

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX79/24 – Transitional Training and Checking Requirements for Crew Members in Part 138 Operations – Exemption Instrument 2024

Purpose

The purpose of *CASA EX79/24 – Transitional Training and Checking Requirements for Crew Members in Part 138 Operations – Exemption Instrument 2024* (the **exemption instrument**) is to reschedule, generally for a period of 12 months, but in some cases initially up to 3 years, obligations on aerial work operators and relevant crew members to complete training and checking events (**new Part 138 events**) prescribed under Part 138 of the *Civil Aviation Safety Regulations 1998 (CASR Part 138)* and the *Part 138 (Aerial Work Operations) Manual of Standards 2020* (the **MOS**).

However, to qualify for the exemptions, the crew members must have already completed analogous, or otherwise acceptably equivalent, training and checking events (**old events**) under previous legislation, and must have completed those events within newly-specified timeframes.

By recognising the continuing competency of the crew members based on their completion of old events, the practical effect of the exemption instrument will be to provide Part 138 operators, and their relevant crew members, with the opportunity to thereby phase in their gradual transition to full compliance with the CASR Part 138 requirements.

The exemptions from the new Part 138 events will expire on prescribed expiry dates, by which time operators and crew members will be obligated to be compliant with the CASR Part 138 requirements by having conducted the relevant new Part 138 events.

Background

CASA 94/21 – Training and Checking (CASR Part 138) Determination 2021 was made under regulation 202.418 of the *Civil Aviation Safety Regulations 1998 (CASR)* to provide extra time for Part 138 operators and their crew members to transition to full compliance with the training and checking requirements of CASR Part 138, provided that the crew members had completed analogous training and checking events under the prior legislation. Many of those prescribed transition completion dates have now expired.

However, most relevant operators did not avail themselves of the benefit of the determination, and instead took advantage of specific training and checking-related exemptions under Part 10 of *CASA EX87/21 – Flight Operations Regulations – SMS, HFP&NTS and T&C Systems – Supplementary Exemptions and Directions Instrument 2021 (CASA EX87/21)*.

Under Part 10 of *CASA EX87/21*, which commenced on 2 December 2021, operators, whether with or without pre-existing training and checking systems, were exempted from obligations under CASR Part 138 to have a compliant Part 138 training and checking system — provided that their crew members completed alternative training and checking requirements, either under the operators' training and checking manual (if the operators had a pre-existing training and checking system) or under the previously

applicable relevant training requirements prescribed in the relevant Civil Aviation Orders.

However, for virtually all such operators, the benefits of CASA EX87/21 cease to have effect, notionally at the end of 28 February 2025 because they have been given written notice of this “specified date” by CASA under the terms of section 49 in Part 10 of CASA EX87/21. However, because of the 3-year time limitation period applying to CASA EX87/21 itself, the exemptions under that instrument expire at the end 1 December 2024.

The exemption instrument is, therefore, designed to make use of the “specified date” of which notice was given under CASA EX87/21 or, should the contingency arise, make use of a new specified date should one be required, that could be prescribed under *CASA EX73/24 – Flight Operations Regulations – SMS, HFP&NTS and T&C Systems – Supplementary Exemptions and Directions Instrument 2024 (CASA EX73/24)*, which is the replacement instrument for CASA EX87/21.

However, requiring all relevant crew members of Part 138 operators that have been utilising these exemptions to complete all of the new Part 138 events before the end of 28 February 2025, or before the end of an alternative cessation date if one has been specified to an individual relevant Part 138 operator, is impractical due to the volume of training and checking events that would need to be completed in a very short timeframe.

CASA’s implementation methodology for these operators only required the operators to have a compliant Part 138 training and checking system ready to implement by the end of the specified cessation date, with it being a policy intent to provide additional time beyond this date for relevant crew members to complete the new training and checking events.

This policy intent is based on crew members retaining sufficient continuing competency arising from their completion of old events.

CASA has, therefore, issued the exemption instrument to provide affected operators with the opportunity to stagger completion of the new Part 138 events, while safety is preserved through recognition of the continuing competency of the crew members based on their completion of still applicable old events.

In relation to training and checking events which are only required to be completed by a crew member once for the operator, and where the exemption instrument provides 3 years of transitional recognition, it is CASA’s intention to continue the extension of the transitional recognition of these events into the future via appropriate regulatory amendments.

The exemption instrument is intended to provide 3 years of transitional recognition for some training and checking events that have 3-yearly recurrency periods. However, since the exemption instrument itself will expire on 1 December 2027, operators would lose the full 3 years of transitional recognition for these old events if carried out between 2 December 2024 and 28 February 2025. It is CASA’s intention to continue the extension of the transitional recognition of these events until 28 February 2028 via a further exemption, unless within the timeframe appropriate regulatory amendments have addressed the matter.

Legislation — exemptions

Section 98 of the *Civil Aviation Act 1988* (the *Act*) empowers the Governor-General to make regulations for the Act and the safety of air navigation.

Subpart 11.F of CASR deals with exemptions. Under subregulation 11.160(1), and for subsection 98(5A) of the Act, CASA may, by instrument, grant an exemption from a provision of CASR in relation to a matter mentioned in subsection 98(5A).

Subsection 98(5A) matters are, in effect, those affecting the safety, airworthiness or design of aircraft.

Under subregulation 11.160(2), an exemption may be granted to a person or a class of persons. Under subregulation 11.160(3), CASA may grant an exemption on application, or on its own initiative.

Under subregulation 11.170(3), for an application for an exemption, CASA must regard as paramount the preservation of an acceptable level of safety. For making a decision on its own initiative, CASA is guided by the requirement in subsection 9A(1) of the Act that in exercising its powers and functions CASA must regard the safety of air navigation as the most important consideration. The preservation of an acceptable level of safety remains paramount.

Under regulation 11.205, CASA may impose conditions on an exemption if this is 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. Under regulation 11.225, CASA must, as soon as practicable, publish on the internet details of all exemptions under Subpart 11.F of CASR.

Under subregulation 11.230(1), an exemption may remain in force for 3 years or for a shorter period specified in the instrument.

Under subregulation 11.230(3), an exemption, in force in relation to a particular aircraft owned by a particular person, ceases to be in force when the aircraft ceases to be owned by that person. Under regulation 11.235, an exemption is not transferable (as between operators, aircraft, etc.).

Legislation Act 2003 (the LA)

Exemptions under Subpart 11.F of CASR are “for subsection 98(5A)” of the Act, that is, for regulations which empower the issue of certain instruments, like exemptions, in relation to “(a) matters affecting the safe navigation and operation, or the maintenance, of aircraft”, and “(b) the airworthiness of, or design standards for, aircraft”.

The exemption instrument is clearly one in relation to matters affecting the safe navigation and operation of aircraft. Under subsection 98(5AA) of the Act, an exemption issued under paragraph 98(5A)(a), for such matters, is a legislative instrument if expressed to apply in relation to a class of persons, a class of aircraft or a class of aeronautical products (as distinct from a particular person, aircraft or product).

The exemption instrument is generic in nature and applies to classes of persons. It is, therefore, a legislative instrument subject to registration, and tabling and disallowance in the Parliament, under section 15G, and sections 38 and 42, of the LA.

Sunsetting

As the instrument relates to aviation safety and is made under CASR, that means that Part 4 of Chapter 3 of the LA (the sunset 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. Generally speaking, item 15, when invoked, is necessary in order to ensure that, in the interests of aviation safety, a relevant instrument has enduring effect, certainty and clarity for aviation operators, both domestic and international.

The instrument is repealed at the end of 1 December 2027 by virtue of the terms of section 2. Thus, in practice, no sunset avoidance issues arise and there is no impact on parliamentary oversight.

Incorporations by reference

Under subsection 98(5D) of the Act, the exemption instrument may apply, adopt or incorporate any matter contained in any instrument or other writing. A non-legislative instrument may be incorporated into a legislative instrument made under the Act, as that non-legislative instrument exists or is in force at a particular time or from time to time (including a non-legislative instrument that does not exist when the legislative instrument is made). Under paragraph 15J(2)(c) of the LA, the Explanatory Statement must contain a description of the incorporated documents and indicate how they may be obtained.

References to provisions of legislative instruments such as CASR or a Manual of Standards are taken to be as they are in force from time to time, by virtue of paragraph 13(1)(c) of the LA. CASR, the Part 138 MOS, and Civil Aviation Orders are freely available online on the Federal Register of Legislation.

The following documents are applied, adopted or incorporated for the purposes of the exemption instrument.

Document	Description	Manner of incorporation	Source
<i>CASA EX73/24 – Flight Operations Regulations – SMS, HFP&NTS and T&C Systems – Supplementary Exemptions and Directions Instrument 2024 (CASA EX73/24)</i>	Part 10 relevantly exempts relevant operators from applicable requirements of Part 133 of CASR.	As in force from time to time on and from 2 December 2024.	This document is available for free on the Federal Register of Legislation.

Document	Description	Manner of incorporation	Source
Civil Aviation Order 20.11	Sets out requirements for emergency and lifesaving equipment and procedures, and proficiency in passenger control in emergencies.	As in force immediately before 2 December 2021.	This document is available for free on the Federal Register of Legislation.
<i>Part 138 (Aerial Work Operations) Manual of Standards 2020 (the MOS)</i>	The MOS provides prescribed safety standards for the operation of aircraft in aerial work operations.	As in force from time to time.	This document is available for free on the Federal Register of Legislation.

Consultation

Under section 16 of the Act, in performing its functions and exercising its powers, CASA must consult government, industrial, commercial consumer and other relevant bodies and organisations as far as CASA considers such consultation to be appropriate.

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.

Exemptions from regulatory requirements are considered to be beneficial for those to whom they apply, who voluntarily elect to take advantage of them, and who comply with their conditions. It is, therefore, rarely necessary to engage in extensive public consultation on a proposed exemption. However, it is CASA's policy to consult, where possible, in an appropriate way with those parts of the aviation industry most likely to avail themselves of, or be affected by, an exemption so that they may have the opportunity to comment on the possible or likely terms, scope and appropriateness of the exemption.

Although a formal, public consultation has not been undertaken in relation to this exemption instrument, there has been informal consultation with various parts of the aviation industry in relation to providing a continuing and effective means of transition to the Part 138 training and checking requirements.

Office of Impact Analysis (OIA)

An Impact Analysis (*IA*) is not required because the instrument is covered by a standing agreement between CASA and OIA under which an IA is not required for exemption or direction instruments (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) 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.

In terms of economic and cost impacts for subsection 9A(3) of the Act, the exemption instrument will relieve operators from the immediate imposition of training and checking requirements that might otherwise have involved significant compliance costs.

Sector risks

For aviation safety reasons, the exemption instrument is specific to those operators who fall within its scope and who choose to take the benefit of the exemptions and comply with its conditions.

Environmental impact

Under subsection 9A(2) of the Act, while regarding the safety of air navigation as the most important consideration, CASA must exercise its powers and perform its functions in a manner that ensures that, as far as practicable, the environment is protected from the effects and associated effects of the operation and use of aircraft.

It is not anticipated there will be any negative environmental impacts as a result of the exemption instrument, as compared to the baseline that existed on 1 December 2021, since the instrument does not create any new environmental impacts arising from flight operations.

Statement of Compatibility with Human Rights

The Statement in Appendix 2 is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The exemption instrument is compatible with human rights: with its aviation safety focus, it promotes the right to life, the right to work, and the right to safe and healthy working conditions, and it does so in a way that is reasonable, necessary and proportionate in the context of aviation safety.

Making and commencement

The instrument commences on 2 December 2024. The instrument has been made by a delegate of CASA relying on the power of delegation under subregulation 11.260(1) of CASR.

Details of CASA EX79/24 –Transitional Training and Checking Requirements for Crew Members in Part 138 Operations – Exemption Instrument 2024

1 Name of instrument

This section names the instrument.

2 Duration

Under this section, the instrument commences on 2 December 2024, and is repealed at the end of 1 December 2027.

3 Definitions

This section defines certain key words and phrases, in particular:

relevant flight, which means a flight, for an operator, of an aircraft to which Part 138 of CASR applies.

4 Application

Under this section, the instrument applies to the crew members listed in the Table under section 5, and each operator of a relevant flight.

5 Exemptions

(1) Under this subsection:

critical date means the date that is notified to the relevant operator by CASA for the purposes of section 49 of *CASA EX73/24 – Flight Operations Regulations – SMS, HFP&NTS and T&C Systems – Supplementary Exemptions and Directions Instrument 2024 (CASA EX73/24)*.

Three Notes offer important reader guidance.

Note 1 explains in effect that the critical date is the specified date notified to one or more relevant operators by CASA under CASA EX87/21, as continued by CASA EX73/24 (28 February 2025). After this date, relevant operators no longer have the benefit of Part 8 of CASA EX73/24 but may have the benefit of this latest exemption instrument if they satisfy its requirements and conditions.

Note 2 explains in effect that as of 2 December 2024, the critical date is 28 February 2025, unless varied by CASA. 28 February 2025 is the specified date under CASA EX87/21, continued under CASA EX73/24, with the capacity for a relevant variation under CASA EX73/24 if essential.

Note 3 explains that this exemption instrument has no application to a relevant operator who has *voluntarily opted not* to take the benefit of *CASA EX87/21 – Flight Operations Regulations – SMS, HFP&NTS and T&C Systems – Supplementary Exemptions and Directions Instrument 2021* or its successor *CASA EX73/24 – Flight Operations Regulations – SMS, HFP&NTS and T&C Systems – Supplementary Exemptions and Directions Instrument 2024*.

(2) Under this subsection, if:

(a) on or after the critical date, a requirement in relation to a training or checking event mentioned in an item of column 1 of Table 1 applies in relation to a relevant flight by a person with a designation mentioned in column 2 of the same item (the *crew member*); and

- (b) before the critical date, a training or checking event mentioned in column 4 of the item (the *previous event*) happened in relation to the crew member (including if under a previous designation mentioned in column 3); and
- (c) the relevant flight occurs:
 - (i) on or after the critical date; and
 - (ii) before the end of the day specified in column 6 of the item (the *expiry date*);

then:

- (d) the crew member is exempted from compliance with each provision mentioned in column 5 of the item; and
- (e) the operator of the relevant flight is exempted from compliance with the same provision to the extent that the provision:
 - (i) applies to the operator; or
 - (ii) imposes on the operator an obligation to ensure that:
 - (A) the crew member complies with the provision; or
 - (B) the relevant flight may not commence unless the provision has been complied with.

Table 1

Table 1 is comprised of 6 operative columns for 16 crew member training or checking events.

Column 1 lists the crew member training or checking events that are the subjects of the exemption instrument.

Columns 2 and 3 list the current and previous designations of the relevant crew members to whom the Table applies. (Previous designations of the relevant crew members are those in use before the date notified to the relevant operator by CASA for the purposes of section 49 of *CASA EX73/24 – Flight Operations Regulations – SMS, HFP&NTS and T&C Systems – Supplementary Exemptions and Directions Instrument 2024 (CASA EX73/24)*.)

Column 4 lists the applicable previous training or checking events that have already been completed in relation to the relevant crew members (including, where applicable, if the event had been completed under a previous designation of the member).

Column 6 specifies the expiry date for the duration of the completed previous training or checking events mentioned in column 4.

Column 5 lists the provisions of CASR Part 138 and the Part 138 MOS in relation to training and checking obligations, that the relevant crew member (and to the extent applicable, the relevant operator) is exempted from under the terms of the instrument.

Statement of Compatibility with Human Rights

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

CASA EX79/24 – Transitional Training and Checking Requirements for Crew Members in Part 138 Operations – Exemption Instrument 2024

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 *CASA EX79/24 – Transitional Training and Checking Requirements for Crew Members in Part 138 Operations – Exemption Instrument 2024* (the **exemption instrument**) is to reschedule, generally for a period of 12 months, but in some cases initially up to 3 years, obligations on aerial work operators and relevant crew members to complete training and checking events (**new Part 138 events**) prescribed under Part 138 of the *Civil Aviation Safety Regulations 1998 (CASR Part 138)* and the *Part 138 (Aerial Work Operations) Manual of Standards 2020* (the **MOS**).

However, to qualify for the exemptions, the crew members must have already completed analogous, or otherwise acceptably equivalent, training and checking events (**old events**) under previous legislation, and must have completed those events within newly-specified timeframes.

By recognising the continuing competency of the crew members based on their completion of old events, the practical effect of the exemption instrument will be to provide Part 138 operators, and their relevant crew members, with the opportunity to thereby phase in their gradual transition to full compliance with the CASR Part 138 requirements.

The exemptions from the new Part 138 events will expire on prescribed expiry dates, by which time operators and crew members will be obligated to be compliant with the CASR Part 138 requirements by having conducted the relevant new Part 138 events.

Human rights implications

The legislative instrument engages with the following human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*:

- the right to life under Article 6 of the International Covenant on Civil and Political Rights (the **ICCPR**)
- the right to safe and healthy working conditions under Article 7 of the International Covenant on Economic, Social and Cultural Rights (the **ICESCR**)
- the right to work under Article 6 of the ICESCR.

Right to life under the ICCPR***Right to safe and healthy working conditions under the ICESCR******Right to work under the ICESCR***

This engagement is in the context of CASA's statutory purpose. The aim of CASA and its regulatory framework is to uphold aviation safety by prescribing the conduct of individuals and organisations involved in civil aviation operations, including flight operations. It is, therefore, a threshold requirement for all CASA legislative instruments that they preserve, promote and enhance aviation safety and, thereby, contribute to safe and healthy working conditions for crew and ground staff.

The instrument allows more time for relevant operators to transition to full compliance with CASR Part 138 in an orderly way that will ensure effective conduct of relevant training and checking while ensuring that an acceptable level of safety is preserved based on existing relevant crew member competencies.

The instrument is designed to provide flexibility of timing for the aviation industry and CASA in relation to implementing the training and checking requirements of Part 138, thereby enabling intended safety outcomes both by requiring existing crew member competency based on acceptable safety standards, and by facilitating an orderly and final transition arrangement for relevant operators to full compliance with the requirements of Part 138.

Human rights implications

This legislative instrument is compatible with human rights and to the extent that it may engage certain rights it does so in a way that promotes the right to life, the right to work, and safe and healthy working conditions on board relevant aircraft. These measures are considered to be reasonable, necessary and proportionate in the interests of aviation safety.

Conclusion

This legislative instrument is compatible with human rights.

Civil Aviation Safety Authority