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Title	Transposition of Amendment 43 to Annex 2 to the Chicago Convention on remotely piloted aircraft systems (RPASs) into common rules of the air
NPA Number	NPA 2012-10

UK CAA (European.Affairs@caa.co.uk) has placed **46** unique comments on this NPA:

Cmt	Segment description	Page	Comment	Attachment
82	(General Comments)	0	<p>Page No: General</p> <p>Comment: The SERA Part B Opinion (Opinion 05/2011 dated 14 Nov 2011) noted the requirement for <i>'a 'maintenance' process [to] be put in place to consider future safety needs, ICAO Annex 11 and Annex 3 amendments, or any amendment coming from a change within the EU operational environment'</i>. The matter has been raised at successive meetings of the Single European Sky Committee but no decision on the way forward has been reached at these.</p> <p>Now that SERA Parts A and B have been adopted by the Commission there is a need to put in place a process to deal with amendments to the legislation made necessary by changes to ICAO SARPs and material within the scope of the legislation. Although EASA have a process in place to make suggestions on how States should respond to ICAO material and help them respond, States still have rights and obligations to ICAO including the ability to make national differences. This raises the potential of different national approaches to ICAO material impacting on SERA and the need to have a way to resolve these, agree EU differences where needed and make appropriate changes to the SERA regulation.</p> <p>Justification: There is a requirement for a process to deal with amendments to the legislation and agreement on what this will be.</p>	
83	(General Comments)	0	<p>Page No: General</p> <p>Comment: The proposal does not appear to fully appreciate the size and complexity of any RPAS as the NPA does not discriminate between RPAS types other than by CAT or SPO. A 1 kg small unmanned aircraft cannot be put under the same conditions as a 1000 kg unmanned aircraft. Reference is made to the applicability of Regulation (EC) No 216/2008 but this only applies to EASA aircraft - which rules out unmanned aircraft weighing less than 150 kg. Therefore there is a significant difference between the scope of SERA and the scope of the Basic regulation which is inadequately addressed in the NPA.</p>	

			<p>Justification: Clarity, applicability and proportionality of the proposed regulation. There is a need for resolution of difference in scope between SERA and the Basic regulation</p>
85	A. Explanatory Note — IV. Content of the draft Opinion/Decision	6 - 11	<p>Page No: 6 and 32</p> <p>Paragraph No: 13 and 15</p> <p>Comment: The NPA claims that transposition of Annex 2 Amendment 43 is urgent. Whilst there is value in introducing harmonised rules, this should only be done when regulatory material is of an appropriate level of maturity. This is not the case with the RPAS provisions of ICAO Annex 2 Amendment 43, a fact that is acknowledged in the notes to the new Appendix 4 Section 2 ('Certificates and licensing') contained within Amendment 43.</p> <p>The proposed addition of the new Appendix 2 to the Rules of the Air should not be adopted and the text of SERA.3138 should be amended accordingly.</p> <p>Justification: The proposed RPAS text is unsupported by appropriate airworthiness and licensing requirements. Implementation in advance of those supporting provisions will result in incomplete and inadequate regulation that will have significant, disproportionate and unintentional impacts upon all RPAS operations. In addition, the proposed RPAS text does not achieve an appropriate degree of harmonisation, given that its application is dependent upon national requirements.</p> <p>A better timed and holistic approach to the development of RPAS legislation will prevent incomplete and inadequate requirements being put into law. RPAS-related rules of the air, airworthiness and licensing issues need to be fully addressed and regulatory requirements developed and introduced as a single package.</p> <p>Proposed Text: Changes to currently adopted SERA text need to be limited to the following:</p> <p>SERA.3138 Remotely piloted aircraft A remotely piloted aircraft shall be operated in such a manner as to minimize hazards to persons, property or other aircraft and in accordance with the provisions as have been adopted under the Chicago Convention and the Basic regulation.</p> <p>SERA.8020 Adherence to Flight Plan Amend as proposed in the NPA</p>
86	A. Explanatory Note — IV. Content of the draft Opinion/Decision	6 - 11	<p>Page No: 7</p> <p>Paragraph No: 24</p> <p>Comment: ICAO SARPS are not international law and there are no</p>

			<p>legal obligations associated with them. The recital implies that it is essential to subsume Amendment 43 within EU law as a matter of urgency because of a perceived mandatory origin.</p> <p>Justification: Clarity and appropriateness of NPA rationale.</p>	
87	A. Explanatory Note — IV. Content of the draft Opinion/Decision	6 - 11	<p>Page No: 7</p> <p>Paragraph No: 27</p> <p>Comment: There is no definition of ‘specialised operations’ in either ICAO Annex 2 or SERA Article 2. EASA seem to be creating a new category of user so without formally defining which users fall in this category, the applicability of the proposed legislation runs the risk of being misinterpreted or misapplied. This is the first of several references to SPO and this comment applies to all subsequent mentions of the term.</p> <p>The incorporation of a definition is considered necessary given reference to the term in proposed Recital 6 and that, if the NPA text is adopted, SERA may be amended prior to the introduction of the impending Commission Regulation covering air operations.</p> <p>Justification: Clarity and completeness of regulation.</p> <p>Proposed Text: Add the agreed definition of ‘specialised operations’ as incorporated into Part-SPO.</p>	
88	A. Explanatory Note — IV. Content of the draft Opinion/Decision	6 - 11	<p>Page No: 9 and 32</p> <p>Paragraph No: 40 and 3, draft SERA.3138, Appendix 2</p> <p>Comment: The NPA states that new proposed Appendix 2 transposes in particular the ICAO Standards to facilitate requesting and obtaining the authorisation for domestic RPAS missions and also for the special authorisation to fly internationally. However, Amendment 43 to ICAO Annex 2 specifically refers to remotely piloted aircraft systems engaged in international air navigation. The ‘new’ Appendix 4 applies only to international operations of an RPA, i.e. to operations where the RPA is being operated in a contracting State other than its State of registry. The operation of an RPA within the boundaries of its State of registry remains under the purview of the respective competent authority. The meaning and purpose of ICAO Annex 2 Amendment 43 has therefore been significantly changed by the proposed SERA text and risks the introduction of unintended consequences. Given the current lack of supporting ICAO and European airworthiness and licensing requirements plus appropriate guidance material, the proposal appears to be premature. Implementation in advance of those supporting provisions will result in incomplete or inadequate regulation that will</p>	

		<p>have significant, disproportionate and unintentional impacts upon all RPAS operations envisaged and beyond those under the influence of Regulation (EC) No 216/2008.</p> <p>The amendment will apply to non-EASA aircraft as well as EASA aircraft and will thus require national procedures as well as EASA ones (although the former may follow the latter once the latter have been issued). However, as the current EASA timeline for development of EASA procedures and standards is 2015, would national derogations until this date be required?</p> <p>SERA development has, to date, acknowledged that emerging ICAO provisions – notably in the case of communications failure – will impact upon, and cause change to, the SERA regulation. SERA.8035(b) states that the <i>'Member States shall comply with the appropriate provisions on communication failures as have been adopted under the Chicago Convention. The Commission shall propose common European procedures by 31 December 2015 at latest, for implementation of the said ICAO provisions in Union law.'</i></p> <p>Pending development of supporting RPAS regulatory material, a similar provision for RPAS operations is advocated as the most appropriate way of responding to the Annex 2 change.</p> <p>The proposed addition of the new Appendix 2 to the Rules of the Air should not be adopted and the proposed text of SERA.3138 should be amended accordingly.</p> <p>Justification: The proposed change to SERA with RPAS text extends the applicability of the source ICAO text beyond what was intended and is unsupported by appropriate harmonised airworthiness and licensing requirements. Implementation in advance of those supporting provisions will result in incomplete or inadequate regulation that will have significant, disproportionate and unintentional impacts upon all RPAS operations both within the scope of Regulation (EC) No 216/2008 and beyond.</p> <p>Proposed Text: SERA.3138 Remotely piloted aircraft A remotely piloted aircraft shall be operated in such a manner as to minimize hazards to persons, property or other aircraft and in accordance with the provisions as have been adopted under the Chicago Convention and the Basic regulation.</p>	
89	A. Explanatory Note — IV. Content of the draft Opinion/Decision	<p>6 - 11</p> <p>Page No: 9 and 32</p> <p>Paragraph No: 41(b), draft SERA.3138, Appendix 2</p> <p>Comment: See also comment against paragraph 40, draft SERA.3138 and Appendix 2 This paragraph acknowledges that common rules regarding RPAS approvals, RPAS pilot licensing and the certification</p>	

			<p>of RPAS operators are not yet available, yet Appendix 2 to the proposed SERA text includes references to such requirements. If these are to be established at individual State level, the stated objective of regulatory harmonisation is not being achieved. Whilst the objective of harmonised regulation of RPAS is acknowledged, the preferred route should be one of developing and implementing RPAS regulatory material in a harmonised manner. Introduction of the proposed SERA text in isolation will result in this holistic approach not being achieved, and with incomplete and inadequate regulation being put into law. For now, Member States should be obliged to do nothing more than to follow the requirements of the Chicago Convention, rather than introducing the text as proposed.</p> <p>Justification: The proposed RPAS text extends the applicability of the source ICAO text but is unsupported by airworthiness and licensing requirements. Implementation in advance of those supporting provisions will result in incomplete or inadequate regulation that will have significant, disproportionate and unintentional impacts upon all RPAS operations. A holistic approach to the development of RPAS legislation will prevent incomplete and inadequate regulation being put into law. Such an approach is more appropriate, less confusing, and arguably more cost-effective.</p> <p>Proposed Text: SERA.3138 Remotely piloted aircraft A remotely piloted aircraft shall be operated in such a manner as to minimize hazards to persons, property or other aircraft and in accordance with the provisions as have been adopted under the Chicago Convention and the Basic regulation.</p>	
90	A. Explanatory Note — IV. Content of the draft Opinion/Decision	6 - 11	<p>Page No: 9-10 and 32</p> <p>Paragraph No: 42, 44, draft SERA.3138, Appendix 2</p> <p>Comment: It is not clear why authorisation from the competent authority is required for <i>all</i> RPAS flights, as Amendment 43 to ICAO Annex 2 only stipulates this for flights that cross international boundaries.</p> <p>This paragraph indicates that what is being harmonised does not in itself constitute operating rules or 'rules of the air', rather a set of authorisation requirements that in themselves assume that supporting provisions concerning approvals and licensing are already (or will be) in place at national level. The NPA acknowledges that once common rules will be available for airworthiness, remote pilot licensing and certification of RPAS operators, a further amendment to SERA might be proposed. Such an approach is time consuming and costly – to both regulatory authorities and to RPAS operators and can be avoided by not introducing the proposed text at this time, and instead developing RPAS regulatory material in a</p>	

			<p>harmonised/holistic manner.</p> <p>Justification: The approach proposed by NPA 2012-10 is both time consuming and costly – to both regulatory authorities and to RPAS operators and can be avoided by not introducing the proposed text at this time.</p> <p>Proposed Text: SERA.3138 Remotely piloted aircraft A remotely piloted aircraft shall be operated in such a manner as to minimize hazards to persons, property or other aircraft and in accordance with the provisions as have been adopted under the Chicago Convention and the Basic regulation.</p>	
91	A. Explanatory Note — IV. Content of the draft Opinion/Decision	6 - 11	<p>Page No: 10</p> <p>Paragraph No: 45</p> <p>Comment: The transposition of Amendment 43 to ICAO Annex 2 1.3 includes a change from 'ATS Authority' to 'ATS provider'. This introduces a new requirement to co-ordinate the flight with the ATS provider in the High Seas airspace concerned. Where the High Seas airspace is Class G, there is no current requirement for an aircraft to notify the ATS provider of its presence or to seek a service so the UK CAA request further justification for requiring contact between the RPAS operator/pilot and the ATS provider.</p> <p>Justification: Clarity of intent of the proposed regulation required.</p>	
92	A. Explanatory Note — IV. Content of the draft Opinion/Decision	6 - 11	<p>Page No: 10, 34</p> <p>Paragraph No: 53(f), Appendix 2 para 2.1(6)</p> <p>Comment: The requirement for 'detect and avoid' for operations other than VLOS suggests that aircraft not meeting this requirement will not be permitted to undertake operations in segregated airspace. If Appendix 2 were to be incorporated into SERA, revised text is required to avoid misunderstanding and/or unintended consequences.</p> <p>Justification: Clarification is necessary to prevent misunderstanding and/or unintended consequences.</p> <p>Proposed Text: If Appendix 2 were to be incorporated into SERA as proposed, revised text is required as follows: 'In the case of operations which are not VLOS, or are operated in segregated airspace, all the involved RPAS are equipped with a suitable detect and avoid system'.</p>	
93	A. Explanatory Note — IV. Content of the draft	6 - 11	<p>Page No: 10 and others</p> <p>Paragraph No: 54 and others</p> <p>Comment:</p>	

	Opinion/Decision		<p>Observation only: we note some errors in referring to Appendix 2 and Appendix 4 – proposed Appendix 2 is occasionally referred to as Appendix 4 therefore a thorough proof read of the eventual CRD and Opinion is essential to ensure the errors are not repeated in these later documents.</p> <p>Justification: Correctness of references in text.</p>	
94	A. Explanatory Note — IV. Content of the draft Opinion/Decision	6 - 11	<p>Page No: 11</p> <p>Paragraph No: 56</p> <p>Comment: There is confusion here. NPA Appendix 2 para 3.3 is concerned with the language of certificates, which has a reference to Amendment 43 Annex 2 paras 3.3/3.4. Is the NPA text referring to Appendix 2 para 4.3, rather than para 3.3? This appears to be confirmed by NPA Para 61 Page 11, where the issue of language is highlighted but is cross-referenced with Appendix 2 para 4.3 (which is not about language but about the validity of authorisations).</p> <p>Justification: Clarification.</p>	
95	A. Explanatory Note — IV. Content of the draft Opinion/Decision	6 - 11	<p>Page No: 11</p> <p>Paragraph No: 57</p> <p>Comment: Observation: paragraph 57 states that 'Unlimited duration of the authorisation is not proposed since it is not deemed appropriate until common rules on the certification of the RPAS operator are not promulgated'. Should this read '...until common rules on the certification of the RPAS operator are promulgated'?</p> <p>Justification: Clarification.</p>	
96	A. Explanatory Note — IV. Content of the draft Opinion/Decision	6 - 11	<p>Page No: 11,12 and 32</p> <p>Paragraph No: 58, Regulatory Impact Assessment, draft SERA.3138,</p> <p>Comment: The statement concerning the Notes to ICAO Annex 2 Amendment 43 are noted, however the significance of these Notes in putting ICAO Annex 2 Amendment 43 into context appears to have been missed, not least in the NPA. Note 2 in particular (<i>'Certification and licensing standards are not yet developed. Thus, in the meantime, any certification and licensing need not be automatically deemed to comply with the SARPs of the related Annexes, including Annexes 1, 6 and 8, until such time as the related RPAS SARPs are developed.'</i>) strongly indicates the need for supporting provisions and guidance to be developed in advance of incorporating ICAO Annex 2 Amendment 43 into European law. Note that Note 3 states that <i>'Article 8 of the Chicago Convention assures each</i></p>	

			<p><i>contracting State of the absolute sovereignty over the authorisation for RPA operation over its territory.</i></p> <p>The proposed addition of the new Appendix 2 to the Rules of the Air should not be adopted and the proposed text of SERA.3138 should be amended accordingly.</p> <p>Justification: The proposed RPAS text extends the applicability of the source ICAO text but is unsupported by air operations, airworthiness and licensing requirements. Implementation in advance of those supporting provisions will result in incomplete or inadequate regulation that will have significant, disproportionate and unintentional impacts upon all RPAS operations. A holistic approach to the development of RPAS legislation will prevent incomplete and inadequate regulation being put into law. Pending development of airworthiness, licensing and any other regulatory requirements it is considered more appropriate for SERA.3138 to require Member States to operate RPAS in accordance with the provisions of the Chicago Convention, following the precedent followed by the SSC-adopted loss of communications procedures at SERA.8035 (b).</p> <p>Proposed Text: SERA.3138 Remotely piloted aircraft A remotely piloted aircraft shall be operated in such a manner as to minimize hazards to persons, property or other aircraft and in accordance with the provisions as have been adopted under the Chicago Convention and the Basic regulation.</p>	
97	A. Explanatory Note — V. Regulatory Impact Assessment	12 - 28	<p>Page No: 12 and 32</p> <p>Paragraph No: Regulatory Impact Assessment</p> <p>Comment: The Regulatory Impact Assessment claims that the proposed legislative change is intended to address safety risks presented by the proliferation of commercial and corporate RPAS posed to third parties on the ground and to other airspace users by means of common rules of the air. The proposals do not provide common rules of the air; rather they merely offer common authorisation requirements. As these requirements are not currently supported by appropriate airworthiness and licensing requirements, and that they will also apply to domestic RPAS operations (the purpose of the original ICAO Annex 2 Amendment 43 text being to address international operations), the proposals are incomplete (this is acknowledged in the body of the NPA), and disproportionate.</p> <p>The proposed addition of the new Appendix 2 to the Rules of the Air should not be adopted and the proposed text of SERA.3138 should be amended accordingly.</p> <p>Justification: It is considered more appropriate for SERA.3138 to require</p>	

			<p>Member States to operate RPAS in accordance with the provisions of the Chicago Convention, following the precedent followed by the SSC-adopted loss of communications procedures at SERA.8035(b).</p> <p>Proposed Text: SERA.3138 Remotely piloted aircraft A remotely piloted aircraft shall be operated in such a manner as to minimize hazards to persons, property or other aircraft and in accordance with the provisions as have been adopted under the Chicago Convention and the Basic regulation.</p>	
98	A. Explanatory Note — V. Regulatory Impact Assessment	12 - 28	<p>Page No: 12 and 32</p> <p>Paragraph No: Regulatory Impact Assessment</p> <p>Comment: The comments concerning the FAA's regulatory development effort is noted, not least the objective of developing a plan 'which will result in a 5-year RPAS roadmap'; this suggests the need for an integrated, holistic RPAS regulatory development effort, and not piecemeal legislative change that NPA 2012-10 is advocating, with its attendant inadequacies and disproportionate impacts.</p> <p>In addition, it is understood that the cited 30 September 2015 deadline is actually that for having necessary regulation in place rather than achieving 'safe integration of RPAS into national airspace'.</p> <p>Justification: NPA 2012-10 advocates a piecemeal approach to RPAS regulatory and legislative development. A holistic approach to EU RPAS regulatory and legislative development is strongly advocated; meanwhile SERA's amendment can be limited to obliging Member States to operate RPAS in accordance with the Chicago Convention, following the precedent set in SERA.8035(b).</p> <p>Proposed Text: SERA.3138 Remotely piloted aircraft A remotely piloted aircraft shall be operated in such a manner as to minimize hazards to persons, property or other aircraft and in accordance with the provisions as have been adopted under the Chicago Convention and the Basic regulation.</p>	
99	A. Explanatory Note — V. Regulatory Impact Assessment	12 - 28	<p>Page No: 13-15</p> <p>Paragraph No: Scale of the Issue</p> <p>Comment: 2011 world UAV forecast data is welcomed, however it is noted that the supporting text consists of numerous guarded assumptions regarding the growth in RPAS use. More importantly, we note the age of the forecasts for European RPAS market 2008-2020 (i.e. published in 2007) and question the currency and validity of this. It is not clear whether this data refers to 'large' RPAS (>150 kgs) or all RPAS; if it is the latter, then the NPA's proposals</p>	

			<p>appear excessive for such a small population of aircraft, especially given the incompleteness of regulatory material already identified. If 2011 world UAV forecast data can be provided, can stakeholders also be provided with more recent European RPAS growth forecasts than that provided in the NPA, and for these to state clearly which RPAS are reflected in these?</p> <p>Justification: Currency and completeness of data.</p>	
100	A. Explanatory Note — V. Regulatory Impact Assessment	12 - 28	<p>Page No: 15</p> <p>Paragraph No: Scale of the Issue</p> <p>Comment: The NPA states that a study commissioned by the European Commission and published in 2007 estimated a huge potential for an increase of civil RPAS applications as soon as appropriate legislation is in place. Does this suggest that the NPA's purpose is to encourage market growth as well as harmonise rules? We contend that any lack of 'appropriate legislation' is not a constraint upon the growth of RPAS operations; the key issue is one of integrating RPAS operations with those of other aircraft – and this NPA does not facilitate that.</p> <p>Justification: Clarity of argument.</p>	
101	A. Explanatory Note — V. Regulatory Impact Assessment	12 - 28	<p>Page No: 15</p> <p>Paragraph No: 1.2</p> <p>Comment: There does not seem to be any recognition that ATS providers will be impacted upon by the proposed Regulation if prior co-ordination is needed between the RPAS operator and the ATS provider for every flight.</p> <p>Justification: Address an omission.</p> <p>Proposed Text: Add 4th bullet 'ATS Providers'</p>	
102	A. Explanatory Note — V. Regulatory Impact Assessment	12 - 28	<p>Page No: 16</p> <p>Paragraph No: 2</p> <p>Comment: It is claimed that transposition of ICAO Annex 2 Amendment 43 'requires to define adequately' the scope of the common rules of the air for RPAS. It is argued that the proposed 'rules' are not rules of the air as such, rather they are supporting 'administrative' requirements that are themselves not supported by critical harmonised air operations, airworthiness and licensing provisions. National requirements still take precedent, therefore the objective of EU harmonisation is not met.</p>	

			<p>Reference is made to the timing of the 'common rules' for RPAS, yet a target date for implementation does not appear to be included in the NPA.</p> <p>Justification: Clarity of regulation.</p>	
103	A. Explanatory Note — V. Regulatory Impact Assessment	12 - 28	<p>Page No: 17</p> <p>Paragraph No: 3</p> <p>Comment: The term 'specialised RPAS operations' is introduced but not defined. A definition is requested.</p> <p>Justification: Definition required; clarity of regulation.</p>	
104	A. Explanatory Note — V. Regulatory Impact Assessment	12 - 28	<p>Page No: 17/18</p> <p>Paragraph No: 4(i)</p> <p>Comment: The options and associated assessments are noted. It is not clear how safety will deteriorate without a 'clear common legal framework' when EU states will apply ICAO Annex 2 Amendment 43 and (in the absence of common supporting regulations) appropriate national regulations. The statement implies that safe RPAS operations cannot be achieved (or that they are currently undertaken in an unsafe manner) without common rules. Safety will remain the prime concern of states and appropriate safety mechanisms will be applied pending the development of a comprehensive suite of common regulatory provisions covering RPAS. In the absence of common operating, airworthiness and licensing rules this NPA relies upon the application of national regulations to underpin a set of authorisation requirements that States are already required to follow as part of their obligations to ICAO. As a result the proposed regulatory change does not offer any meaningful harmonisation. Common rules can in due course serve to enhance safety, however current RPAS operations are not inherently unsafe, and the NPA in itself does not offer a meaningful level of harmonisation.</p> <p>Justification: Contentious safety argument and the need for clear and effective legislation.</p>	
105	A. Explanatory Note — V. Regulatory Impact Assessment	12 - 28	<p>Page No: 21</p> <p>Paragraph No: 4(iv)</p> <p>Comment: The assessment is an environmental issue, not a Rules of the Air issue, and the weighting afforded to it is questionable. If the principle issue is safety of operations, it is argued that the weighting here should be the same as 'Economic' (i.e. 1).</p>	

			<p>It should be noted that if the NPA proposals are adopted, the powerplants of the RPAS brought into regulatory scope will differ significantly, ranging from large, and potentially noisy turbine powered aircraft, to small aircraft powered by quiet electric motors. Is the assessment based upon every possible form of RPAS propulsion?</p> <p>Justification: Relevance and clarity of argument.</p>	
106	A. Explanatory Note — V. Regulatory Impact Assessment	12 - 28	<p>Page No: 22</p> <p>Paragraph No: 4(v)</p> <p>Comment: The proportionality assessments are welcome and the comments noted. With regards to the statement that 'Basic rules of the air could significantly differ from one state to another', the UK CAA would contend that, as SERA brings about harmonisation of these, the significant differences are already removed. As the NPA proposes common authorisation requirements, the 'rules of the air' assessment appears inappropriate. With regards to the assumption that differing rules of the air would 'not create a level playing field especially for SMEs', it is not clear how (or why) RPAS operators will apply the rules of the air differently based upon the nature and scale of their operations.</p> <p>Justification: Clarity of argument.</p>	
107	A. Explanatory Note — V. Regulatory Impact Assessment	12 - 28	<p>Page No: 23</p> <p>Paragraph No: 4(vi)</p> <p>Comment: If the case for introducing the proposed regulation is harmonisation, why are the assessments here only afforded a weighting of 1?</p> <p>Justification: Clarity and understanding of weighting rationale.</p>	
108	A. Explanatory Note — V. Regulatory Impact Assessment	12 - 28	<p>Page No: 24</p> <p>Paragraph No: Option 2</p> <p>Comment: Page 24 of the draft Opinion states that Option 2 (i.e. include only CAT and SPO) is presented as the preferred option. However, paragraph 1 (General operating rules) of Appendix 2 appears to apply to all RPAS operations. Which is correct?</p> <p>Justification: Clarity of proposed regulation.</p>	
109	A. Explanatory Note — V. Regulatory Impact	12 - 28	<p>Page No: 25 and 32</p> <p>Paragraph No: 6</p>	

	Assessment	<p>Comment: The UK CAA welcomes acknowledgement within the NPA of ICAO's recognition of the need to fully develop supporting RPAS SARPs in ICAO Annexes 1, 6 and 8. The UK CAA would strongly prefer to see in due course the holistic development and implementation of EU provisions based upon the ICAO texts (including those contained within ICAO Annex 2 Amendment 43) - rather than piecemeal development of these – as advocated in the NPA.</p> <p>Pending such development, it is considered more appropriate for Member States to be obliged to have RPAS operated in accordance with the provisions of the Chicago Convention rather than introduce incomplete regulation at this point. This follows the precedent set at SERA.8035 regarding common European communication failure procedures.</p> <p>Justification: More complete, appropriate and proportionate rule making.</p> <p>Proposed Text: SERA.3138 Remotely piloted aircraft A remotely piloted aircraft shall be operated in such a manner as to minimize hazards to persons, property or other aircraft and in accordance with the provisions as have been adopted under the Chicago Convention and the Basic regulation.</p>	
110	A. Explanatory Note — V. Regulatory Impact Assessment	<p>12 - 28</p> <p>Page No: 25 and 32</p> <p>Paragraph No: 6 (table)</p> <p>Comment: Both options are noted, in particular the recognition in option 2A that 'Member States should apply their measures for remote pilot licensing and RPAS operations. The Agency is unable to issue separate type certificates for RPAS, RPA and RPS'. This is seen as further evidence that the proposed regulation will not achieve an appropriate – and meaningful – level of harmonisation, and that member States will have to continue to bear regulatory burdens (including the cost of implementing the regulatory changes proposed in this NPA).</p> <p>The actions required under option 2B are noted, as is the anticipated timescale for these to be developed. In addition to developing airworthiness requirements, licensing issues will have to be resolved. The UK CAA understands that the necessary ICAO SARPs will be developed during the same timescale; it is therefore considered appropriate for European regulatory development to be based upon ICAO work. A suite of mature regulations can then be introduced concurrently. Pending this development, Member States should merely be obliged to follow provisions of the Chicago Convention.</p> <p>Justification: Better and more effective regulation.</p>	

			<p>Proposed Text: SERA.3138 Remotely piloted aircraft A remotely piloted aircraft shall be operated in such a manner as to minimize hazards to persons, property or other aircraft and in accordance with the provisions as have been adopted under the Chicago Convention and the Basic regulation.</p>	
111	A. Explanatory Note — V. Regulatory Impact Assessment	12 - 28	<p>Page No: 28</p> <p>Paragraph No: 8b</p> <p>Comment: The UK CAA notes the Agency's preference for Option 2A, noting that the subsequent Opinion can be anticipated in 2013 (published simultaneously with the CRD). There appears to be no indication within the NPA as to when the Agency anticipates incorporation of the proposed changes into the SERA rule, other than references to 2013 on pages 26.</p> <p>Justification: Clarity of rulemaking - an indication as to when the Agency anticipates incorporation of the proposed changes into the SERA rule (and why that date has been identified) is requested.</p>	
112	A. Explanatory Note — V. Regulatory Impact Assessment	12 - 28	<p>Page No: 28</p> <p>Paragraph No: 8b</p> <p>Comment: The UK CAA does not support option 2A, preferring instead option 2B. The former seeks to introduce regulatory provisions that go beyond the scope and purpose of ICAO Annex 2 Amendment 43 and brings with it a set of requirements applicable to all RPAS, regardless of size or the nature of the operator. As such it is disproportionate.</p> <p>The proposed measures do not seek to introduce any harmonised rules of the air; instead they are merely seeking harmonised authorisation requirements – these are not rules of the air and will not in themselves contribute to the safety of RPAS operations.</p> <p>As a result, the proposals do not achieve an appropriate measure of harmonisation in safety critical areas, but they do impose additional regulatory burdens upon member States through a number of requirements contained within the proposed text. For example, paragraph 3.2 states that 'The application shall include [a] copy of certificate of registration' – when a State may not require certain RPAS to be registered. In the context of ICAO Annex 2 Amendment 43 this and other requirements are 'Unless otherwise specified by the State(s)'.</p> <p>As the proposed text applies to all RPAS, regardless of RPAS MTOW and both EASA and national certification requirements, there is a risk of unintended consequence that can be avoided through more considered, holistic development of RPAS regulatory requirements than this</p>	

			<p>NPA demonstrates.</p> <p>Justification: The need for better and appropriately proportionate regulation.</p>	
113	B. Draft rules — I. Draft Opinion SERA	30 - 36	<p>Page No: 30</p> <p>Paragraph No: Draft Opinion Recital 2</p> <p>Comment: The SERA regulation as endorsed by the Single Sky Committee is also derived in part from ICAO Annexes 3 and 11.</p> <p>Justification: Accuracy.</p> <p>Proposed Text: (2) Accordingly, the Commission adopted the Commission Implementing Regulation (EU) No .../... on common rules of the air and operational provisions regarding services and procedures in air navigation. This Regulation implemented Standards and Recommended Practices contained in Annex 2, Annex 3 and Annex 11 to the Chicago Convention.</p>	
114	B. Draft rules — I. Draft Opinion SERA	30 - 36	<p>Page No: 31 and 32</p> <p>Paragraph No: Draft Opinion Recital 6 and Article 2</p> <p>Comment: Reference is made to the application of the proposals to 'specialised operations' but the term is not subsequently defined within SERA.</p> <p>Justification: The agreed definition of 'specialised operations' as incorporated into Part-SPO is required for completeness.</p> <p>Proposed Text: Add the agreed definition of 'specialised operations' as incorporated into Part-SPO.</p>	
115	B. Draft rules — I. Draft Opinion SERA	30 - 36	<p>Page No: 31</p> <p>Paragraph No: Draft Opinion Recital 6</p> <p>Comment: It is agreed that model aircraft, used for recreational or sports activities should be excluded from the requirements of this Regulation.</p>	
116	B. Draft rules — I. Draft Opinion SERA	30 - 36	<p>Page No: 31</p> <p>Paragraph No: Draft Opinion Recital 8</p> <p>Comment: This article acknowledges the lack of key supporting regulatory material by referring to future regulatory change. The UK CAA strongly advocates a change to proposed SERA.3138 'Remotely piloted aircraft' to read 'A remotely piloted aircraft shall be operated in such a manner as to minimize hazards to persons, property or</p>	

			<p>other aircraft and in accordance with the provisions as have been adopted under the Chicago Convention and the Basic regulation'. If adopted, this text would also facilitate amendment of Recital 8 such that it would become a statement of intent to develop appropriate airworthiness, licensing and air operations provisions governing RPAS operations. It is argued that the development of the latter would also obviate the need to incorporate into SERA the ICAO Annex 2 Amendment 43 authorisation requirements in the manner advocated by the NPA.</p> <p>Justification: The need for better and appropriate regulation.</p>	
117	B. Draft rules — I. Draft Opinion SERA	30 - 36	<p>Page No: 32</p> <p>Paragraph No: 2</p> <p>Comment: Proposed definition 108c ("Remotely piloted aircraft (RPA)") refers to 'unmanned aircraft', but this latter term is not defined. Definition is required.</p> <p>Justification: Completeness and clarity of regulation.</p>	
118	B. Draft rules — I. Draft Opinion SERA	30 - 36	<p>Page No: 32</p> <p>Paragraph No: 3 and 32</p> <p>Comment: ICAO Annex 2 Amendment 43 acknowledges that supporting SARPs concerning the airworthiness, licensing and operation of RPAS has yet to be developed. Introduction of the regulation as featured in NPA 2012-10 is best timed to coincide with the development of these – and their introduction into EU regulatory material – in order to best achieve the stated harmonisation objectives in a proportionate, timely and cost-effective manner. Meanwhile, the scope of the amendment is best limited to requiring Member States to undertake RPAS operations in accordance with the provisions of the Chicago Convention. This is in keeping with the precedent set at SERA.8035(b) (as endorsed by the Single Sky Committee), which is worded such in recognition of current ICAO work to develop new communication failure procedures. Adoption of the text as proposed by the UK CAA will then obviate the need for most of the proposed changes to SERA Article 2, the amendment to SERA.3140, the move of extant Appendix 2 and the incorporation of proposed Appendix 2. In making this proposal UK CAA acknowledges that appropriate regulation pertaining to RPAS operations is likely to be incorporated at a later date, but will be appropriately supported by other, related regulatory material.</p> <p>Justification: The proposed change to draft SERA with RPAS text extends the applicability of the source ICAO text beyond what was intended and is unsupported by airworthiness and licensing</p>	

			<p>requirements. Implementation in advance of those supporting provisions will result in incomplete or inadequate regulation that will have significant, disproportionate and unintentional impacts upon all RPAS operations both within the scope of Regulation (EC) No 216/2008 and beyond. A holistic approach to the development of RPAS legislation will prevent incomplete and inadequate regulation being put into law.</p> <p>Proposed Text: SERA.3138 Remotely piloted aircraft A remotely piloted aircraft shall be operated in such a manner as to minimize hazards to persons, property or other aircraft and in accordance with the provisions as have been adopted under the Chicago Convention and the Basic regulation.</p>	
119	B. Draft rules — I. Draft Opinion SERA	30 - 36	<p>Page No: 32</p> <p>Paragraph No: 3</p> <p>Comment: Reference is made in draft SERA.3138 to 'specialised operations' but the term is not defined within SERA and may need to be.</p> <p>Justification: The agreed definition of 'specialised operations' as incorporated into Part-SPO is required for completeness.</p> <p>Proposed Text: Add the agreed definition of 'specialised operations' as incorporated into Part-SPO.</p>	
120	B. Draft rules — I. Draft Opinion SERA	30 - 36	<p>Page No: 32</p> <p>Paragraph No: 5</p> <p>Comment: The UK CAA acknowledges the need to introduce the change to SERA.8020 'Adherence to Flight Plan'.</p> <p>Justification: Appropriateness of regulatory change and transposition of ICAO requirements into SERA.</p>	
121	B. Draft rules — I. Draft Opinion SERA	30 - 36	<p>Page No: 33</p> <p>Paragraph No: Draft Opinion — SERA</p> <p>Comment: If the proposed amendment is adopted, existing Appendixes 3, 4 and 5 will need to be renumbered. This is overlooked in the NPA, which refers only to renumbering the current Appendix 2 to Appendix 3.</p> <p>Justification: Correct page numbering.</p> <p>Proposed Text: Appendix 3 – Table of Cruising Levels to the Annex Rules of the Air is renumbered Appendix 4.</p>	

			<p>Appendix 4 – ATS Airspace Classes – Services Provided And Flight Requirements to the Annex Rules of the Air is renumbered Appendix 5.</p> <p>Appendix 5 – Requirements Regarding Services in Air Navigation – Technical Specifications Related to Aircraft Observations and Reports by Voice Communications to the Annex Rules of the Air is renumbered Appendix 6.</p>	
124	B. Draft rules — I. Draft Opinion SERA	30 - 36	<p>Page No: 33-36</p> <p>Paragraph No: 7 (proposed new Appendix 2)</p> <p>Comment: The introduction of Appendix 2 is not necessary if the SERA.3138 text as proposed by the UK CAA is accepted as an interim change.</p> <p>In addition, whereas page 24 of the draft Opinion states option 2 (i.e. include only CAT and SPO) is the preferred option, paragraph 1 (General operating rules) of Appendix 2 appears to apply to all RPAS operations.</p> <p>Justification: Unnecessary regulatory requirement if proposed alternative text is accepted. Clarification of text.</p>	
125	B. Draft rules — I. Draft Opinion SERA	30 - 36	<p>Page No: 33</p> <p>Paragraph No: 1.1, 1.2</p> <p>Comment: It is not clear why authorisation from the competent authority is required for <i>all</i> RPAS flights, whereas ICAO Annex 2 Amendment 43 only stipulates this for flights that cross international boundaries.</p>	
126	B. Draft rules — I. Draft Opinion SERA	30 - 36	<p>Page No: 33</p> <p>Paragraph No: 1.3</p> <p>Comment: The transposition of ICAO Annex 2 Amendment 43 includes a change from 'ATS Authority' to 'ATS provider'. The NPA change results in a new requirement to co-ordinate the flight with the ATS provider in the High Seas airspace concerned. Where the High Seas airspace is Class G, there is no current requirement for an aircraft to notify the ATS provider of its presence or to seek a service.</p> <p>Justification: Clarification on, and justification for, requiring contact between the RPAS operator/pilot and the ATS provider in such circumstances is requested.</p>	
127	B. Draft rules — I. Draft Opinion SERA	30 - 36	<p>Page No: 33</p> <p>Paragraph No: 1.3</p> <p>Comment: Constraints imposed on High Seas operations would be unacceptable to military and other State aircraft.</p>	
128	B. Draft rules	30	Page No: 36	

	— I. Draft Opinion SERA	- 36	<p>Paragraph No: 6</p> <p>Comment: It is not clear whether the requirements for prior co-ordination with the ATS provider contained in the SERA regulation would apply at all times, or merely for flight over the high seas as in ICAO Appendix 2 1.3 . Clarification is requested.</p> <p>Justification: Clarity of intent of the proposed regulation required.</p>	
129	B. Draft rules — I. Draft Opinion SERA	30 - 36	<p>Page No: 36</p> <p>Paragraph No: 6.1</p> <p>Comment: The requirement for flight plans to be submitted in accordance with the provisions of 'Section 4 of this Annex' may not always be acceptable to the military.</p>	
162	B. Draft rules — I. Draft Opinion SERA	30 - 36	<p>Page No: 33</p> <p>Paragraph No: Appendix 2 Para 1.3</p> <p>Comment: The transposition of Amendment 43 to ICAO Annex 2 1.3 includes a change from 'ATS Authority' to 'ATS provider'. This introduces a new requirement to co-ordinate the flight with the ATS provider in the High Seas airspace concerned. Where the High Seas airspace is Class G, there is no current requirement for an aircraft to notify the ATS provider of its presence or to seek a service so NATS would like to see further justification for requiring contact between the RPAS operator/pilot and the ATS provider.</p> <p>While it is accepted that an RPAS shall not be operated across the territory of another State without special authorisation issued by each State in which the flight is to operate, for military and/or State RPAS it would not be acceptable to mandate that an RPAS shall not be operated over the high seas without prior coordination with the appropriate ATS authority.</p> <p>Justification: Clarity of intent of the proposed regulation required.</p>	