

Explanatory Statement

Civil Aviation Safety Regulations 1998

Exemption — instrument proficiency check for single-pilot turbojet aeroplane type rating

Purpose

The purpose of this instrument is to exempt the holder of a single-pilot turbojet aeroplane type rating from the requirement to have successfully completed an annual instrument proficiency check in an aeroplane type covered by the rating and that is to be flown under the instrument flight rules (the *IFR*), provided the holder has successfully completed an annual proficiency check in **any** single-pilot turbojet aeroplane.

As a condition of this exemption, the holder of a single-pilot turbojet aeroplane rating is required to have successfully completed a bi-annual instrument proficiency check in **an** aeroplane type covered by the rating and that is to be flown under the IFR.

Legislation — CASR Part 61

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.

Part 61 of the *Civil Aviation Safety Regulations 1998* (*CASR 1998*) sets out flight crew licensing requirements. (References below to provisions that commence with the numerals “61” are to Part 61 of CASR 1998.)

Regulation 61.805 deals with limitations on the exercise of the privileges of pilot type ratings, in particular concerning the requirement to have instrument proficiency checks for flight under the IFR.

Under subregulation 61.805 (1), the holder of a pilot type rating is authorised to exercise the privileges of the rating under the IFR, but only if the holder has a valid instrument proficiency check for an aircraft type covered by the rating. A single-pilot type rating can cover a number of different aircraft types.

Bi-annual instrument proficiency check for the aircraft type covered by a type rating

Under subregulation 61.805 (2), the holder of a pilot type rating is taken to have a valid instrument proficiency check for an aircraft type, *other than a single-pilot turbojet aeroplane type*, in certain circumstances.

Thus, under paragraph 61.805 (2) (a), the holder of a pilot type rating is taken to have a valid instrument proficiency check for an aircraft type covered by the rating, *other than a single-pilot turbojet aeroplane type*, during the 24 months from when the holder passes the flight test for (among other things) an instrument rating, in an aircraft of that type (*that is, of the type which is covered by a type rating that the holder holds*).

Under paragraph 61.805 (2) (aa), the holder of a pilot type rating is taken to have a valid instrument proficiency check for an aircraft type, *other than a single-pilot turbojet aeroplane type*, during the 24 months from when the holder passes the flight test for the pilot type rating in an aircraft under the IFR.

Under paragraph 61.805 (2) (b), the holder of a pilot type rating is taken to have a valid instrument proficiency check for an aircraft type, *other than a single-pilot turbojet aeroplane type*, during the 24 months from when the holder (among other things) passes the flight test for an instrument endorsement in an aircraft of that type.

Under paragraph 61.805 (2) (c), the holder of a pilot type rating is taken to have a valid instrument proficiency check for an aircraft type, *other than a single-pilot turbojet aeroplane type*, during the 24 months from when the holder successfully completes an operator proficiency check that covers certain IFR operations in an aircraft of that type.

Under paragraph 61.805 (2) (d), the holder of a pilot type rating is taken to have a valid instrument proficiency check for an aircraft type, *other than a single-pilot turbojet aeroplane type*, during the period when the holder is successfully participating in certain operators' training and checking for an IFR operation in an aircraft of that type.

Under paragraph 61.805 (2) (e), the holder of a pilot type rating is taken to have a valid instrument proficiency check for an aircraft type, *other than a single-pilot turbojet aeroplane type*, during the 24 months from when the holder completes an instrument proficiency check for the aircraft type.

Under paragraph 61.805 (2) (f), the holder of a pilot type rating is taken to have a valid instrument proficiency check for an aircraft type, *other than a single-pilot turbojet aeroplane type*, during the 24 months from expiry of an existing check provided that in the 3 months before expiry the holder has successfully completed an instrument proficiency check for the aircraft type.

Annual instrument proficiency check for single-pilot turbojet aeroplanes covered by a type rating

Under paragraph 61.805 (3) (a), the holder of a pilot type rating is taken to have a valid instrument proficiency check *for a single-pilot turbojet aeroplane type*, during the 12 months from when the holder passes the flight test for (among other things) an instrument rating, in an aircraft of that type, *that is, a single-pilot turbojet aeroplane type for which the holder holds a type rating*.

Under paragraph 61.805 (3) (b), the holder of a pilot type rating is taken to have a valid instrument proficiency check *for a single-pilot turbojet aeroplane type*, during the 12 months from when the holder (among other things) passes the flight test for an instrument endorsement in an aircraft of that type.

Under paragraph 61.805 (3) (c), the holder of a pilot type rating is taken to have a valid instrument proficiency check *for a single-pilot turbojet aeroplane type*, during the 12 months from when the holder successfully completes an operator proficiency check that covers certain IFR operations in an aircraft of that type.

Under paragraph 61.805 (3) (d), the holder of a pilot type rating is taken to have a valid instrument proficiency check *for a single-pilot turbojet aeroplane type*, during the period when the holder is successfully participating in certain operators' training and checking for an IFR operation in an aircraft of that type.

Under paragraph 61.805 (3) (e), the holder of a pilot type rating is taken to have a valid instrument proficiency check *for a single-pilot turbojet aeroplane type*, during the

12 months from when the holder completes an instrument proficiency check for the aircraft type.

Under paragraph 61.805 (3) (f), the holder of a pilot type rating is taken to have a valid instrument proficiency check *for a single-pilot turbojet aeroplane type*, during the 12 months from expiry of an existing check provided that in the 3 months before expiry the holder has successfully completed an instrument proficiency check for the aircraft type.

Relevant ancillary provisions

Under subregulation 61.805 (5), for paragraphs 61.805 (3) (e) and (f) described above, the holder of a pilot type rating for a single-pilot turbojet aeroplane type, successfully completes an instrument proficiency check for *the relevant aircraft* if, among other things, a particular assessment of the holder's competency is carried out by CASA or an approved person. The relevant aircraft is the single-pilot turbojet aeroplane type covered by the rating.

Under subregulation 61.805 (6), for paragraphs 61.805 (3) (e) and (f) described above, the instrument proficiency check must be conducted in a relevant aircraft or an approved flight simulation training device for the proficiency check. Once again, the relevant aircraft is the single-pilot turbojet aeroplane type covered by the rating; and the approved flight simulation training device is a device for the single-pilot turbojet aeroplane type covered by the rating.

Legislation — exemptions

Subpart 11.F of CASR 1998 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 1998 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. 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 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 (but not an exceptional circumstances exemption for regulation 11.185 about major emergencies) 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.).

Background

Regulation 61.805 commenced on 1 September 2014. Under the previous licensing rules, pilots conducting IFR operations as pilot in command only needed to complete an instrument rating renewal in *an aircraft* covered by the instrument rating. For example, to operate a multi-engine aeroplane under the IFR, the pilot was required to have a current command (multi-engine aeroplane) grade of instrument rating. There were no *type-specific* renewals required. The rating authorised the holder to conduct a flight under the IFR in any multi-engine or single engine aeroplane.

As set out in detail above, Part 61 introduced new requirements for pilots operating type-rated aircraft under the IFR. Those requirements meant that:

1. the pilot must have completed, within the previous 24 months, an instrument proficiency check conducted in an aircraft covered by the type rating (see subregulation 61.805 (2)); and
2. for single-pilot turbojet aeroplanes, the pilot must have completed, within the previous 12 months, an instrument proficiency check in *an aircraft covered by the type rating* (see subregulation 61.805 (3)).

Subregulation 61.805 (3) aimed to address the safety concerns associated with operating complex, high performance aeroplanes under the IFR. These aircraft typically have complex systems and in certain circumstances high workload situations can arise for the pilot. The purpose of the 12-monthly instrument proficiency in *an aircraft covered by the type rating* was to provide an acceptable level of assurance that pilots would be competent operating these kinds of aircraft that have higher cognitive workloads without the assistance of a co-pilot.

In the light of experience, however, including discussions with the Flight Crew Licensing (*FCL*) Subcommittee of the Standards Consultative Committee (*SCC*), CASA now considers that, relative to the interests of aviation safety, this second requirement, insisting on 12-monthly instrument proficiency in *an aircraft covered by the type rating*, is too onerous and could be relaxed without prejudicing aviation safety.

Before reaching a decision, CASA also considered the United States Federal Aviation Administration's regulation 61.58 for single-pilot turbojet operations under which pilots are required to have an annual proficiency check in any single-pilot turbojet aeroplane and a bi-annual check in the specific type.

It is, therefore, proposed to relax the requirements so that a pilot wishing to operate a single-pilot turbojet aeroplane must have completed an instrument proficiency check in *any single-pilot turbojet aeroplane* within the previous 12 months.

However, in the interests of aviation safety, the requirement to have successfully completed the bi-annual instrument proficiency check under subregulations 61.805 (1) and (2) for an aircraft type covered by a pilot type rating, other than a single-pilot turbojet aeroplane type, should be extended to include single-pilot turbojet aeroplane types covered by the pilot type rating.

The exemption

The effects of the exemption must be understood in the context that, for the purposes of flying under the IFR, the holder of a pilot type rating must have successfully completed a relevant instrument proficiency check within the prescribed preceding period.

Thus, the exemption exempts the holder of a single-pilot turbojet aeroplane type rating from, in effect, the obligation to have **an annual** instrument proficiency check for the single-pilot turbojet aeroplane type covered by the rating, and that the holder intends to fly under the IFR. Instead, an instrument proficiency check in **any** single-pilot turbojet aeroplane type will suffice. At the same time, a requirement is added for a **bi-annual** instrument proficiency check for a single-pilot turbojet aeroplane type covered by the rating.

There are 2 consequential machinery exemptions and a related condition to make the exemption operate without ambiguity in relation to what is “the relevant aircraft” for the conduct of an IPC, or for the use of an approved flight simulation training device for an IPC.

The details of the provisions of the exemption are set out in Appendix 1.

Duration

The exemption is expressed to operate until expiry at the end of 28 February 2018, as if it had been repealed by another instrument. It is expected that before the exemption expires appropriate amendments will be made to Part 61 of CASR 1998 to reflect the intent of the exemption and, thereby, make its continuation unnecessary.

Legislative Instruments Act 2003 (the LIA)

As noted above, exemptions under Subpart 11.F of CASR 1998 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 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 applies to a class of persons (holders of pilot type ratings) and is, therefore, a legislative instrument subject to registration, and tabling and disallowance in the Parliament, under sections 24, and 38 and 42 of the LIA.

Consultation

For section 17 of the LIA, in May 2015 CASA consulted the FCL Subcommittee of the SCC, a CASA/Industry consultation forum, which supported the proposal. Following on from this meeting, and taking into account representations made and CASA’s own assessment of implications arising, CASA decided to formulate the proposals now embodied in the exemption.

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement (*RIS*) is not required because the exemption instrument is covered by a standing agreement between CASA and OBPR under which a RIS is not required for an exemption (OBPR id: 14507).

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 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.

Commencement and making

The exemption commences on the day after registration and expires at the end of 28 February 2018, as if it had been repealed by another instrument.

The exemption has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

[Instrument number CASA EX41/16]

Exemption — instrument proficiency check for single-pilot turbojet aeroplane type rating

1 Duration

Under this section, the exemption instrument commences on the day after registration and expires at the end of 28 February 2018, as if it had been repealed by another instrument.

2 Definitions

This section provides some basic definitions.

3 Application

This section provides that the exemption instrument applies to the holder of a single-pilot turbojet aeroplane type rating for the exercise of privileges under the IFR.

4 Exemptions

- (1) Under this subsection, the holder of a single-pilot aeroplane type rating (the *SP type rating holder*) is exempted from subregulation 61.805 (1), to the extent of the requirement to have a valid instrument proficiency check (*IPC*) for the aeroplane type in accordance with the options provided for under subregulation 61.805 (3).
- (2) Under this subsection, the SP type rating holder is also exempted from subregulations 61.805 (5) and (6).
- (3) Under this subsection, the exemptions in subsections (1) and (2) are subject to the conditions in section 5.

5 Conditions

Section 5 contains the 3 relevant conditions to which the exemptions mentioned in section 4 are subject.

Under the first condition, the SP type rating holder must have a valid IPC for **any** single-pilot turbojet aeroplane type, as if (despite the exemption) the requirement under subregulations 61.805 (1) and (3), to have successfully completed a valid IPC **for the aeroplane type covered by the rating**, applied as a requirement to have successfully completed a valid IPC for **any** single-pilot turbojet aeroplane type.

A Note explains that the effect of this condition is that for an SP type rating holder, the 12-monthly IPC requirement under subregulations 61.805 (1) and (3) may now be satisfied by an IPC in **any** single-pilot turbojet aeroplane type.

Under the second condition, the SP type rating holder must have a valid IPC for the aeroplane type covered by the rating, as if the requirements under subregulations 61.805 (1) and (2) for the holder of a pilot type rating other than a single-pilot turbojet aeroplane type rating, to have successfully completed a valid IPC for any aircraft type covered by the rating, **also** applied to the holder of a single-pilot turbojet aeroplane type rating.

A Note explains that the effect of this condition is that an SP type rating holder must have successfully completed a 24-monthly IPC for **any single-pilot turbojet aeroplane type** covered by the rating held, in order to be authorised to pilot any aircraft type covered by the rating, under the IFR.

Under the third condition, subregulations 61.805 (5) and (6) must be complied with **as if they applied despite the exemption** in subsection 4 (2) of this instrument, except that references to “relevant aircraft” for paragraphs 61.805 (3) (e) and (f) must be taken to be references to **any** single-pilot turbojet aeroplane type (rather than the particular single-pilot turbojet aeroplane type covered by the holders rating).

A Note explains that, therefore, it is a condition of the exemption from the requirements in subregulations 61.805 (5) and (6), that subregulations 61.805 (5) and (6) be complied with, but **in the particular context of the operation of the exemption**.

Statement of Compatibility with Human Rights

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

Civil Aviation Safety Regulations 1998

Exemption — instrument proficiency check for single-pilot turbojet aeroplane type rating

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 this instrument is to exempt the holder of a single-pilot turbojet aeroplane rating from the requirement to have successfully completed an annual instrument proficiency check in an aeroplane type covered by the rating and that is to be flown under the IFR, provided the holder has successfully completed an annual proficiency check in **any** single-pilot turbojet aeroplane.

As a condition of this exemption, the holder of a single-pilot turbojet aeroplane rating is required to have successfully completed a bi-annual instrument proficiency check in **an** aeroplane type covered by the rating and that is to be flown under the IFR.

Human rights implications

The exemption in 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*. The 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