

Annex D

CAA BETTER REGULATION GATEWAY FRAMEWORK

PRINCIPLE	TEST	TEST	TEST	TEST	TEST	TEST
Level zero – pull together the evidence you have, identify gaps in your knowledge and how you might fill those gaps	<p>Can you clearly define the risk you aim to mitigate? Who is at risk?</p> <ul style="list-style-type: none"> UK is at risk of non-compliance with SERA, thus raising the possibility of EC infringement proceedings. Industry is at risk due to lack of clarity concerning the applicability of EU and national regulation arising from duplication. The CAA is of the view that this would result in reductions in safety. Retention of extant rules is permissible under SERA and is considered appropriate by the CAA to provide legal certainty on those issues that are not addressed by SERA and to ensure through these that current levels of safety are maintained. 	<p>What is the likelihood of the risk occurring and what would be impact, and on whom?</p> <ul style="list-style-type: none"> See comments to the left. 	<p>Costs – do you know how much industry spends, or would have to spend, to implement the options you are considering? Does the industry agree with your estimates?</p> <ul style="list-style-type: none"> Through consultation the CAA sought estimates from industry as to the likely costs of implementing the CAA’s legislative change proposals. 	<p>Can you estimate by how much your option would mitigate the risk – both its severity and likelihood?</p> <ul style="list-style-type: none"> The previously described risks are removed as a result of revoking those current UK rules that are superseded by SERA. 		
Alternatives - could your policy objective be achieved by means other than regulation?	<p>Do nothing? Often in response to one-off incidents or tragedies there are demands that “something must be done”. Should it? What’s your evidence to justify action?</p> <ul style="list-style-type: none"> To do nothing is considered unacceptable because it is contrary to European law and likely lead to EC infringement proceedings. 	<p>Information campaign & education? Would information, advice and persuasion – perhaps reinforced by other incentives or existing penalties achieve the change you want?</p> <ul style="list-style-type: none"> Legislative change is necessary to achieve implementation of the SERA regulation through revisions to, or revocation of, aspects of current UK legislation. The changes to UK legislation do not seek the introduction of new legislation. Legislative change activities associated with SERA implementation will be supplemented by CAA awareness activity. 	<p>Use the market? Could a market be introduced to achieve your policy objective? Could the sector introduce its own Code of Practice or information for participants?</p> <ul style="list-style-type: none"> The suggested means are not appropriate as the issue is of domestic legislative change to facilitate the implementation of EU law. The rules of the air (regardless of whether they are in EU or domestic law) are intended to prevent collisions in the air and on the ground, are intended to protect aircraft operators and passengers, third party individuals and property on the ground alike. An industry sector code of practice with or without supporting ‘information for participants’ would not provide the legal certainty associated with regulation and would not address the requirements of all of the affected/interested parties. 	<p>Financial incentives? Would a change in fees & charges bring about the policy shift you wish to achieve? What about a subsidy or price cap in a non-competitive market?</p> <ul style="list-style-type: none"> The suggested mechanisms are not viable options given the nature of both the current and future legislation, and the circumstances they are intended to address. The CAA Scheme of Charges is not affected by the measure. 	<p>Self-regulation and/or voluntary Code of Practice? Could your stakeholders take responsibility for regulating themselves? This may be cheaper and more flexible than State intervention</p> <ul style="list-style-type: none"> The suggested mechanisms are not viable options given the nature of both the current and future legislation, and the circumstances they are intended to address. <p>The CAA Scheme of Charges is not affected by the measure.</p>	<p>Prescriptive regulation? Will this result in any unintended consequences? If the rules are not strictly enforced, what will be the level of compliance?</p> <ul style="list-style-type: none"> Rules of the air (regardless of whether they are in EU or domestic law) are required to prevent collisions in the air and on the ground, are intended to protect aircraft operators and passengers, third party individuals and property on the ground alike. No other means would provide the legal certainty associated with regulation, and would not address the requirements of all of the affected/interested parties without prejudice to any of them, regardless of the nature and scale of said parties.
Proportionality – you should only intervene when necessary. Your remedies should be appropriate to the risk posed, and costs identified and minimised.	<p>Is your intervention proportionate to the perceived problem or risk? Does your intervention justify the compliance costs imposed? Don’t use a sledgehammer to crack a nut.</p> <ul style="list-style-type: none"> The intervention is considered appropriate. It results in a reduction in the level of domestic legislation following its supersession by EU law. 	<p>Have you considered all the options for achieving your policy objective?</p> <ul style="list-style-type: none"> To not change UK legislation was considered unacceptable because it is contrary to European law and likely lead to Commission infringement proceedings. To amend UK legislation on 4 December 2012, i.e. immediately when SERA came into force so as to achieve the policy objectives and 	<p>What is the impact of your intervention on the smaller end of the sector, eg GA?</p> <ul style="list-style-type: none"> All aviation sectors are affected equally by the implementation and the replacement of Rules of the Air Regulations 2007 by Rules of the Air Regulations 2014. There are no industry competition issues associated with the proposed legislative changes. 	<p>Don’t gold-plate. Are you transposing EU regulation without any gold-plating?</p> <ul style="list-style-type: none"> EU regulations are not being transposed; UK legislation is being reduced in size and scope to facilitate implementation of EU legislation. A number of extant UK Rules of the Air are recommended for retention; these supplement SERA; they comply with the requirements of SERA Article 8 	<p>What’s your enforcement regime? Is it proportionate to the risk and the size of the company/participant?</p> <ul style="list-style-type: none"> Extant CAA enforcement means will continue to apply. This is appropriate given that the measures are essentially a recast of the current domestic regulatory framework to one that is essentially an EU framework with permissible supplementary domestic provisions. 	<p>In enforcing, could you take an educational rather than punitive approach?</p> <ul style="list-style-type: none"> Extant CAA enforcement means will continue to apply. Awareness and educational activities form part of the suite of available measures – a punitive approach is not necessarily a default position. This, for example, characterises the CAA’s approach to dealing with airspace infringements.

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		intended effects details above. In addition, publish guidance explaining which provisions of the ANO and ROTA are superseded by SERA. This was considered unachievable given uncertainty concerning the final content of the Regulation and insufficient time to conduct the necessary safety assessments and effect UK legislative change <ul style="list-style-type: none"> As above but to complete amendment of UK legislation by 4 December 2014 (by which time EU Member State implementation of SERA is to be complete) was identified as the preferred option as it allowed time for detailed consideration of SERA's impacts upon UK regulatory material. 	<ul style="list-style-type: none"> All industry sectors have been aware of the impending implementation of SERA since 2012. All sectors were invited to participate in a public consultation on the CAA's proposals for domestic legislative change. 	and are considered by the CAA to be necessary to satisfy the requirement in SERA Article 9 to maintain or enhance existing safety levels.		
Accountability – you must be able to justify your decisions, and be open to public scrutiny.	Have you published and consulted all those who will be affected by your intervention? <ul style="list-style-type: none"> Eurocontrol and the European Aviation Safety Agency (EASA) have undertaken successive public consultations regarding the development of the EU SERA regulation. The CAA has consulted with industry on its original proposals for domestic legislative change. The European and CAA proposals have been amended following detailed consideration of consultation responses. 	Have you clearly explained how and why final decisions have been reached? <ul style="list-style-type: none"> Yes, through the consultation report. 	Do those you are regulating know and understand the standards and criteria against which they will be judged? <ul style="list-style-type: none"> Yes. This will be through Rules of the Air regulations 2014, amendments to the Air Navigation Order 2009, SERA itself and awareness material that the CAA will publish between now and the end of 2014. 	Will you set up or use an existing well-publicised, accessible, fair and effective complaints and appeals procedure? <ul style="list-style-type: none"> Existing channels will continue to apply. 		
Consistency – rules and standards should be joined-up and implemented fairly.	Are your interventions consistent with other regulators that may operate in the same sector? Are you working in a joined-up way with other regulators? <ul style="list-style-type: none"> The CAA is aware that the other EU Member States are in the process of amending domestic aviation legislation as part of their SERA implementation activity, and will retain national provisions as they consider necessary. The UK CAA and the Irish Aviation Authority are committed to 	Does your intervention take account of existing or proposed regulations/interventions, whether of domestic, EU or international origin? <ul style="list-style-type: none"> The purpose of the legislative change is to facilitate UK implementation of SERA, which entered EU law on 4 December 2012. 	Is your intervention predictable and gives certainty to those you are regulating? <ul style="list-style-type: none"> Retention of certain extant UK rules of the air is intended to provide certainty to industry. 	How will you ensure that your intervention is applied consistently across the sector and the UK <ul style="list-style-type: none"> Rules of the Air regulations 2014, amendments to the Air Navigation Order 2009, plus SERA itself will apply. Non-compliance with SERA and Rules of the air regulations 2014 by industry will be addressed through sanctions contained within the Air Navigation Order 2009. 	What are other EU Member States doing? Is the UK consistent with them? <ul style="list-style-type: none"> The other EU Member States are in the process of amending domestic aviation legislation as part of their SERA implementation activity, and will retain national provisions as they consider necessary. The UK's approach to SERA implementation is therefore consistent with these other activities. 	
Transparency – you should be open in your policy making, and keep regulations simple and user-friendly.	Before formal consultation: Have discussed the problem you are trying to solve with the sector and other interested parties, including your initial thoughts on why and how the CAA might intervene? <ul style="list-style-type: none"> Eurocontrol and the European Aviation Safety Agency (EASA) had already undertaken successive public consultations regarding the development of the EU SERA 	Have discussed the problem you are trying to solve with the sector Have you consulted effectively before your intervention has been put in place? Have you taken stakeholders' views and expertise into account? <ul style="list-style-type: none"> The CAA has undertaken a public consultation on its proposals. Consultation responses have been assessed and have led the CAA to revise its proposed Rules of the Air 	How long have you consulted for? Was it a long enough period to allow those potentially affected to respond? How have you consulted? <ul style="list-style-type: none"> The CAA undertook a public consultation on its proposals for legislative change. Stakeholders were advised of the consultation by means of a CAA Information Notice, a CAA press release, direct contact with National 	Is your intervention clear and simple? When will you issue guidance, in plain language, to allow those affected sufficient time to prepare for the change? Have you given examples/tools of how compliance might be achieved? <ul style="list-style-type: none"> The regulatory change will be effected through legal process. The resultant legislative changes will be reflected in: 	Have you distinguished clearly what is strict regulation and what is best practice? <ul style="list-style-type: none"> Regulation will be reflected in the Rules of the Air Regulations 2014 (and of course SERA). Permissions by the competent authority (for the purposes of SERA this will be the CAA) will be promulgated by appropriate means (and will be included in the UK AIP). 	Are the consequences of non-compliance clear? <ul style="list-style-type: none"> By not implementing SERA, the UK is at risk of non-compliance with SERA, thus raising the possibility of EC infringement proceedings. Non-compliance with SERA and Rules of the air regulations 2014 by industry will be addressed through sanctions contained within the Air Navigation Order 2009.

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	<p>regulation.</p> <ul style="list-style-type: none"> The CAA was aware of numerous issues presented to Eurocontrol and EASA by UK interests during the course of European consultations and was largely successful in preserving as far as possible in EU law numerous flexibilities and freedoms enjoyed by UK airspace users. The UK will continue to permit certain freedoms in accordance with SERA's flexibility provisions, although these will be promulgated through the UK AIP and not Rules of the Air Regulations 2014. Rules of the Air Regulations 2014 are considered necessary by the CAA to provide legislative clarity on those issues that either fall outside the scope of SERA or certainty through domestic legislation, or both. 	<p>2014:</p> <ul style="list-style-type: none"> There are 64 Rules of the Air 2007. The CAA originally proposed 40 Rules of the Air 2014. Following further scrutiny of its proposals in the light of the GA Red Tape Challenge this number has been further reduced to 28. Several current rules will not be carried forward into the Rules of the Air 2014 either because: <ul style="list-style-type: none"> They are obsolete. They can be better presented as guidance. The content can be hosted in other documents, such as CAPs and Policy Statements. They are permissions granted in accordance with flexibilities within SERA and require publication in the UK AIP. 	<p>Air Traffic Management Advisory Committee membership and reminders to these.</p> <ul style="list-style-type: none"> The material was hosted on the CAA website. The consultation material clearly stated how to respond to the consultation, and to whom. A 2-month consultation period was allowed. This accords with contemporaneous Government guidelines concerning consultations and was considered appropriate given constraints associated with the legislative change process. Further input post-consultation stakeholder input was received, including issues raised as a result of the Government's Red Tape Challenge initiative; this has further informed the CAA's proposals for change. 	<ul style="list-style-type: none"> CAP393: Air Navigation: The Order and the Regulations. Other CAPs affected by the legislative change. Policy Statements. The UK AIP. Bespoke awareness and education material. 	<ul style="list-style-type: none"> A number of current requirements currently contained within Rules of the Air Regulations 2007 will be revoked and instead either addressed through CAPs and Policy Statements or published through appropriate media as guidance. 	
<p>Targeting – your interventions should be focused on the problem, and minimise side effects.</p>	<p>Does your intervention focus on the problem and not take a scattergun approach?</p> <ul style="list-style-type: none"> The intervention addresses the need to facilitate UK implementation through the removal of UK legislation that is superseded by EU legislation, and the retention of UK legislation to address those issues falling outside the current scope of SERA. 	<p>Could your intervention be goal-based and allow those being regulated flexibility in deciding how to meet a clear, unambiguous target?</p> <ul style="list-style-type: none"> Legislative change is necessary to ensure consistency and legal certainty throughout industry, regardless of sector or the nature and scale of operations. 	<p>Have you adapted your guidance to meet the differing needs of different groups within the sector?</p> <ul style="list-style-type: none"> Given that SERA is derived from ICAO Standards and Recommended Practices (SARPs) with which the UK already complies (as a Contracting State to ICAO and subject to filed Differences), much of the guidance currently produced by the CAA will remain unchanged. However, it will be necessary to review said guidance to ensure that it remains current. 	<p>Have you focussed on those activities that give rise to the most serious risk? What is your evidence? Is it fact based or anecdotal? Have you tested it?</p> <ul style="list-style-type: none"> The legislative change applies throughout industry, regardless of sector or the nature and scale of operations. 	<p>What plans do you have to review your intervention to make sure it is still necessary and effective? If it is not how will it be modified or removed?</p> <ul style="list-style-type: none"> Development of the SERA regulation is incomplete. Once the final text of SERA Part C plus its supporting Acceptable Means of Compliance and Guidance Material is known it will be necessary to review Rules of the Air 2014 to ensure compliance. This may result in further reduction in the UK rule set as it is superseded by EU law. SERA will be amended over time to reflect changes to source ICAO SARPs and the development of additional harmonised EU requirements. Such developments will require reviews UK Rules of the Air that could result in the further removal of domestic legislation. 	<p>What will be the impact of your intervention on growth in the sector? Are you creating a barrier to sector participation or market entry?</p> <ul style="list-style-type: none"> The measures taken ensure compliance with EU Law. All aviation sectors are affected equally and there are no competition issues.