

## Explanatory Statement

### Civil Aviation Safety Regulations 1998

#### CASA EX24/21 — Aircraft Engineer Licence (Basic Practical Maintenance Experience Requirement) Exemption 2021

##### Purpose

The purpose of *CASA EX24/21 — Aircraft Engineer Licence (Basic Practical Maintenance Experience Requirement) Exemption 2021* (the **instrument**) is to provide relief for applicants for initial issue of aircraft engineer licences from the prescriptive recency requirement relating to demonstrating their practical maintenance experience under the *Part 66 Manual of Standards* (the **Part 66 MOS**). An amendment to the Part 66 MOS is currently under preparation to achieve the same effect and once that amendment is in place, the instrument will no longer be needed. The measure is sought to be expedited by this instrument due to the disruptive effects of the COVID-19 pandemic on the ability of aircraft engineer licence applicants to comply with the recency requirement.

##### 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**).

Part 66 of CASR deals with aircraft engineer licences and ratings for the performance of maintenance certification for maintenance carried out on aircraft and issuing certificates of release to service for aircraft in relation to maintenance carried out on aircraft.

Regulation 66.015 of CASR sets out the matters that may be dealt with by way of the Part 66 MOS. This includes, at paragraph 66.015 (2) (f), training and experience requirements for the grant of an aircraft engineer licence.

Under subregulation 66.025 (1) of CASR, subject to regulation 11.055, CASA must grant an aircraft engineer licence to an applicant if:

- (a) the applicant is not a licensed aircraft maintenance engineer at the time of making the application; and
- (b) CASA is satisfied that the applicant meets the requirements mentioned in subregulation (3).

For this instrument, subparagraph 66.025 (3) (e) (i) of CASR is of relevance and requires, amongst other things, that the applicant meet the requirements of section 66.A.30 of the Part 66 MOS for the licence applied for.

Paragraph 66.A.30 (a) of the Part 66 MOS specifies the practical maintenance experience that must be acquired for applicants for aircraft engineer licences in the A, B and C categories. The required experience ranges from 2 to 5 years depending on the category of licence.

Paragraph 66.A.30 (d) of the Part 66 MOS provides that, for an initial issue of an aircraft engineer licence, of the total practical maintenance experience that is required, at least 1 year must be:

- maintenance experience on aircraft relevant to the category or subcategory for which the licence was sought; and
- accumulated immediately before making the application for the licence.

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 compliance with 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 11.160 (3) of CASR, an exemption may be granted on application by a person or on CASA's own initiative.

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. CASA has regard to the same test when deciding whether to grant an exemption on its own initiative.

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.

Subsection 98 (5D) of the Act provides that a legislative instrument made under the Act or the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time, even if the other instrument or writing does not yet exist when the legislative instrument is made.

### **Background**

Amendments to the Part 66 MOS have been drafted and were consulted on during August and September 2019. Those amendments propose a similar relaxation of the paragraph 66.A.30 (d) recency requirement to that in the instrument, namely, that at least 1 year of the practical maintenance experience must be practical maintenance experience that CASA regards as recent practical maintenance experience.

A relaxation of this recency requirement is considered to be one of a number of amendments to the Part 66 MOS identified as a way of achieving an uptake in aircraft engineer licences.

The measure would also achieve harmonisation with the European Union Aviation Safety Agency (**EASA**) regulation. The equivalent EASA recency provision provides:

*“At least 1 year of the required experience shall be recent maintenance experience on aircraft of the category/subcategory for which the initial aircraft maintenance licence is sought.”*

The EASA provision, in only requiring “recent maintenance experience” is less prescriptive than the current equivalent in the Part 66 MOS. The relevant EASA acceptable means of compliance entitled *AMC 66.A.30(d) Basic experience requirements*, set out in *AMC/GM to Annex III (Part-66) to Regulation (EU) No 1321/2014*, provides guidance on what is considered to be recent experience for the provision as follows:

*“To be considered as recent experience; at least 50% of the required 12-month recent experience should be gained within the 12 month period prior to the date of application for the aircraft maintenance licence. The remainder of the recent experience should have been gained within the 7-year period prior to application.”*

The need for the measure in this instrument was identified before the COVID-19 pandemic but the disruptive effects of the pandemic on aircraft availability and employment and training opportunities have brought the need for relief into sharper focus and, therefore, it is considered desirable to bring this measure forward by means of this instrument.

CASA has recently made a similar exemption from the Part 66 MOS in *CASA EX97/20 — Aircraft Engineer Licence and Rating Training and Qualification (Extension of Time Due to COVID-19) Exemption 2020*. The effect of that instrument is to relax training and qualification requirements set out in the Part 66 MOS. However, it is a measure that is directly related to disruptions caused by the COVID-19 pandemic, and as such will only remain in force until 22 March 2021.

*CASA EX92/20 — Materials Flammability Airworthiness Standards (Medical Isolation Transportation Devices) Instrument 2020* is an example of an instrument that, like this instrument, would have been made regardless of the COVID-19 pandemic but was prioritised because of the pandemic. That instrument was made on 24 June 2020 and is to be repealed at the end of May 2023.

### **Overview of instrument**

The instrument provides relief to first-time applicants for aircraft engineer licences. It relaxes the recency requirement for their practical maintenance experience under paragraph 66.A.30 (d) of the Part 66 MOS.

A first-time applicant is exempt from the recency requirement set out in paragraph 66.A.30 (d) of the Part 66 MOS and will now only be required to satisfy CASA that, of the total amount of practical maintenance experience required to be demonstrated (which ranges from 2 to 5 years depending on the category), at least 12 months is recent practical maintenance experience gained on aircraft relevant to the category or subcategory of the licence sought. CASA is required, in determining whether the experience is recent, to have regard to the EASA acceptable means of compliance for its equivalent provision under its regulations. The instrument offers a degree of flexibility for applicants in how their recent practical maintenance experience can be demonstrated in their pathway to being first issued with an aircraft engineer licence.

This measure is part of broader suite of amendments to the Part 66 MOS currently under preparation. It is considered appropriate to bring this measure forward in this instrument in the circumstances of the pandemic to expedite this alternative pathway to first-time licence applicants.

In considering whether to grant the exemption, CASA has regarded as paramount the preservation of at least an acceptable level of aviation safety. This measure will provide flexibility for applicants that CASA does not consider will adversely affect aviation safety.

### **Documents incorporated by reference**

Under subsection 14 (1) of the *Legislation Act 2003* (the *LA*), if enabling legislation authorises or requires provision to be made in relation to any matter by legislative instrument, the instrument may, unless the contrary intention appears, make provision in relation to that matter by applying, adopting or incorporating, with or without modification, among other matters, the provision of a disallowable legislative instrument. Subsection 98 (5D) of the Act provides that, despite section 14 of the *LA*, a legislative instrument made under the Act or the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing at a particular time or as in force or existing from time to time.

The instrument incorporates the EASA acceptable means of compliance entitled *AMC 66.A.30 (d) Basic experience requirements*, set out in *AMC/GM to Annex III (Part-66) to Regulation (EU) No 1321/2014*, prepared by EASA, as existing from time to time. The relevant AMC provides guidance on what is deemed recent experience under equivalent EASA regulations (this guidance is set out under the heading “Legislation” above). This document is freely available on the Internet on the following webpage: <https://www.easa.europa.eu/document-library/agency-decisions/ed-decision-2015029r>.

### **Content of instrument**

Section 1 sets out the name of the instrument.

Section 2 provides that the instrument commences on the day after it is registered and is repealed at the end of 31 January 2024.

Section 3 sets out the definitions for the instrument. For example, the **Part 66 MOS** is defined as the Part 66 Manual of Standards which in turn is defined in the CASR Dictionary. The **relevant AMC** is also defined to minimise the amount of information in the substantive provisions of the instrument.

Subsection 4 (1) provides that an eligible applicant is exempt from compliance with subparagraph 66.025 (3) (e) (i) to the extent that the provision requires the person to comply with subparagraph 66.A.30 (d) 2 of the Part 66 MOS. Subsection 4 (1) sets out what an eligible applicant is, namely, a person who is an initial applicant for an aircraft engineer licence whose practical maintenance experience includes at least 1 year of practical maintenance experience that CASA is satisfied is recent, having regard to the relevant AMC. Any adverse determination by CASA of an applicant’s recency resulting in a refusal to grant the licence would be reviewable on its merits by the AAT under item 1 of Table 201.004 of CASR (see subregulation 201.004 (2) of CASR).

**Legislation Act 2003**

Paragraph 10 (1) (d) of the LA provides that an instrument is a legislative instrument if it includes a provision that amends another legislative instrument. Subsection 4 (1) of the instrument amends paragraph 66.A.30 (d) of the Part 66 MOS for all first-time applicants for aircraft engineer licences in respect of the recency of their practical experience.

Additionally, 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. 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 exemption in this instrument applies to applicants for an initial issue of an aircraft engineer licence — such applicants constitute a class of persons. 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**

CASA has consulted on Part 66 MOS amendments, including an amendment to paragraph 66.30.A (d) of the MOS which is essentially in the same terms as the exemption in the instrument.

However, the instrument itself has not been consulted on due to the need to prioritise this measure for the benefit of first-time licence applicants whose practical maintenance experience has been disrupted by the pandemic. CASA is, therefore, 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**

A Statement of Compatibility with Human Rights is at Attachment 1.

**Making and commencement**

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

The instrument commences on the day after it is registered and is repealed at the end of 31 January 2024.

## Statement of Compatibility with Human Rights

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

### CASA EX24/21 — Aircraft Engineer Licence (Basic Practical Maintenance Experience Requirement) Exemption 2021

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 provides relief from the current legislative recency requirement for a first-time applicant for an aircraft engineer licence. This recency requirement under current paragraph 66.A.30 (d) of the *Part 66 Manual of Standards* (the **Part 66 MOS**), requires at least 1 year of the total number of years of practical maintenance experience required for applicants to have been accumulated immediately before the making of the application. This requirement is, under the exemption in the instrument, relaxed so that the 12 months of experience need only be accumulated recently. CASA decides on a case-by-case basis whether or not the experience is recent and in doing so it must take into account the guidance document for an equivalent recency provision produced by the European Union Aviation Safety Agency. Any adverse determination by CASA of an applicant's recency resulting in a refusal to grant the licence would be reviewable on its merits by the AAT under item 1 of Table 201.004 of CASR (see subregulation 201.004 (2) of CASR).

The need for this relief was identified before the COVID-19 pandemic and the measure is expected to eventually be included as an amendment to the Part 66 MOS. The measure has been prioritised by means of this instrument due to the disruptive effects of the pandemic on the aircraft industry, employment and training.

#### Human rights implications

##### *Right to work*

The right to work, contained in Article 6 (1) of the *International Covenant on Economic, Social and Cultural Rights*, includes the right of everyone to the opportunity to gain their living by work which they freely choose or accept. The right to work is promoted by this instrument as it provides relief for first-time applicants for aircraft engineer licences from recency requirements that they may otherwise have trouble meeting, including as a result of the COVID-19 pandemic disruptions.

##### *Other rights*

This legislative instrument does not engage any of the other applicable rights or freedoms.

**Conclusion**

This legislative instrument is compatible with human rights because it promotes the protection of human rights.

**Civil Aviation Safety Authority**