

Subsidiary Legislation made under ss.16 & 30.

**Civil Aviation (Detention and Sale of Aircraft)
Regulations 2015**

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Commencement **1.11.2015**

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2009-05

Civil Aviation

2015/163

**Civil Aviation (Detention and Sale of Aircraft)
Regulations 2015**

In exercise of the powers conferred upon him by sections 16 and 30 of the Civil Aviation Act 2009, the Government has made the following Regulations–

Title and commencement.

1. These Regulations may be cited as the Civil Aviation (Detention and Sale of Aircraft) Regulations 2015 and come into operation on the 1st November 2015.

Interpretation.

2. In these Regulations, unless the context otherwise requires–

“airport charges” means charges payable to the Operator for the use of, or for services provided at, the Civil Airport;

“aircraft documents”, in relation to any aircraft, means any certificate of registration, maintenance or airworthiness of that aircraft, any log book relating to the use of that aircraft or its equipment and any other similar document; and

“Operator” means the person appointed as manager or operator of the Civil Airport pursuant to section 26 of the Civil Aviation Act 2009;

Detention and sale of aircraft for unpaid airport charges.

3.(1) Where default is made in the payment of airport charges incurred in respect of any aircraft at the Civil Airport, the Operator or any designated person may, subject to the provisions of this regulation, take such steps as are necessary to detain, pending payment, either–

- (a) the aircraft in respect of which the charges were incurred (whether or not they were incurred by the person who is the operator of the aircraft at the time when the detention begins); or
- (b) any other aircraft of which the person in default is the operator at the time when the detention begins;

and if the charges are not paid within 56 days of the date when the detention begins, the Operator may, subject to this regulation, sell the aircraft in order to satisfy the charges.

(2) The Operator or any designated person must not detain or continue to detain an aircraft under this regulation by reason of any alleged default in the payment of airport charges if the operator of the aircraft or any other person claiming an interest therein–

- (a) disputes the charges, or any of them, are due or, if the aircraft is detained under sub-regulation (1)(a), that the charges in question were incurred in respect of that aircraft; and
 - (b) gives to the Operator, pending determination of the dispute, sufficient security for the payment of the charges which are alleged to be due.
- (3) The Operator must not sell an aircraft under this regulation without the leave of the court; and the court must not give leave except on proof–
- (a) that a sum is due to the Operator for airport charges;
 - (b) that a default has been made in the payment thereof; and
 - (c) that the aircraft which the Operator seeks leave to sell is liable to sale under this regulation by reason of the default.
- (4) An application made by the Operator for leave to sell an aircraft under this regulation must take the required steps set out in the Schedule–
- (a) for bringing the proposed application to the notice of persons whose interests may be affected by the determination of the court thereon, including any person or persons having an international interest as defined in regulation 3 of the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015; and
 - (b) for affording to any such person an opportunity of becoming a party to the proceedings on the application;
- and, if leave is given, the Operator must secure that the aircraft is sold for the best price that can reasonably be obtained.
- (5) Failure to comply with any requirement of sub-regulation (4) in respect of any sale, while actionable as against the Operator at the suit of any person suffering loss in consequence thereof, shall not, after the sale has taken place, be a ground for impugning its validity.
- (6) The proceeds of any sale under this regulation must be applied as follows, and in the following order–
- (a) in payment of any customs duty which is due in consequence of the aircraft having been brought into Gibraltar;

- (b) in payment of the expenses incurred by the Operator in detaining, keeping and selling the aircraft, including their expenses in connection with the application to the court;
- (c) in payment of the airport charges which the court has found to be due;

and the surplus, if any, must be paid to or among the person or persons whose interests in the aircraft have been divested by reason of the sale with priority being given to any person or persons having an international interest as defined in regulation 3 of the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015, and in accordance with the rules set out in regulation 14 of those same Regulations.

(7) The power of detention and sale conferred by this regulation in respect of an aircraft extends to the equipment of the aircraft and any stores for use in connection with its operation (being equipment and stores carried in the aircraft) whether or not the property of the person who is its operator, and references to the aircraft in sub-regulations (1) to (6) include, except where the context otherwise requires, references to any such equipment and stores.

(8) The power of detention conferred by this regulation in respect of aircraft extends to any aircraft documents carried in it, and any such documents may, if the aircraft is sold under this regulation, be transferred by the Operator to the purchaser.

(9) The power conferred by this regulation to detain an aircraft in respect of which airport charges have been incurred may be exercised on the occasion on which the airport charges have been incurred or on any subsequent occasion when the aircraft is at the Civil Airport.

(10) Nothing in this regulation shall prejudice any right of the Operator to recover any charges, or any part thereof, by action.

Designated Persons.

3.(1) An aircraft detained under these Regulations must be detained by a person authorised by the Operator.

(2) The person designated to detain an aircraft must attend the aircraft and serve a detention notice, in the presence of a witness, either by presenting it to the aircraft captain or affixing it to the exterior of the aircraft.

(3) In the event that the notice is affixed to the exterior of the aircraft, a copy should be sent immediately to the head office of the owner and operator of the aircraft respectively.

SCHEDULE**STEPS TO BE TAKEN TO BRING PROPOSED APPLICATION TO COURT TO
NOTICE OF INTERESTED PERSONS AND AFFORD THEM AN OPPORTUNITY
OF BECOMING A PARTY TO THE PROCEEDINGS**

1. If the Operator proposes to apply to the court for leave to sell an aircraft under these Regulations, the following steps for bringing the proposed application to the notice of persons whose interests may be affected by the determination of the court thereon and for affording to any such person an opportunity of becoming a party to the proceedings on the application as are applicable to the aircraft, must be taken.

(1) At least 21 days before applying to the court, the Operator must publish in the Gibraltar Gazette such a notice as prescribed by paragraph 2 of this Schedule, and must also, unless in that case it is impracticable to do so, serve such a notice on each of the following persons—

- (a) the person in whose name the aircraft is registered;
- (b) the person, if any, who appears to the Operator to be the owner of the aircraft;
- (c) any person who appears to the Operator to be a charterer of the aircraft whether or not by demise;
- (d) any person who appears to the Operator to be the operator of the aircraft;
- (e) any person who is registered as a mortgagee of the aircraft under the laws of Gibraltar or who appears to the Operator to be a mortgagee of the aircraft under the law of any other country;
- (f) any other person who appears to the Operator to have a proprietary interest in the aircraft; and
- (g) any person having an international interest as defined in regulation 3 of the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015.

(2) If any person who has been served with a notice in accordance with sub-paragraph (1) of this paragraph informs the Operator within 14 days of the service of the notice of his desire to become a party to the proceedings, the Operator must make that person a defendant to the application.

Content and service of notice under paragraph 1

2.(1) A notice under paragraph 1 of this Schedule must—

- (a) state the nationality and registration marks of the aircraft;
- (b) state the type of aircraft;
- (c) state that by reason of default in the payment of a sum specified by the Operator for airport charges, the Operator, on a date which must be specified in the notice, detained the aircraft under these Regulations and, unless payment of the sum so due is made within a period of 56 days from the date when the detention began, or within 21 days of the date of service of the notice, whichever shall be the later, will apply to the court for leave to sell the aircraft; and
- (d) invite the person to whom the notice is given to inform the Operator within 14 days of the service of the notice if he wishes to become a party to the proceedings on the application.

(2) A notice under paragraph 1 of this Schedule must be served—

- (a) by delivering it to the person to whom it is to be sent;
- (b) by leaving it at his usual or last known place of business or residence;
- (c) by sending it, addressed to him at his usual or last known place of business or residence, by post; or
- (d) if the person to whom it is to be sent is an incorporated company or body, by delivering it to the secretary, clerk or other appropriate officer of the company or body at its registered or principal office or sending it, addressed to the secretary, clerk or other appropriate officer of the company or body at that office, by post.

(3) Any notice which is sent by post to a place outside Gibraltar must be sent by air mail or by some other equally expeditious means including any reasonable electronic means.