

PROJET DE LOI

ENTITLED

The Detention of Aircraft (Guernsey and Alderney) Law, 1994 *

[CONSOLIDATED TEXT]

NOTE

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* No. I of 1994 (Ordres en Conseil Vol. XXXV(1), p. 12); as amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. ** of 2016). See also the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 (Ordres en Conseil Vol. XXIII, p. 573); the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978 (Ordres en Conseil Vol. XXVI, p. 264); the Law Reform (Age of Majority) (Sark) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 378); the Age of Majority (Alderney) Law, 2001 (No. XXV of 2001, Ordres en Conseil Vol. XLI, p. 738); the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009 (No. VII of 2010).

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ARRANGEMENT OF SECTIONS

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The Detention of Aircraft (Guernsey and Alderney) Law, 1994

THE STATES, in pursuance of their Resolution of the 26th day of May, 1993^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey and Alderney.

Detention and sale of aircraft for unpaid airport fees.

1. (1) Where default is made in the payment of airport fees incurred, in respect of an aircraft, at Guernsey Airport or Alderney Airport, the appropriate authority may, subject to the provisions of this Law –

- (a) detain, pending payment –
 - (i) the aircraft in respect of which the fees were incurred (whether or not incurred by the person who is the operator of the aircraft at the time when the detention begins), or
 - (ii) any other aircraft of which the person in default is the operator at the time when the detention begins, and
- (b) if the fees are not paid within 56 days of the date when the detention begins, sell the aircraft in order to satisfy the fees.

(2) The appropriate authority shall not detain or continue to

^a Article VII of Billet d'État No. VIII of 1993.

detain an aircraft under this section by reason of any alleged default in the payment of airport fees if the operator of the aircraft or any other person claiming an interest therein –

- (a) disputes that the fees, or any of them, are due or, if the aircraft is detained under subsection (1)(a)(i), that the fees in question were incurred in respect of that aircraft, and
- (b) gives to the appropriate authority, pending determination of the dispute, security acceptable to the authority and sufficient for the payment of the fees alleged to be due.

No sale without leave of court.

2. (1) The appropriate authority shall not sell an aircraft under section 1 without leave of the Court.

(2) The Court shall not give leave except on proof –

- (a) that a sum is due for airport fees,
- (b) that default has been made in the payment thereof, and
- (c) that the aircraft which the appropriate authority is seeking leave to sell is liable to sale under section 1 by reason of the default.

(3) Where the appropriate authority proposes to apply for leave to sell under this section it shall, not less than seven days before the day upon which the application is to be heard, give notice to any person of whom the authority is or ought reasonably to be aware whose interests may be affected by the Court's decision on the application.

(4) A notice under subsection (3) shall inform the person in question of the date, time and place of the hearing and that he is entitled to become

a party to the proceedings.

(5) If leave to sell is given, the appropriate authority shall use its best endeavours to ensure that the aircraft is sold for the best price reasonably obtainable.

(6) Failure to comply with any requirement of subsection (3), (4) or (5) in respect of a sale shall not, after the sale has taken place, be a ground for impugning its validity.

(7) Subsection (6) is without prejudice to any right of action arising against the appropriate authority at the suit of any person suffering loss in consequence of the failure to comply.

Application of proceeds of sale.

3. The proceeds of any sale of an aircraft under this Law shall, notwithstanding any other interest or charge, be applied as follows and in the following order –

- (a) in payment of any duty or impôt (whether of customs or excise) chargeable on imported goods and due in consequence of the bringing of the aircraft into Guernsey or Alderney,
- (b) in payment of any expenses incurred by the appropriate authority in detaining, keeping and selling the aircraft, including its expenses and costs in connection with the application to the Court for leave to sell,
- (c) in payment of the airport fees which the Court has found to be due,
- (d) in payment of any charge due in respect of the aircraft by virtue of regulations under section 73 of the Civil

Aviation Act 1982^b,

and the surplus, if any, shall be paid to or among the persons of whom the authority is or ought reasonably to be aware whose interests in the aircraft have been divested by reason of the sale.

NOTE

In accordance with the provisions of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972, section 1(5), with effect from 1st October, 2004, any reference in this enactment to "impôt" shall be construed as a reference to excise duty.

Equipment and stores of aircraft.

4. The powers of detention and sale conferred by section 1 in respect of an aircraft extend to the equipment thereof and any stores for use in connection with its operation, being equipment and stores carried in the aircraft and whether or not the property of the operator; and references to the aircraft in sections 1 to 3 include, except where the context requires otherwise, references to such equipment and stores.

Aircraft documents.

5. The powers of detention conferred by section 1 in respect of an aircraft extend to any aircraft documents carried in it, and any such documents may, if the aircraft is sold under this Law, be transferred by the appropriate authority to the purchaser.

Exercise of power of detention.

6. The powers conferred by section 1 to detain an aircraft in respect of which airport fees have been incurred may be exercised when the fees are incurred or whenever the aircraft is subsequently at Guernsey Airport or Alderney Airport.

Service of documents.

7. (1) Any document to be given or served under this Law may be

^b An Act of Parliament (1982 c. 16); the Act was extended to the Bailiwick by United Kingdom S.I's. 1992/230 and 1992/806.

given or served –

- (a) on an individual, by being delivered to him, or by being left at, or sent by post or transmitted to, his usual or last known place of abode,
- (b) on a body corporate with a registered office in the Bailiwick, by being left at, or sent by post or transmitted to, that office,
- (c) on a body corporate without a registered office in the Bailiwick, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in the Bailiwick or, if there is no such place, its registered or principal office outside the Bailiwick,
- (d) on an unincorporated body, by being given to or served on any partner, member, manager or officer thereof in accordance with paragraph (a), or by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in the Bailiwick or, if there is no such place, its principal or last known principal place of business elsewhere,
- (e) on the Board or the States of Alderney, by being left at, or sent by post or transmitted to, their respective principal offices in the Bailiwick,

and in this section the expression "**by post**" means by registered post or recorded delivery service and the expression "**transmitted**" means transmitted by telex, facsimile transmission or any similar means which produces a document containing the text of the communication.

(2) If service of a document cannot, after reasonable enquiry, be effected in accordance with subsection (1), the document may be given or served by

being –

- (a) published on two occasions in La Gazette Officielle, and
- (b) affixed to some conspicuous part of the aircraft to which it relates,

and a document served under this subsection is sufficient if addressed generally to all persons whose interests may be affected by the sale of the aircraft in question or whose interests in the aircraft may be divested by reason of the sale.

(3) Subsections (1) and (2) are without prejudice to any other lawful method of service.

(4) Notwithstanding the provisions of this section and of any other rule of law in relation to the service of documents, no document to be given to or served on the appropriate authority under or for the purposes of this Law shall be deemed to have been given or served until it is received.

(5) If a person upon whom a document is to be given or served under this Law is an infant or person under guardianship, the document shall be given to or served on his guardian; and if there is no guardian, the appropriate authority may apply to the Court for the appointment of a person to act as guardian for the purposes of this Law.

(6) A document sent by post shall, unless the contrary is shown, be deemed for the purposes of this Law to have been received –

- (a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,
- (b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any non-business day within the meaning of section 1(1) of the Bills of Exchange (Guernsey) Law, 1958, as amended^c.

NOTES

In accordance with the provisions of, first, the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978, section 1(1), section 1(2) and section 3, with effect from 1st July, 1978 and subject to the saving provision in section 1(6) of the 1978 Law and, second, the Age of Majority (Alderney) Law, 2001, section 1(1), section 1(3) and section 3, with effect from 14th December, 2001 and subject to the transitional and savings provisions in section 1(5) of, and the Schedule to, the 2001 Law, the reference in this section to an "infant" shall be construed as a reference to a "minor", that is to say a person under the age of 18 years.

In accordance with the provisions of the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 2, with effect from 4th January, 2010, and having regard to the references in this section to "guardian", a guardian or person referred to as such has parental responsibility in respect of a child if the conditions in paragraph (a) or paragraph (b) of that section are satisfied.

Interpretation.

8. (1) In this Law, unless the context otherwise requires –

"aircraft documents" means, in relation to an aircraft, any certificate of registration, maintenance or airworthiness of the aircraft, any log book relating to the use of the aircraft or its equipment and any similar document,

"airport fees" means the fees payable under the provisions of the Airport Fees Ordinance, 1987^d, the airport service charges payable under the provisions of the Airport Service Charge (Guernsey) Law, 1958^e and any other charges or amounts payable to the States of Guernsey, the States of Alderney or any of their respective committees in respect of the use of, or in respect of services, goods or facilities provided at, Guernsey Airport or Alderney Airport,

^c Ordres en Conseil Vol. XVII, p. 384; and Vol. XXIV, p. 84.

^d Article VII of Billet d'État No. VIII of 1993.

^e Ordres en Conseil Vol. XVII, p. 448.

"Alderney Airport" means the airport known as Alderney Airport in respect of which the States of Alderney holds an aerodrome licence granted by the Royal Court under Article 70 of the Air Navigation Order 1980^f, and includes all land in respect of which the said licence is for the time being granted,

"the appropriate authority" means the Board, in relation to an aircraft at Guernsey Airport, and the States of Alderney, in relation to an aircraft at Alderney Airport,

"the Board" means the States of Guernsey [States' Trading Supervisory Board],

"the Court" means the Royal Court sitting as an Ordinary Court, in relation to an aircraft detained at Guernsey Airport, and the Court of Alderney, in relation to an aircraft detained at Alderney Airport,

"Guernsey Airport" means Guernsey Airport at La Villiaze, being the airport in respect of which the Board holds an aerodrome licence granted by the Royal Court under Article 70 of the Air Navigation Order 1980, and includes all land in respect of which the said licence is for the time being granted,

"operator", in relation to an aircraft, means the person having the management thereof for the time being or, in relation to a particular time, at that time.

(2) The provisions of the Interpretation (Guernsey) Law, 1948^g shall apply to the interpretation of this Law.

(3) Any reference in this Law to an enactment is a reference

^f United Kingdom S.I. 1980/1965, extended to the Bailiwick by United Kingdom S.I. 1981/1805.

^g Ordres en Conseil Vol. XIII, p. 355.

thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

NOTES

In section 8, the words in square brackets in the definition of the expression "the Board" in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 12(b), Schedule 2, Part 8, with effect from 1st May, 2016.¹

The functions, rights and liabilities of the Public Services Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the States' Trading Supervisory Board and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 12(b), Schedule 2, Part 8, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.²

The Airport Service Charge (Guernsey) Law, 1958 has since been repealed by the Aviation (Bailiwick of Guernsey) Law, 2008, section 175, Schedule 18, paragraph 2, with effect from 1st February, 2009.

Savings for existing remedies.

9. Nothing in this Law shall prejudice any right or remedy of the appropriate authority in respect of airport fees arising otherwise than under this Law.

Citation.

10. This Law may be cited as the Detention of Aircraft (Guernsey and Alderney) Law, 1994.

NOTE

The Law received Royal Sanction on 8th February, 1994 and was registered on the Records of the Island of Guernsey and came into force on 11th April, 1994.

¹ These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 3(b), Schedule 2, paragraph 2(b), with effect from 6th May, 2004.

² The functions, rights and liabilities of the Public Services Department and its Minister arising under or by virtue of this Law were transferred to and vested in them, respectively, from the Board of Administration and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 3(b), Schedule 2, paragraph 2(b), with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.