



Australian Government

Civil Aviation Safety Authority

Instrument number CASA 32/22

I, ANTHONY ALFRED STANTON, Branch Manager, Sport & Recreation Aviation, Stakeholder Engagement Division, a delegate of CASA, make this instrument under regulations 11.056, 11.245 and 91.045 of the *Civil Aviation Safety Regulations 1998*.

Anthony A. Stanton
Branch Manager, Sport & Recreation Aviation
Stakeholder Engagement Division

14 July 2022

CASA 32/22 — Use of Class A Airspace by Sailplanes Instrument 2022

1 Name

This instrument is *CASA 32/22 — Use of Class A Airspace by Sailplanes Instrument 2022*.

2 Duration

This instrument:

- (a) commences on the day after it is registered; and
- (b) is repealed at the earlier of the following:
 - (i) the end of 31 May 2024;
 - (ii) the commencement of the Part 103 Manual of Standards.

3 Definitions

Note In this instrument, certain terms and expressions have the same meaning as they have in the *Civil Aviation Act 1988* and the regulations. These include: *ATS provider*, *Part 91 Manual of Standards*, *Part 103 Manual of Standards*, *private operation*, *sailplane* and *VFR flight*.

In this instrument:

AA means Airservices Australia, ARN 202210, in its capacity as an ATS provider.

CFI means the person appointed in writing by the relevant R/MO as the chief flying instructor of a GFA affiliate, or a person exercising delegated authority of the appointed person.

CFI directions means written requirements for the flight of a sailplane issued by a CFI, as the CFI directions exist at the time of the flight.

duty instructor, for a sailplane operation to be held in class A airspace covered by an LOA, means the person who is:

- (a) authorised in writing by the CFI of the GFA affiliate that is coordinating the sailplane operation; and

(b) responsible for the safe and efficient conduct of the operation.

GFA means The Gliding Federation of Australia Inc, ARN 217932.

GFA affiliate means any of the following gliding clubs or associations that are affiliated with the GFA:

- (a) Western Australian Gliding Association Incorporated;
- (b) Canberra Gliding Club Inc;
- (c) Grampians Soaring Club Incorporated.

LOA means a Letter of Agreement signed by AA and the GFA, or by AA and a GFA affiliate, that:

- (a) is in effect on the day of, and relates to, sailplane operations; and
- (b) describes the area within which sailplane operations may be conducted in class A airspace; and
- (c) specifies the limitations and conditions (however described) on which AA agrees to the conduct of sailplane operations in class A airspace within the area mentioned in the agreement.

relevant RM/O, for the appointment of a CFI for a GFA affiliate, means the GFA Regional Manager, Operations responsible for appointing CFIs for gliding clubs or associations that are:

- (a) affiliated with the GFA; and
- (b) located within the State or Territory within which the GFA affiliate is located.

relevant sailplane means a sailplane that is employed in private operations.

4 Application

- (1) Subject to subsection (2), this instrument applies in relation to the pilot in command of a relevant sailplane flown in a sailplane operation in class A airspace covered by an LOA, and any GFA affiliate that is coordinating a sailplane operation in class A airspace.
- (2) The instrument applies in relation to the pilot in command of the relevant sailplane if the pilot in command:
 - (a) is a member of the GFA; and
 - (b) has, before flying the relevant sailplane in the class A airspace:
 - (i) confirmed with the CFI or duty instructor that the sailplane operation in the class A airspace is covered by an LOA and has been cleared by AA; and
 - (ii) received a briefing, on the day of the flight, from the CFI or duty instructor about the matters mentioned in paragraph 7 (a).

Note Class A airspace is determined from time to time in a legislative instrument made under regulation 5 of the *Airspace Regulations 2007*. As at the date of commencement of this instrument, the legislative instrument is *CASA OAR 046/22 — Determination of Airspace and Controlled Aerodromes Etc. (Designated Airspace Handbook) Instrument 2022* and is available at <https://www.legislation.gov.au/Details/F2022L00757>.

5 Approval

- (1) For the purposes of paragraph 91.285 (1) (b) of CASR, the pilot in command of a relevant sailplane is approved under regulation 91.045 of CASR to conduct a VFR flight in the relevant sailplane in class A airspace covered by an LOA.

- (2) The approval is subject to the conditions mentioned in section 6.

6 Conditions

The pilot in command must conduct the VFR flight in the relevant sailplane in class A airspace in accordance with:

- (a) the CFI directions issued in relation to the sailplane operation in which the aircraft is flown in the class A airspace; and
- (b) the conditions and limitations for the sailplane operation in the class A airspace that are mentioned in the LOA that covers the class A airspace, as the LOA exists on the day of the VFR flight; and
- (c) any other requirements for the safe conduct of the flight in class A airspace communicated to the pilot during the briefing mentioned in subparagraph 4 (2) (b) (ii).

Note 1 See also *Civil Aviation Order 95.4 (Exemptions from CAR and CASR — Sailplanes and Towing Aircraft) Instrument 2021 (CAO 95.4)* for the flight conditions that apply to a relevant sailplane. For example, paragraph 9.1 of CAO 95.4 requires a relevant sailplane to only be flown in VMC and in accordance with the VFR, and only during daylight hours. Paragraph 9.1 also requires a relevant sailplane to be equipped with or carry, serviceable radiocommunications equipment at a height of 5 000 feet AMSL or in specified VMC criteria, and for pilots in command to have specified pilot qualifications or authorisations for the use of radiocommunications equipment fitted to a relevant sailplane.

Note 2 For the purposes of regulation 91.255 of CASR, Division 11.1 of the Part 91 Manual of Standards (**Part 91 MOS**) prescribes requirements for the use by an aircraft (including sailplanes) of a class of airspace or a portion of a class of airspace. For example, paragraph 11.10 (2) (b) of the Part 91 MOS sets out procedures to follow if the radiocommunication system is not functioning correctly.

7 Direction

For regulation 11.245 of CASR, the CFI of any GFA affiliate that is coordinating a sailplane operation in class A airspace must ensure that the pilot in command of any sailplane, before it is flown in the sailplane operation:

- (a) receives a briefing from the CFI or duty instructor about:
 - (i) the CFI directions issued in relation to the sailplane operation; and
 - (ii) the conditions and limitations for the sailplane operation in the class A airspace that are mentioned in the LOA that covers the class A airspace; and
 - (iii) any other requirements for the safe conduct of the flight in class A airspace; and
- (b) is provided with a copy of:
 - (i) the CFI directions that are issued in relation to the flight; and
 - (ii) the LOA that covers sailplane operations in the class A airspace.

Note For regulation 11.250 of CASR, the direction in this section ceases to be in force on the day this instrument is repealed under section 2.

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA 32/22 — Use of Class A Airspace by Sailplanes Instrument 2022

Purpose

The purpose of *CASA 32/22 — Use of Class A Airspace by Sailplanes Instrument 2022* (the **instrument**) is to grant approval for pilots in command of sailplanes employed in private operations, who are members of The Gliding Federation of Australia Inc (the **GFA**), to conduct VFR flights in sailplane operations in class A airspace covered by a Letter of Agreement (the **LOA**) between Airservices Australia (**AA**) and the GFA or a specified GFA affiliate. The approval is subject to conditions imposed in the interests of safety of air navigation. The instrument also issues a direction to the chief flying instructor (**CFI**) of any GFA affiliate coordinating such a sailplane operation to brief the pilots in command regarding specified matters, and provide them with copies of CFI directions for the flight, and the relevant LOA.

The instrument is necessary so that sailplanes may be flown in sailplane operations in class A airspace for high altitude flights in wave soaring events held in certain areas in the Snowy Mountains in New South Wales, the Grampians in Victoria and Bluff Knoll in Western Australia.

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**).

Subregulation 91.285 (1) of CASR provides that the pilot in command of an aircraft for a VFR flight contravenes the subregulation if, during the flight:

- (a) the aircraft is flown in class A airspace; and
- (b) the pilot in command does not hold an approval under regulation 91.045 to conduct a VFR flight in class A airspace.

Subregulation 91.285 (2) provides that it is a strict liability offence for a person to contravene subregulation 91.285 (1).

Subregulation 91.045 (1) of CASR provides that, if a provision in Part 91 refers to a person holding an approval under regulation 91.045, the person may apply to the Civil Aviation Safety Authority (**CASA**) for the approval.

Under regulation 11.015 of CASR, an approval of this type is an authorisation under Part 11 of CASR, with Subpart 11.BA of CASR applying to the authorisation.

Regulation 11.055 sets out criteria that apply to CASA when granting an authorisation. Regulation 11.056 provides that an authorisation may be granted subject to any condition that CASA is satisfied is necessary in the interests of the safety of air navigation. Under regulation 11.077, a person commits an offence of strict liability if the person breaches a condition of an authorisation.

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 to contravene a direction under regulation 11.245.

Under subsection 14 (1) of the *Legislation Act 2003* (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 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.

Background

The GFA has previously operated sailplanes in class A airspace covered by LOAs between AA and the GFA or a GFA affiliate under instrument *CASA EX86/18 — Use of Class A Airspace by Gliders Exemption 2018 (CASA EX86/18)* and earlier under instrument number CASA 07/15.

CASA EX86/18 granted an approval for subregulation 99AA (3) of the *Civil Aviation Regulations 1988 (CAR)* for the pilot in command of a sailplane to engage in a V.F.R. flight in Class A airspace, and a permission for subregulation 174A (3) of CAR to fly a sailplane that is not equipped with a serviceable secondary surveillance transponder to fly the sailplane in class A airspace under the V.F.R.

Instrument EX86/18 also granted exemptions from subregulation 207 (2) of CAR and specified subsections of *Civil Aviation Order 20.18 (Aircraft equipment — basic operational requirements) Instrument 2014 (CAO 20.18)* to the extent that the CAO provisions required the sailplane to carry ADS-B transmitting equipment and Mode S transponder equipment.

On 2 December 2021 regulations 99AA, 174A, 207 and 232A of CAR were repealed by the *Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions Regulations 2021*, and Part 91 of CASR and the *Part 91 (General Operating and Flight Rules) Manual of Standards 2020* (the **Part 91 MOS**) commenced. *Civil Aviation Order 95.4 (Exemptions from CAR and CASR — Sailplanes and Towing Aircraft) Instrument 2021 (CAO 95.4)* commenced on the same date. CAO 20.18 was made under regulations 207 and 232A of CAR.

The Part 91 MOS does not require sailplanes to be fitted with a transponder when operating in controlled airspace up to FL290, nor require fitment of an ADS-B when operating above FL290.

It is anticipated that the Part 103 Manual of Standards, when it commences, will contain the equipment requirements for Part 103 aircraft, including for the operation of sailplanes in class A airspace.

The CASR Dictionary defines *sailplane*, *VFR*, and *Part 103 aircraft* as follows:

sailplane means a glider:

- (a) that has an empty weight of more than 70 kg; and
- (b) the free flight of which does not depend on an engine.

VFR (short for visual flight rules) means:

- (a) for Part 131 aircraft — the rules and procedures set out in Subdivision 131.D.4.2; and
- (b) for all other aircraft — the rules and procedures set out in Subdivision 91.D.4.2.

Part 103 aircraft: see subregulations 103.005 (4), (5) and (6).

The definition of *Part 103 aircraft* in regulation 103.005 of CASR was inserted by the *Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019* on 2 December 2021, and includes sailplanes. CAO 95.4 that also commenced on that date sets out the flight conditions that apply to a “relevant sailplane”, being a sailplane that is employed in private operations. The instrument therefore applies in relation to the pilot in command of a relevant sailplane, similarly defined (if the pilot and the sailplane meet other specified requirements).

The sailplanes used in the sailplane operations in class A airspace covered by an LOA all meet the CASR Dictionary definition of *sailplane* and are employed in private operations.

The previous instrument CASA EX86/18 repealed at the end of 30 June 2021. The GFA has applied for the instrument to be remade.

Overview of instrument

The instrument provides an approval under regulation 91.045 of CASR, for the purposes of paragraph 91.285 (1) (b) of CASR, for the pilot in command of a relevant sailplane to conduct a VFR flight in class A airspace covered by an LOA. The approval is subject to similar conditions as in CASA EX86/18. A direction is also issued under regulation 11.245 of CASR to the CFI of any GFA affiliate that is coordinating a sailplane operation in class A airspace regarding a briefing and other information to be given to the pilots in command of the sailplanes flown in the sailplane operation.

CASA has assessed the impact of the instrument on aviation safety and is satisfied that, based on its assessment of the GFA’s risk assessment provided with the application, and the conditions imposed on the approval and the direction issued to the CFI, there are no adverse safety implications in relation to granting the approval.

Documents incorporated by reference

The instrument incorporates by reference CFI directions and LOAs.

CFI directions are directions given to pilots in command of sailplanes for flights of their sailplane, and are incorporated as they exist at the time of the flight. There are different CFI directions for different GFA affiliates, and they may not yet exist when the legislative instrument is made.

As mentioned previously, 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.

Copies of CFI directions are made available, free of charge, to pilot in command of sailplanes by the relevant CFI or GFA affiliate organisation. Under the direction given in section 7 of the instrument, they must be given to the pilot in command of a sailplane before it is flown in a sailplane operation in class A airspace.

Also, on request CASA can request a copy of CFI directions from a GFA affiliate and provide it for perusal by any person free of charge at any CASA office by prior arrangement.

An LOA is a Letter of Agreement between AA and the GFA, or AA and a GFA affiliate, that governs the use of class A airspace, managed by AA, by sailplane pilots. A separate LOA is made for each volume of class A airspace in which sailplanes operate, and a copy is held by the GFA, or GFA affiliate, that is a party to the LOA. Each LOA is incorporated by reference for a sailplane pilot as the LOA exists on the day of a flight by the pilot in class A airspace.

LOAs are available, free of charge, to sailplane pilots from the relevant CFI or GFA affiliate organisation that is a party to the LOA. Under the direction given in section 7 of the instrument, a copy of the relevant LOA must be given to the pilot in command of a sailplane before it is flown in sailplane operations in the class A airspace covered by the LOA.

Also, on request CASA can request a copy of an LOA from a GFA affiliate and provide it for perusal by any person free of charge at any CASA office by prior arrangement.

Content of instrument

Section 1 names the instrument.

Section 2 sets out the duration of the instrument.

Section 3 contains definitions for the instrument. A key defined term is ***relevant sailplane***, which is defined as meaning a sailplane that is employed in private operations.

The note located immediately below the heading of section 3 is a signpost note, intended to assist users of the instrument to identify particular defined terms located in the Act or the regulations.

Section 4 sets out the application of the instrument. The instrument applies in relation to the pilot in command of a relevant sailplane flown in a sailplane operation in class A airspace

covered by an LOA, and any GFA affiliate that is coordinating a sailplane operation in class A airspace.

The pilot in command must be a member of the GFA, and before flying the relevant sailplane, have confirmed with the CFI or duty instructor that the sailplane operation in the class A airspace is covered by an LOA and has been cleared by AA, and have received a briefing about specified matters.

The note located below section 4 explains that class A airspace is determined in a legislative instrument and provides the name and location of the latest such instrument.

Section 5 sets out an approval under regulation 91.045 of CASR for the purposes of paragraph 91.185 (2) (b) of CASR. The pilot in command of a relevant sailplane is approved to conduct a VFR flight in the relevant sailplane in class A airspace covered by an LOA.

Section 6 sets out the conditions subject to which the approval is granted. The pilot in command must conduct the VFR flight in the relevant sailplane in class A airspace in accordance with the relevant CFI directions, the conditions and limitations for the sailplane operation that are mentioned in the relevant LOA, as it exists on the day of the flight, and any other requirements communicated during the pilot briefing.

Section 7 sets out a direction to the CFI of any GFA affiliate that is coordinating a sailplane operation in class A airspace. The direction is given under section 11.245 of CASR. In summary, the direction is for the CFI to ensure that pilots of sailplanes flown in the sailplane operation receive, before flight, a briefing about the applicable CFI directions, the conditions and limitations for the sailplane operation that are mentioned in the applicable LOA and any other requirements for the safe conduct of the flight, and are provided with copies of the CFI directions and the relevant LOA.

Legislation Act 2003

Paragraph 98 (5A) (a) of the Act provides that CASA may issue instruments in relation to matters affecting the safe navigation and operation or the maintenance of aircraft. Additionally, paragraph 98 (5AA) (a) of the Act provides that an instrument issued under paragraph 98 (5A) (a) is a legislative instrument if the instrument is expressed to apply in relation to a class of persons. The instrument applies in relation to certain pilots in command of certain sailplanes, and to GFA affiliates that coordinate certain kinds of sailplane operations. The instrument is, therefore, a legislative instrument, and 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, 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*). However, the instrument will be repealed at the end of 31 May 2024, which will occur before the sunsetting provisions would have repealed the instrument if they had applied. Any renewal of the 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 this instrument.

Consultation

CASA provided the GFA with a draft of the instrument on 23 June 2022 for any comment. The GFA responded that it could meet the conditions and provided no other comment. Given this response, and that no adverse comment has been received by CASA regarding CASA EX86/18, 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 economic and cost impact of the instrument has been determined by:

- (a) the identification of individuals and businesses affected by the instrument; and
- (b) consideration of how the requirements to be imposed on individuals and businesses under the instrument will be different compared to existing requirements; and
- (c) consideration of community impacts, beyond those direct impacts on individuals and businesses affected by the instrument, that are relevant if the instrument were to result in flow-on effects to other aviation businesses, or local non-aviation businesses that experience a change in their activity due to the instrument.

The requirements of the instrument apply to members of the GFA who are pilots in command of sailplanes flying in sailplane operations in class A airspace, and to the CFI of GFA affiliates coordinating such sailplane operations. The requirements are substantially similar to those imposed under CASA EX86/18 that was repealed at the end of 30 June 2021.

CASA has assessed that the economic and cost impact of the instrument is not significant. The GFA has applied for the instrument and it enables pilots in command to fly their sailplanes in class A airspace.

Impact on categories of operations

The instrument is likely to have a beneficial effect on sailplane operations and related businesses by promoting those operations and encouraging the use of equipment offered for sale or hire by those businesses.

Impact on regional and remote communities

The instrument is likely to be of economic benefit to regional communities because it will enable sailplane events to be held in the Snowy Mountains in New South Wales, the Grampians in Victoria and at Bluff Knoll in Western Australia. This will lead to participants in, and spectators of, the events to visit regional communities in those areas.

Office of Best Practice Regulation (OBPR)

A Regulation Impact Statement (*RIS*) is not required in this case, as the exemption is covered by a standing agreement between CASA and OBPR under which a RIS is not required for approvals and directions (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 a delegate of CASA relying on the power of delegation under subregulation 11.260 (1) of CASR.

The instrument commences on the day after it is registered and is repealed at the earlier of the following: the end of 31 May 2024, the commencement of the Part 103 Manual of Standards.

Statement of Compatibility with Human Rights

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

CASA 32/22 — Use of Class A Airspace by Sailplanes 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

The legislative instrument enables pilots in command of sailplanes to use class A airspace. Members of The Gliding Federation of Australia Inc (the **GFA**) who pilot sailplanes employed in private operations will be able to conduct VFR flights in sailplane operations in class A airspace covered by a Letter of Agreement between Airservices Australia (**AA**) and the GFA, or between AA and a specified GFA affiliate. An approval is granted under regulation 91.045 of CASR, for the purposes of paragraph 91.285 (1) (b) of CASR, subject to conditions imposed in the interests of the safety of air navigation. The instrument also issues a direction to the chief flying instructor of any GFA affiliate coordinating such a sailplane operation to brief the pilots in command regarding specified matters and to provide them with other relevant information.

The instrument is necessary so that sailplanes may be flown in sailplane operations in class A airspace for high altitude flights in wave soaring events.

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