

Explanatory Memorandum to Tynwald Members

Issued by the Department of Economic Development

To the Hon Clare Christian, President of Tynwald and the Hon Council and Keys in Tynwald assembled

1. Title of measure

Aviation (Cape Town Convention) (No.2) Order 2016 (SD 2016/0229).

2. Changes in policy

None.

3. Effects of the measure

This Order gives effect to the Convention on International Interests in Mobile Equipment and the Protocol on Matters Specific to Aircraft Equipment (known together as "the Cape Town Convention").

The Order applies to the Island, with modifications, the UK's International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015 (SI 2015/915).

The Cape Town Convention is a private international law treaty designed to encourage the flow of capital for high value aircraft, helicopters and aircraft engines above a certain size and capacity, which are referred to as "aircraft objects". Aircraft objects regularly cross borders and widely differing approaches taken by various legal systems creates uncertainty amongst intending financiers concerning the power of their rights should the debtor default on the finance agreement. The Convention reduces the risk to creditors lending finance to purchase or lease aircraft objects by establishing an internationally agreed framework for the legal rights of financiers. It facilitates the registration and prioritisation of an "international interest" to be enforceable in any signatory jurisdiction and grants other remedies for creditors in the event that a debtor defaults.

The Convention applies to transactions creating international interests if the aircraft object is registered in a Contracting State or if the debtor, which may be a borrower, mortgator, lessee or conditional buyer, is situated in a Contracting State. Registering an international interest is not a mandatory requirement, therefore users of the Aircraft Registry would benefit from the provisions of the Convention only if they chose to do so.

The Order applies the Convention to the Island without disturbing the current Manx insolvency regime.

The Aviation (Cape Town Convention) Order 2016 (SD 2016/0182) will be revoked by the Aviation (Cape Town Convention) No.2 Order 2016 (SD 2016/0229). The original Order did not include provision to correct some finer details in the UK Regulations to be applied to the Island. The UK have confirmed that there is intention to implement the corrections in their Regulations with an amending statutory instrument, but that this will not happen in the immediate future.

4. Reasons for the measure

The Order will enable a request to be made for the UK to extend its ratification of the Cape Town Convention to the Island.

The Convention along with the Aircraft Protocol has been ratified by 64 countries worldwide. Without extension of the UK's ratification, the Aircraft Registry risks a loss of reputation which would become increasingly detrimental to the Island's aviation related economy.

Relevant businesses and interested parties responded to the consultation with a strong and unanimous opinion that implementation of the Convention on the Island as proposed by the Department is a necessity in order for the Aircraft Registry to remain competitive. International financial, legal and insurance companies which are inherently risk averse are likely to become progressively more reluctant to support registration of aircraft on the Island if extension of the UK's ratification does not occur.

Approximately 70% of aircraft currently registered on the Island would meet the criteria to register for the benefits of the Convention if the UK's ratification was extended.

5. Resource implications

The Order will not create any resource implications.

6. Tynwald procedure

The Aviation (Cape Town Convention) (No.2) Order 2016 is made under section 11 of the Airports and Civil Aviation Act 1987. Section 11(4) of the Act requires Tynwald approval for the Order to come into operation.