



# Australian Government

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## Civil Aviation Safety Authority

I, PHILIPPA JILLIAN SPENCE, Director of Aviation Safety, on behalf of CASA, make this instrument under regulations 11.160 and 11.205 of the *Civil Aviation Safety Regulations 1998* and subregulations 5 (1) and (1A) of the *Civil Aviation Regulations 1988*.

**[Signed P. Spence]**

Pip Spence  
Director of Aviation Safety

30 November 2021

### **Civil Aviation Order 95.12 (Exemptions from CAR and CASR — Gyroplanes Not Exceeding 250 kg) Instrument 2021**

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#### **1 Name**

- 1.1 This instrument is *Civil Aviation Order 95.12 (Exemptions from CAR and CASR — Gyroplanes Not Exceeding 250 kg) Instrument 2021*.
- 1.2 This Order may be cited as *Civil Aviation Order 95.12*.
- 1.3 A reference in a CASA instrument (being an instrument issued by CASA under a statutory power to issue the instrument) to section 95.12 of the Civil Aviation Orders is taken to be a reference to this Order.

#### **2 Duration**

- 2.1 This Order commences on 2 December 2021, immediately after the commencement of both of the following:
  - (a) Schedule 1 to the Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019;
  - (b) the Civil Aviation Safety Amendment (Part 91) Regulations 2018.
- 2.2 Subject to paragraph 2.3, this Order is repealed at the end of 1 December 2024.
- 2.3 Paragraph 5A.2 is repealed at the end of 1 December 2023.

#### **3 Repeal**

*Civil Aviation Order 95.12 Instrument 2011* (assigned the FRL number F2020C00329) is repealed.

#### **4 Application**

This Order applies to a single-place gyroplane with an empty weight not exceeding 250 kg that is:

- (a) employed in private operations; and
- (b) listed with a sport aviation body other than an ASAO;  
(referred to in this Order as a *relevant aircraft*).

*Note* See definition of *listed* in paragraph 5.1.

## 5 Definitions

*Note* In this Order, certain terms and expressions have the same meaning as they have in the Act and the regulations. These include: *aircraft flight manual instructions*, *ASAO*, *employed in private operations*, *flying training*, *gyroplane*, *pilot certificate*, *private operation*, *registered*, *sport aviation body*, *VFR*, *VMC* and *VMC criteria*.

5.1 In this Order, unless the contrary intention appears:

*Act* means the *Civil Aviation Act 1988*.

*aerial mustering* means the use of a relevant aircraft to locate, direct and concentrate livestock.

*ASRA Basic Gyroplane Construction Standards* means the document of that name, prepared by the Australian Sport Rotorcraft Association Inc., as existing from time to time.

*CAO 20.18* means *Civil Aviation Order 20.18*, as in force immediately before the commencement of the *Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions) Regulations 2021*.

*close relative*, of a person, means the spouse or a parent, child or sibling of the person.

*emergency ELT* has the meaning given by section 26.50 of the Part 91 MOS.

*empty weight*, in relation to a relevant aircraft, means the weight of the aircraft including all items of fixed equipment, unusable fuel and undrainable oil, but excluding all other items of disposable load.

*flying instructor authorisation*, in relation to a relevant aircraft, means an authorisation, however described, that:

- (a) is issued to a person (the *holder*) by the relevant sport aviation body in accordance with its operations manual; and
- (b) confers privileges on the holder to conduct flying training in the aircraft.

*listed*: an aircraft is listed with a sport aviation body if:

- (a) the sport aviation body's approved function is or includes administering the aircraft; and
- (b) the sport aviation body holds a record of:
  - (i) a description of the aircraft (by reference to its make, model and serial number or construction number) and the identity of the aircraft's operator; and
  - (ii) the identifying mark issued for the aircraft by the sport aviation body in accordance with its operations manual or technical manual.

*operations manual*, in relation to the relevant sport aviation body for a relevant aircraft, means 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.

*Order* means Civil Aviation Order.

*Part 91 MOS* means the Part 91 Manual of Standards.

*Part 138 MOS* means the Part 138 Manual of Standards.

*pilot authorisation*, in relation to a person piloting an aircraft, means:

- (a) a pilot certificate; and

- (b) a rating or endorsement issued in accordance with the operations manual of the relevant sport aviation body that authorises the person operating the aircraft to conduct specified activities in the aircraft.

**relevant aircraft** means an aircraft to which this Order applies under subsection 4.

**relevant sport aviation body**, in relation to an aircraft, person or activity means a sport aviation body whose approved function is or includes administering the aircraft, person or activity.

**SAB flight permit**: see subsection 5A.

**single-place gyroplane** means a gyroplane that has been designed, manufactured or certificated to carry only the pilot and no other persons.

**suitable landing area**, in relation to a relevant aircraft, means an area in which such an aircraft may be landed without endangering the safety, or damaging the property, of persons unconnected with the operation of the aircraft.

**survival ELT** has the meaning given by section 26.51 of Part 91 MOS.

**technical manual**, in relation to the relevant sport aviation body for a relevant aircraft, means the manual, approved from time to time by CASA, that contains:

- (a) airworthiness, design and maintenance standards; and
- (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.

- 5.2 A reference in this Order to a Class of airspace is a reference to the volumes of airspace of that Class, as determined by CASA in the *Determination of Airspace and Controlled Aerodromes Etc. (Designated Airspace Handbook) Instrument*, as in force from time to time.

## **5A SAB flight permits**

- 5A.1 In this Order:

**SAB flight permit**, in relation to a relevant aircraft, means an authorisation, however described, that:

- (a) is issued by the relevant sport aviation body in accordance with its operations manual or technical manual; and
- (b) confirms:
  - (i) the aircraft's compliance with the *ASRA Basic Gyroplane Construction Standards*; and
  - (ii) the sport aviation body's oversight of the aircraft's operation.

- 5A.2 For the purposes of this Order, but without limitation, an SAB flight permit is taken to be in force for a relevant aircraft if, immediately before the commencement of this Order under subsection 2:

- (a) the aircraft was listed with a relevant sport aviation body; and
- (b) an authorisation under subregulation 262AP (5) of CAR was in force in relation to the aircraft.

## 6 Relevant aircraft authorised to fly without certificate of airworthiness

Subject to the other subsections in this Order, a relevant aircraft is, for the purposes of regulation 200.020 of CASR (and for those purposes only), an Australian aircraft that is exempt from CASR (other than Parts 1, 11, 21, 39, 61, 67, 91, 92, 99 and 149).

*Note* Under regulation 200.020 of CASR, for the purposes of paragraph 20AA (3) (b) of the Act, such an aircraft is authorised to fly without a certificate of airworthiness.

## 7 Authorisation to perform duty without civil aviation authority

- 7.1 Subject to the conditions in this Order, for the purposes of paragraph 20AB (1) (b) of the Act, a person performing a duty that is essential to the operation of a relevant aircraft during flight time is authorised to do so without a civil aviation authorisation mentioned in paragraph 20AB (1) (a).
- 7.2 Despite paragraph 7.1, a person who makes an airborne radio transmission on an aeronautical HF frequency must be authorised to transmit using an aeronautical radio under Part 61 or 64 of CASR.

## 8 Exemptions

- 8.1 Subject to paragraph 8.3, a person who would, but for this subsection, have an obligation under the *exempted provisions* in relation to a relevant aircraft is exempt from complying with the obligation if the person complies with the conditions in this Order.
- 8.2 In paragraph 8.1:  
*exempted provisions* means:
- (a) Parts 4 to 4D (inclusive) of CAR;
  - (b) the following provisions of CASR:
    - (i) regulations 91.095, 91.105, 91.110, 91.115, 91.145, 91.155, 91.267, 91.415, 91.430, 91.550, 91.585, 91.590, 91.595, 91.605, 91.615, 91.625, 91.725 and 91.915;
    - (ii) Subparts 91.K and 91.Y;
    - (iii) Parts 13, 27, 33, 35, 45, 47, 64 and 90.
- 8.3 The exemption relating to regulation 91.105 of CASR is subject to the condition that, for a flight, if the aircraft flight manual instructions or the relevant sport aviation body requires the aircraft flight manual to be carried on board the aircraft, the aircraft flight manual must be so carried.

## 9 General conditions

*Note* CASA may, by an approval under subsection 13, authorise a person to fly a relevant aircraft otherwise than in accordance with a condition in this subsection.

The following general conditions apply in relation to a relevant aircraft:

- (a) there must be clearly displayed in a relevant aircraft, in a position visible to the pilot when occupying the control seat, a sign stating that:
  - (i) neither CASA nor the relevant sport aviation body guarantees the airworthiness of the aircraft; and
  - (ii) the pilot operates the aircraft at the pilot's own risk;
- (b) a relevant aircraft must not be used in aerial application operations within the meaning given by regulation 137.010 of CASR;

- (c) a relevant aircraft must not be used for the carriage of passengers or cargo for hire or reward;
- (d) a relevant aircraft must not be used for any purpose other than:
  - (i) the personal carriage of the pilot; or
  - (ii) the aerial inspection, conducted as a private operation, of stock, fencing or farm or pastoral equipment that is located on land owned by, or under the control of, the pilot or close relative of the pilot; or
  - (iii) aerial mustering, or flying training for aerial mustering, provided that it is in accordance with subsection 10;
- (e) a relevant aircraft must not be operated by a person as pilot in command unless the person:
  - (i) holds a valid pilot certificate issued by the relevant sport aviation body in accordance with its operations manual; and
  - (ii) subject to the other conditions set out in this Order, operates the aircraft in accordance with the privileges and limitations of the certificate;
- (f) subject to the other conditions set out in this Order, a relevant aircraft must be operated in accordance with the relevant sport aviation body's operations manual;
- (g) a relevant aircraft must be maintained in accordance with the maintenance standards set out in the relevant sport aviation body's operations manual or technical manual (to the extent to which they are applicable).

## **10 Aerial mustering and flying training for aerial mustering**

*Note* CASA may, by an approval under subsection 13, authorise a person to fly a relevant aircraft otherwise than in accordance with a condition in this subsection.

- 10.1 A relevant aircraft must not be used for aerial mustering unless:
- (a) the pilot holds:
    - (i) a pilot certificate issued by the relevant sport aviation body; and
    - (ii) either:
      - (A) a Part 61 gyroplane rating and endorsement (see paragraph 10.3); or
      - (B) a Part 61-equivalent gyroplane rating and endorsement (see paragraph 10.3); and
  - (b) the pilot is the owner of the aircraft; and
  - (c) the operation is conducted entirely over land owned or occupied by the pilot; and
  - (d) before the operation commences, the pilot has completed the risk assessment and mitigation processes prescribed in section 13.05 of the Part 138 MOS for a limited aerial work operator and the pilot is duly satisfied that the risks of the operation can be sufficiently mitigated for the operation to be carried out safely; and
  - (e) the operation is conducted as a limited aerial work operation within the meaning of the Part 138 MOS.
- 10.2 A relevant aircraft must not be used for flying training for aerial mustering except in accordance with the operations manual of the relevant sport aviation body.
- 10.3 In this subsection:

**Part 61 gyroplane rating and endorsement**, in relation to a pilot, means a flight crew licence with a gyroplane category rating with:

- (a) a Part 61 gyroplane low-level rating, provided that:
  - (i) the rating was issued within the previous 24 months; or
  - (ii) the pilot has, within the previous 24 months, completed a gyroplane low-level rating flight review in accordance with section 14 of the *Part 61 Manual of Standards*; and
- (b) a Part 61 aerial mustering-gyroplane endorsement.

**Part 61-equivalent gyroplane rating and endorsement**, in relation to a pilot certificate holder, means:

- (a) a gyroplane low-level rating issued by the relevant sport aviation body in accordance with requirements that are, under the sport aviation body's operations manual, equivalent standards to those required for such a rating if issued under Part 61 of CASR<sup>1</sup>, provided that:
  - (i) the rating was issued within the previous 24 months; or
  - (ii) the pilot certificate holder has, within the previous 24 months, completed, and has been assessed as competent (by the holder of a flying instructor authorisation issued by the sport aviation body that authorises the holder to conduct the flying training) to conduct, a gyroplane low-level rating flight review, which requires, under the sport aviation body's operations manual, equivalent standards to those required for such a flight review if conducted under Part 61 of CASR<sup>2</sup>; and
- (b) an aerial mustering-gyroplane endorsement, issued by the relevant sport aviation body in accordance with the requirements that are, under the sport aviation body's operations manual, equivalent standards to those required for such an endorsement if issued under Part 61 of CASR<sup>3</sup>.

*Note 1* The equivalent standards are the gyroplane low-level competency standards mentioned in Appendix Q.4 of Schedule 1, and in Schedule 2, to the Part 61 Manual of Standards.

*Note 2* The equivalent standards are the flight review standards mentioned in section 14 of the Part 61 Manual of Standards.

*Note 3* The equivalent standards are the aerial mustering-gyroplane competency standards mentioned in Appendix Q.7, and in Schedule 2, to the Part 61 Manual of Standards.

## 11 Flight conditions

*Note* CASA may, by an approval under subsection 13, authorise a person to fly a relevant aircraft otherwise than in accordance with a condition in this subsection.

11.1 The following flight conditions apply in relation to a relevant aircraft:

- (a) a relevant aircraft may only be flown in VMC and in accordance with the VFR;
- (b) a relevant aircraft may only be flown during daylight hours;
- (c) a relevant aircraft must not conduct aerobatic manoeuvres;
- (d) any cargo carried on board a flight by a relevant aircraft must be securely restrained;
- (e) a relevant aircraft must be flown in accordance with the flight height and separation limitations in subsection 12;

- (f) a relevant aircraft must not be flown within 5 nautical miles of a certified or registered aerodrome unless the pilot holds a valid pilot certificate endorsed for that type of activity;
  - (g) a relevant aircraft must not be flown above a body of water at a horizontal distance from a suitable landing area of more than:
    - (i) the distance that the aircraft could glide in case of engine failure; or
    - (ii) in the case of a power-assisted sailplane or powered sailplane, if the pilot wears a life jacket and the aircraft is equipped with a serviceable radiocommunication system and an emergency ELT or survival ELT:
      - (A) 25 nautical miles from a suitable landing area; or
      - (B) in the case of a flight between Tasmania and mainland Australia in either direction — a longer route if taking advantage of safer weather conditions;
  - (h) a relevant aircraft must not be flown over a populous area or public gathering unless:
    - (i) an SAB flight permit is in force for the aircraft; and
    - (ii) an approval is in force under regulation 91.045 or 91.050 of CASR authorising the flight over the area or gathering, which approval imposes no conditions or limitations that would prevent the flight;
  - (i) a relevant aircraft may only be flown in:
    - (i) Class E or G airspace; or
    - (ii) subject to paragraph 11.2 — Class A, B, C or D airspace or a restricted area.
- 11.2 For the purposes of subparagraph 11.1 (i) (ii), a person must not operate a relevant aircraft in Class A, B, C or D airspace or a restricted area unless:
- (a) the following authorisations are in force:
    - (i) an SAB flight permit, or an experimental certificate under regulation 21.195A, is in force in relation to the aircraft; and
    - (ii) an approval is in force under regulation 91.045 or 91.050 of CASR authorising the flight in the aircraft over a populous area or public gathering, which approval imposes no conditions or limitations that would prevent the flight; and
  - (b) the aircraft is fitted with an engine of a kind:
    - (i) mentioned in paragraph 6.1 of Schedule 1 to the Civil Aviation Amendment Order (No. R94) 2004 (also known as section 101.55 of the Civil Aviation Orders), as in force on 31 May 2016; or
    - (ii) that:
      - (A) CASA has approved as being suitable for use in a relevant aircraft; or
      - (B) is certified to the airworthiness standards for engines mentioned in Part 32 or 33 of CASR; and
  - (c) the aircraft is fitted with a radio capable of two-way communication with air traffic control; and

- (d) the person holds a pilot licence with an aircraft category rating, the valid privileges of which include operating in controlled airspace and at a controlled aerodrome; and
  - (e) the pilot has a valid flight review for the aircraft's class rating under Part 61 of CASR; and
  - (f) if the controlled airspace in which the aircraft is operating requires a transponder to be fitted — the aircraft is fitted with a transponder that is suitable for use in the airspace.
- 11.3 Any radiocommunications equipment fitted to a relevant aircraft must not be used by a person unless:
- (a) in the case of transmission in VHF frequency:
    - (i) the person is authorised or qualified to transmit in VHF frequency under Part 61 of CASR; or
    - (ii) the relevant sport aviation body has authorised the person to operate VHF radiocommunications equipment in accordance with its operations manual; and
  - (b) in any other case — the person is authorised or qualified to transmit in the relevant frequency in accordance with regulation 91.625 of CASR.
- 11.4 A relevant aircraft that is fitted with, or carries, automatic dependent surveillance-broadcast equipment, must comply with the requirements relating to the equipment in subsection 9B of CAO 20.18.
- 11.5 A relevant aircraft that is fitted with, or carries, SSR transponder equipment, must comply with the requirements relating to the equipment in subsections 9BA, 9C and 9E of CAO 20.18.

## **12 Flight height and separation limitations**

*Note* CASA may, by an approval under subsection 13, authorise a person to fly a relevant aircraft otherwise than in accordance with a condition in this subsection.

- 12.1 Subject to paragraphs 12.2 and 12.3, a relevant aircraft may be flown at a height of less than 300 feet above ground level over land owned by a person (including the Crown), only if:
- (a) the aircraft is flying in the course of actually taking off or landing; or
  - (b) the aircraft is flying over land that is owned by, or under the control of, the pilot; or
  - (c) the owner or occupier (including the Crown) of the land, or an agent or employee of the owner or occupier, has given permission for the flight to take place at such a height.
- 12.2 Except when taking off or landing, a relevant aircraft that is flown at a height of less than 500 feet above ground level must be at a distance of at least 100 metres horizontally from:
- (a) a public road (being a street, road, lane, thoroughfare or place open to, or used by, the public for passage of vehicles); or
  - (b) a person other than a person associated with the operation of the aircraft; or
  - (c) a dwelling, except with the permission of the occupier.
- 12.3 When taking off or landing, a relevant aircraft that is flown at a height of less than 500 feet above ground level must, during the take-off or landing, maintain a

horizontal distance from a person or place referred to in paragraph 12.2 that may be less than 100 metres but is:

- (a) enough to avoid endangering any person or causing damage to any property; and
  - (b) as far as possible from such a person or place, having regard to carrying out a safe take-off or landing.
- 12.4 A relevant aircraft may only be flown higher than 500 feet above ground level if the pilot holds a current gyroplane pilot certificate endorsed for that activity.
- 12.5 A relevant aircraft must not be flown:
- (a) at a height of 5 000 feet above mean sea level or higher; or
  - (b) in the VMC criteria specified in item 4 of Table 2.07 (3) of the Part 91 MOS;
- unless it is equipped with, or carries, serviceable radiocommunications equipment and the pilot is authorised or qualified to use it.
- 12.6 A relevant aircraft must not be flown at a height of 10 000 feet above mean sea level or higher.

### **13 Approval of flights not complying with flight conditions**

- 13.1 CASA may, on application by a person who proposes to fly a relevant aircraft otherwise than in accordance with a condition in subsection 9, 10, 11 or 12, approve the proposed flight.
- 13.2 The application must:
- (a) include details of the proposed flight and the flight conditions sought to be disapplied; and
  - (b) be made at least 28 days before the proposed flight.
- 13.3 The approval must specify:
- (a) the condition in subsection 9, 10, 11 or 12 that is not to apply in relation to the proposed flight; and
  - (b) the conditions, if any, to which the approval is subject.
- 13.4 A person must not contravene an approval (or any conditions of an approval) granted under this subsection.

### **14 Transitional provisions**

- 14.1 A certificate, approval or authorisation given under the repealed Order by a sport aviation body that was current or in force immediately before the commencement of this Order, continues on and from that commencement as if it were an equivalent certificate, approval or authorisation given by the sport aviation body under this Order and subject to the same terms and conditions.
- 14.2 An approval given, or determination made, under the repealed Order by CASA that was in force immediately before the commencement of this Order, continues on and from that commencement as if it were an equivalent approval given, or determination made, by CASA under this Order and subject to the same terms and conditions.
- 14.3 In this subsection:  
***repealed Order*** means *Civil Aviation Order 95.12 Instrument 2011* (repealed under subsection 3).