

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX46/21 — Remotely Piloted Aircraft Operations Beyond Visual Line of Sight Instrument 2021

Purpose

The purpose of *CASA EX46/21 — Remotely Piloted Aircraft Operations Beyond Visual Line of Sight Instrument 2021* (the **instrument**) is to enable the holder of a remote pilot licence (**remote pilot**) to operate a remotely piloted aircraft (**RPA**) beyond visual line of sight (**BVLOS**) without having passed an examination required by the *Civil Aviation Safety Regulations 1998* (**CASR**), in circumstances where the pilot is a member of the personnel of a certified RPA operator that has approval for such operations under regulation 101.029 of CASR. The operation must be conducted in accordance with documented practices and procedures of the person certified as the RPA operator of the RPA, and (for some operations) under the supervision and direction of another remote pilot who has passed the examination.

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 CASR.

Paragraph 98 (5A) (a) of the Act states that the Civil Aviation Safety Authority (**CASA**) may issue instruments in relation to matters affecting the safe navigation and operation, or the maintenance, of aircraft.

RPA operations

Under regulation 101.252 of CASR, it is generally an offence if a person operates an RPA, other than an excluded RPA, without a remote pilot licence that authorises the person to do so.

Subregulation 101.073 (1) of CASR provides that a person commits an offence of strict liability if the person operates an unmanned aircraft and the aircraft is not operated within the person's visual line of sight. Subregulation (2) states that subregulation (1) does not apply if the person holds an approval under regulation 101.029 to operate the unmanned aircraft beyond the person's visual line of sight. Subregulation (3) provides that an unmanned aircraft (which includes an RPA) is being **operated within the visual line of sight** of the person operating the aircraft if the person can continually see, orient and navigate the aircraft to meet the person's separation and collision avoidance responsibilities, with or without corrective lenses, but without the use of binoculars, a telescope or other similar device.

Paragraph 101.300 (4) (a) of CASR requires that a person must not operate an RPA BVLOS unless the person has passed one of the following examinations to qualify the person to operate an RPA other than within the visual line of sight of the person:

- (a) an aeronautical knowledge examination (within the meaning of Part 61 of CASR) for the grant of an instrument rating under Part 61 of CASR;
- (b) an aviation licence theory examination before 1 September 2014 that is taken to be an equivalent examination;
- (c) an examination approved by CASA.

Exemptions

Subpart 11.F of CASR provides for the granting of exemptions from particular provisions of the regulations.

Subregulation 11.160 (1) of CASR provides that, for subsection 98 (5A) of the Act, CASA may grant an exemption from compliance with a provision of the regulations. Under subregulation 11.160 (2), an exemption may be granted to a person or a class of persons, and may specify the class by reference to membership of a specified body or any other characteristic. Under subregulation 11.160 (3), an exemption may be granted on application by a person or on CASA's own initiative.

Under subregulation 11.170 (3) of CASR, in deciding whether to grant an exemption, CASA must regard as paramount the preservation of at least an acceptable level of aviation safety. CASA has regard to the same test when deciding whether to grant an exemption on its own initiative.

Regulation 11.205 of CASR provides that CASA may impose conditions on an exemption if necessary in the interests of the safety of air navigation. Under regulation 11.210, it is a strict liability offence not to comply with the obligations imposed by a condition.

Regulation 11.225 of CASR requires an exemption to be published on the Internet. Under subregulation 11.230 (1), the maximum duration of an exemption is 3 years.

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 to contravene a direction under regulation 11.245.

Background

The instrument repeals and reissues, with some amendments, instrument *CASA EX67/20 — Remotely Piloted Aircraft Operations Beyond Visual Line of Sight Instrument 2020 (CASA EX67/20)*.

CASA EX67/20 was issued to allow unqualified pilots to continue to operate under the supervision of a qualified pilot as has been the practice, subject to compliance with the conditions set out in the exemption. The qualified pilot would have to be the person certified as the RPA operator of the RPA or appointed to supervise the particular operation by that RPA operator.

After CASA EX67/20 was issued, it became apparent that regulation 101.073 of CASR required both an RPA operator and RPA remote pilot to hold an approval to conduct operations BVLOS under regulation 101.029 of CASR. In circumstances where an RPA remote pilot is conducting a BVLOS operation as a member of personnel of an RPA operator,

CASA views such requirement as excessive without adding to aviation safety. The additional amendments in the instrument provide an exemption for an RPA remote pilot to have an approval under regulation 101.029 of CASR in such circumstances.

CASA will seek amendments to Part 101 of CASR to give effect to the provisions of this instrument, following a review of Part 101, which is expected to take place in 2021.

Overview of instrument

The instrument is intended to enable operators of RPAs to continue to operate their aircraft as is the current practice, subject to compliance with the conditions included in the exemption. The instrument also exempts an RPA remote pilot from the requirement to hold an approval to conduct an operation BVLOS under regulation 101.029 of CASR, in circumstances where the pilot is operating the RPA as a member of the personnel of an RPA operator who does hold an approval under regulation 101.029.

CASA is satisfied that issuing the exemption will preserve at least an acceptable level of safety, as required under subregulation 11.170 (3) of CASR. Several operators are currently operating as described with one qualified pilot to supervise one or more pilots who are not yet qualified in respect of BVLOS operations, and no accidents or incidents are known to have resulted. CASA considers that not to grant the exemption would be unduly restrictive.

Documents incorporated by reference

This instrument incorporates section 5.04 of the *Part 101 (Unmanned Aircraft and Rockets) Manual of Standards 2019* (as amended) (**Part 101 Manual of Standards**) made under regulation 101.028 of CASR. In accordance with subsection 14 (3) of the *Legislation Act 2003* (the **LA**), section 5.04 of the Part 101 Manual of Standards is incorporated as in force or existing from time to time. The Part 101 Manual of Standards is publicly and freely available on the Federal Register of Legislation website at www.legislation.gov.au.

Content of instrument

Section 1 sets out the name of the instrument.

Section 2 sets out the duration of the instrument which is from the day after registration to the end of 30 April 2023. The note under section 2 confirms that the directions in section 7 cease to be in force at the same time as the instrument is repealed.

Section 3 repeals instrument CASA EX67/20.

Section 4 sets out definitions for the instrument. The note before the first definition states that definitions in the Act or the regulations are used in the instrument, such as **RPA** to mean remotely piloted aircraft other than a balloon or a kite.

enclosed operation is defined as an RPA operation in which the RPA is operated inside a structure, in specified circumstances.

EVLOS operation class 1 is defined as having the same meaning as it has in section 5.04 of the Part 101 Manual of Standards.

exempted flight is defined to mean a flight of an RPA that does not comply with paragraph 101.300 (4) (a) of CASR. These are the types of flights to which the exemption in the instrument applies.

remote pilot is defined to refer to the holder of a remote pilot licence and to a person who was qualified as at 28 September 2016 as a UAV operator and is taken to have been certified as an RPA operator. The note after the definition refers to the relevant transitional provision that extends the qualification of a UAV operator.

supervising remote pilot is defined as a remote pilot qualified to operate an RPA BVLOS and is either the person certified as the RPA operator of the RPA, or appointed by that person to act as supervising remote pilot. Therefore, in accordance with subsections 7 (2) and (3), the person can supervise a pilot who has not passed one of the 3 examinations mentioned in paragraph 101.300 (4) (a) and, therefore, does not meet the requirements to operate BVLOS.

The phrase **beyond visual line of sight** is defined in subsection 4 (2) to mean any operation that does not come within the meaning of **operated within the visual line of sight** as defined in subregulation 101.073 (3) of CASR.

Section 5 states who the exemption applies to, namely, a remote pilot as defined who operates an RPA BVLOS as a member of the personnel of an RPA operator.

Section 6 sets out the exemption, which enables a remote pilot to operate an RPA BVLOS as a member of the personnel of an RPA operator, though not qualified to do so under paragraph 101.300 (4) (a) of CASR. The pilot is also exempt from committing an offence under regulation 101.073. The exemption is subject to compliance with the conditions in section 8.

Section 7 sets out directions to the person certified as the RPA operator of an RPA that conducts an exempted flight. The remote pilot will be operating the RPA under that person's certification. The directions ensure that the person certified as the RPA operator has appropriate documented practices and procedures, for the operation of RPA BVLOS, that have been approved by CASA. The documented practices and procedures must include requirements for appropriate training of remote pilots and record keeping.

Section 8 sets out the conditions to which the grant of the exemption to the remote pilot is subject.

Under subsection 8 (1), the remote pilot for an exempted flight must ensure that the flight complies with documented practices and procedures prepared by the person certified as the RPA operator of the RPA and approved by CASA. Therefore, the remote pilot must have completed the specific induction training for the conduct of the flight BVLOS.

Under subsection 8 (2), conditions relating to the supervision of a flight are set out. For operations other than enclosed operations and EVLOS operations class 1 that do not require a supervising remote pilot, the supervising remote pilot must be at the place where the remote pilot is located. The supervising remote pilot must also be readily accessible to the remote pilot conducting the flight, and immediately available to advise and direct.

Under subsection 8 (3), a remote pilot must comply with the directions of the supervising remote pilot.

Legislation Act 2003

Paragraph 98 (5AA) (a) of the Act states that an instrument issued under paragraph 98 (5A) (a) of the Act is a legislative instrument if the instrument is expressed to apply in relation to a class of persons. The instrument applies to a class of persons, being remote pilots who operate RPA BVLOS.

The instrument is a legislative instrument and is subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Consultation

Consultation under section 17 of the LA has not been undertaken in this case.

The instrument removes an unnecessary burden on remote pilots of RPA to complete an examination before operating RPA BVLOS, or to hold an approval under regulation 101.029 of CASR, provided that: the remote pilot is operating as a member of personnel of an RPA operator with approval under regulation 101.029; appropriate training is completed; the operation is in accordance with documented practices and procedures of the person certified as the RPA operator of the RPA; and, where appropriate, the operation is conducted under the supervision and direction of another remote pilot who has passed the examination.

The RPA industry has been carrying out such operations since at least 2018. There are presently applications waiting for approval to do the same. It is CASA's view that consultation is not necessary since the exemption accords with what is current practice.

In these circumstances, CASA is satisfied that no consultation is appropriate or reasonably practicable for the instrument for section 17 of the LA.

Sector risk, economic and cost impact

Subsection 9A (3) of the Act states that subject to regarding the safety of air navigation as the most important consideration, 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.

As the instrument repeals and replaces an existing instrument with largely the same provisions and conditions, giving effect to current practice, there will be no change of economic or cost impact on individuals, businesses or the community.

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 exemptions (OBPR id: 14507).

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 directly engage any of the applicable rights or freedoms, and is compatible with human rights, as it does not directly raise any human rights issues.

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 end of 30 April 2023.

Statement of Compatibility with Human Rights

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

CASA EX46/21 — Remotely Piloted Aircraft Operations Beyond Visual Line of Sight Instrument 2021

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 the legislative instrument is to allow certain pilots, who would not otherwise be qualified to do so, or do not hold an approval under regulation 101.029 of the *Civil Aviation Safety Regulations 1998*, to pilot remotely piloted aircraft beyond their visual line of sight, subject to compliance with conditions to ensure aviation safety. The conditions include requirements relating to training and supervision of the pilot.

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

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*.

Civil Aviation Safety Authority