

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX06/25 — Amendment of CASA EX67/24 (Expiry of Certain Directions) Instrument 2025

Purpose

The purpose of *CASA EX06/25 — Amendment of CASA EX67/24 (Expiry of Certain Directions) Instrument 2025* (the **amending instrument**) is to correct an error in a provision of another instrument in which the Civil Aviation Safety Authority (**CASA**) issued directions to the Australian Aerobatic Club (the **Club**) about aerobatic activity in the vicinity of a non-controlled aerodrome.

Subsection 20B(7) of *CASA EX67/24 – Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2024* (the **exemptions instrument**) issued the directions and subsection 20B(8) provided that the directions cease to be in force at the earlier of the day the section is repealed and 2 December 2024. That 2024 date was included in error. The amending instrument revives the directions in subsection 20B(7) and corrects subsection 20B(8) to refer instead to 2 December 2027.

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**).

Directions

Subpart 11.G of CASR provides for CASA to issue directions in relation to matters affecting the safety of air navigation. Under paragraph 11.245(1)(a) of CASR, CASA may, by instrument, issue a direction about any matter affecting the safe navigation and operation of aircraft.

Subregulation 11.245(2) of CASR provides that CASA may issue such a direction if CASA is satisfied that it is necessary to do so in the interests of the safety of air navigation, if the direction is not inconsistent with the Act, and for the purposes of CASA's functions.

Under paragraph 11.250(a) of CASR, a direction under regulation 11.245 ceases to be in force on the day specified in the direction. Under regulation 11.255 it is an offence of strict liability (with a maximum penalty of 50 penalty units) to contravene a direction under regulation 11.245.

Amendment of another legislative instrument

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.

Background

The exemptions instrument continued the operation of certain exemptions from obligations under Part 91 of CASR, and related directions, that were granted to operators and pilots in command of certain aircraft by CASA to facilitate the implementation of Part 91 in accordance with CASA's transition policies for the flight operations regulations. Those exemptions and directions were consolidated in *CASA EX81/21 – Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2021* (the **repealed instrument**), which was repealed on 1 December 2024.

Section 20B (Aerobatic activities in the vicinity of a non-controlled aerodrome — exemptions and directions) had been inserted in the repealed instrument by *CASA EX46/22 — Amendment of CASA EX81/21 (Aerobatic Activities, Experimental Aircraft, and Other Matters) Instrument (No. 1) 2022*.

When the repealed instrument was replaced by the exemptions instrument, section 20B was duplicated.

Subsection 20B(3) provides that the section applies to the Club and the pilot in command (in relation to aerobatic activity in the vicinity of a non-controlled aerodrome).

Subsection 20B(5) provides that each exemption in subsection 20B(4) is subject to a series of conditions, in particular that the pilot in command must be aware of, and comply with, all Club rules and procedures before conducting aerobatic activity and comply with otherwise exempted from provisions if they have reason to believe that the Club is failing to comply with any of this section's requirements. The effect of the condition in paragraph 20B(5)(c) is that the exemptions in 20B(4) do not apply if the pilot in command has a reason to believe that the Club is not meeting the requirements in subsection 20B(7).

Subsection 20B(6) gives effect to subsection 20B(7) in setting out the safety directions given to the Club in support of the exemptions given to the pilots in command.

Subsection 20B(7) directs the Club in particular to:

- develop, maintain and disseminate written rules and procedures (including to CASA on request)
- appoint a Competition Coordinator for all aerobatic activity, and, acting through the Competition Coordinator, ensure that a range of safety elements are in place, including that:
 - there is a relevantly staffed and functioning ground communications station, in accordance with specific requirements
 - only aircraft carrying serviceable VHF radio transceivers may participate in aerobatic activity
 - pilots in command comply with specific rules about stopping and restarting activities when scheduled air transport aircraft arrive and depart
 - pilots in command comply with specific rules about stopping and restarting radio operations on the VHF frequency nominated by the Club when scheduled air transport aircraft arrive and depart
 - pilots in command are told immediately if the ground communications station has ceased operations
 - pilots in command relevantly monitor the common traffic advisory frequency (**CTAF**)

- pilots in command are fully briefed
- ensure that CASA is informed in advance on a range of prescribed matters, including the following:
 - the name of the Competition Coordinator
 - the location of the non-controlled aerodrome
 - the rules and procedures, including the CTAF, to be used
 - the details of the aerobatic activity that are to be published in a NOTAM, including the operating times of the activity and the location and boundaries of the aerobatic box.

Subsection 20B(8) provides that the directions in subsection 20B(7) cease to be in force at the earlier of the day the section is repealed and 2 December 2024. That 2024 date was included in error. Its inclusion means the directions in section 20B(7) have expired.

The amending instrument revives the directions in subsection 20B(7) and corrects the error in the date of their expiry. Those directions will cease to be in force at the earlier of the day on which section 20B is repealed and 2 December 2027.

Content of the instrument

Section 1 sets out the name of the amending instrument.

Section 2 sets out the commencement of the amending instrument. The amending instrument commences on the day after it is registered.

Section 3 gives effect to the amendment to the exemptions instrument in Schedule 1.

Schedule 1 amends the exemptions instrument, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* to restate subsections 20B(6) to (8) of the exemptions instrument.

Subsection 20B(6) gives effect to the directions in subsection 20B(7).

Subsection 20B(7) sets out the safety directions given to the Club in support of the exemptions given to the pilots in command.

The directions (which are in the same terms as in the exemptions instrument) are to:

- develop, maintain and disseminate written rules and procedures (including to CASA on request), which are incorporated by reference in other provisions of the exemptions instrument not affected by the amendments made by the amending instrument
- appoint a Competition Coordinator for all aerobatic activity and, acting through the Competition Coordinator, ensure that a range of safety elements are in place, including that:
 - there is a relevantly staffed and functioning ground communications station, in accordance with specific requirements
 - only aircraft carrying serviceable VHF radio transceivers may participate in aerobatic activity
 - pilots in command comply with specific rules about stopping and restarting activities when scheduled air transport aircraft arrive and depart

- pilots in command comply with specific rules about stopping and restarting radio operations on the VHF frequency nominated by the Club when scheduled air transport aircraft arrive and depart
- pilots in command are told immediately if the ground communications station has ceased operations
- pilots in command relevantly monitor the CTAF
- pilots in command are fully briefed
- ensure that CASA is informed in advance on a range of prescribed matters, including the following:
 - the name of the Competition Coordinator
 - the location of the non-controlled aerodrome
 - the rules and procedures, including the CTAF, to be used
 - the details of the aerobatic activity that are to be published in a NOTAM, including the operating times of the activity and the location and boundaries of the aerobatic box.

Subsection 20B(8) provides that the directions in subsection 20B(7) cease to be in force at the earlier of: the day the section is repealed; and 2 December 2027.

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. The amending instrument amends the exemptions instrument, which was registered as a legislative instrument and the amending instrument is, therefore, also a legislative instrument, subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Sunsetting

Part 4 of Chapter 3 of the LA (the *sunsetting provisions*) does not apply to the amending instrument because the amending instrument relates to aviation safety and is made under CASR (item 15 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

The amending instrument will be repealed automatically under section 48A of the LA. The provisions of the exemptions instrument affected by the amending instrument will be repealed at the end of 1 December 2027. Those repeals will occur before the sunsetting provisions would have repealed the amending instrument or the exemptions instrument if they had applied. Any renewal of, or further amendment to, the exemptions 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 the amending instrument.

Consultation

The error being corrected by the amending instrument was identified in the course of consultation with industry about the implementation of the exemptions instrument. CASA is satisfied that no further consultation is appropriate or reasonably practicable for the amending 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 amending 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. The Office of Impact Analysis (*OIA*) also made an assessment that an Impact Analysis was not required.

Impact on categories of operations

The amending instrument impacts on the conduct of aircraft operations involving aerobatic activity in the vicinity of a non-controlled aerodrome. Its provisions ensure that an appropriate level of aviation safety is assured for these operations.

Impact on regional and remote communities

There are no identified rural and regional impacts that differ in any material way from the general economic and cost impacts, or sector risks, described above.

Office of Impact Analysis

An Impact Analysis (*IA*) is not required in this case, as the direction is covered by a standing agreement between CASA and OIA under which an IA is not required for directions (OIA id: OIA23-06252).

Statement of Compatibility with Human Rights

The Statement in Attachment 1 is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Making and commencement

The amending instrument has been made by a delegate of CASA relying on the power of delegation under subregulation 11.260(1) of CASR.

The amending instrument will commence on the day after it is registered.

Statement of Compatibility with Human Rights

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

CASA EX06/25 — Amendment of CASA EX67/24 (Expiry of Certain Directions) Instrument 2025

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 *CASA EX06/25 — Amendment of CASA EX67/24 (Expiry of Certain Directions) Instrument 2025* (the **amending instrument**) is to correct an error in a provision of another instrument in which the Civil Aviation Safety Authority issued directions to the Australian Aerobatic Club about aerobatic activity in the vicinity of a non-controlled aerodrome.

Subsection 20B(7) of *CASA EX67/24 – Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2024* issued the directions and subsection 20B(8) provided that the directions cease to be in force at the earlier of the day the section is repealed and 2 December 2024. That 2024 date was included in error. The amending instrument revives the directions in subsection 20B(7) and corrects subsection 20B(8) to refer instead to 2 December 2027.

Human rights implications

This legislative instrument does not engage with any of the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Conclusions

The directions in this legislative instrument are 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*.

Civil Aviation Safety Authority