

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX83/18 — Occupation of Flight Control Seat (Certain Flight Instruction and Examination Activities) Exemption 2018

Purpose

The purpose of this instrument is to enable specified flight training and flight examination activities to be undertaken by qualified persons when they are not occupying a flight control seat (in this explanatory statement referred to as a *control seat*) of a relevant aircraft or flight simulation training device (*FSTD*). The person may not be occupying a control seat, being a seat at which flight controls are fitted, for a number of reasons. There may only be 1 control seat in the aircraft, or the nature of the operation may mean that there are other persons already occupying all the control seats.

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 *Civil Aviation Safety Regulations 1998 (CASR)* and *Civil Aviation Regulations 1988 (CAR)*.

Part 61 of CASR regulates the licensing of flight crew. Relevantly, subregulation 61.065 (1) of CASR (*CASR 61.065 (1)*) makes it an offence for the holder of a flight crew licence to “conduct” an activity while acting as an instructor or examiner if the person is not authorised under Part 61 to conduct the activity.

Regulation 61.010 of CASR prescribes definitions for Part 61. It defines “conduct”, as a verb and in relation to specified types of operation including operations in aircraft and simulated flight operations, to cover the occupation of a control seat while the operation takes place.

The scheme in Part 61 establishes various licences, ratings and endorsements. Relevantly for this legislative instrument, Part 61 creates a number of classes of “pilot licence”. Subregulation 61.375 (7) of CASR authorises the holder of a pilot licence to conduct activities mentioned in column 1 of an item in Table 61.375 of CASR. Items of the table relevantly prescribe activities for which each of a flight instructor rating, simulator instructor rating and flight examiner rating is required.

The holding of a pilot licence may be augmented with flight instructor ratings to provide flight training in aircraft and FSTDs (Division 61.T.1), simulator instructor ratings to provide flight training in FSTDs (Division 61.T.2) and flight examiner ratings to conduct flight tests and other examinations of other pilots (Subpart 61.U).

Regulation 61.1165 prescribes the privileges of a flight instructor rating. For the purposes of this legislative instrument, the regulation authorises the holder of such a rating to conduct, in an aircraft or a FSTD:

- flight training for licences and certain ratings and endorsements on licences (paragraph (a));
- training in multi-crew cooperation (paragraph (c));
- differences training for variants within type-rated aircraft (paragraph (d));

- training for the general competency requirement in regulation 61.385 of CASR (paragraph (e)); and
- flight reviews for certain ratings on pilot licences (paragraph (f)).

Regulation 61.1190 prescribes the privileges of a simulator instructor rating. For the purposes of this legislative instrument, the regulation authorises the holder of such a rating to conduct, in a FSTD or tethered helicopter:

- flight training for licences and certain ratings and endorsements on licences (paragraph (a));
- training in multi-crew cooperation (paragraph (c));
- differences training for variants within type-rated aircraft (paragraph (d));
- training for the general competency requirement in regulation 61.385 of CASR (paragraph (e)); and
- flight reviews for certain ratings on pilot licences (paragraph (f)).

Regulation 61.1255 prescribes the privileges of a flight examiner rating. For the purposes of this legislative instrument, the regulation authorises the holder of such a rating to conduct:

- flight tests for licences and certain ratings and endorsements on licences (paragraph (a)), and
- proficiency checks of the kinds prescribed in paragraph (c) of the regulation.

In addition, regulation 61.040 of CASR empowers CASA to grant approvals for the purpose of specified provisions of Part 61. Relevantly for this legislative instrument, Part 61 contemplates approvals under regulation 61.040 in relation to the following matters:

- conduct of a flight test for a licence, rating or endorsement (subregulation 61.245 (3));
- conduct of a flight review (subregulation 61.400 (2)); and
- conduct of proficiency checks (subregulations 61.650 (7), 61.695 (7), 61.805 (7), 61.880 (7), 61.1015 (5), 61.1110 (5), 61.1180 (5), 61.1205 (5), 61.1285 (5)).

In addition, regulation 141.035 of CASR empowers CASA to grant approvals for the purpose of specified provisions of Part 141, and regulation 142.040 of CASR empowers CASA to grant approvals for the purpose of specified provisions of Part 142. In some cases, those approvals under Part 141 or 142 form the basis of authorisations for persons to conduct activities under Part 61 of CASR. Relevantly for this instrument, the CASR 141.035 and 142.040 approvals are referenced in Part 61 to authorise the following matters:

- flight training for flight crew licences, ratings and certain endorsements (subparagraph 61.195 (2) (b) (ii));
- differences training for a type variant (subparagraph 61.200 (b) (ii));
- assessment of completion of an approved course of training conducted by a Part 141 or 142 operator (paragraph 61.210 (2) (c));
- flight training for an aircraft class rating (subparagraph 61.747 (3) (b) (ii));
- conduct of an approved course of training for a pilot type rating (paragraph 61.810 (4) (b)); and
- conduct of an approved course of training for a flight engineer type rating (paragraph 61.1385 (4) (b)).

In addition, a number of persons in the aviation industry conduct flight instructor and examiner activities pursuant to instruments of delegation granted under CAR. Such instruments of delegation are defined as an *old authorisation* in regulation 202.261 of CASR.

The terms of old authorisations are saved after the commencement of Part 61 of CASR by regulation 202.263 of CASR.

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 subregulation 11.170 (3) of CASR, in deciding whether to grant an exemption, CASA must regard as paramount the preservation of at least an acceptable level of aviation safety.

Regulation 11.205 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

A number of flight instruction activities in FSTDs, and flight examination activities in aircraft and FSTDs, involve a trainee or student pilot being instructed or examined by a second pilot, and the second pilot being instructed, examined or checked by a third pilot. In this situation, the third pilot is still conducting the relevant instructor or examiner activity. If the activity is conducted in an aircraft or FSTD that has only 2 control seats, then the third pilot will not occupy a control seat.

It is also possible that such a flight instruction or examination activity is conducted in a FSTD that has only 1 control seat, in which case both the second and third pilots would not occupy a control seat.

A similar issue arises for flight instruction activities in FSTDs, and flight examination activities in aircraft and FSTDs, involving a trainee or student pilot being instructed or examined by a second pilot. In this situation, the second pilot is “conducting” the relevant instructor or examiner activity. If the activity is conducted in an aircraft or FSTD that has only 1 control seat, then the second pilot will not occupy a control seat.

If the activity is an examination conducted in an aircraft that has only 1 seat, the second pilot may “conduct” the activity from another aircraft, or from the ground.

Any of the circumstances above in which a person “conducts” a flight instructor or flight examination activity while not occupying a control seat would contravene regulation 61.065 of CASR. In some of these circumstances, this is an unintended consequence of the Part 61 scheme.

Instrument

The instrument grants exemptions to relevant pilot licence holders with flight instructor, simulator instructor, or flight examiner ratings to permit the conduct of specified instructor

and examiner activities by those pilots when not occupying a control seat, subject to compliance with specified conditions imposed in the interests of safety.

The instrument also grants the exemptions to persons who hold an approval, under regulation 61.040, 141.035 or 142.040 of CASR (defined as **CASR special approval**), to conduct the same specified activities. The exemption does not apply to all approvals under these provisions; only those that require the occupation of a control seat to conduct the activities specified in the instrument.

The instrument also grants the exemptions to persons who hold a delegation, under repealed provisions of Part 5 of CAR that were saved by regulation 202.263 of CASR (defined as an **old authorisation**, reflecting the term in regulation 202.261 of CASR), to conduct the same specified activities. The exemption does not apply to all delegations granted under Part 5 of CAR and saved by regulation 202.263; only those that require the occupation of a control seat to conduct the activities specified in the instrument.

The exemptions cover specified instructor activities in FSTDs and specified examination activities in aircraft and FSTDs.

Section 1 of the instrument states the instrument name.

Section 2 states that the duration of the instrument.

Section 3 provides definitions for the instrument, including a number of signpost definitions of terms used in Part 61 of CASR, or defined in regulation 61.010 of CASR. Important terms include **flight control seat**, which is given the meaning as used in the definition of “conduct” in regulation 61.010 of CASR. Other important terms are **relevant flight examiner activity**, and **relevant simulator instructor activity**, which are defined by reference to specific activities mentioned in regulations 61.1255, 61.1165 and 61.1190. Another important term is **CASR special approval**, mentioned above.

Section 3 also consolidates **flight instructor rating** and **simulator instructor rating** into the single term **pilot instructor rating** where it is convenient to do so in the instrument, and defines **single-place aircraft** to mean an aircraft that has only 1 control seat. This last-mentioned definition would cover both aircraft that have only 1 seat, and aircraft that have 1 control seat plus 1 or more non-control seats.

Section 4 grants an exemption from compliance with CASR 61.065 (1) by reference to Table 1 in the instrument. The exemption is granted to the holder of an authorisation mentioned in column 1 of the table, to the extent that CASR 61.065 (1) requires compliance with the provisions mentioned in column 2 of the table for that item, when the authorisation holder is conducting the activity mentioned in column 3 of the table for the item. The effect of the exemption is explained below.

For a **relevant simulator instructor activity**, the holder of a pilot licence with a flight instructor rating is exempt from CASR 61.065 (1) to the extent that the subregulation requires the holder to comply with subregulation 61.375 (7) of CASR, by reference to item 7 of Table 61.375.

In addition, the holder of a flight instructor rating, *old authorisation*, or *CASR special approval* is exempt from compliance with regulation 61.1165 of CASR in relation to a *relevant simulator instructor activity*. The whole of regulation 61.1165 can be the subject of the exemption because the defined term *relevant simulator instructor activity* is already limited by reference to specific paragraphs of the regulation.

Also for a *relevant simulator instructor activity*, the holder of a pilot licence with a pilot instructor rating is exempt from CASR 61.065 (1) to the extent that the subregulation requires the holder to comply with subregulation 61.375 (7) of CASR, by reference to item 8 of Table 61.375.

In addition, the holder of a simulator instructor rating, *old authorisation*, or *CASR special approval* is exempt from compliance with regulation 61.1190 of CASR in relation to a *relevant simulator instructor activity*. The whole of regulation 61.1190 can be the subject of the exemption because the defined term *relevant simulator instructor activity* is already limited by reference to specific paragraphs of the regulation.

For a *relevant flight examiner activity*, the holder of a pilot licence with a flight examiner rating is exempt from CASR 61.065 (1) to the extent that the subregulation requires the holder to comply with subregulation 61.375 (7) of CASR, by reference to item 9 of Table 61.375.

In addition, the holder of a flight examiner rating, *old authorisation*, or *CASR special approval* is exempt from compliance with regulation 61.1255 of CASR in relation to a *relevant flight examiner activity*. The whole of regulation 61.1255 can be the subject of the exemption because the defined term *relevant flight examiner activity* is already limited by reference to specific paragraphs of the regulation.

The exemption in section 4 is subject to conditions mentioned in section 5. Subsection 5 (1) requires the authorisation holder to occupy a control seat in specified circumstances, and thus operates as a limitation on the scope of the exemption.

The first specified circumstance is when the activity is a proficiency check in an aircraft, which is not a single-place aircraft, unless each flight crew member occupying a control seat is authorised under Part 61 to pilot the aircraft. This ensures that the pilots at the controls have adequate skill and experience for proficiency check operations.

The second specified circumstance is any activity for which the authorisation holder is required to be the pilot in command of the flight in order for the flight to be authorised under the civil aviation legislation.

The third specified circumstance is any activity for which a control seat is available to be occupied by the relevant authorisation holder. The exemption does not permit the authorisation holder to occupy a non-control seat if a control seat is vacant for the activity.

Subsection 5 (2) imposes conditions for flight examination activities in aircraft that are not a single-place aircraft. The authorisation holder, when in the aircraft but not occupying a control seat, must be able to observe all matters to be demonstrated by the flight crew members occupying the control seat or seats. The instrument does not permit an authorisation holder, in relation to an activity in which 2 pilots occupy control seats, to conduct the activity

from another aircraft, or from the ground. The authorisation holder must also not manipulate an aircraft control or aircraft system accessible from a control seat. This is intended to ensure that the authorisation holder does not impact the safe operation of the aircraft by doing any thing not expected by the other flight crew, or that can only be safely conducted by the occupant of a control seat. This condition is not intended to prevent the authorisation holder from manipulating systems that do not affect the control or safety of the aircraft (personal air-conditioning controls for example).

Subsection 5 (3) imposes a condition for flight examination activities in single-place aircraft. Only aerial application proficiency checks are permitted in a single-place aircraft, and only if the authorisation holder is conducting the check at a place that enables the holder to observe the matters to be demonstrated by the pilot of the aircraft for the check.

Subsection 5 (4) imposes a condition that ensures that an authorisation holder conducting a relevant activity in a FSTD, when not occupying a control seat, is located at a place that enables the holder to observe the matters to be demonstrated by the flight crew members of the aircraft.

Subsection 5 (5) imposes a condition for all activities covered by the exemption. The authorisation holder, when not occupying a control seat, must be able to monitor flight crew use of radiocommunication systems, and must maintain 2-way communications with the flight crew members. The condition applies both to flight examination activities in aircraft, and instructor and examination activities in FSTDs.

CASA has assessed the impact of the instrument and is satisfied that the grant of the exemptions in the instrument, subject to the conditions, would ensure an adequate level of safety.

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 classes of persons from complying with the provisions in Part 61 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

Consultation under section 17 of the LA has not been undertaken in this case. The instrument is provided to remove an unintended consequence of Part 61 of CASR and to ensure the legality of long-standing aviation practices that CASA did not intend to prohibit. The instrument is beneficial in nature. The conditions on the exemption ensure the activities are conducted safely and effectively in a manner consistent with previous practices.

In these circumstances, CASA is satisfied that no consultation is appropriate or necessary 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 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 Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

The instrument commences on the day after registration and is 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 EX83/18 — Occupation of Flight Control Seat (Certain Flight Instruction and Examination Activities) 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 purpose of this instrument is to enable specified flight training and flight examination activities to be undertaken by qualified persons when they are not occupying a flight control seat (*control seat*) of a relevant aircraft or flight simulation training device (*FSTD*). The person may not be occupying a control seat for a number of reasons, including because there is only 1 control seat in the aircraft or FSTD, or if the nature of the operation means that there are other persons already occupying all the control seats.

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