

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE
COMMITTEE *for* ECONOMIC DEVELOPMENT

THE INVESTIGATION OF AIR ACCIDENTS AND INCIDENTS

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled "The Investigation of Air Accidents and Incidents" dated 28th October 2021 they are of the opinion:-

1. to agree that the legislation which currently applies to the Bailiwick of Guernsey regarding the investigation of air accidents and incidents is updated, in particular to implement: (a) Annex 13 to the Chicago Convention as required; and (b) Regulation (EU) 996/2010 on the investigation and prevention of accidents and incidents in civil aviation.
2. to signify their agreement to the substance of the proposed Order in Council (set out in paragraphs 4.2 and 4.3 of this Policy Letter) for the purposes of Article 72A of the Reform (Guernsey) Law, 1948, as amended.
3. to direct the preparation of such legislation as may be necessary to give effect of the above decisions.

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1)(c) of the Rules of Procedure of the States of Deliberation and their Committees.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE
COMMITTEE *for* ECONOMIC DEVELOPMENT

THE INVESTIGATION OF AIR ACCIDENTS AND INCIDENTS

The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

28th October 2021

Dear Sir

1 Executive Summary

- 1.1 The United Kingdom ('UK'), through the Department for Transport ('DfT'), has requested that the Bailiwick of Guernsey ('the Bailiwick') updates its legislation relating to the investigation of air accidents and incidents.
- 1.2 The International Civil Aviation Organisation ('ICAO') routinely carries out audits of its Member States, including the UK, and these audits include consideration of the legislation that each Member State government establishes to effectively implement ICAO standards and recommended practices. For the purposes of ICAO, the Bailiwick is one of the territories for which the UK is responsible.
- 1.3 The DfT has requested that the Bailiwick updates its legislation before the next ICAO audit. The Acting Director of Civil Aviation for the Bailiwick of Guernsey has advised that the necessary legislation should be updated as soon as possible.
- 1.4 The proposals set out in this Policy Letter seek to enable the Bailiwick to make the relevant legislative changes before the next ICAO audit.
- 1.5 Specifically, the proposals set out in this Policy Letter seek to:
 - (i) introduce the latest UK legislation relating to air accidents and incident investigation, as set out in the UK Civil Aviation (Investigation of Air Accidents and Incidents) Regulations, 2018 (the '2018 Regulations');

- (ii) implement Regulation (EU) 996/2010, of the European Parliament and Council, relating to the investigation and prevention of accidents and incidents in civil aviation ('Regulation 996/2010'); and
 - (iii) implement the requirements set out in Annex 13 of the United Nations ('UN') Convention on International Civil Aviation, (the 'Chicago Convention'¹), relating to aircraft accident and incident investigation.
- 1.6 For the relevant legislation to be updated across the Bailiwick, the States of Deliberation, the States of Alderney, and the Chief Pleas of Sark will each need to make Ordinances under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 (the 'Implementation Law') to implement EU Regulation 996/2010 in their own jurisdictions.

2 Introduction and background

- 2.1 Since the 1970s, UK legislation regarding air accident and incident investigations has been extended to the Bailiwick by Order in Council with modifications made to ensure that legislation is appropriate for application in the Bailiwick context.
- 2.2 The legislation currently in force in the Bailiwick is the UK Civil Aviation (Investigation of Air Accidents and Incidents) Regulations, 1996 (the '1996 Regulations'), as extended to the Bailiwick by the Civil Aviation (Investigation of Air Accidents and Incidents) (Guernsey) Order, 1998 (the '1998 Order').
- 2.3 The 1996 Regulations provide that the Air Accidents Investigation Branch ('AAIB') of the DfT, which investigate air accidents and incidents for the UK, the Crown Dependencies and the British Overseas Territories, may do so in relation to air accidents and incidents linked to the Bailiwick².
- 2.4 Since the 1996 Regulations were made, the UK has updated its own legislation and further requirements have been introduced on a global and European level.
- 2.5 The UK made the 2018 Regulations to update its air accident investigation practices, and make further provision required by Annex 13 of the Chicago Convention.
- 2.6 In addition, necessary modifications have been made as a consequence of Brexit,

¹ Among other things, the Chicago Convention, which was made in 1944, established the ICAO as a specialised agency of the UN to support international cooperation on matters of air transport.

² The AAIB may be called upon to conduct an investigation: where an accident occurs within the Channel Islands (as state of occurrence); and where an accident involving a locally registered aircraft occurs over the high seas (i.e. where there is no state of occurrence) and responsibility falls to the state of registration. The AAIB may also be called upon to assist with an investigation by a third country where the subject of which is a Guernsey-registered aircraft.

as the UK retained certain EU legislation including Regulation 996/2010, which concerns the establishment of common rules in the field of civil aviation safety investigations³.

- 2.7 Whilst the 2018 Regulations, which revoked and replaced the 1996 Regulations, now take account of Annex 13 of the Chicago Convention and Regulation 996/2010, the 1996 Regulations currently extended to the Bailiwick do not.

3 Obligations and international standards

- 3.1 The UK, which is constitutionally responsible for the formal international relations of the Bailiwick (as it is for all Crown Dependencies), is a signatory state of the Chicago Convention; and, for the purposes of ICAO, the Bailiwick is one of the territories for which the UK is responsible.

- 3.2 In addition, the DfT has a Memorandum of Understanding⁴ ('MoU') with the Bailiwicks of Guernsey and Jersey, which states, among other things:

"The Bailiwicks of Jersey and Guernsey will:

- (d) Take steps to ensure or promote, as the case may be, the timely enactment of relevant civil aviation legislation".*

[and]

"The UK will:

Ensure that the Bailiwicks are advised in a timely manner:

- (i) of any proposals to amend, in its application to the UK, civil aviation legislation which has been extended to the Bailiwicks, and*
- (ii) upon request, of any amendments to the UK domestic legislation on which the Bailiwicks' local legislation may be based.*

In accordance with agreed time scales, provide timely advice to the Bailiwicks on any proposed aviation legislation that they may have drafted".

- 3.3 Updating the Bailiwick's legislation as proposed in this Policy Letter would enable the Bailiwick to meet its MoU obligations. The DfT has requested that the Bailiwick make the necessary legislative changes before the ICAO audit

³ European Parliament and Council of the European Union (2010). Regulation (EU) 996/2010 [Online]. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:295:0035:0050:EN:PDF>

⁴ The MoU is reproduced in the Regulatory Framework Document published by the Office of the Director of Civil Aviation, available at: <https://cidca.aero/CHttpHandler.ashx?id=136016&p=0>

anticipated to take place in 2022.

- 3.4 This process is currently being completed by Jersey and has already been completed by the Isle of Man.

4 Legislative changes

- 4.1 Bringing the relevant legislation in the Bailiwick up to date necessitates:

- (i) the making of an Order in Council extending the 2018 Regulations to the Bailiwick; and
- (ii) the making of Ordinances, by each of the three legislative assemblies of the Bailiwick, under the EU Implementation Law, to implement Regulation 996/2010 throughout the Bailiwick.

- 4.2 The proposed Order in Council would:

- (i) extend the 2018 Regulations to the Bailiwick with modifications, and
- (ii) revoke and replace the previous Order in Council which extended the (previous) 1996 Regulations.

- 4.3 The 2018 Regulations, as extended with modifications, would principally:

- (i) designate the AAIB as the safety investigation authority for the Bailiwick of Guernsey (as is the case today under current Bailiwick legislation);
- (ii) state that the sole objective of a safety investigation is the prevention of accidents and incidents (without the apportionment of blame or liability);
- (iii) give effect to the appointment of the UK Chief Inspector of Air Accidents and other Inspectors in the Bailiwick for the purposes of these Regulations,
- (iv) confer powers and duties on the Chief Inspector and other Inspectors in relation to safety investigations (including providing any person whose reputation could be adversely affected by a safety investigation report with relevant information to permit that person to make written representations on the report), and
- (v) implement the relevant requirements of Annex 13 of the Chicago Convention which are not implemented by Regulation 996/2010.

- 4.4 The proposed Ordinance would:

- (i) implement Regulation 996/2010 for the purposes of the Bailiwick, with suitable modifications, which makes provision to ensure high quality civil aviation safety investigations. It also includes rules concerning the timely availability of information relating to all persons and dangerous goods on board an aircraft involved in an accident and aims to improve the assistance to the victims of air accidents and their relatives.

4.5 The proposed legislation would also align the procedures applicable in the Bailiwick with those in the UK and other Crown Dependencies, subject to relevant modifications for the purposes of the Bailiwick.

5 Article 72A of the Reform (Guernsey) Law, 1948, as amended

5.1 Insofar as the extension of the 2018 Regulations involves the making of an Order in Council which has effect in Guernsey, the Policy & Resources Committee has a duty, under Article 72A of the Reform (Guernsey) Law, as amended (the 'Reform Law') to submit the proposal to the States of Deliberation so that they may signify their views on it.

6 Alderney and Sark

6.1 The authorities of Alderney and Sark were consulted on, and supported, the proposed extension, to the Bailiwick, of the 2018 Regulations, and the proposal to implement Regulation 996/2010.

6.2 As explained in paragraph 4.1, for Regulation 996/2010 to be implemented throughout the Bailiwick, the States of Deliberation, the States of Alderney, and the Chief Pleas of Sark must each make Ordinances, under the Implementation Law, to implement Regulation 996/2010 in their own jurisdictions.

7 Compliance with Rule 4

7.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.

7.2 Rule 4(1)(a) concerns whether, and how, Propositions contribute to the objectives and policies of the States of Deliberation. In the Government Work Plan⁵, the States of Deliberation made managing the effects of Brexit and meeting international standards one of their four main priorities for government this political term (Priority 2 of the Government Work Plan). These Propositions, which seek to ensure that the Bailiwick's civil aviation legislation is up to date, align fully with the objective of Priority 2 of the Government Work Plan.

⁵ Billets d'État VI and XV of 2021.

- 7.3 Rule 4(1)(b) concerns what joint working or consultation has taken place with Committees or relevant stakeholders in the preparation of the Propositions. As explained in section 6, above, the authorities of Alderney and Sark were consulted. As these Propositions relate to the responsibilities of both the Policy & Resources Committee and the Committee *for* Economic Development, the two Committees have worked together to jointly prepare the Propositions. The Propositions were prepared with the Office of the Director of Civil Aviation.
- 7.4 In accordance with Rule 4(1)(c), it is confirmed that the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- 7.5 In accordance with Rule 4(1)(d), no additional resources are required to carry these proposals into effect.
- 7.6 In accordance with Rule 4(2), it is confirmed that the Propositions relate to the Committee *for* Economic Development's responsibilities for securing the provision of air links to and from the Bailiwick; and to the duty of the Policy & Resources Committee under Article 72A of the Reform Law. The Propositions are supported unanimously by both Committees.

Yours faithfully

Policy & Resources Committee

P T R Ferbrache
President

H J Soulsby
Vice-President

M A J Helyar
J P Le Tocq
D J Mahoney

Committee *for* Economic Development

N R Inder
President

S J Falla
Vice-President

A Kazantseva-Miller
N G Moakes
S P J Vermeulen