

Explanatory Statement

Civil Aviation Safety Regulations 1998

Part 101 Manual of Standards (Extensions of Time Due to COVID-19) Amendment Instrument 2020 (No. 1)

Purpose

The *Part 101 (Unmanned Aircraft and Rockets) Manual of Standards 2019* (the **MOS**) prescribes a range of miscellaneous matters in relation to the safety and regulatory oversight of remotely piloted aircraft (**RPA**), including training and competency standards for remote pilot licences, and standing approvals for certain kinds of operations near aerodromes and beyond visual line of sight (**VLOS**) provided they meet conditions and requirements prescribed by the MOS.

The MOS was expressed to commence on the day of registration but, effectively, only certain provisions took effect on that date, for example, relating to flight beyond VLOS operations, and certain notifications be given to CASA. Implementation of the remaining provisions was deferred for 12 months to 10 April 2020 (in one instance, for 18 months), to enable RPA training organisations in particular to prepare for the transition.

As with the aviation industry generally, RPA training organisations have been faced with the progressively dire implications of the COVID-19 pandemic, the associated state of emergency across Australia and the need to maximise the remedial effects of travel bans and social distancing rules. Largely because of this, and its impacts, for example, on mobility and staffing, it has proved to be impracticable for a large number of the training organisations to finalise their required training documented practices and procedures for CASA approval by properly incorporating all of the relevant elements from the new training syllabus contained in the MOS.

The *Part 101 Manual of Standards (Extensions of Time Due to COVID-19) Amendment Instrument 2020 (No. 1)* (the **MOS amendment**) is, therefore, designed to defer for 6 months the 10 April 2020 take effect date for most of the provisions in the MOS, in particular those relating to training course.

Legislation — the Act

Under subsection 98 (1) of the *Civil Aviation Act 1988* (the **Act**), the Governor-General may, among other things, make regulations prescribing matters required, permitted, necessary or convenient for the Act and in the interests of the safety of air navigation. Part 101 of the *Civil Aviation Safety Regulations 1998* (**CASR**) deals with the operation of unmanned aircraft, rockets and fireworks.

Legislation — Part 101 of CASR

Under regulation 101.028, CASA may issue a MOS prescribing matters required or permitted by the Regulations to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to Part 101.

Legislation — Acts Interpretation Act 1901

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.

The MOS amendment

The MOS amendment repeals section 1.03 of the MOS (Provisions which take effect later than on commencement) and substitutes a new section 1.03 which retabulates the take effect dates for the provisions of the MOS which did not take effect on commencement.

Thus, all of Chapter 2, concerning training courses (and training instructors) will now take effect 6 months later on the deferred date of 10 October 2020 (this was the original take effect date for the provisions relating to instructors).

Chapter 4, concerning controlled aerodromes, will take effect on 10 April 2020 as originally provided for. Chapter 9, concerning prescribed areas, will take effect on 10 April 2020 as originally provided (except Division 9.2 concerning no-fly zones which took effect on registration of the MOS). Chapter 10, concerning record keeping, will now take effect 6 months later on the deferred date of 10 October 2020 (except Divisions 10.1 and 10.4 concerning Definitions and giving certain information to CASA, which took effect on registration of the MOS).

Legislation Act 2003 (the LA)

Under paragraph 98 (5A) (a) of the Act, regulations made “for” that same provision may empower CASA to issue instruments in relation to matters affecting the safe navigation and operation of aircraft.

Under subsection 98 (5AA) of the Act, an instrument (like a MOS) issued under paragraph 98 (5A) (a) is taken to be a legislative instrument if it is expressed to apply in relation to a class of persons or aircraft or aeronautical products.

The MOS is an instrument empowered by regulation 101.028 made by the *Civil Aviation Legislation Amendment (Part 101) Regulation 2016* (the **amendment regulations**). The relevant amendment regulation was made “For subsection 98 (5A) of the Act”.

The standards set by the MOS apply, not to a particular remote pilot or a particular RPA but to the class of such pilots and aircraft. The MOS is, therefore, by virtue of subsection 98 (5AA), a legislative instrument and subject to registration, and tabling and disallowance in the Parliament, under sections 15G, and 38 and 42, of the LA.

Consultation

CASA has been engaging with a number of RPA training organisations facing the delaying implications of the COVID-19 pandemic and who require relief from the imminence of the 10 April 2020 take effect date for the training course requirements of the MOS. In the circumstances, CASA does not consider that any further formal consultation would be useful or necessary in relation to the MOS amendment deferring relevant take effect dates to 10 October 2020.

Office of Best Practice Regulation (OBPR)

Under OBPR guidelines, a MOS amendment which is considered to be of a machinery nature is exempted from OBRP requirements. Insofar as the MOS amendment adjusts take effect dates for some MOS provisions, it may be considered to be of a machinery nature and exempted from OBPR requirements.

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights at Appendix 1 has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The legislative instrument does not engage any of the applicable rights and freedoms, and is, therefore, compatible with human rights, as it does not improperly infringe any human rights issues.

Commencement and making

The MOS amendment commences on the day it is registered. It has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

Statement of Compatibility with Human Rights

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

Part 101 Manual of Standards (Extensions of Time Due to COVID-19) Amendment Instrument 2020 (No. 1)

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 *Part 101 (Unmanned Aircraft and Rockets) Manual of Standards 2019* (the **MOS**) prescribes a range of miscellaneous matters in relation to the safety and regulatory oversight of remotely piloted aircraft (**RPA**), including training and competency standards for remote pilot licences, and standing approvals for certain kinds of operations near aerodromes and beyond visual line of sight (**VLOS**) provided they meet conditions and requirements prescribed by the MOS.

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Human rights implications

The 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*. The 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