

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX46/18 — Dual Flight Checks before Solo Flights (Student Pilots) Exemption 2018

Purpose

The purpose of this instrument is to exempt student pilots from the requirement under the *Civil Aviation Safety Regulations 1998 (CASR)* for them to successfully complete a dual flight check within the 14 days before conducting a solo flight. The exemption is subject to a condition that the student pilots successfully complete a dual flight check in the same type of aircraft within the previous 30 days. The instrument also provides a related exemption for flight instructors who approve the conduct of solo flights by student pilots who have performed such a dual flight check.

Legislation

Section 98 of the *Civil Aviation Act 1988* (the *Act*) empowers the Governor-General to make regulations for the Act and in the interests of the safety of air navigation. Relevantly, the Governor-General has made the CASR and the *Civil Aviation Regulations 1988 (CAR)*.

Subpart 11.F of CASR provides for the granting of exemptions from particular provisions of the regulations. Subregulation 11.160 (1) provides that, for subsection 98 (5A) of the Act, CASA may grant an exemption from a provision of the regulations or the Civil Aviation Orders. Under subregulation 11.160 (2), an exemption may be granted to a person, or to a class of persons.

Part 61 of the CASR deals with flight crew licencing requirements. Under regulation 61.065 of CASR, the holder of a flight crew licence commits an offence if the holder conducts an activity mentioned in Part 61 while piloting a registered aircraft and the holder is not authorised under that Part to conduct the activity. Under paragraph 61.115 (a) of CASR, a student pilot is authorised to conduct a solo flight in an aircraft only if the student pilot has, within the previous 14 days and in the same type of aircraft, successfully completed a dual flight check. Under subregulation 61.1225 (1) of CASR, it is an offence for a flight instructor to approve a person to pilot an aircraft in a way that is not authorised by paragraph 61.115 (a).

In CASR, ***dual flight check*** means an in-flight assessment by a flight instructor of the competency of a student pilot to conduct a solo training flight.

Regulation 11.205 of CASR provides that 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.

Regulation 11.225 of CASR, requires an exemption to be published on the Internet. Under subregulation 11.230 (1), the maximum duration of an exemption is 3 years.

Background

The instrument renews CASA EX78/15 (the ***current instrument***) that expires at the end of April 2018. In renewing the current instrument, CASA has regarded as paramount the preservation of at least an acceptable level of safety.

Instrument

Section 1 sets out the name of the instrument.

Section 2 sets out the duration of the instrument. The instrument commences on 1 May 2018 and is to be repealed at the end of 30 April 2021.

Section 3 provides some sign post definitions to aid the reader of the instrument.

Section 4 exempts a student pilot from compliance with regulation 61.065 of CASR to the extent that the regulation requires the pilot to comply with paragraph 61.115 (1) (a) of CASR in relation to a solo flight. The section imposes a condition on this exemption that the student pilot must have, within the previous 30 days before undertaking the solo flight, successfully completed a dual flight check in the same type of aircraft as that in which the solo flight is to be undertaken.

Section 5 exempts a flight instructor from compliance with regulation 61.1225 of CASR to the extent that it requires that if the instructor approves a person to conduct a solo flight as a student pilot, the approval is to pilot the aircraft in a way authorised by paragraph 61.115 (1) (a) of CASR. The section imposes a condition on this exemption that the flight instructor must sign in the student's training records a record of the student having, within the previous 30 days before the solo flight, successfully completed a dual flight check in the same type of aircraft as that in which the solo flight is to be undertaken.

The effect of the exemptions and conditions is to replace the 14-day time frame for a dual flight check in CASR with a 30-day time frame.

This time frame reflects CASA's preferred policy regarding the time frame for flight checks by student pilots who conduct solo flights, having regard to that of other countries. It is the same time frame as that previously specified in CAR for the conduct of flight checks. It is also consistent with the time frame specified by the equivalent New Zealand regulations, which require flight experience within the previous 30 days for student pilots to fly solo.

Legislation Act 2003 (the LA)

Paragraph 98 (5A) (a) of the Act provides that CASA may issue instruments in relation to matters affecting the safe navigation and operation or the maintenance of aircraft.

Additionally, paragraph 98 (5AA) (a) of the Act provides that an instrument issued under paragraph 98 (5A) (a) is a legislative instrument if the instrument is expressed to apply in relation to a class of persons. As the instrument exempts student pilots (a class of persons) from a requirement of CASR it is a legislative instrument. It is, therefore, subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Consultation

The current instrument was issued by CASA after the effect of paragraph 61.115 (1) (a) of CASR was brought to its notice by the aviation industry, including from flight training schools at a forum on Part 61 on 17 December 2014. Following that notice, the Flight Crew Licensing Subcommittee of the Standards Consultative Committee, which was the CASA industry consultation forum when the current exemption was made, recommended in March 2015 that the requirement in Part 61 be changed to reflect the previous rule under CAR which was 30 days between flight checks.

The instrument is made in substantially similar terms as the current instrument. The exemption is beneficial to industry and reflects the current arrangements. Regulatory amendments are proposed to replace the need for the exemption.

In these circumstances, CASA considers that it is not necessary or appropriate to undertake any further consultation on this instrument for section 17 of the LA.

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement (*RIS*) is not required in this case, as the exemption is covered by a standing agreement between CASA and OBPR under which a RIS is not required for exemptions (OBPR id: 14507).

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights at Attachment 1 has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. 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.

Making and commencement

The instrument has been made by the Group Executive Manager, Aviation, a delegate of CASA, relying on the power of delegation under subregulation 11.260 (1) of CASR.

The instrument commences on 1 May 2018 and is repealed at the end of 30 April 2021.

Statement of Compatibility with Human Rights

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

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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

This instrument applies to student pilots who conduct solo flights and to flight instructors who approve solo flights by student pilots. It allows student pilots to undertake solo flights provided they have undergone a dual flight check in the same type of aircraft within the 30 days before the solo flight. The instrument also allows flight instructors to approve solo flights by student pilots who have complied with this condition.

The dual flight exemption for student pilots follows representations made by the aviation industry. It makes the obligation on student pilots to undergo a dual flight check less onerous.

The instrument renews and reflects the intention of instrument CASA EX78/15 that expires at the end of April 2018.

Human rights implications

This legislative 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