

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX90/20 — Helicopter Aircrew Members Amendment Instrument 2020 (No. 1)

Purpose

The purpose of *CASA EX90/20 — Helicopter Aircrew Members Amendment Instrument 2020 (No. 1)* (the *instrument*) is to amend CASA instrument *CASA EX131/19 — Helicopter Aircrew Members Instrument 2019 (CASA EX131/19)*, to extend the deadline for the training requirements set out in *CASA EX131/19* from 30 June 2020 to 31 December 2020, as travel restrictions imposed due to the COVID-19 pandemic have made it impracticable to conduct the training by 30 June 2020.

Legislation

Subpart 11.F of the *Civil Aviation Safety Regulations 1998 (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 *Civil Aviation Act 1988 (the Act)*, the Civil Aviation Safety Authority (*CASA*) may grant an exemption from a provision of the regulations.

Under subregulation 11.160 (2), an exemption may be granted to a person or a class of persons and may specify the class by reference to membership of a specified body or any other characteristic.

Under subregulation 11.160 (3), an exemption may be granted on application by a person or on *CASA*'s own initiative.

Under subregulation 11.175 (4) of CASR, in deciding whether to reissue an exemption, *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 reissue an exemption on its own initiative.

Regulation 11.205 of CASR provides that *CASA* may impose conditions on an exemption if necessary in the interests of the safety of air navigation. Under regulation 11.210 of CASR, 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) of CASR, the maximum duration of an exemption is 3 years.

Subpart 11.G of CASR provides for *CASA* to issue directions in relation to matters affecting the safety of air navigation. Under paragraph 11.245 (1) (a) of CASR, *CASA* may, by instrument, issue a direction about any matter affecting the safe navigation and operation of aircraft. Subregulation 11.245 (2) provides that *CASA* may issue such a direction if *CASA* is satisfied that it is necessary to do so in the interests of the safety of air navigation, if the direction is not inconsistent with the Act, and for the purposes of *CASA*'s functions.

Under paragraph 11.250 (a) of CASR, a direction under regulation 11.245 ceases to be in force on the day specified in the direction. Under regulation 11.255 of CASR, it is an offence of strict liability to contravene a direction under regulation 11.245.

Subsection 20AB (1) of the Act makes it an offence for any person to perform a duty that is essential to the operation of an Australian aircraft during flight time unless the person holds a civil aviation authorisation that authorises performance of that duty or the person is authorised by or under the regulations to perform that duty without a civil aviation authorisation.

Under subregulation 215 (3) of the *Civil Aviation Regulations 1988 (CAR)*, CASA may give a direction requiring an operator to include, or vary, particular information, procedures and instructions in the operator's operations manual.

Paragraph 226 (1) (c) of CAR permits a person to occupy the control seat of an aircraft equipped with fully or partially functioning dual controls if the person is authorised by CASA. Subregulation 226 (2) provides that an authorisation may be granted subject to conditions imposed in the interests of safety. Subregulation 226 (3) makes it an offence for a person to contravene a condition on an authorisation.

Subregulation 227 (2) of CAR operates to prohibit a person to occupy the pilot seat or other operating crew position of an aircraft unless the person is, among other things, a member of the operating crew assigned for duty in the aircraft and is licensed for the duties associated with the seat or position.

Under subsection 33 (3) of the *Acts Interpretation Act 1901 (the AIA)*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Background

CASA EX131/19 was issued on 27 November 2019 and registered on the Federal Register of Legislation on 29 November 2019. CASA EX131/19 authorises an aircrew member to occupy the relevant control seat of a helicopter, during flight time, to perform duties that assist the pilot in command to conduct operations safely, and provide an exemption against a requirement that a person occupying such a seat be licensed under the Act.

The authorisation and exemption are subject to conditions specified in CASA EX131/19, that mitigate risks associated with unlicensed persons occupying a relevant control seat, of a helicopter, during flight time. Those conditions limit the duties that may be performed, and prohibit an air crew member from acting as pilot. The conditions also require the aircrew member, after 30 June 2020, to have evidence of the satisfactory completion of, or be undertaking, the specified courses, or to hold an equivalent qualification.

A more detailed description of the provisions of CASA EX131/19 is set out in the Explanatory Statement that was registered with CASA EX131/19 (FRL id: F2019L01528).

Due to travel restrictions that have been in place due to the COVID-19 pandemic, some aircrew members will be unable to complete, or be undertaking, the specified courses by 30 June 2020. The instrument amends CASA EX131/19 to extend the date by which aircrew members must complete, or be undertaking, the specified courses to 31 December 2020.

Overview of instrument

In accordance with subsection 33 (3) of the AIA, the instrument amends paragraph 5 (2) (c) of CASA EX131/19 to remove "30 June 2020" and insert "31 December 2020", with the effect

an aircrew member that relies on the exemption in CASA EX131/19 must complete, or be undertaking, the courses specified in CASA EX131/19 by 31 December 2020.

Content of instrument

Section 1 states the name of the instrument.

Section 2 states the commencement of the instrument.

Section 3 states that CASA EX131/19 is amended as set out in Schedule 1 to the instrument.

Schedule 1 omits “30 June 2020” from paragraph 5 (2) (c) of CASA EX131/19, and inserts “31 December 2020”.

Legislation Act 2003 (the LA)

Paragraph 10 (1) (d) of the LA provides that an instrument will be a legislative instrument if it includes a provision that amends or repeals another legislative instrument. This instrument amends CASA EX131/19 that was registered as a legislative instrument and is, therefore, also a legislative instrument, subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Consultation

Industry operators notified CASA of the inability to comply with the training requirements set out in CASA EX131/19 by 30 June 2020. Travel restrictions and quarantine due to COVID-19 have prevented aircrew members from gathering and travelling to training facilities to conduct the required training.

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 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 a delegate of CASA relying on the power of delegation under subregulation 11.260 (1) of CASR. The instrument commences on the day after it is registered and is automatically repealed in accordance with section 48A of the LA.

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

CASA EX90/20 — Helicopter Aircrew Members Amendment Instrument 2020 (No. 1) amends CASA instrument *CASA EX131/19 — Helicopter Aircrew Members Instrument 2019*, to extend the deadline for the training requirements set out in *CASA EX131/19* from 30 June 2020 to 31 December 2020, as travel restrictions imposed due to the COVID-19 pandemic have made it impracticable to conduct the training by 30 June 2020.

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