

STATES OF JERSEY



Jersey

DRAFT CIVIL AVIATION (AMENDMENT) (JERSEY) LAW 202-

Lodged au Greffe on 9th June 2021
by the Minister for External Relations and Financial Services
Earliest date for debate: 14th September 2021

STATES GREFFE



Jersey

DRAFT CIVIL AVIATION (AMENDMENT) (JERSEY) LAW 202-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for External Relations and Financial Services has made the following statement –

In the view of the Minister for External Relations and Financial Services, the provisions of the Draft Civil Aviation (Amendment) (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**

Minister for External Relations and Financial Services

Dated: 9th June 2021

REPORT

1. Background

- 1.1 Jersey currently implements its international obligations in respect of the investigation of aviation accidents and investigations under the [Civil Aviation \(Investigation of Air Accidents and Incidents\) \(Jersey\) Order 2000](#) (the “2000 Order”). The last legislative change was made in 2014 when Regulations under the [Air Navigation \(Jersey\) Law 2014](#) applied the provisions of the 2000 Order for investigation of accidents and incidents involving Jersey aircraft wherever they are occur.
- 1.2 The Island’s legislation in this area needs to be updated to reflect international standards set out in the current version of Annex 13 of the Convention on International Civil Aviation (the “Chicago Convention”) relating to Aircraft Accident and Incident Investigation.
- 1.3 Rather than updating the Island’s legislation by amendment to the 2000 Order by Order in Council, the Minister for External Relations and Financial Services (the “Minister”) has decided to take this opportunity to propose an amendment to the [Civil Aviation \(Jersey\) Law 2008](#) (the “Law”) to introduce regulation making powers, which would enable Regulations to be made implementing the Island’s international obligations in respect of the Chicago Convention.
- 1.4 As the international standards in the area of civil aviation inevitably develop in the future, the amendment to the Law that would be made by the Civil Aviation (Jersey) (Amendment) Law 202- (the “draft Amendment Law”) would enable Jersey to keep pace more quickly and easily with these changes.
- 1.5 If the States Assembly approves the draft Amendment Law, the Minister will in due course bring forward to the States Assembly for its consideration draft Regulations made under the Law to implement Annex 13 of the Chicago Convention. The intention would be to bring the draft Regulations into force in parallel with the draft Amendment Law.

2. Legislative provisions

- 2.1 The draft Amendment Law inserts a new Article 19A to the Law, which would give the States powers to make Regulations about the investigation of air accidents and serious incidents in Jersey, and to give effect to the Chicago Convention and any amendment to it.
- 2.2 It also amends Article 21 of the Law to enable Regulations to be made to give effect to international agreements relating to civil aviation without the need to further amend the 2008 Law.
- 2.3 The draft Amendment Law would also amend the Law:
 - to provide that the Civil Aviation (Investigation of Air Accidents and Incidents) (Jersey) Order 2000 no longer has effect;
 - to clarify Article 148(2) of the Air Navigation (Jersey) Law 2014 (the “Air Navigation Law”), which prohibits a member of the crew of an aircraft being drunk or under the influence of drugs, and;
 - to add a definition for the expression “psychoactive substances” used in Article 148 of the Air Navigation Law. The definition of psychoactive

substances is the same as that used by the International Civil Aviation Organisation.

3. Coming into force

- 3.1. This Law will come into force on a day to be specified by the Minister by Order.

4. Financial and manpower implications

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

5. Human Rights

- 5.1 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 Notes on the Draft Civil Aviation (Amendment) (Jersey) Law 202-**

These Notes have been prepared in respect of the Draft Civil Aviation (Amendment) (Jersey) Law 202- (the “**draft Law**”) 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**”).

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

Article 1 of the draft Law will amend the Civil Aviation (Jersey) Law 2008 (the “2008 Law”) to enable the States Assembly, by Regulations, to make any provision that may be necessary or expedient to give effect to the Chicago Convention and to make general provision for the investigation of air accidents and investigation. Regulations would, therefore, replace the regime under the Civil Aviation (Investigation of Air Accidents and Incidents) (Jersey) Order 2000.

The States Assembly already has the power under Article 21 of the 2008 Law to make Regulations to amend the 2008 Law itself so as to give effect to an international agreement instrument or obligation relating to civil aviation by which Jersey is bound. Article 2 of the draft Law will amend Article 21 of the 2008 Law so that the States Assembly may make Regulations making provision considered necessary or expedient to give effect to such international agreement instrument or obligation without amending the 2008 Law.

Taking these powers will not itself have any effect on ECHR rights, as the rights and obligations of Islanders will only be affected to the extent that this is provided for in Regulations. While the exercise of the powers in Articles 1 and 2 of the draft Law may engage ECHR rights, as might other Regulation-making powers, issues of ECHR compatibility can be considered in the usual way, as the Regulations are developed.

It will continue to be the case that, when exercising the Regulation-making power, the States Assembly will be bound by Article 7(4)(a) of the Human Rights (Jersey) Law 2000, which makes it unlawful for the Assembly to exercise a power to make Regulations in a manner that is incompatible with a Convention right.

The introduction by Article 3 of the draft Law of an express definition in the Air Navigation (Jersey) Law 2014 of “psychoactive substance” to follow the international definition does not engage any ECHR rights. Article 3 of the draft Law also provides a slight amendment to Article 148 of the 2014 Law regarding persons who are aircraft crew or being carried by an aircraft for the purpose of being crew who are required not to be under the influence of alcohol, drugs or psychoactive substances including medicine. This is an existing offence, therefore, in Jersey law and the amendment by the draft Law is simply to clarify the wording that a person must not be under the influence of a drug or substance so as to impair that person’s capacity to act as a crew member or so as to create a risk to that person or anyone else. This provision may engage with an individual’s rights to a private life (Article 8 ECHR) and to the enjoyment of his or her possessions (Article 1 of the First Protocol to the ECHR) by requiring him or her to desist from consumption of alcohol, drugs, psychoactive substances including medicines where the individual is to act as a crew member or be carried on an aircraft

to be a crew member. This provision is, however, entirely justifiable as a necessary and proportionate measure in the pursuit of the legitimate aim of being concerned for the safety and security of aircraft and of human life aboard aircraft and on the ground by ensuring that aircraft personnel who have responsibilities for safety and security are not impaired in the performance of their duties and do not create a risk for themselves or others.

EXPLANATORY NOTE

This Law if passed will provide a power for the States to make Regulations about the investigation of air accidents and serious incidents in Jersey. It also clarifies the effect of Article 148 of the Air Navigation (Jersey) Law 2014 and removes the legal effect in Jersey of the Civil Aviation (Investigation of Air Accidents and Incidents) (Jersey) Order 2000.

Article 1 inserts a new Article 19A to the Civil Aviation (Jersey) Law 2008 (the “2008 Law”). The purpose of the new provision is to give the States power to make Regulations relating to the investigation of air accidents and serious incidents which occur in Jersey or its air space or over its territorial waters. In the main the regulations when made will give effect to provisions of the Chicago Convention on international aviation which provides an international framework for the conduct of civil aviation and related matters.

Article 2 amends Article 21 of the 2008 Law so as to enable Regulations to be made to give effect to international agreements relating to civil aviation without the need to further amend the 2008 Law.

Article 3 clarifies Article 148(2) of the Air Navigation (Jersey) Law 2014 which prohibits a member of the crew of an aircraft being drunk or under the influence of drugs. It adds to Article 1 of the Law a definition of the expression “psychoactive substance” used in Article 148 and clarifies the wording of paragraph (2) of Article 148. The definition of psychoactive substance is the same as that used by the International Civil Aviation Organisation.

Article 4 provides that the Civil Aviation (Investigation of Air Accidents and Incidents) (Jersey) Order 2000 has no effect in relation to Jersey or its air space or over its territorial waters. Regulations made under the new Article 19A of the 2008 Law are intended to replace its provisions in relation to investigation of accidents relating to aircraft.

Article 5 gives the title by which the Law may be cited and provides for the Law to come into force on a date specified by Order made by the Minister for External Relations and Financial Services.



Jersey

DRAFT CIVIL AVIATION (AMENDMENT) (JERSEY) LAW 202-

A LAW to amend the Civil Aviation (Jersey) Law 2008 and the Air Navigation (Jersey) Law 2014, and for connected purposes.

<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>
<i>Coming into force</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 Part 4 of Civil Aviation (Jersey) Law 2008 amended

In the Civil Aviation (Jersey) Law 2008¹ –

- (a) in the heading of Part 4, for “ORDERS” there is substituted “AND AIR ACCIDENT INVESTIGATION”;
- (b) after Article 19 (Air Navigation Orders) there is inserted –

“19A Air accident and incident investigation

- (1) The States may, by Regulations, make provision in relation to the investigation of air accidents and incidents.
- (2) The Regulations may contain provisions reasonably necessary or expedient –
 - (a) to give effect to the Chicago Convention and any amendment of it; and
 - (b) generally to make provision for the investigation of air accidents and incidents.
- (3) The Regulations may provide that –
 - (a) a contravention of the Regulations is an offence;
 - (b) a person who commits the offence is liable to imprisonment for a term of 2 years and a fine.”.

2 Article 21 of Civil Aviation (Jersey) Law 2008 amended

In Article 21 (implementation of international obligations) of the Civil Aviation (Jersey) Law 2008² after “this Law” there is inserted “or make such other provision as they consider necessary or expedient”.

3 Air Navigation (Jersey) Law 2014 amended

- (1) In Article 1(1) (interpretation) of the Air Navigation (Jersey) Law 2014³, after the definition “private flight” there is inserted –
 - “psychoactive substance” means alcohol, opioids, cannabinoids, sedatives and hypnotics, cocaine, other psychostimulants, hallucinogens and volatile solvents, but does not include coffee or tobacco;”.
- (2) In Article 148(2) (drunkenness in aircraft) of that Law, for “render that person’s capacity so to act or so as to create a risk to that person or any other person” there is substituted “–
 - (a) impair that person’s capacity so to act; or
 - (b) create a risk to that or any other person.”.

4 Civil Aviation (Investigation of Air Accidents and Incidents) (Jersey) Order 2000 has no effect in relation to Jersey

- (1) The Civil Aviation (Investigation of Air Accidents and Incidents) (Jersey) Order 2000⁴ has no effect in relation to Jersey.
- (2) In this Article, “Jersey” has the same meaning as in the Civil Aviation (Jersey) Law 2008⁵.

5 Citation and commencement

- (1) This Law may be cited as the Civil Aviation (Amendment) (Jersey) Law 202- .
- (2) This Law comes into force on a day to be specified by the Minister for External Relations and Financial Services by Order.

ENDNOTES

Table of Endnote References

1	<i>chapter 03.530</i>
2	<i>chapter 03.530</i>
3	<i>chapter 03.250</i>
4	<i>chapter 03.525</i>
5	<i>chapter 03.530</i>