

**DRAFT AIR TRANSPORT PERMITS (AMENDMENT) (JERSEY) LAW 200-**

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by the Jersey Transport Authority**

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## **European Convention on Human Rights**

The President of the Jersey Transport Authority has made the following statement -

In the view of the Jersey Transport Authority the provisions of the Draft Air Transport Permits (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Deputy A.J. Layzell of St. Brelade**

## REPORT

The Air Transport Permits (Jersey) Law 1998 provides for the licensing of air transport services between the United Kingdom and the Island, and between the other Channel Islands and the Island. The prime purpose of the Law was to give the Insular Authorities the ability to take action to safeguard in particular the inter-Island air services, and the year round scheduled services between the Island and the United Kingdom, at a time when the United Kingdom licensing authority, the Civil Aviation Authority, was pursuing an open skies policy in common with the European Union generally.

Licensing powers were considered necessary because the Civil Aviation Authority was prepared to grant licences to airlines operating from the United Kingdom to Guernsey and on to Jersey and back to the United Kingdom permitting those airlines to pick up passengers between Guernsey and Jersey or vice versa. The Jersey Transport Authority of the day was concerned that the diversion of traffic to such airlines would make it difficult if not impossible for the established operator, Aurigny Air Services, to maintain the frequency of air service upon which the many links between the Islands depend.

When the licensing powers were taken it was agreed that the Jersey Transport Authority should be concerned solely with the action needed to safeguard the interests of all air transport users (i.e. Island residents, the business community, those visiting families and friends in the Island, and tourists). There was no wish to duplicate the assessment that continues to be made by the Civil Aviation Authority into the safety and financial soundness of individual airlines. Accordingly the Air Transport Permits (Jersey) Law 1998 provided that a permit could only be issued by the Jersey Transport Authority in respect of a flight which had been authorised by a Civil Aviation Authority Air Transport Licence or Route Licence, or which had the permission of the Secretary of State.

The Civil Aviation Authority has decided to make some changes to the present arrangements so that in future European Community carriers will no longer require a route licence for services between the United Kingdom and the Channel Islands. At the same time a new form of air transport licence will be issued to those airlines that presently are required to hold such a licence. The existing Law needs to be amended to take these changes into account.

The changes to the Law proposed are as follows -

1. The present reference to the need to hold a route licence is to be replaced by a reference to an operating licence.  
  
All European Community air carriers are required to hold an operating licence unless they are specifically exempt from doing so.
2. The present provision whereby a carrier's permit is suspended or revoked upon the suspension or revocation of a carrier's route licence needs to be amended to refer to an operating licence.
3. Under the present provisions of the Law the withdrawal of the existing air transport licence and its replacement by the proposed new form of air transport licence would have led to the suspension or revocation of the existing air transport permit. The proposed amendment to the existing Law avoids this by stating that suspension or revocation should not apply where the air transport licence is revoked by reason only of its replacement with a further air transport licence which authorises the flights to which the permit relates.
4. With the removal of the requirement to hold a route licence the position would be that, as all Community air carriers are required to hold an operating licence unless they are specifically exempt from doing so, a significant number of operations which had not been the intention of the Jersey Transport Authority to make subject to permit would be brought into the scope of the Law. It has therefore been necessary with the change in the Law to set out in detail in the Schedule a description of the flights by Community air carriers which are to be excepted from the requirement for a permit.
5. To facilitate future changes the opportunity is being taken with the amendment to the Law to provide that in future the States will be able to make regulations to amend the principal Law for the purpose of making changes consequential upon any change in the licensing regimes in the United Kingdom and throughout the European Community. In addition the exceptions in the Schedule will be able to be amended by Order.

The Jersey Transport Authority is of the opinion that for the time being it is still in the interests of the Island, and in particular in the interests of all the users of air services, that the air transport services between the United Kingdom and the Island, and between other of the Channel Islands and the Island, should remain subject to permit. In due course no doubt the Jersey Competition Regulatory Authority will have a view on the exercising of this licensing power. In the meantime a need to be able to safeguard the inter-Island services, and the year round scheduled services, remains.

The Jersey Transport Authority would emphasise that the licensing powers have not been used to frustrate the arrival in the Island of so called low cost airlines. The possibility of licences being granted in the future to the low cost airlines will continue to depend on how far the States is prepared to go in meeting their requests in respect of lower airport charges. The Jersey Transport Authority believes that this is an issue that calls for a States debate on how the Airport should be funded and the Jersey Transport Authority has sought the assurance of the Harbours and Airport Committee that such a debate will take place before the end of September against the background of the OXERA report on Airport funding.

There are no financial or manpower implications arising from consequences to this amendment and the changes are compliant with the proposed Human Rights Law.

### **European Convention on Human Rights**

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Committee in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 18th June 2002 the Jersey Transport Authority made the following statement before Second Reading of this projet in the States Assembly -

In the view of the Jersey Transport Authority the provisions of the Draft Air Transport Permits (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

## **Explanatory Note**

The purpose of this draft Law is to ensure that, when flights to and from the Island by Community air carriers cease to require a route licence from the Civil Aviation Authority, they shall continue to require a permit from the Jersey Transport Authority.

*Article 1* is the interpretation provision.

*Article 2* amends Article 1 of the Air Transport Permits (Jersey) Law 1998 (the “principal Law”) to add and remove definitions.

*Article 3* amends Article 2 of the principal Law so as to preserve the existing categories of flights for which a permit from the Jersey Transport Authority is required, notwithstanding that a flight by a Community air carrier will no longer require a route licence from the Civil Aviation Authority.

*Article 4* amends Article 6 of the principal Law so that it is a precondition of the grant of a permit to a Community air carrier that the carrier has an operating licence. Currently, the precondition is that the carrier has a route licence.

*Article 5* amends Article 8 of the principal Law with the effect that a Community air carrier’s permit is automatically suspended or revoked at any time when the carrier’s operating licence is suspended or revoked. Currently, such a carrier’s permit is suspended or revoked upon the suspension or revocation of the carrier’s route licence. Secondly, it provides that where an air transport licence is revoked and immediately replaced with a new air transport licence, the permit for the flights continues in force.

*Article 6* amends the principal Law so as to enable the States to make Regulations to amend the principal Law in the future, for the purpose of making changes consequential upon any change in the licensing regimes in the United Kingdom and throughout the European Community. In addition, the Jersey Transport Authority is empowered to amend the exceptions in the Schedule by Order.

*Article 7* adds the Schedule to the principal Law. The Schedule lists descriptions of flights by Community air carriers which are to be excepted from the requirement for a permit. These standard exceptions include emergency landings, training flights and small private charters.

*Article 8* is the citation and commencement provision. Article 5(2) is deemed to come into force immediately. The amendment made by this provision anticipates impending changes in the air transport licence regime of the Civil Aviation Authority. As a part of those changes, all existing air transport licences will be revoked and replaced with new air transport licences. The amendment has the effect that permit holders who are also air transport licence holders will not be required, under the principal Law, to re-apply for their permits by reason only that their licences have been revoked and replaced as part of the Civil Aviation Authority changes.

**AIR TRANSPORT PERMITS (AMENDMENT) (JERSEY) LAW 200-**

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**A LAW** to amend the Air Transport Permits (Jersey) Law 1998; sanctioned by Order of Her Majesty in Council of the

(Registered on the \_\_\_\_\_ day of \_\_\_\_\_ 200-)

**STATES OF JERSEY**

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The \_\_\_\_\_ day of \_\_\_\_\_ 200-

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

ARTICLE 1

In this Law, “principal Law” means the Air Transport Permits (Jersey) Law 1998.<sup>[1]</sup>

ARTICLE 2

In Article 1(1) of the principal Law -

(a) after the definition “cargo”<sup>[2]</sup> there shall be inserted the following definition -

“ ‘Community air carrier’ means an air transport undertaking established in the Community;”;

(b) after the definition “flight”<sup>[3]</sup> there shall be inserted the following definition -

“ ‘operating licence’ means an operating licence granted in any EEA State in accordance with Council Regulation 2407/92 on licensing of air carriers (as that Regulation has effect in accordance with the EEA Agreement as amended by the Decision of the EEA Joint Committee No. 7/94 of the 21st of March 1994);”;

(c) the definition “route licence”<sup>[4]</sup> shall be deleted;

(d) in the definition “permission of the Secretary of State”,<sup>3</sup> for the words “Article 77 of the Air Navigation (Jersey) Order 1972” there shall be substituted the words “Article 102 of the Air Navigation (No. 2) Order 1995 as it applies to the Island by virtue of the Air Navigation (Jersey) Order 2000, as amended”.

ARTICLE 3

In Article 2 of the principal Law, for paragraph (2)<sup>4</sup> there shall be substituted the following paragraphs -

“(2) A permit shall not be required for a flight -

(a) which is excepted from the requirement for an air transport licence by virtue of Article 64(2)(a), (b) or (c) of the 1982 Act; or

(b) where the aircraft is used by a Community air carrier and -

(i) the flight is of a description in the Schedule to this Law, or

- (ii) the flight is specified or is one of a series of flights specified by Order of the Jersey Transport Authority.
- (3) The Schedule to this Law shall have effect to describe flights excepted under paragraph (2)(b)(i).”.

#### ARTICLE 4

For Article 6(2) of the principal Law<sup>[5]</sup> there shall be substituted the following paragraph -

“(2) A permit shall not authorize a flight unless, at the time of grant -

- (a) in the case of a flight where the aircraft is used by a Community air carrier, there is an operating licence in force in respect of the flight;
- (b) in any other case, the flight is authorized by an air transport licence or permission of the Secretary of State.”.

#### ARTICLE 5

(1) In Article 8 of the principal Law,<sup>[6]</sup> for paragraphs (1) and (2) there shall be substituted the following paragraphs -

“(1) The Authority shall suspend a permit at any time when -

- (a) in the case of a flight where the aircraft is used by a Community air carrier, the operating licence in respect of the flights to which the permit relates is suspended;
- (b) in any other case -
  - (i) the air transport licence which also authorizes the flights to which the permit relates is suspended, or
  - (ii) the permission of the Secretary of State which also authorizes the flights is not in effect.

(2) The Authority shall revoke a permit if -

- (a) in the case of a flight where the aircraft is used by a Community air carrier, a revocation of the operating licence in respect of the flights to which the permit relates takes effect;
- (b) in any other case -
  - (i) a revocation of the air transport licence which also authorizes the flights to which the permit relates takes effect, or
  - (ii) the permission of the Secretary of State which also authorizes the flights is withdrawn.”.

(2) In Article 8 of the principal Law,<sup>[7]</sup> after paragraph (2) there shall be inserted the following paragraph -

“(2A) Paragraph (2) shall not apply where an air transport licence is revoked by reason only of its replacement with a further air transport licence which authorizes the flights to which the permit relates.”.

#### ARTICLE 6

After Article 16 of the principal Law<sup>[8]</sup> there shall be inserted the following Article -

#### “ARTICLE 16A

#### **Regulations and Orders**

(1) The States may by Regulations amend this Law for purposes consequential upon any change in the arrangements and requirements for the grant of operating licences or of air transport licences or permission of the Secretary of State.

(2) The Jersey Transport Authority may by Order amend the Schedule to this Law.

(3) The Subordinate Legislation (Jersey) Law 1960<sup>[9]</sup> shall apply to Orders made under this Law.”.

#### ARTICLE 7

At the end of the principal Law<sup>[10]</sup> there shall be added the Schedule set out in the Schedule to this Law.

#### ARTICLE 8

This Law may be cited as the Air Transport Permits (Amendment) (Jersey) Law 200- and shall come into force on the seventh day following its registration, save that Article 5(2) shall be deemed to have come into force upon the adoption of this Law by the States.



*SCHEDULE*

(Article 7)

“*SCHEDULE*

(Article 2(3))

EXCEPTIONS FOR COMMUNITY AIR CARRIERS

1. Flights solely for one or more of the following purposes -
  - (a) the provision of ambulance or rescue facilities, including medical, ambulance and other attendants;
  - (b) the carriage of emergency food or emergency medical supplies;
  - (c) the carriage of one or more of the following persons, being the operator of the aircraft, any bona fide servant of his (including, in the case of a body corporate, the directors and, in the case of a body corporate established by or under any enactment, including an enactment of another place in the British Islands, for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, the members of that body corporate), and any baggage or other property of the operator or any such servant;
  - (d) the training or testing of persons in the performance of duties in connection with aircraft;
  - (e) the testing or demonstrating of the aircraft or of any apparatus, whether or not that apparatus is carried on the aircraft, or the testing or demonstrating of any manner of flying or of any arrangements in connection with flying or with the carriage of passengers or cargo by air;
  - (f) the dropping or projecting of material in the interests of agriculture, horticulture, forestry or public health or as a measure against oil pollution;
  - (g) the taking of photographs or the carrying of a survey from the air.
2. Flights by aircraft having a maximum total authorized weight of less than 25,000 kg, being flights solely for the carriage of cargo or passengers with or without their baggage, or both cargo and passengers, in consequence of a person's exclusive right to use the carrying capacity of the aircraft on that flight, being -
  - (a) cargo all of which is consigned by that person and none of which is carried in pursuance of an agreement between that person and any other person made otherwise than as a term of the sale of the cargo in question;
  - (b) passengers, none of whom is carried for a separate fare.
3. A flight by an aircraft of which the Civil Aviation Authority is the operator.
4. Flights solely for carrying out the operator's obligations under a charter of the aircraft to any department of the States or of the government of the United Kingdom or to the Civil Aviation Authority.
5. A flight by a helicopter solely for the purpose of carrying a load externally suspended from it.
6. A flight not intended to land at a place in the Island, but which does so by reason of an emergency occurring after the beginning of the flight or any other circumstance beyond the control of the operator and commander of the flight.
7. The flight next made by an aircraft which lands in the circumstances described in paragraph 6.
8. Any flight to or from a place at which the aircraft neither takes up nor sets down passengers or cargo, being a flight made in the course of carrying passengers for reward under the authorization of an air transport licence.
9. A flight for the carriage of passengers with or without their baggage, or for the carriage of cargo or both cargo and passengers, in respect of which the following conditions are complied with -
  - (a) no passengers are carried other than -

- (i) employees (including directors) of the operator or any company which is a member of the same group as the operator, being employees acting in the course of their employment,
  - (ii) customers or professional advisers of the operator or of any company which is a member of the same group as the operator,
  - (iii) husbands and wives of such employees, customers and professional advisers accompanying their spouses on the flight;
- (b) no cargo is carried, other than cargo consigned to or by a company which is a member of the same group as the operator;
- (c) no reward is given or promised wholly or partly in respect of or in connection with the carriage of passengers or cargo on the flight other than reward given or promised to the operator by a company which is a member of the same group as the operator.

NOTE: For the purposes of paragraph 2 -

- (a) any reward wholly or partly in respect of or in connection with the carriage of a passenger (other than remuneration passing from the operator of the aircraft to a member of the crew of it) shall be deemed to be a fare, irrespective of the person by or to whom it has been given -

Provided that reward for the exclusive right to use the passenger capacity of the aircraft shall not be a fare;

- (b) a fare shall be deemed to be separate although it is for several journeys or for a journey by a group of passengers who are fewer in number than the number of seats occupied on the flight; and
- (c) “maximum total weight authorized”, in relation to aircraft, means the maximum total weight of the aircraft and its contents at which the aircraft may take off anywhere in the world, in the most favourable circumstances, in accordance with the certificate of airworthiness in force in respect of it.

For the purposes of paragraph 9 “group” means a body corporate and all other bodies corporate which are its subsidiaries.”.

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[1] Volume 1998, page 87.

[2] Volume 1998, page 88.

[3] Volume 1998, page 88.

[4] Volume 1998, page 89.

[5] Volume 1998, page 92.

[6] Volume 1998, page 94.

[7] Volume 1998, page 94.

[8] Volume 1998, page 100.

[9] Tome VIII, page 849 and Volume 2001, pages 3 and 4.

[10] Volume 1998, page 101.