



ORDINANCE OF THE STATES: IV of 2023

The Air Accident and Investigation (Alderney) Ordinance, 2023

<i>Made</i>	<i>15th March 2023</i>
<i>Coming into force</i>	<i>5th July 2023</i>

THE STATES OF ALDERNEY, in pursuance of their Resolution of the 16th December, 2021, and in exercise of the powers conferred on them by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^a, and all other powers enabling them in that behalf, hereby order:-

EU Regulations to have effect in Alderney.

1. (1) The EU provisions listed in subsection (2) shall have full force and effect in Alderney subject to the adaptations, exceptions and modifications set out in the Schedule.

(2) The EU provisions for the purposes of subsection (1) are -

- (a) Regulation (EU) No. 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive

^a Ordres en Conseil Vol. XXXV(1),p. 65; this enactment has been amended.

94/56/EC,

- (b) article 22 of Regulation (EU) No 376/2014 of the European Parliament and of the Council of 3 April 2014 on the reporting, analysis and follow-up of occurrences in civil aviation, amending Regulation (EU) No. 996/2010 of the European Parliament and of the Council and repealing Directive 2003/42/EC of the European Parliament and of the Council and Commission regulations (EC) No 1321/2007 and (EC) No 1330/2007, and
- (c) article 135 of Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency and amending regulations (EU) No 2111/2015, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91.

Extent.

2. This Ordinance has effect in Alderney, its dependencies and its territorial waters.

Citation.

3. This Ordinance may be cited as the Air Accident and Investigation

(Alderney) Ordinance, 2023.

Commencement.

4. This Ordinance shall come into force on the day appointed by regulations of the Policy and Finance Committee of the States of Alderney.

SCHEDULE

Section 1

Modifications to Regulation (EU) No. 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC.

1. In Article 1 (subject matter) -

(a) in paragraph 1 -

- (i) in the first place it occurs, omit "European",**
- (ii) after "safety investigations", insert "in the Bailiwick", and**
- (iii) omit the words from ", including through" to "Safety Investigation Authorities", and**

(b) omit paragraph 2.

2. In Article 2 (definitions) -

- (a) in paragraph (2), delete "Member",**
- (b) in paragraph (3), after "a State" insert "(on its own behalf or on behalf of a British Territory, or an entity established in the State or British Territory)",**
- (c) after paragraph (3), insert the following paragraphs -**

"(3a) 'aircraft' means any machine that can derive support in the atmosphere from the reactions of the air other than reactions of the air against the earth's surface;

(3b) 'Annex 13' means Annex 13 to the Chicago Convention, as that Annex has effect from time to time;

(3c) 'British Territory' means the Bailiwick of Guernsey, Bailiwick of Jersey, the Isle of Man or a British overseas territory;"

(d) after paragraph (4), insert the following paragraphs -

"(4a) 'Chicago Convention' means the Convention on International Civil Aviation which was, on 7 December 1944, signed in Chicago on behalf of the Government of the United Kingdom, as that Convention has effect from time to time;

(4b) 'contributing factors' has the meaning given in Annex 13;

(4c) 'DCA' means -

(a) the Director of Civil Aviation of the Bailiwick of Guernsey; or

(b) where there is no such Director or the Director is unable to exercise the functions and duties of Director, any person who has been appointed as Deputy Director, or Acting Director, of Civil Aviation in accordance with the Aviation (Bailiwick of Guernsey) Law, 2008;

(4d) 'enactment' has the meaning given in the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016;"

- (e) in paragraph (11), for "staff of the national civil aviation authority, or staff of EASA" substitute "the DCA and the staff of the Office of the DCA",
- (f) in paragraph (16), after the words "in the Annex" insert "to this Regulation", and
- (g) after paragraph (17), insert the following paragraphs -

"(18) 'State of Design', 'States of Manufacture', 'State of Occurrence', 'State of Registry' have the meanings given by Chapter 1 of Annex 13;

(19) 'an act of unlawful interference', for the purposes of Article 12(2), means any act which constitutes an offence under any of the following provisions of the United Kingdom Aviation Security Act 1982 ("the 1982 Act") as it applies in the Bailiwick -

(a) subsection (1) of section 1 (hijacking) of the 1982 Act, but as if subsection (2) of that section (and the reference to subsection (2) in subsection (1)) was omitted;

(b) subsection (1) or (2) of section 2 (destroying, damaging or endangering safety of aircraft) of the 1982 Act, but as if subsection (4) of that section (and the references to subsection (4) in subsections (1) and (2)) was omitted; or

(c) subsection (1) or (3) of section 3 (other acts endangering or likely to endanger safety of aircraft) of the 1982 Act, but as if subsections (5) and (6) of that section (and the references to subsections (5) and (6) in subsection (1) and the reference to subsection (5) in subsection (3)) were omitted; and

(20) 'victim', for the purposes of Article 15(4) and (5), means any person who suffers a fatal injury or a serious injury in any of the circumstances described in Article 2(1)(a) and for the purposes of this definition 'fatal injury' and 'serious injury' have the same meanings given in paragraphs 5 and 17 of this Article, respectively."

3. In Article 3 (scope) -

(a) for paragraph 1, substitute the following paragraph -

"1. This Regulation shall apply to safety investigations into accidents and serious incidents:

(a) which have occurred in the Bailiwick;

(b) involving aircraft registered in the Bailiwick or operated by an undertaking established in the Bailiwick, which have occurred outside the Bailiwick, when such investigations are not conducted by the United Kingdom, other State or a British Territory;

(c) in which the United Kingdom (on behalf of the Bailiwick) is entitled, according to international standards and recommended practices, to appoint an accredited representative to participate as a State of Registry, State of the Operator, State of Design, State of Manufacture or State providing information, facilities or experts at the request of the State conducting the investigation; and

(d) in which the United Kingdom (on behalf of the Bailiwick), having a special interest by virtue of fatalities or serious injuries to its citizens, is permitted by the State conducting the investigation to appoint an expert.", and

(b) in paragraph 3 –

- (i) for "Member State concerned" substitute "Bailiwick", and
- (ii) for "national legislation" substitute "any other relevant enactment".

4. In Article 4 (civil aviation safety investigation authority) -

- (a) in paragraph 1, for "Each Member State" substitute "The Bailiwick",
- (b) in paragraph 5, for "at national level" substitute "for the Bailiwick by the safety investigatory authority", and
- (c) omit paragraph 6.

5. In Article 5 (obligation to investigate) -

- (a) for paragraph 1, substitute the following paragraph -

"1. Every accident or serious incident in the Bailiwick involving any aircraft (other than an aircraft identified in Annex I to Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018) shall be the subject of a safety investigation conducted by the safety investigation authority of the Bailiwick."

- (b) for paragraph 2, substitute the following paragraph -

"2. Where an aircraft which is registered in the Bailiwick (other than an aircraft identified in Annex I to Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018) is involved in an accident or a serious incident

the location of which cannot be definitively established as being in the territory of the United Kingdom, another State or a British Territory, a safety investigation shall be conducted by the safety investigation authority of the Bailiwick.",

(c) in paragraph 4 -

(i) for "Safety investigation authorities" substitute "The safety investigation authority",

(ii) for "accidents or serious incidents to other types of aircraft" substitute "accidents, serious incidents or other incidents to aircraft engaged in military, customs, police or similar services", and

(iii) for "the national legislation of the Member States, when they expect" substitute "any relevant enactment, when it expects", and

(d) in paragraph 5, for "for which a certificate or declaration is not required pursuant to Article 56(1) and (5) of Regulation (EU) 2018/1139, or concerns a manned aircraft with a maximum take-off mass less than or equal to 2 250 kg, and", substitute the following subparagraphs -

"(a) a manned aircraft with a maximum take-off weight mass of less than or equal to 2 250 kg, or

(b) an unmanned aircraft,".

6. In Article 6 (cooperation between safety investigation authorities) -

(a) for paragraph 1, substitute -

"1. The safety investigation authority may request the assistance of safety investigation authorities from the United Kingdom, any other State or a British Territory and may provide assistance to such authorities if requested.",

(b) at the start of paragraph 2, for "A" substitute "The", and

(c) after paragraph 2, insert the following paragraph -

"3. For the avoidance of doubt and for the purposes of paragraph 2 -

(a) the safety investigation authority may temporarily delegate the task of conducting a specified element of an investigation into an accident or serious incident to the safety investigation authority designated for the purposes of that Article for any other jurisdiction within the British Islands ("the delegated safety investigation authority") in order for that authority to exercise specified powers under the legislation relating to air accident and incident investigation applying from time to time in that jurisdiction where it is necessary or expedient for those powers to be exercised for the purposes of such an investigation commenced in the Bailiwick; and

(b) subject to mutual agreement to the contrary, the safety investigation authority shall resume the conduct of such an investigation after the exercise by the designated safety investigation authority of the specified powers.".

7. Omit Article 7 (European network of civil aviation safety investigation authorities).

8. In Article 8 (participation of EASA and national civil aviation authorities in safety investigations) -

(a) in the heading, for "EASA and national civil aviation authorities" substitute "the DCA",

(b) in paragraph 1 -

(i) for the words from the start to "respective competence, to" substitute -

"1. The DCA must, provided that the requirement of no conflict of interest is satisfied,"

(ii) in point (a), for "territory of a Member State", substitute "Bailiwick", and

(iii) in point (b) -

(A) omit "of the Member States", and

(B) for "third country" substitute "State (other than the United Kingdom) or a British Territory", and

(c) in paragraph 3, for "EASA and the national civil aviation authorities", substitute "The DCA".

9. In Article 9 (obligation to notify accidents and serious incidents) -

- (a) in paragraph 1, for "Any" substitute "Unless otherwise required by a relevant enactment, any", and
- (b) in paragraph 2 -
 - (i) for "the Commission, EASA" substitute "the DCA",
 - (ii) omit ", the Member States", and
 - (iii) for "third countries", substitute "the United Kingdom, any other State or British Territory".

10. In Article 10 (participation of the Member States in safety investigations) -

- (a) in the heading, for "Member States" substitute "safety investigation authority",
- (b) in paragraph 1 -
 - (i) for the first sentence substitute -

"Upon receipt of the notification of the occurrence of an accident or serious incident from another State or British Territory, to the United Kingdom (in relation to the Bailiwick as the State of Registry, the State of the Operator, the State of Design or the State of Manufacture), the safety investigation authority must, as soon as possible, inform the country concerned whether the safety investigation authority intends to appoint an accredited

representative in accordance with international standards and recommended practices.", and

(ii) in the second sentence for "country" substitute "State or British Territory", and

(c) omit paragraph 2.

11. In Article 11(2) (status of safety investigators) -

(a) for "the legal acts of the Union or national" substitute "any relevant", and

(b) in point (g) omit "EASA".

12. In Article 12 -

(a) in paragraph 1, for "national" substitute "any relevant",

(b) in the first sentence of paragraph 2, for "national" substitute "any relevant" wherever it appears, and

(c) in paragraph 3 (coordination of investigations) -

(i) in the first paragraph, for "Member States shall ensure that safety investigation authorities" substitute "The Bailiwick must ensure that the safety investigation authority", and

(ii) omit the last paragraph.

13. In Article 13(1) (preservation of evidence), for the words from the beginning to "occurred" substitute "Where the accident or serious incident occurred in the Bailiwick, the safety investigation authority".

14. In Article 14 (protection of sensitive safety information) -

(a) in paragraph 1, in point (e) for "other Member States or third countries" substitute "the United Kingdom, other State or a British Territory" ,

(b) in paragraph 2, in point (d), for "Directive 2003/42/EC" substitute "section 124 or 125 of the Air Navigation (Bailiwick of Guernsey) Law, 2012", and

(c) in paragraph 3 -

(i) in the first subparagraph -

(A) for "national" substitute "any relevant",
and

(B) omit the second sentence, and

(ii) omit the second subparagraph.

15. In Article 15 (communication of information) -

(a) in paragraph 1, for "applicable rules of professional secrecy" substitute "obligations of confidentiality under any relevant law", and

(b) in paragraph 3 -

(i) in the first sentence, for "EASA and national civil aviation authorities" substitute "the DCA", and

(ii) in the second sentence -

(A) for "EASA and the national civil aviation authorities" substitute "the DCA", and

(B) for the words from "applicable" to the end substitute "any other relevant enactment".

16. In Article 16 (investigation report) -

(a) in paragraph 3 -

(i) for "EASA," substitute "the DCA (where appropriate)", and

(ii) for "applicable rules of professional secrecy" substitute "obligations of confidentiality under any relevant law",

(b) in paragraph 4 -

(i) for "EASA," substitute "the DCA (where appropriate)", and

(ii) for "applicable rules of professional secrecy" substitute "obligations of confidentiality under any relevant law", and

(c) in paragraph 8 -

(i) in point (b), for ";" substitute ".", and

(ii) omit point (c).

17. In Article 17 (safety recommendations) -

(a) in paragraph 1, for "those in other Member States or third countries", substitute "the DCA (where necessary) and any authority concerned in the United Kingdom, another State or a British territory", and

(b) in paragraph 2, at the start, for "A" substitute "The".

18. In Article 18 (follow-up to safety recommendations and safety recommendations database) -

(a) in paragraph 3, for "Each" substitute "The",

(b) in paragraph 4, omit the words ", including the authorities responsible for civil aviation safety at the Member State and Union level,", and

(c) omit paragraph 5.

19. In Article 20 (information on persons and dangerous goods on board) -

- (a) in paragraph 1, for the words "Union airlines" to "the Treaties apply" substitute "Operators of aircraft arriving in or departing from the Bailiwick",
- (b) in paragraph 2 -
 - (i) omit "in charge", and
 - (ii) for "each Member State" substitute "the DCA", and
- (c) in paragraph 4, for "the legal acts of the Union and national" substitute "any relevant".

20. Article 21 (assistance to the victims of air accidents and their relatives) -

- (a) in paragraph 1 -
 - (i) omit "and harmonised",
 - (ii) for "at EU level, each Member State shall establish" substitute ", the DCA shall cause to be established", and
 - (iii) for "at national level" substitute "for the Bailiwick",
- (b) in paragraph 2 -
 - (i) in the first sentence -

- (A) for "Member States" substitute "The DCA", and
 - (B) for "their territory" substitute "the Bailiwick",
- (ii) in the third sentence -
 - (A) for "Member States" substitute "DCA", and
 - (B) for "their territory" substitute "the Bailiwick",
- (iii) in the fourth sentence -
 - (A) for "Member States" substitute "The DCA", and
 - (B) for "third-country airlines which operate in the Union" substitute "airlines established outside the Bailiwick but which operate in the Bailiwick",
- (c) in paragraph 3, for the words from "Member State" in the first place it occurs, to "accident" in the third place it occurs, substitute "DCA",
- (d) in paragraph 4 -

(i) for "Member State or a third country" substitute "State (other than the United Kingdom)", and

(ii) for the words from "territories" to "apply" substitute "Bailiwick",

(e) in paragraph 5, for "its State" substitute "the relevant State", and

(f) omit paragraph 6.

21. Article 22 (access to documents and protection of personal data) -

(a) omit paragraph 1, and

(b) in paragraph 2, for the words from "Directive 95/46/EC" to the end substitute "the Data Protection (Bailiwick of Guernsey) Law, 2018, as it has effect from time to time".

22. Omit Article 23 (penalties).

23. Omit Article 24 (amendment of the Regulation).

24. Omit Article 25 (repeals)

25. Omit Article 26 (entry into force).