EXPLANATORY MEMORANDUM TO

THE UNMANNED AIRCRAFT (AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations are made under the European Union (Withdrawal) Act 2018 (c. 16) ("the Act"), as amended, to address failures of retained EU law relating to unmanned aircraft to operate effectively. These Regulations are being made in order to address deficiencies arising as a result of the United Kingdom's exit from the European Union ("EU"), in two Regulations concerning unmanned aircraft. Commission Implementing Regulation (EU) 2019/947 ("the Implementing Regulation") sets out the rules and procedures for the operation of unmanned aircraft. Commission Delegated Regulation (EU) 2019/945 ("the Delegated Regulation") sets out the requirements for unmanned aircraft and for third-country operators of unmanned aircraft. This instrument also amends a deficiency in the Air Navigation Order 2016 (S.I. 2016/765) ("ANO 2016") and makes minor amendments to a savings provision in the Operation of Air Services (Amendment etc.) (EU Exit) Regulation 2018 (S.I. 2018/1392) ("the 2018 Regulations").

Explanations

What did any relevant EU law do before exit day?

2.2 The Implementing Regulation applies from 31st December 2020. It lays down detailed provisions for the operation of unmanned aircraft in three different risk-based categories of flight as well as particular requirements for those involved in those operations, including remote pilots and organisations.

2.3 The Delegated Regulation principally deals with product standards for unmanned aircraft. It lays down the requirements for the design and manufacture of unmanned aircraft and associated accessories intended to be operated under the rules and conditions defined in the Implementing Regulation. It also defines the type of unmanned aircraft whose design, production and maintenance shall be subject to certification. Finally, it lays down rules for third-country unmanned aircraft operators, when they conduct unmanned aircraft operations in EU Member States.

Why is it being changed?

2.4 These Regulations address deficiencies in the Implementing and the Delegated Regulations to ensure that the law continues to operate effectively after the end of the transition period. The Implementing Regulation and the Delegated Regulation contain a number of elements which, if not amended, will not function correctly at the end of the transition period.

What will it now do?

2.5 These Regulations keep the effect of the policy framework established by the Implementing Regulation and the Delegated Regulation unchanged. The specific amendments made through these Regulations are set out below in section 7.

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 The territorial application of this instrument 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 territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State, Rachel Maclean MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Unmanned Aircraft (Amendment) (EU Exit) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 The Act makes provision for repealing the European Communities Act 1972 and will, as amended by the European Union (Withdrawal Agreement) Act 2020, preserve EU law, as it stands at the end of the transition period, in United Kingdom law. It enables the creation of a new body of domestic legislation by bringing the texts of directly applicable EU legislation into domestic legislation, as well as saving EU-derived domestic legislation which was made to implement the United Kingdom's obligations as a member of the EU.

6.2 The Act also contains temporary powers enabling Ministers and the devolved administrations to make secondary legislation to correct legislation that no longer operates appropriately at the end of the transition period, so that the domestic legal system continues to function correctly.

6.3 The Implementing Regulation sets out the rules and procedures for the operation of unmanned aircraft. The Delegated Regulation sets out the requirements for unmanned aircraft and for third-country operators of unmanned aircraft. These Regulations amend the Implementing and the Delegated Regulations so that they include fixes for deficiencies arising out of EU exit when they are retained in UK law at the end of the transition period.

7. Policy background

What is being done and why?

7.1 In the Delegated Regulation, the most significant change is the new power for the Secretary of State to designate standards after the end of the transition period. There are, however, no immediate plans, or need, to exercise this power. Until it is exercised, unmanned aircraft and associated accessories that conform to the current EU harmonised standards will continue to be considered compliant with EU requirements, and those requirements will be recognised by the UK.

7.2 The other significant change is that the definition of "approved body" replaces the definition of "notified body"; the effect of which is that the Secretary of State can approve bodies to carry out conformity assessments (i.e. the process demonstrating whether the essential requirements of the Regulation relating to unmanned aircraft and associated aircraft have been fulfilled) without notifying the EU Commission. The other changes are mostly minor and technical in nature; many of them are consequential upon these two more significant changes.

7.3 While most provisions of the Implementing Regulation apply from 31st December 2020, and will therefore be retained, the effect of Article 23 (which concerns the applicability dates) is that some provisions, including Article 5(5), will not be retained. Article 5(5) concerns operations in the specific category, which could be conducted under an operational declaration rather than an authorisation, in particular circumstances.

The Delegated Regulation

7.4 The Delegated Regulation sets out requirements for the design and manufacture of unmanned aircraft, including product standards for unmanned aircraft systems ("UAS") being placed on the market in the EU. It also provides oversight mechanisms to ensure that products placed on the EU market meet those standards. It defines various classes of UAS to be operated in the "open category" under the Implementing Regulation (see below at paragraph 7.11). The requirements for each class are set out in the Annex to the Delegated Regulation, and include requirements such as maximum take-off mass, speed and height, serial number, direct remote identification and geo-awareness systems. It also sets out requirements for UAS subject to certification, for example if it has a characteristic dimension of 3m or more, it is designed for transporting people or it is designed for transporting dangerous goods.

7.5 The Delegated Regulation sets out requirements for manufacturers to ensure that UAS have been designed and manufactured in compliance with the Annex, as well as to draw up technical documentation and carry out a conformity assessment procedure. The conformity assessment procedure can be carried out by the manufacturer itself, or outsourced. Under the Delegated Regulation, requirements for importers are also set out, including ensuring that, before placing a UAS on the market in the EU, the manufacturer has carried out the conformity assessment procedure, drawn up the technical documentation and that the product bears the CE marking which meets the principles set out in Article 30 of Regulation (EC) No 765/2008. Similar requirements also apply to distributors.

7.6 The Delegated Regulation also sets out various requirements for Member States to notify the European Commission and other Member States of bodies authorised to carry out third party conformity assessment tasks and to designate a notifying

authority to set up and carry out the procedures for the assessment and notification of conformity assessment bodies, and the monitoring of notified bodies.

7.7 Finally, the Delegated Regulation sets out requirements for market surveillance and control of products entering the Union Market, including where products present a risk or are non-compliant. The Delegated Regulation also makes it a requirement for third-country UAS operators to comply with the Implementing Regulation.

7.8 Regulations 2 to 57 of this instrument amend the retained version of the Delegated Regulation to essentially maintain the same requirements as currently apply at EU level. They also create the legislative framework for a UK regime which would allow the UK to set standards, whilst providing for continued recognition of EU standards until the UK designates its own technical standards, which these Regulations refer to as "designated standards" to replace the EU harmonised standards. Pending this, unmanned aircraft and associated accessories which satisfy EU requirements after the transition period will be deemed to satisfy the UK requirements. This ensures that at a minimum, the same product standards as currently apply will be maintained, meaning that unmanned aircraft that lawfully bear the CE marking may continue to be put on the UK market. Article 20 of the IR provides for a transitional period, until 1 January 2023, permitting unmarked (CE or UK) unmanned aircraft to continue to be placed on the market. The UK intends to designate standards by the time these transitional provisions cease to have effect.

7.9 The key changes are:

a) regulation 6 inserting the new power for the Secretary of State to designate technical standards, but preserving the effect of EU harmonised standards before that power has been used. This same approach is taken in regulation 15 of the Cableway Installations (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/1347);

b) regulation 7 inserting a power for the Secretary of State to make regulations prescribing one or more public authorities as market surveillance authorities;

c) regulations 18 and 19 amending references to the CE marking regime to instead refer to the UK marking regime which will form part of the retained Regulation (EC) 765/2008 as amended by the Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696);

d) regulation 22 empowering the Secretary of State to approve bodies to carry out third-party conformity assessment tasks;

e) regulation 45 inserting the new Article 42A which provides for post-implementation period continuity until such time as the Secretary of State designates standards under the new Article 3A and, for example, permits the ongoing recognition of CE markings and EU conformity assessments.

7.10 The remaining amendments are minor and technical. For example, they:

a) replace references to languages used by Member States with "English";

b) remove obligations for the Secretary of State to inform the EU Commission and Member States when taking certain actions; and

c) ensure the definitions of the various economic operators reflect the fact that the UK will no longer be in the EU (for example ensuring "importers" are persons who import into the UK, rather than the EU as currently drafted).

The Implementing Regulation

7.11 The Implementing Regulation sets out the rules and procedures for the operation of unmanned aircraft. These include a risk-based approach to operational authorisations, whereby operations will be authorised either under the "open", "specific" or "certified" categories depending on the level of risk they pose.

7.12 The Implementing Regulation also sets out requirements for the registration and competency testing of unmanned aircraft operators and remote pilots as well as a minimum age of 16 for remote pilots, subject to various exemptions set out in Article 9(2) and a power for Member States to vary the minimum age requirement in certain circumstances, set out in Article 9(3).

7.13 Rules for conducting an operational authorisation are also set out in Article 11 of the Implementing Regulation, including identifying the risks of the operation on the ground and in the air, including the risk to third parties or property on the ground, the complexity of the operation, the purpose of the flight and probability of collision with other aircraft.

7.14 The Implementing Regulation allows Member States to define UAS geographical zones for safety, security and environmental reasons. Within a geographical zone, Member States can prohibit certain or all UAS operations for particular reasons, or only allow UAS operations which meet particular criteria. Member States may also use geographical zones, subject to a risk assessment, to permit UAS operations which would not otherwise meet certain requirements of the "open category".

7.15 Finally, Article 16 of the Implementing Regulation allows the competent authority of a Member State to issue an authorisation for UAS operations in the framework of model aircraft clubs and associations, upon request by a club or association.

7.16 Regulations 58 to 83 of this instrument amend the retained version of the Implementing Regulation. Most amendments are minor and technical as referred to in point 7.10. The salient provisions are:

a) regulation 66 which confers upon the Secretary of State a power to make regulations that vary the age restrictions that apply in relation to unmanned aircraft operations in the open and specific categories, subject to the negative procedure;

b) regulation 71 which confers upon the Secretary of State a power to make regulations, again subject to the negative procedure, that would designate certain areas as "geographical zones" for safety, security, privacy or environmental reasons;

c) regulation 77 which amends the transitional provisions to ensure existing authorisations made by the Civil Aviation Authority ('CAA') issued prior to the relevant date remain valid during the transitional period provided for in the Implementing Regulation.

d) regulation 79, as a consequence of omitting paragraph 4 of Article 23, means that under the retained Implementing Regulation, UAS operations in the specified category will not be able to be conducted under operational declarations. As noted in point 7.3, Article 5(5), which relates to operational declarations based on standard scenarios that apply across the EU, will not be retained. Article 23(4) permits Member States to accept declarations based on domestic standard scenarios in the period before Article 5(5) becomes applicable in the EU. The UK has no intent of relying on this temporary

provision as there are no national standard scenarios or plans for national standard scenarios and the EU standard scenarios will not be retained. Accordingly, references to operational declarations have been removed from both the Implementing and Delegated Regulations. Similarly, references to the standard scenarios to which those operational declarations relate are omitted from the Annex to the Implementing Regulation. The Appendices, which deal with both operational declarations and standard scenarios, are also omitted.

The Air Navigation Order 2016

7.17 The Aviation Safety (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/645) amended the definition of "EASA certified aerodrome" in Schedule 1 of the ANO 2016 to remove references to the European Aviation Safety Agency ("EASA") as these will no longer apply to the UK after the end of the transition period. These regulations make a similar change to Articles 94A and 94B of the ANO 2016 by removing references to EASA. This ensures that the flight restriction zones which currently apply around EASA-certified aerodromes continue to apply to those aerodromes after the end of the transition period.

The Operation of Air Services (Amendment etc.) (EU exit) Regulations 2018

7.18 The 2018 Regulations were made to address deficiencies in retained EU law in the field of the operation of air services, including that related to airline operating licences. Regulation 10 of those Regulations contains a savings provision which clarifies that only operating licences held by UK airlines will continue to be valid in the UK after EU Exit. In light of the ratification of the Withdrawal Agreement and the continued application of EU law to the UK until the end of the transition period, regulation 83 of this instrument replaces references in regulation 10 to exit day with references to IP completion day, so that the savings provision applies from the end of the transition period.

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

8.1 This instrument is being made using the power in section 8 of the Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 There are no plans for consolidation.

10. Consultation outcome

10.1 The Implementing Regulation and Delegated Regulation were developed by the EU following a public consultation run by EASA in the form of Advance Notice of Proposed Amendment 2015-10: Introduction of a regulatory framework for the operation of drones which was open from 31 August 2015 to 29 September 2015. The Department for Transport has not consulted formally on the content of this instrument specifically, as the changes it makes to the Implementing Regulation and Delegated Regulation are limited to what is required to ensure the two regulations continue to function correctly after the end of the Implementation Period. However, two

consultations have been carried out in recent years on the UK's approach to the regulation of unmanned aircraft more generally: Unlocking the UK's High Tech Economy: Consultation on the Safe Use of Drones in the UK, which ran from December 2016 to March 2017, and Taking Flight: The Future of Drones in the UK, which ran from July to September 2018. Ministers and Officials at the Department engage regularly with the unmanned aircraft community, including manufacturers and model flying associations, with the CAA and with other public bodies involved in the regulation of unmanned aircraft. This includes engagement on the content of this instrument specifically, to ensure that the approach taken in this instrument is appropriate and effective, both in legal and in practical terms.

11. Guidance

11.1 The Department considers that no guidance is necessary.

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 A full impact assessment has not been prepared for this instrument because it makes only minor changes to correct deficiencies in retained EU law and its impact on businesses and the public sector is limited.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses, as it is expected to be minimal

14. Monitoring & review

14.1 The approach to monitoring of this legislation is for it to take place in the course of normal departmental business.

14.2 As this instrument is made under the Act, no review clause is required.

15. Contact

15.1 Hannah Nicoll at the Department for Transport (Telephone: 07785 696843 or email: hannah.nicoll@dft.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Jack Goodwin, Deputy Director for Aviation Strategy, Airlines and Consumers, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rachel Maclean MP, Parliamentary Under Secretary of State at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) Act 2018

1. Appropriateness statement

1.1 The Parliamentary Under Secretary of State, Rachel Maclean MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Unmanned Aircraft (Amendment) (EU Exit) Regulations 2020 do no more than is appropriate.".

1.2 This is the case because: the changes this instrument makes to the Commission Implementing Regulation (EU) 2019/947 and Commission Delegated Regulation (EU) 2019/945 are minor and do no more than is strictly necessary to ensure that the Regulations function correctly once the UK has left the EU. The specific changes are set out in the 'Policy Background' section in paragraphs 7.1 to 7.18.

2. Good reasons

2.1 The Parliamentary Under Secretary of State, Rachel Maclean MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action.".

2.2 These are:

a) ensuring that the legislation governing the design, manufacture and operation of unmanned aircraft in the UK continues to function correctly at the end of the transition period;

b) ensuring that there is clarity for the unmanned aircraft industry, as well as leisure operators and remote pilots of unmanned aircraft, regarding which legislation will apply at the end of the transition period, and therefore which requirements they are expected to meet.

3. Equalities

3.1 The Parliamentary Under Secretary of State, Rachel Maclean MP, has made the following statement(s):

"The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.".

3.2 The Parliamentary Under Secretary of State, Rachel Maclean MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I, Rachel Maclean, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.".

4. Explanations

4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.