

Explanatory Statement

Civil Aviation Regulations 1988

Civil Aviation Order 95.12 and Civil Aviation Order 95.12.1 Amendment Instrument 2020 (No. 1)

Purpose

The main purpose of the amendments is to enable a member of the Australian Sport Rotorcraft Association (*ASRA*) to operate in Class A, B, C or D airspace an aircraft to which Civil Aviation Order (*CAO*) 95.12 or CAO 95.12.1 applies, if the member of the ASRA holds a pilot licence with an aeroplane category rating (instead of a gyroplane category rating).

Class A, B, C and D airspace is each controlled airspace that is also used by passenger transport aircraft.

The instrument also includes amendments to:

- (a) more precisely identify the intended provision mentioned in the cross-references in subparagraph 3 (f) of CAO 95.12 and subparagraph 3.1 (g) of CAO 95.12.1; and
- (b) correct some incorrect cross-references in subsection 3 of CAO 95.12 and paragraph 3.1 of CAO 95.12.1; and
- (c) repeal provisions in subsection 3 of CAO 95.12 and paragraph 3.1 of CAO 95.12.1 that consist solely of cross-references to repealed provisions of the *Civil Aviation Regulations 1988 (CAR)*.

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)* and *CAR*.

CASR

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 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, and may specify the class by reference to membership of a specified body or any other characteristic.

The term *pilot licence* is defined in regulation 61.010 of CASR to mean any of 5 kinds of licences including, relevantly at paragraphs (d) and (e), a private pilot licence and a recreational pilot licence.

CAO 95.12 and CAO 95.12.1

CAO 95.12 and CAO 95.12.1 were made under subregulation 308 (1) of *CAR* and commenced on 7 April 2011 when the following instruments repealed and substituted, respectively, CAO 95.12 and CAO 95.12.1:

- (a) *Civil Aviation Order 95.12 Instrument 2011*;
- (b) *Civil Aviation Order 95.12.1 Instrument 2011*.

When they commenced on 27 June 2011, the *Civil Aviation and Civil Aviation Safety Amendment Regulations 2011 (No. 2)* repealed regulation 308 of *CAR* and substituted the

version of subregulation 11.160 (1) of CASR that existed before those amendment regulations commenced. The substituted (and current) version of regulation 11.160 of CASR:

- (a) retains the discretionary power, provided by subregulation 308 (1) of CAR before it was repealed, for CASA to grant an exemption from compliance with a provision of CAR; and
- (b) expands that discretionary power, enabling CASA to also grant an exemption from compliance with a provision of CASR or a provision of a CAO.

CAO 95.12 applies to single-place gyroplanes that have an empty weight not more than 250 kilograms and are used solely in private operations for particular purposes, mentioned in subparagraph 5 (c) of that CAO. CAO 95.12.1 applies to 3 particular kinds of 2-place gyroplanes or single-place gyroplanes mentioned in, respectively, paragraph 1.1, 1.2 or 1.3 of that CAO.

Subsection 3 of CAO 95.12 (subject to compliance with subsection 4) and paragraph 3.1 of CAO 95.12.1 (subject to compliance with particular conditions) each exempts aircraft to which those CAOs apply from compliance with:

- (a) Part 61 of CASR, that sets out flight crew licensing requirements; and
- (b) numerous provisions of CAR.

Jointly, those provisions of CAR relate to the following:

- (a) airworthiness requirements; maintenance; defect reporting; flight manuals — respectively, Parts 4, 4A, 4B and 4C;
- (b) removing or altering of a manufacturer's data plate, as well as removing, altering or transferring other identifying information on particular components — Part 4D;
- (c) keeping and retaining navigation logs — Part 7;
- (d) transmitting on an aeronautical radio frequency of a kind used for the purpose of ensuring the safety of air navigation — subregulation 83 (1);
- (e) particular requirements for Australian aircraft, related to: requirements to be satisfied before a pilot in command commences a flight; documents that the pilot in command must carry on the aircraft; conducting aerobatic manoeuvres; and flying below specific heights over cities, towns, populous areas or any other area — respectively, regulations 133, 139, 155 and 157;
- (f) formation flying — subregulation 163AA (2);
- (g) requiring a pilot in command operating an aircraft on the manoeuvring area of, or in the vicinity of, a non-controlled aerodrome to maintain the same track from take-off until the aircraft is 500 feet above the terrain, unless a change in track is necessary to avoid the terrain — paragraph 166A (2) (f);
- (h) requiring a person not to use an Australia aircraft in a class of operation unless CASA has granted particular approvals and made particular directions, and requiring the person to use the aircraft in accordance with CASA's directions (if any) — regulation 207;
- (i) the minimum and supplementary number of operating crew of an Australian aircraft, and the qualifications of the operating crew — regulation 208;
- (j) restriction of advertising commercial operations — regulation 210;
- (k) when a person must not start the engine of an Australian aircraft, or permit the engine of an Australian aircraft to be started — regulation 230;

- (l) displaying lights on aircraft, and displaying lights and markings on mooring cables — Division 4 of Part 13;
- (m) conduct of operations — Division 3 of Part 14;
- (n) as directed by CASA, providing emergency systems and equipment and life-saving equipment that CASA considers necessary to safeguard an aircraft and persons on board the aircraft — regulation 252;
- (o) requiring the pilot in command of an aircraft not to fly over water greater than a particular distance from land — regulation 258;
- (p) a transitional provision setting out requirements that apply to the holder of the certificate of registration for an Australian aircraft for which a flight manual of a particular kind has been issued — regulation 322.

Subsection 6 of CAO 95.12 and subsection 7 of CAO 95.12.1 each set out flight conditions.

Under paragraph 6.3 of CAO 95.12, a gyroplane may be flown inside Class A, B, C or D airspace only if all of the conditions in subparagraphs (a) to (f) are complied with. Relevantly, the condition in subparagraph 6.3 (d) of CAO 95.12 requires the gyroplane to be “flown by the holder of a pilot licence with a gyroplane category rating” that is “issued under Part 61 of CASR and “that allows the holder to fly inside the controlled airspace”.

For aircraft to which CAO 95.12.1 applies, subparagraph 7.4 (d) of CAO 95.12.1 is expressed identically to, and has the same effect as, subparagraph 6.3 (d) of CAO 95.12.

Background

The Manual of Standards to Part 61 of CASR does not include standards related to issuing gyroplane category ratings. Therefore, ASRA members are unable to meet the requirement for a gyroplane category rating mentioned in subparagraph 6.3 (d) of CAO 95.12 and subparagraph 7.4 (d) of CAO 95.12.1. The amendments to subparagraph 6.3 (d) of CAO 95.12 and subparagraph 7.4 (d) of CAO 95.12.1 are intended to address those circumstances and a related unintended consequence: ASRA members cannot fly their gyroplanes in Class A, B, C or D airspace.

CAO 95.12 and CAO 95.12.1 will no longer be required after relevant provisions in Part 103 of CASR, related to sport and recreation aircraft, commence. Part 103 of CASR is located in Schedule 1 to the *Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019*. At the time of preparing this explanatory statement, Schedules 1 to 3 of the *Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019* are scheduled to commence on 25 March 2021.

Overview of instrument

The instrument would enable an ASRA member to operate in Class A, B, C or D airspace an aircraft to which CAO 95.12 or CAO 95.12.1 applies, if the ASRA member holds a pilot licence with an aeroplane category rating (instead of a gyroplane category rating).

The instrument would also:

- (a) more precisely identify the intended provision mentioned in the cross-references in subparagraph 3 (f) of CAO 95.12 and subparagraph 3.1 (g) of CAO 95.12.1; and
- (b) correct some incorrect cross-references in subsection 3 of CAO 95.12 and paragraph 3.1 of CAO 95.12.1; and

- (c) repeal provisions in subsection 3 of CAO 95.12 and paragraph 3.1 of CAO 95.12.1 that consist solely of cross-references to repealed provisions of CAR.

CASA has assessed the ASRA's application for the amendment of CAO 95.12 and CAO 95.12.1 to enable an ASRA member to operate in Class A, B, C or D airspace an aircraft to which CAO 95.12 or CAO 95.12.1 applies, if the ASRA member holds a pilot licence with an aeroplane category rating (instead of a gyroplane category rating). CASA is satisfied that the amendments would maintain an equivalent level of safety of operations by ASRA members who hold a pilot licence of that kind.

Content of instrument

Section 1 names the instrument.

Section 2 provides that the instrument commences on the day after it is registered on the Federal Register of Legislation (*FRL*).

Section 3 provides that Schedule 1 amends CAO 95.12.

Section 4 provides that Schedule 2 amends CAO 95.12.1.

Schedule 1 includes the following amendments of CAO 95.12:

- (a) Items [1] and [2] correct incorrect cross-references in subparagraphs 3 (b) and 3 (d);
- (b) Item [3] more precisely identifies the intended cross-reference in subparagraph 3 (f);
- (c) Items [4] and [5] repeal subparagraph 3 (h) – a provision that consists solely of a cross-reference to a repealed provision of CAR – and make a consequential amendment to subparagraph 3 (g);
- (d) Item [6] replaces “gyroplane category rating” with “aeroplane category rating” in subparagraph 6.3 (d) and, therefore, gives effect to the main purpose of amending CAO 95.12.

Schedule 2 includes the following amendments of CAO 95.12.1:

- (a) Item [1] removes an incorrect cross-reference in subparagraph 3.1 (c). By removing that cross-reference, item [1] removes an existing exemption from compliance with regulation 155 of CAR. The removal of that exemption is consistent with CASA's policy that gyroplanes should not, under CAO 95.12.1, be exempt from compliance with the requirements, mentioned in regulation 155 of CAR, for conducting aerobatic manoeuvres;
- (b) Items [2] and [3] correct incorrect cross-references in, respectively, subparagraphs 3.1 (d) and 3.1 (e);
- (c) Item [4] repeals subparagraph 3.1 (f) – a provision that consists solely of a cross-reference to a repealed provision of CAR;
- (d) Item [5] more precisely identifies the intended cross-reference in subparagraph 3.1 (g);
- (e) Items [6] and [7] repeal subparagraph 3.1 (j) – a provision that consists solely of a cross-reference to a repealed provision of CAR – and make a consequential amendment to subparagraph 3.1 (i);
- (f) Item [8] replaces “gyroplane category rating” with “aeroplane category rating” in subparagraph 7.4 (d) and, therefore, gives effect to the main purpose of amending CAO 95.12.1.

Legislation Act 2003 (the LA)

Paragraph 10 (1) (d) of the LA provides that an instrument will be a legislative instrument if it includes a provision that amends or repeals another legislative instrument. This instrument amends *Civil Aviation Order 95.12 Instrument 2011* and *Civil Aviation Order 95.12.1 Instrument 2011*, each of which was registered as a legislative instrument. Therefore, this instrument is also a legislative instrument, subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Consultation

The main amendments in the instrument were requested by ASRA to give effect to previously accepted CASA policy and, therefore, to remove an unintended disadvantage from operators of aircraft to which CAO 95.12 or CAO 95.12.1 applies.

CASA has consulted with the ASRA on removing from CAO 95.12.1 the existing exemption from compliance with regulation 155 of CAR. During the consultation, the ASRA agreed to aligning the requirement in subparagraph 3.1 (c) of CAO 95.12.1 with the requirement in subparagraph 3 (c) of CAO 95.12.

In these circumstances, CASA is satisfied that no further 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

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 the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

The instrument commences on the day after registration and is automatically repealed in accordance with section 48A of the LA.

Statement of Compatibility with Human Rights

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

Civil Aviation Order 95.12 and Civil Aviation Order 95.12.1 Amendment Instrument 2020 (No. 1)

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 instrument would enable an Australian Sports Rotorcraft Association (*ASRA*) member to operate in Class A, B, C or D airspace an aircraft to which Civil Aviation Order (*CAO*) 95.12 or CAO 95.12.1 applies, if the ASRA member holds a pilot licence with an aeroplane category rating (instead of a gyroplane category rating).

The instrument would also:

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Human rights implications

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 positively engaged because the amendments of subparagraph 6.3 (d) of CAO 95.12 and subparagraph 7.4 (d) of CAO 95.12.1 enable ASRA members who hold a pilot licence with an aeroplane category rating to fly an aircraft to which CAO 95.12 or CAO 95.12.1 applies in Class A, B, C or D airspace. Therefore, the instrument promotes the right to work of ASRA members who hold pilot licences with an aeroplane category rating.

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

Conclusion

This legislative instrument is compatible with human rights as it does not adversely affect any human rights.

Civil Aviation Safety Authority