

Subsidiary Legislation made under s.33(2)(b) and (3).

## **Civil Aviation (Insurance) Regulations 2023**

**LN.2023/295**

*Commencement*                      **9.11.2023**

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### **ARRANGEMENT OF REGULATIONS**

#### Regulation

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### **SCHEDULE**

**2009-05**

**Civil Aviation**

**2023/295**

**Civil Aviation (Insurance) Regulations 2023**

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*In exercise of the powers conferred on him by section 33(2)(b) and (3) of the Civil Aviation Act 2009, and all other enabling powers, the Minister has made the following Regulations–*

**Title.**

1. These Regulations may be cited as the Civil Aviation (Insurance) Regulations 2023.

**Commencement.**

2. These Regulations come into operation on the day of publication.

**Interpretation.**

3. In these Regulations–

“air carrier” means an air transport undertaking with a valid operating licence;

“aircraft operator” means the person or entity, not being an air carrier, who has continual effective disposal of the use or operation of the aircraft (the natural or legal person in whose name the aircraft is registered shall be presumed to be the operator, unless that person can prove that another person is the operator);

“commercial operation” means an operation for remuneration and/or hire;

“flight” means–

- (a) with regard to passengers and unchecked baggage, the period of transport of the passengers by aircraft including their boarding and disembarkation;
- (b) with regard to cargo and checked baggage, the period of transport of baggage and cargo from the moment the baggage or cargo is handed to the air carrier until the moment of delivery to the entitled recipient;
- (c) with regard to third parties, the use of an aircraft from the moment when power is applied to its engines for the purpose of taxiing or actual take-off until the moment when it is on the surface and its engines have come to a complete stop; additionally, it shall mean the moving of an aircraft by towing and push-back vehicles or by powers which are typical for the drive and the lift of aircraft, particularly air streams;

“Gibraltar air carrier” means an air carrier with a valid operating licence granted by the Director;

“MTOM” means the Maximum Take Off Mass, which corresponds to a certified amount specific to all aircraft types, as stated in the certificate of airworthiness of the aircraft;

“non-Gibraltar air carrier” means an air carrier which is not a Gibraltar air carrier;

“passenger” means any person who is on a flight with the consent of the air carrier or the aircraft operator, excluding on-duty members of both the flight crew and the cabin crew;

“SDR” means a Special Drawing Right as defined by the International Monetary Fund;

“State aircraft” has the same meaning as in Article 3(b) of the Convention on International Civil Aviation, signed at Chicago on 7 December 1944;

“third-party” means any legal or natural person, excluding passengers and on-duty members of both the flight crew and the cabin crew.

**Scope.**

4.(1) These Regulations shall apply to all air carriers and to all aircraft operators flying within, into, out of, or over Gibraltar.

(2) These Regulations shall not apply to—

- (a) State aircraft;
- (b) model aircraft with a MTOM of less than 20 kg;
- (c) foot-launched flying machines (including powered paragliders and hang gliders);
- (d) captive balloons;
- (e) kites;
- (f) parachutes (including parascending parachutes);
- (g) aircraft, including gliders, with a MTOM of less than 500 kg, and microlights, which—
  - (i) are used for non-commercial purposes; or
  - (ii) are used for local flight instruction which does not entail the crossing of international borders,

in so far as the insurance obligations under these Regulations relating to the risks of war and terrorism are concerned.

**Principles of insurance.**

5.(1) Air carriers and aircraft operators referred to in regulation 4 shall be insured in accordance with these Regulations as regards their aviation specific liability in respect of passengers, baggage, cargo and third parties and the insured risks shall include acts of war, terrorism, hijacking, acts of sabotage, unlawful seizure of aircraft and civil commotion.

(2) Air carriers and aircraft operators shall ensure that insurance cover exists for each and every flight, regardless of whether the aircraft operated is at their disposal through ownership or any form of lease agreement, or through joint or franchise operations, code-sharing or any other agreement of the same nature.

(3) An air carrier or aircraft operator shall be guilty of an offence if the air carrier or aircraft operator fails to comply with any requirement imposed by subregulations (1) and (2).

(4) These Regulations are without prejudice to the rules on liability as arising from any international convention which applies to Gibraltar.

**Insurance in respect of liability for passengers, baggage and cargo.**

6.(1) For liability in respect of passengers, the minimum insurance cover shall be 250,000 SDRs per passenger, with the exception of non-commercial operations by aircraft with a MTOM of 2,700 kg or less, where the level of minimum insurance cover shall be 100,000 SDRs.

(2) For liability in respect of baggage, the minimum insurance cover shall be 1,288 SDRs per passenger in commercial operations.

(3) For liability in respect of cargo, the minimum insurance cover shall be 22 SDRs per kilogram in commercial operations.

(4) Subregulations (1), (2) and (3) shall not apply with respect to flights over Gibraltar carried out by non-Gibraltar air carriers and by aircraft operators using aircraft registered outside Gibraltar which do not involve a landing on, or take off from, Gibraltar.

**Insurance in respect of liability for third parties.**

7.(1) In respect of liability for third parties, the minimum insurance cover per accident, for each and every aircraft, shall be the values set out in the Schedule.

(2) If at any time insurance cover for damage to third parties due to risks of war or terrorism is not available to any air carrier or aircraft operator on a per-accident basis, such air carrier or aircraft operator may satisfy its obligation to insure such risks by insuring on an aggregate basis.

(3) The Director shall closely monitor the application of subregulation (2) in order to ensure that such aggregate is at least equivalent to the relevant amount set out in the table.

### **Compliance.**

8.(1) Air carriers and, when so required, aircraft operators, as referred to in regulation 4, shall demonstrate compliance with the insurance requirements set out in these Regulations by providing the Director with a deposit of an insurance certificate or other evidence of valid insurance.

(2) If—

- (a) the Director, in exercise of his functions under subregulation (1), requires an air carrier or aircraft operator to provide him with an insurance certificate or any other evidence of insurance relating to an aircraft operated by the air carrier or aircraft operator for aviation-specific liability in respect of passengers, baggage, cargo or third parties; and
- (b) the air carrier or aircraft operator fails to provide within a reasonable period—
  - (i) the evidence referred to in paragraph (a); or
  - (ii) a declaration in writing that the air carrier or aircraft operator will not permit that aircraft to be flown other than as a State aircraft unless the Director is first provided with such a certificate or such other evidence of insurance,

the air carrier or aircraft operator shall be guilty of an offence.

### **Provision of false information.**

9. A person who for the purpose of demonstrating compliance with the requirements of regulation 5 knowingly or recklessly provides an insurance certificate or other evidence of insurance which is false in a material respect shall be guilty of an offence.

### **Prevention of take off.**

10.(1) Where the Director has reason to believe that an aircraft is intended or likely to be flown in such circumstances that the requirements of regulation 5 will be contravened he—

- (a) shall give to the person appearing to him to be in command of the aircraft a direction that they shall not permit the aircraft to take off until further notice; and
- (b) shall take such steps as may be necessary to detain the aircraft.

(2) A person who fails to comply with a direction given to them under subregulation (1)(a) shall be guilty of an offence.

(3) For the purposes of carrying out his functions under this regulation the Director, or any person authorised by him, may enter an aerodrome or aircraft.

**Obstruction of officers of the Director.**

11. A person who intentionally obstructs or impedes the Director acting in exercise of his functions under regulation 10 shall be guilty of an offence.

**Penalties.**

12.(1) A person guilty of an offence under regulation 5(3), 9, 10(2) or 11 shall be liable—

- (a) on summary conviction, to a fine at level 5; and
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

(2) A person guilty of an offence under regulation 8(2) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) Where an offence under these Regulations has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to have been attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

## SCHEDULE

Regulation 7

Category	MTOM (kg)	Minimum Insurance (million SDRs)
1	< 500	0.75
2	< 1,000	1.5
3	< 2,700	3
4	< 6,000	7
5	< 12,000	18
6	< 25,000	80
7	< 50,000	150
8	< 200,000	300
9	< 500,000	500
10	≥ 500,000	700