

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX79/18 — Logging of Flight Time as a Pilot (Co-pilots on Single-pilot Certificated Aircraft) Exemption 2018

Purpose

This instrument provides exemptions from certain requirements of the *Civil Aviation Safety Regulations 1998 (CASR)* to allow pilots who perform co-pilot duties in multi-pilot capable aircraft operated by the holder of an air operator's certificate to have their flying time performing those duties taken to be flight time for specified purposes under CASR, even though the second pilot is not required for the operation. Permissible co-pilots will be allowed to log their flying time in these aircraft (*permissible co-pilot time*) in their personal logbook.

Permissible co-pilot time in a category of aircraft will be taken to be equivalent to required flight time in the same category of aircraft for an application for an air transport pilot licence (*ATPL*) in the aeroplane, helicopter or powered-lift aircraft category. Permissible co-pilot time in a type of aircraft will also be taken to be flight time for a pilot type rating for a multi-engine turbine powered aircraft and permissible co-pilot time in a helicopter will be taken to be flight time for a night vision imaging system endorsement in the helicopter category.

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 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) of CASR provides that, for subsection 98 (5A) of the Act, CASA may grant an exemption from a provision of the regulations.

Under subregulation 11.160 (2) of CASR, an exemption may be granted to a person or a class of persons.

Under Subpart 11.F of CASR, in deciding whether to grant an exemption on its own initiative, CASA will regard as paramount the preservation of at least an acceptable level of aviation safety.

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.

Part 61 of CASR establishes the licensing scheme for pilots and flight engineers of registered aircraft. Regulation 61.080 of CASR defines a person's flight time (also referred to in CASR as *flight time as a pilot*) as the duration of specified flights by a person (eg of solo flights) and the person's flight time as, among other things, a co-pilot. Regulation 61.085 of CASR

defines flight time as a co-pilot (also referred to in CASR as *co-pilot flight time*) as “any period, during flight in an aircraft that, under these Regulations, must be flown with a flight crew of at least 2 pilots in which the person is performing co-pilot duties other than as pilot in command under supervision.”

Subregulation 61.345 (1) of CASR requires pilots to keep a personal logbook and specifies all the information that they must include in the logbook after completing each flight, including their flight time.

Regulation 61.700 prescribes the general requirements for the grant of an ATPL. Relevantly for present purposes, an applicant must meet the aeronautical experience requirements in Subpart 61.K of CASR. Regulations 61.705 and 61.710 of CASR, in Subpart 61.K, set out the number of hours of aeronautical experience that an applicant for an ATPL with a particular category of aircraft must have to be eligible for the grant of the ATPL. For example, an applicant for an ATPL with the aeroplane category must have, among other things, at least 1 400 hours of flight time as a pilot and at least 750 hours of flight time as a pilot of an aeroplane. For an ATPL with the helicopter category, among other things, the applicant must have at least 900 hours of flight time as a pilot and at least 750 hours of flight time as pilot of a helicopter.

Regulation 61.775 of CASR sets out limitations on the exercise of privileges of pilot type ratings for multi-engine turbine-powered type-rated aircraft, if the holder of the type rating passed the flight test for the rating in a flight simulator. Under subregulation 61.775 (2), a holder of a rating is authorised to exercise the privileges of his or her type rating as a pilot in command only if the pilot has at least 25 hours of flight time as pilot of an aircraft covered by the rating. The holder is taken to have met this requirement if the holder has at least the number of hours of flight time of the kind specified for each type rating in subregulation 61.775 (3) — for instance, for a type rating for a turbojet-powered aeroplane, the holder is taken to have met the requirements if the holder has at least 1 000 hours of flight time as a pilot of a turbojet-powered aeroplane; or at least 2 000 hours of flight time, including at least 500 hours of flight time as pilot of a turbojet-powered aeroplane.

Regulation 61.1035 of CASR sets out the requirements for the grant of the night vision imaging system endorsements mentioned in regulation 61.1025 of CASR. Paragraph 61.1035 (2) (d) requires that the applicant must have completed, in accordance with subparagraph 61.1035 (4) (b) (i), 250 hours of flight time in a helicopter. Subparagraph 61.1035 (4) (b) (ii) requires that at least 10 hours of that flight time is at night.

Background

The instrument reissues CASA EX116/15 that was repealed at the end of June 2018.

The regulations under the Act may require aircraft operations to be conducted with 2 pilots depending on the complexity of the aircraft and the number of passengers being carried. In the absence of this requirement, an aircraft operator may choose to operate a single-pilot certificated aircraft as a multi-pilot operation, provided that the aircraft is equipped for operations with more than 1 pilot and multi-pilot operating procedures are used.

However, because the definition of *flight time* as a co-pilot, in regulation 61.085 of CASR, does not include the flying time of a co-pilot of a multi-pilot capable aircraft, such a co-pilot would be unable to log this flying time or use it to meet aeronautical experience requirements (the number of required hours of flight time) to support an application for an ATPL, a night

vision imaging system endorsement for helicopters or a pilot type rating for a type rating for a multi-engine turbine powered aircraft.

Overview of instrument

The instrument provides exemptions, subject to conditions, for persons who have been a co-pilot in a multi-pilot capable aircraft that is certificated under CASR for single-pilot operations. The exemptions are from CASR requirements that prevent them from logging their flying time as a co-pilot in these kinds of aircraft, and from having that flying time count as flight time for eligibility for: an ATPL in the aeroplane, helicopter or powered lift-aircraft category; acting as pilot in command in the exercise of pilot type ratings; and night vision imaging system endorsements in the helicopter category.

Each exemption is subject to the general condition in section 8 that the person must, as soon as practicable after completing each flight as a co-pilot, log their permissible co-pilot time in his or her pilot's logbook as if the time was flight time for the purposes of regulation 61.345 of CASR.

CASA has assessed the impact on aviation safety of the instrument and is satisfied that it will have no impact on the safety of pilots or aircraft operations as, under the definition of *permissible co-pilot time* in the instrument, pilots must still be performing co-pilot duties, as specified in the aircraft operator's operations manual, to be able to log permissible co-pilot time and for it to be taken to be flight time for the purposes previously mentioned.

Content of instrument

Section 1 sets out the name of the instrument.

Section 2 sets out the duration of the instrument by providing that it commences on 1 July 2018 and is repealed at the end of 30 June 2021.

Section 3 sets out some definitions for the instrument. A key definition is *permissible co-pilot time* which is defined as time in which a permitted co-pilot performed co-pilot duties in a multi-pilot capable aircraft in accordance with multi-crew procedures specified in the operations manual of the air operator's certificate holder operating the aircraft.

Section 4 exempts a person who has been a permitted co-pilot from compliance with subregulation 61.345 (1) of CASR to the extent that the person must not record in his or her logbook the person's permissible co-pilot time. The exemption is subject to the general condition in section 8.

Section 5 exempts an applicant for an ATPL who was a permitted co-pilot from compliance with paragraph 61.700 (3) (d) of CASR. Regulation 61.700 sets out requirements for the grant of ATPLs, and paragraph 61.700 (3) (d) requires the applicant for an ATPL to have met the aeronautical experience requirements of Subpart 61.K of CASR. The exemption is subject to the condition that the person would meet these requirements for the ATPL if the applicant's permissible co-pilot time was flight time required for the ATPL. The condition operates so that flight time in different categories of aircraft can be used in the manner contemplated in Subpart 61.K. For example, paragraphs 61.705 (1) (a) and (b) operate to permit an applicant for an ATPL with the aeroplane category to rely on up to 650 hours of flight time as a pilot in non-aeroplanes, and this arrangement is intended to be replicated in

relation to permissible co-pilot time. The exemption is also subject to the general condition in section 8.

Section 6 exempts a person who holds a pilot type rating for a type-rated aircraft and who has been a permitted co-pilot for the type of aircraft from compliance with the condition mentioned in subregulation 61.775 (2) of CASR. That condition is that the holder of the pilot type rating has at least 25 hours of flight time as pilot of an aircraft covered by the rating. If the holder does not satisfy this condition, he or she is not authorised to exercise the privileges of the rating.

Section 7 exempts an applicant for a night vision imaging system endorsement mentioned in regulation 61.1025 of CASR, who has been a permitted co-pilot for a helicopter, from compliance with paragraph 61.1035 (2) (d) of CASR to the extent that it requires compliance with subparagraph 61.1035 (4) (b) (i) of CASR. The exemption is subject to the condition that the person would meet the flight time requirements of that paragraph if the person's permissible co-pilot flight time, for a helicopter, was flight time. The exemption is also subject to the general condition in section 8.

Section 8 sets out the condition that applies to each exemption. This condition is that the person to whom the exemption applies must, as soon as practicable after completing each flight as a permitted co-pilot, record the permissible co-pilot time in his or her logbook as if the time was flight time for regulation 61.345 of CASR.

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. The instrument exempts the specified class of persons from specified requirements of CASR. The instrument is, therefore, a legislative instrument and is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Consultation

At the request of industry, the instrument replaced by this instrument was issued to allow co-pilots of single-pilot certificated aircraft to log their time in flight for currency and licensing purposes. The instrument, and the instrument it replaces, is of beneficial effect to the aviation industry and CASA considers that it will have no impact on aviation safety given that permitted co-pilots are still required to conduct multi-crew operations in accordance with an aircraft operator's operations manual. The previous instrument has not been the subject of any adverse feedback.

It is anticipated that a regulatory amendment to address the issues raised by the definition of ***co-pilot flight time*** in regulation 61.085 of CASR will be made in 2019, at which time the instrument will be repealed.

Given the instrument continues existing arrangements, and those arrangements have not been the subject of adverse feedback, CASA is satisfied that no consultation is appropriate or reasonably practicable for 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 is compatible with the relevant human rights and freedoms.

Making and commencement

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

The instrument commences on 1 July 2018 and will be repealed at the end of 30 June 2021.

Statement of Compatibility with Human Rights

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

CASA EX79/18 — Logging of Flight Time as a Pilot (Co-pilots on Single-pilot Certificated Aircraft) Exemption 2018

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 legislative instrument provides exemptions from specified provisions of the *Civil Aviation Safety Regulations 1998* to allow co-pilots of multi-pilot capable single-pilot certificated aircraft to log their flying time as “flight time” for the purposes of currency and licensing requirements in Part 61 of CASR. The instrument allows that time to be logged and taken to be flight hours required for the grant of an air transport pilot licence with the aeroplane, helicopter or powered-lift aircraft category, and for other specified purposes.

Human rights implications

This legislative instrument engages the right to work in article 6 (1) of the International Covenant on Economic, Social and Cultural Rights. It promotes the right to work to the extent that it enhances opportunities for some people to accumulate aeronautical experience for flight crew authorisations used by professional pilots, and therefore to participate in work involving aviation activities for which those authorisations are required. The amendments do not engage other human rights and freedoms.

Conclusion

This legislative instrument is compatible with human rights.

Civil Aviation Safety Authority