

Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Safety Regulations 1998

Civil Aviation Order 95.53 (Commercial Balloon Flying Training and Balloon Transport Operations) Instrument 2021

Purpose

The purpose of the *Civil Aviation Order 95.53 (Commercial Balloon Flying Training and Balloon Transport Operations) Instrument 2021* (the **instrument**) is to repeal *Civil Aviation Order 95.53 (Exemption from provisions of the Civil Aviation Regulations 1988 — manned balloons and hot air airships — aerial work and charter operations)* (the **previous CAO**) and replace it with the instrument.

The instrument, which commences on 2 December 2021, sets out certain standards for the operation of manned free balloons and hot air airships (**Part 131 aircraft**) in operations that require an Air Operator's Certificate (**AOC**) – these being balloon transport operations, and balloon commercial flying training operations as required by paragraph 206(a) of the *Civil Aviation Regulations 1988 (CAR)*, as in force from 2 December 2021 (the **relevant operations**). These standards are complementary to the commencement of Parts 91 and 131 of the *Civil Aviation Safety Regulations 1998 (CASR)* on 2 December 2021. The instrument is made under paragraph 28BA (1) (b) and subsection 98 (4A) of the *Civil Aviation Act 1988* (the **Act**) and regulation 11.160 of CASR.

The instrument replaces the previous CAO and is required for two main reasons: first, because the *Part 131 Manual of Standards (MOS)* that was originally intended to accompany new Part 131 of CASR will not commence as anticipated on 2 December 2021; and secondly, most of the provisions of CAR are being repealed on that date and as a result, the previous CAO will be ineffective in providing requirements, standards and exemptions for operators of relevant operations as it refers to the obsolete CAR provisions. The instrument contains conditions on AOCs authorising relevant operations that require compliance with previously in force provisions of CAR, thereby enabling reasonable continuity for such operations until the Part 131 MOS can commence.

Legislation

The *Civil Aviation Act 1988 (the Act)* establishes the regulatory framework for maintaining, enhancing and promoting the safety of civil aviation, with particular emphasis on preventing aviation accidents and incidents.

Under section 27 of the Act, the Civil Aviation Safety Authority (**CASA**) may issue an AOC for the purposes of its functions. Under subregulation 27 (2) of the Act, an aircraft must not fly into or out of Australian territory or operate in Australian territory, and an Australian aircraft must not operate outside Australian territory, except as authorised by an AOC, by a New Zealand AOC in specified circumstances, or by a permission under section 27A.

Under subregulation 27 (9) of the Act, subregulation (2) applies only to the flying or operation of an aircraft for such purposes as are prescribed. Regulation 206 of CAR prescribes, for subsection 27 (9) of the Act, the purposes for which an AOC is required. Those purposes currently include aerial work operations, regular public transport operations and charter operations. Regulation 206 of CAR will be amended on 2 December 2021.

Under paragraph 28BA (1) (b) of the Act, an AOC has effect subject to any conditions specified in the regulations or CAOs.

Subsection 98 (1) of the Act provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act. The CAR and CASR are made under the Act.

Under subsection 98 (4A) of the Act, CASA may issue CAOs, not inconsistent with the Act or the regulations, and not prescribing any pecuniary penalty, with respect to any matter in relation to which regulations may be made for the purposes of section 28BA.

Subpart 11.F of CASR provides for the granting of exemptions from particular provisions of the regulations. Subregulation 11.160 (1) 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 in relation to a matter mentioned in that subsection (namely matters affecting the safe navigation and operation, or the maintenance, of aircraft or the airworthiness of, or design standards for, aircraft). Subregulation 11.160 (2) of CASR provides that an exemption may be granted to a person or a class of persons.

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.

Subparagraph 14 (1) (a) (ii) of the Legislation Act 2003 (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 legislative instrument — paragraph 14 (3) (a).

Background

Part 131 of CASR was made on 12 December 2019 and commences on 2 December 2021. It sets out the operating rules for Part 131 aircraft (manned free balloons and hot air airships) and tethered gas balloons. It also sets out the operator certification and management rules for balloon transport operations. The purpose of Part 131 is to provide regulations for the operation of Part 131 aircraft in Part 131 recreational activities, specialised balloon operations, commercial balloon flying training operations and balloon transport operations.

Regulation 131.055 of CASR makes provision for CASA to make a manual of standards (MOS) for various matters referred to in the regulations - for example, the kinds of operations that may be classified as specialised balloon operations referred to above. The Part 131 MOS was intended to replace, enhance and modify numerous provisions that applied to the operation of a Part 131 aircraft prior to 2 December 2021 when Part 131 of CASR commences.

In consultation with an established industry working group, the Part 131 MOS will not commence on 2 December 2021 with Part 131 of CASR and will be subject to further consultation in 2022. Therefore, this instrument is designed to ensure that appropriate safety assurance for the use of Part 131 aircraft in balloon transport operations and commercial balloon flying training operations, both of which are authorised by an AOC.

Overview of instrument

The instrument provides a scheme of conditions on AOCs authorising the operation of Part 131 aircraft that facilitates the safe operation of Part 131 aircraft for relevant operations.

The instrument replaces the previous CAO in order to enable reasonable continuity for the conduct of relevant operations until the Part 131 MOS is made and commences, following appropriate consultation with the aviation industry.

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 manner of incorporation and how they may be obtained. The table also states how the document is incorporated.

Document	Description	Manner of incorporation	Source
CASA 29/18 – <i>Civil Aviation (Fuel Requirements) Instrument 2018</i>	Prescribes requirements the carriage of fuel. Incorporated as one of the conditions of the instrument.	As in force immediately before the commencement of the instrument. Paragraph 14(1)(a) of the Legislation Act 2003 authorises the incorporation of this instrument as in force at a particular time.	This document is available for free on the Federal Register of Legislation.
CASA 50/21 - <i>Designation of Airspace for Broadcast Requirements – Locations with Surveillance Flight Information Service</i>	Prescribes directions for radio broadcast requirements and frequency. Incorporated as one of the conditions of the instrument.	As in force immediately before the commencement of the instrument. Paragraph 14(1)(a) of the Legislation Act 2003 authorises the incorporation of this instrument as in force at a particular time.	This document is available for free on the Federal Register of Legislation.
CASA 02/20 – <i>Global Navigation Satellite System (GNSS) Instructions 2020</i>	Prescribes requirements for the use of GNSS systems. Incorporated as one of the conditions of the instrument.	As in force immediately before the commencement of the instrument. Paragraph 14(1)(a) of the Legislation Act 2003 authorises the incorporation of this instrument as in force at a particular time.	This document is available for free on the Federal Register of Legislation.

Document	Description	Manner of incorporation	Source
CASA 97/13 - <i>Designation - of airspace - Direction - broadcast requirements and frequency</i>	<p>Prescribes requirements for radio broadcast requirements and frequency.</p> <p>Incorporated as one of the conditions of the instrument.</p>	<p>As in force immediately before the commencement of the instrument.</p> <p>Paragraph 14(1)(a) of the Legislation Act 2003 authorises the incorporation of this instrument as in force at a particular time.</p>	This document is available for free on the Federal Register of Legislation.
CASA 142/10 – <i>Directions and determinations — Class D airspace</i>	<p>Prescribes requirements for operations in Class D airspace.</p> <p>Incorporated as one of the conditions of the instrument.</p>	<p>As in force immediately before the commencement of the instrument.</p> <p>Paragraph 14(1)(a) of the Legislation Act 2003 authorises the incorporation of this instrument as in force at a particular time.</p>	This document is available for free on the Federal Register of Legislation.
CASA 143/10 – <i>Determination — flight visibility and distance from cloud in V.F.R. flights, and Direction — Special V.F.R. flights</i>	<p>Prescribes requirements for operating under the Special VFR.</p> <p>Incorporated as one of the conditions of the instrument.</p>	<p>As in force immediately before the commencement of the instrument.</p> <p>Paragraph 14(1)(a) of the Legislation Act 2003 authorises the incorporation of this instrument as in force at a particular time.</p>	This document is available for free on the Federal Register of Legislation.
CASA 184/00 – <i>Direction under subregulation 207 (3)</i>	<p>Prescribes requirements for the use of supplemental oxygen by the pilot when conducting parachuting operations.</p> <p>Incorporated as one of the conditions of the instrument.</p>	<p>As in force immediately before the commencement of the instrument.</p> <p>Paragraph 14(1)(a) of the Legislation Act 2003 authorises the incorporation of this instrument as in force at a particular time.</p>	This document is available for free on the Federal Register of Legislation.

Document	Description	Manner of incorporation	Source
CASA 490/05 – <i>Designation of airspace for broadcast requirements — aerodromes with certified air/ground radio services.</i>	<p>Prescribes requirements for operations at an aerodrome where a certified air/ground radio service is in operation.</p> <p>Incorporated as one of the conditions of the instrument.</p>	<p>As in force immediately before the commencement of the instrument.</p> <p>Paragraph 14(1)(a) of the Legislation Act 2003 authorises the incorporation of this instrument as in force at a particular time.</p>	This document is available for free on the Federal Register of Legislation.
CASA 502/08 – <i>Approval – conduct of emergency procedures proficiency tests</i>	<p>Prescribes requirements for the conduct of emergency procedures proficiency tests.</p> <p>Incorporated as one of the conditions of the instrument.</p>	<p>As in force immediately before the commencement of the instrument.</p> <p>Paragraph 14(1)(a) of the Legislation Act 2003 authorises the incorporation of this instrument as in force at a particular time.</p>	This document is available for free on the Federal Register of Legislation.
DASR 2/1994	<p>Prescribes requirements for equipment requirements for flight under the visual flight rules.</p> <p>Incorporated as one of the conditions of the instrument.</p>	<p>As in force immediately before the commencement of the instrument.</p> <p>Paragraph 14(1)(a) of the Legislation Act 2003 authorises the incorporation of this instrument as in force at a particular time.</p>	This document is available for free on the Federal Register of Legislation.
DASR 3/1994	<p>Prescribes requirements for navigating during flight under the visual flight rules.</p> <p>Incorporated as one of the conditions of the instrument.</p>	<p>As in force immediately before the commencement of the instrument.</p> <p>Paragraph 14(1)(a) of the Legislation Act 2003 authorises the incorporation of this instrument as in force at a particular time.</p>	This document is available for free on the Federal Register of Legislation.

Document	Description	Manner of incorporation	Source
<i>Civil Aviation Order 20.2</i>	<p>Prescribes requirements for safety precautions before flight.</p> <p>Incorporated as one of the conditions of the instrument.</p>	<p>As in force immediately before the commencement of the instrument.</p> <p>Paragraph 14(1)(a) of the Legislation Act 2003 authorises the incorporation of this instrument as in force at a particular time.</p>	This document is available for free on the Federal Register of Legislation.
<i>Civil Aviation Order 20.3</i>	<p>Prescribes requirements for marshalling and parking of aircraft.</p> <p>Incorporated as one of the conditions of the instrument.</p>	<p>As in force immediately before the commencement of the instrument.</p> <p>Paragraph 14(1)(a) of the Legislation Act 2003 authorises the incorporation of this instrument as in force at a particular time.</p>	This document is available for free on the Federal Register of Legislation.
<i>Civil Aviation Order 20.4</i>	<p>Prescribes requirements for provision and use of oxygen and protective breathing equipment.</p> <p>Incorporated as one of the conditions of the instrument.</p>	<p>As in force immediately before the commencement of the instrument.</p> <p>Paragraph 14(1)(a) of the Legislation Act 2003 authorises the incorporation of this instrument as in force at a particular time.</p>	This document is available for free on the Federal Register of Legislation.
<i>Civil Aviation Order 20.9</i>	<p>Prescribes requirements for precautions in refuelling, engine and ground radar operations.</p> <p>Incorporated as one of the conditions of the instrument.</p>	<p>As in force immediately before the commencement of the instrument.</p> <p>Paragraph 14(1)(a) of the Legislation Act 2003 authorises the incorporation of this instrument as in force at a particular time.</p>	This document is available for free on the Federal Register of Legislation.

Document	Description	Manner of incorporation	Source
<i>Civil Aviation Order 29.5</i>	<p>Prescribes requirements for precautions in refuelling, engine and ground radar operations.</p> <p>Incorporated as one of the conditions of the instrument.</p>	<p>As in force immediately before the commencement of the instrument.</p> <p>Paragraph 14(1)(a) of the Legislation Act 2003 authorises the incorporation of this instrument as in force at a particular time.</p>	This document is available for free on the Federal Register of Legislation.
<i>Civil Aviation Order 20.11</i>	<p>Prescribes requirements for emergency and life saving equipment and passenger control in emergencies.</p> <p>Incorporated as one of the conditions of the instrument.</p>	<p>As in force immediately before the commencement of the instrument.</p> <p>Paragraph 14(1)(a) of the Legislation Act 2003 authorises the incorporation of this instrument as in force at a particular time.</p>	This document is available for free on the Federal Register of Legislation.
<i>Civil Aviation Order 20.16.1</i>	<p>Prescribes requirements for loading of aircraft.</p> <p>Incorporated as one of the conditions of the instrument.</p>	<p>As in force immediately before the commencement of the instrument.</p> <p>Paragraph 14(1)(a) of the Legislation Act 2003 authorises the incorporation of this instrument as in force at a particular time.</p>	This document is available for free on the Federal Register of Legislation.
<i>Civil Aviation Order 20.16.2</i>	<p>Prescribes requirements for loading of aircraft.</p> <p>Incorporated as one of the conditions of the instrument.</p>	<p>As in force immediately before the commencement of the instrument.</p> <p>Paragraph 14(1)(a) of the Legislation Act 2003 authorises the incorporation of this instrument as in force at a particular time.</p>	This document is available for free on the Federal Register of Legislation.

Document	Description	Manner of incorporation	Source
<i>Civil Aviation Order 20.16.3</i>	<p>Prescribes requirements for carriage of persons.</p> <p>Incorporated as one of the conditions of the instrument.</p>	<p>As in force immediately before the commencement of the instrument.</p> <p>Paragraph 14(1)(a) of the Legislation Act 2003 authorises the incorporation of this instrument as in force at a particular time.</p>	This document is available for free on the Federal Register of Legislation.
<i>Civil Aviation Order 20.18</i>	<p>Prescribes aircraft equipment — basic operational requirements.</p> <p>Incorporated as one of the conditions of the instrument.</p>	<p>As in force immediately before the commencement of the instrument.</p> <p>Paragraph 14(1)(a) of the Legislation Act 2003 authorises the incorporation of this instrument as in force at a particular time.</p>	This document is available for free on the Federal Register of Legislation.
<i>Civil Aviation Order 82.7</i>	<p>Air Operators' Certificates authorising aerial work operations and charter operations in balloons.</p> <p>Incorporated as one of the conditions of the instrument.</p>	<p>As in force from time to time.</p> <p>Paragraph 14(1)(a) of the Legislation Act 2003 authorises the incorporation of this instrument as in force at a particular time.</p>	This document is available for free on the Federal Register of Legislation.
<i>Civil Aviation Regulations 1988</i>	<p>Various provisions of the instrument call up provisions in the Civil Aviation Regulations 1988.</p>	<p>As in force from time to time, or immediately before the commencement of the instrument.</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>	This document is available for free on the Federal Register of Legislation.

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<i>Civil Aviation Safety Regulations 1988</i>	Various provisions of the instrument call up provisions in the Civil Aviation Safety 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.
<i>Part 131 Manual of Standards</i>	The Part 131 MOS will prescribe matters relating to balloons and hot air airships. It is called up for the purpose of defining the date on which sections 6 and 11 of the instrument cease.	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, once made, will be available for free on the Federal Register of Legislation.

Content of instrument

Subsection 1 provides that the name of the instrument is the *Civil Aviation Order 95.53 (Commercial Balloon Flying Training and Balloon Transport Operations) Instrument 2021*. It also states that this Order may be cited as *Civil Aviation Order 95.53* and that a reference in a CASA instrument to section 95.53 of the *Civil Aviation Orders* is taken to be a reference to this instrument.

Subsection 2 provides that the instrument commences on 2 December 2021 and is repealed at the earlier of the following days:

1. 1 December 2024;
2. the day the *Part 131 Manual of Standards* commences.

Subsection 3 provides that the previous CAO is repealed by this instrument.

Subsection 4 contains definitions of terms used in the instrument.

Subsection 5 provides that any person associated with the operation of a Part 131 aircraft engaged in a balloon transport operation or balloon commercial flying training (a **relevant aircraft**) is exempted from compliance with a requirement in regulations 43, 44, 45, 46, 47, 48, 49 and 50 of the CAR.

Subsection 6 provides that, for paragraph 28BA (1) (b) of the Act, an AOC authorising a balloon transport operation or balloon commercial flying training is subject to the condition that each operator and its pilot in command of a relevant aircraft, as applicable, are required to comply with the listed provisions or instruments, as in force immediately before the commencement of this instrument.

Subsection 7 provides that, for paragraph 28BA (1) (b) of the Act, a balloon transport AOC is also subject to the condition that each operator must comply with paragraph 5.4 of section 82.7 of the CAO, as in force from time to time.

Legislation Act 2003

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 CAO 82.3, CAO 82.5 and CAO 82.6 and instruments CASA 30/21 and CASA EX45/21, and amends CAO 82.0, CAO 82.1 and CAO 82.7, which are legislative instruments. Therefore, the instrument is a legislative instrument, 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 Act, CASR and CAR, Part 4 of Chapter 3 of the LA (the sunset 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 in accordance with section 48A of the LA, which will occur before the sunset provisions would have repealed the instrument if they had applied. Therefore, the exemption from sunset does not affect parliamentary oversight of this instrument.

Consultation

CASA undertook appropriate consultation in relation to the development of Part 131 of CASR, details of which can be found in the explanatory statement for the *Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019*. Extensive consultation has been undertaken in relation to the Part 131 MOS which has not yet concluded.

The requirements and conditions expressed in this instrument are consequential to the absence of a Part 131 MOS on the commencement of Part 131 of CASR and do not impose additional costs or burdens on the aviation industry, due to the effective continuation of existing requirements.

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 is covered by the RIS for the *Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019* and the future Part 131 MOS, which was assessed by OBPR as compliant with the Best Practice Regulation requirements with a level of analysis commensurate with the likely impacts (OBPR id: 25643).

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.

CASA prepared a Regulation Impact Statement (*RIS*) for Part 131 of CASR that addressed the economic and cost impact and the risks associated with this sector of the industry. This RIS can

be found in the *Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019*.

The requirements in this instrument are consequential to the absence of the Part 131 MOS and are designed to avoid the cost and time impact on operators by requiring compliance with civil aviation legislation in force prior to the commencement of Part 131 of CASR and which the Part 131 sector of the aviation industry is already required to comply with, thereby avoiding additional costs.

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 MOS amendment 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.

Statement of Compatibility with Human Rights

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

Civil Aviation Order 95.53 (Commercial Balloon Flying Training and Balloon Transport Operations) 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 Disallowable Legislative Instrument

The *Civil Aviation Order 95.53 (Commercial Balloon Flying Training and Balloon Transport Operations) Instrument 2021* (the **instrument**) repeals and replaces *Civil Aviation Order 95.53 (Exemption from provisions of the Civil Aviation Regulations 1988 — manned balloons and hot air airships — aerial work and charter operations)* (the **previous CAO**).

The instrument, which commences on 2 December 2021, sets out certain standards for the operation of Part 131 aircraft in operations that require an Air Operator's Certificate (**AOC**) – these being balloon transport operations, and balloon commercial flying training operations as prescribed by paragraph 206(a) of the *Civil Aviation Regulations 1988 (CAR)*, as in force from 2 December 2021 (the **relevant operations**). These standards are complementary to the commencement of Parts 91 and 131 of the *Civil Aviation Safety Regulations 1998 (CASR)* on 2 December 2021. The instrument is made under paragraph 28BA (1) (b) and subsection 98 (4A) of the *Civil Aviation Act 1988* (the **Act**) and regulation 11.160 of CASR.

The instrument replaces the previous CAO and is required for two main reasons: first, because the Part 131 *Manual of Standards (MOS)* that was originally intended to accompany new Part 131 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 requirements, standards and exemptions for operators of relevant operations as it refers to the obsolete CAR provisions. The instrument contains conditions on AOCs authorising relevant operations that require compliance with previously in force provisions of CAR, thereby enabling reasonable continuity for such operations until the Part 131 MOS can commence.

Human rights implications

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

Conclusion

This legislative instrument that is compatible with human rights as it does raise any human rights issues.