

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX01/23 — Multi-Engine Helicopters (CASA EX49/22) Amendment Instrument 2023

Purpose

The purpose of *CASA EX01/23 — Multi-Engine Helicopters (CASA EX49/22) Amendment Instrument 2023* is to make changes to *CASA EX49/22 — Multi-Engine Helicopters Exemption 2022 (CASA EX49/22)* that are consequential to the *Part 61 Flight Crew Licensing (Prescribed Aircraft and Type Ratings) (Edition 9) Instrument 2023* (the ***new Part 61 prescription instrument***).

CASA EX49/22 was made to enable pilots to operate certain multi-engine helicopters in a way similar to the way multi-engine aeroplanes are operated within a class rating system under regulation 61.747 of the *Civil Aviation Safety Regulations 1998 (CASR)*. For multi-engine aeroplanes, the holder of a multi-engine aeroplane class rating is authorised to exercise the privileges of the rating in an aircraft of a type mentioned in subregulation 61.747(2) if the holder has completed flight training and a flight review, as stated in the regulation. The prescription under CASR of a type rating for all multi-engine helicopters, rather than a class rating, creates practical barriers to the efficient conduct of training and entry-control testing of pilots for less complex multi-engine helicopters certified for single-pilot operation.

The multi-engine helicopters included in the scheme established under CASA EX49/22 were selected based on the training for type ratings prescribed in *Prescription of Aircraft of Aircraft and Rating — CASR Part 61 (Edition 8) Instrument 2021* (the ***old Part 61 prescription instrument***). Aircraft and type ratings prescribed under the old Part 61 prescription instrument have since been amended by the new Part 61 prescription instrument.

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) 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), 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, 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 an exemption to be published on the internet. Under subregulation 11.230(1) of CASR, the maximum duration of an exemption is 3 years.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, 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. Under subsection 13(1) of the *Legislation Act 2003* (the **LA**), subsection 33(3) applies to legislative instruments as if each provision of the instrument were a section of an Act.

Content of instrument

Section 1 states the name of the instrument.

Section 2 provides that the instrument commences on the commencement of the new Part 61 prescription instrument.

Section 3 provides that Schedule 1 amends CASA EX49/22.

Schedule 1

Item [1] inserts a note under the heading to Schedule 1 of the amended instrument, to refer to the provisions that empower the Schedule.

Item [2] substitutes the table in Schedule 1. The new table includes changes to helicopter models, and pilot type ratings for helicopters, that reflect the changes made to the prescription of relevant aircraft and type ratings under regulation 61.060 of CASR in the new Part 61 prescription instrument.

The MBB-BK117 D-3 model was added to Schedule 7 (about single pilot type-rated helicopters) in Edition 8 of the old Part 61 prescription instrument. This instrument deletes reference to “MBB” (the previous name of the manufacturer) for the BK117 models from the C2 onwards for consistency with how the models are identified in the Type Certificate Data Sheet (the TCDS) applicable to those aircraft. Consequently, column 2 of Schedule 7 is amended to remove the prefix MBB from listings of the C-2, D-2, and D-3 models. Reference to “(H145 models)” is added to the description of the D-2 and D-3 models as an aid to identify the helicopters fitted with the Airbus Helionix.

The BK117 C2e model is added as a new variant to the list of variants in column 2 in a separate cell as this model is not fitted with the integrated avionics and autoflight system that is installed in other models. Pilots who hold the type rating but have not previously flown the C2e model will be required to complete the differences training to pilot that model. Alternatively, a person who has been granted a type rating or completed training and a flight review in a C2e model would be required to complete additional training and a flight review prior to flying the more complex models.

Legislation Act 2003

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 EX49/22 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.

As the 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 exemption instrument and is almost immediately spent and repealed in accordance with the automatic repeal provisions in Subdivision A in Division 1 of Part 3 of Chapter 3 of the LA. The principal exemption instrument is itself repealed at the end of 31 July 2025 by virtue of the terms of paragraph 2(b) of the principal exemption instrument. Thus, in practice, no sunsetting avoidance issues arise and there is no impact on parliamentary oversight.

Consultation

A draft version of CASA EX49/22 was published and made available for comment from 21 June 2022 to 4 July 2022. Before making the instrument, CASA considered the responses it had received from aviation industry stakeholders.

The issues that CASA EX49/22 sought to resolve were identified by and had been subject to discussion with industry representatives on CASA's Standards Consultative Committee, FSC Subcommittee and the Flight Crew Licensing Technical Working Group (***FCL TWG***). A helicopter-focussed subgroup of the FCS TWG had also been engaged to understand the technical aspects as they relate to the specific aircraft and training environments. These stakeholders had been engaged in the development of the policy proposal from the inception of the concept and had indicated their support of draft CASA EX49/22.

This instrument makes amendments to update details of helicopter models and type ratings in line with changes made in the new Part 61 prescription instrument. CASA is satisfied that no further consultation is appropriate, or reasonably practicable, for the purposes of 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:

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

The instrument updates the detail of models of aircraft or pilot type ratings for helicopters that are included in the scope of CASA EX49/22. As such, there will be no change to the economic or cost impact on individuals, business or the community.

The BK117 D-3 and C2e helicopter models are added in this instrument to align with the latest and previous changes to the Part 61 prescription instrument. Pilots normally complete type specific training on each of the new variants specified to ensure they are competent to

fly the aircraft safely. Consequently, the amendments do not impose any additional costs on industry.

Also, CASA has assessed that the amended instrument would not have direct negative environmental impacts.

Impact on categories of operations

The instrument adds one helicopter model to the Table in the existing instrument. This will not have any immediate impact as there are no models of that helicopter currently on the Australian register.

The beneficial effect that CASA EX49/22 was assessed as having on aerial work operations conducted in multi-engine helicopters, passenger-carrying Australian air transport operations conducted in multi-engine helicopters, and flight training operators conducting training for multi-engine helicopters, continues with the amendments in this instrument that bring helicopter models and their related pilot type ratings up to date in line with the new Part 61 prescription instrument.

Impact on regional and remote communities

CASA EX49/22 was anticipated to have a positive impact on regional and remote communities because it could encourage operators conducting aerial work, or air transport, operations in or to regional and remote communities to use multi-engine helicopters rather than single-engine helicopters. This continues under this instrument that corrects prescribed models of aircraft and their type ratings in line with the new Part 61 prescription instrument.

Office of Impact Analysis (OIA)

An Impact Analysis (*IA*) is not required in this case, as exemptions are covered by a standing agreement between CASA and OIA under which an IA is not required for exemptions (OIA 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 commencement of the *Part 61 Flight Crew Licensing (Prescribed Aircraft and Type Ratings) (Edition 9) Instrument 2023* and is automatically repealed under 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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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*.

Overview of the legislative instrument

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Human rights implications

Right to work

The right to work, mentioned 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 that they freely choose or accept. The right to work is promoted by the instrument, as it provides greater flexibility for pilots to obtain the civil aviation authorisations that are necessary to perform certain duties.

The right to work is promoted by the instrument, as it increases the availability of suitably-qualified flight instructors, examiners and Part 141 operators to conduct training and assessments for pilots for certain multi-engine helicopters. Also, the instrument allows the holder of a pilot licence to exercise the privileges of the licence in relation to one of the

helicopters, despite not holding the pilot type rating in relation to the helicopter. This increases the availability of suitably-qualified pilots to pilot the helicopters.

Other rights

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

Conclusion

The instrument is compatible with human rights as it does not raise any human rights issues.

Civil Aviation Safety Authority