EXPLANATORY MEMORANDUM TO

THE SQUARE KILOMETRE ARRAY OBSERVATORY (IMMUNITIES AND PRIVILEGES) ORDER 2020

2020 No. XXXX

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The United Kingdom signed on 12 March 2019 a Convention establishing the Square Kilometre Array Observatory published as a Treaty Series No. 27 (2019) (CP 154) ("the Convention"). The Convention obliges the United Kingdom to abide by the terms of the instruments of the Square Kilometre Array Observatory ("the Organisation"), including the Protocol on Privileges and Immunities of the Square Kilometre Array Observatory; and to confer legal capacity and privileges and immunities on the Organisation and on specified categories of individuals connected with the Organisation.

2.2 The draft Order confers legal capacity and privileges and immunities on the Organisation, and grants privileges and immunities to the Organisation's representatives, experts, and staff.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 Apart from article 8 (which does not extend to Scotland), and the application of articles 5-7 and 14-16 so far as they fall within the legislative competence of the Scottish Parliament, the territorial extent and application of this Order includes Scotland and Northern Ireland.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The Devolved Administrations in Scotland and Northern Ireland have been consulted on the production of this Order.

4.3 Some provisions of the instrument do not extend to, or apply in, Scotland. A separate Scottish Order in Council will be prepared to deal with those provisions within the legislative competence of the Scottish Parliament and will be laid before the Scottish Parliament.

5. European Convention on Human Rights

5.1 The Minister has made the following statement regarding Human Rights:

"In my view the provisions of the Square Kilometre Array Observatory (Immunities and Privileges) Order 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 Section 1 of the International Organisations Act 1968 ("the 1968 Act") allows Her Majesty, by Order in Council, to confer on an international organisation, of which the United Kingdom (and any other sovereign Power) is a member, the legal capacities of a body corporate and to grant certain immunities and privileges to the international organisation and its officers, employees, representatives and experts.

6.2 Section 10(1) of the 1968 Act provides that no recommendation shall be made to Her Majesty in Council to make the Order unless a draft of the Order has been laid before Parliament and approved by a resolution of each House of Parliament.

6.3 The privileges and immunities conferred by the draft Order are no greater in extent than those required by the Convention to enable the Organisation and specified individuals connected with the Organisation to function effectively.

6.4 Article 1 of the draft Order provides that it will come into force on the day on which the Convention comes into force.

7. Policy background

What is being done and why?

7.1 The Square Kilometre Array ("SKA") is an international science project set up to build the world's largest and most sensitive radio telescope, allowing scientists to study the Universe in unprecedented detail. The SKA will be a global facility, with headquarters in the UK at Jodrell Bank near Manchester, and telescopes in South Africa and Australia. The Global Headquarters at Jodrell Bank will manage the construction, operation, and data processing of the telescopes

7.2 When fully deployed, the SKA will consist of an array of ~4,000 antennas and be 50 times more sensitive than the Hubble Space Telescope (even though it is ground-based). The SKA will probe the gaseous component of the early Universe, addressing fundamental questions on the origin and evolution of the universe, as well as search for new planets that could harbour life. In addition to its scientific value, the project is also expected to produce technology advances and spin-offs of value to participants. Technology advancements are likely in areas including communications, sensor technologies, supercomputing and software design.

7.3 The SKA is being built in two phases: Phase 1 (estimated at €1,763 million) will provide an operational array of low and mid frequency antennas from 2023, while Phase 2 (if agreed) represents a significant increase in capabilities.

7.4 The United Kingdom signed the Convention in 2019 alongside representatives from six other countries[1], marking the culmination of several years of concerted multilateral negotiations. The Convention establishes the Organisation as an international organisation with legal personality, giving the project an appropriate

[1] South Africa, Australia, China, Italy, the Netherlands and Portugal.

framework to govern a multi-national intercontinental project. It is hoped that other countries including, but not limited to, Canada, France, India, and Germany will sign the Convention at a later date.

7.5 The conferral of legal capacity and immunities and privileges as set out in the Convention is necessary to enable the Organisation to function as an international organisation in the United Kingdom. Article 4 of the Convention requires that each member that is party to the Convention shall take such action as is necessary to make effective in its own territory the provisions set forth in the Protocol on Privileges and Immunities of the Square Kilometre Array Observatory (Annex A of the Convention). This Order is required to ensure that the United Kingdom can fully comply with its obligations under Article 4 of the Convention.

7.6 So far, The Netherlands, Italy and South Africa have ratified the Convention. The Convention will enter into force once all three host countries (the United Kingdom, South Africa and Australia) have ratified it and it is expected that this will occur by the autumn of 2020. As the United Kingdom is one of the host countries, it is important that the United Kingdom ratifies the Convention at the earliest opportunity so that the planned start to the SKA construction in 2021 is not delayed.

7.7 UK implementation of the Convention is unlikely to be controversial. Little public or media interest is envisaged.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 Not applicable.

10. Consultation outcome

10.1 No external consultation was undertaken as this Order implements provisions of an international agreement to which the United Kingdom will be obliged to give effect as a matter of international law once the Convention enters into force. This is consistent with the general practice on Orders made under the International Organisations Act 1968.

11. Guidance

11.1 No guidance will be published.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 This Order is not time limited. Monitoring of the implementation of this Order is not intended.

14.2 The regulation does not include a statutory review clause.

15. Contact

15.1 Margaret Purdasy from the Government Legal Department at the Foreign and Commonwealth Office (telephone: 020 7008 2740 or email: margaret.purdasy@fco.gov.uk) or Gillian Ormiston from the Protocol Directorate at the Foreign and Commonwealth Office (telephone: 020 7008 0397 or email gillian.ormiston@fco.gov.uk) can be contacted with any queries regarding the instrument.

15.2 James Partington, Deputy Director for Fusion, Research Infrastructures and Establishments, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Parliamentary Under Secretary of State for Science, Research and Innovation, Amanda Solloway MP, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.