



# Isle of Man Government

*Reiltys Ellan Vannin*

## **AIRPORTS AND CIVIL AVIATION (AMENDMENT) BILL 2018**

### **EXPLANATORY NOTES**

These Notes have been produced for the assistance of Members with the approval of the Member in charge of the Bill, Mr Skelly MHK.

#### **INTRODUCTION**

1. These explanatory notes relate to the Airports and Civil Aviation (Amendment) Bill 2018. They have been prepared by the Department for Enterprise in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill.
3. In the opinion of the Member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.
4. The Bill has been subjected to public consultation and has been updated to take account of comments raised. Of note, the UK Department for Transport has reviewed the consultation and formally confirmed that they have no objections and are happy to see the Bill proceed.
5. An Impact Assessment of the Bill has been prepared by the Department for Enterprise however it has not been attached as the Bill replicates UK powers currently applied to the Island so there is no material impact on those who are regulated as a result.

## **BACKGROUND**

6. At present the Island mainly relies on the UK to make Orders in Council using the Civil Aviation Act 1982 (as it has effect in the Isle of Man<sup>1</sup>) to implement the Chicago Convention<sup>2</sup> and to regulate air navigation in general. The Air Navigation Order 2015 (as amended)<sup>3</sup> is the UK Statutory Instrument which currently governs civil aviation for aircraft registered on the Island as well as those flying to and from the Island.

7. The process of the UK making Orders in Council to implement the international aviation standards for the Island is an extremely lengthy process exacerbated by limited UK resources.

8. The Bill will significantly assist the Island to meet its obligations to the UK resulting from their ratification of the Chicago Convention. This will be achieved through the making of Orders by Tynwald rather than relying on UK process.

## **FINANCIAL EFFECTS OF THE BILL**

9. The Bill has no financial implications.

## **CLAUSE BY CLAUSE NOTES**

### **Clause 1**

10. This clause gives the short title to the Act which will, if enacted, result from the Bill.

### **Clause 2**

11. This clause provides that the Act will come into operation via an Appointed Day Order. The provision requires consultation with the Department of Infrastructure as it is the Department responsible for the administration of the [Airports and Civil Aviation Act 1987](#) which will be amended by the Bill.

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<sup>1</sup> <https://www.iomaircraftregistry.com/media/1461/civil-aviation-act-1982.pdf> Civil Aviation (Isle of Man) Order 2007 (SI 2007/614) extends elements of sections 60 and 61 of the Civil Aviation Act 1982 to the Island.

<sup>2</sup> The Chicago Convention, also known as the Convention on International Civil Aviation, sets forth the “principles and arrangements for international civil aviation to be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically

<sup>3</sup> <https://www.iomaircraftregistry.com/media/1565/consolidated-ano.pdf> SI 2015/870 as amended by SI2016/155

### **Clause 3**

12. This clause provides for the Airports and Civil Aviation Act 1987 to be amended.

### **Clause 4**

13. This clause provides for the cross heading immediately before section 11 to be substituted to reflect the amendments made by the Bill.

### **Clause 5**

14. On the advice of the Cabinet Office the Department for Enterprise has taken the opportunity to 'Brexit-proof' section 11A of the Act by removing a reference to the *European Communities (Isle of Man) Act 1973*.

### **Clause 6**

15. This clause provides for the *Airports and Civil Aviation Act 1987* to be amended to provide for the Department for Enterprise to make secondary legislation to meet international obligations on civil aviation and to regulate civil aviation in general.

16. The following new sections are inserted into the *Airports and Civil Aviation Act 1987*.

17. Section 11B Orders not derived from United Kingdom legislation or EU instruments

In the new section 11B, subsections (1) and (2) provide the general provision for the Department for Enterprise to make orders to meet international obligations on civil aviation and to regulate civil aviation in general, and for these orders not to be required to apply the related UK legislation.

Without prejudice to the generality of section 11B (1) and (2) above, section 11B (3) and (4) lists particular aspects that such orders may address as follows -

#### Registration of Aircraft

Section 11B(3)(a) enables provisions to be made regarding the process of aircraft registration and reflects content specified in the Civil Aviation Act 1982 (as it has effect in the Isle of Man). The current secondary legislation can be seen in Part 1 of the Air Navigation (Isle of Man) Order 2015 which includes details on who may register an aircraft on the Island and the processes to be followed.

### Certificates of Airworthiness

Section 11B(3)(b) enables provisions to be made regarding the prohibition from aircraft flying unless in possession of a certificate of airworthiness and in accordance with conditions regarding maintenance and repair. This replicates content specified in the Civil Aviation Act 1982 (as it has effect in the Isle of Man). Such provisions are used to ensure that the aircraft possesses the necessary requirements for flying in safe conditions within allowable limits. The current secondary legislation can be seen in Part 3 of the Air Navigation (Isle of Man) Order 2015, which includes processes for the issue and renewal of such certificates, and conditions and processes required to ensure the continued airworthiness of aircraft.

### Aerodromes

In order to ensure compliance with the Aerodrome aspects of the Chicago Convention, it is necessary to license, inspect and regulate aerodromes. Section 11B(3)(c) reflects content specified in the [Civil Aviation Act 1982](#) which was not applied to the Island.

### Access for Inspection

Section 11B(3)(d) enables provisions to be made on access to aerodromes, aircraft and aircraft factories for the purpose of inspection and reflects content specified in the Civil Aviation Act 1982 (as it has effect in the Isle of Man). However the draft also explicitly adds the provision regarding access to aircraft which is implicit in the UK provisions. Such inspections of aircraft, aerodromes, and factories are generally used to ensure that standards are appropriate to ensure public safety. The current secondary legislation can be seen in Article 152 of the Air Navigation (Isle of Man) Order 2015.

### Conditions of Entry and Flight into or within Isle of Man

Section 11B(3)(e) enables provisions to be made to specify conditions for flight into and within the Island and reflects content within section 60 of the Civil Aviation Act 1982 which was not applied to the Island. Such conditions may include specifications on aircraft equipment such as radio communication and navigation equipment, and 'rules of the air' for flight in the Island which are currently achieved through the application of UK Regulations to the Island.

### Persons Engaging in or Employed in Civil Aviation

Section 11B(3)(f) enables provisions to be made to ensure that only appropriate persons undertake specified air navigation tasks and reflects content within the Civil Aviation Act 1982 (as it has effect in the Isle of Man). However, it omits the UK exception of maintenance of aircraft at unlicensed aerodromes that are not used for commercial or gainful purposes. It is felt that the UK wording is an oversight as persons undertaking such tasks are expected to be licenced and appropriately regulated. For example, an aircraft at an

unlicensed aerodrome (e.g. Jurby, Andreas) is equally able to be operated to and from a licenced aerodrome (e.g. Ronaldsway). Therefore the adequacy of maintenance on such aircraft must be the same regardless of the location it is carried out. The current secondary legislation can be found in the Air Navigation (Isle of Man) Order 2015; Part 6 in relation to flight crew licensing, article 28 for aircraft maintenance engineers and Part 19 for licensing of air traffic controllers.

#### Interference with Air Navigation Apparatus

Section 11B(3)(g) enables provisions to be made to minimise or prevent interference with air navigation equipment and replicates content within the Civil Aviation Act 1982 which was not applied to the Island. Such provisions are required as part of the civil aviation regulatory role to ensure that air navigation equipment is appropriately protected and thus ensures the safety of its service.

#### Conditions on the Carriage of Passengers and Goods by Air

Section 11B(3)(h) enables provisions to be made to set conditions on the carriage of passengers and goods by air and replicates content specified in the Civil Aviation Act 1982 (as it has effect in the Isle of Man). An example of such current secondary legislation can be seen in Part 23 of the Air Navigation (Isle of Man) Order 2015 governing commercial air transport and aerial work by foreign registered aircraft. Such provisions ensure that the safety standards are appropriate for public transport.

#### Safety, Efficiency and Regularity of Air Navigation

Section 11B(3)(i) enables provisions to be made to secure the safety, efficiency and regularity of air navigation - a broad principle that includes specifying airspace arrangements for various aviation activities. This reflects content specified in the Civil Aviation Act 1982 (as it has effect in the Isle of Man) with the addition of related content regarding the health of persons on board an aircraft which was added by the UK after the date the Act was applied to the Isle of Man.

#### Issue and Validation of Certificates, Licences, Documents

Section 11B(3)(j) enables provisions to be made to specify the manner and conditions of the issue, validation, renewal, extension or variation of certificates, licenses and other documents required by an order. This replicates content specified in section 60 of the Civil Aviation Act 1982 (as it has effect in the Isle of Man). Numerous current examples of such secondary legislation can be seen in the Air Navigation (Isle of Man) Order 2015, including issuing certificates of aircraft airworthiness and registration, aerodrome licenses, and validating flight crew licenses.

### Exemptions

Section 11B(3)(k) enables provisions to be made to provide exemptions from an order and replicates that currently specified in the Civil Aviation Act 1982 (as it has effect in the Isle of Man). Exemptions are required on occasions in order to support the efficiency of civil aviation, subject to appropriate mitigations being put in place to secure public safety. Such exemptions are routinely administered by the Isle of Man Civil Aviation Administration and the Isle of Man Aircraft Registry. For example, an exemption from the normal rules governing flights would be required to allow an aerial survey to be carried out below the minimum height rule.

### Noise and Emissions

Section 11B(3)(l) enables provisions to be made to prohibit aircraft from taking off or landing in the Island without certificates of compliance with noise and emissions standards. This reflects content regarding noise certificates in the Civil Aviation Act 1982 which was not applied to the Island, with the addition of 'emissions' (which was added by the UK after the date the Act was applied to the Isle of Man). This provision is needed as part of the civil aviation regulatory role currently achieved by the application of UK or EU aircraft noise and environmental standards regulations to the Island; when these regulations are updated it would be beneficial to be able to create bespoke Island legislation to replace these rather than being limited to applying the UK or EU regulations.

### Chicago Convention and Cape Town Convention

Section 11B(4)(a) provides power for the Department for Enterprise to implement any provision or instrument of the Chicago Convention and Cape Town Convention<sup>4</sup>. This reflects provisions relating to the Chicago Convention specified in the Civil Aviation Act 1982 (as it has effect in the Isle of Man), but allows the incorporation of any instrument rather than being limited to Annexes<sup>5</sup>. The [Aviation \(Cape Town Convention\) \(No.2\) Order 2016](#) gives effect to the Cape Town Convention on the Island by implementing a modified version of the UK's International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015. Whilst there is no foreseeable need for amendments or new legislation in relation to the Cape Town Convention, it is desirable to ensure that the new Isle of Man primary powers are future-proof to enable such activity if ever necessary.

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<sup>4</sup> The aim of the Cape Town Convention is to reduce the cost of raising finance for large, high value mobile assets which routinely cross borders. The Convention provides an over-arching framework for high value mobile assets, whilst the accompanying protocols address issues raised in financing a specific type of asset. There are three protocols currently in existence – aircraft equipment, rolling railway stock and space objects.

<sup>5</sup> Therefore this would include ICAO Annexes, Procedures for Air Navigation Services (PANS), Documents, and Circulars, all of which contain requirements that may be relevant to be included in orders.

### Births, Deaths and Missing Persons

Section 11B(4)(b) enables provisions to be made that place requirements on the pilot and owner of an aircraft to report births, deaths, and missing persons on aircraft registered in the Island. Currently, these requirements are specified in the Island through the application of UK regulations which require the Isle of Man Aircraft Registry to maintain records of such events. However, the current regulations will require overhaul in due course and the proposed primary powers will enable bespoke Island legislation to be created.

### Aircraft Insurance

Section 11B(4)(c) and (d) enable provisions to be made to specify minimum insurance required for an aircraft registered on the Island and aircraft operating in the Island. Currently, these requirements are specified in the Island through the application of UK and EU regulations. In due course these will require updated and the proposed primary powers will enable bespoke Island legislation to be created rather than being limited to applying the UK / EU regulations.

### Aircraft and Engine Mortgages

Section 11B(4)(e) enables provisions to be made concerning the registration of aircraft and aircraft engine mortgages. The Isle of Man Aircraft Registry currently provides a register of aircraft mortgages and the process is enabled through the application of a UK regulation which would benefit from replacement with bespoke Island legislation. At this time the Aircraft Registry does not offer a register of aircraft engine mortgages but this is possible in the future and would require supporting secondary legislation.

### Technical Standards

Section 11B(4)(f) enables the provision of internationally recognised technical standards into Island law by referencing these within an order. This will provide benefit by not having to reproduce extensive technical text. A typical example of such a technical document is the ICAO Technical Instructions on Dangerous Goods<sup>6</sup>.

### Ambulatory References

The ability to make ambulatory references as specified in section 11B(4)(g) allows a referenced technical standard under 11B(4)(f) to remain valid in law when the technical standard is updated by an amendment or new edition. This removes the need to make new legislation when such technical standards are updated and ensures that the latest standards are always immediately applicable. For example, the ICAO Technical Instructions on Dangerous Goods are routinely updated every 2 years.

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<sup>6</sup> The [Technical Instructions](#) contain all the detailed instructions necessary for the safe international transport of dangerous goods by air

### Any Other Document

The ability to make provisions in terms of any other document in section 11B(4)(h) enables documents other than internationally recognised technical standards to be applicable in Island law. Such documents would typically be Isle of Man Civil Aviation Administration or Isle of Man Aircraft Registry policy documents. Section 11B(4)(h) also enables the specified document to be amended from time to time and to still remain valid in law without the need for further legislation.

Section 11B(5) enables different provisions in terms of differing classes of aircraft, aerodromes, persons or property and reflects content specified in the Civil Aviation Act 1982 (as it has effect in the Isle of Man). This is required due to the variable nature of these characteristics and to ensure that aviation legislation is proportionate and reasonable for the particular class.

Section 11B(6) specifies that an order under this section will not come into operation until it has been approved by Tynwald. This procedure ensures appropriate scrutiny of the development of the secondary legislation.

Section 11B(7) provides for a reference to goods to include a reference to mails and animals.

18. Additional content from the Civil Aviation Act 1982 as applied to the Isle of Man (trespass; aircraft nuisance; provision of information; use of records) which are directly tied to operations in accordance with 'Air Navigation Orders' have been transposed into the Bill as sections 11C to 11G. These additional aspects need to be replicated in the Bill to have continued day to day effect as Orders made from the resulting Act of Tynwald will replace Air Navigation Orders currently made under the Civil Aviation Act 1982 (as applied to the Island).

### 19. Section 11C Trespassing on licensed aerodromes

Section 11C creates an offence of trespass on an aerodrome licensed in pursuance of an order made under sections 11, 11A or 11B for which a person would be liable on summary conviction to a fine not exceeding level 3 of the standard scale. No person shall be liable to a penalty under this section if at the material time notices warning trespassers of their liability were not posted on or near the boundary of the aerodrome.



## 20. Section 11D Liability of aircraft in respect of trespass, nuisance and surface damage

Section 11D provides that no action shall lie in respect of trespass or in respect of nuisance, by reason only of the flight of an aircraft over any property at a height above the ground so long as the provisions of any orders under sections 11, 11A or 11B have been complied with. Where damages are caused by a person in, or an article, animal or person falling from, an aircraft in flight, taking off or landing then such damages shall be recoverable unless the material loss or damage was caused or contributed to by the negligence of the person by whom it was suffered.

Section 11D(4) provides that where an aircraft had been bona fide demised, let or hired out for any period exceeding 14 days to another person by the owner, any reference in the section to the owner shall be substituted references to the person to whom the aircraft has been so demised, let or hired out to.

## 21. Section 11E Nuisance caused by aircraft on aerodromes

Section 11E provides that no action shall lie in respect of nuisance, by reason only of the noise and vibration caused by an aircraft on an aerodrome to which this subsection applies by virtue of an order under sections 11, 11A or 11B, providing that the provisions of such an order has been complied with.

## 22. Section 11F Provision by others of information for Department

Section 11F provides that the Department for Enterprise may, by notice in writing and served in the prescribed manner, require a person to furnish the Department information of such a description as specified including -

- the holder of any licence or certificate issued, granted or validated by the Department or a recipient of an approval or permission given or validated by the Department under an order made under sections 11, 11A or 11B (other than the holder of an aerodrome licence) should furnish to the Department information which relates to his or her past, present or future activities as holder or recipient of any similar licence, certificate or approval;
- a person who in the Isle of Man has, at any time during the period of two years ending with the date of service of the notice, held out as one who may as a principal or otherwise enter into a contract to make available accommodation for the carriage of persons or cargo on flights in aircraft of which the person is not the operator,

information which relates to the persons past, present or future activities in the Island connected with the making available of such accommodation;

- a person carrying on business in the Island as a manufacturer of aircraft or engines or other equipment for aircraft or as an insurer of aircraft or the holder of an aerodrome licence (issued by the Department under an order under section 11, 11A or 11B) information which relates to the persons past, present or future activities and is a kind which the Department considers that it requires for the purpose of performing any of its functions.

A person who fails to comply with this section commits an offence.

### 23. Section 11G Use of documentary evidence

Section 11G(1) provides for the use of documents in legal proceedings in respect of documents issued or kept in pursuance of an order made under sections 11, 11A or 11B or by a Department or Statutory Board or a document printed by HM Stationary Office or the UK Civil Aviation Authority known as the "United Kingdom Air Pilot" or a publication of the series known as "Notam – United Kingdom".

Section 11G(2) provides for a document purporting to show the position of an aircraft or any message or signal transmitted by or received by any aircraft and made by a designated authority or person, or by a person acting under the control of such a authority or person, if produced from the custody of that authority or person, to be used as evidence in any legal proceedings.

Section 11G(3) extends the references to a document in subsection (2) to a document or article purporting to be a copy of a document and certified to be a true copy by or on behalf of the authority or person but not produced from the custody of that authority or person.

Section 11G(4) provides that a person who wilfully certifies a document or article to be a true copy of any such document mentioned above knowing it not to be a true copy commits an offence.

### 24. Section 11H Regulations prohibiting or restricting flying

Section 11H enable provisions to be made that allow the prohibition or restriction of flying in specified airspace of the Island and reflects content within the Civil Aviation Act 1982 not applied to the Island. Such measures are put in place to impose additional constraints and

conditions in response to particular temporary or short term needs that are in the public interest. These prohibitions/restrictions are currently made in the Isle of Man using powers specified in the Air Navigation (Isle of Man) Order 2015 which enable the Department for Enterprise to make Air Navigation (Restriction of Flying) Regulations.

Examples of where these are routinely used for pre-planned events include:

- Tynwald Day.
- Isle of Man TT and Festival of Motorcycling.
- Red Arrows air displays.

In addition, the powers are designed to put measures in place that can impose airspace prohibitions or restrictions in response to land or sea emergencies. This may be required to protect aircraft from the harmful effects of the event or to protect rescue activities from adjacent aviation activity causing interference. The Tynwald procedure for such regulations must enable these regulations to be made at very short notice, at any time of the day and without undue delay, hence section 11H(2) states that such regulations are to be laid before Tynwald as soon as practicable.

#### 25. Section 11I Power to create offences in secondary legislation

There is a need to be able to prescribe penalties for breaches of secondary legislation made under the new primary powers. This is provided for in section 11I and generally reflects the latest penalties specified in the Civil Aviation Act 1982 (as it has effect in the Isle of Man).

#### **Clause 7**

26. This clause provides for a cross heading to be inserted immediately before section 12.

#### **Clause 8**

27. This clause ensures that the Act is amended to contain new interpretations necessary to support the amendment.