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

Explanatory Memorandum

1. This Bill is promoted by Mr Skelly, MHK on behalf of the Department for Enterprise.
2. *Clauses 1 and 2* deal, respectively, with the Short Title and Commencement of the resulting Act.
3. *Clause 3* provides that the *Airports and Civil Aviation Act 1987* (“the Act”) is amended in the manner set out in the succeeding clauses.
4. *Clause 4* substitutes the cross-heading immediately before section 11 of the Act.
5. *Clause 5* amends section 11A of the Act to remove the reference to the *European Communities (Isle of Man) Act 1973* and to insert a new subsection, i.e. subsection (7). Subsection (7) defines the term “EU instrument”.
6. *Clause 6* inserts new sections into the Act, immediately after section 11A. Those new sections are sections 11B to 11I:
 - (a) Section 11B empowers the Department for Enterprise to make orders for the purpose of incorporating into the law of the Island any international obligation in respect of civil aviation that has been or will be extended to the Island by the United Kingdom, or for the purpose of regulating within the Island civil aviation in general. This power is expressly stated not to be limited to applying relevant UK legislation to the Island. The section gives a number of specific examples of matters that such orders may address.
 - (b) Section 11C makes it an offence to trespass on aerodromes.
 - (c) Section 11D makes provision for liability of aircraft in respect of trespass, nuisance and surface damage.
 - (d) Section 11E precludes the commencement of legal actions for nuisance where the only cause of the alleged nuisance is the noise and vibration caused by aircraft of an aerodrome that is the subject of an order under section 11, 11A or 11B. The preclusion is predicated on the conditions of any such order being complied with.
 - (e) Section 11F empowers the Department for Enterprise to demand that a specified person furnish it with information of any of the descriptions specified in the section.
 - (f) Section 11G makes specific provision for the use of documentary evidence in legal proceedings. It also creates the offence of certifying as a

true copy a document or article (of a type specified in the section) which the person certifying it knows is not in fact a true copy.

- (g) Section 11H empowers the Department for Enterprise to make regulations prohibiting or restricting flying in specified airspace of the Island or any part thereof, for a period that must be specified in the regulations and subject to such conditions as may be specified in the regulations.
- (h) Section 11I empowers the Department for Enterprise to create offences in secondary legislation. Limitations are expressly placed on this power.

- 7. *Clause 7* inserts a cross-heading immediately before section 12 of the Act.
- 8. *Clause 8* inserts two new definitions into section 12 (interpretation) of the Act.
- 9. The resulting Act is not expected to have any financial or human resource implications.
- 10. 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*.



Ellan Vannin

AIRPORTS AND CIVIL AVIATION (AMENDMENT) BILL 2018

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Ellan Vannin

AIRPORTS AND CIVIL AVIATION (AMENDMENT) BILL 2018

1 A **BILL** to amend the Airports and Civil Aviation Act 1987 to provide enabling
2 powers for the making of Isle of Man secondary legislation that is not derived
3 from related secondary legislation enacted in the United Kingdom; to authorise
4 the enactment of Isle of Man secondary legislation that gives effect to
5 international obligations of the Island in relation to civil aviation; and for
6 connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

7 1 Short title

8 The short title of this Act is the Airports and Civil Aviation (Amendment) Act
9 2018.

10 2 Commencement

11 (1) This Act (except section 1 and this section) comes into operation on such
12 day or days as the Department for Enterprise may, after consultation
13 with the Department of Infrastructure, by order appoint.

14 (2) An order under subsection (1) may make such consequential, incidental,
15 supplementary and transitional provisions as appear to the Department
16 for Enterprise to be necessary or expedient for the purposes of the order.

17 3 Airports and Civil Aviation Act 1987 amended

18 The *Airports and Civil Aviation Act 1987* is amended as follows.

19 4 Cross-heading amended

20 For the cross-heading immediately before section 11 (application to Island of
21 civil aviation, etc legislation), substitute —

“Regulation of civil aviation”.

5 Amendment of section 11A

- (1) In section 11A (application to Island of EU instruments) —
- (a) in subsection (1), for “(within the meaning of section 1(1) of the *European Communities (Isle of Man) Act 1973*) which has effect in the United Kingdom and”, substitute “which”; and
- (b) after subsection (6), insert —
- “(7) In this section, “EU instrument” means any instrument issued by an EU institution.”.

6 Insertion of new sections 11B to 11I

Immediately after section 11A (application to Island of EU instruments), insert the following —

“11B Orders not derived from United Kingdom legislation or EU instruments

- (1) The Department for Enterprise may make one or more orders for the purpose of —
- (a) incorporating into the law of the Island any international obligation in respect of civil aviation that has been or will be extended to the Island by the United Kingdom; or
- (b) regulating within the Island civil aviation in general.
- (2) The Department for Enterprise, when making an order under subsection (1), is not required to apply to the Island the provisions of any related legislation of the United Kingdom.
- (3) Without prejudice to the generality of subsection (1) or to any other provision of this Act, an order under this section may contain provision —
- (a) as to the registration of aircraft in the Island;
- (b) for prohibiting aircraft from flying unless certificates of airworthiness issued or validated under an order are in force with respect to them and except upon compliance with such conditions as to maintenance or repair as may be specified in the order;
- (c) for the licensing, inspection and regulation of aerodromes;
- (d) for access to —
- (i) aerodromes and places where aircraft have landed;
- (ii) aircraft for the purpose of inspecting the aircraft; or

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- (iii) aircraft factories for the purpose of inspecting work therein carried on in relation to aircraft or parts thereof;
- (e) as to the conditions under which, and in particular the aerodromes to or from which, aircraft entering or leaving the Island may fly, and as to the conditions under which aircraft may fly from one part of the Island to another;
- (f) for prohibiting persons from engaging in, or being employed in or in connection with, air navigation in such capacities as may be specified in the order except in accordance with provisions in that behalf contained in the order, and for the licensing of those employed at aerodromes licensed under the order in the inspection or supervision of aircraft;
- (g) for minimising or preventing interference with the use or effectiveness of apparatus used in connection with air navigation, and for prohibiting or regulating the use of such apparatus as aforesaid and the display of signs and lights liable to endanger aircraft;
- (h) as to the conditions under which passengers may be carried by air and under which aircraft may be used for other commercial, industrial or gainful purposes, as to the conditions under which goods may be carried by air, for prohibiting the carriage by air of goods of such classes as may be specified in the order, and for conferring, on such persons as may be so specified, powers relating to the enforcement of any such condition or prohibition (including powers to examine, take samples of, seize and detain any goods; powers to open any baggage or packages containing goods or to require them to be opened; and powers to require the production of any documents);
- (i) generally for securing the safety, efficiency and regularity of air navigation and the safety of aircraft and persons and property carried therein, for safeguarding the health of persons on board aircraft, for preventing aircraft endangering other persons and property and, in particular, for the detention of aircraft for any of the purposes specified in this paragraph;
- (j) as to the manner and conditions of the issue, validation, renewal, extension or variation of any certificate, licence or other document required by the order (including the examinations and tests to be undergone), and as to the form, custody, production, cancellation, suspension, endorsement and surrender of any such document;

1 (k) for exempting from the provisions of the order, or any of
2 them —

- 3 (i) any aircraft or persons; or
4 (ii) any classes of aircraft or persons;

5 (l) for prohibiting aircraft from taking off or landing in the
6 Island unless there are in force in respect of those aircraft
7 such certificates of compliance with standards as to noise
8 and emissions as may be specified in the order and except
9 upon compliance with the conditions of those certificates.

10 (4) Without limiting either subsection (1) or subsection (3), an order
11 made under this section may include, but need not be limited to,
12 provisions —

13 (a) incorporating into the law of the Island any provision of
14 the Chicago Convention or the Cape Town Convention, or
15 of any instrument associated with either Convention;

16 (b) placing requirements on the pilot in command and owner
17 of an aircraft to report births, deaths and missing persons
18 on aircraft registered in the Island;

19 (c) specifying the minimum insurance required in respect of
20 liability for passengers, associated duties of applicants for
21 registration of an aircraft on the Island, duties of the
22 Department for Enterprise and associated enforcement
23 powers and penalties;

24 (d) establishing the minimum level of insurance required for
25 aircraft operating in the Island, dictated by maximum take-
26 off mass and numbers of passengers carried;

27 (e) specifying the process for registration of mortgages for
28 aircraft registered on the Island and aircraft engines
29 registered on the Island;

30 (f) incorporating specific internationally recognised technical
31 standards into the law of the Island by means of reference
32 within the order to documents containing such standards,
33 thereby obviating the need to reproduce the text of these
34 documents in the order;

35 (g) making ambulatory reference to technical standards
36 referred to in paragraph (f), as they may —

- 37 (i) be stipulated or amended from time to time; or
38 (ii) appear in a particular edition of a publication in
39 which they are set out,

40 and providing that those technical standards have the force
41 of law in the Island without the need for further legislation

- 1 | whenever they are amended or a new edition of the
2 | publication is produced;
- 3 | (h) in terms of any other document, as such document may be
4 | amended from time to time, which the Department for
5 | Enterprise or another person considers relevant.
- 6 | (5) An order under this section may make different provision with
7 | respect to different classes of aircraft, aerodromes, persons or
8 | property and with respect to different circumstances.
- 9 | (6) An order under this section will not come into operation until it
10 | has been approved by Tynwald.
- 11 | (7) In this section, a reference to goods includes a reference to mails
12 | or animals.

13 | **11C Trespassing on licensed aerodromes**

- 14 | (1) Subject to subsection (2), if any person trespasses on any land
15 | forming part of an aerodrome licensed in pursuance of an order
16 | made under section 11, 11A or 11B, the person shall be liable on
17 | summary conviction to a fine not exceeding level 3 on the
18 | standard scale.
- 19 | (2) No person shall be liable under this section unless it is proved
20 | that, at the material time, notices warning trespassers of their
21 | liability under this section were posted so as to be readily seen
22 | and read by members of the public, in such positions on or near
23 | the boundary of the aerodrome as appear to the court to be
24 | proper.

25 | *Trespass by aircraft and aircraft nuisance, noise, etc*

26 | **11D Liability of aircraft in respect of trespass, nuisance and surface 27 | damage**

- 28 | (1) No action shall lie in respect of trespass or in respect of nuisance,
29 | by reason only of –
- 30 | (a) the flight of an aircraft over any property at a height above
31 | the ground which, having regard to wind, weather and all
32 | the circumstances of the case, is reasonable; or
- 33 | (b) the ordinary incidents of such flight,
34 | so long as the provisions of any order made under section 11, 11A
35 | or 11B have been duly complied with.
- 36 | (2) Subject to subsection (3), whether material loss or damage is
37 | caused to any person or property on land or water by, or by a
38 | person in, or an article, animal or person falling from, an aircraft

1 while in flight, taking off or landing, then unless the loss or
2 damage was caused or contributed to by the negligence of the
3 person by whom it was suffered, damages in respect of the loss or
4 damage shall be recoverable without proof of negligence or
5 intention or other cause of action, as if the loss or damage had
6 been caused by the wilful act, neglect or default of the owner of
7 the aircraft.

8 (3) Where material loss or damage is caused as aforesaid in
9 circumstances in which –

10 (a) damages are recoverable in respect of the said loss or
11 damage by virtue only of subsection (2); and

12 (b) a legal liability is created in some person other than the
13 owner to pay damages in respect of the said loss or
14 damage,

15 the owner shall be entitled to be indemnified by that other person
16 against any claim in respect of the said loss or damage.

17 (4) Where the aircraft concerned has been *bona fide* demised, let or
18 hired out for any period exceeding fourteen days to any other
19 person by the owner thereof, and no pilot, commander, navigator
20 or operative member of the crew of the aircraft is in the
21 employment of the owner, this section shall have effect as if for
22 references to the owner there were substituted references to the
23 person to whom the aircraft has been so demised, let or hired out.

24 (5) This section applies to civil aircraft belonging to or exclusively
25 employed in the service of Her Majesty as it applies to other civil
26 aircraft registered in the Island.

27 **11E Nuisance caused by aircraft on aerodromes**

28 (1) Subsection (2) applies to any aerodrome as respects which
29 provision is made by an order made under section 11, 11A or 11B
30 for regulating the conditions under which noise and vibration
31 may be caused by aircraft.

32 (2) No action shall lie in respect of nuisance by reason only of the
33 noise and vibration caused by aircraft on an aerodrome to which
34 this subsection applies by virtue of an order made under section
35 11, 11A or 11B, as long as the provisions of any such order are
36 duly complied with.

37 **11F Provision by others of information for Department**

38 (1) The Department for Enterprise may, by notice in writing served in
39 the prescribed manner on a person of any of the following
40 descriptions, that is to say –

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- (a) the holder of any licence or certificate issued, granted or validated by the Department for Enterprise;
- (b) a recipient of an approval or permission given or validated by the Department for Enterprise under an order made under section 11, 11A or 11B;
- (c) a person who in the Island has, at any time during the period of two years ending with the date of service of the notice, held himself or herself 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 any part of the world in aircraft of which the person is not the operator;
- (d) 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,

require him to furnish to the Department for Enterprise, in such form and at such times as may be specified in the notice, information of such descriptions as may be so specified, being –

- (i) in the case of such a holder or recipient as aforesaid (other than the holder of an aerodrome licence), descriptions of information which relates to his or her past, present or future activities as the holder or recipient of the licence, certificate or approval in question or his or her past activities as the holder or recipient of any similar licence, certificate or approval or is of a kind which the Department for Enterprise considers that it requires for the purpose of reviewing the licence, certificate or approval in question;
- (ii) in the case of such a person as is mentioned in paragraph (c), descriptions of information which relates to the person's past, present or future activities in the Island connected with the making available of accommodation so mentioned;
- (iii) in the case of such a person as is mentioned in paragraph (d) or the holder of an aerodrome licence, descriptions of information which relates to his past, present or future activities (including, in the case of a holder of an aerodrome licence, information as to the numbers of aircraft and passengers and the quantity of cargo passing and expected to pass through the relevant aerodrome) and is of a kind which the Department for

Enterprise considers that it requires for the purpose of performing any of its functions.

In this subsection, “aerodrome licence” means a licence to operate an aerodrome issued by the Department for Enterprise under an order made under section 11, 11A or 11B.

(2) Without prejudice to the generality of subsection (1), the information relating to the activities of the holder of a licence which the Department for Enterprise may require the holder to furnish in pursuance of that subsection includes particulars of any contract or arrangement —

(a) to which the holder is or was at any time a party and, if the holder is not or was not then an operator of aircraft registered in the Island, to which such an operator is or was then a party; and

(b) which constitutes or relates to an agreement or understanding between operators of aircraft or such operators and other persons with respect to any of the following matters, that is to say —

(i) the provision of flights or of accommodation in aircraft;

(ii) the sharing or transfer of revenue from flights on particular routes;

(iii) the sale by a party to the contract or arrangement of tickets for flights in aircraft operated by another party to it; or

(iv) the making available by a party to the contract or arrangement of staff, equipment or other facilities for use by another party to it.

(3) If a person required to furnish information by virtue of any of the preceding provisions of this section fails to comply with the requirement or, in purported compliance with the requirement, knowingly or recklessly furnishes information which is false in a material particular, then —

(a) in the case of a failure to comply with the requirement the person commits an offence and shall be liable on summary conviction to a fine of an amount not exceeding level 3 on the standard scale; and

(b) in any other case the person commits an offence and shall be liable on summary conviction to a fine not exceeding twice level 5 on the standard scale and on conviction on information to a fine or to custody for a term not exceeding two years or to both; and

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(c) if the requirement was made by virtue of subsection (1) or (2), the Department for Enterprise may, whether or not any proceedings in respect of the requirement have been brought in pursuance of paragraph (a) or (b), revoke any licence or certificate or approval which was issued, granted, validated or given by the Department for Enterprise and to which the requirement related,

and a person who fails to comply with a requirement imposed on him or her in pursuance of this section commits an offence by virtue of paragraph (a) notwithstanding that at any relevant time the person is outside the Island and is neither a British national nor a body incorporated under the law of the Island.

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11G Use of documentary evidence

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(1) In any legal proceedings —

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(a) a document purporting to be certified by such authority or person as may be designated for the purpose by an order or regulations made by the Department for Enterprise as being, or being a true copy of, or of part of, a document issued or kept—

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(i) in pursuance of an order made under section 11, 11A or 11B; or

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(ii) by a Department or Statutory Board; or

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(b) a document printed by Her Majesty's Stationery Office or the United Kingdom Civil Aviation Authority and purporting to be the publication known as the "United Kingdom Air Pilot" or a publication of the series known as "Notam – United Kingdom",

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shall be evidence of the matters appearing from the document.

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(2) In any legal proceedings, any document made by any such authority or person as may be designated for the purposes of this subsection by an order or regulations made by the Department for Enterprise, or by a person acting under the control of such an authority or person, being a document purporting to show —

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(a) the position of an aircraft at any material time; or

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(b) the terms or content of any message or signal transmitted to any aircraft, either alone or in common with other aircraft, or received from any aircraft, by the first-mentioned authority or person, or by a person acting under the control of that authority or person,

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shall, if produced from the custody of that authority or person, be evidence of the matters appearing in the document.

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- 1 (3) The references in subsection (2) to a document made by or under
2 the control of any authority or person include references to a
3 document or article purporting to be a copy of a document so
4 made, and certified to be a true copy by or on behalf of that
5 authority or person; and in relation to such a copy that subsection
6 shall have effect as if the words “if produced from the custody of
7 that authority or person” were omitted.
- 8 (4) Any person who wilfully certifies any document or article to be a
9 true copy of any such document as is mentioned in subsection (2)
10 knowing it not to be a true copy shall be liable —
- 11 (a) on summary conviction, to a fine not exceeding twice level
12 5 on the standard scale or to custody for a term not
13 exceeding three months or to both; and
- 14 (b) on conviction on information, to a fine or to custody for a
15 term not exceeding two years or to both.

16 **11H Regulations prohibiting or restricting flying**

- 17 (1) The Department for Enterprise may make regulations prohibiting
18 or restricting flying in specified airspace of the Island or any part
19 thereof —
- 20 (a) for such period as must be specified in the regulations; and
21 (b) subject to such conditions as may be specified in the
22 regulations.
- 23 (2) Regulations under this section shall be laid before Tynwald as
24 soon as practicable after they are made, and if Tynwald at the
25 sitting at which the regulations are laid or at the next following
26 sitting resolves that they are to be annulled, they cease to have
27 effect.

28 **11I Power to create offences in secondary legislation**

- 29 (1) An order under section 11, 11A or 11B or regulations under
30 section 11H may, for the purpose of securing compliance with its
31 provisions, provide that a person commits an offence in such
32 circumstances as may be specified in the order or regulations, as
33 the case may be, for which offence the person shall be liable on
34 conviction to such penalty as may be so specified.
- 35 (2) The power conferred by virtue of subsection (1) does not include
36 power —
- 37 (a) to provide for offences to be triable summarily only;
38 (b) to authorise the imposition, on summary conviction of any
39 offence, of any term of custody or of a fine exceeding twice
40 level 5 on the standard scale; or

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(c) to authorise the imposition, on conviction on information of an offence, of a term of custody exceeding 5 years.

(3) All sums received by way of fees paid under an order under section 11, 11A or 11B or regulations under section 11H shall be paid into the general revenue of the Island.”.

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7 **Cross-heading inserted**

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Insert, as a cross-heading immediately before section 12 (interpretation), the following –

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“Supplemental”.

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8 **Amendment of section 12**

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In subsection (1) of section 12 (interpretation), insert the following definitions in the appropriate alphabetical sequence –

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“**the Cape Town Convention**” means the Convention on International Interests in Mobile Equipment signed at Cape Town on 16th November 2001;”

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“**the Chicago Convention**” means the Convention on International Civil Aviation which was, on 7th December 1944, signed on behalf of the Government of the United Kingdom at the International Civil Aviation Conference held at Chicago;”.

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IN THE COUNCIL

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

A **BILL** to amend the Airports and Civil Aviation Act 1987 to provide enabling powers for the making of Isle of Man secondary legislation that is not derived from related secondary legislation enacted in the United Kingdom; to authorise the enactment of Isle of Man secondary legislation that gives effect to international obligations of the Island in relation to civil aviation; and for connected purposes.

Leave to introduce given by the Council on 23 January 2018.

MR SKELLY

23 JANUARY 2018

