

STATES OF JERSEY



DRAFT STATES OF JERSEY (TRANSFER OF FUNCTIONS No. 5) (ECONOMIC DEVELOPMENT TO CHIEF MINISTER) (JERSEY) REGULATIONS 201-

Lodged au Greffe on 23rd December 2011
by the Chief Minister

STATES GREFFE



Jersey

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REPORT

Summary

This report outlines the arrangements for the establishment of an independent regulator for aviation security by the transfer of responsibility for this function from the Minister for Economic Development to the Chief Minister.

Present situation

Duties and powers for ensuring aviation security are currently set out under the Aviation Security (Jersey) Order 1993, which extends to Jersey with appropriate adaptations and modifications the provisions of the UK Aviation Security Act 1982.

Under this Order, as construed in accordance with the States of Jersey (Amendments and Construction Provisions No. 10) (Jersey) Regulations 2005, authority for ensuring aviation security standards are met currently rests with the Minister for Economic Development. At present the relevant arrangements are implemented and compliance monitored by the Jersey airport administration.

Reasons for establishing an independent regulator for aviation security

The *independent* regulation of aviation security is a fundamental requirement of the International Civil Aviation Organisation. Operators (aerodromes, airlines and other regulated service providers) are required to have in place effective security management systems, whilst there should be an independent body to monitor their compliance with international standards and provide regulatory oversight.

Standards for aviation security have been set by the European Union under Regulation (EC) No. 300/2008 on common rules in the field of civil aviation security, together with detailed implementing rules which require the establishment of a regulatory function for aviation security. It is essential for the unhindered movement of passengers and cargo between the Channel Islands and UK/Europe that Jersey meets these standards.

Jersey and the UK Department for Transport have agreed an Aviation Security memorandum of understanding which sets out their respective obligations, including a

commitment by Jersey Airport to comply with the standards of the UK National Aviation Security Programme. Compliance with the UK programme requires the establishment of an independent aviation security regulator for Jersey.

The current arrangements, by which Jersey airport acts as both the regulated operator and has responsibility for regulating its own compliance, may lead to a potential conflict of interests and clearly fails to satisfy international standards for independent and impartial regulation.

Transfer of functions

To establish independence from the Airport operator, the responsibility for regulation of aviation security for Jersey would be established under the Chief Minister's Department, in line with the responsibility for monitoring compliance with the relevant international conventions (e.g. the Convention on International Civil Aviation, 1944).

Those *regulatory* elements that are currently managed within Jersey Airport would then be assigned to an independent regulator – the Channel Islands Director of Civil Aviation – who is responsible to the Chief Minister (although *operational* implementation would remain the responsibility of Jersey airport, airlines and other regulated services).

Manpower and resources

There are no direct manpower or resource implications arising from the adoption of these draft Regulations.

Conclusion

The establishment of an independent aviation security regulator under the Chief Minister has the following benefits –

- Creation of a designated regulatory entity which meets the requirements of international organisations.
- Effective separation of operator and regulator interests through separate Ministerial accountabilities.
- Simplified and clearer definition of responsibilities for the airport operator, airlines and other regulated service providers.
- Clearer accountability of government for ensuring the security of the travelling public.

Aviation security is a matter of public interest in view of the potential risk from terrorist activity. The public of Jersey will be reassured that their aviation security is treated as a priority by government, and there are structures in place to ensure their protection in compliance with international standards.

The Draft States of Jersey (Transfer of Functions No. 5) (Economic Development to Chief Minister) (Jersey) Regulations 201- will give effect to the independence of the aviation security regulator from the regulated airport operations in Jersey.

Explanatory Note

These Regulations transfer the functions of the Minister for Economic Development under the Aviation Security Act 1982, as extended to Jersey by the Aviation Security (Jersey) Order 1993 (the “1982 Act”), to the Chief Minister.

Regulation 1, accordingly, defines the Minister for Economic Development as the “transferring Minister” and the Chief Minister as the “receiving Minister”.

Regulation 2 effects the transfer of the functions to the Chief Minister. If, at the time of the transfer, the Minister for Economic Development has incurred any liabilities or acquired any rights in connection with the functions, those liabilities and rights also transfer to the Chief Minister, irrespective of any restriction on assignment or transfer imposed by any contract or other instrument relating to the liability or right, and the transfer does not constitute a breach of any such contract or instrument.

The 1982 Act, being an Act of the United Kingdom, cannot be directly amended by a Jersey enactment and *Regulation 3*, instead, makes provision as to its construction.

At the time of the move to Ministerial government in 2005, the States of Jersey (Amendment and Construction Provisions No. 10) (Jersey) Regulations 2005 (the “2005 Regulations”) provided for all references in the 1982 Act to the Harbours and Airport Committee to be construed as references to the Minister for Economic Development.

Regulation 3 now provides for references to the Harbours and Airport Committee in the 1982 Act to be construed, instead, as references to the Chief Minister. There are two exceptions to this rule for construction of the 1982 Act, where a reference to the Committee shall continue to be construed as reference to the Minister for Economic Development.

The first exception reflects the fact that the Minister for Economic Development shall continue to be responsible for air navigation installations. It should be noted that, following the transfer of functions, the Chief Minister may, under the 1982 Act, give directions requiring the Airport Director to take measures for the protection of those installations or the airport against acts of violence.

The second exception is in the definition “Airport Director”, to reflect the fact that the Minister for Economic Development shall continue to appoint that post-holder under the Aerodromes (Administration) (Jersey) Law 1952.

Regulation 4 amends the 2008 Regulations so as to remove the rule for construction of the 1982 Act, which is superseded by the rule in *Regulation 3*.

Regulation 5 provides for the continuity of any appointment, approval or other decision made, or authority to do any thing given, by the Minister for Economic Development in exercise of the functions under the 1982 Act that are transferred by these Regulations. In the event that any legal proceedings are pending at the time these Regulations come into force to which the Minister for Economic Development is a party in his capacity as functionary under the 1982 Act, the Chief Minister is substituted as a party to the proceedings.

Regulation 6 provides for the citation of these Regulations and their commencement on the day after the day they are made.



Jersey

**DRAFT STATES OF JERSEY (TRANSFER OF
FUNCTIONS No. 5) (ECONOMIC DEVELOPMENT
TO CHIEF MINISTER) (JERSEY)
REGULATIONS 201-**

Arrangement

Regulation

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Jersey

DRAFT STATES OF JERSEY (TRANSFER OF FUNCTIONS No. 5) (ECONOMIC DEVELOPMENT TO CHIEF MINISTER) (JERSEY) REGULATIONS 201-

Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES, in pursuance of Articles 29 and 50 of the States of Jersey Law 2005¹, have made the following Regulations –

1 Interpretation

In these Regulations –

“receiving Minister” means the Chief Minister;

“transferring Minister” means the Minister for Economic Development.

2 Functions and connected rights and liabilities transferred

- (1) There shall be transferred to the receiving Minister the functions of the transferring Minister under the Aviation Security Act 1982, as extended to Jersey by the Aviation Security (Jersey) Order 1993².
- (2) All rights enjoyed and liabilities incurred by the transferring Minister in connection with the functions transferred by paragraph (1) shall be transferred to the receiving Minister and become the rights and liabilities of the receiving Minister.
- (3) A provision of a contract or other instrument that specifies that a right or liability of the transferring Minister is incapable of transfer shall, to the extent that it applies to a right or liability transferred by paragraph (2), be of no effect.
- (4) The operation of paragraph (2) shall not be regarded –
 - (a) as a breach of contract or confidence or otherwise as a civil wrong;
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of rights or liabilities; or

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- (c) as giving rise to any remedy by a party to a contract or other instrument, as an event of default under any contract or other instrument or as causing or permitting the termination of any contract or other instrument, or of any obligation or relationship.

3 Aviation Security Act 1982, as extended to Jersey, construed

In the Aviation Security Act 1982, as extended to Jersey with the exceptions modifications and adaptations listed in Schedule 1 to the Aviation Security (Jersey) Order 1993 –

- (a) the references to the Committee in section 21(6)(a) and in the definition “Airport Director” in section 38(1) shall continue to be construed as references to the Minister for Economic Development; and
- (b) all other references to the Committee shall be construed as references to the Chief Minister.

4 States of Jersey (Amendments and Construction Provisions No. 10) (Jersey) Regulations 2005 amended

In Schedule 1 to the States of Jersey (Amendments and Construction Provisions No. 10) (Jersey) Regulations 2005³, the words “5. Aviation Security (Jersey) Order 1993” shall be deleted.

5 Transitional provisions

- (1) The transfer effected by Regulation 2 shall not prejudice the operation of any appointment, approval, authorization, consent, delegation, determination, direction, instruction, requirement or other thing that is, before these Regulations come into force, made, given or done by the transferring Minister in relation to the functions, rights and liabilities so transferred, but such matter shall, if then in force, continue in force to the like extent and subject to the like provisions as if it had been duly made, given or done by the receiving Minister.
- (2) Anything commenced before these Regulations comes into force by or under the authority of the transferring Minister may, so far as it relates to any of the functions, rights and liabilities transferred by Regulation 2, be carried on and completed by or under the authority of the receiving Minister.
- (3) Where, at the coming into force of these Regulations, any legal proceeding is pending to which the transferring Minister is a party and the proceeding has reference to any of the functions, rights and liabilities transferred by Regulation 2, the receiving Minister shall be substituted in the proceeding for the transferring Minister and the proceeding shall not abate by reason of the substitution.

6 Citation and commencement

These Regulations may be cited as the States of Jersey (Transfer of Functions No. 5) (Economic Development to Chief Minister) (Jersey) Regulations 201- and shall come into force on the day after the day they are made.

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- ¹ *chapter 16.800*
² *chapter 03.385*
³ *R&O.50/2005*