

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX16/25 – Amendment of CASA EX62/24 (for CASR Part 131) – Exemption Instrument 2025

Purpose

The purpose of *CASA EX16/25 – Amendment of CASA EX62/24 (for CASR Part 131) – Exemption Instrument 2025* (the **exemption amendment instrument**) is to redraft section 7 of *CASA EX62/24 – CASR Part 131 – Exemptions and Directions Instrument 2024 (CASA EX62/24)* which has been misinterpreted and misapplied.

Background

Part 131 of the *Civil Aviation Safety Regulations 1998 (CASR)* deals with Part 131 aircraft (essentially balloons) and balloon transport operators. CASA EX62/24 was required principally to make Part 131 and the Part 131 Manual of Standards (the **MOS**) operate effectively together on and from 12 November 2024 when the MOS commenced and certain redundant Civil Aviation Orders were repealed.

Under subparagraph 131.195(1)(e)(iv) of CASR, the exposition of a balloon transport operator must include for its key personnel (for example, its chief executive officer and its head of flying operations), among other things:

the name of each person authorised to carry out the responsibilities of the position when the position holder is absent from the position or cannot carry out the responsibilities.

This provision did not mandate that the operator must have such a back-up person but it was being so interpreted. Since such a requirement was unnecessary, CASA inserted section 7 into CASA EX62/24 to exempt balloon transport operators from compliance with subparagraph 131.195(1)(e)(iv).

A Note explained, in effect, that the operator may choose **not** to take the benefit of this particular exemption and may, therefore, choose to name in the exposition a back-up person.

This was being misinterpreted to mean that even if an operator did have a back-up person, there was no need to identify them in the exposition.

CASA's policy intent behind CASA EX62/24 was always that there was no requirement to have a back-up, but if an operator did have one they must be approved by CASA and noted in the operator's exposition.

The exemption amendment instrument corrects this by replacing section 7 with a new section that applies to a balloon transport operator who has **not** authorised another person to carry out the responsibilities of a key person in their absence. In these circumstances, the operator is exempted from compliance with subparagraph 131.195(1)(e)(iv).

A new Note clarifies the position by explaining that subparagraph 131.195(1)(e)(iv) may imply that an operator must actually have a "back-up" authorised person to act for an absent key person. However, this was not intended, and an operator is not required to notify CASA if they choose not to have such a back-up person. An operator may choose

to appoint such a back-up person, but if so, a new appointment, or changes to the appointment, would be a significant change that requires CASA's approval. The Note explains, therefore, that the revised exemption is for the avoidance of doubt to make clear that an operator who has chosen **not** to have a back-up person is exempted from any obligation to make such an appointment.

Legislation — exemptions

Section 98 of the *Civil Aviation Act 1988* (the **Act**) empowers the Governor-General to make regulations for 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. The preservation of an acceptable level of safety remains paramount.

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. There are no conditions expressed in the exemption amendment instrument. Under regulation 11.225, CASA must, as soon as practicable, publish on the internet details of all exemptions under Subpart 11.F of CASR.

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.).

Legislation Act 2003 (the LA)

Exemptions under Subpart 11.F of CASR are “for subsection 98(5A)” of the Act, that is, for regulations which empower the issue of certain instruments, like exemptions, in relation to “(a) matters affecting the safe navigation and operation, or the maintenance, of aircraft”, and “(b) the airworthiness of, or design standards for, aircraft”.

The exemption amendment instrument is clearly one in relation to matters affecting the safe navigation and operation of aircraft. Under subsection 98(5AA) of the Act, an exemption issued under paragraph 98(5A)(a), for such matters, is a legislative

instrument if expressed to apply in relation to a class of persons, a class of aircraft or a class of aeronautical products (as distinct from a particular person, aircraft or product).

The exemption amendment instrument is generic in nature and applies to classes of persons. It is, therefore, a legislative instrument subject to registration, and tabling and disallowance in the Parliament, under section 15G, and sections 38 and 42, of the LA.

Sunsetting

As the exemption amendment instrument relates to aviation safety and is made under CASR, that means that Part 4 of Chapter 3 of the LA (the sunset provisions) does not apply to the exemption amendment instrument (as per item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

The exemption amendment instrument deals 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.

The exemption amendment instrument is repealed when CASA EX62/24 is repealed, that is at the end of 11 November 2027. Thus, in practice, no sunset avoidance issues arise and there is no impact on parliamentary oversight.

Incorporations by reference

Under subsection 98(5D) of the Act, the exemption amendment 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 legislative instruments such as CASR or a Manual of Standards are taken to be as they are in force from time to time, by virtue of paragraph 13(1)(c) of the LA. CASR, CAR and the MOS are freely available online on the Federal Register of Legislation.

No documents are incorporated into the exemption amendment instrument.

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 as far 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.

No formal public consultation has been undertaken in relation to the exemption amendment instrument because it is merely a technical correction for which CASA considers that no consultation is necessary.

Office of Impact Analysis (OIA)

An Impact Analysis (*IA*) is not required because the exemption amendment instrument is covered by a standing agreement between CASA and the OIA under which an IA is not required for exemption or direction instrument (OIA23-06252).

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 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 instrument will save relevant operators some administrative costs by relieving them of any obligation to notify CASA when they chose not to have any back-up personnel for key personnel.

Sector risks

For aviation safety reasons, the exemption amendment instrument is specific to Part 131 operations only and those operators and pilots who fall within its scope and who choose to take the benefit of the exemptions and comply with its conditions.

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 instrument, as compared to the baseline that existed on

1 December 2021, since the exemption amendment instrument does not create any new environmental impacts arising from flight operations.

Statement of Compatibility with Human Rights

The Statement in Appendix 2 is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The exemption amendment instrument as such is compatible with human rights and raises no human rights issues.

Making and commencement

The exemption amendment instrument commences on the day after it is registered. The exemption amendment instrument has been made by a delegate of CASA relying on the power of delegation under subregulation 11.260(1) of CASR.

Details of:**CASA EX16/25 – Amendment of CASA EX62/24 (for CASR Part 131) – Exemption Instrument 2025**

1 Name

This section names the exemption amendment instrument.

2 Commencement

Under this section, the exemption amendment instrument commences on the day after it is registered.

3 Amendment of instrument CASA EX62/24

Under this section, Schedule 1 amends *CASA EX62/24 – CASR Part 131 – Exemptions and Directions Instrument 2024*.

A Note explains that *CASA EX62/24 – CASR Part 131 – Exemptions and Directions Instrument 2024* is repealed at the end of 11 November 2027.

Schedule 1 Amendment**[1] Section 7**

This amendment replaces the previous section 7 as follows.

7 Exemption — if no authorised person acting in the absence of key personnel

- (1) Under this subsection, section 7 applies to a balloon transport operator (the *operator*) who has not authorised another person to carry out the responsibilities of a key person when that key person is absent from their position or cannot carry out the responsibilities of their position.
- (2) Under this section, the operator is exempted from compliance with subparagraph 131.195(1)(e)(iv).

A Note explains that subparagraph 131.195(1)(e)(iv) may imply that an operator must actually have a “back-up” authorised person to act for an absent key person (commonly referred to as an “alternate key person”).

This was not intended. Further, an operator is not required to notify CASA if they choose not to have such a back-up person (although the absence of such a person can have operational implications for the operator — see CASA’s website for further information and guidance material on this).

An operator may choose to appoint such a back-up person, and if so, a new appointment, or changes to the appointment, would be a significant change that requires CASA’s approval. The exemption, therefore, is for the avoidance of doubt to make clear that an operator who has chosen not to have a back-up person is exempted from any obligation to make such an appointment.

Statement of Compatibility with Human Rights

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

CASA EX16/25 – Amendment of CASA EX62/24 (for CASR Part 131) – Exemption Instrument 2025

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 *CASA EX16/25 – Amendment of CASA EX62/24 (for CASR Part 131) – Exemption Instrument 2025* (the **exemption amendment instrument**) is to redraft section 7 of *CASA EX62/24 – CASR Part 131 – Exemptions and Directions Instrument 2024 (CASA EX62/24)* which has been misinterpreted and misapplied.

Background

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Under subparagraph 131.195(1)(e)(iv) of CASR, the exposition of a balloon transport operator must include for its key personnel (for example, its chief executive officer and its head of flying operations), among other things:

the name of each person authorised to carry out the responsibilities of the position when the position holder is absent from the position or cannot carry out the responsibilities.

This provision did not mandate that the operator must have such a back-up person but it was being so interpreted. Since such a requirement was unnecessary, CASA inserted section 7 into CASA EX62/24 to exempt balloon transport operators from compliance with subparagraph 131.195(1)(e)(iv).

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Human rights

The legislative instrument, as such, raises no issues affecting human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* and is, therefore, compatible with human rights.

Conclusion

This legislative instrument is compatible with human rights.

Civil Aviation Safety Authority