

Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Safety Regulations 1998

CASA EX65/23 — Amendment of CASA EX66/21 (for Pilots in Command in Miscellaneous Dropping Operations) Instrument 2023

CASA EX66/23 — Amendment of CASA EX92/22 (for Part 137 operators in Miscellaneous Dropping Operations) Instrument 2023

CASA EX67/23 — Amendment of CASA EX86/21 (for operators under Part 138 in Miscellaneous Dropping Operations) Instrument 2023

Purpose

Dropping things or substances from an aircraft below 500 ft AGL can be characterised as an aerial application operation **under Part 137** of the *Civil Aviation Safety Regulations 1998 (CASR)* or an aerial work dispensing operation **under Part 138** of CASR.

Part 61 of CASR prescribes that an aerial application rating is required for such operations. However, not all such dropping requires the specialist skills that are involved in acquiring and using an aerial application rating. A relevant low-level rating and low-level endorsement would be safe and sufficient qualifications that would not involve the skills redundancy that would otherwise arise from holding an aerial application rating.

This is the case for *miscellaneous dropping operations* below 500 ft. These are defined as operations that involve, or involve training for, dropping “relevant articles” from an aircraft in flight below 500 ft, where no spraying or broadcasting any substance is involved.

Relevant articles means any of the following:

- (a) incendiaries to initiate controlled burning;
- (b) baits for the capture or eradication of feral animals;
- (c) search and rescue equipment;
- (d) fodder for livestock;
- (e) items for disaster relief;
- (f) other articles of a nature, or articles dropped for a purpose, that is closely similar to the nature or purpose of the articles mentioned in paragraphs (a) to (e).

As may be seen, a **relevant article** does not include any substance that may be sprayed or broadcast.

CASA EX66/21 — *Flight Crew Licensing (Miscellaneous Exemptions) Exemption 2021 (CASA EX66/21)* contains a range of temporary exemptions from the pilot licensing requirements of Part 61 of CASR.

The purpose of *CASA EX65/23 — Amendment of CASA EX66/21 (for Pilots in Command in Miscellaneous Dropping Operations) Instrument 2023* (the **pilot instrument**) is to add additional exemptions to CASA EX66/21 so that the pilot in command of an aircraft in a miscellaneous dropping operation is not required to hold an aerial application rating but must instead hold a relevant low-level rating and low-level endorsement.

CASA EX92/22 — Part 137 and Part 91 of CASR — Supplementary Exemptions and Directions Instrument 2022 (**CASA EX92/22**) contains a range of temporary exemptions from the requirements of Part 137 of CASR for aerial application operations.

The purpose of *CASA EX66/23 — Amendment of CASA EX92/22 (for Part 137 operators in Miscellaneous Dropping Operations) Instrument 2023* (the **Part 137 instrument**) is to add additional exemptions to CASA EX92/22, consequential on, and to support, the pilot instrument for miscellaneous dropping operations that are otherwise aerial application operations.

CASA EX86/21 — Part 138 and Part 91 of CASR — Supplementary Exemptions and Directions Instrument 2021 (**CASA EX86/21**) contains temporary exemptions from Part 138 of CASR for aerial work operations.

The purpose of *CASA EX67/23 — Amendment of CASA EX86/21 (for operators under Part 138 in Miscellaneous Dropping Operations) Instrument 2023* (the **Part 138 instrument**) is to add additional Part 138 exemptions to CASA EX86/21 consequential on, and to support, the pilot instrument for miscellaneous dropping operations that are otherwise aerial work operations.

In certain respects, the 3 exemption amendment instruments will operate to continue, in respect of defined miscellaneous dropping operations below 500 ft, the position as it was previously for incendiary dropping and similar operations under Civil Aviation Order 29.5, Air service operations — miscellaneous dropping of articles from aircraft in flight (**CAO 29.5**).

In September 2014, CAO 29.5 was amended to take into account the commencement of Part 61 of CASR. As a result, the Part 61 definitions of **aerial application operation**, **application material**, and **apply** had the effect that, for Part 61 flight crew licencing purposes, the dropping of *any* material became an aerial application operation which, if carried out below 500 ft (as most of these operations are), would require the pilot in command to hold an aerial application rating.

This was an unintended compliance requirement for pilots in command of certain non-aerial application specific tasks, including aerial work dispensing operations under Part 138 of CASR for incendiary dropping, dropping of baits, search and rescue equipment drops, fodder drops, and dropping of items for disaster relief. These tasks do not need the full set of aerial application rating competencies in order to be safely carried out in flight below 500 ft above ground level and they can be more appropriately regulated by ensuring that the pilot in command holds a low-level rating under Part 61.

This issue has been dealt with through exemption instruments and the 3 exemption amendment instruments will continue that process until the relevant provisions in CASR are amended, if drafting resources are available by the end of 2024.

In this Explanatory Statement, CASA EX66/21, EX92/22 and EX86/21 are collectively described as the principal instruments.

Aviation safety

In determining whether to issue the exemption amendment instruments, CASA had regard to the safety of air navigation as the most important consideration.

CASA is satisfied that, given the nature of the amendments involved, and the necessary conditions imposed, an acceptable level of aviation safety will be preserved, and the safety of air navigation thereby maintained.

Legislation — exemptions

Section 98 of the Act empowers the Governor-General to make regulations for the *Civil Aviation Act 1988* (the *Act*) and the safety of air navigation.

Subpart 11.F of CASR deals with exemptions. Under subregulation 11.160 (1), and for subsection 98 (5A) of the Act, CASA may, by instrument, grant an exemption from a provision of CASR in relation to a matter mentioned in subsection 98 (5A).

Subsection 98 (5A) matters are, in effect, those affecting the safety, airworthiness or design of aircraft.

Under subregulation 11.160 (2), an exemption may be granted to a person or a class of persons. Under subregulation 11.160 (3), CASA may grant an exemption on application, or on its own initiative. Under subregulation 11.170 (3), for an application for an exemption, CASA must regard as paramount the preservation of an acceptable level of safety. For making a decision on its own initiative, CASA is guided by the requirement in subsection 9A (1) of the Act that in exercising its powers and functions CASA must regard the safety of air navigation as the most important consideration.

Under regulation 11.205, CASA may impose conditions on an exemption if this is 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. Under regulation 11.225, CASA must, as soon as practicable, publish on the internet details of all exemptions under Subpart 11.F.

Under subregulation 11.230 (1), an exemption may remain in force for 3 years or for a shorter period specified in the instrument.

Under subregulation 11.230 (3), an exemption, in force in relation to a particular aircraft owned by a particular person, ceases to be in force when the aircraft ceases to be owned by that person. Under regulation 11.235, an exemption is not transferable (as between operators, aircraft, etc.).

Part 61 of CASR

Under regulation 61.010 of CASR, an ***aerial application operation*** is a flight carried out by an aircraft to apply application material. Under the CASR Dictionary, referencing regulation 137.010 of CASR, ***application material*** means fertiliser, trace elements, seeds, baits, water, pesticides or other material. ***Apply***, in relation to application material, means to drop or spray the material onto the ground or water.

Under paragraph 61.065 (1) (a) and subregulation 61.065 (2) of CASR, the holder of a flight crew licence commits a strict liability offence if they pilot a registered aircraft when not authorised under Part 61. Under subregulation 61.375 (7) and item 6 in

Table 61.375, for an aerial application operation below 500 ft AGL, the pilot must hold an aerial application rating.

Also, under subregulation 138.500 (2) of CASR, the pilot in command of an aircraft for a flight involving an aerial work operation commits an offence if the pilot performs a duty as pilot in command for the flight and, for subparagraph 138.500 (1) (a) (i), is not qualified under Part 61 of CASR for the flight.

As noted above, CASA considers that for an aerial application operation below 500 ft, or an aerial work operation that is a dispensing operation below 500 ft AGL that is also a miscellaneous dropping operation, aviation safety requirements would be satisfied if the pilot in command held a relevant low-level rating and low-level endorsement rather than the more onerous aerial application rating.

The pilot instrument, therefore, with a new Part 16, inserts a new subsection 7 (1) into CASA EX66/21, to the effect that the pilot in command of an aircraft in a miscellaneous dropping operation is exempted from compliance with:

- (a) subparagraph 61.065 (1) (a) (i); and
- (b) subregulation 61.065 (2) — in respect of subparagraph 61.065 (1) (a) (i); and
- (c) subregulation 61.375 (7);

but only to the extent that:

- (d) the miscellaneous dropping operation is an aerial application operation below 500 ft for which item 6 in Table 61.375 requires the pilot in command to hold an aerial application rating; and
- (e) if the pilot in command is not employed to conduct the miscellaneous dropping operation for an operator under Part 137 of CASR, or for an aerial work operator under Part 138 of CASR — the pilot conducts the miscellaneous dropping operation in accordance with the requirements and limitations that apply to a limited aerial work operation under Part 138 of CASR.

Paragraph (e) is designed to introduce an additional safety component into miscellaneous dropping operations that are conducted by a pilot who is not operating under the aegis of an operator under Part 137, or by a certificated aerial work operator under Part 138.

Under new subsection 74 (2), the pilot in command of an aircraft in a miscellaneous dropping operation is exempted from compliance with subregulation 138.500 (2) of CASR but:

- (a) only with respect to subparagraph 138.500 (1) (a) (i); and
- (b) only to the extent that the miscellaneous dropping operation is an aerial work operation in the form of a dispensing operation below 500 ft, for which item 6 in Table 61.375 requires the pilot in command to hold an aerial application rating.

Under a new section 75, the exemptions under section 74 are subject to the following conditions:

- (a) the pilot in command must hold a low-level rating and a low-level endorsement for the category of aircraft used in the miscellaneous dropping operation;

- (b) the pilot in command must comply with the requirements imposed on a pilot in command under:
 - (i) Part 137 of CASR — if the aeroplane operator is an operator under Part 137 of CASR; or
 - (ii) Part 138 of CASR — if the aircraft operator conducts aerial work operations (whether or not the operator holds an aerial work certificate authorising the operation).

Since all miscellaneous dropping operations will be either an aerial application operation in an aeroplane under Part 137 of CASR, or a dispensing operation as part of an aerial work operation under Part 138 of CASR, paragraph 75 (b) is intended to ensure that the benefit of the exemption is subject to the usual requirements for such operations.

A Note references the related Part 137 and Part 138 operator exemptions, that are, in effect, contained in the Part 137 instrument and the Part 138 instrument which, respectively, amend CASA EX92/22 and CASA EX86/21 with amendments to complement the pilot instrument.

Section 3 of the instrument also repeals *CASA EX136/20 — Incendiary Dropping Operations (Aerial Application Rating) Instrument 2020*, virtually all of which is repealed at the end of 30 September 2023, and which is functionally replaced by the pilot instrument and the Part 137 instrument. However, a Note explains that an ongoing record keeping obligation on Part 137 operators under CASA EX136/20 is grandfathered by the Part 137 instrument until 30 September 2026.

Part 137 of CASR

Under regulation 137.010 of CASR, while ***application material***, and ***apply*** in relation to application material, have the meanings mentioned above, a Part 137 ***aerial application operation*** is defined as a flight by an aeroplane to apply application material, or for a variety of related purposes, including flights for inspections, training and preparations.

Under regulation 137.235, the operator of an aeroplane commits an offence if the aeroplane is used to conduct an application operation, and the pilot in command of the aeroplane is not authorised under Part 61 to pilot the aeroplane in the operation. Such an authorisation would be an aerial application rating which would be at variance with the pilot instrument.

As noted above, CASA considers that for an aerial application operation below 500 ft AGL that is a miscellaneous dropping operation, aviation safety requirements would be satisfied if the pilot in command held a relevant low-level rating and low-level endorsement rather than the more onerous aerial application rating.

The Part 137 instrument is, therefore, consequential on the pilot instrument. It inserts a new section 9 into CASA EX92/22 to provide that the operator of an aeroplane in a miscellaneous dropping operation below 500 ft that is an aerial application operation under Part 137 of CASR is exempted from compliance with regulation 137.235 of CASR but:

- (a) only in relation to the operator's pilot in command who is entitled to, and who takes, the benefit of the exemptions under Part 16 of CASA EX66/21; and

- (b) only to the extent of those exemptions as they apply to the pilot in command.

Under a new section 10, the exemptions in section 9 are subject to the condition that for a miscellaneous dropping operation below 500 ft, the operator must:

- (a) have procedures in their operations manual for the particular kind of miscellaneous dropping operation conducted by the pilot in command; and
- (b) ensure that the pilot in command is compliant with the conditions imposed on the pilot in command under Part 16 of CASA EX66/21.

A second condition provides that to the extent that the operator took advantage of *CASA EX136/20 — Incendiary Dropping Operations (Aerial Application Rating) Instrument 2020 (CASA EX136/20)* before it was repealed, the operator must continue to preserve for 3 years from their creation, and make available to CASA for inspection on request, any records of risk management processes that were required under subsection 11 (4) of CASA EX136/20 to be so preserved and made available.

A Note explains that section 3 of *CASA EX65/23 — Amendment of CASA EX66/21 (for Pilots in Command in Miscellaneous Dropping Operations) Instrument 2023* repealed CASA EX136/20.

Part 138 of CASR

Under subregulation 138.010 (1) of CASR, an **aerial work operation** means, among others, a dispensing operation. Under subregulation 138.010 (3), a **dispensing operation** means dropping or releasing any substance or object from an aircraft in flight and includes training for such an operation.

Under subparagraph 138.475 (2) (c) (i) of CASR, the operator of an Australian aircraft for an aerial work operation (whether or not the operator holds an aerial work certificate authorising the operation) commits an offence if, when the flight begins, each flight crew member is not authorised to pilot the aircraft during the flight under Part 61.

Under subregulation 138.500 (2A) of CASR, the operator of an Australian aircraft for an aerial work operation (whether or not the operator holds an aerial work certificate authorising the operation) commits an offence if, for a flight involving an aerial work operation, the assigned pilot in command is not authorised under Part 61 of CASR to carry out the assigned duties as required under subparagraph 138.500 (1) (a) (i).

As noted above, CASA considers that for an aerial work operation that is a dispensing operation below 500 ft AGL that is also a miscellaneous dropping operation, aviation safety requirements would be satisfied if the pilot in command held a relevant low-level rating and low-level endorsement rather than the more onerous aerial application rating.

The Part 138 instrument is, therefore, consequential on the pilot instrument. It inserts a new section 28 into CASA EX86/21 to provide that the operator of an aircraft in a miscellaneous dropping operation that is an aerial work operation in the form of a dispensing operation is exempted from compliance with the following provisions of CASR:

- (a) subregulation 138.475 (1) — but only with respect to subparagraph 138.475 (2) (c) (i);
- (b) subparagraph 138.500 (2A) (a) (i) — but only with respect to subparagraph 138.500 (1) (a) (i);

BUT:

- (c) only in relation to the operator's pilot in command who is entitled to, and who takes, the benefit of the exemptions under Part 16 of CASA EX66/21; and
- (d) only to the extent of those exemptions as they apply to the pilot in command.

Under a new section 29, the exemptions in section 28 are subject to the condition that for a miscellaneous dropping operation, the operator must:

- (a) have procedures in their operations manual for the particular kind of miscellaneous dropping operation conducted by the pilot in command; and
- (b) ensure that the pilot in command is compliant with the conditions imposed on the pilot in command under Part 16 of CASA EX66/21.

Legislation Act 2003 (the LA)

The exemption amendment instruments are for the safe navigation and operation of aircraft and apply to classes of persons, under subsections 98 (5) and (5AA) of the Act. As such, they were legislative instruments under the LA and subject to registration, and tabling and disallowance in the Parliament, under sections 15G, and 38 and 42, of the LA.

Sunsetting

As the exemption amendment instruments relate to aviation safety and are made under CASR, that means that Part 4 of Chapter 3 of the LA (the sunset provisions) does not apply to the instruments (as per item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*). The exemption amendment instruments deal with aviation safety matters that, once identified, require a risk response or treatment plan. Generally speaking, item 15, when invoked, is necessary in order to ensure that, in the interests of aviation safety, a relevant instrument has enduring effect, certainty and clarity for aviation operators both domestic and international.

In this case, the exemption amendment instruments amend the principal exemptions instrument and are 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 exemptions instruments are themselves repealed at the end of 31 May 2024, 30 November 2025 and 28 February 2025, respectively, by virtue of their duration provisions. Thus, in practice, no sunset avoidance issues arise and there is no adverse impact on parliamentary oversight.

Incorporations by reference

Under subsection 98 (5D) of the Act, the instrument may apply, adopt or incorporate any matter contained in any instrument or other writing. A non-legislative instrument may be incorporated into a legislative instrument made under the Act as that non-legislative instrument exists or is in force at a particular time or from time to time (including a non-legislative instrument that does not exist when the legislative instrument is made).

Under paragraph 15J (2) (c) of the LA, the Explanatory Statement must contain a description of the incorporated documents and indicate how they may be obtained.

References to provisions of CASR are taken to be as they are in force from time to time, by virtue of paragraph 13 (1) (c) of the LA. CASR is freely available online on the Federal Register of Legislation.

Operator operations manuals are incorporated documents in the Part 137 instrument and the Part 138 instrument.

An operator's operations manual is a document, or suite of documents, that specifies the scope of the operations and activities conducted by the operator, and sets out the procedures and other matters, that must be implemented by the operator and the flight crew to comply with the civil aviation legislation. A manual for an operator means the manual as changed from time to time.

A manual is not publicly or freely available. It is proprietary to the operator who creates it and owns its intellectual property, and it will generally include commercial in confidence information about the operator's business. The incorporated requirements of manuals are at the operator-specific level and apply only to the operator and its personnel. Further, the operator is under obligations to make the manual available to its personnel who have obligations under the document.

However, CASA will, as far as practicable, make arrangements with any relevant operator to make a suitably redacted copy of the manual available for requested inspection by appointment at a relevant CASA office.

Economic and cost impact, and sector risks

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 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.

In terms of economic and cost impacts for subsection 9A (3) of the Act, the exemption amendment instruments, by somewhat lowering the level of pilot qualification required for a miscellaneous dropping operation that is also an aerial application operation or an aerial work operation in the form of a dispensing operation, will marginally lower qualification costs.

The requirements to update operations manuals to cover these kinds of operations will impose minor costs on operators who will also gain a wider range of pilots to carry out relevant operations.

Sector risks

There will be a particular impact on aerial application operators and aerial work operators involved in dispensing operations. However, this is a positive impact for the reasons mentioned above.

Rural, remote and regional impacts

There are no identified rural, remote or regional impacts that differ in any really material way from the general economic and cost impacts, or sector risks described above. However, smaller operators, more likely to be located in rural and regional areas, will benefit as described above.

Environmental impact

Under subsection 9A (2) of the Act, while regarding the safety of air navigation as the most important consideration, CASA must exercise its powers and perform its functions in a manner that ensures that, as far as practicable, the environment is protected from the effects and associated effects of the operation and use of aircraft.

It is not anticipated there will be any negative environmental impacts as a result of the exemption amendment instruments, as compared to the baseline that existed on 1 December 2021, since the instruments do not create any new environmental impacts arising from flight operations.

Consultation

Under section 16 of the Act, in performing its functions and exercising its powers, CASA must consult government, industrial, commercial consumer and other relevant bodies and organisations insofar as CASA considers such consultation to be appropriate.

Under section 17 of the LA, before a legislative instrument is made, CASA must be satisfied that it has undertaken any consultation it considers appropriate and practicable in order to draw on relevant expertise and involve persons likely to be affected by the proposals.

Exemptions from regulatory requirements are considered to be beneficial for those to whom they apply, who voluntarily elect to take advantage of them, and who comply with their conditions. It is, therefore, rarely necessary to engage in extensive public consultation on a proposed exemption. However, it is CASA's policy to consult, where possible, in an appropriate way with those parts of the aviation industry most likely to avail themselves of, or be affected by, an exemption so that they may have the opportunity to comment on the possible or likely terms, scope and appropriateness of the exemption.

There has been no formal consultation on the exemption amendment instruments because they are wholly beneficial in effect for relevant pilots and operators.

However, there have been informal consultations by CASA with a range of operators who have sought and who support the changes introduced by the exemptions.

In the circumstances, CASA is satisfied that it has undertaken such consultation as it considers appropriate and reasonably practicable.

There will be further formal consultation in the future as CASA moves to translate, in appropriate form, the various exemptions contained in the principal exemption instruments into the CASR rules.

Office of Impact Analysis (OIA)

An Impact Analysis (*IA*) is not required because the exemption amendment instruments are covered by a standing agreement between CASA and OIA under which an IA is not required for exemption or direction instruments (OIA id: 14507).

Statement of Compatibility with Human Rights

The Statement in Appendix 5 is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The exemption amendment instruments are amending instruments to beneficially modify a pilot qualification requirement for particular specialist operations.

As such, they do not directly give rise to any human rights issues. The principal exemption instruments themselves have indirect effects on the right to life under the International Covenant on Civil and Political Rights (ICCPR), and the right to safe and healthy working conditions under the International Covenant on Economic, Social and Cultural Rights (ICESCR), as explained in the relevant Explanatory Statements that accompanies them when they were made.

Commencement and making

The exemption amendment instruments commence on the day after they are registered.

The exemption amendment instruments have been made by the Executive Manager, National Operations & Standards, a delegate of CASA, relying on the power of delegation under subregulation 11.260 (1) of CASR.

Appendix 1

Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the
Human Rights (Parliamentary Scrutiny) Act 2011*

CASA EX65/23 — Amendment of CASA EX66/21 (for Pilots in Command in Miscellaneous Dropping Operations) Instrument 2023**CASA EX66/23 — Amendment of CASA EX92/22 (for Part 137 operators in Miscellaneous Dropping Operations) Instrument 2023****CASA EX67/23 — Amendment of CASA EX86/21 (for operators under Part 138 in Miscellaneous Dropping Operations) Instrument 2023**

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

Dropping things or substances from an aircraft below 500 ft AGL can be characterised as an aerial application operation **under Part 137** of the *Civil Aviation Safety Regulations 1998 (CASR)* or an aerial work dispensing operation **under Part 138** of CASR.

Part 61 of CASR prescribes that an aerial application rating is required for such operations. However, not all such dropping requires the specialist skills that are involved in acquiring and using an aerial application rating. A relevant low-level rating and low-level endorsement would be safe and sufficient qualifications that would not involve the skills redundancy that would otherwise arise from holding an aerial application rating.

This is the case for *miscellaneous dropping operations* below 500 ft. These are defined as operations that involve, or involve training for, dropping “relevant articles” from an aircraft in flight below 500 ft, where no spraying or broadcasting any substance is involved.

Relevant articles means any of the following:

- (a) incendiaries to initiate controlled burning;
- (b) baits for the capture or eradication of feral animals;
- (c) search and rescue equipment;
- (d) fodder for livestock;
- (e) items for disaster relief;
- (f) other articles of a nature, or articles dropped for a purpose, that is closely similar to the nature or purpose of the articles mentioned in paragraphs (a) to (e).

As may be seen, a **relevant article** does not include any substance that may be sprayed or broadcast.

CASA EX66/21 — Flight Crew Licensing (Miscellaneous Exemptions) Exemption 2021 (CASA EX66/21) contains a range of temporary exemptions from the pilot licensing requirements of Part 61 of CASR.

The purpose of *CASA EX65/23 — Amendment of CASA EX66/21 (for Pilots in Command in Miscellaneous Dropping Operations) Instrument 2023* (the **pilot instrument**) is to add additional exemptions to CASA EX66/21 so that the pilot in command of an aircraft in a miscellaneous dropping operation is not required to hold an aerial application rating, but must instead hold a relevant low-level rating and low-level endorsement.

CASA EX92/22 – Part 137 and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2022 (CASA EX92/22) contains a range of temporary exemptions from the requirements of Part 137 of CASR for aerial application operations.

The purpose of *CASA EX66/23 — Amendment of CASA EX92/22 (for Part 137 operators in Miscellaneous Dropping Operations) Instrument 2023* (the **Part 137 instrument**) is to add additional exemptions to CASA EX92/22, consequential on, and to support, the pilot instrument for miscellaneous dropping operations that are otherwise aerial application operations.

CASA EX86/21 – Part 138 and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2021 (CASA EX86/21) contains temporary exemptions from Part 138 of CASR for aerial work operations.

The purpose of *CASA EX67/23 — Amendment of CASA EX86/21 (for operators under Part 138 in Miscellaneous Dropping Operations) Instrument 2023* (the **Part 138 instrument**) is to add additional Part 138 exemptions to CASA EX86/21 consequential on, and to support, the pilot instrument for miscellaneous dropping operations that are otherwise aerial work operations.

In certain respects, the 3 exemption amendment instruments will operate to continue, in respect of defined miscellaneous dropping operations below 500 ft, the position as it was previously for incendiary dropping and similar operations under Civil Aviation Order 29.5, Air service operations — miscellaneous dropping of articles from aircraft in flight (**CAO 29.5**).

In September 2014, CAO 29.5 was amended to take into account the commencement of Part 61 of CASR. As a result, the Part 61 definitions of **aerial application operation**, **application material**, and **apply** had the effect that, for Part 61 flight crew licensing purposes, the dropping of *any* material became an aerial application operation which, if carried out below 500 ft (as most of these operations are), would require the pilot in command to hold an aerial application rating.

This was an unintended compliance requirement for pilots in command of certain non-aerial application specific tasks, including aerial work dispensing operations under Part 138 of CASR for incendiary dropping, dropping of baits, search and rescue equipment drops, fodder drops, and dropping of items for disaster relief. These tasks do not need the full set of aerial application rating competencies in order to be safely

carried out in flight below 500 ft above ground level and they can be more appropriately regulated by ensuring that the pilot in command holds a low-level rating under Part 61.

This issue has been dealt with through exemption instruments and the 3 exemption amendment instruments will continue that process until the relevant provisions in CASR are amended, if drafting resources are available by the end of 2024.

Human rights implications

The legislative instruments engage with the following human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*:

- the right to life under Article 6 of the International Covenant on Civil and Political Rights (the *ICCPR*)
- the right to safe and healthy working conditions under Article 7 of the International Covenant on Economic, Social and Cultural Rights (the *ICESCR*).

Right to life under the ICCPR

Right to safe and healthy working conditions under the ICESCR

The effect of the exemption amendment instruments is to permit miscellaneous dropping operations below 500 ft provided the pilot in command of the relevant aircraft holds a relevant low-level rating and low-level endorsement, rather than an aerial application rating. The full range of training and skills under an aerial application rating are not required for miscellaneous dropping operations below 500 ft, but conditions in each of the 3 exemption amendment instruments are designed to ensure that an acceptable level of aviation safety is preserved for working pilots in such operations.

Human rights implications

These legislative instruments are compatible with human rights and to the extent that they may indirectly engage certain rights they do so in a way that promotes the right to life and promotes safe and healthy working conditions on board relevant aircraft. These measures are considered to be reasonable, necessary and proportionate in the interests of aviation safety.

Conclusion

These legislative instruments are compatible with human rights.

Civil Aviation Safety Authority