



# Civil Aviation Act 1949

1949 CHAPTER 67 12 13 and 14 Geo 6

## PART IV

LIABILITY FOR DAMAGE, ETC., CAUSED BY AIRCRAFT

### **40 Liability of aircraft in respect of trespass, nuisance and surface damage**

- (1) No action shall lie in respect of trespass or in respect of nuisance, by reason only of the flight of an aircraft over any property at a height above the ground, which, having regard to wind, weather and all the circumstances of the case is reasonable, or the ordinary incidents of such flight so long as the provisions of Part II and this Part of this Act and any Order in Council or order made under Part II or this Part of this Act are duly complied with.
- (2) Where material loss or damage is caused to any person or property on land or water by, or by a person in, or an article or person falling from, an aircraft while in flight, taking off or landing, then unless the loss or damage was caused or contributed to by the negligence of the person by whom it was suffered, damages in respect of the loss or damage shall be recoverable without proof of negligence or intention or other cause of action, as if the loss or damage had been caused by the wilful act, neglect, or default of the owner of the aircraft:

Provided that where material loss or damage is caused as aforesaid in circumstances in which—

- (a) damages are recoverable in respect of the said loss or damage by virtue only of the foregoing provisions of this subsection ; and
- (b) a legal liability is created in some person other than the owner to pay damages in respect of the said loss or damage;

the owner shall be entitled to be indemnified by that other person against any claim in respect of the said loss or damage.

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#### **41 Nuisance caused by aircraft on aerodromes**

- (1) An Order in Council under section eight of this Act may provide for regulating the conditions under which noise and vibration may be caused by aircraft on aerodromes and may provide that subsection (2) of this section shall apply to any aerodrome as respects which provision as to noise and vibration caused by aircraft is so made.
- (2) No action shall lie in respect of nuisance by reason only of the noise and vibration caused by aircraft on an aerodrome to which this subsection applies by virtue of an Order in Council under section eight of this Act, as long as the provisions of any such Order in Council are duly complied with.

#### **42 Limitation of liability**

- (1) Subject to the provisions of this Part of this Act, where a person or his estate is liable to pay damages by reason of loss or damage which, after the appointed day, is caused on any one occasion to persons or property on land or water by, or by a person in, or an article or person falling from, an aircraft while in flight, taking off or landing, his or, as the case may be, his estate's total liability to pay damages by reason of the loss or damage shall be limited in accordance with the provisions of the Fifth Schedule to this Act;

Provided that a person or, as the case may be, his estate shall not be entitled to the benefit of this section in relation to any such loss or damage as aforesaid in any case in which it is proved that the loss or damage is attributable to his wilful misconduct or to wilful misconduct on the part of any of his servants or agents, unless (in a case where the loss or damage is attributable to wilful misconduct on the part of any of his servants or agents) it is proved that the loss or damage occurred without his actual fault or privity.

- (2) Any reference in this Act to the total limit of liability appropriate to an aircraft shall be construed as a reference to the total amount to which a person could, in the circumstances mentioned in the foregoing subsection, limit his liability to pay damages in respect of loss or damage caused on any one occasion by that aircraft, whether to persons or to property; and any reference in this Act to the limit of liability for property claims appropriate to an aircraft shall be construed as a reference to the amount to which a person could, in such circumstances, limit his liability to pay damages in respect of loss or damage caused on any one occasion by that aircraft, if that loss or damage were only loss of, or damage to, property.
- (3) Without prejudice to the operation of the next following section, a person or, as the case may be, his estate shall not be entitled to the benefit of this section in relation to any loss or damage, if, at the time of the happening of the event which was the cause of the loss or damage, he was not the owner of the aircraft concerned and was in, or in possession or control of, the aircraft without the authority or permission of the owner thereof.
- (4) Where any person or the estate of any person is alleged to be under any liability in respect of such loss or damage as is mentioned in subsection (1) of this section, and several claims for damages are made or apprehended in respect of that liability, the said person or his personal representative, as the case may be, may make application to the High Court, and thereupon the court may assess the liability to pay damages, and determine whether, and, if so, to what amount, it can be limited under this section, dealing separately, if need be, with such of the claims as are in respect of loss of or

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damage to property, and, if the liability can be so limited, may distribute the amount thereof among the several claims on the following principles:—

- (a) if the claims are solely in respect of loss of life or personal injury or solely in respect of loss of, or damage to, property, the amount of the liability shall be distributed rateably;
  - (b) if there are claims both in respect of loss of life or personal injury and in respect of loss of, or damage to, property, one-half of the total limit of liability appropriate to the aircraft concerned shall be appropriated, so far as necessary, to meeting claims for loss of life or personal injury and shall be distributed rateably among them, and the other half shall be distributed rateably among all the claims, including claims in respect of loss of life or personal injury if and so far as they exceed the aforesaid appropriation.
- (5) Where an application is made to the court under the last foregoing subsection, the court may stay any proceedings pending in any other court in relation to the same matter, and may give such directions as the court thinks proper for the joining of persons interested as parties to the proceedings, for the exclusion of claims which are not brought before the court within a certain time, and for requiring security from the person by whom the application to the court was made.
- (6) Nothing in this or the last but one foregoing section shall affect the operation of the Carriage by Air Act, 1932, or any contract for the carriage of passengers or goods by air in so far as the contract provides for determining or limiting the liability of the carrier thereunder.

### **43 Compulsory third-party insurance**

- (1) Subject to the provisions of this section, a person shall not fly, or cause or permit any other person to fly, an aircraft, unless there is in force in relation to the flying of the aircraft by that person or that other person, as the case may be,—
- (a) a policy of insurance issued by an authorised insurer which, subject to any restrictions or conditions specified therein, insures the owner of the aircraft against all liability which he may incur in respect of loss or damage caused to persons or property on land or water by, or by any person in, or any article or person falling from, the aircraft while in flight, taking off or landing, or
  - (b) a security given by an authorised giver of securities, being a security which consists of an undertaking by the giver of the security to make good, subject to any restrictions or conditions specified therein, any failure by the owner of the aircraft to discharge any such liability as aforesaid;

and a person or, as the case may be, his estate shall not be entitled to the benefit of the last foregoing section in relation to any claim made in respect of such loss or damage as aforesaid, unless it is proved that such a policy or security as aforesaid was in force in relation to the flying of the aircraft concerned at the time of the happening of the event which was the cause of the loss or damage giving rise to the claim, or, if the claim is made against the person who at that time was the owner of the aircraft or against his estate, that the aircraft was then in the possession or control of some other person without the authority or permission of the owner.

- (2) If any person contravenes this section, he shall be liable, on summary conviction, to a fine not exceeding two hundred pounds or to imprisonment for a term not exceeding six months or to both.

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- (3) The foregoing provisions of this section shall not apply to an aircraft of which, at the material time, the owner is a local authority, a police authority or the Receiver for the Metropolitan Police District, or which, at that time, is being used for police purposes by, or under the direction of, a police officer or by a person employed by a police authority or employed by the said receiver, and shall not apply to any aircraft if and so long as the owner thereof has deposited, and keeps deposited, with the Accountant-General of the Supreme Court of Judicature in England, for and on behalf of that court, an amount at least equal to the total limit of liability appropriate to that aircraft or, where he is the owner of three or more aircraft, an amount at least equal to the aggregate of the two greatest of the total limits of liability appropriate to those aircraft respectively.
- (4) For the purpose of this section except as it applies in Northern Ireland any person or body of persons carrying on in Great Britain marine, aviation and transit insurance business shall be an authorised insurer:

Provided that—

- (a) an assurance company which, immediately before the twenty-ninth day of October, nineteen hundred and forty-five, was carrying on in Great Britain assurance business of any class to which the Assurance Companies Act, 1909, applies in compliance with such of the provisions of that Act as then applied to the company and to that class of business; and
- (b) an association as respects which an order is for the time being in force under paragraph 3 of Part III of the Second Schedule to the Assurance Companies Act, 1946,

shall not for that purpose be an authorised insurer, unless it is a body corporate having a paid up share capital of not less than fifty thousand pounds (as required by section two of the said Act of 1946).

For the purposes of paragraph 1 of Part V of the said Second Schedule (which authorises the Board of Trade by regulations to adapt references in that Schedule to the said limit of fifty thousand pounds) the proviso to this subsection shall be treated as if contained in that Schedule.

- (5) For the purpose of this section as it applies in Northern Ireland any person or body of persons carrying on in the United Kingdom marine, aviation and transit insurance business shall be an authorised insurer :

Provided that—

- (a) an insurance company which, immediately before the first day of December, nineteen hundred and forty-six, was carrying on in the United Kingdom assurance business of any class to which the Assurance Companies Act, 1909, applies in compliance with such of the provisions of that Act as then applied to the company and to that class of business ; and
- (b) an association as respects which an order is for the time being in force under paragraph 3 of Part III of the Second Schedule to the Assurance Companies Act (Northern Ireland), 1947,

shall not for that purpose be an authorised insurer unless it is a body corporate having a paid-up share capital of not less than fifty thousand pounds (as required by section two of the said Act of 1947).

For the purposes of paragraph 1 of Part V of the said Second Schedule (which authorises the Ministry of Commerce for Northern Ireland by regulations to adapt

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references in that Schedule to the said limit of fifty thousand pounds) the proviso to this subsection shall be treated as if contained in that Schedule.

No limitation on the powers of the Parliament of Northern Ireland contained in the Government of Ireland Act, 1920, shall preclude that Parliament from amending or repealing the provisions of this subsection.

(6) In this section:—

- (a) the expression " authorised giver of securities " means either an authorised insurer or a body of persons which carries on in the United Kingdom the business of giving securities of the kind required by this Part of this Act, and which has deposited and keeps deposited with the Accountant-General of the Supreme Court of Judicature in England, for and on behalf of that Court, the Sum of fifteen thousand pounds in respect of that business; and
- (b) the expression " local authority " except in relation to Scotland means the council of a county, county borough, metropolitan borough or county district, the common council of the City of London, or any joint board or joint committee which is so constituted as to include among its members representatives of any such council and in relation to Scotland means any county, town or district council, or any joint committee which is so constituted as to include among its members representatives of any such council.

#### **44 Certificates of insurance or security**

A policy of insurance or a security shall be of no effect for the purposes of the foregoing provisions of this Part of this Act, unless and until there is delivered by the insurer to the person by whom the policy is effected, or by the giver of the security to the person to whom it is given, a certificate in such form, and containing such particulars with respect to the policy or security, as may be prescribed by the Minister, and any such certificate relating to a policy or certificate relating to a security is hereafter in this Act referred to as a " certificate of insurance " or " certificate of security," as the case may be.

#### **45 Rights under policies, etc.**

The provisions of the Sixth Schedule to this Act (being provisions which, subject to certain adaptations, modifications and exceptions, correspond with the provisions of the Road Traffic Acts, 1930 and 1934, referred to in the margin of the said Schedule) shall have effect in relation to policies of insurance, securities and deposits required for the purposes of the foregoing provisions of this Part of this Act.

#### **46 Offences in connection with policies, etc.**

- (1) If any person, with intent to obtain for himself or any other person such a policy of insurance or such a security as is required by this Part of this Act, fails to disclose a fact which he knows to be a material fact, or makes a representation of fact which he knows to be false in a material particular, he shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds or to both.
- (2) If any person issues a certificate of insurance or certificate of security which is to his knowledge false in any material particular, he shall be liable, on summary conviction,

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to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds or to both.

#### **47 Survival of causes of action in Northern Ireland**

Except in so far as the Parliament of Northern Ireland may otherwise enact, the provisions contained in the Seventh Schedule to this Act (which, subject to certain adaptations, modifications and exceptions, correspond with provisions of the Law Reform (Miscellaneous Provisions) Act, 1934, relating to the survival of causes of action) shall have effect in Northern Ireland with respect to causes of action in respect of loss or damage which after the appointed day is caused to persons or property on land or water by, or by persons in, or articles or persons falling from, aircraft while in flight, taking off or landing.

#### **48 Power to give effect to Rome Convention**

- (1) Whereas a Convention for the unification of certain rules relating to damage caused by aircraft to third parties on the surface was, on the twenty-ninth day of May, nineteen hundred and thirty-three, signed in Rome on behalf of His Majesty, and a copy of that Convention has been laid before each House of Parliament:

And whereas it is expedient that provision should be made for giving effect to the said Convention:

Now, therefore, His Majesty may, if it appears to His Majesty in Council to be necessary or expedient so to do for the purpose of giving effect to the said Convention, make an Order in Council—

- (a) directing—
    - (i) that the provisions set out in the Order shall, in relation to aircraft registered in any such country other than the United Kingdom as may be specified in the Order, have effect in lieu of the provisions of this Part of this Act, save section forty-one; or
    - (ii) that all or any of the said provisions shall, in relation to such aircraft as aforesaid, have effect subject to such modifications, adaptations and exceptions as may be specified in the Order ;
  - (b) making such provision as appears to His Majesty in Council to be required for securing that an aircraft registered in the United Kingdom shall not leave the United Kingdom on a flight to or over any such country as aforesaid, unless there is on board the aircraft a certificate relating to a policy of insurance, a security or a deposit of money in respect of the aircraft, being a certificate in such form, and issued by such person, and containing such particulars, as may be prescribed by the Order.
- (2) If the Convention recited in the foregoing subsection is amended by any Convention or agreement to which His Majesty or His Majesty's Government in the United Kingdom is a party, the said subsection shall have effect as if any reference therein to " the said Convention " were a reference to the first-mentioned Convention as so amended.

#### **49 Supplemental provisions for Part IV**

- (1) In this Part of this Act—

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" certificate of insurance " and " certificate of security " have the meanings assigned to them by section forty-four of this Act.

" material ", in relation to any fact or particular, means of such a nature as to influence the judgment of a prudent insurer or giver of securities in determining whether he will take the risk or provide security, and, if so, at what premium or for what consideration, as the case may be, and subject to what restrictions and conditions ;

" policy of insurance " includes a covering note.

(2) Where the aircraft concerned has been bona fide demised, let or hired out for any period exceeding fourteen days to any other person by the owner thereof, and no pilot, commander, navigator or operative member of the crew of the aircraft is in the employment of the owner, this Part of this Act shall have effect as if for references therein to the owner there were substituted references to the person to whom the aircraft has been so demised, let or hired out.

(3) Part VI of this Act applies to this Part of this Act.

## **50 Commencement of certain provisions in Part IV**

The provisions of sections forty-two to forty-eight of this Act shall not come into operation until such day as the Minister may by order appoint, and references in this Part of this Act to the appointed day shall be construed as references to the beginning of the day so appointed.

An order under this section shall be made by statutory instrument.