

All NATMAC Representatives

26 April 2010
DAP/CAS/DJD/SERA

NATMAC INFORMATION LETTER

Dear Astheaynes,

SINGLE EUROPEAN SKY MANDATE ON THE DEVELOPMENT OF STANDARDISED EUROPEAN RULES OF THE AIR (SERA)

I'm sure you will recall my writing to you in February to inform you of a EUROCONTROL Notice of Proposed Rule-Making (ENPRM/10-002) concerning Standardised European Rules of the Air (SERA) and the associated consultation on a draft Implementing Rule (IR) that the European Commission has tasked EUROCONTROL to develop. Consultation closed on 12 April 2010, and the purpose of this letter is to advise you of the CAA's response to EUROCONTROL.

In formulating its contribution to the consultation process, the CAA sought to respond in as constructive a manner as possible, whilst recognising that in certain respects the SERA proposals as presented have the potential to impact significantly upon each of the various aircraft operations within the UK FIRs. Given that the UK is a signatory to the Chicago Convention, and the draft IR is essentially a transposition of ICAO Annex 2, almost all of what appears in the draft IR will not be new to us.

However, as a Contracting State to ICAO it is within our gift to file Differences to ICAO Standards and Recommended Practices (SARPs) in order to achieve these by different means, or to apply more stringent standards. SERA seeks to transpose ICAO provisions into European Law - to which all European Union (EU) member States would be bound - with proposals for how implementation of them can be harmonised.

As currently presented, the most significant primary impact of SERA would be the reduction in an EU State's freedom to apply Differences in response to unique State circumstances. This, plus the process, means and timescales by which the European Commission (EC) is pursuing the development and implementation of the SERA mandate are our principle concerns. These are articulated in our response to Formal Consultation, a copy of which is attached. You may wish to note that the same concerns had already been presented to EUROCONTROL in our response to Informal Consultation.

We are aware that a number of NATMAC member organisations have chosen to submit independent comment on the SERA proposals to EUROCONTROL, and have had sight of several such responses. You will note from the attached that there are numerous similarities between these and our own response; equally, there are some differences. Issues of note include (in no particular order):

Flight Planning. We believe the proposed flight planning requirements have not been adequately justified, are potentially burdensome to certain airspace users and air traffic

service providers and therefore warrant revision. We do not believe the draft IR precludes the continued application of the UK's 'booking out' procedures, although the need to develop a comparable 'booking in' procedure appears likely.

Pre-Flight Actions. It should be noted the requirement clearly refers to 'available information appropriate to the intended operation'. This is a verbatim transposition of Annex 2, and not a new requirement.

Aerobatic Flight. The draft IR's definition is a transposition of that found in ICAO Annex 2 (although the latter refers to 'acrobatic flight'). The UK does not differ from this; the Air Navigation Order merely expands upon on the kinds of manoeuvres that may be undertaken. The draft IR does not appear to seek to inhibit flying training or glider operations, rather we believe the ICAO/SERA definition refers to deviations from 'normal' operations, regardless of what these may be. Abrupt changes do not, therefore, necessarily constitute aerobatics if they are part of 'normal operations'.

Dropping and Spraying. It has become apparent that there is some concern that, if implemented, the IR would inhibit glider and balloon operations through its dropping and spraying provisions. Our view is that these provisions refer to stores dropping and spraying in an aerial work sense (ie, for commercial gain), and not the dropping or spraying of ballast and/or tow ropes.

Quadrantal Flight Levels. Our response refers to the UK's use of quadrantal flight levels and the need for a thorough assessment of the implications of adopting ICAO semi-circular flight levels. However, in doing so we were mindful of the fact that the UK appears to be the only State to apply the former, and the adoption of the latter is highly likely.

VFR and Special VFR at Night. SERA may cause a review of the UK's current position of not permitting VFR flight at night, and Special VFR at night may not be permissible in the future. Were night VFR to be permitted, this would by necessity follow a rigorous assessment of its viability and the additional conditions the CAA may decide were appropriate mitigations of associated safety risks. It is too early to speculate whether such measures will be required.

A workshop presenting the outcomes of the formal consultation is planned for 3 June 2010, and EUROCONTROL expects to submit the Final Report on mandate developments to the European Commission by the end of June 2010. If the proposed legislation is acceptable to the EC it should be presented to the Single Sky Committee for approval later this year.

Details of the SERA mandate and the associated project plan can be found on the EUROCONTROL website at http://www.eurocontrol.int/ses/public/standard_page/sk_sera.html and http://www.eurocontrol.int/ses/public/standard_page/sk_sera.html.

Yours sincerely,



M Swan
Director of Airspace Policy

Enclosure:

UK Response to SERA Formal Consultation

CONSULTATION RESPONSE SHEET

CONSULTATION TITLE:

draft implementing rule on Standardised European Rules of the Air
Enclosure 3



Please return this response sheet by **12 April 2010** to:

Mr Olivier MROWICKI,
SES Mandate Manager SERA,
EUROCONTROL,
Rue de la Fusée, 96,
B – 1130 BRUSSELS,
Belgium

or by E-mail to sesframework@eurocontrol.int

or by fax to +322 729 5190

NOTES FOR THE USE OF THE CONSULTATION RESPONSE SHEET

1. All comments on the associated Consultation material must be made using this response sheet. Comments submitted not using this sheet will be referred back to the originator.
2. As a minimum, Sections 1, 2, 4, 5 and 6 of the Response Sheet Main Page must be completed before returning the response.
3. Formal comments are invited on the contents of the draft implementing rule on Standardised European Rules of the Air (SERA) (Enclosure 1). *Please do **not** submit comments on the draft justification material (Enclosure 2).*
4. Comments should be as specific as possible, including a reason/explanation for the comment and, where applicable, a proposed replacement text.
5. Each response return must be signed and dated by an appropriate person with the authority to authorise comments on behalf of the stated organisation.

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MAIN PAGE

1. ORGANISATION COMMENTING

Organisation Name:	UK Civil Aviation Authority	
Contact Name: ¹	Dave Drake	
Contact Address:	Directorate of Airspace Policy Civil Aviation Authority, CAA House 45-59 Kingsway London WC2B 6TE	
Telephone/Fax:	Tel: +44207 453 6512	Fax: +44207 453 6565
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2. GENERAL RESPONSE²

Acceptable without amendment:

Acceptable but would be improved with amendments:

Not acceptable but would be acceptable with amendments:

Not acceptable under any circumstances:

3. SPECIFIC COMMENTS: See pro forma over page.

4. COMPOSITION OF RESPONSE

This response consists of the following:

This Page **PLUS** (enter number) attached comments sheets.

5. ASSOCIATION OF NAME WITH COMMENTS:

I do **not** agree to my name/organisation being associated with the comments provided.³

6. VALIDATION

Name: Dave Drake

Position: Airspace Regulator, DAP

Signature:

Date: 12 April 2010

¹ This is the person who is to be contacted directly to discuss or clarify the submitted comments. A single point of contact is requested.

² Show your overall acceptance position on Enclosure 1 by an 'X' in the appropriate response box.

³ Comments will be published with reference to their source unless a specific request is made **not** to do.

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COMMENTS SHEET

Organisation Name: UK CAA

Form No. of

Paragraph Reference
(Article/Recital etc):

Comment:

1. **Overarching Safety Considerations.** Changes to the Rules of The Air are being proposed in the interests of European harmonisation that may have as yet unknown impacts upon safety. The Justification Material accompanying the draft IR deals with safety in an occasionally simplistic manner and appears to be based on an assumption that 'operations in accordance with SERA will be acceptably safe where acceptably safe means an increased level of safety compared to the current situation'. The Justification Material then assumes that post-SERA operations 'should be safer than current operations', adding that a 'consistent level of safety will be demonstrated because SERA Part A will be applicable equally to the totality of civil aviation activities' throughout the EU.

These are significant assumptions and what they actually mean is that a consistent **minimum** level of safety will be demonstrated because SERA Part A will be applicable throughout the EU. This is significantly different, and indicates the need for States to retain where necessary national Differences and domestic aviation legislation in place to enhance the baseline safety provisions presented in ICAO Annex 2, and therefore the draft IR. It is key for these not to contradict SERA, hence our proposing revised text for Article 7.

A 'local safety assessment' is also required to underpin the transition from current Member State 'Rules of the Air'. Article 8 places a specific obligation upon Member States to conduct a safety assessment leading to mitigation 'preceding the actual changes to the previously applied procedures'. The draft IR currently bears no reflection of what States can do if their safety assessment does not support a change to a particular part of the draft IR.

Within the UK, our current Rules of The Air have evolved over decades and we have a high level of understanding of the accident and serious incident rates in UK airspace. We are, however, only now beginning to gain routine access to incident data from other European States, where serious incident rates can in some cases be significantly worse than ours. In harmonising rules to a common text generally involves a move towards a 'lowest common denominator' but this carries with it the possibility of an unintended consequence being that States also inadvertently harmonise safety incident rates. The principle aim of SERA must, therefore, be to establish a common and consistent **minimum** level of safety throughout the EU through SERA whilst permitting States to retain Differences that do not run counter to the draft IR but may be 'More Exacting' or 'Different in Character'. ICAO guidance regarding the first of these states:

- a) More exacting or exceeds the ICAO Standard or Recommended Practice

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(SARP)(Category A). This category applies when the national regulation is more demanding than the corresponding SARP, or imposes an obligation within the scope of the Annex which is not covered by a SARP. **This is of particular importance where a State requires a higher standard** which affects the operation of aircraft of other Contracting states in and above its territory;

SERA's secondary (and longer term) aim must be to enhance this minimum through the progressive harmonisation of differences. This will by necessity be a continuous and iterative process with no fixed completion date.

ANT51 was informed that the current intention is to have the SERA IR completed in June so it can be approved under comitology by the Single Sky Committee later this year. This is not an activity which should be undertaken at such a rapid pace. Recognising that the development of SERA is a European Regulatory obligation to which we are committed under SES Regulations, it would, nonetheless be preferable first to gain more information on incident rates from across the European States before we agree to relinquish our current Rules of The Air. It will, in any event, take States quite some time to conduct the required safety assessments as much of the evidence supporting current differences is likely to be lost in history and will certainly pre-date the introduction of formal safety management processes.

If this major piece of regulatory change is to proceed at its current rapid pace then it is essential that adequate provision is made for States to build upon the provisions of the IR where it is considered necessary and exercise their right to file Differences in the interests of safety. In this regard it is essential that we do not lose sight of the fact that the source of the draft IR – ICAO Annex 2 - recognises the potential for local efficiencies being achieved through local changes or enhancements.

2. **Objectives, Prioritisation and Planning of SERA Work.** The current SERA work has its origins in an SSC Airspace Classification Workshop held in July 2007, which agreed the need to develop a common EU interpretation of the definition of the 7 ICAO airspace classifications; but to allow different local implementation of these classifications through an airspace toolbox, which has been developed by the Eurocontrol ANT. Despite this, work has proceeded with the transposition of ICAO Annex 2 as the first stage of SERA and it is not clear what the objective is of taking the full transposition approach and when and how airspace classifications will be addressed.

In addition there has been no debate on how to take account of the toolbox approach with the need to consider what mechanism should be used (e.g. SES Community Specification, EASA AMC – see further Toolbox comment below).

Moreover we lack an overall plan for how this work will be taken forward beyond ICAO Annex 2. It is important that Eurocontrol produce this plan as per the mandate for the IR and that it is made available as soon as possible, and at the very least with the final draft IR that is submitted to the Commission and in due course to the SSC. This plan must also cover how Eurocontrol will work with EASA to develop proposals for ICAO Annex 11 in particular as this work has close links with the scope of the EASA ATM 001 Drafting Group.

Finally, the scope of the draft IR needs to be fully and clearly articulated. For example, if the draft IR is not intended to touch upon VFR operations outside

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controlled airspace, let us say so.

3. **Consultation**. The first SERA IR has been developed in extremely short timescales leaving little time for thorough consultation. A direct result of this is that areas of the recreational flying community have interpreted certain aspects of the proposals as having a detrimental impact on their pursuits. Whilst CAA has a different interpretation, it is clear that this is a consequence of the process and it is vital that Eurocontrol take the time to consult properly with all airspace users, addressing each of the concerns adequately and ensure that the scope of the proposals is made clear. We would ask that this be addressed in future consultation activities associated with this and future phases of SERA work. Furthermore, given the complexity of the issues at stake, the potential impacts of the project, and the need for effective engagement with affected stakeholders leads us to conclude that the formal consultation phase for 'Part B' and beyond must not be truncated in any way. It is considered essential that a pragmatic approach to each of the complexities and realities of transposition is essential in order to deliver outcomes that are beneficial but that do not result in unintended consequences.

4. **Local Variations**. The SERA work should be targeted at harmonisation of ICAO rules and their implementation only as far as this will benefit the European ATM network. The broad scope of the current work and the timescales for its development do not allow adequate time to assess the need to retain local differences, adequately assess the implications of their removal or make a robust case for their retention. Many of these local differences are in place for good reason and will benefit local users and operations according to local operational and safety circumstances without having a detrimental impact on the European network.

We are therefore concerned that the drive for harmonisation ignores the benefits that freedom to derive local solutions can add and needs to be kept at the network level. It must be borne in mind that the underlying objective from the State perspective is to harmonise as far as feasible, with an acceptance that there may be some areas where this may be limited – or indeed not possible – according to individual State circumstances including the need to make local efficiencies. Consequently, the initial focus should be on IFR en-route operations that utilize the European ATM network.

Consideration must be given on the development of additional material to allow States to retain procedures that demonstrate safety assurance and allow acceptable freedom of operation.

5. **Transparency**. It is acknowledged that the SERA mandate builds on already existing activities, namely the results achieved by the SERA Task Force to chart the national differences filed against ICAO. However the processes by which both the distillation of responses has been undertaken and the rationale leading to the conclusions reached in the preparation of the IR and supporting material are not transparent to States. For example, the identification of the options presented in the Justification Material at times appears simplistic, with only two potential options ('Do Nothing' and the adopted option) ever being presented. Given the various State Differences and provisions within individual State legislative systems this is inappropriate. In addition it does not appear that the work has considered individual State legislative systems and the benefits of additional supplementary material. rules

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hand” rule.

6. **Military Operations.** The supporting material to the SERA mandate (eg, Justification Material) would be greatly enhanced by the incorporation of an explicit statement regarding the mandate’s applicability to the military. This could be supported by referring to Chicago Convention Article 3d: ‘The contracting States undertake, when issuing regulations for their State aircraft, that they will have due regard for the safety of navigation of civil aircraft’.

7. **Exemptions.** Mechanisms for temporary or specific exemptions from Rules of the Air (eg, for specific events or operations) need to be developed prior to SERA implementation. At what level are these to be established, and how will these be managed and notified at State level?

8. **Unusual/Unforeseen Circumstances.** It is essential that SERA provisions do not constrain a Member State from reacting immediately to unforeseen changes to aviation safety, national security or other circumstances which involves a product, person or organisation subject to the provisions of this IR. In practical terms this may result in States developing bespoke solutions to certain unforeseen circumstances and for these to remain in place until a harmonized Union solution is developed and implemented. It is reasonable to require an affected Member State to notify the Commission and the other Member States when such measures are required and the reasons why they have been taken, however the necessary mechanism for this will need to be devised as part of the SERA project.

9. **Airspace Classification Toolbox.** We support the development of the Airspace Classification Toolbox to date, however feel that issues associated with its status, scope, content and name require resolution. It is considered essential that:

- a. Greater clarity on the intended legal status of the Toolbox is provided as soon as possible (can it be developed as a Community Specification or an EASA Acceptable Means of Compliance, for example?).
- b. The scope and content of the Toolbox is widened to reflect the various demands of Annex 2, Annex 11, Doc 4444, Doc 8168 and other contributory SERA documents, and renamed ‘Rules of the Air Toolbox’ (pending resolution of its status).
- c. The means by which the Airspace Classification Toolbox will be maintained requires clarification and greater emphasis within the IR and its supporting material.

Reason(s) for Comment:

The SERA package as a whole will have a significant impact to the UK. The definitive case for the benefits of the removal of Differences has yet to be made within the draft IR and its justification Material, neither is it clear that a full and proper analysis of the impact of their removal on local efficiencies has been carried out. This statement is based upon what is held to be a lack of transparency associated with IR development and the truncated timescales associated with SERA work. It is

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not yet clear whether the proposed implementation timescales allow sufficient time to make the local changes necessary.

Concerns about the manner in which the SERA mandate is being developed and the potential for unintended consequences due to shortened consultation, in terms of process, transparency and understanding, and also the overall scope of the intended IR. As this process will be repeated in Part b and C work it is important to get the various balances right at this initial stage of the project.

Greater clarity on certain issues is required.

Certain issues appear to be under-developed.

The need to ensure appropriate responses to safety concerns without undue delay (reflects EASA Basic Regulation Article 14).

It is recognised that the Airspace Classification Toolbox has greater bearing upon SERA Part B through ICAO Annex 11, there are links to Part A (eg, provisions for VFR flight at night) and other non-Annex 11 documents. It is necessary for this linkage to be reflected in the content and name of the Toolbox.

Proposed Change/Text (where applicable):

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COMMENTS SHEET

Organisation Name: UK CAA

Form No. of

Paragraph Reference (Article/Recital etc):

Comment:

Assuming that a State is obliged to comply with SERA Part A provisions, what is the impact of the IR on current rights and duties under the Chicago Convention for existing ICAO provisions?

Is it implied that a State may still observe compliance with ICAO, or not if appropriate, if there is no agreement on elements of SERA?

Reason(s) for Comment:

Clarification is requested.

Proposed Change/Text (where applicable):

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COMMENTS SHEET

Organisation Name: UK CAA

Form No. **of**

**Paragraph Reference
(Article/Recital etc):**

Recital 10,
Article 5
Justification Material page 10
Eurocontrol Initial Plan on EC Mandate Support on
Development of Standardised European Rules of the Air
(SES/AS/SERA/IPL/1.0)

Comment:

As we move towards common EU Differences to ICAO it is necessary to devise agreed processes ensuring regular review and analysis of the relevant amendments to ICAO SARPs, and to allow consensual development of these, in other words an EU approach to amending an ICAO SARPs is required.

Whilst it is accepted that such mechanisms are not established by the IR (see Justification Material), they are nevertheless part of the overall SERA project, and must be addressed before commencement of SERA Part B. This requirement is reflected in the Initial Plan, which states that the final report 'will consist of a main section.....including the required provisions for maintenance and update of the rule'.

What groups, either existing or new, will be envisaged to propose, review, or adopt new procedures? How will these groups feed into existing ICAO forums for ensuring non-divergence between ICAO and SERA?

Will responsibility for future SERA development/change remain with Eurocontrol on behalf of the EC, or will responsibility be transferred in time to EASA?

Reason(s) for Comment:

Greater clarity on the possible mechanisms and processes (including those applicable to the associated 'Airspace Classifications Toolbox') and the means (and timescales) by which these will be introduced and sustained is requested.

Proposed Change/Text (where applicable):

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COMMENTS SHEET

Organisation Name: UK CAA

Form No. of

Paragraph Reference
(Article/Recital etc):

Comment:

A number of terms contained within the draft IR are common to several areas of current European aviation legislation development work (eg, ATM and Aerodrome Regulations), and the definitions of a number of these are not consistent with those contained within other aviation documents. It is essential that the definitions of these terms are cross-checked to those used elsewhere within European-level aviation documentation to avoid inaccuracies and inconsistencies (eg, definition of 'aerodrome').

Check the order in which terms and their definitions appear and correct this where necessary.

Will Article 2 be expanded as definitions applicable to each of the affected ICAO source documents are transposed?

Reason(s) for Comment:

The avoidance of inconsistent or incomplete definitions of terms and phrases within EC, EASA and Eurocontrol aviation documentation is essential and can be achieved through the creation of a single source of definitions (a 'European Civil Aviation Vocabulary'). This does not have to delay SERA activity, however it should be undertaken as a parallel activity for completion as soon as possible (ie, before completion of SERA Part 2 activity).

ICAO Doc 9713 'International Civil Aviation Vocabulary' can be used as the template for such a 'vocabulary', which would incorporate non-ICAO EASA/SES definitions, with entries suitably annotated to show the applicable sources.

The definitions should not be restricted to just those used within ICAO SARPs and PANS - consideration should also be given to incorporating terms which are not defined in ICAO Annexes or PANS or EU/EASA/Eurocontrol (including SES) documents but which are regularly used (eg, those listed at UK AIP GEN 2.2).

Proposed Change/Text (where applicable):

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Organisation Name: UK CAA

Form No. of

Paragraph Reference
(Article/Recital etc):

Article 2 'Definitions'
Definition 9 'aerodrome traffic'

Comment:

The definition of 'aerodrome traffic' is an amalgam of the definition and the supporting note contained within ICAO Annex 2 and Doc 9713.

Although the amalgamation is understandable, it arguably results in the term 'vicinity of the aerodrome' meaning 'when an aircraft is entering or leaving an aerodrome traffic circuit'. This will impact upon subsequent phases of SERA as the term 'vicinity of the aerodrome' is applied in relation to other activities beyond aircraft entering and leaving the aerodrome traffic circuit, such as instrument approaches.

Eurocontrol Air Traffic Management Procedures Development Sub-Group (APDSG) has endeavoured to develop a more specific definition of 'vicinity of an aerodrome' (in relation to reduced separation in the vicinity of an aerodrome) but found that any definition presented adverse rather than beneficial outcomes.

Reason(s) for Comment:

The refinement either warrants mention in the Supplement and the Justification Material or, following further consideration, removal of the second sentence (ie, the note to the definition as presented in Annex 2 and Doc 9713). Liaison with APDSG recommended.

Proposed Change/Text (where applicable):

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COMMENTS SHEET

Organisation Name: UK CAA

Form No. of

Paragraph Reference
(Article/Recital etc):

Article 2 'Definitions'
Definition 10 'aerodrome traffic circuit'

Comment:

The definition of aerodrome traffic circuit seems unnecessary as the term is not used in the text, but appears to be included to expand upon the term 'in the vicinity of the aerodrome' as used in the definition of 'aerodrome traffic'.

Reason(s) for Comment:

Definition appears superfluous for this part of the IR (however, see comment against Definition 13 below).

Proposed Change/Text (where applicable):

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COMMENTS SHEET

Organisation Name: UK CAA

Form No. of

Paragraph Reference
(Article/Recital etc):

Article 2 'Definitions'
Definition 13 'aerodrome station'

Comment:

As the definition of the term 'aerodrome traffic circuit' appears to be included to expand upon the term 'in the vicinity of the aerodrome' as used in the definition of 'aerodrome traffic', so use of the term 'aeronautical mobile service' within definition 13 generates the need for this to be defined in turn, as is the case in ICAO documents.

Reason(s) for Comment:

Consistency with Definition 10 (if Definition 9 is not amended and Definition 10 is retained).

Proposed Change/Text (where applicable):

See ICAO Doc 9713 Part 1.

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Organisation Name: UK CAA

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Paragraph Reference
(Article/Recital etc):

Article 2 'Definitions'
Definition 34 'approach control service'

Comment:

The definition encompasses services for arriving and departing controlled flights provided by aerodrome control but excludes services for aircraft not landing at the aerodrome (ie, transits that may not qualify for inclusion under 'area control service').

Reason(s) for Comment:

The definition should be scoped around general service provision in the area of an aerodrome up to the point where aerodrome control provides the service for arriving and/or departing controlled flights. Approach control services are also available to flights transiting the area but not intending to land.

Proposed Change/Text (where applicable):

'approach control service' means air traffic control service for any aircraft which is not receiving an aerodrome control service, which is flying in, or in the vicinity of the aerodrome traffic zone of the aerodrome in respect of which the service is being provided, whether or not the aircraft is flying by visual reference to the surface.

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COMMENTS SHEET

Organisation Name: UK CAA

Form No. of

Paragraph Reference
(Article/Recital etc):

Article 2 'Definitions'
Definition 35 'approach control unit'

Comment:

The definition includes services for arriving and departing controlled flights provided by aerodrome control but excludes services for aircraft not landing at the unit.

Reason(s) for Comment:

The definition should be scoped around general service provision in the area of an aerodrome up to the point where aerodrome control provides the service for arriving and/or departing controlled flights. Approach control services are also available to flights transiting the area but not intending to land.

Proposed Change/Text (where applicable):

'approach control unit' means a unit established to provide air traffic control service for any aircraft which is not receiving an aerodrome control service, which is flying in, or in the vicinity of the aerodrome traffic zone of the aerodrome in respect of which the service is being provided, whether or not the aircraft is flying by visual reference to the surface.

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COMMENTS SHEET

Organisation Name: UK CAA

Form No.

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Paragraph Reference
(Article/Recital etc):

Article 2 'Definitions'
Definition 36 'apron'

Comment:

Differs from the definition for "apron" introduced at Article 3(o) of the EASA Basic Regulation by Regulation 1108/2009. The words "on a land aerodrome" are not seen in the EASA definition.

Reason(s) for Comment:

The definitions must be aligned.

Proposed Change/Text (where applicable):

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COMMENTS SHEET

Organisation Name: UK CAA

Form No.

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Paragraph Reference
(Article/Recital etc):

Article 2 'Definitions'
Definition 45 'competent authority'

Comment:

The reference to "central authority" seems unnecessarily restrictive upon Member States; what is important is that a competent authority is designated by the Member State.

Reason(s) for Comment:

The justification refers to EASA and current EASA IRs use the terms "designated by" in this context.

Proposed Change/Text (where applicable):

'competent authority' means the authority designated by a Member State to ensure compliance with the requirements of this Regulation or any authority to which that competence has been delegated.

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Organisation Name: UK CAA

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Paragraph Reference (Article/Recital etc):

Comment:

The definition of 'glider' is at odds with the EASA NPA 2008-17b FCL101 definition of 'Sailplane'. The terms 'glider' and 'sailplane' are synonymous and therefore scope exists for the SERA definition to be aligned with that used by EASA.

The terms 'self-sustaining glider' and 'self-propelled hang glider' are considered to be 'gliders' within the UK Air Navigation Order, but are also defined separately.

The UK Air Navigation Order additionally defines 'self-launching motor glider'.

Reason(s) for Comment:

SERA and EASA definitions must be aligned to ensure commonality at European level.

Consideration should be given to defining categories of 'glider'.

Proposed Change/Text (where applicable):

'Glider' (or 'sailplane') means a heavier-than-air aircraft that is supported in flight by the dynamic reaction of the air against its fixed lifting surfaces, the free flight of which does not depend on an engine.

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Form No. of

Paragraph Reference
(Article/Recital etc):

Comment:

'Night' is not defined in ICAO Annex 2. The definition provided within the draft IR is a transposition of that presented in Annexes 1 and 6 as explained in the Justification Material, and also in Doc 9713. We note the removal of the words '...as may be prescribed by the appropriate authority' and the incorporation of the supporting note. No justification for this move has been presented, and results in an overly complex, contentious and misunderstood definition.

It is appropriate for the definition to revert to that presented by ICAO without incorporation of the note. This then permits appropriate competent authorities to supplement the definition with more readily understood terminology that best suits domestic arrangements.

Reason(s) for Comment:

The definition is overly complex, contentious and misunderstood. As a result it may present adverse safety impacts that do not currently exist.

Proposed Change/Text (where applicable):

'night' means the hours between the end of evening civil twilight and the beginning of morning civil twilight, as may be prescribed by the appropriate authority.

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Organisation Name: UK CAA

Form No. of

Paragraph Reference
(Article/Recital etc):

Article 2 'Definitions'
Definition 100 'runway-holding position'

Comment:

The use of the term 'runway holding position' is not necessarily safe at all times.

Reason(s) for Comment:

Notwithstanding the definition, in practice this can be interpreted as an instruction to hold on the runway.

There are also other areas on an aerodrome where an aircraft can be instructed to hold position and await further clearance, eg intersecting taxiways. There is no requirement for a discrete definition of the entry point to a runway, rather the term used should be 'holding point'.

Proposed Change/Text (where applicable):

'holding position' means a specified location, identified by visual or other means, in the vicinity of which the position of an aircraft on the ground or in flight is maintained in accordance with air traffic control clearances.

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Paragraph Reference
(Article/Recital etc):

Comment:

See 'General Comments' regarding compliance and unforeseen circumstances.

Reason(s) for Comment:

Refinement of Article 3 is required to ensure appropriate and timely national responses to safety and security concerns without undue delay. The proposed text reflects that used in EASA Basic regulation Article 14 and does not preclude subsequent regularisation of any such measures at Union level.

Proposed Change/Text (where applicable):

2. The provisions of this Regulation shall not prevent a Member State from discharging its responsibilities as a signatory of the Chicago Convention by reacting immediately to a safety problem, which involves a product, person or organisation subject to the provisions of this Regulation. The Member State shall immediately notify the Commission and the other Member States of the measures taken and the reasons therefore.

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Paragraph Reference (Article/Recital etc):

Comment:

Article 7 appears to allow states to complement the IR through additional provisions, but that these must be compliant with the regulation. The use of the word 'compliant' generates confusion in the scope of the additional requirements. We understand the intention is to allow complimentary but not contradictory provisions (as is the case with ICAO Doc 7030).

"Compliant with the Regulation" is not the same as "do not contradict the provisions of the Regulation" as suggested in the Justification Materialand would be a more stringent requirement. The word 'compliant' could be understood to mean that there is no scope to bolster the requirements. The key aim here is to ensure that they are not in conflict, as per use of ICAO Doc 7030 provisions with regard to other SARPs.

Revisions to the Article are therefore necessary and would enhance clarity. Note the use of the word 'unless' in the proposed revised text: as currently presented, the word 'until' means that Union provisions will at some time replace them. This is not necessarily the case, and the word 'unless' is more appropriate.

Reason(s) for Comment:

There are a number of areas within the UK Rules of the Air (Rule 4 Reporting of hazardous conditions, Rule 7 Weather reports and forecasts, Rule 16 Right hand traffic rule, Rule 21 Speed limitations, Rule 22 Use of radio navigation aids, Rule 24 Practice instrument approaches, Rule 42 (2A) Right of way on the ground and Rule 45 Flight within ATZs) where the UK has additional or more detailed requirements than ICAO Annex 2. It is never clearly stated but implicit in the draft that this will no longer permitted. Removing some of these entails increased risk.

Clarification on the future status of such local provisions and flexibilities is necessary.

Proposed Change/Text (where applicable):

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Article 7 Additional Provisions

1. Member States that have implemented or may implement additional provisions complementing the Standards adopted under the framework of the Chicago Convention shall ensure that these do not contradict the provisions contained in the Annex to this Regulation.
2. Those additional complementing provisions shall continue to apply unless they are subsequently replaced by appropriate Union provisions.

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Paragraph Reference (Article/Recital etc):

Comment:

We have assumed that, where a State has a procedure which is different to those in SERA Part A, adoption of the SERA provision will require a full safety assessment by States under safety management processes prior to the change. If the safety assessment concludes that adoption of the SERA provision is not as safe as existing State procedures (including State-filed differences), is the State justified in not adopting the SERA provision?

If Eurocontrol's safety assessment of SERA provisions determines that these either maintain or enhance safety (individually and collectively), but subsequent State assessments determine that safety is lowered, which assessment takes primacy, and how would such issues be resolved?

Incorporation of Flexibility Provisions similar to those found in Article 14 of 216/2008 should be considered for the SERA IR.

Reason(s) for Comment:

Clarification is necessary. All aviation organisations now operate under an ICAO-compliant SMS and will, potentially, have to undertake individual SMS change assessments in each area. In the event that safety is adversely impacted, under European legislation such a change could not proceed, and our State responsibilities proscribe the Authority from allowing it.

Proposed Change/Text (where applicable):

2. In the event that the safety assessment identifies unacceptable risk which cannot be adequately mitigated, Member States shall notify the Commission and other Member States. In such circumstances the Member State shall ensure that an appropriate exemption from the common rules and provisions set out in the Annex to this Regulation is promulgated in the appropriate Aeronautical Information Publication and, where appropriate, a national difference is notified to ICAO in accordance with the Member State's Chicago Convention obligations.

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Paragraph Reference (Article/Recital etc):

Comment:

The Justification Material states that this Article will list the identified regulations that which will require amendment as a result of the entry into force of the Implementing Rule. These regulations and their amendments are not yet introduced in the Article, as they will directly depend upon the final content of the SERA IR once it is adopted.

It is not possible to comment meaningfully on this Article until the regulations have been duly identified. However, it is considered feasible for this Article to be progressively developed as the IR drafting process progresses. Therefore the next iteration of the draft must contain some indication of the identified regulations that which will require amendment as a result of the entry into force of the Implementing Rule **before** States can agree to the draft.

Reason(s) for Comment:

Clarification is necessary.

Proposed Change/Text (where applicable):

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COMMENTS SHEET

Organisation Name: UK CAA

Form No. of

Paragraph Reference
(Article/Recital etc):

Annex
Part A – Rules of the Air
Paragraphs 1.1 and 2.1

Comment:

There is unnecessary duplication at paragraphs 1.1 and 2.1.2. Also the provisions appear to conflict with those contained within ICAO Annex 11.

Reason(s) for Comment:

Remove duplication and restructure 'Chapter 1' through the incorporation of the existing paragraph 2.1.1 as below. Amend text to better align it with that contained in Annex 11 – necessary to do this as Annex 11 will be the subject of SERA Part B/Part C.

Proposed Change/Text (where applicable):

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Chapter 1 — Applicability of the Rules of the Air

1.1. This Regulation shall apply to aircraft:

- a) operating into, within or out of the Union;
- b) bearing the nationality and registration marks of a Member State of the Union, and operating in any airspace to the extent that they do not conflict with the rules published by the State having jurisdiction over the territory overflown.

1.2. Those portions of the airspace over the high seas where air traffic services will be provided shall be determined on the basis of regional air navigation agreements. A Member State having accepted the responsibility to provide air traffic services in such portions of airspace shall thereafter arrange for the services to be established and provided in accordance with the provisions of this Rule.

1.3. A Member State accepting the responsibility for providing air traffic services over the high seas may apply the Standards and Recommended Practices in a manner consistent with that adopted for airspace under its jurisdiction.

1.4. For those parts of the high seas where a Member State has accepted, pursuant to a regional air navigation agreement, the responsibility of providing air traffic services, the Member State shall designate the ATS provider for providing those services.

Chapter 2 - Compliance with the Rules of the Air

Remainder of proposed Chapter 2 retained and paragraphs renumbered accordingly.

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**Paragraph Reference
(Article/Recital etc):**

Annex
Part A – Rules of the Air
Paragraph 3.1.2.1

Comment:

Reference is made to 'an open-air assembly of persons', however the draft IR has not been developed such that the term is neither defined nor quantified. The draft IR would be greatly enhanced if a threshold value were to be assigned to the term.

UK Rules of the Air Rule 5 (Low flying prohibitions) makes reference to open-air assemblies of more than 1000 persons.

Reason(s) for Comment:

Quantification of the term 'an open-air assembly of persons' is required.

Proposed Change/Text (where applicable):

Consider 'an open-air assembly of persons' to mean more than 1000 persons.

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Form No. of

Paragraph Reference
(Article/Recital etc):

Annex
Part A – Rules of the Air
Paragraphs 3.1.4 to 3.1.7

Comment:

Are these intended to cater for both commercial operations (Community Legislation) and non-commercial (aerial work/recreational) operations (national legislation)?

Reason(s) for Comment:

Within each paragraph the text 'flights shall only be carried out in accordance with Union legislation and, where applicable, national legislation for aircraft operations regulated by Member States' appears inappropriate. Should the "and" be an "or"?

Proposed Change/Text (where applicable):

Amend text to read 'flights shall only be carried out in accordance with Union legislation or, where applicable, national legislation for aircraft operations regulated by Member States'.

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Organisation Name: UK CAA

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Paragraph Reference
(Article/Recital etc):

Annex
Part A – Rules of the Air
Paragraph 3.1.8.1d

Comment:

There appears to be an inconsistency between SERA, guidance contained in the draft Eurocontrol Specification for harmonised Rules for OAT under IFR inside ECAC controlled airspace (EUROAT) and UK regulations.

a. SERA (and therefore ICAO Annex 2) specifies:

A distance not exceeding 1km (0.5nm) laterally and longitudinally and 30m (100ft) vertically from the flight leader shall be maintained by each aircraft.

b. The draft Eurocontrol EUROAT specification states:

Each aircraft or element of this formation shall remain within 1nm horizontally and 100ft vertically (EUROAT 2.4.3.1 - allowances are made for non-standard formations as per UK MATS Pt 1).

c. UK regulations for Military formations inside UK FIRs state:

Formation elements are contained within 1nm laterally and longitudinally and at the same level or altitude (MATS Pt 1 Sec1 Chap 4 Page 8 and JSP 552 235.165.2 & 3).

In class F and G limitations may be increased to 3nm and/or up to 1000ft vertically. (JSP 552 235.165.2). Tactical co-ordination or an Airspace Coordination Notice may further extend these criteria.

It is not clear whether the SERA provision precludes level formation flight. In addition, the IR does not appear to differentiate between OAT and GAT (note that neither term appears in 'Definitions'). It does not appear to discriminate between military or civil formations, neither does it explicitly state its applicability to military formations operating as GAT. Can it be assumed that military formations operating as OAT (both outside and with controlled airspace) are not affected by the IR? If so, this could result in two sets of formation flight criteria. This is potentially unsafe, and does not represent good ATM procedure practice.

As currently written, it is not clear whether 'the conditions prescribed by the competent authority' refer to national regulations or the terms of an ATC clearance provided by the appropriate ATS unit. The removal of the provision for States to prescribe additional conditions for formation flights would remove ability to publish alternative procedures that are assessed as having a greater safety benefit.

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The Explanatory Material issued in support of Informal Consultation stated that the issue of State competency in this area will be addressed through additional material. The UK supports this approach to ensure that formation flight procedures are not deficient in safety assurance, however it is not clear what this 'additional material' is.

Consultation on the Eurocontrol 'Specification for harmonized Rules for Operational Air Traffic (OAT) under Instrument Flight Rules (IFR) inside controlled Airspace of the ECAC Area (EUROAT)' remains ongoing. In addition, there may be additional implications for the ongoing Eurocontrol DCMAC and ASM-SG-sponsored 'Altitude Reservation and En-Route Air To Air Refuelling in European Airspace' study (ie, non-standard block level clearances for large/tanker/transport formations).

Reason(s) for Comment:

The standard should be consistent across all of the above regulations.

The suggested wording below allows for more flexible lateral parameters for formation elements.

With regard to vertical separation, the SERA provision can be interpreted as meaning 100 ft vertically both above and below - either the supporting procedural and technical safety nets risk being eroded or it may not be possible to use the levels immediately adjacent to those used by a formation.

In the former instance, and in accordance with Mode C level occupancy provisions, aircraft may in fact be 300ft above or below the indicated level. Vertical separation between controlled flights could therefore be as little as 600ft. In the latter instance, capacity will be seriously diminished within an airway sector. Requiring a formation to maintain a single level ensures the integrity of the procedures/safety nets in place, allows the maintenance of standard vertical separation whilst retaining the use of adjacent levels, and affords the formation the necessary freedom to keep station safely.

Proposed Change/Text (where applicable):

Paragraph 3.1.8.1

d) a distance not exceeding 1nm laterally and longitudinally and at the same level or altitude. Flights operating outside these parameters will be operated in accordance with national regulations or conditions prescribed by the appropriate competent authority.

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Paragraph Reference (Article/Recital etc):

Comment:

This is not an Annex 2 requirement (arguably more closely related to ICAO Doc 8168 Pans-Ops Part 1) and refers to an 'aircraft' rather than its pilot.

Notwithstanding the explanation contained within the Justification Material, how many States consider it necessary to carry such a provision? Given that no reference can be found to it within Annex 2 or Doc 7030, what are the origins of the provision and why is its incorporation considered necessary?

Reason(s) for Comment:

The proposed provision represents good airmanship and it is arguably not necessary to introduce this into legislation. In addition, the measure is a basic airframe safety provision, not an 'avoidance of collisions' measure.

Justification for incorporation of this provision as presented in the supporting material appears inadequate and flawed. To state that the provision 'improves the safety by preventing an aircraft with an impaired manoeuvrability to make an avoidance manoeuvre leading to a possible aircraft loss of control' overlooks the fact that the pilots of such aircraft cannot assume that the pilots of all other aircraft will necessarily be aware of its impaired manoeuvrability and will give way to it.

It appears inconsistent to incorporate this provision into the draft IR whilst overlooking safety-critical measures referred to in the response to Informal Consultation such as the UK's Right Hand Rule' (see separate entry).

Proposed Change/Text (where applicable):

If it is considered necessary to retain a provision of this nature within Part A, then it is better placed in section 3.1 and worded thus:

'An aircraft with impaired manoeuvrability shall not be flown in a manner that shall lead to a possible loss of control.'

(However, the relevance/appropriateness of the proposed provision remains questionable)

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**Paragraph Reference
(Article/Recital etc):**

Annex
Part A – Rules of the Air
Paragraph 3.2.3

Comment:

There is an opportunity to expand upon Annex 2 provisions concerning the avoidance of collisions through the adoption of the 'Right Hand Rule', and in doing so enhance the draft IR.

The UK Rules of the Air 2007 Rule 16 (Right Hand Rule) enhances collision avoidance provisions thus:

- (1) Subject to paragraph (2), an aircraft which is flying within the United Kingdom with the surface in sight and following a road, railway, canal or coastline, or any other line of landmarks, shall keep them on its left.
- (2) Paragraph (1) shall not apply to an aircraft flying within controlled airspace in accordance with instructions given by the appropriate air traffic control unit.

The origins of the UK's provisions lie in the first mid-air collision between passenger-carrying commercial air transport aircraft in April 1922. Both aircraft were following (by flying above it) a line feature and collided at an altitude of 500 feet in mist. Neither aircraft had time to take evasive action; both aircraft were destroyed and all 7 passengers and crew were killed.

The Right Hand Rule (or variations of it) are believed to be taught and/or applied (either as rules or best practice) in a number of countries, including Canada, USA (eg, the Hudson River Corridor), Norway, Czech Republic and Ireland.

In addition, the UK Rules of the Air 2007 Rule 11 includes a provision permitting a glider overtaking another glider in the UK to alter its course to the right or to the left.

Reason(s) for Comment:

The UK's Rule 16 enhances collision avoidance provisions for aircraft approaching head on or converging, and should be adopted by the IR.

The UK's Rule 11 confers additional flexibility to glider operations and should be adopted by the IR.

Proposed Change/Text (where applicable):

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Right hand rule:

3.2.3.3.2.1

(a) Subject to paragraph (2), an aircraft which is flying with the surface in sight and following a road, railway, canal or coastline, or any other line of landmarks, shall keep them on its left.

(b) Paragraph (a) shall not apply to an aircraft flying within controlled airspace in accordance with instructions given by the appropriate air traffic control unit.

Gliders overtaking:

3.2.3.3.3.1 A glider overtaking another glider may alter its course to the right or to the left.

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Paragraph Reference
(Article/Recital etc):

Comment:

1. There is an opportunity to expand upon Annex 2 provisions concerning the surface movement of aircraft, and in doing so enhance the draft IR in a manner that also encompasses the movement of towed aircraft and vehicles on aerodromes (Annex 2 and thus the draft IR refer only to taxiing aircraft). Such provisions were introduced within the UK in accordance with the recommendations arising from the investigation by the Air Accident Investigation Branch of the Department for Transport of a collision at Heathrow Airport in March 2004 between an aircraft on a taxiway and an aircraft being towed. UK Rules of the Air Rule 42 'Right of way on the ground' states:

(1) This rule shall apply to flying machines and vehicles on any part of a land aerodrome provided for the use of aircraft and under the control of the person in charge of the aerodrome.

(2) Notwithstanding any air traffic control clearance it shall remain the duty of the commander of a flying machine to take all possible measures to ensure that his flying machine does not collide with any other aircraft or vehicle or with any obstacle.

(2A) Where a flying machine is being towed on the ground and the commander of the flying machine is not on board, then notwithstanding any air traffic control clearance it is the duty of the person in charge of the vehicle towing the flying machine to take all possible measures to ensure that the aircraft does not collide with any other aircraft or vehicle or with any obstacle.

(3) Flying machines and vehicles shall give way to aircraft which are taking off or landing.

(4) Vehicles and flying machines which are not taking off or landing shall give way to vehicles towing aircraft.

(5) Vehicles which are not towing aircraft shall give way to aircraft.

Given the nature and purpose of the draft IR it is not necessary to include regulations concerning the access and movement of vehicles (other than in the circumstances described above) and people on aerodromes. It is considered appropriate that the need for such regulation (introduced separately and at national level) be referred to in revised Justification Material.

2. Paragraph 3.2.3.4.1c does not specify the direction in which aircraft must overtake other

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aircraft. Are States to specify the direction that the overtaking aircraft must pass?

3. Paragraph 3.2.3.4.2 as written places no obligation on pilots to conform to instructions to prevent incursions on to manoeuvring areas other than runways. The paragraph can be enhanced by applying it to runway entries in addition to runway crossings.

4. Paragraph 3.2.3.4.3 reflects Annex 2 but does not explain how stop bar failures defaulting to red are to be accommodated. UK CAP493 (Manual of Air Traffic Services Part 1) Section 2 Chapter 1 para 9.3.4 states:

At aerodromes where taxiway stop-bars are used to protect taxiway routes and runways from inadvertent incursions, controllers are not to clear aircraft to cross an illuminated stop-bar. Inoperable taxiway stop-bars and associated taxiways should be withdrawn from service and an alternative routeing used. The Aerodrome Authority may decide, on grounds of safety, that inoperable stop-bars and associated taxiways be withdrawn from service.

On the occasions when the withdrawal of inoperable stop-bars and associated taxiways is not possible and the stop-bar cannot be readily suppressed, an aircraft may be cleared to cross such an illuminated taxiway stop-bar subject to the following conditions:

- a) The stop-bar and aircraft affected are visible to the aerodrome controller;*
- b) The phraseology used is to leave the pilot in no doubt that the clearance applies only to the faulty stop-bar; and*
- c) In the case of illuminated stop-bars protecting the runway, aircraft may not be cleared to cross without the assistance of an aerodrome operations vehicle.*

Reason(s) for Comment:

Such provisions enhance the safety of the ground movement of aircraft and vehicles.

Proposed Change/Text (where applicable):

The wording of UK Rules of the Air Rule 42 (as quoted above) can be used as the basis for enhanced right of way provisions.

Paragraph 3.2.3.4.2 amend to read:

An aircraft taxiing on the manoeuvring area shall stop and hold at all runway-holding positions unless an explicit clearance to enter or cross the runway has been issued by the aerodrome control tower.

Paragraph 3.2.3.4.3 amend to read:

An aircraft taxiing on the manoeuvring area shall stop and hold at all lighted stop bars and may proceed further when the lights are switched off or in accordance with an explicit clearance to cross the notified holding position that has been issued by the aerodrome control tower. Inoperable taxiway stop-bars and associated taxiways shall be withdrawn from service and alternative routeings used. On the occasions when the withdrawal of

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inoperable stop-bars and associated taxiways is not possible and the stop-bar cannot be readily suppressed, an aircraft may be cleared to cross such an illuminated taxiway stop-bar subject to the following conditions:

- a) The stop-bar and aircraft affected are visible to the aerodrome controller;
- b) The phraseology used is to leave the pilot in no doubt that the clearance applies only to the faulty stop-bar; and
- c) In the case of illuminated stop-bars protecting the runway, aircraft may not be cleared to cross without the assistance of an aerodrome operations vehicle.

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**Paragraph Reference
(Article/Recital etc):**

Annex
Part A – Rules of the Air
Paragraph 3.2.4.1

Comment:

This proposal adds a requirement to display navigation lights, where fitted, during daylight hours, but offers no safety case for doing so.

Reason(s) for Comment:

Many light aircraft have only limited charging capability (indeed there is no mandatory requirement for an aircraft to be fitted with an electrical system). Many aircraft are not therefore equipped with either anti-collision lights or navigation lights since they have no means of providing the necessary power. In addition, a requirement to have lights on during the day can seriously reduce the charge available for both normal and emergency requirements.

Proposed Change/Text (where applicable):

Revert to text at ICAO Annex 2 paragraph 3.2.3.1

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**Paragraph Reference
(Article/Recital etc):**

Annex
Part A – Rules of the Air
Paragraph 3.3.1.2

Comment:

The submission of a flight plan for any IFR flight and certain VFR flights is proposed. For operations in Class G airspace, this places an additional burden upon those States where this is currently not required and potentially places an additional onus on operators where they undertake IFR for any reason e.g. training, operations conducted in Class G airspace under VMC, where an air traffic service is not required or requested, etc.

The requirement represents a move away from the provisions of ICAO Annex 2, and the safety case for the provision is inadequately presented within the Justification Material. The basis of the change is arguably flawed, in that it does not appear to acknowledge the fact that an air traffic control service can only be provided within which separation between IFR aircraft is provided by ATC (ie, ICAO Classes A-E) as described in ICAO Annex 11. Hence the requirement for flight plans to be filed for IFR flight within such airspace is implicit in Annex 2 (see also the first sentence to Note 1 of ICAO Annex 2 paragraph 3.6.1.1). Annex 2 then seeks to cause the submission of flight plans for aircraft flying within advisory airspace. What Annex 2 is not inferring is the need for flight plans for IFR flight within Class G.

Alternative wording is suggested below. This constitutes an additional option to those presented in the Justification Material (page 32). Contrary to the conclusion in the Justification Material, the possibility of misinterpretation of the amended provision as presented in the IR is high as the procedure is ambiguous. The suggested wording below removes the ambiguity, whilst retaining the additional provisions regarding border crossings and VFR operations at night.

Reason(s) for Comment:

This requirement will increase flight plan submissions and will result in consequent increases in ATFN traffic to ANSPs, who may have to introduce either operational or system changes to accommodate them.

Notwithstanding the new requirements, more clarification on the reason for the change, in terms of safety benefit, is requested.

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Proposed Change/Text (where applicable):

3.3.1.2 A flight plan shall be submitted prior to operating any flight or portion thereof:

- a) to be provided with air traffic control service or air traffic advisory service.
- b) planned to operate within or into areas or along routes designated by the competent authority, to facilitate the provision of flight information, alerting and search and rescue services;
- c) planned to operate within or into areas or along routes designated by the competent authority, to facilitate coordination with appropriate military units or with air traffic services units in adjacent States in order to avoid the possible need for interception for the purpose of identification;
- d) planned to operate across international borders, unless otherwise prescribed by the States concerned;
- e) planned to operate at night, in accordance with 4.3 a).

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Paragraph Reference
(Article/Recital etc):

Annex
Part A – Rules of the Air
Paragraph 3.3.5.1

Comment:

Additional requirements for flight plans potentially over-demanding.

Reason(s) for Comment:

The UK does not currently specify a requirement for the submission of an arrival report to close a flight plan and this is published as a Difference in UK AIP GEN 1.7. Alternative provisions are in place to make sure that ATC are aware that a flight has arrived within 30 mins of ETA.

Full implementation of the requirement may result in the inability of extant message handling systems to host resultant increases in messaging.

Proposed Change/Text (where applicable):

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Paragraph Reference
(Article/Recital etc):

Annex
Part A – Rules of the Air
Paragraph 3.6.5.11

Comment:

Is the CPDLC reference specific to type, or does it allow other data link technologies?

Reason(s) for Comment:

It is not clear whether CPDLC is a generic term for data link services in this context or whether it is a specific technology. Clarification is requested.

Proposed Change/Text (where applicable):

The requirement for an aircraft to maintain an air-ground voice communication watch shall remain in effect when data link services have been established.

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**Paragraph Reference
(Article/Recital etc):**

Annex
Part A – Rules of the Air
Paragraph 3.6.5.2.1

Comment:

Eurocontrol APDSG has raised concerns with the current ICAO communication failure procedures specified in Annex 2, Annex 10 Vol II and PANS-ATM, specifically with the VFR procedures at Annex 2 paragraph 3.6.5.2.1. These concerns were addressed directly to ICAO and the group is awaiting a response.

Separate from the APDSG activity, there is believed to be an impending amendment to an ICAO SARP to address a specific issue with communication failure but the detail is not known. ANT48 WP12 - Amendment ICAO COM Failure Procedure refers.

Consideration should be given to delaying transposition of paragraph 3.6.5.2 until such time as clarification from ICAO is received that amendments to the SARPs may be forthcoming, or incorporating suitable text provided by APDSG. The argument within the Justification Material that a mature proposal would need to be considered for further amendment of SERA is considered to be false, and that the 'cautious approach' it refers to is not acceptable. It would be better to omit reference to communication failure at this stage and introduce provisions as anticipated in the Justification Material, ie, to address the communication failure provisions contained in ICAO Annex 10, Volume II as part of SERA Part C development work.

Reason(s) for Comment:

Transposition of existing ICAO provision into European legislation would not recognise the current safety concerns. There might also be an unnecessary delay in amending SERA Part A if during the process to introduce the legislation, an ICAO amendment was published.

Proposed Change/Text (where applicable):

Refer issue to APDSG.

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Paragraph Reference
(Article/Recital etc):

Annex
Part A – Rules of the Air
Paragraph 3.6.5.2.2g

Comment:

Sub-paragraph 3.6.5.2.2g appears to be incomplete, note content of Annex 2 Paragraph 3.6.5.2.2g.

Reason(s) for Comment:

Incomplete text.

Proposed Change/Text (where applicable):

Annex 2 Paragraph 3.6.5.2.2 states:

g) land, if possible, within 30 minutes after the estimated time of arrival specified in e) or the last acknowledged expected approach time, whichever is later.

(Annex 2 and draft IR sub-paragraph 3.6.5.2.2e states:

e) commence descent from the navigation aid or fix specified in d) at, or as close as possible to, the expected approach time last received and acknowledged; or, if no expected approach time has been received and acknowledged, at, or as close as possible to, the estimated time of arrival resulting from the current flight plan;)

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Comment:

It is not clear why Attachment B to Annex 2 has not been transposed. Transposition of Attachment B and reference to it by a transposition of Annex 2 paragraph 3.7 Note 2 is recommended.

Reason(s) for Comment:

Adaptation of Attachment B for the purposes of completeness is considered appropriate given its content. The reference to 'related guidance material' within the accompanying Justification Material is noted, however it is not clear what form this will take, when it will be published and by whom.

Proposed Change/Text (where applicable):

Suggest incorporating Annex 2 Attachment B as an attachment to the draft IR.

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Comment:

Paragraph 3.8.1 appears to contradict paragraph 3.8.2, in that the former places actions on States (and provides for national regulation) and then in the latter specifies what States shall do.

Paragraph 3.8.2b – It would seem appropriate to develop this provision further by adding a reference to 'congested areas', and for the term to carry the same meaning and purpose as in (for example) paragraph 4.6.

Paragraph 3.8.2c – Civil-registered aircraft may be chartered for the purpose of adding realism to training.

Paragraph 3.8.5's provisions are not relevant for aircraft that are subject to interception as a result of unlawful interference.

Paragraph 3.8 appears to be very different to Annex 2 paragraph 3.8, containing as it does elements from that paragraph, Appendix 2 and the supporting Attachment A. While the Justification Material explains why Annex 2 paragraph 3.8 and Attachment A have not been transposed in their entirety, it does not provide any indication as to when the work on appropriate additional material will be undertaken or concluded. As presented in the draft IR, Interception provisions are incomplete.

It must be noted that national security considerations may override draft IR provisions should circumstances dictate.

Reason(s) for Comment:

In the current security climate, unlawful interference and interception of civil aircraft may be reasonably assumed to be parts of the same scenario. However the sequence of events in paragraph 3.8.5 suggests this is not the case and they prescribe pilot actions that would not be relevant in such circumstances. For example, an aircraft subject to unlawful interference that was subsequently intercepted for security reasons should squawk Mode A 7500 rather than Mode A 7700 and would not need to make a blind call on 121.5 MHz. In addition, it should be recognised that an aircraft subject to unlawful interference unable to squawk Mode A 7500 would equally not be able to squawk Mode A 7700.

It is not clear from the Draft IR or the supporting Justification Material whether the above anomalies (other than that associated with additional material derived from

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Annex 2 Attachment A) will be regularised as part of Part B/Part C work. It is strongly recommended that this work is undertaken as a matter of urgency, and that States are fully engaged at each stage of the work's development in order to ensure individual State requirements are satisfactorily met.

With regards to the development of additional material derived from Annex 2 Attachment A and the absence of associated timescales, it would appear more appropriate to transpose Attachment A and subsequently refine it.

Regardless of the statement in the supporting Justification Material, this is essentially a national security issue, and goes beyond current EC/EASA/Eurocontrol competencies.

Proposed Change/Text (where applicable):

Paragraph 3.8.2b to read:

b) an interception shall be limited to determining the identity of the aircraft, unless it is necessary to return the aircraft to its planned track, direct it beyond the boundaries of national airspace, guide it away from a prohibited, restricted or danger area and congested areas, or instruct it to effect a landing at a designated aerodrome;

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Paragraph Reference
(Article/Recital etc):

Annex
Part A – Rules of the Air
Paragraph 3.9 and Table 3-2

Comment:

An explanation of the term of 'with the surface in sight' would enhance this provision.
The term 'aerial work' is used in Table 3-2 but is not defined.

Reason(s) for Comment:

The UK Air Navigation Order 2009 Article 255(1) defines 'with the surface in sight' thus:
'With the surface in sight' means with the flight crew being able to see sufficient surface features or surface illumination to enable the flight crew to maintain the aircraft in a desired attitude without reference to any flight instrument and 'when the surface is not in sight' shall be construed accordingly.
The term 'aerial work' requires definition.

Proposed Change/Text (where applicable):

'With the surface in sight' means with the flight crew being able to see sufficient surface features or surface illumination to enable the flight crew to maintain the aircraft in a desired attitude without reference to any flight instrument and 'when the surface is not in sight' shall be construed accordingly.
See ICAO Doc 9713 Part 1 for definition of 'aerial work'.

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Paragraph Reference
(Article/Recital etc):

Annex
Part A – Rules of the Air
Paragraph 3.9.1 Table 3-2
and Chapter 4

Comment:

The UK Rules of the Air specify a VFR speed restriction of 250 knots below FL100 unless certain conditions apply.

Reason(s) for Comment:

This is a mitigating factor for the avoidance of aerial collisions in lower visibility. Its incorporation into the IR would assist in reducing the risk of aerial collisions, especially in Class F and G airspace.

Proposed Change/Text (where applicable):

The wording of UK Rules of the Air 2007 Rule 21 can form the basis of an appropriate equivalent provision within the draft IR.

Rule 21 states:

(1) Subject to paragraph (2), an aircraft shall not fly below flight level 100 at a speed which, according to its air speed indicator, is more than 250 knots.

(2) Paragraph (1) shall not apply to—

(a) flights in Class A airspace;

(b) VFR flights or IFR flights in Class B airspace;

(c) IFR flights in Class C airspace;

(d) VFR flights in Class C airspace or VFR flights or IFR flights in Class D airspace when authorised by the appropriate air traffic control unit;

(e) an aircraft taking part in an exhibition of flying for which a permission is required by article 80(1) of the [UK Air Navigation] Order, if the flight is made in accordance with the terms of the permission granted to the organiser of the exhibition of flying and in accordance with the conditions of the display authorisation granted to the pilot under article 80(6)(a) of the [UK Air Navigation] Order;

(f) the flight of an aircraft flying in accordance with the A Conditions or the B Conditions;

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or

(g) an aircraft flying in accordance with a written permission granted by the CAA authorising the aircraft to exceed the speed limit in paragraph (1).

(3) The CAA may grant a permission for the purpose of paragraph (2)(g) subject to such conditions as it thinks fit and either generally or in respect of any aircraft or class of aircraft.

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Paragraph Reference
(Article/Recital etc):

Annex
Part A – Rules of the Air
Paragraph 4.2

Comment:

We have assumed that is this refers only to aerodromes within a Control Zone, and not to all aerodromes.

Reason(s) for Comment:

Refined wording is required (see below).

Proposed Change/Text (where applicable):

Except when a special VFR clearance is obtained from an air traffic control unit, VFR flights shall not take off or land at an aerodrome within a control zone, or enter that aerodrome's traffic zone or traffic pattern:

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Paragraph Reference (Article/Recital etc):

Comment:

The UK permits Special VFR but not VFR at night. Neither the draft IR nor the supporting Airspace Classification Toolbox contain provision for Special VFR at night.

The draft IR's provisions for VFR flight at night are further developed in the Airspace Classification Toolbox. Regardless of this, the move to VFR flight at night within UK airspace would represent a significant change in the conduct of flight within the UK FIRs and would warrant detailed consideration before being approved, and the possibility of the UK not approving VFR flight at night cannot be discounted.

One issue is terrain clearance and the risk of controlled flight into terrain. In order to mitigate this issue, it is strongly recommended that the provisions of draft IR paragraph 5.1.2.1 be adapted to night VFR operations as suggested below.

Reason(s) for Comment:

An additional provision is required to ensure safety whilst flying at VFR at night.

Alternatively, the provisions of the draft IR at paragraph 4.3 should be replaced with a transposition of ICAO Annex 2 paragraph 4.3 and the appropriate competent authority left to determine the conditions applicable to VFR flight at night.

Further development of the toolbox to incorporate the provision shall not be overlooked.

Proposed Change/Text (where applicable):

Either add:

Except when necessary for take-off or landing, or except when specifically authorised by the competent authority, a VFR flight at night shall be flown at a level which is not below the minimum flight altitude established by the State whose territory is overflown, or, where no such minimum flight altitude has been established:

- a) over high terrain or in mountainous areas, at a level which is at least 600 m (2 000 ft) above the highest obstacle located within 8 km of the estimated position of the aircraft;
- b) elsewhere than as specified in a), at a level which is at least 300 m (1 000 ft) above the

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highest obstacle located within 8 km of the estimated position of the aircraft.

OR

Further develop the toolbox to incorporate the provision.

OR

Replace paragraph 4.3 with:

VFR flights between sunset and sunrise, or such other period between sunset and sunrise as may be prescribed by the appropriate ATS authority, shall be operated in accordance with the conditions prescribed by such authority.

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Paragraph Reference
(Article/Recital etc):

Annex
Part A – Rules of the Air
Paragraphs 4.7 and 5.3.1.1

Comment:

UK has found it beneficial to use Quadrantal Rules below FL195.

Reason(s) for Comment:

Removal of the quadrantal option within UK airspace represents a major change in operational modus operandi. Significant regulatory, institutional and cultural change is therefore anticipated. It would need to be proven that any alternative system was equally safe.

Revision of the SERA Project Plan (*EUROCONTROL INITIAL PLAN ON EC MANDATE SUPPORT ON DEVELOPMENT OF STANDARDISED RULES OF THE AIR SES/AS/SERA/IPL/1.0 dated 26/10/09*) to incorporate more definitive project milestones and timescales is necessary to inform and facilitate detailed domestic consultation on this proposal. The revision would also inform and facilitate earlier preparation for SERA Part B work.

Proposed Change/Text (where applicable):

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**Paragraph Reference
(Article/Recital etc):**

Annex
Part A – Rules of the Air
Appendix 1 paragraphs 1.2.1, 3 and 6

Comment:

Paragraph 1.2.1 remove duplicated text in line 1.

The UK does not currently use the signals referred to at Paragraph 3. If mandated by SERA do they have to be introduced into the UK? Our interpretation is that the draft IR is not seeking their introduction, rather it means that if the UK chooses to introduce such signals in the future, their use will comply with the IR.

The signals at paragraph 6 are not commonly used in the UK, where radio is the normal means of communication. If mandated do they have to be introduced into the UK? Our interpretation is that the draft IR is not seeking their introduction, rather it means that where such signals are used, they will comply with the IR.

Reason(s) for Comment:

Removal of duplicated text.

Clarification from Eurocontrol required regarding mandated status and associated training and application issues if not currently used.

Proposed Change/Text (where applicable):

Paragraph 1.2.1 amend to read:

The following signals, used either together or separately, mean that grave and imminent danger threatens, and immediate assistance is requested:

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Paragraph Reference
(Article/Recital etc):

Annex
Part A – Rules of the Air
Supplement

Comment:

The Part A Justification Material states that the SERA Development Process *'will be followed by further deliverables addressing the requirements and practices that must be considered in order to properly build the Standardised European Rules of the Air. This refers in particular to the provisions of.....the EUR Regional Supplementary Procedures for Europe (SUPPs, Doc 7030/5 EUR). It is foreseen that the requirements resulting from those deliverables will be integrated in Parts B and C of the Annex to the implementing rule'*.

For this and subsequent SERA parts, further clarity on the relationship to Doc 7030 is requested. Where there are agreed European differences, SERA may be interpreted as supplements to the baseline ICAO provisions so it is not clear what purpose Doc 7030 would subsequently have.

Reason(s) for Comment:

Additional clarification to that provided in the Justification Material is required.

Proposed Change/Text (where applicable):

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Paragraph Reference
(Article/Recital etc):

Justification Material
Chapter 2
Section 2.1

Comment:

Paragraph 3 line 8 refers to 'Certification Specifications'; should this read 'Community Specifications'?

Reason(s) for Comment:

Potential inconsistency requires correction.

Proposed Change/Text (where applicable):