

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX62/22 — Amendment of CASA EX66/21 (Operator Proficiency Checks by Check Pilots) Instrument 2022

Purpose

CASA EX62/22 — Amendment of CASA EX66/21 (Operator Proficiency Checks by Check Pilots) Instrument 2022 (the **amending instrument**) amends instrument *CASA EX66/21 — Flight Crew Licensing (Miscellaneous Exemptions) Exemption 2021* (the **principal instrument**) by repealing Part 6 and substituting it with a new Part (**new Part 6**).

New Part 6 exempts check pilots from provisions of the *Civil Aviation Safety Regulations 1998* (**CASR**) that would otherwise require them to hold a flight examiner rating in order to conduct certain operator proficiency checks.

New Part 6 has been drafted to align with the terminology and policy of Parts 121, 133, 135 and 138 of the *Civil Aviation Safety Regulations 1998* (**new CASR Parts**) and the associated amendments to the *Civil Aviation Order 82.0* (**CAO 82.0**) following their commencement on 2 December 2021. The opportunity is also taken to make minor drafting improvements to previous Part 6.

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 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 a provision of CASR.

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), 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 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.

Regulation 61.010 of CASR defines an **operator proficiency check** as an assessment conducted by an operator in accordance with its training and checking responsibilities under these Regulations of whether a person has the aeronautical skills and knowledge required by the operator.

Subregulation 61.065 (1) of CASR provides that the holder of a flight crew licence must not conduct an activity mentioned in Part 61 of CASR while piloting, or acting as a flight engineer of, a registered aircraft or acting as an instructor or examiner, if the holder is not authorised under Part 61 to conduct the activity. Subregulation 61.065 (2) makes it an offence of strict liability to contravene subregulation (1) unless the offence involves a contravention of regulation 61.385 of CASR.

Regulation 61.375 of CASR sets out the limitations on the exercise of privileges of pilot licences. Subregulation 61.375 (7) authorises the holder of a pilot licence, in exercising the privileges of the licence, to conduct an activity mentioned in column 1 of an item in table 61.375 (relevantly, an activity mentioned in regulation 61.1255 of CASR) only if the holder also holds the rating mentioned in column 2 of the item (relevantly, a flight examiner rating).

Regulation 61.1255 sets out the privileges of flight examiner ratings which include, under subparagraph 61.1255 (c) (v), authority for a flight examiner to conduct operator proficiency checks for holders of pilot licences.

CAO 82.0 imposes conditions on air operator certificates for specified types of aircraft operations. Amendments to CAO 82.0 that commenced on 2 December 2021 were made to align with the terminology and policy of the new CASR Parts and to avoid inconsistency between regulatory requirements.

Background

The principal instrument is a collection of miscellaneous exemptions for flight crew licensing that deal with matters for which miscellaneous exemptions in the area of flight crew licensing have been issued by CASA in the past. It reflects regulatory development that is expected eventually to be reflected in regulation.

Part 6 of the principal instrument (which previously exempted check pilots from the requirement in subregulation 61.375 (7) from holding a flight examiner rating) fell out-of-date following the commencement of the new CASR Parts on 2 December 2021. It referred to concepts that have been removed from the legislation. Key among these is the definition in the principal instrument of **check pilot** which referred in part to that term as having the meaning given by paragraph 2.1 of CAO 82.0. *Civil Aviation Order (Flight Operations) Repeal and Amendment Instrument 2021 (No. 1)* repealed the definition of **check pilot** in that CAO. This affected the definitions of **check pilot approval** and **exempt check pilot** in the principal instrument. Accordingly, Part 6 was required to be amended to align more closely with the post-2 December 2021 legislation.

Overview of New Part 6

New Part 6 exempts a check pilot from compliance with subregulation 61.065 (1) (when taken together with subregulation 61.375 (7) (as it relates to item 9 of table 61.375) and

subparagraph 61.1255 (c) (v)) to the extent that the pilot may conduct an operator proficiency check for the holder of a pilot licence (mentioned in subparagraph 61.1255 (c) (v)) without holding a flight examiner rating. However, the exemption does not authorise the check pilot to conduct an operator proficiency check for the purposes of regulation 61.650, 61.695 or 61.880 of CASR.

The conditions of the exemption, described below, are imposed in the interests of the safety of air navigation.

CASA has assessed the impact new Part 6 will have on aviation safety and is satisfied that the circumstances in which the exemptions apply, together with the conditions imposed, will preserve an acceptable level of safety.

Content of amending instrument

Section 1 sets out the name of the amending instrument.

Section 2 provides that the amending instrument commences on the day after it is registered.

Section 3 provides that Schedule 1 of the amending instrument amends the principal instrument.

Item [1] of Schedule 1 includes, immediately below the heading to section 3 of the principal instrument, a reference to the CASR Dictionary term ***Part 121 proficiency check***.

Item [2] of Schedule 1 omits the definitions of ***check pilot***, ***check pilot approval*** and ***exempt check pilot*** from subsection 3 (1).

Item [3] of Schedule 1 inserts a new signpost definition of ***check pilot***, indicating that its meaning is to be found in section 27 of new Part 6.

Item [4] of Schedule 1 repeals Part 6 of the principal instrument and substitutes it with new Part 6, consisting of sections 27 to 29.

Section 27 sets out the persons to whom the Part applies, referred to as a ***check pilot***.

Subsection 28 (1) provides that a check pilot is exempt from compliance with subregulation 61.065 (1) (when taken together with subregulation 61.375 (7) (as it relates to item 9 of table 61.375) and subparagraph 61.1255 (c) (v)) to the extent that the pilot may conduct an operator proficiency check for the holder of a pilot licence (mentioned in subparagraph 61.1255 (c) (v)) without holding a flight examiner rating. Subsection 28 (2) clarifies that subsection (1) does not authorise the check pilot to conduct an operator proficiency check for the purposes of regulation 61.650, 61.695 or 61.880. Subsection 28 (3) provides that the check pilot must comply with the conditions mentioned in section 29.

Section 29 sets out the conditions which are:

- a check pilot who holds an approval mentioned in paragraph 27 (a) may only conduct an operator proficiency check for an aeroplane of a kind to which the approval applies

- a check pilot who is engaged by an operator to conduct training or a check mentioned in paragraph 27 (b) may only conduct an operator proficiency check for aircraft in respect of which the check pilot has been engaged
- an operator proficiency check must be conducted in accordance with the operator's training and checking responsibilities under the regulations.

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. The amending instrument amends the principal instrument which is a legislative instrument and is, therefore, also a legislative instrument. It is subject to registration on the Federal Register of Legislation and tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

As the amending instrument relates to aviation safety and is made under CASR, Part 4 of Chapter 3 of the LA (the ***sunsetting provisions***) does not apply to the instrument (as per item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*). In this case, the instrument amends the principal instrument and is almost immediately spent. It is repealed in accordance with the automatic repeal provisions in section 48A of the LA. Part 13 is itself repealed at the end of 31 May 2024 by virtue of section 2 of the principal instrument. Therefore, the exemption from sunsetting does not affect parliamentary oversight of the amending instrument.

Consultation

Consultation under section 17 of the LA has not been undertaken in this case. New Part 6 continues the effect of the Part it replaces. The changes are considered to be necessary updates so that concepts and terminology in Part 6 align with the new CASR Parts and amendments to CAO 82.0 that commenced on 2 December 2021. In these circumstances, CASA is satisfied that no consultation is appropriate or reasonably practicable for the amending instrument for section 17 of the LA.

Sector risk, economic and cost impact

Subsection 9A (1) of the Act states that, in exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration.

Subsection 9A (3) of the Act states that, subject to subsection (1), in developing and promulgating aviation safety standards under paragraph 9 (1) (c), CASA must:

- consider the economic and cost impact on individuals, businesses and the community of the standards; and
- take into account the differing risks associated with different industry sectors.

The cost impact of a standard refers to the direct cost (in the sense of price or expense) which a standard would cause individuals, businesses and the community to incur. The economic impact of a standard refers to the impact a standard would have on the production, distribution and use of wealth across the economy, at the level of the individual, relevant businesses in the aviation sector, and the community more broadly. The economic impact of a standard could also include the general financial impact of that standard on different industry sectors.

As Part 6 replaces an outdated Part in the principal instrument with provisions that will have the same effect, there will be no change of economic or cost impact on individuals, businesses or the community.

Impact on regional and remote communities

The instrument is not likely to have a specific impact on operators in regional or remote communities in Australia.

Impact on categories of operations

New Part 6 will have a beneficial effect in continuing to enable check pilots to conduct certain operator proficiency checks without holding a flight examiner rating. It would benefit not only those personnel but also operators who would otherwise need to engage appropriately authorised flight examiners.

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

The amending 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

This legislative instrument amends instrument *CASA EX66/21 — Flight Crew Licensing (Miscellaneous Exemptions) Exemption 2021* (the **principal instrument**) by repealing Part 6 and substituting it with a new Part (**new Part 6**). New Part 6 replaces and continues the measure in the principal instrument with necessary updated terminology and drafting improvements following the commencement on 2 December 2021 of Parts 121, 133, 135 and 138 of the *Civil Aviation Safety Regulations 1998 (CASR)* and the amendment of *Civil Aviation Order 82.0*.

New Part 6 exempts a check pilot (defined in section 27) from compliance with subregulation 61.065 (1) of CASR (when taken together with subregulation 61.375 (7) of CASR (as it relates to item 9 of table 61.375) and subparagraph 61.1255 (c) (v) of CASR) to the extent that the pilot may conduct an operator proficiency check for the holder of a pilot licence (mentioned in subparagraph 61.1255 (c) (v)) without holding a flight examiner rating. However, the exemption does not authorise the check pilot to conduct an operator proficiency check for the purposes of regulation 61.650, 61.695 or 61.880.

Any safety risks potentially arising from the measure are addressed by conditions imposed on the exemption in the interests of the safety of air navigation.

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