

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4774 GIBRALTAR Thursday 22nd October 2020

B. 17/20

BILL

FOR

AN ACT to confer powers to police officers and authorised persons relating to small unmanned aircraft and requirements in the Civil Aviation Act 2009 and subsidiary legislation, to provide for fixed penalties for certain offences relating to small unmanned aircraft and for connected purposes.

ENACTED by the Legislature of Gibraltar.

Title.

1. This Act may be cited as Small Unmanned Aircraft (Offences) Act 2020.

Commencement.

2. This Act comes into operation on the day of publication.

Interpretation.

- 3.(1) In this Act, unless the context otherwise requires-

“acknowledgement of competency” has the meaning given in regulation 51ZD of the regulations;

“article associated with a SUA” includes—

- (a) any component, part or product of a SUA; and
- (b) any equipment, including an electronic device, relating to a SUA;

“authorised officer” means a police officer and a customs officer;

“authorised person” means an authorised officer, an immigration officer or a wildlife warden;

“BGTW” means British Gibraltar Territorial Waters which is the area of sea, the sea bed and subsoil within the seaward limits of the territorial sea adjacent to Gibraltar under

British sovereignty and which, in accordance with the United Nations Convention on the Law of the Sea 1982, currently extends to three nautical miles and to the median line in the Bay of Gibraltar;

“certificate of registration” has the meaning given in regulation 51ZB(4) of the regulations;

“customs officer” has the meaning given to it in section 2 of the Imports and Exports Act 1986;

“Director” means the person appointed to the office of Director of Civil Aviation pursuant to section 6 of the Civil Aviation Act 2009 or any person appointed to act as Director on a temporary basis pursuant to section 7 of the Civil Aviation Act 2009;

“exemption” means an exemption under regulation 108 of the regulations;

“immigration officer” has the meaning given to it in the Immigration, Asylum and Refugee Act 1962;

“Minister” means the Minister with responsibility for Civil Aviation;

“permission” means permission under regulation 51 of the regulations;

“Police Act” means the Police Act 2006 and any subsidiary legislation made under it, as may be amended from time to time;

“police officer” has the meaning given to it in section 2 of the Police Act;

“premises” includes any place or property and, in particular, includes—

- (a) any vehicle, vessel, aircraft or hovercraft;
- (b) any offshore installation;
- (c) any renewable energy installation;
- (d) any tent or movable structure;

“property” includes land and buildings;

“registration number” has the meaning given in regulation 51ZB(4) of the regulations;

“the regulations” means the Civil Aviation (Air Navigation) Regulations 2009 as may be amended from time to time;

“relevant exemption” means the exemption which the authorised person has reasonable grounds for suspecting is or was applicable to a SUA, or to a person, in relation to a flight;

“relevant offence under the regulations” means an offence under any of these provisions of the regulations—

- (a) regulation 51(4) (small unmanned aircraft: permissions for certain flights);
- (b) regulation 51A (small unmanned surveillance aircraft);
- (c) regulation 49(3) (prohibited or restricted flying);
- (d) regulation 32 (endangering safety of an aircraft);

“relevant offence” means-

- (a) an offence under this Act;
- (b) an offence under the regulations which relates to SUAs and is triable only summarily;
- (c) an offence under sections 63 and 67 of the Prison Act 2011;

“relevant permission” means the permission which the authorised person has reasonable grounds for suspecting is or was required for a flight;

“relevant prison offence” means—

- (a) an offence under any of these provisions of the Prison Act 2011—
 - (i) section 67 (assisting a prisoner to escape);
 - (ii) section 63 (conveyance of prohibited articles into or out of prison).;

“remote pilot” has the meaning given in regulation 2(1) of the regulations;

“small unmanned aircraft or SUA” has the meaning given in regulation 2(1) of the regulations;

“SUA operator” has the meaning given in regulation 2(1) of the regulations;

“wildlife warden” means a person appointed as such pursuant to section 21 of the Nature Protection Act 1991 and whose powers, for the purposes of this Act, shall be limited to the Upper Rock Nature Reserve, BGTW and no other place.

PART I

GENERAL POWERS RELATING TO SMALL UNMANNED AIRCRAFT

Power of authorised person to require a SUA to be grounded.

4.(1) An authorised person may exercise the power conferred by this section if the authorised person has reasonable grounds for believing that an unauthorised flight by a SUA is taking place.

(2) The authorised person may require a person to ground the SUA if—

- (a) the authorised person has reasonable grounds for believing that the person is controlling the SUA; and
- (b) the authorised person has reasonable grounds for suspecting that the SUA has been, is, or is likely to be, involved in the commission of an offence (including an offence under this Act).

(3) A person is guilty of an offence if—

- (a) the person without reasonable excuse fails to comply with a requirement under this section; or
- (b) the person is controlling the SUA without a permit issued in accordance with regulation 51(4) of the regulations.

(4) A person who is guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Power of authorised officer to stop and search persons, vessels or vehicles.

5.(1) An authorised officer may exercise the power conferred by this section if the authorised officer is in a place to which the authorised officer lawfully has access (whether or not it is a place to which the public has access).

(2) The authorised officer may search—

- (a) a person;
- (b) a vessel;
- (c) anything which is in or on a vessel;
- (d) a vehicle; or

(e) anything which is in or on a vehicle,

if Condition A or Condition B as set out below are satisfied.

(3) Condition A is that the authorised officer has reasonable grounds for suspecting that—

- (a) the authorised officer will find a SUA or an article associated with a SUA; and
- (b) the SUA, or the article associated with a SUA, is or has been involved in the commission of—
 - (i) an offence under regulation 51(4) or 32 of the regulations; or
 - (ii) any relevant prison offence.

(4) Condition B is that the authorised officer has reasonable grounds for suspecting that—

- (a) the authorised officer will find a SUA or an article associated with a SUA;
- (b) the SUA, or the article associated with a SUA, is or has been involved in the commission of an offence under regulation 51A or 49(3) of the regulations; and
- (c) the commission of that offence involves or involved the use of the SUA, or the article associated with a SUA, for one or more of the following purposes—
 - (i) to endanger any other aircraft (whether or not a SUA);
 - (ii) to cause any person harm, harassment, alarm or distress;
 - (iii) to undermine security or good order and discipline in any prison or in any other institution where persons are lawfully detained;
 - (iv) to damage property (including land or buildings);
 - (v) to threaten national security.

(5) An authorised officer may seize anything that the authorised officer discovers in the course of a search under this section if the authorised officer has reasonable grounds for believing that it is evidence in relation to a relevant offence under the regulations or a relevant prison offence.

Power to enter and search premises under warrant.

6.(1) If a magistrate is satisfied that there are reasonable grounds for believing that articles to which this Part applies are on any premises or property, the magistrate may issue a warrant authorising a police officer to—

- (a) enter and search the premises or property; and

(b) seize anything found there which the police officer has reason to believe is such an article.

(2) This Part applies to an article if it is—

(a) a SUA; or

(b) an article associated with a SUA,

which has been involved in the commission of a relevant offence under the regulations.

(3) The power to search conferred by sub-section (1)(a) is only a power to search to the extent that is reasonably required for the purpose of discovering—

(a) a SUA; or

(b) an article associated with a SUA.

(4) Sections 12 (power to authorise entry and search of premises), 19 and 20 of the Criminal Procedure and Evidence Act 2011 (execution of search warrants and safeguards) apply to warrants issued under this section.

Supplementary powers.

7.(1) An authorised officer may if necessary use reasonable force for the purpose of exercising a power conferred by this Act.

(2) Section 28 of the Criminal Procedure and Evidence Act 2011 (retention) applies to anything seized under this Part.

(3) Anything seized under this Part may be retained for as long as is necessary in all the circumstances and in particular—

(a) for use as evidence at a trial for a relevant offence; or

(b) for forensic examination or for investigation in connection with a relevant offence.

(4) An article associated with a SUA may not be retained for either of the purposes mentioned in subsection (3) if a photograph or a copy would be sufficient for that purpose.

(5) The powers conferred by this section are in addition to any power otherwise conferred.

PART II

REGISTRATION AS SUA OPERATOR AND COMPETENCY OF REMOTE PILOT

Exercise of the powers conferred by this Part.

8. An authorised person may exercise the powers conferred by sections 9 to 11 if the authorised person has reasonable grounds for believing that—

- (a) a flight by a SUA is taking place or has taken place; and
- (b) the requirements in regulations 51ZB and 51ZD of the regulations apply or applied to that flight.

Provision of documentation or evidence by remote pilots.

9.(1) If an authorised person has reasonable grounds for believing that a person is or was the remote pilot of the SUA, the authorised person may require the person to—

- (a) provide—
 - (i) an acknowledgement of competency which is or was valid for that flight; or
 - (ii) information that would assist or enable the authorised person to verify that the person has or had an acknowledgement of competency which is or was valid for that flight; and
- (b) provide information as to the identity of the SUA operator.

(2) The person is to be taken to have complied with a requirement under sub section (1)(b) to provide information as to the identity of the SUA operator if the person provides at least one of the following kinds of information—

- (a) physical identification of the SUA operator, if the SUA operator is at the scene of the flight;
- (b) the registration number of the SUA operator;
- (c) the name and address of the SUA operator.

(3) But that does not mean that the person cannot comply with the requirement under sub section (1)(b) by providing information of some other kind.

(4) If the remote pilot does not provide information as to the identity of the SUA operator under sub section (1)(b), the authorised person may require the remote pilot to provide the name and address of the person (if any) who made the SUA available for use by the remote pilot.

(5) A person is guilty of an offence if—

- (a) the person fails to comply with a requirement imposed under this section;
- (b) the requirements in sections 51ZB and 51ZD of the regulations apply or applied to the flight; and
- (c) the person is or was the remote pilot of the SUA.

(6) A person who is guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) Section 15 includes a defence to the offence under this section.

Provision of documentation or evidence by SUA operators.

10.(1) If an authorised person has reasonable grounds for believing that a person (“S”) is or was the SUA operator of the SUA, the authorised person may require S to—

- (a) provide—
 - (i) a certificate of registration which is or was valid for that flight; or
 - (ii) information that would assist or enable the authorised person to verify that S has or had a certificate of registration which is or was valid for that flight; and
- (b) provide information as to the identity of the person or persons whom S believes are or were the remote pilot or pilots of the SUA during that flight.

(2) A person is guilty of an offence if—

- (a) the person fails to comply with a requirement imposed under this section;
- (b) the requirements in regulations 51ZB and 51ZD of the regulations apply or applied to the flight; and
- (c) the person is or was the SUA operator of the SUA.

(3) A person who is guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) Section 15 includes a defence to the offence under this section.

Power to inspect SUA.

11.(1) An authorised person may require a person in possession of the SUA to allow the authorised person to inspect the SUA—

- (a) if the authorised person considers that the inspection would assist the authorised person in deciding whether the powers conferred by section 9 or 10 are exercisable; or
- (b) for the purpose of checking whether the SUA operator's registration number is displayed on the SUA in the manner (if any) prescribed for the purpose of regulation 51ZB(2)(b) of the regulations.

(2) An authorised officer may if necessary, use reasonable force for the purpose of exercising the power conferred by this section.

(3) A person who fails to comply with a requirement imposed under subsection 11(1), or if the SUA operator's registration number is not displayed on the SUA in the manner (if any) prescribed for the purpose of regulation 51ZB(2)(b) of the regulations is guilty of an offence.

(4) A person who is guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

PART III

PERMISSIONS FOR FLIGHTS AND EXEMPTIONS FROM REQUIREMENTS

Provision of evidence of permissions for certain flights.

12.(1) An authorised person may exercise the powers conferred by this section if the authorised person has reasonable grounds for believing that a flight by a SUA is taking place or has taken place.

(2) If an authorised person has reasonable grounds for believing that a person is or was the remote pilot or the SUA operator of the SUA, the authorised person may require the person to produce evidence of the relevant permission.

(3) A person is guilty of an offence if—

- (a) the person fails to comply with a requirement imposed under this section;
- (b) the relevant permission is or was required for the flight; and
- (c) the person is or was the remote pilot or the SUA operator of the SUA.

(4) A person who is guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) Section 15 includes a defence to the offence under this section.

Provision of evidence of exemptions for certain flights.

13.(1) An authorised person may exercise the powers conferred by this section if the authorised person has reasonable grounds for believing that—

- (a) a flight by a SUA is taking place or has taken place; and
- (b) a provision of the regulations is being or has been contravened unless an exemption is or was applicable to the SUA, or to a person, in relation to the flight.

(2) If an authorised person has reasonable grounds for believing that a person is or was the remote pilot or the SUA operator of the SUA, the authorised person may require the person to produce evidence of the relevant exemption.

(3) The evidence which an authorised person may require a person to produce under subsection (2) includes evidence of the applicability of the relevant exemption to the SUA, or to a person, in relation to the flight.

(4) A person is guilty of an offence if—

- (a) the person without reasonable excuse fails to comply with a requirement imposed under this section;
- (b) the relevant exemption is or was applicable to a SUA, or to a person, in relation to the flight and it is not produced; and
- (c) the person is or was the remote pilot or the SUA operator of the SUA.

(5) A person who is guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(6) Section 15 includes a defence to the offence under this section.

PART IV

GENERAL

Offence of providing false or misleading information.

14.(1) A person commits an offence if—

- (a) any information, documentation or evidence that the person provides under this Act is false or misleading in a material respect; and
- (b) he person either—
 - (i) knows that the information, documentation or evidence is false or misleading; or
 - (ii) is reckless as to whether it is false or misleading.

(2) A person who is guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Provision of information at a police station.

15.(1) A person may comply with a requirement imposed under section 9,10,12 or 13 by providing the required information, documentation or evidence at a police station within seven days beginning with the day after which provision of the information, documentation or evidence was required.

(2) It is a defence for a person charged with an offence under section 9,10,12 or 13 in respect of a failure to provide required information, documentation or evidence to prove that it was not reasonably practicable for it to be provided at the police station before the day on which the proceedings were commenced.

(3) The proceedings against a person for an offence are commenced when—

- (a) an information is laid for the offence;
- (b) the person is charged with the offence; or
- (c) a written charge is issued against the person for the offence.

Powers of Minister exercisable by regulations.

16.(1) The Minister may make regulations in respect of any matter and for any purpose relating to the application of this Act and for more effectually carrying into effect the objects of this Act.

(2) Any power conferred by this Act to make regulations includes power, by subsequent regulations, to vary or revoke any regulations so made.

Amendment to the Criminal Procedure and Evidence Act 2011 .

17. Schedule 14 of the Criminal Procedure and Evidence Act 2011 is amended by adding the following new paragraphs immediately following paragraph 11-

“12. An offence under section 4 of the Small Unmanned Aircraft (Offences) Act 2020 (*Power of authorised person to require an unmanned aircraft to be grounded*).

13. An offence under section 5 of the Small Unmanned Aircraft (Offences) Act 2020 (*Power of authorised officer to stop and search persons or vehicles*).”.

PART V

FIXED PENALTIES FOR CERTAIN OFFENCES RELATING TO SMALL UNMANNED AIRCRAFT

18.(1) This section applies where an authorised person has reason to believe that a person (P) aged 18 or over is committing, or has committed, a fixed penalty offence.

(2) Where on any occasion an authorised person finds a person (‘P’) whom the authorised person has reason to believe on that occasion has committed an offence by contravening or having contravened a provision specified in section 4,9,10,11,12,13 or 14 the authorised person may give P a notice offering P the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty if Condition A and Condition B are met:

(a) Condition A: the authorised person believes that P did not, and did not intend to—

- (i) endanger any other aircraft (whether or not an unmanned aircraft);
- (ii) cause any person harm, harassment, alarm or distress;
- (iii) cause any person occupying any premises nuisance or annoyance relating to their occupation of the premises;
- (iv) undermine security or good order and discipline in any prison or in any other institution where persons are lawfully detained;
- (v) disturb public order; or
- (vi) damage property (including land or buildings),

when committing the offence.

(b) Condition B: the authorised person obtains P's name and address.

(3) Where a person has been given a notice under this section in respect of an offence—

- (a) no proceedings must be instituted for that offence before the expiration of twenty-eight days following the date of the service of that notice; and
- (b) the person must not be proceeded further against for that offence if the person pays the fixed penalty before the expiration of that period.

(4) In subsection (3)—“proceedings” means any criminal proceedings in respect of the act or omission constituting the offence specified in the notice under subsection (2), and “conviction” shall be construed in like manner.

(5) A notice under this section shall be in a form substantially similar to that appearing in the Schedule hereto and shall give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence and shall state—

- (a) a reference to the regulation creating the offence;
- (b) the period during which, by virtue of subsection (3), proceedings are not to be taken for the offence;
- (c) the amount of the fixed penalty; and
- (d) the address of the Clerk of the Magistrates' Court to whom the fixed penalty shall be paid; and, without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting to that person at that address a letter containing the amount of the penalty (in cash or otherwise).

(6) The fixed penalty payable in pursuance of a notice under this section shall be—

- (a) £1,000.00 in respect of a contravention of section 4;
- (b) £400.00 in respect of a contravention of section 9;
- (c) £400.00 in respect of a contravention of section 10;
- (d) £400.00 in respect of a contravention of section 11;
- (e) 400.00 in respect of a contravention of section 12;
- (f) £100.00 in respect of a contravention of section 13;
- (g) £400.00 in respect of a contravention of section 14;

Discounts for prompt payment.

19.(1) This section applies where a person is served a fixed penalty notice under section 18.

(2) Where this section applies, a person who makes payment within 14 days of the fixed penalty notice being issued shall only be liable to pay 50% of the amount of the fixed penalty.

Bodies corporate & the Crown.

20.(1) For the purposes of this Act, where a fixed penalty notice is given to a body corporate, the place where that body resides and the address of that body are the registered or principal office of that body.

(2) Nothing in this Act authorises a fixed penalty notice to be given in respect of the commission of a fixed penalty offence if, by virtue of any immunity of the Crown, no liability to a penalty for commission of the offence would arise.

SCHEDULE

Section 18

FORM OF NOTICE

Notice Number:

Notice Served on:

By Officer:

Who had reason to believe that the following contravention had occurred and that a penalty charge is now payable:

[INSERT THE DETAILS OF THE OFFENCE]

Date of contravention:

Time:

SUA observed from:

Location:

Make:

Colour:

Registration No:

A penalty charge of [] where section 18 of the Small Unmanned Aircraft (Offences) Act 2020 applies is now payable. Payment must be received by the Clerk of the Magistrates' Court , no later than the last day of the period of 28 days beginning with the date on which this notice was issued.

The fixed penalty will be reduced by a discount of 50% to [] if payment is received later than the last day of the period of 14 days beginning with the date on which this Fixed Penalty Notice was issued.

SEE OVERLEAF FOR

How to pay

What happens if the charge is not paid

-----DETACH HERE -----

Payment Slip

Fixed Penalty Notice number:

Notice issued on:

Make:

Colour:

Registration No:

Contravention:

The penalty charge is [] or [] if payment is received by the Clerk of the Magistrates' Court no later than the last day of the period of 14 days beginning with the date on which this payment was served.

DO NOT IGNORE THIS NOTICE

Within 14 days from the date of issue of this notice you can

- Pay the reduced fixed penalty detailed overleaf which will be accepted as full settlement. Payment must be received by the Clerk of the Magistrates' Court within 14 days from the date of service of this notice to be eligible for the reduced penalty charge.

After the expiry of the 14 day discount period you can

- Pay the full fixed penalty detailed overleaf.

After 28 days from the date of service of this notice

- If the fixed penalty is not paid in full the notice will be forwarded to the Magistrates' Court and a Summons issued.

HOW TO PAY

By cash or cheque in person or by post, in all cases to the Clerk of the Magistrates' Court at 32-36 Town Range, Gibraltar.

By electronic bank transfer (please include notice number as reference) to:

[insert account details]

A receipt for the payment will be given. Part payment will not be accepted. The person paying the penalty must forward with the remittance the payment slip of the notice. This notice is deemed to have been given to the person liable for the offence indicated above. If the fixed penalty is not paid within the time limit set, the offender is liable to be prosecuted.

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