

## Explanatory Statement

### Civil Aviation Regulations 1988

### Civil Aviation Safety Regulations 1998

## Civil Aviation Order 95.10 (Exemptions from CAR and CASR — Microlight Aeroplanes) Instrument 2021

### Purpose

The purpose of *Civil Aviation Order 95.10 (Exemptions from CAR and CASR — Microlight aeroplanes) Instrument 2021* (the **instrument**) is to repeal and reissue *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* (the **previous CAO**) in order to:

- (a) continue to exempt operators of Microlight Aeroplanes from provisions of the regulations, which involves transitioning from exemptions from CAR to exemptions from their equivalent provisions in *Civil Aviation Safety Regulations 1988 (CASR)* following the commencement, on 2 December 2021, of the following legislation:
  - the *Civil Aviation Safety Amendment (Part 91) Regulations 2018*;
  - the *Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019*;
  - the *Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions) Regulations 2021*.

The instrument reissues the previous CAO and is required for two main reasons: first, because the *Part 103 Manual of Standards (MOS)* that was originally intended to accompany new Part 103 of CASR will not commence as anticipated on 2 December 2021; and secondly, most of the provisions of CAR are being repealed on that date and as a result, the previous CAO will be ineffective in providing exemptions for operators of relevant aircraft as it refers to the obsolete CAR provisions. The instrument is being remade with exemptions from equivalent provisions in CASR. This will enable reasonable continuity for operators of such aircraft, whilst creating a bridge to the new flight rules under Part 91 of CASR and, eventually, to the new rules for sport and recreation aircraft under Part 103 of CASR. The opportunity has also been taken to make minor drafting improvements and updating or deleting outdated or obsolete provisions.

### Legislation

Subsection 20AB (1) of the *Civil Aviation Act 1988* (the **Act**) provides that 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 to do so under a civil aviation authorisation or is authorised by or under the regulations to perform that duty without the civil aviation authorisation.

For paragraph 20AB (1) (a) of the Act, a person is taken to hold a civil aviation authorisation that is in force and authorises the person to perform a duty that is essential to the operation of an unregistered Australian aircraft during flight time if:

- (a) the person holds a pilot certificate granted by a sport aviation body that administers aviation activities in the aircraft; and
- (b) the person operates the aircraft in accordance with the sport aviation body's operations manual and the conditions of the instrument.

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 *Civil Aviation Regulations 1988* (*CAR*).

Subpart 11.F of the CASR provides for the granting of exemptions from 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 compliance with 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.

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, 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 reissue an exemption on its own initiative.

Regulation 11.205 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.

Under subsection 14 (1) of the *Legislation Act 2003* (the *LA*), a legislative instrument may make provision in relation to matters by applying, adopting or incorporating provisions of an Act or disallowable legislative instrument as in force at a particular time or as in force from time to time. A legislative instrument may also make provision in relation to matters by applying, adopting or incorporating any matter contained in any other instrument or writing as in force at, or before, the time the legislative instrument commences. Under subsection 14 (2) of the LA, unless the contrary intention appears, the 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. However, subsection 98 (5D) of the Act provides that, despite section 14 of the LA, 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.

## **Background**

Part 103 of CASR was made on 12 December 2019 and commences on 2 December 2021. Part 103 sets out the operating rules for a wide range of non-registered aircraft, referred to as Part 103 aircraft (regulation 103.005), including:

- sailplanes
- powered parachutes
- gyroplanes
- gyrogliders
- hang gliders and powered hang gliders
- paragliders and powered paragliders
- rotorcraft that are prescribed in the Part 103 MOS
- weight-shift-controlled aeroplanes that are prescribed in the Part 103 MOS
- any other aeroplane that is prescribed in the Part 103 MOS - these include very light aeroplanes, covered by a range of certification criteria.

The purpose of Part 103 is to provide regulations for the operation of sport and recreational aircraft administered by an approved self-administering organisation (ASAO) under Part 149. A Part 149 ASAO certificate would list functions the organisation administers such as personnel authorisations, training, aircraft airworthiness authorisations and systems, oversight, education, enforcement.

Prior to 2 December 2021, these aircraft were operated according to a suite of exemptions in the 95 series of Civil Aviation Orders (CAO). Broadly speaking, pilots were allowed to operate the aircraft outside of the generally applied operating rules - in CARs, as long as they comply with the operations manual of the specified sport aviation body of the conditions of the CAO.

Part 103 of CASR provides the operating rules for these aircraft in a similar way, although the link to the sport aviation body is replaced by a link to Part 149 where the responsibility for administering the operations is held by the holder of a Part 149 certificate.

Regulation 103.015 makes provision for CASA to make a manual of standards (MOS) for various matters referred to in the regulations - for example, the kinds of aeroplanes referred to above.

In consultation with an established industry working group, CASA has opted to defer the making of the Part 103 MOS to allow further development of it. Therefore, to ensure operations of microlight aeroplanes can continue after 2 December 2021, the instrument was remade.

This instrument continues the substance of regulatory exemptions from CAR applying under the previous CAO, however, in form, the exemptions are now largely from the equivalent provisions under CASR, in particular, the new Part 91 provisions. Industry and operators should not experience any disruption to operations as a result of this instrument.

## **Overview of instrument**

The instrument enables the continuation of exemptions for operators of microlight aeroplanes from certain requirements of the CAR and enables the introduction of exemptions for those

operators from certain requirements of the CASR. *Microlight aeroplane* is defined in section 5 of the instrument.

The instrument reissues the previous CAO in substantially the same form, with the changes being minor drafting improvements, updating or deletion of outdated or obsolete provisions and the introduction of some new provisions. The commencement of Part 91 of CASR (on 2 December 2021) repealed certain provisions of CAR that impact the operations of microlight aeroplanes. Therefore, provisions to maintain the operating environment have been drafted into the Part 103 MOS. However, because the making of the Part 103 has been deferred, equivalent provisions have been included in this instrument.

The intent of the changes is to maintain the operating environment for microlight aeroplanes that existed immediately before 2 December 2021.

### Documents incorporated by reference

In accordance with paragraph 15J (2) (c) of the LA, the following table contains a description of the documents incorporated by reference into the legislative instrument, the organisation responsible for each document and how they may be obtained. The table also states how the document is incorporated.

Document	Description	Manner of incorporation	Source
<i>Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019</i>	Called up for the purpose of defining the commencement of the instrument	As in force from time to time.  Paragraph 14(1)(a) of the <i>Legislation Act 2003</i> authorises the incorporation of this instrument as in force from time to time.	This document is available for free on the Federal Register of Legislation.
<i>Civil Aviation Regulations 1988</i>	Various provisions of the instrument call up provisions in the Civil Aviation Regulations 1988.	As in force from time to time.  Paragraph 14(1)(a) of the <i>Legislation Act 2003</i> authorises the incorporation of this instrument as in force from time to time.	This document is available for free on the Federal Register of Legislation.

<b>Document</b>	<b>Description</b>	<b>Manner of incorporation</b>	<b>Source</b>
<i>Civil Aviation Safety Amendment (Part 91) Regulations 2018</i>	Called up for the purpose of defining the commencement of the instrument	As in force from time to time.  Paragraph 14(1)(a) of the <i>Legislation Act 2003</i> authorises the incorporation of this instrument as in force from time to time.	This document is available for free on the Federal Register of Legislation.
<i>Civil Aviation Safety Regulations 1988</i>	Various provisions of the instrument call up provisions in the <i>Civil Aviation Safety Regulations 1988</i> .	As in force from time to time.  Paragraph 14(1)(a) of the <i>Legislation Act 2003</i> authorises the incorporation of this instrument as in force from time to time.	This document is available for free on the Federal Register of Legislation.
<i>Determination of Airspace and Controlled Aerodromes Etc. (Designated Airspace Handbook) Instrument</i>	This instrument determines relevant volumes of airspace as flight information regions and areas, as classifications of airspace, and as control zones, and determines relevant controlled aerodromes.  It is a legislative instrument that is revised and reissued by CASA approximately every 6 months.  Incorporated for the purpose of avoiding doubt about references made to a class of airspace.	As in force from time to time.  Paragraph 14(1)(a) of the <i>Legislation Act 2003</i> authorises the incorporation of this instrument as in force from time to time.	This document is available for free on the Federal Register of Legislation.

Document	Description	Manner of incorporation	Source
Exposition, of an ASAO	<p>Exposition, for an ASAO, means:</p> <p>(i) the set of documents approved by CASA under regulation 149.080 in relation to the ASAO; or</p> <p>(ii) 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>Various provisions of the instrument call up an exposition.</p>	<p>As existing from time to time.</p> <p>Subsection 98 (5D) of the Act authorises the incorporation of this document into the instrument as existing from time to time.</p>	<p>The relevant exposition is available to members of the relevant ASAO.</p>
Operations manual (of a Sports Aviation Body)	<p>The manual, approved from time to time by CASA, that contains the practices, procedures, instructions and other information by which the sport aviation body ensures the operational safety of the aircraft in accordance with the civil aviation legislation.</p> <p>Various provisions of the instrument call up an operations manual.</p>	<p>As existing from time to time.</p> <p>Subsection 98 (5D) of the Act authorises the incorporation of this document into the instrument as existing from time to time.</p>	<p>The document is available to members of the relevant Sports Aviation Body.</p>
<i>Part 91 Manual of Standards</i>	<p>The Part 91 MOS prescribes matters relating to general operating and flight rules permitted under Part 91 to be prescribed in the MOS.</p> <p>Various provisions of the instrument call up provisions in the Part 91 MOS.</p>	<p>As in force from time to time.</p> <p>Paragraph 14(1)(a) of the <i>Legislation Act 2003</i> authorises the incorporation of this instrument as in force from time to time.</p>	<p>This document is available for free on the Federal Register of Legislation.</p>

<b>Document</b>	<b>Description</b>	<b>Manner of incorporation</b>	<b>Source</b>
Technical manual (of a Sports Aviation Body)	<p>The manual, approved from time to time by CASA, that contains:</p> <p>(a) airworthiness, design and maintenance standards; and</p> <p>(b) aeronautical practices and test procedures and processes; by which the relevant sport aviation body ensures the technical safety of the aircraft in accordance with the civil aviation legislation.</p> <p>Various provisions of the instrument call up a technical manual.</p>	<p>As existing from time to time.</p> <p>Subsection 98 (5D) of the Act authorises the incorporation of this document into the instrument as existing from time to time.</p>	<p>The document is available to members of the relevant Sports Aviation Body.</p>

The exposition of an ASAO, or the operations manual or technical manual of an SAB are typically available to operators and pilots who are members of the applicable ASAO or SAB. CASA has incorporated the documents in the instrument because aviation safety requires the use of the information and data in the documents by aircraft operators and pilots. ASAOs and SABs administer a wide variety of aircraft types and operations, and to make legislation addressing all the relevant operation and technical aspects would result in lengthy and complex legislation.

### **Content of instrument**

Subsection 1 sets out the name of the instrument: *Civil Aviation Order 95.10 (Exemptions from CAR and CASR — Microlight Aeroplanes) Instrument 2021*.

Subsection 2 provides that the instrument commences on 2 December 2021 after the commencement of both of the following:

- (i) Schedule 1 to the *Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019*; and
- (ii) the *Civil Aviation Safety Amendment (Part 91) Regulations 2018*.

It also states that the instrument is repealed at the end of 1 December 2024.

Subsection 3 identifies the repeal of the previous CAO registered with FRL.

Subsection 4 provides that the order applies to a microlight aeroplane if it is listed with a sport aviation body.

Subsection 5 provides for definitions of terms used in the instrument. Some of the terminology has been updated since the previous CAO. Some further definitions have been

added to provide for the clarity around lightweight aeroplanes within the application of the instrument.

The legal citations of the sporting aviation bodies are updated to remove *RAAus* and *SAFA*. Those 2 bodies are now described as a *relevant sport aviation body*. RAAus is currently an ASAO and it is expected that SAFA would be authorised as an ASAO in relation to relevant aircraft, in which case it will be treated under the instrument as an ASAO. Definitions regarding operational or technical manuals have also been updated to reflect the *relevant sport aviation body* rather than be specific to *RAAus* or *SAFA*.

Subsection 6 provides that the relevant aircraft is not required to be issued with a certificate of airworthiness.

Subsection 7 provides that a person performing a duty that is essential to the operation of a relevant aeroplane during flight time is authorised to do so without a civil aviation authorisation mentioned in paragraph 20AB(1)(a) of the Act. This is a new provision to ensure pilots of aircraft that were previously encompassed by Subpart 200.B (which will be repealed) remain authorised to fly without being licensed by CASA. It also requires that a person making a broadcast on an aeronautical HF frequency must be authorised to do so under Part 61 or Part 64 of CASR.

Subsection 8 states the persons to which the exemptions are granted by CASA under the instrument and sets out which provisions of CASR are exempted from compliance providing the conditions of the Order are complied with. The exemptions are mostly the same in purpose as they were in the previous CAO and consistent with the previous CAO, the exemptions are subject to compliance with the conditions in the Order.

Subsection 9 sets out the general conditions that apply in relation to relevant aircraft. These include that the aircraft must not be used other than for the carriage, of the pilot or the private conduct of aerial inspections of stock, fencing or farm or pastoral equipment (this does not include aerial application or mustering operations). Operation of the aircraft must be in accordance with the relevant sport aviation body's operations manual and technical manual. Maintenance on aircraft must be performed by suitably qualified persons in accordance with the relevant sport aviation body's technical manual. Apart from that, the subsection is in substantially the same form as it was in the previous CAO, with minor updates (including provisions accommodating ASAOs) and drafting improvements.

Subsection 10 sets out the flight conditions which are mostly the same as those in the previous CAO. The conditions include flight height, location and airspace restrictions, requirements to fly only in VMC, during daylight hours and not in acrobatic flight or over a populous areas or public gatherings (subject to certain requirements), not to use radiotelephone equipment (subject to certain qualifications), and a requirement to carry certain emergency location transmitters when flying over a body of water. The only substantive changes since the previous CAO are, in subparagraph 10.1 (h), updated conditions for flying over a closely-settled or populous area or a public gathering and, in paragraph 10.1 and 10.2, the addition of Class B airspace restrictions and updated conditions for flying in Class A, B, C or D airspace and in an active restricted area. The changes substitute outdated provisions with provisions that are more closely aligned with Part 103 of CASR and the Part 103 MOS.



Subsection 11 provides further qualifications on the conditions under subsection 10 for flying lower than 500 feet above ground level and for such aircraft flying at 5 000 feet or higher above mean sea level.

Subsection 12 provides for an approval process for persons wishing to fly a relevant aircraft otherwise than in accordance with the Order. The subsection is in substantially the same form as in the previous CAO. There are no express fetters on the discretionary power. Applications for approvals will be determined on a case by case basis by reference to safety considerations. There may be a range of reasons for an application under this subsection and it would not be practical or necessary for the instrument or ES to specify the factors that the decision-maker should consider in exercising the discretion. General principles of administrative law would restrict the decision-maker to decisions that are reasonable and have regard to relevant considerations. Depending on the nature of the application and the variation sought, the relevant delegate would be any of the following (who are all employees of CASA and SES equivalent officers):

- Executive Manager, National Operations & Standards
- Executive Manager, Regulatory Oversight
- Branch Manager, Sport & Recreation Aviation

An approval under this provision constitutes an *authorisation* within the meaning of regulation 11.015 of CASR. Item 1 of the Table 201.004 of CASR (see subregulation 201.004(2) of CASR) deems an adverse decision on an authorisation to constitute a reviewable decision on its merits by the Administrative Appeals Tribunal. CASA will include in any such decisions an AAT merits review notice.

Subsection 13 sets out the transitional provisions for the instrument and continues certificates, approvals and authorisations by RAAus or SAFA and approvals by CASA under subsection 9 of the previous CAO.

In renewing, amending to equivalent provisions or adding the exemptions under the instrument, CASA has regarded as paramount the preservation of at least an acceptable level of aviation safety.

### **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 repeals *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* that was registered as a legislative instrument and is, therefore, also a legislative instrument, subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Subsection 8 (4) of the LA provides that an instrument is a legislative instrument if it determines the law or alters the content of the law, rather than determining particular cases in which the law is to apply or is not to apply. As the instrument exempts microlight aeroplanes from provisions of the CAR and CASR, the instrument is a legislative instrument. The instrument is therefore 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 the CAR and CASR, Part 4 of Chapter 3 of the LA (the *sunsetting provisions*) does not apply to the instrument (item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*). However, this instrument will be repealed at the end of 1 December 2024, which will occur before the sunsetting 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 sunsetting does not affect parliamentary oversight of this instrument.

### **Consultation**

The instrument is a remake of the previous CAO with only minor or machinery changes and affects the operation of microlight aeroplanes registered with a sport aviation body –the Sports Aviation Federation of Australia (*SAFA*) or Recreational Aviation Australia (*RAAus*). The SAFA and RAAus were represented in the industry Technical Working Group (*TWG*) and were present at the meeting of TWG members where the deferral of the making of the Part 103 MOS, and this subsequent legislative solution, was discussed. In these circumstances, CASA is satisfied that no further consultation is appropriate or reasonably practicable for the instrument for 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 the previous requirements of CAO 95.10 to implement the policy of the CASR Part 103 and there will be no change to the economic or cost impact on individuals, businesses or the community. The Office of Best Practice Regulation also made an assessment that a Regulation Impact Statement was not required for the policy requirements of CASR Part 103 (OBPR id: 25640).

### **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 2 December 2021, immediately after the commencement of both of the following:

- (i) Schedule 1 to the *Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019*;
- (ii) the *Civil Aviation Safety Amendment (Part 91) Regulations 2018*.

The instrument is repealed at the end of 1 December 2024.

## 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 (Exemptions from CAR and CASR — Microlight aeroplanes) Instrument 2021

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 *Civil Aviation Order 95.10 (Exemptions from CAR and CASR — Microlight aeroplanes) Instrument 2021* (the **instrument**) is to reissue *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* (the **previous CAO**).

The instrument enables the continuation of exemptions for operators of microlight aeroplanes from certain requirements of the *Civil Aviation Regulations 1988 (CAR)* and enables the introduction of exemptions for those operators from certain requirements of the *Civil Aviation Safety Regulations (CASR)*.

The instrument reissues the previous CAO in substantially the same form, with the changes being minor drafting improvements, updating or deletion of outdated or obsolete provisions and the introduction of some new provisions. The commencement of Part 91 of CASR (on 2 December 2021) repealed certain provisions of CAR that impact the operations of microlight aeroplanes. Therefore, provisions to maintain the operating environment were included in a proposed *Part 103 Manual of Standards (MOS)*. However, because the making of the Part 103 MOS has been deferred, equivalent provisions have been included in this instrument.

The intent of the changes is to maintain the operating environment for microlight aeroplanes that existed immediately before 2 December 2021.

#### 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**