

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA EX27/23 — Remotely Piloted Aircraft Operations Beyond Visual Line of Sight Exemption 2023

Purpose

CASA EX27/23 — Remotely Piloted Aircraft Operations Beyond Visual Line of Sight Exemption 2023 (the **instrument**) exempts a remote pilot who, as an RPA operator or member of an RPA operator's personnel, operates a remotely piloted aircraft (an **RPA**) beyond the pilot's visual line of sight from compliance with the examination requirement under paragraph 101.300(4)(a) of the *Civil Aviation Safety Regulations 1998 (CASR)*. Also, in stated circumstances, the instrument exempts a remote pilot who, as a member of an RPA operator's personnel, operates an RPA beyond the pilot's visual line of sight from compliance with subregulation 101.073(1) of CASR. The exemptions are subject to stated conditions. Also, the instrument repeals *CASA EX46/21 — Remotely Piloted Aircraft Operations Beyond Visual Line of Sight Instrument 2021 (CASA EX46/21)*.

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 101.021 of CASR, an **RPA** is a remotely piloted aircraft, other than the following:

- (a) a balloon;
- (b) a kite;
- (c) a model aircraft.

Under paragraph 101.300(4)(a), it is a condition of a remote pilot licence that an RPA must be operated within the visual line of sight of the licence holder unless the licence holder has passed:

- (a) an aeronautical knowledge examination (within the meaning of Part 61 of CASR) for the grant of an instrument rating under Part 61; or
- (b) an aviation licence theory examination before 1 September 2014 that is taken to be an equivalent requirement for the grant of an instrument rating under regulation 202.274 of CASR; or
- (c) an approved examination.

As far as is relevant, under subregulation 101.300(6), the licence holder commits an offence of strict liability if the licence holder contravenes the condition.

Under subregulation 101.073(1), 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 101.073(2) states that subregulation (1) does not apply if the person holds an approval, under regulation 101.029 of CASR, to operate the unmanned aircraft beyond the person's visual line of sight and any conditions imposed on the approval are complied with. Subregulation 101.073(3) states that an unmanned aircraft 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.

Subregulation 101.029(1) states that if a provision in Part 101 of CASR refers to a person holding an approval under the regulation, the person may apply to CASA for the approval.

Exemptions

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

Subregulation 11.160(1) of CASR states 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 11.175(4) of CASR, in deciding whether to renew an exemption, on application by a person, 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 renew an exemption on its own initiative.

Regulation 11.205 of CASR states that CASA may impose, on an exemption, any condition necessary in the interests of the safety of air navigation. Under regulation 11.210 of CASR, 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) of CASR, the maximum duration of an exemption is 3 years.

Documents incorporated by reference

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 states 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 instrument repeals and reissues, with some changes, CASA EX46/21. In particular, the non-application of two of the conditions of the exemptions to a remote pilot operating an RPA for an exempted flight is extended to an RPA operation that is an EVLOS operation class 2. The term *EVLOS operation class 2* is defined in section 5.04 of the *Part 101 Manual of Standards* (the *Part 101 MOS*).

CASA will seek amendments to Part 101 of CASR, with a view to achieving the same policy objectives as for the instrument. The proposed amendments have been the subject of public consultation and are supported by the industry. If the proposed amendments are made and commence before 31 August 2024, CASA will repeal the instrument.

Content of instrument

Section 1 of the instrument states the name of the instrument.

Section 2 of the instrument states the duration of the instrument.

Section 3 of the instrument repeals CASA EX46/21.

Section 4 of the instrument contains definitions of terms used in the instrument.

CASA believes the condition of a remote pilot licence stated in paragraph 101.300(4)(a), which requires the licence holder to operate an RPA within the visual line of sight of the licence holder unless the licence holder has passed one of the stated examinations, places an unnecessary burden on the licence holder, with limited safety benefits. Accordingly, under subsection 5(1) of the instrument, the holder of a remote pilot licence who operates an RPA for an exempted flight is granted an exemption from compliance with the condition. The exemption applies to the licence holder, whether as an RPA operator or member of an RPA operator's personnel. Subsection 5(4) of the instrument includes safeguards by requiring the licence holder to comply with stated conditions of the exemption. This continues existing arrangements under CASA EX46/21, which is repealed by this instrument, with the change that an EVLOS operation class 2 will no longer require supervision by a remote pilot who meets the requirement in subregulation 101.300(4).

Also, under subsection 5(2) of the instrument, the holder of a remote pilot licence who operates an RPA for an exempted flight is granted an exemption from compliance with subregulation 101.073(1), which requires a person operating an unmanned aircraft to do so within the person's visual line of sight. The exemption applies to the licence holder, as a member of an RPA operator's personnel. However, under subsection 5(3) of the instrument, the exemption only applies if the RPA operator holds an approval, under regulation 101.029, for the operator's personnel to operate the RPA beyond visual line of sight. Subsection 5(4) of the instrument includes safeguards by requiring the licence holder to comply with stated conditions of the exemption.

If the holder of a remote pilot licence is an RPA operator, the licence holder would need to comply with subregulation 101.073(1) in relation to an RPA operation for an exempted flight. However, under subregulation 101.073(2), this would not apply if the licence holder holds an approval, under regulation 101.029, to operate the RPA beyond the licence holder's visual line of sight and complies with any conditions of the approval.

CASA is satisfied that renewing the exemptions will preserve at least an acceptable level of aviation safety, as required under subregulation 11.175(4). CASA considers that not to renew the exemptions would be unduly restrictive for RPA operators and remote pilots who operate RPAs.

Also, CASA is satisfied the imposition of the conditions on the exemptions is necessary in the interests of the safety of air navigation.

Under subsection 6(1) of the instrument, one of the conditions is that the remote pilot must ensure the RPA operation complies with the documented practices and procedures for operating the RPA for an exempted flight. The term ***documented practices and procedures*** is defined in section 4 of the instrument.

Under subsection 6(2) of the instrument, one of the conditions of the exemptions requires the remote pilot to operate the RPA under the immediate supervision of the supervising remote pilot, for the RPA operation, who must meet several stated requirements. Under subsection 6(3) of the instrument, another condition requires the remote pilot to comply with the directions, in relation to the RPA operation, of the supervising remote pilot for the RPA operation. The term ***supervising remote pilot*** is defined in section 4 of the instrument as follows:

supervising remote pilot, for an RPA operation, means a remote pilot who:

- (a) meets the requirements of subregulation 101.300(4) of CASR for operating an RPA beyond visual line of sight; and
- (b) either:
 - (i) is the RPA operator of the RPA being operated during the RPA operation; or
 - (ii) if the remote pilot is not the RPA operator of the RPA — has been appointed by the RPA operator to supervise the person operating the RPA during the RPA operation.

However, under subsection 6(4) of the instrument, the conditions stated in subsections 6(2) and (3) do not apply if the RPA operation is an enclosed operation or EVLOS operation. The terms ***enclosed operation*** and ***EVLOS operation*** are defined in section 4 of the instrument. Given the nature of an enclosed operation, CASA believes these conditions do not need to apply to the operation. Also, CASA believes these conditions do not need to apply to an EVLOS operation as Chapter 5 of the Part 101 MOS has adequate safeguards that mitigate against the risks of the operation.

In accordance with subsection 33(3) of the *Acts Interpretation Act 1901*, the instrument repeals instrument number CASA EX46/21, which is no longer required, given the making of the instrument.

Documents incorporated by reference

The instrument incorporates the documented practices and procedures for operating an RPA for an exempted flight. The instrument states the term ***documented practices and procedures*** has the meaning given by subsection 1.04(2) of the Part 101 MOS. The term is defined in the subsection to mean, for an RPA operator, the written practices and procedures of the operator, as existing or in force from time to time, which have been approved in writing by CASA. Subsection 1.04(3) states the requirements that apply in relation to the documented practices and procedures.

The documents containing the documented practices and procedures are not publicly or freely available. The documents are prepared, and used exclusively, by the relevant RPA operator, and will generally include commercial-in-confidence information about the operator's business. The documented practices and procedures are at the RPA operator-specific level and apply only to the operator and its personnel. The operator must give a copy of the documented practices and procedures, or any approved amendments of the practices and procedures, to the operator's remote pilots under paragraphs 1.04(3)(d) and (e).

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 a remote pilot who operates an RPA for an exempted flight.

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

Sunsetting

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 (in accordance with 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 August 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 the instrument.

Consultation

Consultation under section 17 of the LA has not been undertaken in relation to the instrument.

However, the policy objectives of the instrument were the subject of public consultation as part of the review by CASA of Part 101 of CASR from 15 December 2021 to 21 February 2022. The proposed amendments of Part 101 of CASR received majority support during the consultation process. CASA also consulted on the proposed amendments with several Government agencies.

Also, the instrument, in effect, continues in operation the exemptions granted under CASA EX46/21 and the conditions of the exemptions.

In these circumstances, CASA is satisfied that no further 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) of the Act, 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) that 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, in effect, the same exemptions and conditions of the exemptions, there will be no change to the economic or cost impact on individuals, businesses or the community by the instrument.

Impact on categories of operations

The instrument is likely to have a beneficial impact in relation to some RPA operations conducted by an RPA operator because the operator's remote pilots will not have to meet the examination requirement, under paragraph 101.300(4)(a), which would otherwise apply to a remote pilot who operates an RPA for an exempted flight.

Impact on regional and remote communities

There will be no impacts from the instrument that are specific to rural and remote communities.

Office of Impact Analysis (OIA)

An Impact Analysis (*IA*) is not required for the instrument as the exemptions are covered by a standing agreement between CASA and OIA, under which an IA is not required for exemptions (OIA 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 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 31 August 2024.

Statement of Compatibility with Human Rights

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

CASA EX27/23 — Remotely Piloted Aircraft Operations Beyond Visual Line of Sight Exemption 2023

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*.

Overview of the legislative instrument

The legislative instrument exempts a remote pilot who, as an RPA operator or member of an RPA operator's personnel, operates a remotely piloted aircraft (an **RPA**) beyond the pilot's visual line of sight from compliance with the examination requirement under paragraph 101.300(4)(a) of the *Civil Aviation Safety Regulations 1998 (CASR)*. Also, in stated circumstances, the instrument exempts a remote pilot who, as a member of an RPA operator's personnel, operates an RPA beyond the pilot's visual line of sight from compliance with subregulation 101.073(1) of CASR. The exemptions are subject to stated conditions. Also, the instrument repeals *CASA EX46/21 — Remotely Piloted Aircraft Operations Beyond Visual Line of Sight Instrument 2021*.

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