

Title:	<b>Opinion and Instruction Document</b> <b>Extension of UAS Transitional and Legacy Provisions</b>
Package Number (allocated by SARG Rule Making)	<b>0142</b>
Headline Purpose:	Extend the Transitional and Legacy Unmanned Aircraft Systems (“UAS”) Provisions within <a href="#">UK Regulation (EU) 2019/945</a> .
Proposed action:	Extend the provisions indefinitely, with the option for the Secretary of State to end them following a phase out period.

*In accordance with its obligations under Articles 76 and 115 of the UK Basic Regulation, the CAA proposed to the Department for Transport that there be a change to the law in the manner set out in this Opinion and Instruction Document (“OID”). However, it being open to the Secretary of State for Transport to adopt a different approach to address the relevant issues, this OID **should not be read as reflecting the actual changes made to the law** (either through its wording or the expression of any policy objective). The text of any changes to the law (and associated explanatory material) will be made available via [legislation.gov.uk](http://legislation.gov.uk) if/when the Secretary of State for Transport makes and lays the Statutory Instrument (expected to be in late November/early December 2022).*

## Objective

Transitional UAS provisions were built into [UK Regulation \(EU\) 2019/947](#) to allow Unmanned Aircraft (“UA”) that were not built to set product standards (‘class marked aircraft’), to operate until such a time that those standards were developed. This was anticipated to be complete by January 2023, however, this has not happened, nor is there any expected date of completion. The transitional UAS provisions will expire at the end of 2022 and there is an urgent need to address this issue before expiry. There are therefore two aims.

**Primary:** To allow the current transitional UAS provisions within [UK Regulation \(EU\) 2019/947](#) (that are due to expire at the end of 2022), to continue to permit the use of UAS that do not conform to a standard that is yet to be established.

**Secondary:** Provisions are built into [UK Regulation \(EU\) 2019/945](#), to automatically adopt EU standards and class marked aircraft within the UK until UK standards are developed. There is a need to correct the wording of this, so that it has the desired effect, as intended.

## Background

**Primary aim: To extend the end-date of Legacy and Transitional UAS provisions as set out in UK Regulation (EU) 2019/947.**

[UK Regulation \(EU\) 2019/947](#) provides provisions for UAS that have met certain product standards to be class marked<sup>1</sup> and operate in the open category (without CAA authorisation). Presently, there are no *class marked* UAS and almost all Open category UAS operate under the transitional UAS provisions. When product standards are developed, the intention of the regulation is that over time UAS that do not conform to a *Class Marking* standard will be phased out from the Open Category<sup>1</sup>

<sup>1</sup> *The Open category of UAS Operations do not require a CAA authorisation. These are generally lower risk, and bound by a mass limit of 25 Kg, and a height limit of 120m. The category is split into the A1, A2 and A3 subcategories, with various mass limits, and operational limits within each. Generally, the A1 and A2 subcategory are used within built up areas, often for commercial purposes.*

(primarily recreational operations).

To continue to allow open category operations before standards are developed, [UK Regulation \(EU\) 2019/947](#) contains provisions for UAS that do not conform to a *Class Marking* product standard (as set out in [UK Regulation \(EU\) 2019/945](#)) to continue to operate until the end of 2022, or to operate beyond that date under specific circumstances (see **Article 20** provisions below). This was to allow the estimated time required to set up the *Class Marking* system. There are two such provisions:

- **Article 20** UAS arrangements allow for UAS that do not conform to a *Class Marking* standard and are placed on the market prior to the 1<sup>st</sup> January 2023 to operate in the A1 or A3 sub-categories of the *Open Category*<sup>1</sup>. Currently, any UAS placed on the market after the 1<sup>st</sup> January 2023, that do not conform to a *Class Marking* standard, will not be able to operate in the Open category<sup>1</sup>.

*(Though these UAS could operate in accordance with a CAA Operational Authorisation in the Specific category<sup>1</sup>, this places an undue regulatory and financial burden on both the operator, and the CAA).*

**The aim is to extend this provision, so that UAS placed on the market after 1st January 2023 that do not conform to class marking standards (which do not exist yet) can continue to be used in accordance with the Article 20 provisions. When the standards have been developed and promulgated, a specific date can then be introduced to end the transitional arrangements.**

**Note:** *This proposal relates purely to the operation of UAS, and not to the UAS manufacture, or to the development of a class marking standard. Manufacturers are still bound by the requirements of [UK Regulation \(EU\) 2019/945](#).*

- **Article 22** UAS arrangements allow for UAS (that meet certain technical and operational requirements) to be operated in the A1, A2, and A3 subcategories<sup>1</sup> of the *Open category*<sup>1</sup> until the end of 2022. Without this proposed change and without an established *Class Marking* system in place there will be no UAS capable of operating within the A2 subcategory of the Open category<sup>1</sup> after the 1<sup>st</sup> January 2023.

It is proposed to extend both these transitional provisions until such time as they are revoked; this will avoid additional extensions in the future and prevent additional legal changes.

These extensions will allow time for the British Standards Institute to develop and promulgate standards and industry to design, manufacture and place on the market UAS in accordance with those standards. The extensions will also allow time to physically deliver these UAS to market.

### **Reasons this proposal is necessary**

- 1) It is unclear when class marked UAS will be available in the UK.

The **time required** for the industry to produce class marked UAS, is not easy to forecast because it relies on the interest and capacities and priorities of standard bodies, supply chain, and the UK Government. The development and adoption of standards has not been done yet and once they have manufacturers will require more time to design, produce and deliver new UAS to these standards. Subsequently, a transition period will be required to enable industry to plan the disposal, modification or replacement of current UA. Setting a definitive end of transitional and legacy arrangements date now is not advised. This is because it is at high risk of being inaccurate and correction will require more regulatory change and may have an adverse economic impact on manufacturers and operators working towards a date that is likely to change. This disbenefit can be avoided if this change is anchored on how to identify the end of these periods rather than attempting to predict when they will happen.

- 2) The significant **environmental impact**

If the transition period were to end prematurely, it would lead to a large number of fully functional UAS<sup>2</sup> becoming more difficult to use, or illegal in some cases. This may require premature disposal and replacement with class marked UAS (when available).

This must be a considered approach so that operators can plan the disposal and acquisition of UAS based on the predicted lifetime of the UAS. The environmental impact of such a large number of UA being disposed of will be significant, as described in the consultation response below.

3) **Standards** are not yet developed or adopted for manufacturers to use to develop class marked UAS

Although several regulatory *requirements* for class marked UAS are set out in [UK Regulation \(EU\) 2019/945](#), the *standards* to which these must be built have not yet been developed so manufacturers cannot build to meet these requirements yet. Only when an UA meets all the requirements can it be labelled with an appropriate 'C marking' on the aircraft itself.

**Note:** *If there is a desire to introduce specific requirements, such as mandatory Remote ID within the Open category, before the Article 20 and 22 transitional arrangements are ended, this may be achieved separately through regulatory change to [UK Regulation \(EU\) 2019/947](#), without there being a requirement to adhere to class marking requirements, that may not yet be fully developed.*

4) The **Market Surveillance Authority** has not been established

This is the body (set out in [UK Regulation \(EU\) 2019/945](#)) which will oversee UAS conformity to UK Regulation (EU) 2019/945. This body has not yet been nominated, funded, or established by the Department for Transport (“DfT”). This will take significant effort and resources and will not be operational for some time. This body needs to be established before class marked products can be distributed and used in the UK.

5) **Conformity Assessment Bodies** have not been established

These are bodies (set out in [UK Regulation \(EU\) 2019/945](#)) which assess whether products conform to the relevant requirements. These bodies have not yet been identified or approved by the DfT.

6) **The EU has agreed an extension to the transition arrangements**

The European Commission have taken the decision (week commencing 14 March 2022) to extend the transitional provisions for EU member states by a year. Without an extension to the transitional arrangements this would leave the UK as the only State in Europe requiring operators to use class marked UAS

### **Response to public consultation**

The CAA ran a three-week consultation to gauge support for, or against, an extension to the transitional provisions. In total the CAA received 4506 responses across the five questions posed. The consultation response document is available on the CAA website ([CAP2367](#))

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<sup>2</sup> within the A2 subcategory

**Secondary aim: To improve provisions for technical and designated standard adoption as defined within the UK Regulation (EU) 2019/945 Article 3A (5) and 42A.**

**Note:**

*In accordance with its obligations under Article 76 of the UK Basic Regulation, the CAA proposed to the DfT that the law be amended in the manner set out in this Opinion and Instruction Document (“OID”). However, the Department for Transport may decide to take a different approach to address the relevant issues and may not choose to adopt the CAA’s proposal. This OID is therefore published in accordance with the CAA’s obligations under Article 115 of the UK Basic Regulation but it **should not be taken to reflect the changes to the law** (either in its wording or its policy objective) which will be introduced by the Department for Transport in the Statutory Instrument to be laid in November 2022.*

[UK Regulation \(EU\) 2019/945](#) contains a provision to automatically adopt any future EU harmonised product standard pertaining to this regulation in the absence of a UK alternative. For example, if the EU were to adopt a set of specific standards for class marked UAS, the UK will automatically inherit the same standards as we currently do not have our own.

In principle, the provision is sound. However, the current wording of this provision ceases to be applicable once the UK adopts *any* standard under this regulation. This means if the UK were to adopt a standard relating to Remote ID, the provision in its current state, would not allow for the UK to use EU class marked product standards (if we chose to, and in the absence of our own).

The CAA does not consider that this is the intent of this article, and instead believes that this provision should only cease to operate, when the UK adopts all standards, or at least an *equivalent* standard, rather than when it adopts *any* standard, if it adopts them separately (as currently worded).

For example, if the EU adopts a number of standards as harmonised standards, then under this provision the UK will adopt them. If the UK then adopts a single standard (for example, a lighting standard), then as currently drafted, all the EU standards will then not apply in the UK.

This proposal would mean that in this example, only the EU standard that relates to UAS lighting ceases to have effect, but the others remain in effect.

As this is an administrative change, to avoid any unintended consequences, and to ensure the intent of this provision is realised in the wording, the CAA have not consulted on this change.

To avoid negative impacts, it is proposed that this task should be complete and new regulation in place before **31 Dec 2022**.

An impact assessment has not been carried out, because this is an extension to provisions already in regulation, and so there is no impact to stakeholders based on the regulation today.

### **What legal powers are being used to achieve the change?**

Article 57 of Regulation (EU) 2018/1139 (“[the UK Basic Regulation](#)”) as retained (and amended in UK domestic law) under the European Union (Withdrawal) Act 2018.

### **Consequence of not making these legislative changes**

#### **Cessation of A2 operations after 01 Jan 2022**

UAS will not be able to operate in the A2 subcategory of operations in the UK after the end of 2022. There are approximately 9000 operators in the A2 subcategory, many of which are likely to be commercial operators in ‘congested areas’ who derive income from these operations. Instead, they will be forced to operate in the Specific category and have to obtain an operational authorisation for

this activity which will significantly increase cost, administration, and regulatory burden, and is disproportionate to the nature of the operation.

If the regulation is not amended, those affected will then be required to obtain a CAA authorisation if they wish to continue flying or operating; the CAA does not have the resource to process these additional authorisations within the necessary timeframe if the regulation remains unamended.

A large number of entities derive income from the delivery of mandatory training and assessment for UAS Operators within the A2 subcategory. If the operations in this subcategory stop, as a result of the ending of the transitional arrangements, then those training entities will also face a significant economic impact.

### No new UAS on the market, after 1<sup>st</sup> January 2022

As no UAS newly placed on the market may be operated after this date, manufacturers are likely to stop development and production of new UAS until the class marking system is available. This is likely to do significant economic damage to the UAS manufacturing industry, and to the UAS operation industry.

### Environmental impact

If the transitional provisions are extended to a point in time, rather than until revocation, operators are likely to dispose of UAS that do not meet the future requirements. If the date is extended again, as is likely, that will result in a significant number of UAS being disposed of unnecessarily. This scenario would be repeated with each extension to the transitional period.

## Affected Law (and, if Applicable, UK AMC)

What is the existing legal framework (UK law) which is relevant here?	<a href="#">UK Regulation (EU) 2019/947</a>
Identify the law that is being changed	<a href="#">UK Regulation (EU) 2019/947</a> Article 20 and 22 <a href="#">UK Regulation (EU) 2019/945</a> Article 3A and 42A
Are any consequential amendments needed to other pieces of law?	None identified at this stage
If the change proposed is to retained EU Implementing Rules made under the UK Basic Regulation is there any UK Acceptable Means of Compliance (“AMC”), Guidance Material (“GM”) or Certification Specification (“CS”) that will be changed/newly adopted as a consequence?	AMC/GM update to <a href="#">UK Regulation (EU) 2019/947</a> Article 20 and 22.
Does this proposal relate to an international treaty obligation (e.g. an ICAO SARP)?	No
Is a consultation required?	Consultation completed on 13 May 2022. Approximately 4300 responses were received, over a 3-week consultation period.  <a href="#">Consultation Document</a>  Consultation response document is available on the CAA website ( <a href="#">CAP2367</a> )

Is an Impact Assessment under the Better Regulation Framework necessary?	No Impact Assessment required, as this is a continuation of existing provision. There will be no change, based on the current regulation.
When is it intended that these provisions should be brought into force?	Before the end of 2022.
Has an SI "slot" been agreed with DfT?	SI slot (November 2022) agreed.
Will there be any criminal offences?	Criminal offences already created within the ANO.
If so, is a Justice Impact Test required?	No
What is the intended extent of the provision?	The UK.
Are there any devolved issues	No
Are any transitional provisions needed?	No

## Suggested Changes to existing wording of Law

### UK Regulation (EU) 2019/947

#### Article 20

#### Particular provisions concerning the use of certain UAS in the 'open' category

(1) UAS which do not comply with Delegated Regulation (EU) 2019/945 and which are not privately-built are allowed to continue to be operated under the following conditions, ~~when they have been placed on the market before the Transition End Date, as set out in paragraph 3 of this Article. ;~~ ~~when they have been placed on the market before 1 January 2023.~~

- (a) in subcategory A1 as defined in Part A of the Annex, provided that the unmanned aircraft has a maximum take-off mass of less than 250 g, including its payload;
- (b) in subcategory A3 as defined in Part A of the Annex, provided that the unmanned aircraft has a maximum take-off mass of less than 25 kg, including its fuel and payload.

(2) The Secretary of State may set the Transition End Date by direction providing no less than two years notice, providing that a suitable standard has been designated under UK Regulation (EU) 2019/945 Article 3A, and the Secretary of State has prescribed an authority as the market surveillance authority, under UK Regulation (EU) Article 3B.

#### **Editorial Note**

*Article 20(2) has been suggested so that a phase out period of two years must be included, to allow **manufacturers** sufficient time to plan and develop UAS that conform to the standards. It is anticipated that this phase out period is commenced, only once the product standards are designated, and the market surveillance authority is established.*

## Article 22 [The 'transitional' provisions]

### Transitional provisions

(1) Without prejudice to Article 20, the use of UAS in the 'open' category which do not comply with the requirements of Parts 1 to 5 of the Annex to Delegated Regulation (EU) 2019/945 shall be allowed to continue for a transitional period of 30 months starting one year after the date of entry into force of this Regulation, subject to the following conditions

- (a) (The transitional A1 subcategory): unmanned aircraft with a take-off mass of less than 500 g are operated within the operational requirements set out in points UAS.OPEN.020(1) of Part A of the Annex by a remote pilot having competency level at least equivalent to the level in point UAS.OPEN.030(2) of Part A of the Annex;
- (b) (The transitional A2 subcategory): unmanned aircraft with a take-off mass of less than 2 kg is operated by keeping a minimum horizontal distance of 50 meters from people and the remote pilots have a competency level at least equivalent to the one set out in point UAS.OPEN.030(2) of Part A of the Annex;
- (c) (The Transitional A3 subcategory): unmanned aircraft with a take-off mass of less than 25kg is operated within the operational requirements set out in point UAS.OPEN.040(1) and (2) and the remote pilots have a competency level at least equivalent to the one set out in point UAS.OPEN.020(4)(b) of Part A of the Annex.

(2) The Secretary of State may revoke the provision set out in paragraph (1) of this Article by direction, providing a date for revocation no less than two years after the Transition End Date provided for in Article 20(3).

### Editorial Notes

*Article 22(2) has been suggested, so that this provision may be phased out over a 2 year period, and only once the legacy phase out period is complete. This is to ensure class marked UAS have had adequate time on the market so that operators can plan for the replacement of their aircraft, taking into account the economic and environmental cost of doing so.*

## **Annex 1 – Relevant Regulatory Extracts**

### **UK Regulation (EU) 2019/945**

#### **Article 3 – Definitions**

(42) ‘the EU Regulation’ means Regulation (EU) 2019/945 of 12 March 2019 on unmanned aircraft systems and on third-country operators of unmanned aircraft systems as that Regulation has effect in EU law as amended from time to time(a);

(43) ‘designated standard’ has the meaning provided in Article 3A;

#### **3A Designated Standards (5)**

Harmonised standards, as defined in Article 3(20) of the EU Regulation, have effect as designated standards until the Secretary of State designates standards under this Regulation.

#### **Article 42A – post-implementation period continuity provision**

(1) Paragraph 2 applies where, at any time before any technical standard has been adopted and designated as a designated standard in accordance with Article 3A

(a) a UAS, accessories kit or remote identification add-on has been assessed by a notified body in accordance with any of the EU conformity assessment procedures;

(b) an EU declaration of conformity has been drawn up in accordance with the EU Regulation in respect of the UAS or accessories kit; and

(c) a CE marking has been affixed to the UAS or accessories kit.

(2) Where this paragraph applies

(a) a UAS or accessories kit is to be treated as having been assessed in accordance with the equivalent conformity assessment procedure in Section 3 of Chapter 2 of the EU Regulation; and

(b) the EU declaration of conformity and the CE marking are to be treated for the purposes of this Regulation and any other enactment relating to UAS, accessories kits or remote identification add-ons as if they were respectively a declaration of conformity under this Regulation and a UK marking.

### **Regulation (EU) 2019/945 (Not UK version)**

#### **Article 3 - Definitions**

(20) ‘harmonised standard’ means a harmonised standard as defined in point (c) of Article 2(1) of Regulation (EU) No 1025/2012;

### **Regulation (EU) No 1025/2012;**

#### **Article 2(1) (c)**

‘Harmonised standard’ means a European standard adopted on the basis of a request made by the Commission for the application of Union harmonisation legislation.