

THE BAILIFF OF GUERNSEY
MR RICHARD J. COLLAS

TEL: (01481) 726161
FAX: (01481) 713861
E-MAIL: bailiff@gov.gg



THE BAILIFF'S CHAMBERS
ROYAL COURT HOUSE
GUERNSEY GY1 2PB

The President
States of Alderney
Island Hall
Royal Connaught Square
ALDERNEY
GY9 3UE



14 December 2012

Dear Sir

THE AIR NAVIATION (BAILIWICK OF GUERNSEY) LAW, 2012
and
THE AVIATION (AMENDMENT) (BAILIWICK OF GUERNSEY) LAW, 2012

I enclose a copy of a States Report dated 07 August 2012, addressed to the Chief Minister, Policy Council, by the Minister, Commerce & Employment Department, concerning 'Aircraft Registry' proposals.

On the 01 November 2012, the States of Deliberation resolved as follows:-

"To direct the preparation of such legislation as may be necessary to give effect to the proposals."

On 13 December 2012, the States of Deliberation approved two Projets de Loi entitled "The Air Navigation (Bailiwick of Guernsey) Law, 2012" and "The Aviation (Amendment) (Bailiwick of Guernsey) Law, 2012" which give effect to the above Resolution.

I enclose fifteen copies of each of those two Projets de Loi and shall be obliged if you will place them before the States of Alderney for their approval at their next meeting.

Yours faithfully

A handwritten signature in black ink, appearing to be 'R. Collas'.

COMMERCE AND EMPLOYMENT DEPARTMENT

AIRCRAFT REGISTRY

The Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

7th August 2012

Dear Sir

1. Executive Summary

- 1.1 This report provides an update on the Commerce and Employment Department's project to establish an aircraft registry in Guernsey and identifies the legislative requirements for the creation of a registry.
- 1.2 It also proposes a number of amendments to Guernsey's current aviation legislation in addition to those necessary for the establishment of a registry which can usefully be effected as part of the revision of the Bailiwick's aviation legislation.

2. Background

2.1 On 30th September 2011¹, the States resolved:

1. *To approve in principle the establishment of:-*
 - a) *a Channel Islands aircraft registry, subject to agreement with the relevant authorities in Jersey; or*
 - b) *in default of such agreement within such time frame as the Department considers reasonable, a Guernsey aircraft registry on the basis set out in this States Report.*
2. *To direct the Department to work with the Law Officers to identify the necessary legislative requirements for the establishment of a Registry and to report back to the States outlining the necessary legislation.*

¹ Article 16 of Billet d'État XV (Volume 1) of 2011

3. *To direct the Department to appoint a commercial partner for the proposed Registry.*
4. *To delegate authority to the Treasury and Resources Department to approve the Full Business Case for the establishment of a Guernsey Aircraft Registry.*

3. Update on progress with the Aircraft Registry project

- 3.1 It has not yet been possible to reach agreement with the relevant authorities in Jersey on the establishment of a Channel Island Aircraft Registry and the Department has therefore decided to proceed with the establishment of a Guernsey Aircraft Registry while keeping open the opportunity for discussions with Jersey. It may still be possible to transform the project into a joint one prior to the business case and law changes being put forward for approval, should agreement be reached.
- 3.2 The following sections of this report outline the legislation required for the establishment of the Guernsey Aircraft Registry in accordance with Resolution 2.
- 3.3 A competitive tender process was conducted culminating in the appointment of SGI Aviation as the commercial partner for the project. SGI Aviation is working with the Director of Civil Aviation (DCA) to complete the Full Business Case for the establishment of a Guernsey Aircraft Registry and to develop all necessary policies and procedures. Resolution 3 has therefore been complied with.
- 3.4 The project is in progress and on schedule. There are four main parallel work streams: drafting of the legislative changes; development of the associated technical requirements and procedures; development of the supporting software application; and development of the detailed business case for approval by Treasury and Resources in accordance with Resolution 4.
- 3.5 The Full Business Case will be submitted to the Treasury and Resources Department for approval, in compliance with Resolution 4, once it is complete.

4. Relevant legislation currently in force

- 4.1 At present, the key piece of aviation legislation in the Bailiwick of Guernsey is the Aviation (Bailiwick of Guernsey) Law, 2008. It is a comprehensive piece of legislation covering the establishment of the Office of the Director of Civil Aviation; DCA roles, functions and responsibilities; general regulation of civil aviation with respect to the environment; as well as detailed provisions relating to air navigation. It includes, for example, schedules covering the Rules of the Air and the Carriage of Dangerous Goods, some of which require to be updated to take account of the introduction of Standardised European Rules of the Air.

5. Legislative proposals

5.1 Amendment of the Aviation (Bailiwick of Guernsey) Law, 2008

The powers of the DCA under this existing Law will be reviewed in the light of the recent appointment of an Aviation Security Regulator, who also acts in the role of deputy DCA. The States resolved on 28th July 2011² to extend the function of the DCA to cover regulating aviation security within the Bailiwick. It is intended to take the opportunity formally to incorporate that resolution into Law under these proposals and to provide additional powers where necessary, to ensure that the Aviation Security Regulator is properly able to regulate and enforce aviation security in an appropriate manner.

5.1.1 The existing provisions of Part II will be reviewed to ensure that it:

- permits arrangements to be made for the investigation of accidents outside of the Bailiwick involving aircraft registered in Guernsey;
- Requires the reporting to the Director of Civil Aviation of births and deaths occurring in any part of the world in aircraft registered in Guernsey so that these may be appropriately registered and permit the Department by regulation to provide for the recording by the DCA of missing persons where there are grounds to suspect that they have died as a result of an accident involving an aircraft registered in Guernsey.
- Contains such consequential amendments as are necessary as a result of the establishment of a registry and the amendment of the existing legislation.

5.1.2 Part III (Provisions Relating to Air Navigation) will be repealed. The provisions of this Part will provide the foundation for the new Air Navigation (Bailiwick of Guernsey) Law described at 5.2 below.

5.2 Air Navigation (Bailiwick of Guernsey) Law

5.2.1 A new Bailiwick wide Law will be enacted, based upon Part III of the existing Aviation (Bailiwick of Guernsey) Law, 2008.

5.2.2 The existing provisions of Part III will be reviewed and expanded to ensure that the new Law:

- Incorporates relevant updates that need to be made to the Air Navigation Rules, in light of recent changes to the United Kingdom Air Navigation Order and also to the United Kingdom Overseas Territories Air Navigation Order ('ANO'), the model for Part III.

² Article 7 of Billet d'État XIII of 2011

These cover issues such as a new offence related to the malicious use of lasers against aircraft in flight and air traffic control positions and a revised definition for 'small aircraft';

- Includes additional provisions relating to aerial work to clarify the powers of the DCA to issue aerial work certificates for commercial aviation activities, other than public transport, conducted in the Bailiwick;
- Requires that landings in the Bailiwick that are not made on a licensed airfield require the prior permission of the DCA;
- Introduces all requirements necessary to meet the international obligations imposed upon a territory with an aircraft registry, including airworthiness, personnel licensing and operations provisions, in order that the UK authorities can be satisfied that they will meet their obligations as the State of Registry under the International Convention on Civil Aviation;
- Permits the Director of Civil Aviation ('DCA') to accept international certifications that comply with International Civil Aviation Organisation ('ICAO') standards;
- Contains such consequential amendments as are necessary as a result of the establishment of a registry and the amendment of the existing legislation.

5.3 Aircraft Registry (Guernsey) Law

5.3.1 This will be an entirely new piece of legislation which will contain the provisions that are necessary for the establishment of the aircraft registry in Guernsey. It will not be a Bailiwick Law, as the Registry will be located solely in Guernsey.

5.3.2 The Law will:

- Permit the registration of aircraft in Guernsey in accordance with international standards as set out in the Convention on International Civil Aviation ('the Chicago Convention');
- Create the Guernsey Aircraft Registry and the Office of Registrar of Aircraft;
- Create Registers of Aircraft, Aircraft Engines and Aircraft Charges;
- Permit the Department to prescribe by regulation the eligibility criteria for who may apply to register an aircraft. In principle, the ability to

register will be restricted to any legal person resident in the Bailiwick of Guernsey or natural persons resident in either the Bailiwick of Guernsey or the Bailiwick of Jersey. This will ensure that the demand from the Channel Island private aviation community for a local registration is met but also that the secondary benefits from the corporate side of the market are generated within the Bailiwick. However, some flexibility in defining the eligibility criteria is needed to ensure that the aircraft registry is able to respond appropriately to capture certain strands of the potential market;

- Define the scope of the aircraft that may be registered on the Register. The Law will provide for the registration of private aircraft operations and aircraft conducting limited commercial activities known as “aerial work”; excluding microlight aircraft and aircraft of the kind operated on a national ‘Permit to Fly’, as opposed to an ICAO compliant Certificate of Airworthiness. In the paragraph 5.3 of the Report on the establishment of an Aircraft Registry, the Department proposed that the primary legislation that will be required to establish the Register should permit the registration of all categories of aircraft operation so that the scope of the Registry can be expanded in future if so desired. As matters have progressed since September 2011 the Department has come to the view that, whilst this is desirable in principle, such an approach is not desirable in practice. The Department has no intention to register commercial aircraft carrying passengers and/or cargo and the decision to do so in future is not one that would be taken lightly. It would involve significant planning and the development of new policies and procedures, and may incur a significant additional liability exposure in the event of any accidents. Therefore it is only necessary to permit the registration of non-commercial aircraft. Any potential expansion to commercial aircraft may be dealt with by way of future primary legislation, should that ever be considered to be desirable;
- Identify the procedural requirements for the registration of aircraft and create powers to prescribe appropriate fees;
- Permit outsourcing of the performance of licensing and oversight activity to the private sector;
- Permit security to be taken over registered aircraft and components in the form of a statutory charge, reflecting the provisions of the Cape Town Convention on International Interests in Mobile Equipment; it is essential for the success of the aircraft registry that adequate security can be taken over aircraft and their components, as the vast majority of aircraft registered in Guernsey will be purchased with third party finance and the third party will require adequate security before agreeing to advance funding. Guernsey’s general securities interests legislation, including the Law of Property (Miscellaneous Provisions)

Law, 1979 and the Securities Interests (Guernsey) Law, 2003, does not at present permit security to be taken over tangible moveable property. Therefore, in order for the validity and enforceability of security over aircraft registered in Guernsey to provide sufficient protection and certainty to third parties, it is necessary for a special regime to be created in this Law. The Cape Town Convention is a treaty which includes international standards for the registration of security interests and includes a Protocol specific to aircraft and aircraft engines. The United Kingdom has signed, but not yet ratified the Convention, so it cannot be extended to Guernsey. However, the relevant provisions of the Convention can be mirrored in domestic legislation to provide the international community with reassurance that Guernsey applies internationally accepted standards;

- Contain such other provisions as are necessary, including consequential, ancillary or incidental provisions required as a result of the establishment of a registry, including penalties, offences, removal from the Register, making of appeals, service of documents, certification and the amendment of the existing legislation.

6. Consultation

- 6.1 The Department has consulted widely with the local finance and aviation communities on the principle of the establishment of an aircraft Register.
- 6.2 Alderney has been consulted regarding the Bailiwick aspects of this proposal and has raised no issues.
- 6.3 Sark has been consulted regarding the Bailiwick aspects of this proposal and has raised no issues.
- 6.4 The Law Officers have been consulted regarding this proposal and have raised no issues.

7. Recommendations

- 7.1 The Commerce and Employment Department asks the States to approve the drafting of the legislation set out in this report.

Yours faithfully

K A Stewart
Minister

A H Brouard
Deputy Minister

D de G de Lisle
M P J Hadley
L B Queripel

**APPENDIX 1
DRAFTING OF LEGISLATION – PRIORITY RATING SCHEME
STATES REPORT AIRCRAFT REGISTER**

Criteria

Criterion 1 – Need for legislation

Projets de Loi will be required to:

- Amend the Aviation (Bailiwick of Guernsey) Law, 2008
- Create the Air Navigation (Bailiwick of Guernsey) Law
- Create the Aircraft Registry (Guernsey) Law

as set out in the Report.

Criterion 2 – Funding

No funding is required as a direct result of the legislation.

The Report on the establishment of an Aircraft Registry identified the funding requirements for the operational establishment of an aircraft registry.

Criterion 3 – Risks and benefits associated with enacting/not enacting the legislation

An Aircraft Registry cannot be established without enacting the necessary legislation. There is a clear demand from the aviation and finance industries for the establishment of an Aircraft Register and not enacting the necessary legislation would mean that the potential economic opportunity identified in the Report on the establishment of an Aircraft Registry would not be realised.

Criterion 4 – Estimated Drafting Time

Two months

(NB As there are no resource implications identified in the report, the Treasury and Resources Department has no comments to make.)

(NB The Policy Council has no comment on the proposals.)

The States are asked to decide:-

V.- Whether, after consideration of the Report dated 7th August, 2012, of the Commerce and Employment Department, they are of the opinion to direct the preparation of such legislation as may be necessary to give effect to the proposals.