

2nd Drone Forum - Workshop Summary

Alternatives to the “Consent Provision”

Introduction

On 21 November 2019, the Ministry of Transport (the Ministry) hosted the second Drone Forum. Around 50 stakeholders attended, with a variety from manned and unmanned aviation backgrounds, including drone manufacturers, model aircraft associations, commercial operators, training organisations, and local authorities.

This document provides a summary of the outcome of the workshop and summarises the feedback received on each option.

This forum included a workshop on the consent provision (refer Civil Aviation Rule 101.207). The objective of this workshop was to consider alternatives to the consent provision and any improvements or changes to it that might work in New Zealand, while also seeking to better understand the benefits, costs, risks, mitigations, and unintended consequences of different options proposed.

Attendees worked through four proposed options provided by the Ministry:

- Option 1: Do nothing (keep the current provision)
- Option 2: Refine the consent provision by changing the flight rules (safe distances)
- Option 3: Remove the consent provision completely with no alternative and no change to the existing framework
- Option 4 “Free for All” - other thoughts on changes or alternatives to the consent provision

What is the consent provision?

The consent provision refers to the requirements for Part 101 operators to gain permission from people before flying over them, or in the case of property, from the person occupying or owning it.

The consent provision was introduced when Part 101 was updated in 2015. It aims to minimise the risk to people and property from an uncontrolled drone crash. It also aligns the use of drones with societal expectations of privacy and property rights, including trespass and nuisance. It is a unique imposition on drone operators; neither general nor commercial aviation operators are required to gain such permission (noting that other operational restrictions apply to them e.g. airworthiness standards), as the risk profile is different, and they fly at significantly different altitudes from most drones.

The consent provision also applies to Part 102 operators, but at a lower threshold, i.e. generally they must attempt to gain consent, rather than gain explicit consent. The requirements are determined on a case-by-case basis by the Civil Aviation Authority (CAA) through the Part 102 certification process.

What is the problem with the consent provision?

Many operators see the consent provision as impracticable, restrictive and unrealistic. Therefore, it is often ignored, applied inconsistently, and results in a lot of complaints to the CAA.

This forum was an opportunity to explore with the participant's potential regulatory options to improve, change or remove this provision.

Options

Option 1: Do nothing (keep the current provision)

This option would retain the current consent provision detailed above with no alteration or amendment.

Summary of feedback for Option 1

Overall, the feedback to this option was negative, although some benefits were identified.

Key benefits of the current consent provision mentioned were that it is prescriptive and easy to enforce. There was also mention of the protection it provides to landowners and the general public's right to privacy, which means that, when complied with, this provision promotes social acceptance of drone use.

Participants also believed that keeping the current provision would enable the current education efforts to continue. A better understanding of the consent provision by drone users is developing as more become aware of it since 2015. It has also provided a good basis for the development of a communication framework between drone users and the public and prompted good initiatives like AirShare.

Although there are benefits, some believed that there are a lot of inefficiencies. Some participants labelled it as too strict, perpetuating the idea that drones are inherently "bad", and creating a barrier for innovative uses.

Continued non-compliance remains a major issue with the consent provision. With the continued uptake in recreational drone use, the provision is not widely known and may be difficult to follow in practice. This has led to an increase number of complaints to the CAA.

The consent provision was thought by some workshop attendees to be confusing. Ideas around what is implied and expressed consent, as well as some basic knowledge of the law, is needed to understand how it works in practice. There is also some complexity around permissions where they apply to public and crown owned land.

It was also noted that the consent provision is also a unique feature of the New Zealand regulatory system, with no equivalent overseas. Credibility of the provision may decrease with a rapidly evolving environment. This is particularly problematic as best practice in this area develops.

The enforcement of the consent provision was also questioned. Currently, due to the ability for a drone pilot to remotely control their drone, the consent provision is difficult to enforce as it can be very difficult to identify a pilot breaching the rule.

Option 2: Refine the consent provision by changing the flight rules (safe distance)

The Ministry suggested a potential alternative which could see the introduction of 'safe distance' requirement/rule. This means that, instead of requiring consent from property owners, drones will have a presumptive right to fly over property and people as long as they are following flight rules that include minimum distance(s) from people and property, as well as any other adherence to other requirements (e.g. Privacy Act 1993).

These flight rules could potentially use a combination of safety rules that are not based on consent, but on safe distances, the type of drones being operated and the levels of risks of the operation in question. This has been implemented in other jurisdictions including Canada and the United States.

Summary of feedback to Option 2

There was mixed feedback to this option. Some considered it more reasonable, flexible and fit for purpose. Others thought there are problems with enforceability.

Those who were in favour of the provision stated it would directly address the existing problem by ensuring safety margins where needed. This would give more freedom to drone operators, making them more likely to comply.

It was also suggested that replacing the consent provision with simple, certain and clear safety distances would also unlock greater economic benefits by enabling enterprises to engage in more economic activities.

The introduction of safe distances would be more consistent with manned aviation and could help efforts to foster the integration of drones in the aviation system.

Some participants stated that safe flying distances would also address many of the existing privacy concerns. It would also improve safety cases and enable insurers to have confidence that operators effectively know the rules.

Those who disagreed with this option stated that it was a good start, but there were some flaws. More data was needed to know exactly what distance and height should be used to ensure a solid and credible safety basis for a new rule.

Some participants strongly believed that policing heights and judging distances would make this rule less clear for the pilots and the public, and potentially very difficult to enforce for authorities, as distances may be hard to measure and verify. They also stated that relaxing the consent provision with safe distances would hinder social acceptance and increase the number of complaints to the CAA.

It could also result in higher safety risks as it could have heightened risk of collisions or cause more damage to people or property in case of a drone falling from a greater height.

Option 3: Remove the consent provision completely with no alternative or change to the existing framework

This option would result in the complete removal of the consent provision, with no alternative or change to the existing Part 101 framework. This would effectively allow drones to fly under the current aviation rules without the need for the pilots to ask property owners and people for consent.

Summary of feedback to Option 3

There was mixed feedback to this option. Taking away the consent provision in its entirety would make it less restrictive on the operator but may enable more unwanted and illegal drone use.

The benefits of removing this provision would give recreational and commercial Part 101 operators more places to fly. It would also make it easier for people to understand the rules and ease burden on enforcement authorities.

Some pointed out that the existing safeguards are enough. Drones should be used in a safe manner, regardless of whether the consent provision is included in the rules. There was also a comment that there should be a focus on educating users to act responsibly regardless.

However, some thought the removal of the provision would likely result in increased misuse of drones and put more reliance on both the CAA and the Privacy Commissioner to follow up with complaints. Further, with the removal of the consent provision, there are less legal remedies available to pursue illegal operators.

The rules, as they stand, are already open for misinterpretation. Without the consent provision, the courts would gain a lot of discretion about breaches of privacy. There needs to be at least some clear rules on what and how to operate around property and people to ensure safety.

Option 4: “Free for All” other thoughts on changes or alternatives to the consent provision

This option allowed attendees to provide any other feedback and thoughts they had on other changes or alternatives to the consent provision that were not captured by the options discussed above.

Summary of feedback to Option 4 “Free for All”

Attendees produced a few different concepts that they thought could act as alternatives to the consent provision.

Some suggested that amending the consent provision could be a viable alternative. One suggested removing consent requirements for unoccupied property but maintaining the consent provision for occupied properties and flight over people.

Another suggested that drone pilots should lose their right to fly should they infringe on other people’s safety and rights. This suggestion would also require Part 101 rules to be revised to put more responsibility on the drone pilot.

More education was suggested to target new and younger drone users by encouraging awareness of technology in this area and awareness of safe practice. This would build better foundation of knowledge in the future generations of drone users. This would take time, and benefits will not be immediately felt.

The introduction of a licensing scheme was suggested as well. It was proposed that there could be more rights and privileges associated with a drone pilot license – those who gain a drone pilot license would be able to fly with reduced or more relaxed form of the consent provision. This licencing would require a training syllabus that improves pilots’ skills and ensure awareness of the relevant rules and privacy issues. More generally, it was suggested that licensing would foster better education and understanding of the rules, thus improving compliance.

Introducing new registration and remote identification requirements were also suggested. This would enable the implementation of safe distancing, with the ability to understand flight path and identify the drone pilot/owner (dependant on who is registered).

Registration and remote identification would also enable better enforcement and improve social acceptance. However, it may require significant funding for the system(s) and standards to be introduced.

Next Steps

The Ministry would like to thank those who attended and participated in this workshop. The feedback from this workshop will be considered and inform the ongoing policy development conducted by the Ministry and the CAA on the review of the drone regulatory settings.