

S.P. 17/16



ST. HELENA

GOVERNMENT OF SAINT HELENA

A BILL FOR AN ORDINANCE
THE AVIATION (GENERAL AMENDMENT) ORDINANCE, 2016

Laid on the table - 18 March 2016

Assented to in Her Majesty's name and on Her Majesty's behalf this day of , 2016.

Mark Capes
Governor



**ST HELENA
NO. OF 2016**

Enacted.....
Date of Commencement.....
Published in the Gazette.....

A BILL

FOR

AN ORDINANCE

to amend various Ordinances to make provision for matters related to or affected by air transportation and to introduce amendments consequential upon the enactment of the Aviation Ordinance, 2015; and for purposes connected therewith or incidental thereto.

Enacted by the Governor of St Helena with the advice and consent of the Legislative Council of St Helena.

Citation and commencement

1. This Ordinance may be cited as the Aviation (General Amendment) Ordinance, 2016, and shall come into force on

Amendment of legislation

2. (1) The Ordinances listed in the first column of the Schedule, ^{are} amended to the extent indicated in the second and third columns thereof.
 - (2) The Governor in Council may amend any subsidiary legislation to introduce amendments consequential upon the enactment of the Aviation Ordinance, 2015, and to make provision for matters related to or affected by air transportation.
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SCHEDULE

Section 2(1)

AMENDMENTS TO LEGISLATION

Ordinance	Section	Extent amended	Explanatory note
Animal (Diseases) Ordinance, Cap. 96	Section 5 Section 8	Amended by adding the character and word “, aircraft” after the word “boat” where it occurs in subsections (1) and (5). Amended by adding the character and word “, aircraft” after the word “vehicle” in paragraph (f).	Gives the police power to stop (and subsequently report on) an aircraft where a possible offence against this Ordinance has been committed Makes it an offence to hinder a police officer in their duty to search an aircraft when an offence against this Ordinance has been committed or is suspected to have been committed
Aviation Ordinance, 2015	Section 10	Amend— (a) by repealing subsection (1) and substituting the following therefor: “(1) An aircraft operator must have regard to guidelines issued by the Governor in Council or the World Health Organization in relation to the disinsection and disinfection of aircraft.”; (b) by inserting the following subsection after subsection (1): “(2) For purposes of subsection (1)— “ disinsection ” means the procedure whereby health measures are taken to control or kill insects present in aircraft, baggage, cargo, containers, goods and mail; and “ disinfection ” means the procedure whereby health measures are taken to control or kill infectious agents on a human or animal body, in or on affected parts of aircraft, baggage, cargo, goods or containers, as required, by direct exposure to chemical or physical agents.”;	Requires aircraft operators to adhere to the disinsection and disinfection policies of SHG. Where they don’t exist or are not ‘current’, aircraft operators are required to adhere to the advice of the World Health Organisation. Also adds a penalty for non-compliance with these policies.

			<p>(c) by renumbering the existing subsection (2) as subsection (3);</p> <p>(d) by adding the following subsection: “(4) Any person who contravenes subsection (1) or any Regulations issued under subsection (3) is guilty of an offence for which the maximum penalty on conviction is a fine of £2,000 or imprisonment for a period of six months, or both.”</p>	
Bulk Fuel Ordinance, 2003	Section 2	Amended by deleting the definition of “petroleum products” and substituting the following therefor: ““ petroleum products ”, without derogation from the generality of the term, means gas oil (diesel), gasoline (petrol) and kerosene (jet fuel);”;	<p>Adds the definition of Jet A1 fuel to the Bulk Fuel Ordinance</p>	
Consular Relations Ordinance, Cap. 43	First Schedule, Article 5	Amend— (a) paragraph (k) by inserting the words “and of aircraft registered in that State,” before the words “and in respect of their crews”; (b) paragraph (l) by adding the words “and aircraft” after the word “vessels” in the first line;	<p>Amends the wording of the Ordinance to include aircraft and to bring it in line with international requirements. Note the wording is exactly the same as the wording found in the Vienna Convention on Consular Relations</p>	
	First Schedule, Article 35	Repeal paragraph 7 and substitute the following therefor: “7. A consular bag may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a consular courier. By arrangement with the appropriate local authorities, the consular post may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.”	<p>As above</p>	

Criminal Procedure Ordinance, Cap. 23	Section 44	<p>Repealed and the following is substituted therefor:</p> <p>“Prevention of injury or damage to public property, landmark or navigation aid</p> <p>44. A police officer may of his own authority intervene to prevent any injury or damage attempted to be committed in his view to, or the removal, damage or injury of—</p> <p>(a) any public property, movable or immovable;</p> <p>(b) any public landmark; or</p> <p>(c) any buoy, aid, equipment or other mark used for navigation.”;</p>	Section expanded to include damage to landmarks and navigation aids. This will then include navigation aids found within and outside the aerodrome boundary, and the remote obstacle lights installed on the island
	Section 79	Amended to include the word and character “aircraft,” after the word “vessel,” wherever it occurs;	Addition of “aircraft” to accommodate aviation requirements
Customs Ordinance, Cap. 145	General	<p>Amend—</p> <p>(a) by adding the words “or pilot of an aircraft” after the words “master of a ship” or “master of any ship” in sections 17(2), 37(1)(d) and (g);</p> <p>(b) by adding the words “or pilot of that aircraft” after the words “master of that ship” in section 40;</p> <p>(c) by adding the words “or aircraft” after the word “ship” or “ships” in sections 6(3), 17 (other than subsection (2) thereof), 29(b) and (c), 30, 33, 37(d)(excluding the first reference in that paragraph), 40(1)(c) and (g) and 40(4)(c)(excluding the second reference);</p> <p>(d) by adding the words “or pilot” after the word “master” in sections 29(b);</p> <p>(e) by adding the words “or aerodrome” after the word “port” wherever it occurs in section 17;</p>	Amendments to the Customs Ordinance to cater for aircraft and aviation requirements

		<p>(f) by adding the words “or flight” after the word “voyage” in section 29(b);</p> <p>(g) by adding the words “St Helena or” before the words “the territorial waters of St Helena” in section 29(c);</p> <p>(h) by adding the words “or territorial airspace” after the words “territorial waters” in sections 30 and 33;</p> <p>(i) by adding the words “or aircraft” after the word “ships” and adding the character and word “, aircraft” after the word “ship” in section 41;</p>	
	Section 2	<p>Amend—</p> <p>(a) by deleting the definition of “means of conveyance” and substituting the following therefor: “means of conveyance’ means any ship, aircraft, vehicle, animal or other thing used for the transportation of goods or people;”;</p> <p>(b) by deleting the definition of “owner” and substituting the following therefor: “owner’, in respect of any goods, means any person having possession of or beneficially interested therein, and in relation to a ship or aircraft, includes the operator of such ship or aircraft;</p> <p>(c) by inserting the following definitions after the definition of “perfect entry”: “pilot’ in relation to an aircraft, means the pilot in command of the aircraft; “pilot-in-command’ in relation to an aircraft means the pilot designated by the operator as being in command</p>	Additional definitions to include aircraft, pilots and aircraft owners

		<p>and charged with the safe conduct of a flight, or, if no such designation has been made, the person who for the time being is in charge of piloting the aircraft without being under the direction of any other pilot in the aircraft.”;</p>	
	<p>Section 3</p>	<p>Amend by deleting paragraphs (a), (b) and (c) and substituting the following therefor: “(a) subject to paragraph (b), the time of importation of any goods— (i) by sea, shall be the time when the ship carrying them comes within the limits of the port, or the time when the goods are unloaded in St Helena, whichever is the earlier; (ii) by air, shall be the time when the aircraft carrying them lands in St Helena; (b) the time of importation of restricted goods shall be the time when the ship or aircraft carrying them enters the territorial waters or airspace, as the case may be, of St Helena; (c) the time of exportation of any goods from St. Helena shall be the time when the goods are placed on board the ship or aircraft that is to carry them.”;</p>	<p>Defines when goods are deemed to have landed (by air) on St Helena and to have been exported (by air) from St Helena</p>
	<p>Section 6</p>	<p>Amend— (a) by repealing the heading substituting the following therefor: “Masters and pilots to file inward manifests”; (b) by inserting the following subsection after subsection (2): “(2A) On arrival of an aircraft at the</p>	<p>Allows for the use of paper or electronic cargo manifests to be accepted by Customs Officers provided it satisfies their requirements. Scheduled aircraft operators will provide electronic manifests in advance but private operators (in some circumstances) may not do so. This amendment requires private pilots arriving at St Helena to present a manifest in paper form to Customs</p>

Firearms Ordinance, Cap. 138	Section 2	<p>aerodrome in St Helena, the pilot of that aircraft shall furnish such particulars as may be required.”</p> <p>Repeal the definition of “premises” and substituting the following therefor: “premises’ includes land with or without a building or buildings erected on such land and, subject to any applicable law or international Convention relating to aviation, includes an aircraft.”.</p>	<p>officials if an electronic manifest has not been previously provided</p> <p>Adds aircraft and aviation-related premises to the Firearms Ordinance so that (for example) it makes it an offence to carry a weapon in the Terminal building, Combined Building, anywhere else on the airport site or indeed on an aircraft without the proper authority/permits to do so</p>
Immigration Ordinance, 2011	Section 2	<p>Amend by inserting the following definition after the definition of “passport”: “prescribed form’ or ‘prescribed’ in relation to any form, means such form as may be determined by the Chief Immigration Officer.”;</p>	<p>Gives scope to use other types of forms or certificates that are deemed satisfactory by the Chief Immigration Officer. For example, this allows for the acceptance of Crew Member Certificates (CMCs) as a form of identification. CMCs are issued by the State where the airline/air operator is registered and is in the form of a machine readable biometric card (similar to the identification page of a passport) that is compliant with ICAO standards.</p>
	Section 3	<p>Amend— (a) repeal subsection (2) and substitute the following therefor: “(2) The master of a vessel shall, upon being requested by an Immigration Officer to do so, provide him with— (a) a list of the names, dates of birth, and nationalities of all passengers and other persons on board the vessel who intend to land on St. Helena; or (b) such other information as may be required by the Immigration Officer to enable him to make a determination with respect to the admittance to St Helena of such passengers and persons referred to in paragraph (a).”;</p>	<p>In most circumstances, scheduled airlines will provide more information about the passengers it is carrying than paragraph (a) requires. This is normally provided in electronic form to St Helena before the aircraft departs (usually one day and then one hour before departure). However, if electronic systems fail (at either end) or a private flight is undertaken, it may not be possible to receive the information required in paragraph (a). Also, the ICAO paper passenger manifest form does not require passenger DOBs to be provided. Therefore the Immigration Ordinance will be amended to allow some discretion with regards to what is presented to Immigration officials for them to determine whether entry to St Helena is permitted. Note that this only gives discretion on</p>

		<p>(b) by adding the word “and” at the end of paragraph (c) of the proviso to subsection (4) and adding the following paragraph: “(d) in the case of an immigrant who arrived by aircraft, such named destination shall be the point of departure prior to arriving in St Helena or other place where the inadmissible immigrant is admissible.”.</p>	<p>the evidence presented to them – it does not alter the usual requirements about permits and permission to remain on island.</p>
	<p>Section 5</p>	<p>By adding the following proviso to subsection (5): “Provided that this subsection does not apply to any person who produces valid proof that such person is a crew member of such vessel.</p>	<p>This allows Immigration officials to accept the Crew Member Certificates as a form of identification instead of passports. It should be noted that this <u>only</u> applies to crew on duty; any other crew members arriving on a flight (or indeed a boat/ship) that are not on active duty will need to adhere to the same requirements as any other standard passenger i.e. presentation of a passport (and visa if applicable). CMCs will only be accepted for crew who will be staying temporarily on island i.e. for the aircraft turnaround time or perhaps until the next day when they will return to their originating State.</p>
	<p>Section 16A</p>	<p>Insert the following section in Part 4 before section 17: “Visa requirement to travel to St Helena 16A. (1) Subject to subsection (2), no person holding a passport from a country specified by the Governor by order shall be allowed to travel to St Helena without first having obtained a visa prior to embarking on his or her journey to St Helena. (2) Subsection (1) does not apply to any person who—</p>	<p>This new section adds the requirement for a visa for some foreign nationals to travel to St Helena. To be clear, a visa only grants permission to <u>travel</u> to St Helena; it does not grant permission to <u>enter</u> St Helena. The usual entry requirements will continue to be in force.</p> <p>There are some exceptions to these requirements – naturally this includes those with St Helenian status, but it also includes those who hold a valid long term permit, and crew (on active duty) who would otherwise require a visa to travel to St Helena. As per ICAO Annex 9 requirements, this</p>

		<p>(a) has St Helenian status or a dependant of a person who has St Helenian status;</p> <p>(b) holds a valid long term entry permit issued under section 20; or</p> <p>(c) can produce valid proof that he or she will be a crew member on duty on the vessel on which he or she will be travelling to St Helena.</p> <p>(3) Every application for a visa and every visa issued under subsection (1), shall be in the prescribed form.</p> <p>(4) A person who contravenes the provisions of subsection (1) is guilty of an offence for which the maximum penalty on conviction is a fine of £5,000 or imprisonment for a period of 12 months, or both.”.</p>	<p>requirement should be waived by Immigration authorities in the event of a major incident or natural disaster to permit the rapid deployment of personnel to the island in an emergency.</p> <p>A penalty for the contravention of this section has been added.</p>
	Section 19	<p>Amend subsection (1) by deleting the words in paragraph (c) preceding subparagraph (i) and substituting the following therefor:</p> <p>“(c) establishes to the satisfaction of the Immigration Officer that he has the intention to leave St Helena within 183 days and that he has the means to provide for—”.</p>	<p>Clarifies the requirements of the Immigration Officer in respect of those requesting a short term entry permit</p>
Land Planning and Development Control Ordinance, 2013	Section 16	<p>Repeal subsection (2) and substitute the following therefor:</p> <p>“(2) The Governor in Council may, by Order (to be known as a ‘General Development Order’) specify types of development in respect of which appropriate development permission is deemed, for purposes of subsection (1), to have been granted and may in such Order prescribe procedures for determining whether prior</p>	<p>Allows for the Governor in Council to prescribe procedures for determining whether prior approval is required for certain developments that may impact upon the airport or aviation operations/safety</p>

		approval will be required in respect of any such development.”;	
	Section 21	Amend by adding the words “or the impact thereof on the safety of the operation of the airport” at the end of subsection (2).	Adds a proviso for development applications to be considered in the context of their impact on the airport and aviation operations
Liquor Ordinance, Cap. 56	Section 3	Amend by adding the words “or aircraft” after the word “ship” wherever it occurs in paragraph (f).	Adds “aircraft” to the Ordinance to allow for its provisions to include aircraft operating to and from St Helena
Petroleum Ordinance, Cap. 139	Section 4	Amend by deleting the words “the port of Jamestown” in subsection (1) and substituting “any port of St Helena” therefor;	Removes reference to the port of Jamestown and substitutes with “any port of St Helena” to allow for ports in Ruperts and Jamestown
	Section 14	Amend by deleting the expression “£200” and substituting “£50,000” therefor;	Significantly increases the maximum fine available to the Court for an offence committed against the Ordinance
	Section 16	Amend by deleting the expression “£150” in paragraph (k) and substituting “£50,000” therefor.	Significantly increases the maximum fine that can be prescribed by the Governor in Council for an offence committed against the Regulations
Police Service Ordinance, Cap. 132	Section 26	Amend by adding the word and character “aircraft,” before the word “vessel” in subsection (1)(d).	Permits the police to stop and search aircraft in the course of their duties

EXPLANATORY NOTE

(This note does not form part of the Ordinance)

The purpose of this Ordinance is to introduce amendments to various Ordinances which are consequential upon the introduction of the Aviation Ordinance and aviation related activities.

