

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX138/21 — Aeronautical Knowledge Examinations (Extension of Time Due to COVID-19) Exemption 2021

Purpose

The purpose of *CASA EX138/21 — Aeronautical Knowledge Examinations (Extension of Time Due to COVID-19) Exemption 2021* (the **instrument**) is to provide relief for persons who have started the aeronautical knowledge examination (**AKE**) process but who were unable to complete the process within the prescribed period of 2 years due to COVID-19 restrictions.

The instrument applies to a person who has passed at least 1 part of an AKE for a commercial pilot licence or air transport licence, with an aircraft category rating, between 16 March 2018 and 15 September 2021 and, after passing all parts of the examination within a period of 3 years after 15 March 2018, has requested CASA for an extension of the timeframe to complete the AKE.

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 61 of CASR deals with flight crew licensing. Subpart 61.B of CASR deals with AKEs for the grant of flight crew licences, ratings or endorsements.

Part 141 of CASR establishes the scheme for conducting recreational, private and commercial pilot flight training (other than certain integrated training courses). That training is conducted by Part 141 operators. Part 142 establishes the scheme for conducting integrated and multi-crew pilot flight training, contracted recurrent training and contracted checking. Those activities are conducted by Part 142 operators.

The term **aeronautical knowledge examination** is defined in regulation 61.010 of CASR as meaning, for a flight crew licence, rating or endorsement, an examination set under regulation 61.215 for the grant of a licence, rating or endorsement. **Flight crew licence** is defined in regulation 61.010 of CASR as including a **pilot licence**. **Pilot licence** is defined in regulation 61.010 of CASR as meaning any of the following licences: an air transport pilot licence, a commercial pilot licence, a multi-crew pilot licence, a private pilot licence and a recreational pilot licence.

Under subregulation 61.035 (1) of CASR, the Civil Aviation Safety Authority (**CASA**) may issue a Manual of Standards for Part 61 that sets out matters relating to flight crew licences.

Regulation 61.215 of CASR provides for the setting of AKEs by CASA for the grant of a flight crew licence, rating or endorsement in accordance with aeronautical knowledge standards mentioned in the Part 61 Manual of Standards (the **Part 61 MOS**). Regulation 61.215 also provides for the setting of AKEs by a Part 141 or Part 142 operator for a recreational pilot licence, a flight crew rating other than an instrument rating, or a flight

crew endorsement, if the operator holds an approval by CASA and the exam is set in accordance with the aeronautical knowledge standards mentioned in the Part 61 MOS for the examination.

Under subregulation 61.225 (1) of CASR, a requirement in Part 61 for a person to have passed an AKE for a flight crew licence, rating or endorsement is met if the person meets the standards mentioned in the Part 61 MOS for the examination.

Under subregulation 61.225 (2) of CASR, a person is taken to have passed an AKE only if the person passes all parts of the examination within a period of 2 years.

Schedule 4 of the Part 61 MOS sets out the examination subjects for AKEs for the different flight crew licences and associated category ratings, flight crew ratings on licences and endorsements on ratings. As at commencement of this instrument, Schedule 4 is set out in Volume 4 of the *Part 61 Manual of Standards Instrument 2014* (F2021C00449). Schedule 4 refers to parts of an AKE as examination subjects.

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 11.175 (4) of CASR, in deciding whether to renew an exemption, on application by a person, 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 or renew an exemption, under Division 11.F.1 of CASR, on its own initiative.

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 (but not an exemption granted in exceptional circumstances under regulation 11.185 of CASR) is 3 years.

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.

Background

CASA currently contracts assessment specialists Aspeq to deliver flight crew licence AKEs throughout Australia. Aspeq presently has 44 examination venues located in both regional and metropolitan areas. The government's response to control the spread of the Coronavirus

(COVID-19) has constrained the ability of Aspeq to maintain exam venues open and Aspeq closed some of its examination venues temporarily and major venues had to operate at reduced capacity due to social distancing requirements.

Also, persons seeking to pass an AKE (*candidates*) must comply with the COVID-19 social distancing rules and some have consequently been unable to attend exam venues. Travel restrictions may also impede the capacity of some candidates to attend exam venues. While some exam venues remain closed, Aspeq has introduced new measures consistent with the national public health guidelines at venues to protect the health of staff and candidates. However, as a result of this situation, many AKE applicants may have experienced negative impact on their aviation studies.

Under Part 61 of CASR, candidates must complete all respective parts (subjects) of an AKE within 2 years. The examination subjects for the AKE for each kind of flight crew licence and associated category ratings, and for operational ratings, are set out in Schedule 4 of the *Part 61 Manual of Standards Instrument 2014*.

If candidates have already passed only some parts (subjects) but are unable to complete all the examinations required to satisfy the AKE standard in the required 2-year period through no fault of their own due to the impact of the COVID-19 pandemic, this may result in those candidates being disadvantaged.

CASA EX83/20 — Aeronautical Knowledge Examinations (Extension of Time Due to COVID-19) Exemption 2020 (CASA EX83/20) had previously been made to address this issue. Under CASA EX83/20, persons were allowed an additional 6 months to pass an AKE. CASA EX83/20 applied to a person who:

- between 16 March 2018 and 15 March 2020, passed at least 1 part of an AKE for a flight crew licence, rating or endorsement
- passed all parts of the examination after 15 March 2018 and within a period of 2 years and 6 months.

Overview of instrument

The instrument repeals CASA EX83/20. The instrument is designed to extend the relief given by CASA EX83/20 for another 6 months, and applies to persons who have passed at least 1 part of an AKE for a commercial pilot licence or air transport licence, with an aircraft category rating, between 16 March 2018 and 15 September 2021 and passed all parts of the examination after 15 March 2018 and within a period of 3 years.

The exemption is subject to the condition that the person must, if requested by CASA, demonstrate to CASA that Australian or foreign laws in response to COVID-19 has made it impossible, impracticable or unreasonable for the person to pass all parts of the examination within a period of 2 years. The purpose of the condition is to ensure that only those cases who genuinely need the relief due to the impact of COVID-19 on their ability to sit the examinations are provided with the benefit of the exemption. CASA EX83/20 did not include such a condition.

In considering whether to grant the exemption, CASA has regarded as paramount the preservation of at least an acceptable level of aviation safety.

Content of instrument

Section 1 of the instrument states the name of the instrument.

Section 2 of the instrument repeals CASA EX83/20.

Section 3 sets out the duration of the instrument. The instrument commences on the day after it is registered and is repealed at the end of 15 September 2024.

Section 4 states that words and phrases in the instrument have the same meaning as in Part 61 of CASR, and provides examples.

Section 5 states that the instrument applies to a person who:

- (a) between 16 March 2018 and 15 September 2021, passed at least 1 part of an AKE for a commercial pilot licence, or air transport pilot licence, with an aircraft category rating; and
- (b) has requested CASA, in writing, for an extension of the timeframe to complete the AKE, after passing all parts of the examination:
 - (i) after 15 March 2018; and
 - (ii) within a period of 3 years.

Paragraph 5 (a) applies in relation to AKEs for commercial pilot licences, or air transport pilot licences, with an aircraft category rating, as these are the only examinations subject to the 2-year period for completion mentioned in subregulation 61.225 (2) of CASR. The licences are referred to as being “with an aircraft category rating” because when a person applies for a flight crew licence they must apply for the associated aircraft category rating.

Paragraph 5 (b) operates so that passes in examinations completed before 16 March 2018 will not be recognised for the purposes of completion of all the examinations required within the 3-year period as they would otherwise have expired prior to the impact of COVID-19, in accordance with the prescribed standard.

Section 6 provides that the person is exempt from compliance with subregulation 61.225 (2) of CASR to the extent that it requires that, for the person to be taken to have passed the examination, the person must pass all parts of the examination within a period of 2 years.

Section 7 sets out the condition to which the exemption in section 6 is subject. The condition is that the person must, if requested by CASA, demonstrate to CASA that Australian or foreign law in response to the COVID-19 pandemic has made it impossible, impracticable or unreasonable for the person to pass all parts of the examination within a period of 2 years.

A note below section 7 gives an example of how a person might demonstrate to CASA the matters set out in the condition. The example is a statement given to CASA from Aspeq to the effect that the person’s AKE sitting was cancelled due to Australian State Government-imposed restrictions in place to reduce or control the spread of COVID-19.

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. Also, paragraph 98 (5AA) (a) 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 the instrument applies to a person who has passed, between 16 March 2018 and 15 September 2021, at least 1 part of an AKE for a commercial pilot licence, or air transport pilot licence, and meets other prerequisites stated in section 5 of the instrument. 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.

As the instrument relates to aviation safety and is made under CASR, Part 4 of Chapter 3 of the LA (the *sunsetting provisions*) does not apply to the instrument (item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*). However, the instrument will be repealed at the end of 15 September 2024 and any renewal of the instrument will be subject to tabling and disallowance in the Parliament. Therefore, the exemption from the sunsetting provisions does not affect parliamentary oversight of this instrument.

Consultation

Consultation under section 17 of the LA has not been undertaken in this case. The instrument provides relief to a cohort of persons who have already commenced the AKE process but who cannot meet the time-based obligations for its completion due to the present circumstances of the COVID-19 pandemic. These stakeholders are already familiar with CASA EX83/20.

The exemption in the instrument is beneficial to the stakeholders within the aviation industry to which the instrument applies. CASA has announced the proposed 12-month extension of the statutory time period for completion of commercial pilot licence and air transport pilot licence exams and also advised Aspeq of the proposal. Given this, and the need for the instrument to be made as soon as possible in the current circumstances so that those who need to take advantage of it can do so, CASA is satisfied that no consultation is appropriate or reasonably practicable for this instrument for section 17 of the LA.

Sector risk, economic and cost impact

Subsection 9A (1) of the Act states that, in exercising its powers and performing its functions, CASA must regard the safety of air navigation as the most important consideration.

Subsection 9A (3) of the Act states that, subject to subsection (1), in developing and promulgating aviation safety standards under paragraph 9 (1) (c), CASA must:

- (a) consider the economic and cost impact on individuals, businesses and the community of the standards; and
- (b) take into account the differing risks associated with different industry sectors.

The cost impact of a standard refers to the direct cost (in the sense of price or expense) which a standard would cause individuals, businesses and the community to incur. The economic impact of a standard refers to the impact a standard would have on the production, distribution and use of wealth across the economy, at the level of the individual, relevant businesses in the aviation sector, and the community more broadly. The economic impact of a standard could also include the general financial impact of that standard on different industry sectors.

The economic and cost impact of the instrument has been determined by:

- (a) the identification of individuals and businesses affected by the instrument; and

- (b) consideration of how the requirements to be imposed on individuals and businesses under the instrument will be different compared to existing requirements; and
- (c) a valuation of the impact, in terms of direct costs on individuals and businesses affected by the instrument to comply with the different requirements. This valuation is consistent with the principles of best practice regulation of the Australian Government; and
- (d) a valuation of the impact the different requirements would have on the production, distribution and use of wealth across the economy, at the level of the individual, relevant businesses in the aviation sector, and the community more broadly; and
- (e) consideration of community impacts, beyond those direct impacts on individuals and businesses affected by the instrument, that are relevant if the instrument were to result in flow-on effects to other aviation businesses, or local non-aviation businesses that experience a change in their activity due to the instrument.

The requirements of the instrument apply to persons sitting an AKE who wish to have the benefit of the exemption. These individuals will need to be able to demonstrate to CASA, on request, that Australian or foreign law in response to the COVID-19 pandemic has made it impossible, impracticable or unreasonable for the person to pass all parts of the examination within a period of 2 years. This requirement should not impose any additional cost on the person. As the note in the instrument states, a copy of a statement from Aspeq to a candidate that their exam sitting was postponed or cancelled due to COVID-19 restrictions will be sufficient. An email would be an example of such a statement. CASA has, therefore, assessed that the economic and cost impact of the instrument is not significant.

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*.

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 the day after it is registered and is repealed at the end of 15 September 2024.

Statement of Compatibility with Human Rights

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

CASA EX138/21 — Aeronautical Knowledge Examinations (Extension of Time Due to COVID-19) 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 offers temporary relief from a legislative time-based obligation for completion of aeronautical knowledge examinations within 2 years which candidates may not be able to meet due to COVID-19 restrictions such as the closure of examination venues and travel restrictions.

The instrument exempts specified persons from compliance with subregulation 61.225 (2) of the *Civil Aviation Safety Regulations 1998* to the extent that it requires that the person must pass all parts of the examination within a period of 2 years.

The exemption applies to a person who:

- (a) between 16 March 2018 and 15 September 2021, passed at least 1 part of an aeronautical knowledge examination for a commercial pilot licence, or air transport pilot licence, with an aircraft category rating; and
- (b) has requested CASA, in writing, for an extension of the timeframe to complete the aeronautical knowledge examination, after passing all parts of the examination:
 - (i) after 15 March 2018; and
 - (ii) within a period of 3 years.

The exemption is subject to the condition that the person must, if requested by CASA, demonstrate to CASA that Australian or foreign law in response to the COVID-19 pandemic has made it impossible, impracticable or unreasonable for the person to pass all parts of the examination within a period of 2 years.

The instrument repeals *CASA EX83/20 — Aeronautical Knowledge Examinations (Extension of Time Due to COVID-19) Exemption 2020*, which provided for completion of all parts of an aeronautical knowledge examination within a period of 2 years and 6 months.

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 from prescribed timeframes for the completion of

qualifications necessary for pilots and other flight crew members to perform their duties that they would otherwise be unable to meet due to COVID-19 restrictions.

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