This draft Statutory Instrument supersedes the version laid before Parliament on 3 November 1997.*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

1998 No.

CIVIL AVIATION

The Carriage by Air Acts (Application of Provisions) (Fourth Amendment) Order 1998

Made - - - - 1998

Coming into force in accordance with article 1.

At the Court at Buckingham Palace, the day of 1998

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:—

1. This Order may be cited as the Carriage by Air Acts (Application of Provisions) (Fourth Amendment) Order 1998 and shall come into force on the tenth day after the day on which it is made.

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

(1) In Article 4(a) after "Schedule 2" there shall be inserted "or Schedule 3".

(2) After Article 5 there shall be inserted the following article—

"**5A.**—(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.

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

(2) Section 2 of the Act of 1961 shall apply to such carriage as aforesaid with the following modifications to subsection (1):

(a) For "Convention" where it first appears there shall be substituted "Warsaw Convention as amended by Additional Protocol No. 1 of Montreal 1975(**4**)";

(b) For "at the end of the Convention as set out in the First Schedule to this Act" there shall be substituted "to the Warsaw Convention".

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

(a) For "Convention" where it first appears there shall be inserted "Warsaw Convention as amended by Additional Protocol No. 1 of Montreal 1975";

(b) The words "as set out in the First Schedule to this Act" shall be omitted;

(c) The reference to "the said Schedule" shall be construed as a reference to the amended Convention as applied by Schedule 3 to this Order.".

(3) In Part A of Schedule 2—

(a) in paragraph 3(7), for the word "goods" there shall be substituted the word "cargo";

(b) after paragraph 3(10) there shall be inserted the following sub-paragraph:—

"(10A) Article 15(3) shall not apply.";

(c) after paragraph 3(14) there shall be inserted the following sub-paragraph:—

"(14A) Article 25A shall not apply.".

(4) In Part B of Schedule 2 Articles 15(3) and 25A shall be omitted.

(5) After Schedule 2 there shall be inserted the following Schedule—

"SCHEDULE 3 Article 5A

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

PART A

1. The amended Convention and the Guadalajara Convention shall apply in respect of carriage which is "international carriage" as defined in paragraph 2 of this part of this Schedule, with the exceptions, adaptations and modifications set forth in paragraphs 3 and 4.

2. For the purposes of Article 5A of this Order and of this Schedule "international carriage" shall have the meaning assigned to it by paragraph 3(2) of this part of this Schedule.

3. The amended Convention shall apply to international carriage as aforesaid, with the following exceptions, adaptations and modifications:—

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

(2) The following shall be substituted for Article 1(2):

"(2) "International carriage" means any carriage in which, according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transhipment, are situated either within the territories of two States Parties to the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on behalf of His Majesty on 12th October 1929 as amended by Additional Protocol No. 1

(**4**) Cmd. 4284 and Cmnd. 6480.

of Montreal 1975, or within the territory of a single such State, if there is an agreed stopping place within the territory subject to the sovereignty, suzerainty, mandate or authority of another State, even though that State is not a party to the said Convention of 1929 as so amended.".

(3) The following shall be substituted for Article 1(3):—

"(3) A carriage to be performed by several successive air carriers is deemed for the purposes of this Schedule, to be one undivided carriage, if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within a territory subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party.".

(4) The following shall be substituted for Article 2:—

"**Article 2**

(1) This Schedule applies to carriage performed by the State, not being a State which has availed itself of the Additional Protocol to the Warsaw Convention, or by legally constituted public bodies, provided it falls within the conditions laid down in Article 1.

(2) This Schedule does not apply to carriage performed under the terms of any international postal Convention.".

(5) The following shall be substituted for Article 3:—

"**Article 3**

(1) For the carriage of passengers the carrier must deliver a passenger ticket which shall contain the following particulars:—

(a) the place and date of issue;

(b) the place of departure and of destination;

(c) the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right, the alteration shall not have the effect of depriving the carriage of its international character;

(d) the name and address of the carrier or carriers;

(e) a statement that the carriage is subject to the rules relating to liability established by the Warsaw Convention.

(2) The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract of carriage, which shall none the less be subject to the rules of this Schedule. Nevertheless, if the carrier accepts a passenger without a passenger ticket having been delivered he shall not be entitled to avail himself of those provisions of this Schedule which exclude or limit his liability.".

(6) The following shall be substituted for Article 4:—

"**Article 4**

(1) For the carriage of baggage, other than small personal objects of which the passenger takes charge himself, the carrier must deliver a baggage check.

(2) The baggage check shall be made out in duplicate, one part for the passenger and the other part for the carrier.

(3) The baggage check shall contain the following particulars:—

(a) the place and date of issue;

(b) the place of departure and of destination;

(c) the name and address of the carrier or carriers;

(d) the number of the passenger ticket;

(e) a statement that delivery of the baggage will be made to the bearer of the baggage check;

(f) the number and weight of the packages;

(g) the amount of the value declared in accordance with Article 22(2);

(h) a statement that the carriage is subject to the rules relating to liability established by the Warsaw Convention.

(4) The absence, irregularity or loss of the baggage check does not affect the existence or the validity of the contract of carriage, which shall none the less be subject to the rules of this Schedule. Nevertheless, if the carrier accepts baggage without a baggage check having been delivered, or if the baggage check does not contain the particulars set out at (d), (f) and (h) above, the carrier shall not be entitled to avail himself of those provisions of this Schedule which exclude or limit his liability.".

(7) The following shall be substituted for Article 6(3):—

"(3) The carrier shall sign on acceptance of the cargo.".

(8) The following shall be substituted for Article 8:—

"**Article 8**

The air waybill shall contain the following particulars:—

(a) The place and date of its execution;

(b) the place of departure and of destination;

(c) the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right the alteration shall not have the effect of depriving the carriage of its international character;

(d) the name and address of the consignor;

(e) the name and address of the first carrier;

(f) the name and address of the consignee, if the case so requires;

(g) the nature of the cargo;

(h) the number of the packages, the method of packing and the particular marks or numbers upon them;

(i) the weight, the quantity and the volume or dimensions of the cargo;

(j) the apparent condition of the cargo and of the packing;

(k) the freight, if it has been agreed upon, the date and place of payment, and the person who is to pay it;

(l) if the cargo is sent for payment on delivery, the price of the cargo, and, if the case so requires, the amount of the expenses incurred;

(m) the amount of the value declared in accordance with Article 22(2);

(n) the number of parts of the air waybill;

(o) the documents handed to the carrier to accompany the air waybill;

(p) the time fixed for the completion of the carriage and a brief note of the route to be followed, if these matters have been agreed upon;

(q) a statement that the carriage is subject to the rules relating to liability established by the Warsaw Convention.".

(9) The following shall be substituted for Article 9:—

"**Article 9**

If the carrier accepts cargo without an air waybill having been made out, or if the air waybill does not contain all the particulars set out in Article 8(a) to (i) inclusive and (q), the carrier shall not be entitled to avail himself of the provisions of this Schedule which exclude or limit his liability.".

(10) The following shall be substituted for Article 10(2):—

"(2) The consignor will be liable for all damage suffered by the carrier or any other person by reason of the irregularity, incorrectness or incompleteness of the said particulars and statements.".

(11) Article 15(3) shall not apply.

(12) The following shall be substituted for Article 20(2):—

"(2) In the carriage of cargo and baggage the carrier is not liable if he proves that the damage was occasioned by negligent pilotage or negligence in the handling of the aircraft or in navigation and that, in all other respects, he and his servants or agents have taken all necessary measures to avoid the damage.".

(13) The following shall be substituted for Article 22:—

"**Article 22**

(1) In the carriage of passengers the liability of the carrier for each passenger is limited to the sum of 8,300 Special Drawing Rights. Where, in accordance with the law of the court seised of the case, damages may be awarded in the form of periodic payments, the equivalent capital value of the said payments shall not exceed this limit. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

(2) In the carriage of registered baggage and of cargo, the liability of the carrier is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that the sum is greater than the consignor's actual interest in delivery at destination.

(3) As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 332 Special Drawing Rights per passenger.

(4) The sums mentioned in terms of the Special Drawing Right in this Article shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgement. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgement, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that High Contracting Party.

Nevertheless, those States which are not Members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraphs 1, 2 and 3 of Article 22 may at the time of ratification or accession or at any time thereafter declare that the limit of liability of the carrier in judicial proceedings in their territories is fixed at a sum of 125,000