

Explanatory Statement

Civil Aviation Regulations 1988

Civil Aviation Safety Regulations 1998

Civil Aviation Order 95.10 (Exemption from provisions of the Civil Aviation Regulations 1988 and the Civil Aviation Safety Regulations 1998 — microlight aeroplanes) Instrument 2020

Purpose

The purpose of *Civil Aviation Order 95.10 (Exemption from provisions of the Civil Aviation Regulations 1988 and the Civil Aviation Safety Regulations 1998 — microlight aeroplanes) Instrument 2020* is to reissue *Civil Aviation Order 95.10 Instrument (Repeal and Remake) 2017* (that is due to expire at the end of 30 September 2020) in order to continue to exempt operators of microlight aeroplanes from particular requirements of the *Civil Aviation Regulations 1988 (CAR)* and the *Civil Aviation Safety Regulations 1998 (CASR)*. In addition, the instrument enables Approved Self-administering Aviation Organisations (*ASAOs*) to become authorised to exercise aviation administration functions in relation to microlight aeroplanes. This instrument is expected to be superseded by Part 103 of CASR and the *Part 103 Manual of Standards* (which is yet to be made) on 2 December 2021.

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 CASR and CAR.

Under section 20AB (1) (b) of the Act, a person must not perform any duty that is essential to the operation of an Australian aircraft during flight time unless the person is authorised by or under the regulations to perform that duty without the civil aviation authorisation concerned.

Regulation 200.002 of CASR applies to particular kinds of privately built single-place aeroplanes. It provides that such aeroplanes are exempt from CASR if the conditions in section 95.10 of the Civil Aviation Orders are complied with.

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, the Civil Aviation Safety Authority (*CASA*) may grant an exemption from a provision of the regulations, including CAR, in relation to a matter mentioned in that subsection.

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.

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 reissue 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 renew an exemption on its own initiative.

Regulation 11.205 of CASR 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 is 3 years.

Regulation 5 of CAR allows CASA to issue a permission, approval or authority in Civil Aviation Orders.

Background

The instrument applies in relation to microlight aeroplanes that are registered with sport aviation bodies. The aeroplanes falling within the definition of microlight aeroplane will eventually be a class of sport and recreational aviation aeroplanes under Part 103 of CASR (anticipated to commence on 2 December 2021). Microlight aeroplanes are single-place aeroplanes that have low take-off weights and low maximum wing loadings. In previous forms of CAO 95.10, these aeroplanes were called ultralight aeroplanes.

CAO 95.10 (in substantially the same form as the instrument) was made in 2011 and subsequently remade in 2014 and 2017. Before 2011, CAO 95.10 applied to privately built single-place ultralight aeroplanes, but in 2011 the scope of CAO 95.10 was broadened to extend to low-momentum ultralight aeroplanes and activities appropriate to those aeroplanes.

Until now, the organisations authorised to administer aviation activities for such aeroplanes were the Sports Aviation Federation of Australia Limited (**SAFA**) (previously the Hang Gliding Federation of Australia Inc.) and Recreational Aviation Australia Limited (**RAAus**). Of these two sport aviation bodies, SAFA currently administers weight-shift-controlled ultralight aeroplanes and RAAus administers 3-axis aeroplanes. The proposed instrument continues that situation whilst also opening the field to other ASAOs to perform such functions under Part 149 of CASR and its companion *Part 149 (Approved Self-administering Aviation Organisations) Manual of Standards 2018*. This is the main point of difference between this instrument and its predecessor (*Civil Aviation Order 95.10 Instrument (Repeal and Remake) 2017*) (the **previous CAO**).

Overview of instrument

The proposed instrument is to operate in substantially the same way as the previous CAO but with updated terminology and minor drafting improvements and additional provisions to enable ASAOs to exercise the necessary aviation administration functions in relation to microlight aeroplanes.

CASA has assessed the potential risks of enabling ASAOs to administer the functions of Part 149 of CASR in relation to microlight aeroplanes. ASAOs will need to apply for a certificate to carry out the functions under Part 149 of CASR in relation to microlight aeroplanes and meet the requirements under that Part, which include compliance with

their exposition and civil aviation legislation. Accordingly, CASA is confident that robust approval requirements for the Part 149 of CASR administration system will address any potential risk.

Documents incorporated by reference

The instrument incorporates the following documents:

- RAAus Operations Manual;
- RAAus Technical Manual;
- SAFA Operations Manual;
- the CASR Dictionary, for the definition of *exposition*, used in the instrument as “a relevant ASAO’s exposition;”
- *Part 149 (Approved Self-administering Aviation Organisations) Manual of Standards 2018 (the Part 149 MOS)*, for the definition of *weight-shift-controlled aeroplane*;
- the *Determination of Airspace and Controlled Aerodromes Etc. (Designated Airspace Handbook) Instrument*, as in force from time to time, for the determination of classes of airspace referred to in this instrument.

In accordance with paragraph 15J (2) (c) of the *Legislation Act 2003* (the *LA*), the following table contains a description of the incorporated documents, how the document is incorporated, a description of the document and the organisation responsible for each document and how they may be obtained.

Document and how incorporated	Description	Source
RAAus Operations Manual, approved in writing by CASA from time to time. The whole document is incorporated.	This document sets out operational requirements relating to 3-axis microlight aeroplanes that are registered with RAAus (operating otherwise than as an ASAO)	Prepared by RAAus and given to CASA, and to persons in relation to microlight aeroplanes registered with RAAus. Freely available on the Internet on the following web page: https://www.raa.asn.au/
RAAus Technical Manual, approved in writing by CASA from time to time. The whole document is incorporated.	This document sets out airworthiness, design and maintenance standards relating to 3-axis microlight aeroplanes that are registered with RAAus (when operating otherwise than as an ASAO)	Prepared by RAAus and given to CASA, and to persons in relation to microlight aeroplanes registered with RAAus. Freely available on the Internet on the following web page: https://www.raa.asn.au/

Document and how incorporated	Description	Source
<p>SAFA Operations Manual, approved in writing by CASA from time to time. The whole document is incorporated.</p>	<p>This document sets out operational requirements, airworthiness, design and maintenance standards and aeronautical practices, test procedures and processes relating to weight-shift-controlled microlight aeroplanes that are registered with SAFA (when operating otherwise than as an ASAO).</p>	<p>Prepared by SAFA and given to CASA, and to persons in relation to microlight aeroplanes registered with SAFA. Freely available on the Internet on the following web page: https://members.safa.asn.au/isonic-download.php?docid=0X0X1X1X47R2hYQ2t5YU9HL0xIL1RBbjlrM1VEdz09</p>

Document and how incorporated	Description	Source
<p>Relevant ASAO's <i>exposition</i>, defined in the CASR Dictionary as:</p> <p>(a) the set of documents approved by CASA under regulation 149.080 in relation to the ASAO; or</p> <p>(b) if the set of documents is changed under regulation 149.115 or 149.120, or in accordance with the process mentioned in paragraph 149.340 (i)—the set of documents as changed.</p> <p>The ASAO is required to keep the exposition up-to-date under regulation 149.350 of CASR.</p> <p>Accordingly, the exposition will, under Part 149 of CASR, effectively apply as it exists from time to time, even though those words are not used.</p> <p>Only the definition of <i>exposition</i> is incorporated.</p>	<p>Although no ASAOs are currently authorised to administer microlight aeroplanes, when that eventually does happen, it is anticipated that the ASAO's exposition will contain, or refer to, operational requirements and airworthiness, design and maintenance standards relating to microlight aeroplanes of the kind that the ASAO is authorised to administer.</p>	<p>The exposition is prepared by the relevant ASAO and, under regulation 149.350 of CASR, is required to be made accessible to CASA and to holders of authorisations issued by the ASAO in relation to microlight aeroplanes registered with the ASAO. The contravention by an ASAO of this requirement is an offence of strict liability.</p> <p>If the exposition contains or refers to reference materials under regulation 149.285 of CASR (which include, amongst other things, flight manuals, handbooks and maintenance manuals), the ASAO is required, under regulation 149.285 (2) (b) of CASR, to ensure that authorisation holders have access to those documents.</p> <p>There is no statutory requirement for an ASAO to make its exposition (or any reference materials contained or referred to in the exposition) freely available, however, it is anticipated that those parts of the exposition relating to operational requirements and airworthiness, design and maintenance standards, and any relevant reference materials will be published on the relevant ASAO's web page, just as the equivalent documents produced by sporting aviation bodies such as RAAus and SAFA are published on those organisations' websites.</p> <p>The exposition, although approved by CASA, will not be owned by CASA and accordingly CASA will not be in a position to make it freely available.</p>

Document and how incorporated	Description	Source
<p>The Part 149 MOS Only the definition of <i>weight-shift-controlled aeroplane</i> is incorporated, as in force from time to time.</p>	<p>The Part 149 MOS is made under Part 149 of CASR and sets out matters relating to the functions and obligations of ASAOs. A <i>weight-shift-controlled aeroplane</i> is defined in section 9 (3) of the Part 149 MOS as “an aeroplane, however described, where flight control is attained primarily by weight-shift”.</p>	<p>Issued by CASA under regulation 149.010 of CASR, in force and freely available on the Federal Register of Legislation which is accessible via the Internet on the following webpage: https://www.legislation.gov.au/Details/F2018L01800</p>
<p>The <i>Determination of Airspace and Controlled Aerodromes Etc. (Designated Airspace Handbook) Instrument</i>, as in force from time to time.</p> <p>Only references to classes of airspace, as determined by CASA in that instrument, are incorporated.</p>	<p>This is a legislative instrument that is revised and reissued by CASA approximately every 6 months.</p>	<p>Airspace details from the Determination in force at any particular time are published by Airservices Australia in the Designated Airspace Handbook. The instrument is also freely available on the Federal Register of Legislation which is accessible via the Internet. The current instrument is on the following webpage: https://www.legislation.gov.au/Details/F2020L00595</p>

Subparagraph 14 (1) (a) (ii) of the LA allows a legislative instrument to apply, adopt or incorporate the provisions of another legislative instrument, as the other instrument is in force at a particular time or in force from time to time. The other instrument must be of a type mentioned in subsection 14 (3) of the LA, which relevantly includes a disallowable instrument. This is relevant to the incorporation of:

- a relevant ASAO’s *exposition* (which is a term defined in the CASR Dictionary);
- the Part 149 MOS, in relation to the definition of *weight-shift-controlled aeroplane*; and
- the *Determination of Airspace and Controlled Aerodromes Etc. (Designated Airspace Handbook) Instrument*, in relation to the references to classes of airspace.

Subsection 14 (2) of the LA states that, unless a contrary intention appears in the enabling legislation, a legislative instrument may not make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time. This contrary intention appears

in subsection 98 (5D) of the Act, which provides that a legislative instrument made under the Act or the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time, even if the other instrument or writing does not yet exist when the legislative instrument is made. This is relevant to the incorporation of the RAAus Operations Manual and Technical Manual and the SAFA Operations Manual. By contrast, subsection 14 (2) of the LA is not relevant to an ASAO's exposition as the exposition is a statutory creature that effectively exists from time to time by virtue of the statutory provisions in CASR and the Part 149 MOS and not as a result of the instrument.

Content of instrument

Subsection 1A sets out the name of the instrument which differs from the previous CAO in that it includes the subject matter of the Order, namely "Exemption from provisions of the Civil Aviation Regulations 1988 and the Civil Aviation Safety Regulations 1998 — microlight aeroplanes".

Subsection 1B sets out the duration of the instrument, specifying that it commences on 1 October 2020 (the day after the previous CAO was repealed) and is repealed on the earlier of the commencement of Schedule 1 to the *Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019* (expected to be on 2 December 2021) or the end of 30 September 2023. Part 103 of CASR and the Part 103 MOS are intended to replace this instrument.

Subsection 1 provides that the Order applies in relation to microlight aeroplanes that are registered with a sport aviation body. This subsection looks different to subsection 1 of the previous CAO in that most of the detail has been moved elsewhere in the Order to where it sits more comfortably. The definition of *microlight aeroplane* is now in paragraph 2.1.

Subsection 2 provides for definitions of terms used in the Order. Some of the terminology has been updated since the previous CAO, the most obvious being a change from *ultralight aeroplane* to *microlight aeroplane* and the introduction of the terms *3-axis aeroplane* and *weight-shift-controlled aeroplane* to clarify the distinction between the two different types of microlight aeroplanes governed by the instrument. These terms are not new but their inclusion will clarify the scope of the Order. Most other terms are substantially unchanged since the previous CAO with the exception of updated legal citations of the sporting aviation bodies *RAAus* (which is to continue to register and administer 3-axis aeroplanes) and *SAFA* (previously HGFA, which is to continue to register and administer weight-shift-controlled aeroplanes). Those two bodies are now described as "operating otherwise than as an ASAO" in order to distinguish them from organisations that are authorised to administer microlight aeroplanes as ASAOs. It is contemplated that RAAus and SAFA may eventually be authorised as ASAOs in relation to microlight aeroplanes, in which case they will be treated under the Order as an ASAO. The use of the terms *ASAO* (defined in the CASR Dictionary) and *relevant ASAO* reflects the new role of ASAOs in registering and administering microlights under this Order.

Some definitions, such as *aerial application operation* and *approved kit* have been removed from the definition subsection as they are either no longer used or they have been moved to, and incorporated in, the text of the Order where they are used, thereby improving the Order's readability. Subsections 2.2 to 2.6 of the previous CAO have undergone minor updates to terminology and renumbering, with the result that there are now 9 subparagraphs.

Subsection 3 provides for exemptions from compliance with specified provisions of CAR and, in the case of SAFA-registered weight-shift-controlled aeroplanes, from provisions of CASR. The exemptions from CAR are the same as they were in the previous CAO. The exemption from Part 61 of CASR (which appeared in the lead-in words of subsection 3 of the previous CAO) has been deleted and replaced with subparagraph 3.2 (b) which is considered to better reflect recent and past practice in relation to weight-shift-controlled aeroplanes registered with SAFA, bringing requirements for those aeroplanes into closer alignment with the exemption under regulation 200.002 of CASR. Consistent with the previous CAO, the exemptions are subject to compliance with the conditions in the Order.

Subsection 4 provides for an authorisation for a person to perform a duty essential for the operation of a microlight aeroplane without holding a flight crew licence. It is in substantially the same form as it was in the previous CAO, with minor drafting improvements.

Subsection 5 contains conditions on the exemptions in subsection 3. It has changed since the previous CAO, namely paragraphs 5 (a) and (b) have been imported from subsection 1 (Application) of the previous CAO and now sit more comfortably as conditions under subsection 5. This has not changed the overall effect of the instrument. The remaining conditions set out in subsection 5 are substantially the same as those in the previous CAO, but with minor drafting improvements and new references to ASAOs and the relevant ASAO's exposition. The other conditions are the same as those in the previous CAO, including a requirement to display signs relating to airworthiness in the aeroplane, a prohibition from using the aeroplane in aerial application operations, a requirement to use the aeroplane only for private purposes, a requirement for the pilot to hold a pilot certificate and other operational and maintenance requirements depending on the type of microlight aeroplane and which organisation exercises administrative functions in relation to it.

Subsections 6 and 7 set out the flight conditions which are substantially the same as those in the previous CAO, with most of the changes reflecting the new administrative functions for ASAOs. The conditions under subsection 6 include flight height, location and airspace restrictions, requirements to fly only in VMC, during daylight hours and not in acrobatic flight or over closely settled areas, to be suitably authorised if using radiotelephone equipment, equipment (life jacket, ELT and personal locator beacon) that is required to be carried for certain flights over water and conditions regarding flying in controlled airspace. The conditions under subsection 7 relate to flight height limitations (expanding on the flight height conditions under subsection 6) including the circumstances when a microlight aeroplane may fly below 500 feet, above 5,000 feet and above 10,000 feet.

Subsection 8 provides for an approval process for persons wishing to fly a microlight aeroplane otherwise than in accordance with the Order. The subsection is in the same form as in the previous CAO.

Subsection 9 sets out the transitional provisions, continuing certificates, approvals and authorisations by RAAus or SAFA, and approvals and determinations by CASA, from the previous CAO to the proposed Order.

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 aeroplanes. Additionally, paragraph 98 (5AA) (a) of the Act 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 exempts all operators of microlight aeroplanes from various provisions of CAR. 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.

Consultation

The instrument is being re-issued to replace the previous CAO which expires at the end of 30 September 2020 and the opportunity has been taken to reflect the administrative role of ASAOs, a measure which was always contemplated with the commencement of Part 149 of CASR. This CAO contains substantially the same content as previous versions of CAO 95.10 (for which consultation was undertaken) with the only changes being minor or mechanical in nature. It is essential to re-issue the rules to provide continued relief to the operators of microlight aeroplanes covered by the instrument which would otherwise be grounded. Accordingly, 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)

This instrument exempts microlight aeroplanes registered with RAAus, SAFA or an ASAO from provisions of CAR and CASR. Accordingly, a Regulation Impact Statement (RIS) is not required in this case, as the instrument is covered by a standing agreement between CASA and OBPR under which a RIS is not required for exemptions (OBPR id: 14507).

Sector risk, economic and cost impact

Subsection 9A (3) of the Act states that subject to regarding the safety of air navigation as the most important consideration, 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.

This instrument makes minor or machinery changes to an existing instrument and there will be no change to the economic or cost impact on individuals, businesses or the community

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights at Appendix 1 has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The instrument does not engage any of the applicable rights or freedoms, and is compatible with human rights, as it does not raise any human rights issues.

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 1 October 2020 and is repealed on the earlier of:

- the day of commencement of Schedule 1 to the *Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019*; or
- the end of 30 September 2023.

Statement of Compatibility with Human Rights

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

Civil Aviation Order 95.10 (Exemption from provisions of the Civil Aviation Regulations 1988 and the Civil Aviation Safety Regulations 1998 — microlight aeroplanes) Instrument 2020

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 the *Civil Aviation Order 95.10 (Exemption from provisions of the Civil Aviation Regulations 1988 and the Civil Aviation Safety Regulations 1998 — microlight aeroplanes) Instrument 2020* is to reissue the *Civil Aviation Order 95.10 Instrument 2017* in order to continue to exempt microlight aeroplanes from particular requirements of the *Civil Aviation Regulations 1988* and the *Civil Aviation Safety Regulations 1998*. This will ensure the continuation of the appropriate level of regulation of the operations of such aeroplanes until the instrument is superseded on the commencement of Part 103 of the *Civil Aviation Safety Regulations 1998*, or at the end of 30 September 2023, whichever occurs sooner.

Human rights implications

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

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

Civil Aviation Safety Authority