

Explanatory Statement

Civil Aviation Regulations 1988

Civil Aviation Safety Regulations 1998

Civil Aviation Order 95.55 Amendment Instrument 2022

Purpose

The purpose of *Civil Aviation Order 95.55 Amendment Instrument 2022* is to amend *Civil Aviation Order 95.55 (Exemptions from CAR and CASR — Certain Light Sport Aircraft, Lightweight Aeroplanes and Ultralight Aeroplanes) Instrument 2021 (CAO 95.55)* to:

- remove the limitation on the maximum stall speed of lightweight aeroplanes to which CAO 95.55 applies
- include competency standards for piloting lightweight aeroplanes
- revise the types of flying training for which owners and part-owners of certain aeroplanes can use the aeroplanes, and
- make minor amendments to clarify existing provisions.

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 *Civil Aviation Regulations 1988 (CAR)*. Paragraph 98 (5A) (a) of the Act provides that the Civil Aviation Safety Authority (*CASA*) may issue instruments in relation to matters affecting the safe navigation and operation or the maintenance of aircraft.

Civil Aviation Safety Regulations 1998

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 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 11.170 (3) of CASR, in deciding whether to grant 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 grant 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 subregulation 5 (1) and (1A) of CAR, if CASA is empowered or required under CAR or CASR to issue a direction, instruction or notification, or give a permission, approval or authority, CASA may do so in Civil Aviation Orders or otherwise in writing.

Under subsection 33 (3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument. Under subsection 13 (1) of the *Legislation Act 2003* (the *LA*), subsection 33 (3) applies to legislative instruments as if each provision of the instrument were a section of an Act.

Civil Aviation Order 95.55

CASA made CAO 95.55 under regulations 11.160, 11.205 and 11.245 of CASR and subregulations 5 (1) and (1A) of CAR. CAO 95.55 grants exemptions from various provisions of CASR and CAR in relation to the operation of specified classes of light sport aircraft, lightweight aeroplanes and ultralight aeroplanes that are listed with a sport aviation body. Collectively, they are referred to in CAO 95.55 as **relevant aeroplanes**.

Paragraph 5.1 of CAO 95.55 defines **lightweight aeroplane** by certain characteristics, including the number of seats and its maximum take-off weight. Before the commencement of this instrument, to be a lightweight aeroplane to which CAO 95.55 applied, paragraph (c) of the definition of **lightweight aeroplane** required that it have had a V_{so} stall speed that did not exceed 45 knots.

Subsection 6 of CAO 95.55 grants exemptions from specified provisions of CASR and CAR. Those exemptions are subject to conditions set out in the Order, including general conditions in subsection 8 and flight conditions in subsection 9 of the Order.

Subsection 8 of CAO 95.55 states the general conditions of the exemptions that apply in relation to a relevant aeroplane. These include conditions restricting the use of relevant aeroplanes to certain non-commercial or private uses or flying training. They also require the pilot in command or flying instructors to hold certain qualifications.

Subsection 9 of CAO 95.55 states the flight conditions of the exemptions that apply in relation to a relevant aeroplane. These conditions restrict the circumstances in which such aeroplanes may fly, including in daylight, at certain heights or in certain airspaces.

Background

CAO 95.55 commenced on 2 December 2021 and replaced a similar instrument on the same topic.

CASA received feedback from the aviation industry requesting the removal of the 45 knot stall speed limit on aeroplanes to which CAO 95.55 applies. CASA conducted public consultation on the subject, which is set out in detail below under the heading **Consultation**.

Having considered the submissions received during the public consultation, CASA has decided to amend CAO 95.55 as set out in this instrument.

Overview of instrument

In accordance with subsection 33 (3) of the *Acts Interpretation Act 1901*, the instrument amends CAO 95.55 to:

- remove the limitation on the maximum stall speed of lightweight aeroplanes to which CAO 95.55 applies
- include competency standards for piloting lightweight aeroplanes
- revise the types of flying training for which owners and part-owners of certain aeroplanes can use the aeroplanes, and
- make minor amendments to clarify existing provisions.

CASA has assessed submissions in relation to the amendments and is satisfied that the amendments have no adverse impact on the safety of the aircraft operations.

Documents incorporated by reference

Under subsection 14 (1) of 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 or existing 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.

This instrument incorporates the following documents:

- provisions of CASR
- the standards relating to operating a lightweight aeroplane developed for those aeroplanes by the approved self-administering aviation organisation (*ASAO*) that performs aviation administration functions in relation to the aeroplane.

Those documents are incorporated as in force or existing from time to time in accordance with subsection 14 (1) of the LA and subsection 98 (5D) of the Act.

CASR is freely available from the Federal Register of Legislation (*FRL*) at <https://www.legislation.gov.au/Series/F1998B00220>

The standards relating to operating a lightweight aeroplane can be found in the relevant ASAO's exposition, which is defined in the CASR Dictionary as:

- (a) the set of documents approved by CASA under regulation 149.080 of CASR in relation to the ASAO; or
- (b) if the set of documents is changed under regulation 149.115 or 149.120 of CASR, or in accordance with the process mentioned in paragraph 149.340 (i) of CASR — the set of documents as changed.

The ASAO is required to keep the exposition up to date under regulation 149.350 of CASR. 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.

Regulation 149.285 of CASR requires an ASAO to provide to its personnel and the holders of authorisations from the ASAO, ready access to up- to- date copies of:

- (a) the civil aviation legislation;
- (b) technical standards and practices;
- (c) technical bulletins and instructions;
- (d) manuals for equipment used by the ASAO's personnel;
- (e) any other materials prescribed by the Part 149 MOS. (In this regard, section 35 of the Part 149 MOS prescribes, for an aircraft, the flight manual, the handbook and the maintenance manual.)

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 aeroplanes registered with the ASAO. The contravention by an ASAO of this requirement is an offence of strict liability.

CAO 95.55 incorporates the entirety of an ASAO's exposition. However, having regard to the manner of its incorporation, in practical and actual terms only parts of the exposition are relevant to the instrument. By prior arrangement, CASA will make available for viewing at its offices at least those parts of an exposition, and any other parts that are referred to in regulation 149.285 of CASR, which is expected to be most of an exposition.

Content of instrument

Section 1 of the instrument specifies the name by which it may be cited.

Section 2 of the instrument specifies that the instrument commences on the day after it is registered on the FRL.

Section 3 of the instrument provides that Schedule 1 of the instrument amends CAO 95.55.

Schedule 1 of the instrument sets out the amendments to CAO 95.55.

Item [1] of Schedule 1 removes the 45 knot stall speed limit by omitting paragraph (c) of the definition of ***lightweight aeroplane***.

Items [2] to [4] relate to who can use aeroplanes for flying training and the kind of aeroplanes that can be used. The effect of these amendments is to clarify that only two-seat aeroplanes can be used for flying training. Also, item [4] revises the provisions allowing the use of amateur-built aeroplanes, kit-built aeroplanes and experimental aeroplanes for flying training by owners and part-owners of the aeroplanes. Those who contributed to the fabrication and assembly of an aeroplane can use it to train for a pilot certificate, rating or endorsement. Those who did not contribute to the fabrication and assembly of an aeroplane (such as a subsequent owner) can use it to train for a rating or endorsement. This is a change from the previous provision which also allowed the owner or part-owner of an experimental aeroplane to be trained in the aeroplane to obtain a pilot certificate. The change creates consistency, in the case of experimental aeroplanes, with subparagraph 91.875 (2) (d) (ii) and paragraph 91.880 (d) of CASR.

Items [5] and [6] insert competency standards for the operation of a lightweight aeroplane and are intended to ensure that pilots are competent to operate aeroplanes with more difficult and less forgiving operating characteristics, as opposed to the more benign operating characteristics associated with training aeroplanes. New subsection 8A of CAO 95.55 will require the holder of a pilot authorisation issued in relation to a lightweight aeroplane by a relevant ASAO to be competent in operating the aeroplane to the standards developed for the class or type of aeroplane by the ASAO, including in all of the following areas:

- (a) operating the aeroplane's navigation and operating systems;
- (b) conducting all normal, abnormal and emergency flight procedures for the aeroplane;
- (c) applying operating limitations;
- (d) weight and balance requirements;
- (e) applying aeroplane performance data, including take-off and landing performance data, for the aeroplane.

Items [7] to [11] address minor editorial issues in the principal instrument that were identified while drafting the other items.

Items [12] and [13] clarify the provisions relating to the height at which certain ultralight aeroplanes must be flown when over a populous area or public gathering. In addition to the requirement in regulation 91.265 of CASR to fly at or above 1 000 feet, those aeroplanes must be flown at a height from which they can glide clear of a populous area or public gathering to a suitable landing area.

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 amends CAO 95.55 which is a legislative instrument and is, therefore, also a legislative instrument. It is 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 CASR and CAR, Part 4 of Chapter 3 of the LA (the ***sunsetting provisions***) does not apply to the instrument (as per item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*). In this case, the instrument amends CAO 95.55 and is almost immediately spent. It is repealed in accordance with the automatic repeal provisions in section 48A of the LA. CAO 95.55 is itself repealed at the end of 1 December 2024 by virtue of section 2 of CAO 95.55. Therefore, the exemption from sunsetting does not affect parliamentary oversight of this instrument.

Consultation

CASA received feedback from the aviation industry requesting the removal of the 45 knot stall speed limit on aeroplanes to which CAO 95.55 applies. Consultation on the removal of the 45 knot stall speed occurred during March and April 2022. The consultation asked if the removal of the 45 knot stall speed limit for lightweight aeroplanes would, in relation to the operation of these aeroplanes under ASAO administration, maintain an acceptable level of aviation safety. The results of the consultation can be found at:

<https://consultation.casa.gov.au/regulatory-program/cd-2204os/>

There were 134 responses to the consultation. Of the respondents, 87 identified as being sport and recreational aircraft owners or operators, 87 identified as a pilot of sport and recreational aircraft, 65 identified as a Part 61 licenced pilot, 27 identified as being a sport and recreational aviation maintainer or organisation, 2 identified as a maintenance engineer or an approval holder under regulation 30 of the CAR, 15 identified as being a flight school (sport and recreational aircraft — other than gliders), 2 identified as being gliding clubs and 2 identified as being a sport aviation body or as a prospective ASAO.

Three broad themes arose out of consultation, namely:

- pilots — scope of aircraft, pilot competencies and medical
- aircraft — certification and maintenance
- administrative oversight by ASAOs.

The responses to the consultation included significant support for greater pilot and organisational responsibility for general competency in relation to the operation of heavier, faster, and more complex aircraft. There was also support that, due to the expanded availability of appropriate training types, the training events for pilots of lightweight aeroplanes should encompass training not possible in light sport aeroplanes and ultralight aeroplanes and that instructors should be trained to demonstrate stalls, spin avoidance, and recovery techniques in lightweight aeroplanes to pilot certificate holders where appropriate for the type. There was broad agreement that this expanded capability is likely to have a flow-on safety benefit to the sector as more pilots will gain exposure to these kinds of manoeuvres and handling considerations.

Based on industry feedback, CASA announced that it would amend CAO 95.55 to:

- remove the stall speed limit for lightweight aeroplanes; and
- include competency standards for piloting lightweight aeroplanes.

CASA is satisfied that no further consultation is appropriate or reasonably practicable for this 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 an existing instrument and there will be no significant change to the economic or cost impact on individuals, businesses or the community.

Impact on categories of operations

The instrument is likely to have a beneficial effect on private and some flying training operations and related businesses by promoting those operations. It will provide greater flexibility to the sport and recreation flying sector as it will provide a wider range of aeroplanes that can now be utilised.

Impact on regional and remote communities

The instrument is likely to have a beneficial effect on regional and remote communities in that it allows for a greater number of lightweight aeroplanes administered by sports aviation bodies to be flown in regional and remote areas.

Office of Best Practice Regulation (OBPR)

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, including amendments to 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 it is registered 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 95.55 Amendment Instrument 2022

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

This legislative instrument amends *Civil Aviation Order 95.55 (Exemptions from CAR and CASR — Certain Light Sport Aircraft, Lightweight Aeroplanes and Ultralight Aeroplanes) Instrument 2021 (CAO 95.55)* to remove the limitation on the maximum stall speed of lightweight aeroplanes to which the regulatory exemptions in CAO 95.55 apply. It also amends CAO 95.55 to specify competency standards for piloting those aeroplanes.

The legislative instrument also revises the types of flying training for which owners and part-owners of certain amateur-built, kit-built and experimental aeroplanes can use the aeroplanes.

The Civil Aviation Safety Authority is satisfied that this instrument has no adverse impact on the safety of the aircraft operations.

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