

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX83/20 — Aeronautical Knowledge Examinations (Extension of Time Due to COVID-19) Exemption 2020

Purpose

The purpose of *CASA EX83/20 — Aeronautical Knowledge Examinations (Extension of Time Due to COVID-19) Exemption 2020* (the **instrument**) is to provide relief for persons who have started the aeronautical knowledge examination (**AKE**) process but who may be unable to complete the process within the prescribed period of 2 years due to COVID-19 restrictions.

The instrument applies to a person who:

- (a) between 16 March 2018 and 15 March 2020, passed at least 1 part of an AKE for a flight crew licence, rating or endorsement; and
- (b) passes all parts of the examination after 15 March 2018 and within a period of 2 years and 6 months.

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**).

Part 61 of CASR deals with flight crew licensing. Subpart 61.B of CASR deals with AKEs for the grant of flight crew licences, ratings or endorsements.

Part 141 of CASR establishes the scheme for conducting recreational, private and commercial pilot flight training (other than certain integrated training courses). That training is conducted by Part 141 operators. Part 142 establishes the scheme for conducting integrated and multi-crew pilot flight training, contracted recurrent training and contracted checking. Those activities are conducted by Part 142 operators.

The terms **flight crew licence**, **rating** and **endorsement** are defined in regulation 61.010 of CASR. **Rating** is defined to mean a flight crew rating. **Flight crew rating** is defined to mean a rating granted under Part 61 on a flight crew licence. **Endorsement** is defined to mean a flight crew endorsement. **Flight crew endorsement** is defined to mean an endorsement granted under Part 61 on a flight crew licence.

Under subregulation 61.035 (1) of CASR, the Civil Aviation Safety Authority (**CASA**) may issue a Manual of Standards for Part 61 that sets out matters relating to flight crew licences.

Regulation 61.215 of CASR provides for the setting of AKEs by CASA for the grant of a flight crew licence, rating or endorsement in accordance with aeronautical knowledge standards mentioned in the Part 61 Manual of Standards (the **Part 61 MOS**). Regulation 61.215 also provides for the setting of AKEs by a Part 141 or Part 142 operator for a recreational pilot licence, a flight crew rating other than an instrument rating, or a flight crew endorsement, if the operator holds an approval by CASA and the exam is set in accordance with the aeronautical knowledge standards mentioned in the Part 61 MOS for the examination.

Under subregulation 61.225 (1) of CASR, a requirement in Part 61 for a person to have passed an AKE for a flight crew licence, rating or endorsement is met if the person meets the standards mentioned in the Part 61 MOS for the examination.

Under subregulation 61.225 (2) of CASR, a person is taken to have passed an AKE only if the person passes all parts of the examination within a period of 2 years.

Schedule 4 of the Part 61 MOS sets out the examination subjects for AKEs for the different flight crew licences and associated category ratings, flight crew ratings on licences and endorsements on ratings. As at commencement of this instrument, Schedule 4 is set out in Volume 4 of the *Part 61 Manual of Standards Instrument 2014* (F2018C00657). Schedule 4 refers to parts of an AKE as examination subjects.

Subpart 11.F of 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 compliance with 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 subregulation 11.160 (3) of CASR, an exemption may be granted on application by a person or on CASA's own initiative.

Under subregulation 11.170 (3) of CASR, in deciding whether to grant an exemption on application, CASA must regard as paramount the preservation of at least an acceptable level of aviation safety. CASA has regard to the same test when deciding whether to grant an exemption on its own initiative.

Regulation 11.205 provides that 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.

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 (but not an exemption granted in exceptional circumstances under regulation 11.185 of CASR) is 3 years.

Background

CASA currently contracts assessment specialists Aspeq Limited (*Aspeq*) to deliver flight crew licence AKEs throughout Australia. Aspeq presently has 44 examination venues located in both regional and metropolitan areas. The government's response to control the spread of the Coronavirus (COVID-19) has constrained the ability of Aspeq to maintain exam venues open and Aspeq closed some of its examination venues temporarily and major venues had to operate at reduced capacity due to social distancing requirements.

Also, persons seeking to pass an AKE (*candidates*) must comply with the COVID-19 social distancing rules and some have consequently been unable to attend exam venues. Travel restrictions may also impede the capacity of some candidates to attend exam venues. While some exam venues remain closed, Aspeq has introduced new measures consistent with the national public health guidelines at venues to protect the health of staff and candidates. However, as a result of this situation many AKE applicants may have experienced negative impact on their aviation studies.

Under Part 61 of CASR, candidates must complete all respective parts (subjects) of an AKE within 2 years. The examination subjects for the AKE for each kind of flight crew licence and associated category ratings, and for operational ratings, are set out in Schedule 4 of the *Part 61 Manual of Standards Instrument 2014*.

If candidates have already passed only some parts (subjects) but are unable to complete all the examinations required to satisfy the AKE standard in the required 2 year period through no fault of their own due to the impact of the COVID-19 pandemic, this may result in those candidates being disadvantaged.

To address this issue, CASA has decided that those candidates that passed, between 16 March 2018 and 15 March 2020, at least 1 part of an AKE may have an additional 6 months to pass all parts of the AKE. This timeframe was decided because the COVID-19 restrictions commenced shortly after 16 March 2020 and may have impacted upon the ability of candidates to complete their exam bundles. Candidates will not be required to justify that the extension was due to the impact of the COVID-19 restrictions because this is highly likely due to the closure of the examination venues and the COVID-19 travel restrictions. Any candidate that passed a part (subject) between the specified dates will therefore have the benefit of the exemption.

Applicants for a flight crew licence or rating must, in addition to passing the AKE for the licence or rating, still pass the relevant flight test required under Part 61 of CASR for the licence or rating.

CASA has already granted some exemptions to help the Australian aviation industry deal with the impact of the COVID-19 pandemic on regulatory requirements, including:

- *CASA EX57/20 — Licensing, and Operator Training and Checking (Extension of Time Due to COVID-19) Exemptions Instrument 2020*
- *CASA EX65/20 — Extension of Airworthiness Review Certificate (COVID-19) Exemption 2020.*

In considering whether to grant the exemption, CASA has regarded as paramount the preservation of at least an acceptable level of aviation safety.

Content of instrument

Section 1 of the instrument states the name of the instrument.

Section 2 of the instrument provides that the instrument commences on the day after it is registered and is repealed at the end of 15 September 2022. This enables a person who only passed one subject before 16 March 2020 to have the benefit of the exemption for a 2 and a half year period.

Section 3 of the instrument provides that words and phrases in the instrument have the same meaning as in Part 61 of CASR, and provides examples.

Section 4 states that the instrument applies to a person who:

- (a) between 16 March 2018 and 15 March 2020, passed at least 1 part of an AKE for a flight crew licence, rating or endorsement; and
- (b) passes all parts of the examination after 15 March 2018 and within a period of 2 years and 6 months.

Paragraph 4 (b) operates so that passes in examinations completed before 16 March 2018 will not be recognised for the purposes of completion of all the examinations required within the 2 year and 6 month period as they would otherwise have expired prior to the impact of COVID-19, in accordance with the prescribed standard.

Section 5 provides that the person is exempt from compliance with subregulation 61.225 (2) of CASR to the extent that it requires that, for the person to be taken to have passed the examination, the person must pass all parts of the examination within a period of 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. Also, paragraph 98 (5AA) (a) 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 exemption in the instrument applies to a person who has passed, between 16 March 2018 and 15 March 2020, at least 1 part of an AKE for a flight crew licence, rating or endorsement, and meets other prerequisites stated in section 4 of the instrument. 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

Consultation under section 17 of the LA has not been undertaken in this case. The instrument provides relief to a cohort of persons who have already commenced the AKE process but who cannot meet the time-based obligations for its completion due to the present circumstances of the COVID-19 pandemic.

The exemption in the instrument is beneficial to the stakeholders within the aviation industry to which the instrument applies. CASA has already announced the proposed 6 month extension of the statutory time period for completion of commercial pilot licence and air transport pilot licence exams and also advised Aspeq of the proposal. Given this, and the need for the instrument to be made as soon as possible in the current circumstances so that those who need to take advantage of it can do so, CASA is satisfied that no 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 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*.

Making and commencement

The instrument has been made by the 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 15 September 2022.

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

This instrument offers temporary relief from a legislative time-based obligation for completion of aeronautical knowledge examinations within 2 years which candidates may not be able to meet due to COVID-19 restrictions such as the closure of examination venues and travel restrictions.

The instrument exempts specified persons from compliance with subregulation 61.225 (2) of CASR to the extent that it requires that the person must pass all parts of the examination within a period of two years.

The exemption applies to a person who:

- (a) between 16 March 2018 and 15 March 2020, passed at least 1 part of an aeronautical knowledge examination for a flight crew licence, rating or endorsement; and
- (b) passes all parts of the examination after 15 March 2018 and within a period of 2 years and 6 months.

Human rights implications

Right to work

The right to work, contained in Article 6 (1) of the International Covenant on Economic, Social and Cultural Rights, includes the right of everyone to the opportunity to gain their living by work which they freely choose or accept. The right to work is promoted by this instrument as it provides relief from prescribed timeframes for the completion of qualifications necessary for pilots and other flight crew members to perform their duties that they would otherwise be unable to meet due to COVID-19 restrictions.

Other rights

This legislative instrument does not engage any of the other applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights because it promotes the protection of human rights.