

Explanatory Statement

Civil Aviation Safety Regulations 1998

Type Ratings Excluded from Part 142 Flight Training (Edition 7) Instrument 2023

Purpose

Type Ratings Excluded from Part 142 Flight Training (Edition 7) Instrument 2023 (the **instrument**) prescribes type ratings for the purpose of relevant provisions in Part 142 of the *Civil Aviation Safety Regulation 1998 (CASR)*. The instrument repeals and replaces instrument *Prescription of Type Ratings Excluded from CASR Part 142 Flight Training (Edition 6) Instrument 2018* (referred to in this Explanatory Statement as **Edition 6**).

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*.

Under paragraph 98 (5A) (a) of the Act, such regulations may empower CASA to issue instruments in relation to matters affecting the safe navigation and operation of aircraft.

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.

Part 141 of CASR contains regulations for recreational, private and commercial pilot flight training, other than certain integrated training courses. Such Part 141 flight training may be carried out by a Part 141 operator, that is, a person who holds a Part 141 certificate.

Part 142 of CASR contains regulations for integrated and multi-crew pilot flight training, training for the grant of a type rating, contracted recurrent training and contracted checking. Such training and checking may only be carried out by a Part 142 operator, that is, a person holding a Part 142 authorisation. For training and checking that is carried out in an aircraft, the form of the Part 142 authorisation is an air operator's certificate (**AOC**).

The rationale behind Parts 141 and 142 of CASR is that flight training may be authorised to be conducted for a particular aircraft type rating only if the flight training operator has a course of training together with sufficient systems and personnel in place to safely and effectively manage flight training for the types of aircraft, including their variant models.

Within the range of available aircraft types, some can be grouped together and treated in a common way under Part 61 of CASR, which sets out the licensing scheme for pilots and flight engineers of registered aircraft. The groups of aircraft are known as class ratings. Thus, training to operate one type of aircraft may satisfy the training requirements for a number of other types of aircraft if they have similar characteristics and performance.

However, many types of aircraft are sufficiently complex or different from other types as to warrant type specific training to be required to fly these aircraft. These aircraft are identified as type-rated aircraft.

In some cases, aircraft types can have *more than 1 model* and the characteristics of the models can differ, for example, in such areas as operating systems, size, performance or handling. In some cases, the differences between the models are such that additional training (***differences training***) of the pilots is warranted to enable them to fly another variant of the aircraft type the pilot has been trained to operate.

The regulations ordinarily require flight training for the grant of a type rating, and type rating differences training, to be conducted by a CASR Part 142 operator. In some cases, for the less complex type ratings, this training can be done adequately by the holder of a Part 141 certificate. In other words, the training would not require the additional organisational systems and processes that are required under Part 142. The regulations make provision for prescribing these aircraft in an instrument that can be made by CASA under regulation 142.045 of CASR.

Parts 141 and 142 of CASR

Under paragraph 142.045 (a) of CASR, for paragraph 98 (5A) (a) of the Act, CASA may issue a legislative instrument to prescribe type ratings for certain elements of the definition of ***Part 142 flight training***.

Paragraph 142.015 (2) (d) of CASR provides that ***Part 142 flight training*** is defined as including *training* for the grant of a CASR Part 61 type rating that **is not** prescribed in a legislative instrument under regulation 142.045.

Under subparagraph 142.015 (2) (g) (i) of CASR, ***Part 142 flight training*** is also defined as *differences training* required under regulation 61.780, 61.835 or 61.1370 of CASR for a variant covered by a type rating that **is not** prescribed in a legislative instrument under regulation 142.045.

Under paragraph 141.015 (1) (d) of CASR, ***Part 141 flight training*** is defined as including *training* for the grant under Part 61 of a type rating that **is** prescribed in a legislative instrument under regulation 142.045.

Subparagraph 141.015 (1) (g) (i) of CASR further provides that ***Part 141 flight training*** is defined as including *differences training* required under regulation 61.780 or 61.835 of CASR for a variant covered by a type rating that **is** prescribed in a legislative instrument under regulation 142.045.

Part 61 of CASR

Regulation 61.780 of CASR requires the holder of a pilot type rating in an aircraft with variants to undertake differences training for other variants if the variants are prescribed, and differences training for them is required, under a legislative instrument made under regulation 61.055 or 61.060 of CASR.

Regulation 61.835 of CASR authorises the holder of a cruise relief co-pilot type rating to act as co-pilot in an aircraft (in certain defined circumstances). Again, in particular defined circumstances, including passing a flight test in the aircraft model covered by the rating (the “first variant”), if differences training is required and completed for another aircraft model

covered by the rating (the “second variant”), the holder may exercise the privileges in that second variant.

Under regulation 61.1370 of CASR, the holder of a flight engineer type rating in an aircraft, who passed a flight test for the rating in an aircraft model (the “first variant”), may exercise the privileges of the rating in another aircraft model (the “second variant”) covered by the rating if all required differences training has been completed.

Background

CASA has decided that, as a general rule, flight training for the grant of all single-pilot type ratings, and differences training for those type ratings, should be conducted by a Part 141 operator. There is to be an exception to that general rule for type ratings for certain aircraft that have unique characteristics that warrant the flight training being conducted by a Part 142 operator.

Instrument

The instrument prescribes type ratings for the purposes of Part 142 of CASR. The effect of the instrument is that training in the relevant aircraft (and differences training for the relevant aircraft) is defined as Part 141 flight training, instead of Part 142 flight training. The main purpose of this amendment is to include additional single-pilot aeroplane and helicopter type ratings on the prescribed list.

Content of instrument

Section 1 gives the instrument its name and provides that it commences on the commencement of the *Part 61 Flight Crew Licensing (Prescribed Aircraft and Type Ratings) (Edition 9) Instrument 2023*.

Section 2 repeals *Prescription of Type Ratings Excluded from CASR Part 142 Flight Training (Edition 6) Instrument 2018*.

Section 3 contains the definitions for the instrument, including the definition of *cell* for the purposes of the interpretation of sections 4 to 6 of the instrument.

Section 4 provides that aircraft models mentioned in 1 or more cells in column 2 of the tables in Schedule 1 are variants of aircraft models mentioned in the corresponding cell in column 4 of the table, where both aircraft models have the same type rating.

Section 5

Subsection 5 (1) establishes when differences training is required for a person to exercise the privileges of a type rating in a variant that is different from the variant for which the person received the type rating.

Under subsection (2), differences training is not required for a variant that is in the same cell (in a table in Schedule 1) as the variant for which a person first received a type rating.

Section 6 is made for paragraph 142.045 (a) of CASR.

Subsection 6 (1) prescribes type ratings for aircraft models for the purposes of paragraph (d) of the definition of ***Part 142 flight training*** in subregulation 142.015 (1) (d), of CASR.

Subsection 6 (2) prescribes type ratings for the purposes of subparagraph (g) (i) of the definition of **Part 142 flight training** in subregulation 142.015 (1) (d) of CASR.

Schedule 1

Part 1 of Schedule 1 contains the table setting out aeroplane models and variants, type ratings and differences training requirements, for the purposes of sections 4, 5 and 6.

Part 2 of the Schedule contains the table setting out helicopter models and variants, type ratings and differences training requirements, for the purposes of sections 4, 5 and 6.

Changes since Edition 6

The instrument repeals and substitutes Edition 6. The changes to the instrument include the following:

- Addition of the C408 Skycourier which is an aeroplane certificated for single-pilot operations and has a maximum take-off weight in excess of 5 700 kg. Its prescription in the instrument is in keeping with similar single-pilot types.
- Changing the terminology of “all piston powered models” to “all piston engine models” for the Douglas C-3 and Grumman G-73 Mallard types.
- The Lockheed C-121C aeroplane is the military designation of the L-1049 Super Constellation and is prescribed as a variant of that to be covered by the L-1049 rating.
- Addition of the BK117 C-2e helicopter model as a separate variant to the existing C-2 model. This is consequent on inclusion of the BK117 C-2e model in the *Part 61 Flight Crew Licensing (Prescribed Aircraft and Type Ratings) (Edition 9) Instrument 2023* (the **Part 61 Edition 9 instrument**).
- Addition of the BK117 D-3 helicopter model in the same cell as the D-2 models. The D-3 model was added to *Prescription of Aircraft and Ratings – CASA Part 61 (Edition 8) Instrument 2021* (the **Part 61 Edition 8 instrument**). As a smaller complex helicopter (single-pilot type rated), the aircraft is prescribed to enable flight training to be conducted as Part 141 flight training. Under subsection 5 (2), differences training is not required where the variants are in the same cell in column 2 of a table.
- Addition of the BK117 D-3 helicopter model, consequent to its inclusion in the Part 61 Edition 8 instrument. The model is currently marketed as “H145 D-3” and column 2 in the table in Part 2 is amended to include “BB117 D-3 (H145 D-3)” and is a variant of other aircraft covered by the type rating “BK117/EC145” in column 4.
- Deletion of the SK76 (SP) type rating. The (SP) type rating was deleted from the Part 61 Edition 8 instrument and, consequently, can be deleted from this instrument.
- The K1200 type rating for the Kaman Aerospace Corp K-Max (K1200) helicopter is included in this instrument as it is a single-seat helicopter with relatively basic operating systems. Inclusion of the K1200 type rating in this instrument provides more flexibility for CASA and Part 141 flight training operators in relation to conducting training for the type rating.
- Prescribing differences training for Textron Aviation Inc King Air 300 series multi-engine aeroplanes that have been modified under a supplemental type certificate to fit an autothrottle system. This ensures the training for these modified aircraft can be conducted by a Part 141 operator along with other variants covered by the BE350/1900 type rating.

Legislation Act 2003 (the LA)

Under paragraph 98 (5A) (a) of the Act, CASA may issue instruments in relation to matters affecting the safe navigation and operation of aircraft. Under subsection 98 (5AA) of the Act, an instrument issued under paragraph 98 (5A) (a) is a legislative instrument if expressed to apply in relation to a class of persons or aircraft.

In addition, subsection 8 (2) of the LA provides that if a primary law gives power to do something by legislative instrument, that thing must be done by instrument, and the instrument so made is a legislative instrument. Regulation 142.045 of CASR provides that CASA's prescription of type ratings for paragraph (d) and subparagraph (g) (i) of the definition of **Part 142 flight training** in subregulation 142.015 (2) is made by legislative instrument.

The various prescriptions made by the instrument apply to classes of aircraft. The instrument also prescribes type ratings for paragraph (d) and subparagraph (g) (i) of the definition of **Part 142 flight training** in subregulation 142.015 (2) of CASR. Therefore, the instrument is 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 (as per item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

The instrument deals with aviation safety matters that, once identified, require a risk response or treatment plan. As such, the instrument is intended to have enduring operation and it would not be appropriate for it to be subject to sunsetting. The exemption from the sunsetting provisions affects parliamentary oversight by not requiring the instrument to be remade and subject to further tabling and disallowance in the Parliament under sections 38 and 42 of the LA. Despite this, CASA's current practice is to repeal and remake a new edition of the instrument, generally every year, as an alternative to amending it. A renewal of the instrument would be subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA, in which case the exemption from sunsetting would not affect parliamentary oversight of this instrument.

Consultation

The instrument benefits the aviation industry because the reduced number of aircraft covered by type ratings for which training by a Part 142 operator is required has the effect of reducing compliance costs. The instrument provides more flexibility in the delivery of training conducted in aircraft covered by the specified type ratings, for example, CASA can approve a person to conduct the in-aircraft training, whereas this kind of training would be available under Part 142 only if it was authorised under an AOC.

Appropriate approvals will be provided without cost to Part 141 operators requiring changes to their Part 141 certificates as a consequence of this instrument. CASA is not aware of any affected Part 142 operators, but does not expect that any administrative impacts from the amendments would be subject to any fee.

Having regard to these circumstances, it is CASA's view that it is not reasonably practicable or appropriate to undertake any further consultation under 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 instrument makes minor or machinery changes to an existing instrument and there will be no (or no significant) change to the economic or cost impact on individuals, businesses or the community. The costs of conducting the training for the specified type ratings is reduced as the organisational requirements under Part 141 are less onerous than they would be under Part 142. For example, Part 142 has additional requirements in relation to training and checking and safety management systems. The requirements under Part 141 reflect the reduced need for complex training in less complex aircraft.

The instrument does not introduce cost impacts and is likely to provide cost reductions. The instrument provides increased flexibility to industry and CASA regarding how training programs can be approved for aircraft under Part 141.

Impact on categories of operations

The instrument will have an impact on operators and pilots of aircraft which are being added or amended in the instrument and flight training operators. The impact on operators is to facilitate the introduction of new types of aircraft and to regularise the administration of the licensing system. Necessarily, flight training operators will require training courses to be developed. This will involve the introduction of new training endorsements and examiner endorsements that will have an impact on persons involved in training, flight testing, flight reviews and proficiency testing, and, if applicable, training and checking activities.

Impact on regional and remote communities

The instrument may provide additional training opportunities for smaller Part 141 operators who are based outside the major capital cities. The instrument will generally give more training opportunities to less complex training organisations.

Office of Impact Analysis (OIA)

An Impact Analysis (*IA*) was prepared by CASA for the regulations which constitute the head of power for the legislative instrument. This IA was assessed as adequate by OIA (OIA id: 2777) and applies for the purpose of the legislative instrument. The legislative instrument has been assessed by CASA as generally benefitting the aviation industry because the

reduced number of aircraft covered by type ratings for which training by a Part 142 operator is required has the effect of reducing compliance costs.

Statement of Compatibility with Human Rights

The legislative instrument does not directly engage any of the applicable rights and freedoms and is compatible with human rights. To the extent that it may indirectly limit certain human rights, those limitations are necessary and proportionate in the interests of aviation safety. A Statement of Compatibility with Human Rights is at Attachment 1.

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 commencement of the *Part 61 Flight Crew Licensing (Prescribed Aircraft and Type Ratings) (Edition 9) Instrument 2023*.

Statement of Compatibility with Human Rights

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

Type Ratings Excluded from Part 142 Flight Training (Edition 7) Instrument 2023

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 *Type Ratings Excluded from Part 142 Flight Training (Edition 7) Instrument 2023* (the **instrument**) is a legislative instrument that prescribes type ratings for the purpose of relevant provisions in Part 142 of the *Civil Aviation Safety Regulations 1998*. The instrument, thereby, determines whether a Part 141 operator, rather than a Part 142 operator, may deliver flight training for the prescribed type ratings. Part 142 operators are required to have more sophisticated systems for managing their operations than Part 141 operators.

The instrument repeals and replaces *Prescription of Type Ratings Excluded from CASR Part 142 Flight Training (Edition 6) Instrument 2018* to add various single-pilot certificated aircraft, thus allowing flight training for those aircraft to be conducted by a Part 141 operator, rather than a Part 142 operator, remove aircraft and make changes of an administrative or clarifying nature.

The instrument is, therefore, essentially a machinery instrument whose requirements are consistent with Australia's obligations of conformity to the Chicago Convention on International Civil Aviation, its Protocols and Annexes.

Human rights implications

To the extent that certain aircraft are **not** prescribed, it might be said that the right to work, equality and non-discrimination under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights are engaged for Part 141 flight training organisations, since they cannot provide relevant flight training for aircraft types that are not prescribed. However, such differential treatment arises from the requirements of aviation safety for the particular types of specialised aircraft involved.

Conclusion

The 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*. To the extent that it may also limit human rights, those limitations are reasonable and proportionate in the interests of aviation safety.

Civil Aviation Safety Authority