

Explanatory Statement

Civil Aviation Safety Regulations 1998

CASA 22/21 — Operation of Certain Unmanned Aircraft Directions Amendment Instrument 2021

Purpose

The purpose of *CASA 22/21 — Operation of Certain Unmanned Aircraft Directions Amendment Instrument 2021* (the **instrument**) is to amend instrument CASA 55/20 — *Operation of Certain Unmanned Aircraft Directions 2020 (CASA 55/20)* so that the Civil Aviation Safety Authority (**CASA**) may approve a person to operate a micro RPA (a kind of remotely piloted aircraft), whether indoors or outdoors, less than 30 metres from a person who does not have duties essential to its control or navigation. The instrument also provides for CASA to give approvals allowing a person to operate more than 1 micro RPA or model aircraft at a time.

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)*.

Set out below is an explanation of CASR provisions regulating unmanned aircraft that relate to the amendments made by the instrument. For a further explanation of CASR provisions regulating unmanned aircraft generally, see the Explanatory Statement for CASA 55/20 on the Federal Register of Legislation.

Part 101 of CASR deals with the safety regulation of unmanned aircraft and rockets. Part 101 includes a number of Subparts. Subparts of particular relevance for the instrument are:

- Subpart 101.A — Preliminary
- Subpart 101.C that imposes a range of obligations in relation to the operation of unmanned aircraft generally
- Subpart 101.F that comprises specific provisions for the regulation of remotely piloted aircraft (**RPA**).

On 30 September 2020, Schedule 2 of the *Civil Aviation Safety Amendment (Remotely Piloted Aircraft and Model Aircraft — Registration and Accreditation) Regulations 2019* commenced. The amendments made to Part 101 of CASR included the insertion of new regulations 101.021 and 101.022 into Subpart 101.A.

Regulation 101.021 of CASR defines **RPA** as meaning a remotely piloted aircraft, other than the following: a balloon, a kite, a model aircraft. (Model aircraft are dealt within Subpart 101.G of CASR.)

Regulation 101.022 defines the different types of RPA. The term **micro RPA** is defined to mean an RPA with a gross weight of not more than 250 g.

These provisions replace the previous definitions of these terms in the CASR Dictionary, which were as follows:

- **micro RPA**: defined as an RPA with a gross weight of 100 g or less
- **RPA**: defined as a remotely piloted aircraft, other than a balloon or a kite.

Regulation 101.235 of Subpart 101.F of CASR provides that the Subpart applies to the operation of very small RPA, small RPA, medium RPA or large RPA. A note states that Subpart 101.F does not apply to micro RPA or model aircraft and refers to the definition of **micro RPA** in regulation 101.022. Regulations 101.245 and 101.300 are in Subpart 101.F of CASR and, therefore, do not apply to micro RPA (or model aircraft).

Regulation 101.245 prohibits the operation of an RPA by a person within 30 metres of a second person who is not directly associated with the operation of the RPA. The prohibition does not apply if the person holds an approval under regulation 101.029 for the purposes of the regulation, if the person is standing behind the RPA while it is taking off, or in relation to the operation of certain RPA to within 15 metres of the person with the person's consent, or if the RPA is an airship. The prohibition does not apply if the person holds an approval under regulation 101.029 for the purposes of the regulation.

Subregulation 101.300 (5) provides that it is a condition of a remote pilot licence that the licence holder must not operate more than 1 RPA at a time unless they hold an approval under regulation 101.029 to operate more than 1 RPA at a time and the conditions (if any) imposed on the approval are complied with.

Under subregulation 101.300 (6), it is an offence of strict liability for the holder of a remote pilot licence to contravene such a condition on the approval, or other specified conditions mentioned in regulation 101.300.

Regulation 101.395 prohibits the operation of a powered model aircraft within 30 metres of a person not directly associated with its operation. The prohibition does not apply if the person is standing behind the model aircraft while it is taking off, or if, as part of a model flying competition, the aircraft is flown within 30 metres of a judge of the competition.

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 33 (3) of the *Acts Interpretation Act 1901* (the *AIA*), 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 such instrument.

Background

CASA 55/20 replaced instrument CASA 96/17, *Direction — operation of certain unmanned aircraft*. CASA 55/20 applies to the operation of unmanned aircraft of all kinds, except operation of the aircraft mentioned in subregulation 101.005 (3) of CASR. The directions issued by CASA 55/20 relate variously to operations near aerodromes, operations higher than 400 ft AGL, operations over areas in which emergency operations are being conducted, operations of RPA and model aircraft near people, and operating multiple model aircraft and RPA.

Relevantly for the instrument, section 9 of CASA 55/20 sets out a direction stating that a person controlling an RPA or a model aircraft must ensure that the aircraft is not operated less than 30 metres from a person unless the person has duties essential to the control or navigation of the aircraft. Paragraph 9 (3) (aa) of CASA 55/20 states that the direction does not apply to the operation indoors of a micro RPA if the person holds an approval given by CASA for the purposes of the paragraph. Paragraph 9 (3) (a) states that the direction does not apply to the operation of an RPA or a model aircraft in accordance with an authorisation (however called) or exemption granted under CASR that permits operation of the RPA or model aircraft less than 30 metres from another person.

Such exemptions or authorisations cannot be granted under CASR in relation to micro RPAs because, due to the operation of regulation 101.235 of CASR, regulation 101.245 (described above) does not apply to micro RPAs. There is, therefore, currently no pathway for an operator of a micro RPA, unlike an operator of another kind of RPA or a model aircraft, to be issued an authorisation or exemption to operate closer than 30 metres from people.

CASA 86/20 — Operation of Certain Unmanned Aircraft Directions Amendment Instrument 2020 (CASA 86/20) amended CASA 55/20 to provide CASA with an approval power enabling micro RPAs to be operated indoors. Such a pathway is necessary because micro RPAs may need to be flown indoors for various activities, for example, by commercial entities conducting research and development, indoor photography, or the delivery of training packages to students in schools or other organisations. Since CASA 86/20 was made, CASA has become aware of interest in operating micro RPAs both indoors and outdoors less than 30 metres from people, and expects that applications to enable these operations will increase.

Relevantly for the instrument, subsection 10 (1) of CASA 55/20 sets out a direction stating that a person controlling an RPA or model aircraft must only operate 1 aircraft at a time. Subsection 10 (2) states that the direction does not apply to the operation of an RPA or a model aircraft in accordance with an authorisation or exemption granted under CASR.

However, such exemptions or authorisations cannot be granted under CASR in relation to micro RPAs or model aircraft because subregulation 101.300 (5) of CASR (described above) does not apply to micro RPAs or model aircraft. There is, therefore, currently no pathway for an operator of a micro RPA or model aircraft to be issued an authorisation

or exemption enabling them to operate more than 1 micro RPA or model aircraft at a time.

Since CASA 86/20 was made, CASA has become aware of interest in operating more than 1 micro RPA and model aircraft at a time, and expects that applications to enable these operations will increase, particularly as the technology of these aircraft is advancing and RPAs are becoming smaller.

CASA considers that the widening of the scope of approvals to enable not only indoor but also outdoor operation of micro RPAs within 30 metres of a person who does not have duties essential to the control or navigation of the aircraft, and to enable a person to operate more than 1 micro RPA or model aircraft, would not adversely impact on safety, as any application for approval would still be subject to CASA assessment.

As previously stated in the Explanatory Statements for CASA 55/20 and CASA 86/20, the directions in CASA 55/20 are an interim, precautionary measure, and CASA proposes to develop further amendments to Part 101 of CASR to address the issues currently addressed by the directions. It is anticipated that these further Part 101 amendments will be made by March 2022 and at that time instrument CASA 55/20 will be repealed.

Overview of instrument

In accordance with subsection 33 (3) of the AIA, the instrument amends CASA 55/20.

The instrument amends CASA 55/20 to enable CASA to approve a person to operate a micro RPA less than 30 metres from a person who does not have duties essential to its control or navigation. The instrument also amends CASA 55/20 to enable CASA to give approvals enabling a person controlling an RPA or model aircraft to operate more than 1 micro RPA or model aircraft at a time.

The instrument also makes minor technical amendments that are explained below.

The instrument is an amending instrument and does not incorporate any documents by reference.

CASA has assessed the impact the instrument will have on aviation safety and is satisfied that the amendments made by the instrument will protect aviation safety. This is because the amendments will allow a person to operate unmanned aircraft in the circumstances described above only if the person holds a CASA approval.

Content of instrument

Section 1 states the name of the instrument.

Section 2 states the commencement of the instrument.

Section 3 states that CASA 55/20 is amended as set out in Schedule 1.

Item 1 of Schedule 1 makes a technical amendment to subsection 9 (3) to refer to “the following” paragraphs. This makes clear that the direction in subsection 9 (1) does not apply to any of the kinds of operations mentioned in paragraphs (3) (aa), (a) and (b) that

are in accordance with the relevant paragraph. This is consistent with the approach taken in subsections 7 (2) and 10 (2).

Item 2 of Schedule 1 substitutes paragraph 9 (3) (aa) with a new paragraph 9 (3) (aa) that enables CASA to approve a person to operate a micro RPA less than 30 metres from a person who does not have duties essential to the control or navigation of the aircraft. If such an approval is given, the direction in subsection 9 (1) does not apply.

Item 3 of Schedule 1 makes a technical amendment related to the amendment made by Item 1.

Item 4 substitutes subsection 10 (2) with a new subsection (2) that enables CASA to approve a person to operate a micro RPA or a model aircraft if the person holds an approval given by CASA for the purposes of the paragraph. If such an approval is given, the direction in subsection 10 (1) does not apply. The amendment also takes into account that an authorisation or exemption granted under CASR from the requirement that only 1 RPA may be operated at a time cannot apply to micro RPAs.

Legislation Act 2003 (the LA)

Paragraph 10 (1) (d) of the LA provides that an instrument is a legislative instrument if it includes a provision that amends or repeals another legislative instrument. The instrument amends CASA 55/20, which was registered as a legislative instrument. Therefore, the instrument is also a legislative instrument, subject to tabling and disallowance in the Parliament under sections 38 and 42 of the LA.

Consultation

CASA is satisfied that no consultation is appropriate, or reasonably practicable, for the instrument for section 17 of the LA. The instrument makes amendments to CASA 55/20 that enables CASA to give operators of micro RPAs approval to operate their aircraft within 30 metres of other persons and for operators of micro RPAs and model aircraft to operate more than 1 such aircraft at a time. This is consistent with the approach already taken in CASA 55/20 in relation to the exemptions or authorisations CASA may grant under CASR that permit the same kinds of operations by other kinds of RPAs, or the operation within 30 metres of other persons by model aircraft. Any CASA approvals will still be subject to CASA assessment.

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) states that, subject to subsection 9A (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 instrument makes amendments to a current instrument and there will be no change to the economic or cost impact on individuals, businesses or the community. The Office of Best Practice Regulation (**OBPR**) has also made an assessment that a Regulation Impact Statement (**RIS**) is not required for directions.

Office of Best Practice Regulation

A RIS is not required in this case, as the instrument amends a direction instrument. Such instruments are covered by a standing agreement between CASA and OBPR under which a RIS is not required for 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 will be automatically repealed in accordance with section 48A of the LA.

Statement of Compatibility with Human Rights

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

CASA 22/21 — Operation of Certain Unmanned Aircraft Directions Amendment 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 (the *instrument*) is to amend *CASA 55/20 — Operation of Certain Unmanned Aircraft Directions Instrument 2020 (CASA 55/20)*.

Regulation 101.021 of the *Civil Aviation Safety Regulations 1998 (CASR)* defines an *RPA* as meaning a remotely piloted aircraft, other than the following: a balloon, a kite, a model aircraft. Regulation 101.022 of CASR defines *micro RPA* as meaning an RPA with a gross weight of not more than 250 g.

Subsection 9 (1) of *CASA 55/20* is a direction stating that a person controlling an RPA or a model aircraft must ensure that the aircraft is not operated less than 30 metres from a person unless the person has duties essential to the control or navigation of the aircraft. Paragraph 9 (3) (aa) states that the direction does not apply to the operation indoors of a micro RPA if the person holds an approval given by CASA for the paragraph. Paragraph 9 (3) (a) of the instrument states that the direction does not apply to the operation of an RPA or model aircraft in accordance with an authorisation (however called) or an exemption granted under CASR that permits operation of the RPA or model aircraft less than 30 metres from another person. However, there is currently no pathway under CASR for an operator of a micro RPA to be issued an exemption or an authorisation permitting its operation either indoors or outdoors less than 30 metres from another person.

The instrument, therefore, amends section 9 of *CASA 55/20* to enable the Civil Aviation Safety Authority to approve a person to operate a micro RPA less than 30 metres from a person who does not have duties essential to the control or navigation of the aircraft. The previous amendment (*CASA 86/20 — Operation of Certain Unmanned Aircraft Directions Amendment Instrument 2020*) only provided for this in relation to the operation of a micro RPA indoors.

Subsection 10 (2) of *CASA 55/20* is a direction stating that a person controlling an RPA or model aircraft must only operate 1 aircraft at a time. Subsection 10 (2) states that the direction does not apply to the operation of an RPA or model aircraft in accordance with an authorisation (however described) or exemption issued by CASA. However, there is currently no pathway under CASR for an operator of a micro RPA or model aircraft to

be issued an authorisation or exemption enabling them to operate more than 1 micro RPA or model aircraft at a time.

The instrument, therefore, amends CASA 55/20 to enable CASA to give approvals enabling a person controlling an RPA or model aircraft to operate more than 1 micro RPA or model aircraft at a time.

Any such CASA approvals will be contingent upon a satisfactory safety assessment by CASA.

The instrument also makes some technical amendments to section 9 and clarifies that an authorisation or an exemption mentioned in subsection 10 (2) may only apply to an RPA other than a micro RPA.

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