

STATES OF JERSEY



DRAFT AIRCRAFT REGISTRATION AND AIR NAVIGATION (MISCELLANEOUS PROVISIONS) (JERSEY) LAW 201-

**Lodged au Greffe on 8th April 2015
by the Minister for Economic Development**

STATES GREFFE



Jersey

DRAFT AIRCRAFT REGISTRATION AND AIR NAVIGATION (MISCELLANEOUS PROVISIONS) (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Economic Development has made the following statement –

In the view of the Minister for Economic Development, the provisions of the Draft Aircraft Registration and Air Navigation (Miscellaneous Provisions) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator L.J. Farnham**

Minister for Economic Development

Dated: 2nd April 2015

REPORT

Background

The draft Law is the result of further consultation on the Aircraft Registration (Jersey) Law 2014 (the “**Aircraft Registration Law**”) in advance of the launch of the Jersey Aircraft Registry (the “**JAR**”). This further consultation has occurred due to the Government being encouraged to consider having ratification of the Cape Town Convention on International Interests in Mobile Equipment (the “Cape Town Convention”) extended to Jersey. The United Kingdom are currently moving towards imminent ratification of the Cape Town Convention and have asked the Crown Dependencies to confirm their position on this matter to ascertain whether a single method of ratification with the Crown Dependencies is possible.

Consultation has indicated that it appears desirable that the Cape Town Convention is extended to Jersey. There are, however, various options and declarations that can be made in respect of the Convention which have been included in the consultation. It is anticipated that draft Regulations will be lodged for debate by the States Assembly in the very near future.

There is also a miscellaneous amendment to the Air Navigation (Jersey) Law 2014 (the “**Air Navigation Law**”) as a result of the extension of the United Nations Convention on Transnational Organised Crime the “**Palermo Convention**”).

(i) Article 1 of the draft Law – amendment to Article 29 and 30 of the Aircraft Registration Law

The amendments made by *Article 1* of the draft Law to the Aircraft Registration Law, which amends Article 1 and 29 and repeals Article 30, are specifically made after consultation with the financial services industry regarding the registration of aircrafts on the JAR that wish to be registered with foreign law mortgages.

These amendments intend to put the position beyond doubt that recognition and enforcement of an aircraft mortgage or aircraft engine mortgage can occur regardless of whether the “aircraft mortgage” or “aircraft engine mortgage” (as defined in the Aircraft Registration Law) is created under Jersey law or under foreign law.

The revision of the definitions in respect of “aircraft mortgage” and “aircraft engine mortgage” by virtue of Article 1 also seeks to address the issue of the type of interest that is created. The addition of the words “whether or not title in the aircraft is transferred to the mortgagee” clarifies the position that a relevant interest can still be created in the absence of transfer of title. The introduction of these words recognizes that valid “aircraft mortgages” and “aircraft engine mortgages” can be created under the Aircraft Registration Law, but that in the case of some foreign law interests this may not occur by virtue of transfer of title.

In making these amendments, significant consultation has occurred with the financial services industry, the Financial Services Unit of the Chief Minister’s Department, the Economic Development Department, the Law Officers’ Department and the Viscount regarding this issue.

Importantly, the Viscount has confirmed that he is satisfied that the Aircraft Registration Law, as amended by the draft Law, will allow for the recognition and enforcement of foreign law interests that are registered on the JAR.

(ii) Article 1 of the draft Law – amendment to Articles 11, 13, 40, 41, 43, 44, 45, 46, 48, 50, 51 and 52 of the Aircraft Registration Law

Article 1 of the draft Law amends the Aircraft Registration Law to give a mortgagee the option to exercise powers of enforcement in respect of an aircraft mortgage or aircraft engine mortgage by leasing the aircraft or aircraft engine. It also makes provision for a prescribed fee to be payable for the issuance of a new certificate upon a change being made in the Register. Associated amendments are also made to Article 45 of the Aircraft Registration Law with the aim of clarifying the position as to gross proceeds of a lease.

Consideration of this amendment occurred through discussions over ratification of the Cape Town Convention, and it was felt that this optionality was advantageous to those considering using Jersey as a jurisdiction which provides potential creditors with optionality and flexibility.

(iii) Article 1 of the draft Law – amendment to Article 65 of the Aircraft Registration Law

Article 1 of the draft Law amends the Aircraft Registration Law to allow the Minister, by power of an Order, to make provisions for fees in addition to any fees prescribed in the Aircraft Registration Law. These fees will include, but are not limited to, grant issues or renewals of any other certificates, letters, permissions, approvals validations, variations or exemptions.

(iv) Article 1 of the draft Law – amendment to Article 52 of the Aircraft Registration Law

Article 1 of the draft Law also amends the Aircraft Registration Law by repealing Article 52(3) of that Law. This has been done to ensure consistency in relation to the powers of the Viscount across legislation dealing with secured lending and further to consultation with the Viscount.

(v) Article 2 of the draft Law – amendments to the Air Navigation Law

Article 2 of the draft Law makes an amendment which is required due to the recent extension to Jersey of the Palermo Convention. At the time the Convention was extended, Jersey did not have an active Aircraft Registry. However, when the Aircraft Registration Law is brought into force, the requirements of Article 15 of the Palermo Convention would be applicable in the event that certain offences, such as may involve links to organised crime, money laundering or corruption, might be committed on any aircraft registered in Jersey, or in respect of an offences committed on a foreign-registered aircraft by a British national resident in Jersey.

The Convention requires that there *is a power* to provide the courts in Jersey with the jurisdiction to deal with –

- (a) an offence committed by a person whilst on board an aircraft registered in Jersey and at the time the offence is committed the aircraft is outside Jersey; or
- (b) an offence committed by a person whilst on board an aircraft registered in a country other than Jersey and that person is a British citizen ordinarily resident in Jersey and is not a national of the country in which the aircraft is registered.

Article 2 of the draft Law makes these amendments by inserting a new Article 173A into the Air Navigation Law.

Summary

As the draft Law amends 2 Laws which are the separate responsibilities of the Minister for Economic Development (in respect of the Aircraft Registration Law) and the Minister for External Relations (in respect of the Air Navigation Law), and that the matters in question relate to financial services (for which the Chief Minister has responsibility) the draft Law has been formed in consultation with the Chief Minister's Department and the Ministry of External Relations.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of the draft Law.

Human Rights

The notes on the human rights aspects of the draft Law in the Appendix have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

APPENDIX TO REPORT

Human Rights Note on the Draft Aircraft Registration and Air Navigation (Miscellaneous Provisions) (Jersey) Law 201-

These notes have been prepared in respect of the Draft Aircraft Registration and Air Navigation (Miscellaneous Provisions) (Jersey) Law 201- by the Law Officers' Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers' opinion, the draft Law is compatible with the European Convention on Human Rights ("ECHR") as implemented under the Human Rights (Jersey) Law 2000.

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The draft Law is intended to amend 2 Laws: the Aircraft Registration (Jersey) Law 2014 and the Air Navigation (Jersey) Law 2014, the provisions of which are considered compatible with the ECHR. The draft Law potentially engages 2 Articles of the ECHR: Article 5, the right to liberty and security; and Article 1 of the first Protocol (A1P1), the protection of property.

Article 5 of the ECHR is engaged because the draft Law provides the courts in Jersey with jurisdiction to investigate and prosecute an offence committed by a person whilst on board an aircraft registered in Jersey where, at the time, the aircraft is outside Jersey; and where an offence is committed by a person whilst on board an aircraft registered in another country and that person is a British citizen ordinarily resident in Jersey, and not a national of the country in which the aircraft is registered. However, Article 5 of the ECHR allows for a person to be deprived of their liberty if certain circumstances apply, which includes following a person's conviction for an offence in a competent court. The Jersey courts are considered to be competent courts for the purposes of the ECHR, and the procedural requirements of Article 5 ECHR are provided for in other domestic legislation. Therefore, the draft Law is considered compatible with Article 5.

The draft Law also potentially engages A1P1, as it provides for the deprivation of property rights in an aircraft or aircraft engine in the event of a mortgagor defaulting on their mortgage agreement through a mortgagee being able to lease the asset. However, when a mortgagor is seeking to enforce a mortgage agreement, it is not considered that there is sufficient involvement of a public authority for A1P1 to be engaged, as the deprivation of property has been provided for within a private contractual arrangement. Therefore, the draft Law is compatible with A1P1.

No further ECHR rights are engaged. Therefore, it is considered that the draft is compatible with the ECHR.

Explanatory Note

This Law amends the Aircraft Registration (Jersey) Law 2014 and the Air Navigation (Jersey) Law 2014.

Article 1 amends Articles 1 and 29 of the Aircraft Registration (Jersey) Law 2014 and repeals Article 30 of that Law to remove the restriction that an aircraft mortgage or aircraft engine mortgage must be in the nature of a hypothec and to clarify that an aircraft mortgage or aircraft engine mortgage may be created in Jersey or elsewhere.

Article 1 also amends the Aircraft Registration (Jersey) Law 2014 to –

- (a) give a mortgagee the option to exercise powers of enforcement in respect of an aircraft mortgage or aircraft engine mortgage by leasing the aircraft or aircraft engine;
- (b) make provision for a prescribed fee to be payable for the issuance of a new certificate upon a change being made in the Register;
- (c) to give the Minister the power by Order to make provision for fees to be payable, in addition to any fees prescribed under this Law, rather than just for fees payable to the Registrar in respect of applications; and
- (d) remove the provision for the Royal Court to vest the rights of a mortgagee in an aircraft or aircraft engine in the Viscount where the property of the mortgagor has been declared *en désastre*.

Article 2 amends the Air Navigation (Jersey) Law 2014 to provide the courts in Jersey with the jurisdiction to deal with –

- (a) an offence committed by a person whilst on board an aircraft registered in Jersey and at the time the offence is committed the aircraft is outside Jersey; or
- (b) an offence committed by a person whilst on board an aircraft registered in a country other than Jersey and that person is a British citizen ordinarily resident in Jersey and is not a national of the country in which the aircraft is registered.

For the purpose of investigating and prosecuting the offence it shall be assumed that the offence was committed in St. Helier.

Article 3 provides for the citation of this Law and provides for it to come into force on the date of coming into force of the Aircraft (Registration) (Jersey) Law 2014.



Jersey

DRAFT AIRCRAFT REGISTRATION AND AIR NAVIGATION (MISCELLANEOUS PROVISIONS) (JERSEY) LAW 201-

A LAW to amend the Aircraft Registration (Jersey) Law 2014 and the Air Navigation (Jersey) Law 2014.

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Amendment of the Aircraft Registration (Jersey) Law 2014

In the Aircraft Registration (Jersey) Law 2014¹ –

- (a) in Article 1 –
 - (i) in the definition “aircraft mortgage” after the word “obligation” there shall be inserted the words “(whether or not title in the aircraft is transferred to the mortgagee)”,
 - (ii) in the definition “aircraft engine mortgage” after the word “obligation” there shall be inserted the words “(whether or not title in the aircraft engine is transferred to the mortgagee)”;
- (b) in Article 11(1)(b) for the word “appropriate” there shall be substituted the word “prescribed”;
- (c) in Article 13(2) after the words “after that,” there shall be inserted the words “and on payment of the prescribed fee by the relevant person”;
- (d) in Article 29(1), the words “in the nature of a hypothec” shall be deleted and after the word “created” there shall be inserted the words “(in Jersey or elsewhere)”;
- (e) Article 30 shall be repealed;
- (f) in Article 40(2)(b) after the word “selling” there shall be inserted the words “or leasing”;

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- (g) in Article 41 –
- (i) in the heading for the words “appropriation or sale” there shall be substituted the words “appropriation, sale or lease”,
 - (ii) in paragraph (2) –
 - (A) after the word “selling” there shall be inserted the words “or leasing” and after the word “sell” there shall be inserted the words “or lease”,
 - (B) in sub-paragraph (b) after the word “sale” there shall be inserted the words “or lease”;
- (h) in Article 43 –
- (i) in paragraph (2) after the word “sells” there shall be inserted the words “or leases” and after the word “sale” wherever it occurs there shall be inserted the words “or lease”,
 - (ii) in paragraph (3)(b) for the words “appropriation or sale” there shall be substituted the words “appropriation, sale or lease”;
- (i) in Article 44 –
- (i) for the words “appropriation or sale” where they appear in the heading and in that Article there shall be substituted the words “appropriation, sale or lease”,
 - (ii) for the words “sold under Article 40(2)(b)” there shall be substituted the words “sold or leased under Article 40(2)(b)”,
 - (iii) for the words “appropriated or sold” there shall be substituted the words “appropriated, sold or leased”;
- (j) in Article 45 –
- (i) for the words “sold under Article 40(2)(b)” there shall be substituted the words “sold or leased under Article 40(2)(b)”,
 - (ii) for the words “appropriated or sold” there shall be substituted the words “appropriated, sold or leased”,
 - (iii) for sub-paragraph (a) there shall be substituted the following sub-paragraph –
 - “(a) in the case of –
 - (i) an appropriation, the gross value realized by virtue of the appropriation,
 - (ii) a sale, the amount of the gross proceeds of the sale, or
 - (iii) a lease, the amount of the gross proceeds of the lease which, in accordance with the lease agreement, is expected over the term of the lease and the residual value that aircraft or aircraft engine is expected to have on expiry of the lease;”,
 - (iv) in sub-paragraph (b) for the words “appropriation or sale” there shall be substituted the words “appropriation, sale or lease”,
 - (v) in sub-paragraph (d) after the word “sale” there shall be inserted the words “or lease”;
- (k) in Article 46 –

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- (i) in paragraph (1) –
 - (A) after the word “sold” there shall be inserted the words “or leased”,
 - (B) in sub-paragraph (a) after the word “sale” there shall be inserted the words “or lease”,
 - (ii) in paragraph (2) after the word “sale” there shall be inserted the words “or lease”;
 - (l) in Article 48 –
 - (i) in paragraph (1)(b) after the word “sold” there shall be inserted the words “or leased” and after the word “sale” there shall be inserted the words “or lease”,
 - (ii) in paragraph (3) –
 - (A) after the word “sale” wherever it occurs in that paragraph there shall be inserted the words “or lease”,
 - (B) after the word “selling” there shall be inserted the words “or leasing”;
 - (m) in Article 50 –
 - (i) in the heading after the word “purchaser” there shall be inserted the words “or lessor”,
 - (ii) in paragraph (1) after the word “purchaser” there shall be inserted the words “or lessor” and for the words “appropriated or sold” there shall be substituted the words “appropriated, sold or leased”,
 - (iii) in paragraph (2)(b) for the words “appropriating or selling” there shall be substituted the words “appropriating, selling or leasing”;
 - (n) in Article 51(1) after the word “sell” there shall be inserted the words “or lease”;
 - (o) in Article 52 –
 - (i) in paragraph (1)(a) after the word “sale” there shall be inserted the words “or lease”,
 - (ii) in paragraph (2) for the words “appropriate or sell” there shall be substituted the words “appropriate, sell or lease”,
 - (iii) paragraph (3) shall be deleted;
 - (p) for Article 65(g) there shall be substituted the following subparagraph –
 - “(g) for fees to be payable, in addition to any fees prescribed under this Law;”.

2 Amendment of the Air Navigation (Jersey) Law 2014

After Article 173 of the Air Navigation (Jersey) Law 2014² there shall be inserted the following Article –

“173A Jurisdiction in case of offences on board aircraft

- (1) This Article applies where a person is charged with having committed an offence –
 - (a) on board an aircraft registered in Jersey and at the time the offence is committed the aircraft is outside Jersey; or
 - (b) on board an aircraft registered in a country other than Jersey and that person is a British citizen ordinarily resident in Jersey and is not a national of the country in which the aircraft is registered,and that person is present in Jersey.
- (2) Where this Article applies a court in Jersey has jurisdiction to deal with the offence referred to in paragraph (1)(a) or (b).
- (3) For the purpose of investigating and prosecuting the offence it shall be assumed that the offence was committed in St. Helier.
- (4) In paragraphs (1) ‘charged with having committed an offence’ includes being accused of having committed the offence.”.

3 Citation and commencement

This Law may be cited as the Aircraft Registration and Air Navigation (Miscellaneous Provisions) (Jersey) Law 201- and shall come into force on the date of coming into force of the Aircraft (Registration) (Jersey) Law 2014.

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- ¹ *L.23/2014*
² *chapter 03.250*