

Explanatory Statement

Civil Aviation Safety Regulations 1998

Exemption — instrument proficiency checks for aircraft pilot type ratings

Purpose

The purpose of this instrument is to exempt certain holders of pilot type ratings from the requirement to have successfully completed certain instrument proficiency checks (*IPCs*) in an aircraft type covered by the rating and that is to be flown under the instrument flight rules (the *IFR*) *provided* the holder has successfully completed certain alternative *IPCs*.

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 *IPCs* 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 *IPC* for an aircraft type covered by the rating.

Bi-annual *IPC* for the aircraft type covered by a type rating

The holder of a pilot type rating is taken to have a valid *IPC for an aircraft type other than a single-pilot turbojet aeroplane type* during the following periods:

- under paragraph 61.805 (2) (a) — the 24 months from when the holder passes the flight test for an instrument rating, a private *IFR* rating, a multi-crew pilot licence, or an air transport pilot licence, 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 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 24 months from when the holder passes the flight test for an instrument endorsement in an aircraft of that type (provided the flight test is conducted more than 6 months after the holder passed the flight test for the instrument rating)
- under paragraph 61.805 (2) (c) — 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) — while the holder is successfully participating in an operators’ training and checking system for an *IFR* operation in an aircraft of that type, and the operator holds an approval, under regulation 61.040 for the purposes of paragraph 61.805 (2) (d), for the system and operations in an aircraft of that type
- under paragraph 61.805 (2) (e) — the 24 months from when the holder completes an *IPC* for the aircraft type

- under paragraph 61.805 (2) (f) — the 24 months from expiry of an existing check (provided that in the 3 months before expiry the holder has successfully completed an IPC for the aircraft type).

Annual IPC for single-pilot turbojet aeroplanes covered by a type rating

The holder of a pilot type rating is taken to have a valid IPC *for a single-pilot turbojet aeroplane type* during the following periods:

- under paragraph 61.805 (3) (a) — the 12 months from when the holder passes the flight test for an instrument rating or a private IFR rating in an aircraft of that type
- under paragraph 61.805 (3) (b) — the 12 months from when the holder passes the flight test for an instrument endorsement in an aircraft of that type (provided the flight test is conducted more than 6 months after the holder passed the flight test for the instrument rating)
- under paragraph 61.805 (3) (c) — 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) — while the holder is successfully participating in an operators' training and checking system for an IFR operation in an aircraft of that type, and the operator holds an approval under regulation 61.040, for the purposes of paragraph 61.805 (3) (d), for the system and operations in an aircraft of that type
- under paragraph 61.805 (3) (e) — the 12 months from when the holder completes an IPC for the aircraft type
- under paragraph 61.805 (3) (f) — the 12 months from expiry of an existing check, provided that in the 3 months before expiry the holder has successfully completed an IPC for the aircraft type.

Relevant ancillary provisions

Under subregulation 61.805 (5), for paragraphs 61.805 (2) (e) and (f), and (3) (e) and (f) described above, the holder of a pilot type rating successfully completes an IPC *for the relevant aircraft* if, among other things, a particular assessment of the holder's competency is carried out by CASA, a flight examiner or an approved person.

Under subregulation 61.805 (6), for paragraphs 61.805 (2) (e) and (f), and (3) (e) and (f) described above, the IPC must be conducted in a relevant aircraft or an approved flight simulation training device for the proficiency check.

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

Part 61, including regulation 61.805, commenced on 1 September 2014. Under the previous licensing rules, pilots conducting IFR operations only needed to complete an annual instrument rating renewal in *any aircraft* covered by the instrument rating. For example, to operate a multi-engine aeroplane under the IFR as pilot in command, 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.

The former annual instrument rating renewal rule was embodied in regulation 61.880. (Additional relevant rules in Civil Aviation Orders 40.1.5, 82.0, 82.1, 82.3 and 82.5 continue to apply to pilots and operators conducting air transport operations under the IFR.)

As set out in detail above, regulation 61.805 introduced new requirements for pilots operating type-rated aircraft under the IFR. Those requirements meant that:

1. the pilot must, within the previous 24 months, and using one of the alternatives described above, have completed a check of the pilot's competency conducting IFR operations in an aircraft covered by the type rating (see subregulation 61.805 (2)); and
2. for single-pilot turbojet aeroplanes — the pilot must, within the previous 12 months, and using one of the alternatives described above, have completed a check of the pilot's competency conducting IFR 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 as a single-pilot operation. These aircraft typically have complex systems and in certain circumstances high workload situations can arise for the pilot when operating alone. 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.

However, in the light of experience and feedback from the aviation industry, including discussions with the Flight Crew Licensing (*FCL*) Subcommittee of the Standards Consultative Committee (*SCC*) (a broad-based CASA/industry consultation forum), and the Industry Advisory Panel (*IAP*) (a joint CASA/industry consultation forum for Part 61), CASA undertook to review and reconsider the Part 61 pilot type-rating specific IPC requirements.

Before reaching a decision, CASA reconsidered the US Federal Aviation Administration's (FAA) regulation 61.58 for single-pilot turbojet aeroplane operations under which pilots are required to have an annual proficiency check in any single-pilot turbojet aeroplane type and a biennial check in the specific type.

In view of that FAA rule, and as an initial response to the broader type rating IPC issue, CASA made an exemption for pilots operating single-pilot turbojet aeroplanes under the IFR. The exemption, CASA EX41/16, was registered on 10 March 2016 and tabled in each House of the Parliament on 15 March 2016. The exemption relieved pilots from the requirement to have a valid annual IPC for single-pilot turbojet aeroplane types provided the pilot had a valid annual IPC for any single-pilot turbojet aeroplane type. Under this exemption, the pilot was not relieved from the biennial type-rating specific IPC requirement.

Following further consideration of the requirements, including consultation with the 2 consultation bodies described above, CASA now considers that, relative to the interests of aviation safety, the requirement insisting on 24-monthly (or 12-monthly — for the single-pilot turbojet aeroplane type) instrument proficiency for each type rating under which pilots are exercising privileges, is onerous and unnecessary, and could be relaxed without adverse effects on aviation safety.

It is, therefore, proposed to relax the requirements so that (as the case applies) a pilot must have completed an IPC in *any* single-pilot turbojet aeroplane within the previous 24 months; or in *any* multi-crew type-rated aircraft in the same category as the pilot type rating held within the previous 24 months, or in *any* other type-rated aircraft in the same category within the previous 24 months. (To be clear, these are specific, not overlapping or interchangeable, requirements.)

It should be noted that pilots would still be required to satisfy the general instrument rating proficiency check requirements in regulation 61.880. These provisions ensure that pilots exercising the privileges of an instrument rating are checked annually conducting operations under the IFR in an aircraft *of the same category* and, if the aircraft is a multi-engine aircraft, then the pilot is checked in a multi-engine aircraft of the same category.

The effect of the exemption is that a pilot who complied with the relevant conditions of the exemption for acquiring a valid instrument proficiency check, rather than with the requirements of subregulation 61.805 (2) or (3), would be authorised under subregulation 61.805 (1) to exercise the privileges of his or her rating during the relevant period.

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 IPC within the prescribed preceding period.

Thus, the exemption exempts the holder of a *single-pilot turbojet aeroplane type rating* (the **SP type rating holder**) from, in effect, the obligation to have an annual IPC for the single-pilot turbojet aeroplane type covered by the rating, and that the holder intends to fly under the IFR. Instead, a 24-monthly IPC in **any** single-pilot turbojet aeroplane type will suffice.

The exemption exempts the holder of a *multi-crew type rating for a particular aircraft* from, in effect, the obligation to have a 24-monthly IPC for the aircraft type covered by the rating, and that the holder intends to fly under the IFR. Instead, an IPC in **any** multi-crew type-rated aircraft in the same category will suffice.

The exemption exempts the holder of a *pilot type rating (that is not a single-pilot turbojet aeroplane type rating, or a multi-crew type rating for a particular aircraft)* from, in effect, the obligation to have a 24-monthly IPC for the aircraft type covered by the rating, and that the holder intends to fly under the IFR. Instead, an IPC in **any** type rated aircraft in the same category will suffice.

Consequential machinery exemptions

There are 2 consequential machinery exemptions and related conditions 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.

General condition

A general condition applies to the exemptions. Thus, an exemption does not apply to any of the pilot type rating holders mentioned in the instrument unless the holder’s pilot licence records that the holder has a valid IPC in accordance with the conditions in the exemption for having alternative valid IPCs.

Repeal of CASA EX41/16

Finally, the instrument repeals instrument CASA EX41/16 which was registered on 10 March 2016 and tabled in each House of the Parliament on 15 March 2016. As noted above, CASA EX41/16 contained an exemption exempting the SP type rating holder in somewhat similar, though not identical, terms to the exemption in the current instrument.

The repeal and modified reinstatement of that exemption in the context of the current instrument does not infringe any of the requirements protecting parliamentary scrutiny of legislative instruments under section 46 (legislative instruments not to be remade while required to be tabled) of the *Legislation Act 2003* (the **LA**), or section 47 (legislative instruments not to be remade while subject to disallowance) of the LA.

Acts Interpretation Act 1901

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. This interpretation provision facilitates the repeal of the previous exemption.

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

Duration

The exemption is expressed to commence on 1 July 2016. This is to allow a short period of administrative lead time.

The exemption is expressed to operate until it is repealed at the end of 31 August 2018, being the final date by which pre-CASR Part 61 licences will, as continued authorisations under regulation 202.263 of CASR 1998, be physically converted to CASA Part 61 licences.

The exemption is an interim measure, pending substantive amendments to Part 61 which will remove the need for the exemption. These amendments will be part of a larger set of amendments to Part 61 for which drafting instructions are being prepared. It is expected that, subject to the capacity of OPC to produce them in the context of competing priorities arising from government drafting demands, the amendments will be made and in force within the next 18 months to 2 years.

Legislation Act 2003

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 15G, and 38 and 42, of the LA.

Consultation

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, except in urgent circumstances, it is CASA’s policy to consult 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.

For section 17 of the LA, CASA commenced consultation with the FCL Subcommittee of the SCC in May 2015. The initial consultation was for the single-pilot turbojet aeroplane IPC proposal. However, a separate proposal to review multiple checks and flight reviews was also discussed at the same time. General support was given to both proposals.

At a meeting on 16 December 2015, the IAP identified the question of pilot type rating IPCs as one requiring high priority, and recommending removal of the type rating-specific check requirements.

In May 2016, CASA posted proposal documents on the SCC and IAP discussion forum websites, followed by postings of the text of a possible exemption instrument. A number of responses were received and all supported the proposal. Bearing in mind these representations, and in the light of CASA's own assessment of safety implications, 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 1 July 2016 and is repealed at the end of 31 August 2018.

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

[Instrument number CASA EX93/16]

Exemption — instrument proficiency checks for aircraft pilot type ratings

1 Duration

Under this section, the exemption instrument commences on 1 July 2016, and is repealed at the end of 31 August 2018.

2 Repeal

Under this section, CASA EX41/16 is repealed.

3 Definitions

Under this section, assistance is given with definitions of terminology.

4 Application

Under this section, the instrument applies according to its terms.

5 Exemption No. 1 — Single-pilot turbojet aeroplane type ratings

Under this subsection, the SP type rating holder, for the exercise of privileges under the IFR, is exempted from subregulation 61.805 (3). The SP type rating holder is also exempted from subregulations 61.805 (5) and (6).

6 Conditions – Exemption No. 1 – Single-pilot turbojet aeroplane type ratings

- (1) Under this subsection, the SP type rating holder must have a valid IPC as if the requirements under subregulation 61.805 (3), to have a valid 12-monthly IPC for the aeroplane type covered by the rating, applied as a requirement to have a valid 24-monthly IPC for *any single-pilot turbojet aeroplane type*.

A Note explains that, for an SP type rating holder, the 12-monthly IPC requirement under subregulations 61.805 (1) and (3) may be satisfied by a 24-monthly IPC in *any* single-pilot turbojet aeroplane type.

- (2) Under this subsection, subregulations 61.805 (5) and (6) must be complied with as if they applied despite the exemption in section 5 of the 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 holder’s rating).

A Note explains that thus, 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.

7 Exemption No. 2 — Multi-crew aircraft type ratings

Under this subsection, the holder of a multi-crew aircraft pilot type rating (the *multi-crew type rating holder*) for a particular aircraft category for the exercise of privileges under the IFR is exempted from subregulation 61.805 (2). The holder is also exempted from subregulations 61.805 (5) and (6). This section does not apply to an SP type rating holder or the holder of a pilot type rating for a particular aircraft category, other than a multi-crew aircraft pilot type rating for a particular aircraft category.

8 Conditions – Exemption No. 2 – Multi-crew aircraft type ratings

- (1) Under this subsection, the multi-crew type rating holder for a particular aircraft category must have a valid IPC, as if the requirements under subregulation 61.805 (2) to have a valid 24-monthly IPC for the aircraft type covered by the rating, applied as a requirement to have a valid 24-monthly IPC for *any* multi-crew type-rated aircraft in the same category.
- (2) Subregulations 61.805 (5) and (6) must be complied with as if they applied despite the exemption in section 7 of this instrument, except that references to “relevant aircraft” for paragraphs 61.805 (2) (e) and (f) must be taken to be references to any multi-crew aircraft type in the same category as that of the multi-crew aircraft type rating holder’s rating (rather than the particular aircraft type covered by the holder’s rating).

A Note explains that thus, 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.

9 Exemption No. 3 — Other aircraft type ratings

Under this section, the holder of a pilot type rating for the exercise of privileges under the IFR is exempted from subregulation 61.805 (2). The holder is also exempted from subregulations 61.805 (5) and (6). The section does not apply to an SP type rating holder or a multi-crew aircraft type rating holder.

10 Conditions – Exemption No. 3 – Other aircraft type ratings

- (1) Under this subsection, the holder mentioned in section 9 must have a valid IPC, as if the requirements under subregulation 61.805 (2), to have a valid IPC for the aircraft type covered by the rating, applied as a requirement to have a valid IPC for *any* type-rated aircraft in the same category.
- (2) Under this subsection, subregulations 61.805 (5) and (6) must be complied with as if they applied despite the exemption in subsection 9 (2) of the instrument, except that references to “relevant aircraft” for paragraphs 61.805 (2) (e) and (f) must be taken to be references to any aircraft type in the same category as that of the relevant type rating holder’s rating (rather than the particular aircraft type covered by the holder’s rating).

A Note explains that thus, 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.

11 General condition — Exemption Nos. 1, 2 and 3

Under this section, an exemption mentioned in section 5, 7 or 9 does not apply to the pilot type rating holder mentioned in the section unless the holder’s pilot licence records that the holder has a valid IPC in accordance with the condition in subsection 6 (1), 8 (1) or 10 (1) (as the case requires).

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 checks for aircraft pilot type ratings

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 certain holders of pilot type ratings from the requirement to have successfully completed certain instrument proficiency checks (*IPCs*) in an aircraft type covered by the rating and that is to be flown under the instrument flight rules, *provided* the holder has successfully completed certain alternative *IPCs*.

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