

ORDER IN COUNCIL

X
2013

ratifying a Projet de Loi

ENTITLED

The Aviation (Amendment) (Bailiwick of Guernsey) Law, 2012

(Registered on the Records of the Island of Guernsey
on the 16th September, 2013.)



2013

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 16th day of September, 2013 before Richard John Collas, Esquire, Bailiff; present:- Stephen Edward Francis Le Poidevin, Esquire, Barbara Jean Bartie, Stephen Murray Jones, Peter Sean Trueman Girard, Esquires, Constance Helyar-Wilkinson, Terry George Snell, Niall David McCathie, Terry John Ferbrache, David Allan Grut, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated 10th July, 2013 approving and ratifying a Projet de Loi entitled “The Aviation (Amendment) (Bailiwick of Guernsey) Law, 2012”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Comptroller thereon, ORDERED:

1. That the said Order be registered on the records of this Island;
and
2. That an extract of this present Act, together with a copy of the said Order be sent by Her Majesty’s Greffier to the Greffier of the Court of Alderney and to the Sénéchal of Sark for registration on the records of those Islands respectively.



THE 10th DAY OF JULY 2013

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

The following report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

“In accordance with Your Majesty’s General Order of Reference of 22nd February 1952 the Committee have considered a Petition of the States of Guernsey:

“That, in pursuance of their Resolutions of 28th July 2011, 30th September 2011 and 1st November 2012, the States of Deliberation at a meeting on 13th December 2012 approved a Projet de Loi entitled the Aviation (Amendment) (Bailiwick of Guernsey) Law, 2012 and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. That the States of the Island of Alderney at a meeting held on 9th January 2013 considered the Projet de Loi when a Resolution was passed agreeing to the application to Alderney. That the Chief Pleas of the Island of Sark at a meeting held on 16th January 2013 considered the Projet de Loi when a Resolution was passed agreeing to the application to Sark. That the Projet de Loi is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction the Aviation (Amendment) (Bailiwick of Guernsey) Law, 2012, and to order that it shall have force of law in the Bailiwick of Guernsey.

“The Committee have considered the Projet de Loi and have agreed to report that it may be advisable for Your Majesty to approve and ratify it”.

Her Majesty, having taken the report into consideration, was pleased, by and with the advice of Her Privy Council, to approve and ratify the Projet de Loi (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Bailiwick of Guernsey and shall be entered on the Register of the Island of Guernsey and observed accordingly.

Her Majesty’s Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty’s Order and to proceed accordingly.

Richard Tilbrook

PROJET DE LOI

ENTITLED

The Aviation (Amendment) (Bailiwick of Guernsey) Law, 2012

THE STATES, in pursuance of their Resolutions of the 28th July, 2011^a, 30th September, 2011^b and 1st November, 2012^c, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

Amendment of the Aviation Law.

1. This Law amends the Aviation (Bailiwick of Guernsey) Law, 2008^d ("the Aviation Law").

Amendment of Part I of the Aviation Law.

2. Part I of the Aviation Law is amended as follows -

- (a) in section 2 after "functions under" insert "the provisions of",
- (b) in section 3 before the words "this Law" wherever appearing insert "the provisions of",

^a Article VII of Billet d'État No. XIII.

^b Article XVI of Billet d'État No. XV of 2011.

^c Article V of Billet d'État No. XXI of 2012.

^d Order in Council No. XXVIII of 2008.

- (c) in section 4 -
 - (i) in subsection (1) after "provided for under" insert "the provisions of ",
 - (ii) in subsection (1)(e) after "activities," delete "and",
 - (iii) in subsection (1)(f) for "." substitute "and,", and
 - (iv) after subsection (1)(f) insert -
 - "(g) to regulate aviation security within the Bailiwick, including, without limitation, to be responsible for maintaining standards of aviation security equivalent to those in place in the UK and Europe, ensuring all relevant persons in the Bailiwick are appropriately audited for compliance with those standards, and enforcing those standards, as appropriate.",
- (d) in section 5(1)(e) delete ", or under",
- (e) in section 6(1) after "carrying out his functions" insert "under the provisions of this Law",

- (f) in section 6(1)(e) delete "by or under this Law",
- (g) in section 8 -
 - (i) for "this Law" wherever it appears substitute "the Aviation Laws",
 - (ii) in subsection (1)(a)(iii) after "Director of" insert "Civil Aviation"
- (h) in section 9(2) after "by or under" insert "the provisions of", and
- (i) in section 13(1) after the words "functions and powers" insert "under the provisions of this Law".

Amendment of Part II of the Aviation Law.

3. Part II of the Aviation Law is amended as follows -

- (a) in section 27 -
 - (i) in subsection (1) for the words "section 146" substitute "any provision relating to the investigation of accidents in the Air Navigation (Bailiwick of Guernsey) Law, 2012",
 - (ii) in subsection (1)(a) after the words "over the Bailiwick" insert "or occurring elsewhere to aircraft registered in the Bailiwick",

(iii) in subsection (3)(a) delete the words "in the regulations", and

(iv) after subsection (5) insert -

"(6) If any person contravenes or fails to comply with any Ordinance under this section he shall be liable on summary conviction to a fine not exceeding twice level 5 on the uniform scale or to imprisonment for a term not exceeding three months.",

(b) in section 35 -

(i) in subsection (1) in the definition of aerodrome licence for the words "section 105" substitute "the Air Navigation (Bailiwick of Guernsey) Law, 2012", and

(ii) in subsection (3) for the words "a body incorporated" substitute "a legal person established",

(c) after section 35 insert -

"Recording and registration of births and deaths, etc.

35A. (1) The Department may, by regulations, require such persons as may be specified therein to keep records and make returns to the Director of Civil Aviation -

- (a) of births and deaths occurring in any part of the world in any aircraft registered in Guernsey, and
- (b) of the death, outside the Bailiwick, of any person who, being a traveller on such an aircraft, is killed on the journey in consequence of an accident,

and make provision for the keeping by the Director of a record of any returns made to him in accordance with any such requirement.

(2) Any person who fails to comply with any such requirement shall be liable on summary conviction to a fine not exceeding level 3 on the uniform scale.

(3) Where regulations made under subsection (1) provide for the keeping of records by the Director of Civil Aviation, they shall also provide for the transmission of certified copies to the Registrar-General of Births and Deaths for the Bailiwick of Guernsey (which office was created under the Loi relative à l'Enregistrement des Naissances et Décès dans le Bailliage de l'Île de Guernesey, 1935).

(4) The Registrar-General shall cause the certified copies to be filed and preserved in a book to be kept by him for the purpose and to be called the Air Register Book of Births and Deaths.

(5) Regulations made under subsection (1) shall provide for the rectification of any records kept by the Director of Civil Aviation in pursuance of the regulations and for the transmission of certified copies of

any corrected entry in the records to the Registrar-General of Births and Deaths for the Bailiwick of Guernsey.

(6) On receipt of a certified copy of any such corrected entry, the Registrar-General shall cause the corrected entry to be substituted for the corresponding entry for the time being made in the Air Register Book of Births and Deaths.

(7) The enactments relating to the registration of births and deaths in the Bailiwick of Guernsey shall have effect as if the Air Register Book of Births and Deaths were a certified copy or duplicate register transmitted to the Registrar-General in accordance with those enactments.

(8) The Department may by regulations provide -

- (a) for the keeping by the Director of Civil Aviation of a record of persons reported to him as missing, being persons with respect to whom there are reasonable grounds for believing that they have died in consequence of an accident to an aircraft registered in the Bailiwick of Guernsey,
- (b) for the rectification of any such records, and
- (c) for the transmission of information as to the matters for the time being entered on the record to the Registrar-General of Births and Deaths for the Bailiwick of Guernsey.",

- (d) in section 39 -
 - (i) in subsection (1) for "any aircraft " substitute "a Bailiwick controlled aircraft or (subject to subsection (2)) any other aircraft ",
 - (ii) in subsection (2) -
 - (A) after "on board an aircraft" insert "which is not a Bailiwick controlled aircraft", and
 - (B) for paragraph (b) substitute -
 - "(b) in the case of an aircraft registered in a country other than Guernsey, the act or omission would, if taking place there, also constitute an offence under the law in force in that country.",
 - (iii) in subsection (3) delete "in which the aircraft is registered", and
 - (iv) after subsection (3) insert the following subsections –

"(3A) The requirement in subsection (2)(b) shall be taken to be met unless, not later than the rules of court may provide, the defence serves on the prosecution a notice -

- (a) stating that, on the facts as alleged with respect to the act or omission, the requirement is not in their opinion met,
- (b) showing the grounds for their opinion, and
- (c) requiring the prosecution to prove that it is met.

(3B) The court, if it thinks fit, may permit the defence to require the prosecution to prove that the requirement is met without the prior service of a notice under subsection (3A).",

- (v) in subsection (6) -
 - (A) after the words "means any aircraft" insert the following ", whether or not a Bailiwick controlled aircraft,"
 - (B) after the definition of "aircraft" insert the following definition -

"Bailiwick controlled aircraft" means an aircraft -

- (a) which is for the time being registered in Guernsey, or
- (b) which is not for the time being registered in any country but in the case of which either

the operator of the aircraft or each person entitled as owner to any legal or beneficial interest in it satisfies the following requirements, namely -

- (i) that he is a person qualified to be the owner of a legal or beneficial interest in an aircraft registered in Guernsey, and
 - (ii) that he resides or has his principal place of business in the Bailiwick, or
- (c) which, being for the time being registered in some other country, is for the time being chartered by demise to a person who, or to persons each of whom, satisfies the requirements aforesaid,"
- (e) in section 40(2) after "aircraft while it is", insert "in",
- (f) in section 40(3), delete "." at the end of paragraph (c) and insert the following at the end of the subsection -

"and for the purposes of subsection (2)(b) any Bailiwick controlled aircraft shall be deemed to be registered in Guernsey whether or not it is in fact so registered and whether or not it is in fact registered in some other country."

- (g) in section 40(7) -
 - (i) in paragraph (a) after "subsection 6(a)" insert "in the case of a Bailiwick controlled aircraft, in any country or, in the case of any other aircraft, in the Bailiwick,"
 - (ii) in paragraph (b) -
 - (A) after "in the Bailiwick, or" insert "in the case of a Bailiwick controlled aircraft registered in Guernsey,"
 - (B) for "in any country which is" substitute "in any other country which is a",
- (h) in section 41(4) delete the words that appear after "as aforesaid that" and substitute the following -

" -

 - (a) any offence has been committed on a Bailiwick controlled aircraft while in flight elsewhere than in or over the Bailiwick, or
 - (b) there has taken place on board on any other aircraft an act or omission which constitutes an offence by virtue of section 39(1), that officer may inquire into the case upon oath.", and

- (i) for section 45 substitute the following section -

Offences by legal persons, etc.

45. (1) Where an offence to which this section applies has been committed by a legal person and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of -

- (a) any director, manager, secretary or other similar officer, or any foundation official of the legal person or
- (b) any person who was purporting to act in any such capacity,

he as well as the legal person shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a legal person are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the legal person.

(3) Any offence to which this section applies shall, for the purpose of conferring jurisdiction, be deemed to have been committed in any place where the offender may for the time being be.

(4) This section applies to any offence under section 34 or 35(4) or under regulations made by virtue of section 24.

(5) Subsection (3) applies to any offence under any provision made by, or under, this Law, except, without prejudice to section 39(4) an offence under section 40(7)."

Amendment of Part V of the Aviation Law

4. In Part V of the Aviation Law, after section 169 insert the following sections -

"Aviation Security and Safety

Aviation Security: transfer of functions.

169A. The powers, functions and duties conferred on the Public Services Department under and by virtue of the Aviation Security Act, are hereby transferred to the Department.

Confidentiality of Aviation Security Directions.

169B. (1) Where any power to make directions under the Aviation Security Act, or under section 169C, is exercised in such a manner that it includes information disclosure of which is prohibited, or controlled by, the Official Secrets Act 1989, or any other information which, if disclosed might -

- (a) endanger the interests of the Bailiwick abroad,
- (b) seriously obstruct the promotion or protection of the interests of the Bailiwick abroad, or
- (c) endanger or prejudice the safety or security of residents of the Bailiwick,

then that information shall be kept confidential, and the directions shall make provision to ensure that such information remains confidential and is only disclosed in circumstances prescribed by the directions.

(2) If such directions provide that any part thereof is confidential, and any person breaches such duty of confidentiality he shall be liable on summary conviction to a fine not exceeding twice level 5 on the uniform scale or to imprisonment for a term not exceeding three months.

(3) This provision has retrospective effect, save that no proceedings for an offence created under subsection (2) may be brought where the act forming the basis of the offence was committed prior to the commencement of this provision.

Power to make Aviation Security Directions.

169C. (1) Where the Director of Civil Aviation considers it necessary or expedient to implement any international or European rules, regulations or other instruments regulating aviation security ("**aviation security rules**") -

- (a) to preserve the security of the Bailiwick, or
- (b) in the interests of passengers flying in, to or from the Bailiwick,

he may recommend to the Department that directions be made by the Department (and subsequently repealed or amended) to implement any aviation security rules, with such modifications as may be necessary or appropriate for the Bailiwick.

(2) Where the Director of Civil Aviation considers it that it is necessary or expedient to implement any particular provisions to ensure aviation security -

(a) to preserve the security of the Bailiwick, or

(b) in the interests of passengers flying in, to or from the Bailiwick,

he may recommend to the Department that directions be made by the Department (and subsequently repealed or amended) to implement such provisions.

(3) On receipt of a recommendation under subsection (1) or (2) the Department may make (and subsequently repeal or amend) the necessary directions in such form as it considers appropriate.

(4) If any person breaches any provision of a direction made under this section he shall be liable on summary conviction to a fine not exceeding twice level 5 on the uniform scale or to imprisonment for a term not exceeding three months.

(5) Without prejudice to subsection (4), any directions made under this section may also prescribe a financial penalty up to a maximum of £200,000 in relation to any breach of those directions, which penalty shall be without prejudice to any other power, penalty, sanction or remedy (criminal, civil or administrative) imposed under the provisions of this Law, which penalty -

- (a) shall be recoverable as a civil debt, and
- (b) may be appealed under section 11.

Power to make Aviation Safety Directions.

169D. (1) Where the Director of Civil Aviation considers it necessary or expedient to implement any international or European rules, regulations or other instruments regulating aviation safety ("aviation safety rules") -

- (a) to preserve the safety of the aircraft, aerodromes, aerodrome users in the Bailiwick, or
- (b) in the interests of passengers flying in, to or from the Bailiwick,

he may recommend to the Department that directions be made by the Department (and subsequently repealed or amended) to implement the aviation safety rules, with such modifications as may be necessary or appropriate for the Bailiwick.

(2) Where the Director of Civil Aviation considers that it is necessary or expedient to implement any particular provisions to ensure aviation safety -

- (a) to preserve the safety of the aircraft, aerodromes or aerodrome users in the Bailiwick, or

- (b) in the interests of passengers flying in, to or from the Bailiwick,

he may recommend to the Department that directions be made by the Department (and subsequently repealed or amended) to implement such provisions.

(3) On receipt of a recommendation under subsection (1) or (2) the Department may make (and subsequently repeal or amend) the necessary directions in such form as it considers appropriate.

(4) If any person breaches any provision of a direction made under this section he shall be liable on summary conviction to a fine not exceeding twice level 5 on the uniform scale or to imprisonment for a term not exceeding three months.

(5) Without prejudice to subsection (4), any directions made under this section may also prescribe a financial penalty up to a maximum of £200,000 in relation to any breach of those directions, which penalty shall be without prejudice to any other power, penalty, sanction or remedy (criminal, civil or administrative) imposed under the provisions of this Law, which penalty -

- (a) shall be recoverable as a civil debt, and
- (b) may be appealed under section 11."

Amendment of Parts VI and VII of the Aviation Law.

5. Parts VI and VII of the Aviation Law are amended as follows -

- (a) in section 170 -
 - (i) in subsections (1)(a) and (1)(b) after the words "functions and powers" insert "under the provisions of this Law", and
 - (ii) in subsection (2)(a) after the words "functions and powers" insert "under the provisions of this Law",
- (b) in section 179 -
 - (i) delete the definition of "aviation facility" and re-insert the same after the definition of "aviation activities",
 - (ii) after the definition of "aviation function" insert the following definitions -

"Aviation Laws" means -

- (a) this Law,
- (b) the Aviation Security Act,
- (c) the Air Navigation (Bailiwick of Guernsey) Law, 2012, and
- (d) any other enactment or statutory instrument prescribed for the

purposes of this section by regulations of the Department,

"Aviation Security Act" means the Aviation Security Act 1982,"

- (iii) in the definition of "licensed aerodrome" for "section 117" substitute "the Air Navigation (Bailiwick of Guernsey) Law, 2012",
- (iv) for the definition of "military aircraft" substitute -

"military aircraft" has the meaning given in section 39(b),"

- (v) after the definition of "private flight" insert -

"provisions of this Law" means any provision of this Law or of any Ordinance, regulations or rules hereunder and the provisions of the Aviation Laws and any Ordinance, regulations or rules thereunder,"

- (vi) for the definition of "resident person" substitute the following -

"resident person" means a person who is a British citizen and who is ordinarily resident in the Bailiwick,"

- (vii) in subsection (2) after the words "in flight" insert the words "for the purposes of the Aviation Laws", and
- (vii) in subsection (3) for the words "this Law" substitute the words "the Aviation Laws".

(2) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(3) The Interpretation (Guernsey) Law, 1948^d applies to the interpretation of this Law throughout the Bailiwick.

Citation.

6. This Law may be cited as the Aviation (Amendment) (Bailiwick of Guernsey) Law, 2012.

S. M. D. ROSS,
Her Majesty's Deputy Greffier.

^d Ordres en Conseil Vol. XIII, p. 355.

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