaining cohort of some 50 previous ATOs very difficult to achieve. CASA has decided, therefore, to provide these transitioned FER holders with an additional 3 months in which to schedule and complete their EPC. This is done by amending the calendar in Schedule 1 of CASA EX70/18. In simplified terms, the Table is amended so that for a birthday that occurs in the month of March, April, May, June, July, or August for a year of birth that is an even number (for example, 1970, 1972), an EPC must be completed by not later than 3 months after the previously prescribed date, as follows:

| <b>For a birthday month of</b> | <b>Uneven year:<br/>N.A.</b> | <b>In an even year, the previous completion date was:</b> | <b>And the new completion date is:</b> |
|--------------------------------|------------------------------|---|--|
| March                          |                              | 31 March 2020   | 30 June 2020                           |
| April                          |                              | 30 April 2020   | 31 July 2020                           |
| May                            |                              | 31 May 2020   | 31 August 2020                         |
| June                           |                              | 30 June 2020  | 30 September 2020                      |
| July                           |                              | 31 July 2020  | 31 October 2020                        |
| August                         |                              | 31 August 2020  | 30 November 2020                       |

CASA EX69/20 is expressed to operate until it is repealed at the end of 30 November 2020, the final extended completion date for the last category of members of the cohort. Consequently, the end date of the original exemption, into which CASA EX69/20 will be inserted for compilation purposes, is also amended to be 30 November 2020.

In deciding on a modified exemption for this remaining cohort of FER holders, and in determining the extended spread or stagger mechanism, aviation safety is the most important consideration. CASA is satisfied that, despite the new 3-month delay, the proposal preserves a level of aviation safety that is acceptable, specifically in the context of the status and experience of the particular transitioning ATOs, and the unavoidable circumstance of the impact of social distancing rules on the practicality of completing the relevant EPCs sooner.

### ***Legislation Act 2003 (the LA)***

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 (the particular FER holders) and is, therefore, a legislative instrument subject to registration, and tabling and disallowance in the Parliament, under sections 15G, and 38 and 42, of the LA.

### **Consultation**

Exemptions from regulatory requirements are considered to be beneficial for those to whom they apply, who voluntarily elect to take advantage of them, and who comply with their conditions. It is, therefore, rarely necessary to engage in extensive public consultation on a proposed exemption. However, it is CASA's policy to consult in an appropriate way with those parts of the aviation industry most likely to avail themselves of, or be affected by, an exemption so that they may have the opportunity to comment on the possible or likely terms, scope and appropriateness of the exemption.

However, in this case, the exemptions are urgent, and CASA considers that the relevant state of affairs, as well as informal feedback, suggests that consultation would add little if anything to the proposed solution but would delay its promulgation to those who need to plan to take advantage of it.

In this case, therefore, CASA considers that no consultation is required because of the necessity to promulgate, as soon as possible, the fact of the exemption and the proposed extended stagger dates (the first of which expires on 30 June 2020) so that those wishing to gain the benefit of the exemption can plan accordingly within the contingencies of the current COVID-19 pandemic.

### **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.

### **Commencement and making**

The exemption commences on the date it is registered and is repealed at the end of 30 November 2020.

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

## 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**

#### **CASA EX69/20 – EPC Requirements for ATOs Transitioning to the FER (Extensions of Time Due to COVID-19) – Exemption Amendment Instrument 2020 (No. 1)**

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 purpose of this instrument, *CASA EX69/20 – EPC Requirements for ATOs Transitioning to the FER (Extensions of Time Due to COVID-19) – Exemption Amendment Instrument 2020 (No. 1) (CASA EX69/20)*, is to amend an existing exemption from certain provisions of Part 61 of the *Civil Aviation Safety Regulations 1998 (CASR)* to accommodate recent impacts from the effects of the COVID-19 pandemic.

The original exemption was a facilitative mechanism to allow former approved testing officers who had transitioned to the new (equivalent) status of flight examiner rating (**FER**) holder, to complete a required examiner proficiency check (**EPC**) according to a staggered timetable. For the last remaining cohort of some transitioned 50 FER holders, the social distancing rules required to be observed during the COVID-19 pandemic make completion of their EPC impracticable within the original timeframe.

Consequently, CASA has amended the original exemption instrument to extend the relevant dates by 3 months to new specific completion dates.

#### **Human rights implications**

The exemption in 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**