Draft Order in Council laid before Parliament under section 8A of the Carriage by Air Act 1961 and section 4A of the Carriage by Air (Supplementary Provisions) Act 1962, for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2001 No.

CIVIL AVIATION

The Carriage by Air Acts (Implementation of the Montreal Convention 1999) Order 2001

Made - - - - 2001

Coming into force in accordance with article 1

At the Court at [ ], the [ ] day of [ ] 2001

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been laid before Parliament and has been approved by a resolution of each House of Parliament, in accordance with section 8A of the Carriage by Air Act 1961(**1**) and section 4A of the Carriage by Air (Supplementary Provisions) Act 1962(**2**);

Whereas it appears to Her Majesty in Council that Her Majesty's Government in the United Kingdom has agreed to a revision of the Warsaw Convention as amended at The Hague, 1955 comprising the Convention for the Unification of Certain Rules for International Carriage by Air done at Montreal on 28 May 1999(**3**);

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 8A of the Carriage by Air Act 1961 and section 4A of the Carriage by Air (Supplementary Provisions) Act 1962, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows—

(**1**) 1961 c. 27. Section 8A was inserted by section 3(1) of the Carriage by Air and Road Act 1979 (c. 28) and came into force on 22 October 1998 (S.I.1998/2562). It was amended by paragraph 1 of Schedule 2 to the International Transport Conventions Act 1983 (c. 14).

(**2**) 1962 c. 43. Section 4A was inserted by section 3(2) of the Carriage by Air and Road Act 1979 and came into force on 12 October 2000 (S.I. 2000/2768).

(**3**) Cm. 4651

Citation, commencement and effect

1.—(1) This Order may be cited as the Carriage by Air Acts (Implementation of the Montreal Convention 1999) Order 2001.

(2) This Order shall come into force on the day the Convention for the Unification of Certain Rules for International Carriage by Air done at Montreal on 28 May 1999 comes into force or takes effect for the United Kingdom and the Secretary of State shall give notice of that day in the London, Edinburgh and Belfast Gazettes.

(3) Nothing in this Order shall affect rights and liabilities arising out of an occurrence which took place before the coming into force of this Order.

Amendments of the Carriage by Air Act 1961

2.—(1) The Carriage by Air Act 1961 is amended as follows.

(2) For section 1, substitute—

"Convention to have the force of law

1.—(1) The applicable provisions of the Carriage by Air Conventions have the force of law in the United Kingdom in relation to any carriage by air to which they apply, irrespective of the nationality of the aircraft performing that carriage.

(2) Subsection (1) does not apply in relation to Community air carriers to the extent that the provisions of the Council Regulation have the force of law in the United Kingdom.

(3) Subsection (1) is subject to the other provisions of this Act.

(4) If more than one of the Carriage by Air Conventions applies to a carriage by air, the applicable provisions that have the force of law in the United Kingdom are those of whichever is the most recent applicable Convention in force.

(5) The Carriage by Air Conventions are—

(a) the Convention known as "the Warsaw Convention as amended at The Hague, 1955" ("the Convention");

(b) that Convention as further amended by Protocol No. 4 of Montreal, 1975 ("the Convention as amended"); and

(c) the Convention known as "the Montreal Convention 1999" ("the Montreal Convention").

(6) "The applicable provisions" means—

(a) the provisions of the Convention set out in Schedule 1,

(b) the provisions of the Convention as amended set out in Schedule 1A, and

(c) the provisions of the Montreal Convention set out in Schedule 1B,

so far as they relate to the rights and liabilities of carriers, carriers' servants and agents, passengers, consignors, consignees and other persons.

(7) In this Act a reference to an Article of, or Protocol to, any of the Carriage by Air Conventions is a reference to that Article or Protocol as it appears in the Schedule in which it is set out.

(8) If there is any inconsistency between the text in English in Part I of Schedule 1 or 1A and the text in French in Part II of that Schedule, the French text shall prevail.".

(3) In subsection (1) of section 2 (designation of High Contracting Parties)—

(a) for "the Convention or the Convention as amended" substitute "any of the Carriage by Air Conventions"; and

(b) for the words from "the Additional Protocol" to the end substitute

(a) "the Additional Protocol at the end of the Convention;

(b) the Additional Protocol at the end of the Convention as amended; or

(c) Article 57(a) of the Montreal Convention.".

(4) After subsection (1) of that section, insert—

"(1A) Her Majesty may by Order in Council certify any revision of the limits of liability established under the Montreal Convention.".

(5) For subsection (2) of that section substitute—

"(2) he provisions of the Carriage by Air Conventions mentioned in subsection (2A) shall not be read as extending references in the applicable provisions to the territory of a High Contracting Party (except such as are references to the territory of any State, whether a High Contracting Party or not) to include any territory in respect of which that High Contracting Party is not a party.

(2A) The provisions are—

(a) Article 40A(2) of the Convention;

(b) Article 40A(2) of the Convention as amended; and

(c) paragraph 1 of Article 56 of the Montreal Convention.".

(6) In section 3 (fatal accidents), for "Article 17 in Schedule 1 or 1A to this Act" substitute

(a) "Article 17 of the Convention;

(b) Article 17 of the Convention as amended; or

(c) Article 17.1 of the Montreal Convention.".

(7) For subsection (1) of section 4 (limitation of liability) substitute—

"(1) It is hereby declared that the limitations on liability in the applicable provisions mentioned in subsection (1A) apply whatever the nature of the proceedings by which liability may be enforced.

(1A) The provisions are—

(a) Article 22 of the Convention;

(b) Article 22 of the Convention as amended; and

(c) Articles 21 and 22 of the Montreal Convention.

(1B) The limitation for each passenger in—

(a) paragraph (1) of Article 22 of the Convention or of the Convention as amended, and

(b) Article 21 and paragraph (1) of Article 22 of the Montreal Convention,

applies to the aggregate liability of the carrier in all proceedings which may be brought against him under the law of any part of the United Kingdom, together with any proceedings brought against him outside the United Kingdom.".

(8) In subsection (2) of that section—

(a) for "the said Article 22" substitute "a provision mentioned in subsection (3A)"; and

(b) for "the provisions of the said Article 22" substitute "that provision".

(9) In subsection (3) of that section, for "the said Article 22" substitute "a provision mentioned in subsection (3A)".

(10) After subsection (3) of that section, insert—

"(3A) The provisions are—

(a) Article 22 of the Convention;

(b) Article 22 of the Convention as amended; and

(c) Articles 21, 22 and 44 of the Montreal Convention.".

(11) In subsection (5) of that section—

(a) after "Article 22" insert "of the Convention or of the Convention as amended"; and

(b) after "Article 25a" insert "of that Convention".

(12) In section 4A (notice of partial loss), in subsection (1), for the words from the beginning to "shall", where it first occurs, substitute "References to damage in the provisions mentioned in subsection (2)".

(13) For subsection (2) of section 4A substitute—

"(2) The provisions are—

(a) Article 26(2) of the Convention;

(b) Article 26(2) of the Convention as amended; and

(c) Article 31(2) of the Montreal Convention.".

(14) In section 5 (time for bringing actions), in subsection (1), for "the Convention or the Convention as amended relates" substitute "any of the Carriage by Air Conventions applies".

(15) In subsection (2) of that section—

(a) for "Article 29 in Schedule 1 or 1A to this Act shall" substitute "The provisions mentioned in subsection (4)"; and

(b) for "the Convention or the Convention as amended" substitute "any of the Carriage by Air Conventions".

(16) In subsection (3) of that section, for the words from the beginning to "shall" substitute "Subsections (1) and (2) and the provisions mentioned in subsection (4)".

(17) After subsection (3) of that section, insert—

"(4) The provisions are—

(a) Article 29 of the Convention;

(b) Article 29 of the Convention as amended; and

(c) Article 20 of the Montreal Convention.

(5) If the Montreal Convention applies, "carrier" in this section includes an actual carrier as defined by Article 39 of that Convention.".

(18) In section 6 (contributory negligence)—

(a) the existing provision becomes subsection (1); and

(b) for "Article 21 in Schedule 1 or 1A to this Act" substitute "the provisions mentioned in subsection (2)".

(19) After subsection (1) of that section, insert—

"(2) The provisions are—

(a) Article 29 of the Convention;

(b) Article 29 of the Convention as amended; and

(c) Article 20 of the Montreal Convention.".

(20) In section 7 (power to exclude aircraft in use for military purposes), for "Convention as set out in Schedule 1 or 1A" substitute "the applicable provisions".

(21) For section 8 (action against High Contracting Parties) substitute—

"Actions against parties to Conventions.

8.—(1) Each party to a Carriage by Air Convention, for the purposes of any action brought in a court in the United Kingdom in accordance with a provision mentioned in subsection (5) to enforce a claim in respect of carriage undertaken by him, is deemed to have submitted to the jurisdiction of that court.

(2) Accordingly, rules of court may provide for the manner in which any such action is to be commenced and carried on.

(3) But nothing in this section shall authorise the issue of execution against the property of any party to a Carriage by Air Convention.

(4) Subsections (1) and (2) do not apply to a party to a Carriage by Air Convention who has availed himself, in relation to a provision mentioned in subsection (5), of—

(a) the Additional Protocol at the end of the Convention,

(b) the Additional Protocol at the end of the Convention as amended; or

(c) Article 57(a) of the Montreal Convention.

(5) The provisions are—

(a) Article 28 of the Convention;

(b) Article 28 of the Convention as amended;

(c) Articles 33 and 46 of the Montreal Convention.

(6) "Party" means—

(a) in relation to the Convention and the Convention as amended, a High Contracting Party; and

(b) in relation to the Montreal Convention, a State Party.".

(22) In section 10 (application to carriage by air not governed by Convention)—

(a) for "Schedule 1 or 1A to this Act" substitute "the applicable provisions of any of the Carriage by Air Conventions"; and

(b) for "Convention or Convention as amended" substitute "Convention in question".

(23) In section 11 (application to Scotland), in paragraph (b), for "Article 17 in Schedule 1 or 1A to this Act" substitute

(a) "Article 17 of the Convention,

(b) Article 17 of the Convention as amended, and

(c) Article 17.1 of the Montreal Convention,".

(24) In section 14 (interpretation etc), for subsection (2) substitute—

"(2) in this Act—

"the applicable provisions" has the meaning, given in section 1(6);

"the Carriage by Air Conventions" has the meaning given in section 1(5);

"the Convention", "the Convention as amended" and "the Montreal Convention" have the meaning given in section 1(5);