

Explanatory Statement

Civil Aviation Act 1988

Civil Aviation Order 95.32 Instrument 2011

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.

Under subregulation 308 (1) of the *Civil Aviation Regulations 1988 (CAR 1988)*, CASA may exempt aircraft, or persons in, on, or otherwise associated with the operation of the aircraft, from compliance with specified provisions of CAR 1988.

The *Civil Aviation Order 95.32 Instrument 2011* replaces the previous Civil Aviation Order 95.32. It contains a new Civil Aviation Order 95.32 (the *new Order*).

The previous Civil Aviation Order 95.32 contained exemptions to allow the operation of weight shift controlled aeroplanes and powered parachutes, subject to compliance with the conditions mentioned in it.

Civil Aviation Order 95.32 applies to weight shift controlled aeroplanes and powered parachutes as did the previous Order, however the descriptions of the aircraft to which the Order applies have been changed. These changes are generally in accordance with the proposed Part 103 draft regulations (*Sport and recreational aviation operations*), for which a draft Notice of Proposed Rule Making (*NPRM*) has been circulated and which is being prepared in accordance with the mainly favourable response.

The changes extend the previous classes of aircraft to which the Order applies by increasing the maximum weights allowed for each class. There are also some changes to performance requirements. A new class of aircraft is also included which covers larger amateur-built aircraft. The characteristics of the new class are substantially those of the classes carried across from the previous Order, which covered aircraft assembled by commercial manufacturers or assembled from kits prepared by commercial manufacturers.

The new Order allows those persons flying and constructing aircraft of the types to which the Order refers to operate without restrictions that are no longer considered necessary. The new Order now permits an aircraft to be used for aerial inspections if conducted as a private operation over land belonging to the aircraft owner or a member of his or her immediate family.

The expression *built-up area* used in the previous Order, which was not defined, has been replaced by the defined expression *closely-settled area*. This expression is also used and defined in the proposed Part 103 of CASR 1998.

Subregulation 252A (2) of CAR 1988 is applied in relation to the carriage of emergency locator beacons. In the case of a flight extending more than 50 miles from the point of departure, a 2-place aeroplane to which the Order refers needs to be equipped with an approved emergency locator transmitter in accordance with regulation 252A, or a personal locator beacon approved by CASA for use on such an aircraft. .

Changes have also been made to the flight conditions that deal with flights over bodies of water and the minimum distances from land that an aircraft is permitted to travel. Weight shift controlled aeroplanes and powered parachutes are allowed to fly up to 25 nautical miles from land, if all persons on the aircraft wear life jackets and the aircraft is fitted with the prescribed safety equipment. For flights between Tasmania and mainland Australia, that limitation may be exceeded in order to take advantage of better weather conditions.

The new Order now allows an aircraft to be less than 100 metres from a public road, a person not associated with the operation of an aircraft or a private dwelling when taking off or landing. However, the aircraft must be distant enough to avoid endangering any person or causing damage to any property and as far as possible from such a person or place, having regard to carrying out a safe take-off or landing.

Other changes have been made in the new Order to simplify the provisions, which in the previous Order had been amended piece-meal over the years. The Order has also been prepared to make it as uniform as possible with the other Orders also dealing with light aircraft that have been remade at the same time.

Legislative Instruments Act

Under subparagraph 6 (d) (i) of the *Legislative Instruments Act 2003* (the *LIA*), an instrument is a legislative instrument for section 5 of the LIA if it is declared to be a disallowable instrument under legislation in force before the commencement of the LIA. Under subsection 95 (5) of the Act, Civil Aviation Orders are declared to be disallowable instruments. The new Order is, therefore, a legislative instrument and it is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LIA.

Consultation

The changes are consistent with the NPRM for the proposed Part 103 as mentioned above. The sport and recreational aviation aircraft industry and users of those aircraft were made aware of the changes included in the new Order and have, through the various associations that regulate those aircraft, prepared for their introduction. None of the changes should adversely affect aviation safety.

Office of Best Practice Regulation (OBPR)

The OBPR does not require a Regulation Impact Statement as the amendments are minor and of a machinery nature.

The instrument commences on the day after it is registered.

The instrument has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

[Civil Aviation Order 95.32 Instrument 2011]