

STATES OF JERSEY



DRAFT EU LEGISLATION (CIVIL AVIATION INSURANCE) (JERSEY) REGULATIONS 201-

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by the Minister for External Relations

STATES GREFFE



Jersey

DRAFT EU LEGISLATION (CIVIL AVIATION INSURANCE) (JERSEY) REGULATIONS 201-

REPORT

Introduction

In order to fulfil the requirements for a national aircraft registry, it is a prerequisite to introduce Regulations relating to minimum insurance requirements.

These Regulations implement Regulation (EC) No 785/2004 of the European Parliament and the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators (OJ L 138, 20.4.2004, pl) as amended up to the date of commencement of these Regulations.

The purpose of these Regulations is to establish minimum insurance requirements for air carriers and aircraft operators in respect of passengers, baggage, cargo and third parties, for both commercial and private flights, and only applies to air carriers and aircraft operators flying within, into, out of, or over the territory of an EU country. However, this model meets international standards leading to mutual recognition, thus avoiding the need to develop a bespoke model for the Jersey Aircraft Registry.

Background

Following the terrorist attacks in the United States in September 2001, the European Commission took an interest in insurance requirements in the aviation industry. The EU set out to ensure a proper minimum level of insurance to cover liability of air carriers in respect of passengers, baggage, cargo and third parties that would foster consumer protection and avoid distortion of competition between air carriers. In addition, the Commission stated that it would continue to monitor developments in the aviation insurance market with regard to the revision of the amounts and conditions of insurance required for the grant of operating licences by Member States.

In the European Union, the distinction between national and international air transport was eliminated, and it was therefore deemed appropriate to establish minimum insurance requirements for community air carriers. To ensure a level playing field with community air carriers, these requirements also apply to air carriers from third countries, as Jersey registered aircraft will be classified.

Principles of insurance

The implementation of Regulation EC 785/2004 will require air carriers and aircraft operators to be insured, in particular in respect of passengers, baggage, cargo and third parties, to cover the risks associated with aviation-specific liability (including acts of war, terrorism, hijacking, acts of sabotage, unlawful seizure of aircraft and civil commotion).

This Regulation is without prejudice to the rules on liability as arising from international Conventions, EU law and the national law of the EU countries.

Compliance

Air carriers and, when so required, aircraft operators, must demonstrate compliance with the insurance requirements set out in Regulation EC 785/2004 by providing the competent authorities of the EU country concerned with an insurance certificate or other evidence of valid insurance.

Although the implementation of the EU Regulation itself is not obligatory for non-EU states, the implementation of an air carrier insurance regulation is necessary to enable aircraft registered in one State to conduct operations in another State. This principle of reciprocity is enshrined within the Montreal Convention¹.

The EU Regulation is a suitable model of such an Air Carrier Insurance Regulation and has proven itself to be acceptable as a model which meets international standards leading to mutual recognition. Adoption of the standard would then be a convenient method for meeting international obligations with respect to air carrier insurance, thus avoiding the need to develop a (unique) model for the Government of Jersey.

Insurance in respect of liability for passengers, baggage and cargo

For liability in respect of non-commercial operations by aircraft with a Maximum Take-off Mass (MTOM) of 2,700 kg. or less, EU countries may set a lower level of minimum insurance cover, provided that such cover is at least 100,000 Special Drawing Rights² (SDR) per passenger.

The level of cover set out above does not apply with respect to flights over the territory of the EU country carried out by non-EU air carriers and by aircraft operators using aircraft registered outside the EU which do not involve a landing on, or take-off from, such territory.

Insurance in respect of liability for third parties

For liability in respect of third parties, the minimum insurance cover per accident and per aircraft must be –

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

¹ The European Council 2001/539/EC concluded the Convention for the Unification of Certain Rules relating to International Carriage by Air, agreed at Montreal on 28 May 1999 (Montreal Convention), which lays down new rules on liability in respect of the international carriage by air of persons, baggage and cargo.

Article 50 of the Montreal Convention requires parties to ensure that air carriers are adequately insured to cover liability under that Convention. The Warsaw Convention of 1929 and its subsequent amendments will continue to exist alongside the Montreal Convention for an indefinite period. Both Conventions provide for the possibility of unlimited liability.

² SDRs are a form of international money, created by the International Monetary Fund, and defined as a weighted average of various convertible currencies.

Category	MTOM (Kg.)	Minimum Insurance (million SDRs)
7	< 50,000	150
8	< 200,000	300
9	< 500,000	500
10	≥ 500,000	700

Enforcement and Sanctions

EU countries must ensure that air carriers and aircraft operators comply with Regulation EC 785/2004, and by default, as a third country, the Jersey Aircraft Registry must ensure that aircraft flown into and out of the EU have the minimum insurance cover.

With respect to overflights by non-EU air carriers or aircraft registered outside the EU which do not involve a landing on or take-off from any EU country, as well as with respect to stops in EU countries by such aircraft for non-traffic purposes, the EU country concerned may request evidence of compliance with the insurance requirements laid down in this regulation.

Sanctions imposed by EU countries for infringement of this regulation must be effective, proportional and dissuasive. For EU air carriers, these sanctions may include the withdrawal of the operating licence. With regard to non-EU air carriers and to aircraft operators using aircraft registered outside the EU, the sanctions may include refusal of the right to land on the territory of an EU country.

Where EU countries are not satisfied that the conditions of this regulation are met, they must prohibit an aircraft from taking off until the air carrier or aircraft operator concerned has produced evidence of adequate insurance cover.

Financial and manpower implications

There are no financial or manpower implications arising from the adoption of these draft Regulations.

Explanatory Note

These Regulations implement Regulation (EC) No 785/2004 of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators (OJ L 138, 20.4.2004, p1) as amended up to the date of commencement of these Regulations (the “Insurance Regulation” as defined in *Regulation 1*).

Regulation 1 provides definitions for certain terms used in the Regulations.

Regulation 2 requires the Director of Civil Aviation (the “Director”) to perform the functions that are required by Articles 5 and 8 of the Insurance Regulation to be performed by a member State (of the European Union) or by the competent authority of a member State and for the purpose of these provisions Jersey is to be treated as if it were a member State.

Regulation 3 creates an offence where an air carrier or aircraft operator fails to comply with any requirement imposed on the air carrier or aircraft operator by paragraphs 1 and 2 of Article 4 of the Insurance Regulation (which requires air carriers and aircraft operators to be insured as regards their specific liability in respect of passengers, baggage, cargo and third parties).

Regulation 4 sets the level of minimum insurance cover in respect of liability for passengers in the case of non-commercial operations by aircraft with a maximum take-off mass of 2,700 kg or less, as 100,000 SDRs (special drawing rights) per passenger.

Regulation 5 applies if –

- (a) the Director requires an air carrier or aircraft operator to provide the Director 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, the required evidence or 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 air carrier or aircraft operator has first provided the Director with such a certificate or such other evidence of insurance.

Where *Regulation 5* applies and the aircraft is registered under Article 20 of the Aircraft Registration (Jersey) Law 2014 the Director must give notice to the Registrar of Aircraft (the “Registrar”) of the air carrier’s or aircraft operator’s failure and the Registrar is required to cancel the registration of the aircraft. An air carrier or aircraft operator who fails to comply with *Regulation 5* is guilty of an offence.

Regulation 6 requires an applicant for the registration of an aircraft in Jersey under Article 20 of the Aircraft Registration (Jersey) Law 2014 to provide the Registrar with an insurance certificate or any other evidence of insurance relating to the aircraft for aviation-specific liability in respect of passengers, baggage, cargo or third parties and a declaration in writing that the applicant will not permit the aircraft to be flown other than as a State aircraft unless the applicant has first provided to the Registrar such a certificate or such evidence of insurance. The requirement in Article 13 of the Aircraft Registration (Jersey) Law 2014 to give notice to the Registrar of changes in the registered particulars shall not extend to changes in particulars provided under *Regulation 6*.

Regulation 7 applies in relation to overseas-registered aircraft and creates an offence where the air carrier or aircraft operator of such an aircraft who is operating, or

appears to the Director to be intending to operate, the aircraft is required to and fails to provide the Director with (a) an insurance certificate or any other evidence of insurance relating to that aircraft for aviation-specific liability in respect of passengers, baggage, cargo or third parties or (b) 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 air carrier or aircraft operator has first provided the Director or that authorized person with such a certificate or such other evidence of insurance.

Regulation 8 creates an offence where a person who for the purpose of demonstrating compliance with the requirements of paragraphs 1 and 2 of Article 4 of the Insurance Regulation, knowingly or recklessly provides an insurance certificate or other evidence of insurance which is false in a material respect.

Regulation 9 empowers the relevant authority (as defined in *Regulation 1*) to prevent an aircraft from taking off and to detain it where he or she has reason to believe that an aircraft is intended or likely to be flown in such circumstances that the requirements of paragraphs 1 or 2 of Article 4 of the Insurance Regulation will be contravened. *Regulation 9* also gives the relevant authority the power to enter an aerodrome or aircraft.

Regulation 10 prohibits the obstruction of the relevant authority acting in exercise of his or her functions under *Regulation 9*.

Regulation 11 provides the penalties for the offences under the Regulations so that a person guilty of an offence under *Regulation 3(1)*, *8*, *9(2)* or *10* would be liable to imprisonment for a term of 2 years and to a fine, and a person guilty of an offence under *Regulation 5(2)(b)* or *7(2)* would be liable to a fine of level 3 on the standard scale. Under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993, level 1 is £50, level 2 is £500, level 3 is £2,000 and level 4 is £5,000.

Regulation 11 also sets out the circumstances in which partners, directors and officers of a body corporate, a separate limited partnership or a limited liability partnership or other partnership with separate legal identity may be criminally liable where an offence under the Law is proved against such a body corporate or partnership.

Regulation 12 provides for the citation of the Regulations and provides for the Regulations to come force on the same day that the Aircraft Registration (Jersey) Law 2014 comes into force.



Jersey

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Arrangement

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Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of Article 2 of the European Union Legislation (Implementation) (Jersey) Law 2014¹, have made the following Regulations –

1 Interpretation

- (1) In these Regulations –
- “aerodrome” has the meaning given to it by Article 1(1) of the Air Navigation (Jersey) Law 2014²;
- “Director” has the meaning given to it under Article 2 of the Civil Aviation (Jersey) Law 2008³;
- “Insurance Regulation” means Regulation (EC) No 785/2004 of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators (OJ L 138, 20.4.2004, p1) as amended up to the date of making of these Regulations;
- “Registrar” means the Registrar of Aircraft appointed under Article 2 of the Aircraft Registration (Jersey) Law 2014⁴;
- “relevant authority” means –
- (a) in the case of an aircraft in respect of which a permit is required under Article 105 of the Air Navigation (Jersey) Law 2014, the Secretary of State or a person authorized to act on his or her behalf for this purpose; and
- (b) in the case of any other aircraft, the Director;
- “State aircraft” means an aircraft referred to in Article 3(b) of the Convention in International Civil Aviation, signed at Chicago on 7 December 1944.
- (2) Unless the context otherwise requires, expressions used in both these Regulations and the Insurance Regulation have the same meaning as in the Insurance Regulation.

2 Director to perform functions

The Director shall perform the functions that are required by Articles 5 and 8 of the Insurance Regulation to be performed by a member State or by the competent authorities of such a member State and for the purpose of these provisions Jersey is to be treated as if it were a member State.

3 Offence of failing to comply with the Insurance Regulation

- (1) Subject to paragraph (2), an air carrier or aircraft operator who fails to comply with any requirement imposed upon the air carrier or aircraft operator by paragraphs 1 and 2 of Article 4 of the Insurance Regulation shall be guilty of an offence.
- (2) An offence under this Regulation shall not be committed by –
 - (a) an aircraft operator in relation to an aircraft which is registered in a member State; and
 - (b) an air carrier, if the air carrier's operating licence has been granted by such a member State.

4 Minimum insurance in respect of liability for passengers

In accordance with paragraph 1 of Article 6 of the Insurance Regulation, the level of minimum insurance cover set for liability in respect of passengers in the case of non-commercial operations by an aircraft with a maximum take-off mass of 2,700 kg or less, shall be 100,000 SDRs rights per passenger.

5 Provision of information

- (1) This Regulation applies if –
 - (a) the Director, in exercise of his or her functions under Regulation 2, requires an air carrier or aircraft operator to provide the Director with an insurance certificate or any other evidence of valid 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 sub-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 air carrier or aircraft operator has first provided the Director with such a certificate or such other evidence of insurance.
- (2) Where this Regulation applies –
 - (a) if the aircraft is registered under Article 20 of the Aircraft Registration (Jersey) Law 2014, the Director shall give notice to the Registrar of the air carrier's or aircraft operator's failure and

the Registrar shall, subject to paragraph (3), the cancel the registration of the aircraft; and

- (b) the air carrier or aircraft operator shall be guilty of an offence.
- (3) The Registrar shall not cancel the registration of an aircraft which is the subject of an undischarged mortgage under the Aircraft Registration (Jersey) Law 2014 unless all persons shown in the Register as mortgagee of that aircraft have consented to the cancellation.

6 Provision of information on application for registration

- (1) On applying for the registration of an aircraft in Jersey under Article 20 of the Aircraft Registration (Jersey) Law 2014, the applicant shall provide the following to the Registrar –
 - (a) an insurance certificate or any other evidence of insurance relating to the aircraft for aviation-specific liability in respect of passengers, baggage, cargo or third parties; or
 - (b) a declaration in writing that the applicant will not permit the aircraft to be flown other than as a State aircraft unless the applicant has first provided to the Registrar such a certificate or such evidence of insurance.
- (2) If the applicant fails to comply with paragraph (1), the Registrar shall refuse the application.
- (3) The requirement in Article 13 of the Aircraft Registration (Jersey) Law 2014 to give notice to the Registrar of changes in the registered particulars shall not extend to changes in particulars provided under paragraph (1).

7 Provision of information: overseas-registered aircraft

- (1) This Regulation applies in relation to an air carrier or aircraft operator who is operating, or appears to the Director to be intending to operate, an aircraft for which a permission under Article 105 or 107, or a licence under Article 113 or 114, of the Air Navigation (Jersey) Law 2014 is required or has been granted.
- (2) If –
 - (a) the Director, in exercise of the functions under Regulation 2, requires the air carrier or aircraft operator to provide an insurance certificate or any other evidence of insurance relating to that aircraft 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 sub-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 air carrier or aircraft operator

has first provided the Director or that authorized person with such a certificate or such other evidence of insurance,
the air carrier or aircraft operator shall be guilty of an offence.

8 Provision of false information

Any person who for the purpose of demonstrating compliance with the requirements of paragraphs 1 and 2 of Article 4 of the Insurance Regulation 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.

9 Prevention of take off

- (1) Where the relevant authority has reason to believe that an aircraft is intended or likely to be flown in such circumstances that the requirements of paragraphs 1 or 2 of Article 4 of the Insurance Regulation will be contravened, the relevant authority –
 - (a) shall give to the person appearing to the relevant authority to be in command of the aircraft a direction that the person 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 that person under paragraph (1)(a) shall be guilty of an offence.
- (3) The relevant authority may enter an aerodrome or aircraft for the purposes of carrying out his or her functions under this Regulation.

10 Obstruction of relevant authority

A person who intentionally obstructs or impedes the relevant authority acting in exercise of his or her functions under Regulation 9 shall be guilty of an offence.

11 Penalties

- (1) A person guilty of an offence under Regulation 3(1), 8, 9(2) or 10 shall be liable to imprisonment for a term of 2 years and to a fine.
- (2) A person guilty of an offence under Regulation 5(2)(b) or 7(2) shall be liable to a fine of level 3 on the standard scale.
- (3) Where an offence under this Law is committed by a limited liability partnership, a separate limited partnership, any other partnership having separate legal personality or a body corporate and is proved to have been committed with the consent or connivance of –
 - (a) a person who is a partner of the partnership, or a director, manager, secretary or other similar officer of the body corporate; or
 - (b) any person purporting to act in any such capacity,the person is also guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

- (4) Where the affairs of a body corporate are managed by its members, paragraph (3) applies in relation to acts and defaults of a member in connection with the member's functions of management as if he or she were a director of the body corporate.

12 Citation and commencement

These Regulations may be cited as the EU Legislation (Civil Aviation Insurance) (Jersey) Regulations 201- and shall come into force on the same day that the Aircraft Registration (Jersey) Law 2014⁵ comes into force.

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- ¹ *chapter 17.245*
 - ² *chapter 03.250*
 - ³ *chapter 03.530*
 - ⁴ *L.23/2014*
 - ⁵ *L.23/2014*