

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX20/21 – Flight Instructors and Part 141 Operators (Flight Training – Certain Solo Cross-country Flights) Exemption 2021

Purpose

The purpose of the instrument is to exempt flight instructors and Part 141 operators from certain provisions of the *Civil Aviation Safety Regulations 1998 (CASR)*, provisions whose consequential amendment was overlooked in the making of *Civil Aviation Safety Amendment (Flight Crew Licensing Measures No. 1) Regulations 2018 (the 2018 amending regulations)*. This instrument is necessary to correct an anomaly that would make flight instructors and Part 141 operators guilty of committing offences under CASR that they are unable to avoid.

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 CASR.

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, the Civil Aviation Safety Authority (*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 and may specify the class by reference to membership of a specified body or any other characteristic.

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, 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 11.225 of CASR requires exemptions 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 recreational, private and commercial pilot flight training, other than certain integrated training courses.

Paragraph 141.305 (3) (c) of CASR makes it an offence for a Part 141 operator, amongst other things, to allow a student pilot who is undertaking authorised Part 141 flight training with the operator to conduct a solo cross-country flight for the first time if

the student has not completed at least 2 hours of dual instrument time, 1 hour of which is conducted during dual instrument flight time.

Subregulation 141.305 (6) of CASR makes it an offence for a Part 141 operator, amongst other things, to allow the holder of a pilot licence who is receiving flight training from the operator for a recreational navigation endorsement to conduct a solo cross-country flight if the holder has not completed at least 2 hours of dual instrument time, 1 hour of which is conducted during dual instrument flight time.

Subregulation 61.1225 (4) of CASR makes it an offence for a flight instructor, amongst other things, to approve a student to conduct a solo cross-country flight as a student pilot for the first time if, amongst other things, the student has not completed at least 2 hours of dual instrument time, 1 hour of which is conducted during dual instrument flight time.

CASR was amended by the 2018 amending regulations to remove dual instrument flight time obligations on students. Further details of the effect of those regulations are discussed below in “Background”.

Background

The exemption is required to correct an anomaly left by the 2018 amending regulations.

Before the commencement of the 2018 amending regulations, applicants for private or commercial pilot licences with the helicopter category rating were required, under regulations 61.550 and 61.615 of CASR, to have completed at least 2 or 10 hours respectively of dual instrument time at least 1 or 5 hours respectively of which were required to be dual instrument flight time in a helicopter. Similarly, applicants for recreational navigation endorsements were required, under regulations 61.495 and 61.500 of CASR, to have completed at least 2 hours of dual instrument time at least 1 hour of which was to be conducted during dual instrument flight time.

After the commencement of the 2018 amending regulations, those dual instrument time requirements were no longer required of students but under subregulations 141.305 (1) and (6) and 61.1225 (4) of CASR, Part 141 operators and flight instructors were still *prima facie* required to ensure that the obsolete requirements had been met. An offence against subregulation 141.305(1) is an offence of strict liability.

CASA intends to amend the affected regulations at its earliest opportunity prior to the expiry of the exemption, subject to the allocation of OPC drafting resources.

Documents incorporated by reference

The instrument incorporates element H6.4 of section 4 of Schedule 2 of the *Part 61 Manual of Standards Instrument 2014* (the **Part 61 MOS**). Element H6.4 is entitled “*Land, take off and manoeuvre in a confined area*”. This element consists of training that is prescribed for students undertaking helicopter training.

By virtue of section 10 of the Acts Interpretation Act 1901 and section 13 of the *Legislation Act 2003* (the **LA**), the reference in the instrument to the Part 61 MOS is to be construed as a reference to that MOS as originally made and as amended from time

to time. The Part 61 MOS is subordinate legislation made under regulations 11.068 and 61.035 of CASR. It is freely available on the Federal register of legislation.

Subparagraph 14 (1) (a) (ii) of the LA allows a legislative instrument to apply, adopt or incorporate the provisions of another legislative instrument, as the other instrument is in force at a particular time or in force from time to time. The other instrument must be of a type mentioned in subsection 14 (3) of the LA, which relevantly includes a disallowable instrument.

Content of instrument

Section 1 sets out the name of the instrument.

Section 2 provides that the instrument commences on the day after its registration and is repealed at the end of 31 January 2024.

Section 3 contains a definition of *flight instructor* and includes a Note indicating that terms and expressions in the instrument have the same meaning as in the *Civil Aviation Act 1988* and the regulations. The terms given as examples in the Note are all to be found in the CASR Dictionary.

Section 4 sets out the exemptions that apply to a flight instructor and a Part 141 operator in relation to students who are receiving training other than integrated training for a private or commercial pilot licence with the helicopter rating who have completed the specified training under the Part 61 MOS.

Section 5 sets out the exemptions that apply to a flight instructor and a Part 141 operator in relation to students who are receiving flight training for the grant of a recreational navigation endorsement (whether or not as part of helicopter training) and who, in the case of helicopter training, have completed the specified training under the Part 61 MOS.

The effect of the exemptions is to nullify the references to the obsolete dual instrument time requirements imposed on students under repealed provisions, thereby relieving flight instructors and Part 141 operators from automatically committing offences that they are unable to avoid.

CASA assessed the impact on aviation safety of removing the dual instrument flight time requirements ahead of the 2018 amending regulations. The exemptions contained in the instrument are mechanical in nature and simply fill a consequential gap that was overlooked when those regulations were drafted.

Legislation Act 2003

Subsection 8 (4) of the LA provides that an instrument is a legislative instrument if it determines the law or alters the content of the law rather than determining particular cases in which the law is to apply or is not to apply. Sections 4 and 5 of the instrument alter the content of the law for all flight instructors and Part 141 operators in respect of training oversight of students conducting solo cross-country flights for the first time. The section has the effect of removing an obligation on those flight instructors and Part 141 operators.

Additionally, 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 aeroplanes. 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 exempts all flight instructors and Part 141 operators (that is, a class of persons) from the specified provisions of CASR. 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

Extensive consultation occurred ahead of the amending regulations with the aircraft industry and the flight training sector, resulting in the removal of certain dual instrument flight time requirements obligations on students. The instrument is a necessary mechanical remedy that flows from the amending regulations, filling a gap until such time as the CASR can be amended. With extensive consultation on the principal measure already having been undertaken and the fact that this instrument is a necessary mechanical remedy, 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)

This instrument is an exemption for flight instructors and Part 141 operators from certain provisions of CASR. Accordingly, 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).

Senate Committee concerns

There are no issues in this instrument that would give rise to areas of concern for the Senate Standing Committee for the Scrutiny of Delegated Legislation.

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 31 January 2024.

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 purpose of the *CASA EX20/21 – Flight Instructors and Part 141 Operators (Flight Training – Certain Solo Cross-country Flights) Exemption 2021* is to exempt flight instructors and Part 141 operators from certain provisions of the *Civil Aviation Safety Regulations 1998 (CASR)* - provisions whose consequential amendment was inadvertently overlooked in the making of *Civil Aviation Safety Amendment (Flight Crew Licensing Measures No. 1) Regulations 2018*. The exemptions in the instrument fill a gap that, if left unfilled, would make flight instructors and Part 141 operators guilty of committing offences that they are unable to avoid. It is a temporary measure to address an anomaly in the CASR until such time as the CASR can be amended.

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