Draft Order in Council laid before Parliament under section 10(5) of the Carriage by Air Act 1961, for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

1999 No.

CIVIL AVIATION

The Carriage by Air Acts (Application of Provisions) (Fifth Amendment) Order 1999

Made - - - - 1999

Coming into force - - 1999

At the Court at [ ], the [ ] day of [ ] 1999

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(5) 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) (Fifth Amendment) Order 1999 and shall come into force on the tenth day after the day on which it is made.

(2) 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 Acts (Application of Provisions) Order 1967

2.—(1) The Carriage by Air Acts (Application of Provisions) Order 1967(**3**) is hereby amended as follows.

(**1**) 1961 c. 27.
(**2**) 1962 c. 43.
(**3**) S.I.1967/480 as amended by S.I. 1969/1083, 1979/931, 1981/440 and 1998/1058.

(2) In article 2(1):

(a) for the term "the amended Convention" which is defined in that section there shall be substituted the term "the 1955 amended Convention"; and

(b) after the definition of "the 1955 amended Convention" there shall be inserted:

> ""the MP4 amended 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(**4**);";

(3) In articles 3 and 7 for the words "amended Convention" there shall be substituted "1955 amended Convention or the MP4 amended Convention";

(4) For Schedule 1 there shall be substituted the provisions set out in the Schedule to this Order.

(5) In Schedules 2 and 3 for the words "the amended Convention", wherever they appear, there shall be substituted the words "the 1955 amended Convention".

Clerk of the Privy Council

(**4**) Schedule 1A was inserted by S.I. 1999/ .

SCHEDULE Article 3(3)

Provisions inserted, as Schedule 1, in the Carriage by Air Acts (Application of Provisions) Order 1967

"SCHEDULE 1

NON-INTERNATIONAL CARRIAGE AND CARRIAGE OF MAIL AND POSTAL PACKAGES

PART I

APPLICATION OF THE WARSAW CONVENTION AS AMENDED AT THE HAGUE AND BY PROTOCOL NO. 4 OF MONTREAL, 1975

The MP4 amended Convention as set out in Schedule 1A 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 (3) shall not apply.

(4) Article 2(2) and (3) shall not apply.

(5) Chapter II shall not apply.

(6) In Article 22(1) for "16,600 Special Drawing Rights" there shall be substituted "100,000 Special Drawing Rights".

(7) Article 22(6) shall not apply and the following shall be inserted:–

"(6) 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 have 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.

(7) 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 (6) for a particular day; or

(b) that no sum has been so 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.";

(8) In Article 26(1) the words from "and" to the end shall be omitted.

(9) In Article 26(3) the words from "upon" to "writing" shall be omitted.

(10) Article 28 shall not apply.

(11) In Article 30(1) the words from "and" where it first occurs to "Article 1" shall be omitted.

(12) In Article 32 the words from "if" to the end shall be omitted.

(13) Article 34 shall not apply.

(14) Articles 36 to 41 shall not apply.

(15) The Additional Protocol shall not apply.

PART II

APPLICATION OF THE GUADALAJARA CONVENTION

The Guadalajara Convention shall apply in respect of carriage, described in Article 4 of this Order, subject to the following exceptions, adaptations and modifications:–

(1) For "the Convention" wherever it appears, there shall be substituted "the Guadalajara Convention as applied by this Schedule".

(2) In Article 1, the following shall be added as paragraph (a):–

""the Warsaw Convention" means the MP4 amended Convention as applied by this Schedule".

(3) In Article II, the words from "according" to "paragraph (b)" shall be omitted.

(4) In Article III.2 for "by that Convention" there shall be substituted "thereby" and for "of the said Convention" there shall be substituted "thereof".

(5) In Article IV, the second sentence shall not apply.

(6) In Article VII, the second sentence shall not apply.

(7) Article VIII shall not apply.

(8) In Article IX, the words from "if" to the end shall be omitted.

(9) After Article X the following Article shall be added:–

"**Article XI**

Nothing herein shall impose any liability on the Postmaster General or any authority for the time being established by or under any Act of Parliament to provide postal services".

PART III

For convenience of reference the MP4 amended Convention and the Guadalajara Convention, with the exceptions, adaptations and modifications made by this Schedule are here set out:

A. *The MP4 amended Convention, as applied by Schedule 1*

NON-INTERNATIONAL CARRIAGE AND
CARRIAGE OF MAIL AND POSTAL PACKAGES

CHAPTER 1 – SCOPE – DEFINITIONS

Article 1

This Schedule applies to all carriage of persons, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.

Article 2

This Schedule applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1.

CHAPTER III—LIABILITY OF THE CARRIER

Article 17

The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

Article 18

(1) The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, any registered baggage, if the occurrence which caused the damage so sustained took place during the carriage by air.

(2) The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, cargo upon condition only that the occurrence which caused the damage so sustained took place during the carriage by air.

(3) However, the carrier is not liable if he proves that the destruction, loss of, or damage to, the cargo resulted solely from one or more of the following:

(a) inherent defect, quality or vice of that cargo;

(b) defective packing of that cargo performed by a person other than the carrier or his servants or agents;

(c) an act of war or an armed conflict;

(d) an act of a public authority carried out in connection with the entry, exit or transit of the cargo.

(4) The carriage by air within the meaning of the preceding paragraphs of this Article comprises the period during which the baggage or cargo is in the charge of the carrier, whether in an airport or on board an aircraft, or, in the case of a landing outside an airport, in any place whatsoever.

(5) The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an airport. If, however, such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transhipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

Article 19

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo.

Article 20

In the case of passengers and baggage, and in the case of damage occasioned by delay in the carriage of cargo, the carrier shall not be liable if he proves that he and his servants and agents have taken all necessary measures to avoid the damage or that it was impossible for them to take such measures.

Article 21

(1) In the carriage of passengers and baggage, if the carrier proves that the damage was caused by or contributed to by the negligence of the person suffering the damage the Court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

(2) In the carriage of cargo, if the carrier proves that the damage was caused by or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the