

**ENTERPRISE (AVIATION AND MERCHANT
SHIPPING) (MISCELLANEOUS AMENDMENTS) BILL
2021**

Explanatory Memorandum

1. This Bill is promoted by Mr Laurence Skelly, MHK on behalf of the Department for Enterprise.
2. This Bill principally makes amendments to the *Airports and Civil Aviation Act 1987*. It also contains a minor amendment to the *Merchant Shipping (Miscellaneous Provisions) Act 1996* and repeals the *Merchant Shipping (Load Lines) Act 1981*.
3. This Bill is divided into 3 Parts.
4. Part 1 (introductory) comprises clauses 1 and 2. *Clause 1* gives the proposed title of this Bill when enacted and *Clause 2* provides that it will come into operation on the day after Royal Assent for it is announced to Tynwald.
5. Part 2 (amendments to Airports and Civil Aviation Act 1987) comprises *Clauses 3 to 17*.
6. *Clause 3* introduces the amendments to the *Airports and Civil Aviation Act 1987* (the “1987 Act”).
7. *Clause 4* amends the long title to the 1987 Act.
8. *Clause 5* amends section 1 of the 1987 Act to clarify that reference to “the Department” in sections 1 to 10 of the 1987 Act are references to the Department of Infrastructure.
9. *Clauses 6, 7 and 8* update the references to the fines payable on conviction under sections 3, 6 and 9 of the 1987 Act, so that they reflect the actual maximum level of fine that could be imposed on conviction, having regard to the revaluation of fines and the introduction of the 5 levels of fine on the standard scale.
10. *Clause 9* amends section 11 of the 1987 Act to clarify the UK legislation that may be applied to the Island and to provide that an order may specify the exceptions, adaptations and modifications subject to which UK legislation applies to the Island, or set out the UK legislation applied by the order, incorporating the exceptions, adaptations and modifications subject to which it applies to the Island.
11. *Clause 10* amends section 11A of the 1987 Act in respect of the EU instruments that may be applied to the Island.
12. *Clause 11* amends section 11B of the 1987 Act to clarify that an order under section 11B may provide for the licensing or certification of aerodromes.

13. *Clause 12* amends section 11C of the 1987 Act to clarify that it is an offence to trespass on land that has been licensed or certified as an aerodrome.
14. *Clause 13* clarifies that the “Department” referred to in section 11F of the 1987 Act is the Department for Enterprise and updates references to aerodromes being licensed so as to include references to aerodromes that are certified.
15. *Clause 14* amends section 11H of the 1987 Act to enable regulations under that section to prohibit or restrict flying in specified airspace of the Island or any part of the Island for such period as may be specified in the regulations or for an unlimited period; and that such a prohibition may be subject to such conditions as may be specified in, or in accordance with, the regulations. *Clause 14* also amends section 11H to enable regulations to provide for the delegation of certain decisions to persons authorised by the Department.
16. *Clause 15* amends section 11I of the 1987 Act to remove a redundant reference to fees.
17. *Clause 16* inserts new sections 11J and 11K into the 1987 Act. New section 11J provides for orders under the 1987 Act to enable the exercise of discretion, in circumstances specified in the orders, by the Department for Enterprise or a person authorised by that Department. New section 11J sets out the discretion that may be exercised in respect of any function specified in any such order.
18. New section 11K provides that the Department for Enterprise may authorise persons (“authorised officers”) for the purposes of taking of enforcement action; gives such authorised officers powers to enter premises; provides the circumstances when a warrant may be granted to permit authorised persons to enter premises; and sets out the powers of those officers when on premises. New section 11K provides that it is an offence if a person wilfully obstructs an authorised officer acting in pursuance of his or her powers under section 11K, the penalty on summary conviction being a fine not exceeding level 5 on the standard scale.
19. In the case of an order under section 11, 11A or 11B that provides for a safety investigation to be conducted into an accident or incident involving any aircraft, new section 11K(10) provides that nothing in section 11K is to be construed as limiting the powers, specified in such an order, of the Chief Inspector of the Air Accidents Investigation Branch appointed by the Secretary of State for the Department for Transport; the Deputy Chief Inspector of that Branch; or an Inspector of that Branch.
20. *Clause 17* amends section 12 of the 1987 Act to amend the definition of “airport official” and insert a definition of “premises”.
21. Part 3 of this Bill comprises clauses 18 and 19.
22. *Clause 18* amends section 17 of the *Merchant Shipping (Miscellaneous Provisions) Act 1996* to enable the Department for Enterprise, subject to any conditions that the Department for Enterprise considers appropriate, to grant an exemption from a provision of any regulations concerning the payment of a fee, or grant a discount or deferral in respect of any fee payable under such regulations. The Department

for Enterprise may amend or cancel such exemption, discount or deferral where a condition upon which it is granted is not satisfied or in any other circumstances, subject to giving reasonable notice to a person to whom the exemption, discount or deferral applies.

23. *Clause 19* repeals the remainder of the *Merchant Shipping (Load Lines) Act 1981*.
24. If approved, the resulting Act is not expected to have any negative financial or human resource implications.
25. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.



Ellan Vannin

ENTERPRISE (AVIATION AND MERCHANT SHIPPING) (MISCELLANEOUS AMENDMENTS) BILL 2021

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Ellan Vannin

ENTERPRISE (AVIATION AND MERCHANT SHIPPING) (MISCELLANEOUS AMENDMENTS) BILL 2021

1 **A BILL** to amend the Airports and Civil Aviation Act 1987 to amend the powers
2 to make regulations and orders under that Act; amend the enforcement and
3 discretionary powers under that Act; amend the Merchant Shipping
4 (Miscellaneous Provisions) Act 1996 to permit the exemption, discount or
5 deferral of fees payable under that Act; and repeal the Merchant Shipping (Load
6 Lines) Act 1981; and connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

7

PART 1 – INTRODUCTORY

8

1 Short title

9

The short title of this Act is the Enterprise (Aviation and Merchant Shipping) (Miscellaneous Amendments) Act 2021.

10

11

2 Commencement

12

This Act comes into operation on the day after Royal Assent for it is announced to Tynwald.

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PART 2 – AMENDMENTS TO AIRPORTS AND CIVIL AVIATION ACT 1987

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16

3 Amendment of the Airports and Civil Aviation Act 1987

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The *Airports and Civil Aviation Act 1987* is amended in accordance with this Part.

- 1 **4 Long title amended**
- 2 In the Long title —
- 3 (a) for “Department of Highways, Ports and Properties” substitute
- 4 “Department of Infrastructure”;
- 5 (b) for “that Department” substitute “the Department for Enterprise”;
- 6 (c) for “legislation of Parliament” substitute “UK legislation”.
- 7 **5 Section 1 (airport functions of Department of Infrastructure) amended**
- 8 In section 1(1), for “in this Act” substitute “in sections 1 to 10”.
- 9 **6 Section 3 (byelaws, etc supplementary provisions) amended**
- 10 In section 3(1), for “£1,000” substitute “level 3 on the standard scale”.
- 11 **7 Section 6 (power of Department to obtain rights over land) amended**
- 12 In section 6(6) and 6(7), for “£5,000” substitute “level 5 on the standard scale”.
- 13 **8 Section 9 (powers of entry for purposes of survey) amended**
- 14 In section 9(3), for “£5,000” substitute “level 5 on the standard scale”.
- 15 **9 Section 11 (application to Island of civil aviation, etc legislation)**
- 16 **amended**
- 17 In Section 11 —
- 18 (a) in subsection (1), for “, subject to such exceptions, adaptations and
- 19 modifications as may be specified in the order, any legislation of
- 20 the United Kingdom” substitute “any UK legislation”;
- 21 (b) in subsections (2) and (5), for “legislation of the United Kingdom”
- 22 substitute “UK legislation”;
- 23 (c) for subsection (3) substitute —
- 24 | “(2A) An order under subsection (1) may —
- 25 | (a) specify the exceptions, adaptations and modifications
- 26 | subject to which the UK legislation applies to the Island; or
- 27 | (b) set out the UK legislation applied by the order,
- 28 | incorporating the exceptions, adaptations and modifications
- 29 | subject to which it applies to the Island.
- 30 | (3) This section applies to —
- 31 | (a) any provision in UK legislation, which concerns, directly or
- 32 | indirectly —
- 33 | (i) aviation security;

- 1 (ii) civil aviation;
- 2 (iii) airports;
- 3 (iv) air traffic management;
- 4 (v) aviation safety;
- 5 (vi) air navigation services;
- 6 (vii) aircraft and their operation; or
- 7 (viii) the effect on the environment of airports and civil
- 8 aviation; or
- 9 (b) any instrument of a legislative character made or having
- 10 effect as if made under a provision of UK legislation
- 11 mentioned in paragraph (a).”

12 **10 Section 11A (application to Island of EU instruments) amended**

13 In section 11A(1), for paragraphs (a) to (j) substitute —

- 14 “(a) aviation security;
- 15 (b) civil aviation;
- 16 (c) airports;
- 17 (d) air traffic management;
- 18 (e) aviation safety;
- 19 (f) air navigation services;
- 20 (g) aircraft and their operation; or
- 21 (h) the effect on the environment of airports and civil aviation.”

22 **11 Section 11B (orders not derived from United Kingdom or EU**

23 **instruments) amended**

24 In section 11B —

- 25 (a) in the heading, for “United Kingdom legislation” substitute “UK
- 26 legislation”;
- 27 (b) in subsection (2), for “legislation of the United Kingdom”
- 28 substitute “UK legislation”;
- 29 (c) in subsection (3) —
- 30 (i) in paragraph (c), after “for the” insert “certifying.”;
- 31 (ii) omit paragraph (d);
- 32 (iii) in paragraph (f) after “licenced” insert “or certified”.

33 **12 Section 11C (trespassing on licensed aerodromes) amended**

34 In the heading of section 11C and in section 11C(1), after “licensed” insert “or

35 certified”.

13 Section 11F (provision by others of information for Department) amended

In section 11F —

- (a) in the heading, after “Department” insert “for Enterprise”;
- (b) in subsection (1) —
 - (i) in paragraph (i), after “aerodrome licence” insert “or certificate”;
 - (ii) in paragraph (iii), after “aerodrome licence” in both places where it appears insert ““or certificate””;
 - (iii) in the text after paragraph (iii), for ““aerodrome licence” means a licence” substitute ““aerodrome licence or certificate” means a licence or certificate”;
- (c) in subsection (2), after “licence” insert “or certificate”.

14 Section 11H (regulations prohibiting or restricting flying) amended

In section 11H —

- (a) for subsection (1)(a), substitute —
 - “ (a) for such period as may be specified in the regulations or for an unlimited period; and ”;
- (b) in paragraph (b), for “in” substitute “in, or in accordance with,”;
- (c) after subsection (1), insert —
 - “(1A) Regulations under this section may enable the Department for Enterprise, or a person authorised by the Department for Enterprise, to —
 - (a) exempt a person from the application of the regulations made under this section, subject to such conditions as the Department for Enterprise or the person authorised by the Department for Enterprise, as the case may be, may determine;
 - (b) permit a person to enter the specified airspace in respect of which regulations under this section apply at such time, for such purposes or subject to such conditions as the Department for Enterprise or the person authorised by the Department for Enterprise, as the case may be, may determine; or
 - (c) give an instruction or direction to a person exempted under paragraph (a), or permitted to enter specified airspace under paragraph (b), as the case may be.”.

1 **15 Section 11I (power to create offences in secondary legislation) amended**
2 Omit section 11I(3).

3 **16 Sections 11J and 11K inserted**

4 After section 11I insert —

5 **“11J Power of Department for Enterprise to exercise discretion**

- 6 (1) An order made under section 11, 11A or 11B may permit the
7 Department for Enterprise, or a person authorised by the
8 Department for Enterprise, to exercise discretion in respect of a
9 matter described in subsection (2).
- 10 (2) The matters referred to subsection (1) in respect of which an order
11 may provide for the exercise of discretion include, but are not
12 limited to —
- 13 (a) issuing a direction;
- 14 (b) modifying, dispensing with, exempting or excepting a
15 requirement;
- 16 (c) accepting or refusing an application for a matter in a case
17 where such application is not made in accordance with such
18 requirements as may be prescribed under the order;
- 19 (d) issuing or declining to issue a certificate, licence or other
20 document;
- 21 (e) authorising, approving, permitting, prohibiting,
22 suspending or otherwise restricting a person, activity or
23 equipment;
- 24 (f) revoking, suspending or varying a certificate, licence or
25 other document; and
- 26 (g) correcting, amending or cancelling a certificate, licence or
27 other document or an entry in a register.

28 **11K Powers of entry**

- 29 (1) The Department for Enterprise may authorise a person
30 (“authorised officer”) for the purposes of taking any enforcement
31 action required under regulations under section 11H or an order
32 under sections 11, 11A or 11B.
- 33 (2) An authorised officer, upon producing, if so required, some duly
34 authenticated document showing the officer’s authority, has a right
35 at all reasonable hours —
- 36 (a) to enter any premises for the purpose of ascertaining
37 whether there is or has been on the premises any

- 1 material to afford the officer such assistance as he or she
2 may reasonably require.
- 3 (8) An authorised officer exercising any power conferred by
4 subsection (7) may —
- 5 (a) seize and detain any documents which the officer has reason
6 to believe may be required as evidence in proceedings or
7 other enforcement action under regulations under section
8 11H or an order under sections 11, 11A or 11B; and
- 9 (b) where the documents are kept by means of a computer, may
10 require the documents to be produced in a form in which
11 they may be taken away.
- 12 (9) A person who wilfully obstructs an authorised officer acting in
13 pursuance of his or her powers under this section is guilty of an
14 offence and is liable on summary conviction to a fine not exceeding
15 level 5 on the standard scale.
- 16 (10) Where an order under section 11, 11A or 11B provides for a safety
17 investigation to be conducted into an accident or incident involving
18 any aircraft, nothing in this section is to be construed as limiting
19 the powers specified in such an order of —
- 20 (a) the Chief Inspector of the Air Accidents Investigation
21 Branch appointed by the Secretary of State for the
22 Department for Transport;
- 23 (b) the Deputy Chief Inspector of that Branch; or
- 24 (c) an Inspector of that Branch.”

25 17 Section 12 (interpretation) amended

26 In section 12(1) —

- 27 (a) in the definition of “airport official, after “Department” insert “of
28 Infrastructure”;
- 29 (b) after the definition of “owner”, insert —
- 30 “ **“premises”**, for the purposes of sections 11 to 11K, includes any of the
31 following —
- 32 (a) an aerodrome including hangars, aprons, fuel storage
33 facilities, cargo handling areas and places where aircraft
34 land;
- 35 (b) an aircraft;
- 36 (c) a building or other place from which an air navigation
37 service is provided or at which air navigation services
38 equipment is located;
- 39 (d) the offices of an aircraft operator;
- 40 (e) any place containing aviation training facilities;

- 1 (f) any place containing workshops of approved aviation
2 maintenance organisations; and
3 (g) any places at which a meteorological service for air
4 navigation is provided.”.

5 **PART 3 –AMENDMENTS TO SHIPPING LEGISLATION**

6 **18 Merchant Shipping (Miscellaneous Provisions) Act 1996 amended**

7 After section 17(2) of the *Merchant Shipping (Miscellaneous Provisions) Act 1996*
8 insert –

9 “(2A) The Department for Enterprise, subject to any conditions that the
10 Department for Enterprise considers appropriate, may –

- 11 (a) grant an exemption from a provision of any regulations
12 made under subsection (1); or
13 (b) grant a discount or deferral in respect of any fee payable
14 under such regulations.

15 (2B) The Department for Enterprise may amend or cancel such
16 exemption, discount or deferral –

- 17 (a) where a condition upon which it is granted is not satisfied;
18 or
19 (b) in any other circumstances, subject to giving reasonable
20 notice to a person to whom the exemption, discount or
21 deferral under subsection (2A) applies.”.

22 **19 Repeal**

23 The *Merchant Shipping (Load Lines) Act 1981* is repealed.

IN THE KEYS

**ENTERPRISE (AVIATION AND MERCHANT
SHIPPING) (MISCELLANEOUS AMENDMENTS) BILL
2021**

A **BILL** to amend the Airports and Civil Aviation Act 1987 to amend the powers to make regulations and orders under that Act; amend the enforcement and discretionary powers under that Act; amend the Merchant Shipping (Miscellaneous Provisions) Act 1996 to permit the exemption, discount or deferral of fees payable under that Act; and repeal the Merchant Shipping (Load Lines) Act 1981; and connected purposes.

Approved by the Council of Ministers
for introduction in the House of Keys.

MR SKELLY, MHK

MARCH 2021