Draft Order in Council laid before Parliament under section 10 of the Carriage by Air Act 1961, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2001 No.

CIVIL AVIATION

The Carriage by Air Acts (Application of Provisions) 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 10 of the Carriage by Air Act 1961(**1**);

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 10 of the Carriage by Air Act 1961, and of that section as applied by section 5(2) of the Carriage by Air (Supplementary Provisions) Act 1962(**2**) and of all other powers enabling Her in that behalf is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

Citation, commencement and effect

1.—(1) This Order may be cited as the Carriage by Air Acts (Application of Provisions) Order 2001.

(2) This Order shall come into force on the tenth day after the day on which it is made.

(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.

Interpretation

2. In this Order —

"the Act of 1961" means the Carriage by Air Act 1961;

(**1**) 1961 c. 27. Section 10 was amended by S.I. 2001/xxxx.
(**2**) 1962 c. 43

"the Act of 1962" means the Carriage by Air (Supplementary Provisions) Act 1962;

"the 1955 amended Convention" means the English text of the Warsaw Convention with the amendments made in it by the Hague Protocol as set out in Schedule 1 to the Act of 1961, and includes the Additional Protocol to the Warsaw Convention as set out at the end of that Schedule;

"Community air carrier" has the meaning given by Article 2 of the Council Regulation;

"the Council Regulation" means Council Regulation (EC) No. 2027/97 of 9 October 1997 on air carrier liability in the event of accidents(**3**);

"the Guadalajara Convention" means the English text of the Convention, supplementary to the Warsaw Convention, for the Unification of Certain Rules relating to International Carriage by Air performed by a Person other than the Contracting Carrier, as set out in the Schedule to the Act of 1962;

"the MP4 Convention" means the English text of the Warsaw Convention with the amendments made in it by the Hague Protocol and as further amended by Protocol No. 4 of Montreal, 1975 as set out in Schedule 1A to the Act of 1961; and

"the Montreal Convention" means the Convention for the Unification of Certain Rules for International Carriage by Air done at Montreal on 28 May 1999.

Application

3.—(1) This Order shall apply to all carriage by air, not being carriage to which the 1955 amended Convention, the MP4 amended Convention or the Montreal Convention applies.

(2) This Order shall 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.

Non-international carriage

4. Schedule 1 to this Order shall have effect in respect of carriage of which this Order applies being carriage which is not international carriage as defined in Schedule 2 or Schedule 3.

International carriage under the unamended Warsaw Convention

5.—(1) Schedule 2 to this Order shall have effect in respect of carriage to which this Order applies, being carriage which is international carriage as defined in that Schedule and not international carriage as defined in Schedule 3.

(2) Section 2 of the Act of 1961 shall apply to such carriage as aforesaid with the following exceptions, adaptations and modifications:

(a) for "any of the Carriage by Air Conventions" there shall be substituted "the Warsaw Convention";

(b) subsection (1)(b) and (c) shall be omitted;

(c) subsection (1A) shall be omitted;

(d) subsection (2A(b) and (c) shall be omitted.

(3) Section 5 of the Act of 1961 shall apply to such carriage as aforesaid with the following exceptions, adaptations and modifications:

(**3**) O.J. L 285 of 17.10.97, p1. Regulation 2027/97 has effect in accordance with the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993 (Cm 2073 and 2183) as amended by the Decision of the EEA Joint Committee No. 34/98 of 30 April 1998 (O.J. L 310, 19.11.1998, p.21).

(a) for "any of the Carriage by Air Conventions" there shall be substituted "the Warsaw Convention";

(b) subsections (4)(b) and (c) and (5) shall be omitted.

(4) Section 8 of the Act of 1961 shall apply to such carriage as aforesaid with the following exceptions, adaptations and modifications:

(a) for "a Carriage by Air Convention" there shall be substituted "the Warsaw Convention";

(b) subsections (4)(b) and (c), (5)(b) and (c) and (6)(b) shall be omitted;

(c) in subsection (6) "and the Convention as amended" shall be omitted.

International carriage under the unamended Warsaw Convention as amended by Additional Protocol No. 1 of Montreal, 1975

6.—(1) Schedule 3 to this Order shall have effect in respect of carriage to which this Order applies, being carriage which is international carriage as defined in that Schedule.

(2) Section 2 of the 1961 Act shall apply to such carriage as aforesaid with the following exceptions, adaptations and modifications:

(a) for "a Carriage by Air Convention" there shall be substituted "the Warsaw Convention as amended by Additional Protocol No. 1 of Montreal 1975";

(b) subsection (1)(b) and (c) shall be omitted;

(c) subsection (1A) shall be omitted;

(d) subsection (2A)(b) and (c) shall be omitted.

(3) Section 5 of the Act of 1961 shall apply to such carriage as aforesaid with the following exceptions, adaptations and modifications:

(a) for "any of the Carriage by Air Conventions" there shall be substituted "the Warsaw Convention as amended by Additional Protocol No. 1 of Montreal 1975";

(b) subsections (4)(b) and (c) and (5) shall be omitted.

(4) Section 8 of the Act of 1961 shall apply to such carriage as aforesaid, with the following exceptions, adaptations and modifications:

(a) for "a Carriage by Air Convention" there shall be substituted "the Warsaw Convention as amended by Additional Protocol No. 1 of Montreal 1975";

(b) subsections (4)(b) and (c), (5)(b) and (c) and (6)(b) shall be omitted;

(c) in subsection (6) "and the Convention as amended" shall be omitted.

Application of certain provisions of the Acts

7.—(1) Sections 3, 4, 4A, 6, 11 and 12 of the Act of 1961 shall apply to carriage to which Schedule 1 to this Order applies as if the references therein to the Convention and the Convention as amended and articles thereof were omitted and the reference to the Montreal Convention and articles thereof were references to the Montreal Convention and articles thereof as applied by this Order.

(2) Sections 3, 4, 4A, 6, 11 and 12 of the Act of 1961 shall apply to carriage to which Schedules 2 and 3 to this Order apply as if the references therein to the Convention as amended and the Montreal Convention and articles thereof were omitted and the reference to the Convention and articles thereof were references to the 1955 amended Convention and articles thereof as applied by this Order.

(3) Section 3(1) of the Act of 1962 shall apply to carriage to which Schedules 2 and 3 to this Order apply as if the reference therein to article VI in the Schedule to that Act was a reference to that article as applied by this Order.

Gratuitous carriage by the Crown

8.—(1) Subject to paragraph 2, the Acts of 1961 and 1962, and this Order, shall apply to gratuitous carriage by the Crown as they apply to carriage by the Crown for reward.

(2) The Acts of 1961 and 1962, and this Order, shall not apply to gratuitous carriage by the Crown where the carriage is carriage of members of Her Majesty's naval, military or air forces undertaken during a time of actual or imminent hostilities or of severe international tension or of great national emergency.

Revocation

9. The Orders specified in Schedule 4 are hereby revoked.

Clerk of the Privy Council

SCHEDULE 1 Article 4

Non-international carriage

PART I—

APPLICATION OF THE MONTREAL CONVENTION

The Montreal Convention as set out in Schedule 1B to the 1961 Act shall apply in respect of carriage described in article 4 of this Order subject to the following exceptions, adaptations and modifications —

(1) For "Convention" wherever it appears, there shall be substituted "Schedule".

(2) In Article 1.1 the word "international" shall be omitted,

(3) Article 1.2 and 1.3 shall not apply.

(4) Save for Article 3.3 and 3.5 Chapter II shall not apply.

(5) In Article 22.4 for "or, if they were not issued, by the same record preserved by the other means referred to in paragraph 2 of Article 4," substitute "or any alternative record,".

(6) In Article 23.1 the second and third sentences shall be omitted.

(7) For Article 23.2 the following shall be substituted—

"The value on a particular day of one Special Drawing Right shall be treated as equal to such a sum in sterling as the International Monetary Fund has fixed as being the equivalent of one Special Drawing Right—

(a) for that day; or

(b) if no sum has been fixed for that day, for the last day before that day for which a sum has been so fixed.".

(8) For Article 23.3 the following shall be substituted—

"A certificate given by or on behalf of the Treasury stating—

(a) that a particular sum in sterling has been fixed by the International Monetary Fund as referred to in paragraph 2 for a particular day; or

(b) that no sum has been fixed for a particular day and that a particular sum in sterling has been so fixed for a day which is the last day for which a sum has been so fixed before the particular day,

shall be conclusive evidence of those matters for the purposes of this article; and a document purporting to be such a certificate shall in any proceedings be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.".

(9) Article 24 shall be omitted.

(10) Article 31.1 the words from "and" to the end shall be omitted.

(11) Article 33 shall not apply.

(12) Article 34.2 shall not apply.

(13) In Article 36.1 the words from "and" where it first occurs to "Article 1" shall be omitted.

(14) In Article 42 the second sentence shall not apply.

(15) In Article 45 the second sentence shall not apply.

(16) Article 46 shall not apply.

(17) In Article 49 the words from "whether" to "jurisdiction" shall be omitted.