

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX11/24 — ATPL(A) Flight Test Standards (Satellite-based Navigation) Exemption 2024

Purpose

The purpose of *CASA EX11/24 — ATPL(A) Flight Test Standards (Satellite-based Navigation) Exemption 2024* (the **instrument**) is to exempt, in the stated circumstances, an applicant for an air transport pilot licence and associated aeroplane category rating (**ATPL(A)**) from compliance with the requirement, under Part 61 of the *Civil Aviation Safety Regulations 1998 (CASR)*, to demonstrate competency in the use of satellite-based navigation systems when undertaking a flight test. Also, the instrument exempts the flight examiner who conducts the flight test of the applicant, in the stated circumstances, from compliance with the requirements, under Part 61 of CASR, of being satisfied the applicant has demonstrated the competency and of assessing the applicant against the competency.

The instrument, in effect, renews the exemptions in *CASA EX98/21 — ATPL Flight Test Standards (Satellite-based Navigation) Exemption 2021* (the **expiring instrument**).

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. Part 61 of CASR deals with the licensing of aircraft flight crew.

References in this statement to provisions that commence with the number “61” are to provisions of Part 61 of CASR.

The term **flight crew licence** is defined in regulation 61.010 to include a pilot licence. Also, the term **pilot licence** is defined to include an air transport pilot licence.

As far as is relevant, the term **flight test**, for a flight crew licence (an **FCL**), is defined in regulation 61.010 as a test conducted under regulation 61.245 for the FCL.

Under paragraph 61.155(2)(b), an application for a pilot licence must include an application for an aircraft category rating.

Regulation 61.160 states the criteria for the grant of an FCL to an applicant for the FCL. The criteria include a requirement that the applicant meet the requirements mentioned in Part 61 of CASR for the grant of the FCL.

As far as is relevant, regulation 61.245 states that a flight test for an FCL may be conducted in an aircraft or approved flight simulator for the purpose.

As far as is relevant, regulation 61.250 states that an applicant for an FCL passes the flight test for the FCL if the examiner assesses the applicant’s performance in the flight test as meeting the competency standards mentioned in the *Part 61 Manual of Standards* (the **Part 61 MOS**) for the flight test.

Paragraph 61.700(3)(c) requires an applicant for an ATPL(A) to have passed the flight test mentioned in the Part 61 MOS for an ATPL(A).

Under paragraph 61.700(5), for paragraph 61.700(3)(c), the flight test for an ATPL(A) must be conducted under the instrument flight rules in:

- (a) a multi-engine turbine-powered aeroplane that is configured for flight, and operated, with a co-pilot; or
- (b) an approved flight simulator for the flight test.

Subregulation 61.880(1) states that the holder of an instrument rating is authorised to exercise the privileges of the rating in an aircraft of a particular category only if the holder has a valid instrument proficiency check for the aircraft category. As far as is relevant, subregulation 61.880(3) states the circumstances, and periods during which, the holder is taken to have a valid instrument proficiency check for the aircraft category.

As far as is relevant, under subparagraph 61.1295(3)(b)(ii), a flight examiner must assess the applicant for a pilot licence against the competency standards mentioned in the Part 61 MOS for the flight test.

As far as is relevant, paragraph 1 (b) of Appendix K.1 of Schedule 5 to the Part 61 MOS states that an applicant for an ATPL(A) must demonstrate the ability to conduct the activities and manoeuvres mentioned in clause 3 of the Appendix, within the operational scope and under the conditions mentioned in clause 4 of the Appendix, to the competency standards required under section 12 of the MOS that are relevant to the flight test undertaken by the applicant. As far as is relevant, under paragraphs 3.3 (a) and (b) of the Appendix (**paragraphs 3.3 (a) and (b)**), the activities and manoeuvres include:

- (a) to ensure competency to navigate en route using satellite-based navigation systems; and
- (b) to perform integrity checks for the systems.

Exemptions

Subpart 11.F of CASR provides for the granting of exemptions from particular provisions of the regulations. Subregulation 11.160(1) of CASR relevantly provides that, for subsection 98(5A) of the Act, the Civil Aviation Safety Authority (**CASA**) may grant an exemption from a provision of the regulations.

Under subregulation 11.160(2), an exemption may be granted to a person or a class of persons, and may specify the class by reference to membership of a specified body or any other characteristic.

Under subregulation 11.160(3), 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, 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 renew 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.

Background

Under Part 61 of CASR, an applicant for an ATPL(A) must demonstrate competency in the use of satellite-based navigation systems in accordance with paragraphs 3.3(a) and (b). The following flight simulation training devices (the *FSTDs*) are not suitable for that purpose:

- (a) Beechcraft King Air 200 (AUS No. 42 Serial No. 8315);
- (b) Embraer 120 Brasilia (AUS No. 45 Serial No. 8337);
- (c) Fairchild Metro III (AUS No. 18 Serial No. 8321).

As a result, an applicant who is being tested in one of the FSTDs is required to be tested in an aeroplane, or an alternative flight simulation training device, for the purposes of being assessed against the competency standards mentioned in paragraphs 3.3(a) and (b). This results in inconvenience and more expense. Also, it is safer to use a flight simulation training device, rather than an aircraft, to conduct training, checking and testing activities.

The instrument provides an alternative approach, which recognises that a pilot may demonstrate competency in using satellite-based navigation systems, other than in an aeroplane, during a flight test. The alternative approach recognised by the instrument is for the pilot to have a valid instrument proficiency check for the aeroplane category under regulation 61.880.

This means that the pilot may still undertake the flight test, and be assessed by a flight examiner against the other relevant competency standards mentioned in the Part 61 MOS, in any of the FSTDs.

The instrument renews the exemptions in the expiring instrument in substantially the same terms. In renewing the exemptions, CASA has regarded as paramount the preservation of at least an acceptable level of aviation safety.

Instrument

Section 1 states the name of the instrument.

Section 2 states the duration of the instrument.

Section 3 includes definitions of terms used in the instrument. Other terms used in the instrument are defined in CASR. Also, the section states that a person is an *exempted pilot*, for the instrument, if:

- (a) the person is an applicant for an ATPL(A); and
- (b) has a valid instrument proficiency check for the aeroplane category under regulation 61.880.

Section 4 states the instrument applies in relation to a flight test taken by an exempted pilot for an ATPL(A), which is conducted in any of the FSTDs for the purpose.

Subsection 5(1) grants an exemption to the exempted pilot from compliance with paragraph 61.700(3)(c) in stated circumstances.

Subsection 5(2) grants an exemption to the flight examiner who conducts the flight test from compliance with regulation 61.250 in stated circumstances.

Subsection 5(3) grants an exemption to the flight examiner who conducts the flight test from compliance with subparagraph 61.1295(3)(b)(ii) in stated circumstances.

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) 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 is made for the purpose of paragraph 98(5A)(a) and exempts classes of persons from complying with the specified provisions of CASR, namely exempted pilots and flight examiners conducting flight tests for exempted pilots. 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.

Sunsetting

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 (in accordance with 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 28 February 2027, which will occur before the sunseting provisions would have repealed the instrument if they had applied. Any renewal of the instrument will be subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA. Therefore, the exemption from sunseting does not affect parliamentary oversight of the instrument.

Consultation

Under section 17 of the LA, before a legislative instrument is made, CASA must be satisfied that it has undertaken any consultation it considers appropriate and practicable in order to draw on relevant expertise and involve persons likely to be affected by the proposals.

The exemptions in the expiring instrument were proposed by industry members to encourage use of flight simulation training devices and are of general benefit to ATPL(A) applicants and flight examiners. The policy does not increase any safety risks and assists aviation safety by encouraging the use of flight simulation training devices for flight tests instead of aeroplanes. The policy remains the same for the instrument.

CASA has since received industry feedback to the effect that the exemptions in the expiring instrument should be renewed.

In these circumstances, CASA is satisfied that no additional consultation is appropriate, or necessary, for the instrument for section 17 of the LA.

Office of Impact Analysis (OIA)

An Impact Analysis (*IA*) is not required in this case, as the exemptions are covered by a standing agreement between CASA and OIA, under which an IA is not required for exemptions (OIA id: 14507).

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) states that, subject to subsection (1), in developing and promulgating aviation safety standards under paragraph 9(1)(c) of the Act, 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 exemption has been determined by:

- (a) the identification of individuals and the businesses affected by the exemption; and
- (b) consideration of how the requirements to be imposed on individuals and businesses under the instrument will be different compared to existing requirements.

In the instrument, the granting of the exemptions will avoid additional costs that would otherwise be incurred if an exempted pilot were required to demonstrate the pilot's competency in using satellite-based navigation systems, when undertaking a flight test, in an aeroplane.

The operation of the exemptions in the expiring instrument has not led to any known adverse impacts on aviation safety. It is envisaged this will continue to be the case.

Impact on categories of operations

The instrument does not have an impact on specific categories of operations. Rather, the instrument is of benefit to the aviation industry as a whole.

Impact on regional and remote communities

The instrument does not have an impact that is specific to regional and remote communities.

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 listed human rights.

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 March 2024 and will be repealed at the end of 28 February 2027.

Statement of Compatibility with Human Rights

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

CASA EX11/24 — ATPL(A) Flight Test Standards (Satellite-based Navigation) Exemption 2024

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*.

Overview of the legislative instrument

The purpose of the legislative instrument is to exempt, in the stated circumstances, an applicant for an air transport pilot licence and associated aeroplane category rating from compliance with the requirement, under Part 61 of the *Civil Aviation Safety Regulations 1998 (CASR)*, to demonstrate competency in the use of satellite-based navigation systems when undertaking a flight test. Also, the instrument exempts the flight examiner who conducts the flight test of the applicant, in the stated circumstances, from compliance with the requirements, under Part 61 of CASR, of being satisfied the applicant has demonstrated the competency and of assessing the applicant against the competency.

The instrument, in effect, renews the exemptions in *CASA EX98/21 — ATPL Flight Test Standards (Satellite-based Navigation) Exemption 2021*.

Human rights implications

The legislative instrument engages the right to work in Article 6(1) of the International Covenant on Economic, Social and Cultural Rights.

The right to work 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 engaged by the exemption of an exempted pilot (as defined in the instrument), in the stated circumstances, from compliance with the requirement to demonstrate competency in the use of satellite-based navigation systems when undertaking a flight test. The exemption reduces the costs, and inconvenience, for the pilot by avoiding the need for the pilot to demonstrate the competency in an aeroplane. The exemption, therefore, promotes the right to work of the pilot by facilitating the pilot in obtaining an ATPL(A).

Aviation safety is not adversely affected because the pilot is required, under the instrument, to demonstrate the competency in an alternative way.

Conclusion

The legislative instrument is compatible with human rights.

Civil Aviation Safety Authority