



Carriage by Air Act 1961

1961 CHAPTER 27

1 Convention to have force of law

- (1) Subject to this section, the provisions of the Convention known as " the Warsaw Convention as amended at The Hague, 1955 " as set out in the First Schedule to this Act shall, so far as they relate to the rights and liabilities of carriers, carriers' servants and agents, passengers, consignors, consignees and other persons, and subject to the provisions of this Act, have the force of law in the United Kingdom in relation to any carriage by air to which the Convention applies, irrespective of the nationality of the aircraft performing that carriage ; and the Carriage by Air Act, 1932 (which gives effect to the Warsaw Convention in its original form), shall cease to have effect.
- (2) If there is any inconsistency between the text in English in Part I of the First Schedule to this Act and the text in French in Part II of that Schedule, the text in French shall prevail.
- (3) This section shall come into force on such day as Her Majesty may by Order in Council certify to be the day on which the Convention comes into force as regards the United Kingdom.
- (4) This section shall not apply so as to affect rights or liabilities arising out of an occurrence before the coming into force of this section.

2 Designation of High Contracting Parties

- (1) Her Majesty may by Order in Council from time to time certify who are the High Contracting Parties to the Convention, in respect of what territories they are respectively parties and to what extent they have availed themselves of the provisions of the Additional Protocol at the end of the Convention as set out in the First Schedule to this Act.
- (2) Paragraph (2) of Article 40a in the First Schedule to this Act shall not be read as extending references in that Schedule 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.

- (3) An Order in Council under this section shall, except so far as it has been superseded by a subsequent Order, be conclusive evidence of the matters so certified.
- (4) An Order in Council under this section may contain such transitional and other, consequential provisions as appear to Her Majesty to be expedient.

3 Fatal accidents

References in section one of the Fatal Accidents Act, 1846, as it applies in England and Wales, and in Northern Ireland, to a wrongful act, neglect or default shall include references to any occurrence which gives rise to a liability under Article 17 in the First Schedule to this Act.

4 Limitation of liability

- (1) It is hereby declared that the limitations on liability in Article 22 in the First Schedule to this Act apply whatever the nature of the proceedings by which liability may be enforced and that, in particular—
 - (a) those limitations apply where proceedings are brought by a tortfeasor to obtain a contribution from another tortfeasor, and
 - (b) the limitation for each passenger in paragraph (1) of the said Article 22 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.
- (2) A court before which proceedings are brought to enforce a liability which is limited by the said Article 22 may at any stage of the proceedings make any such order as appears to the court to be just and equitable in view of the provisions of the said Article 22, and of any other proceedings which have been, or are likely to be, commenced in the United Kingdom or elsewhere to enforce the liability in whole or in part.
- (3) Without prejudice to the last foregoing subsection, a court before which proceedings are brought to enforce a liability which is limited by the said Article 22 shall, where the liability is, or may be, partly enforceable in other proceedings in the United Kingdom or elsewhere, have jurisdiction to award an amount less than the court would have awarded if the limitation applied solely to the proceedings before the court, or to make any part of its award conditional on the result of any other proceedings.
- (4) The Minister of Aviation may from time to time by order made by statutory instrument specify the respective amounts which for the purposes of the said Article 22, and in particular of paragraph (5) of that Article, are to be taken as equivalent to the sums expressed in francs which are mentioned in that Article.
- (5) References in this section to the said Article 22 include, subject to any necessary modifications, references to that Article as applied by Article 25A.

5 Time for bringing proceedings

- (1) No action against a carrier's servant or agent which arises out of damage to which the Convention relates shall, if he was acting within the scope of his employment, be brought after more than two years, reckoned from the date of arrival at the destination or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

- (2) Article 29 in the First Schedule of this Act shall not be read as applying to any proceedings for contribution between tortfeasors, but no action shall be brought by a tortfeasor to obtain a contribution from a carrier in respect of a tort to which the said Article 29 applies after the expiration of two years from the time when judgment is obtained against the person seeking to obtain the contribution.
- (3) The foregoing provisions of this section and the provisions of the said Article 29 shall have effect as if references in those provisions to an action included references to an arbitration ; and subsections (3) and (4) of section twenty-seven of the Limitation Act, 1939, or, in Northern Ireland, subsections (2) and (3) of section seventy-two of the Statute of Limitations (Northern Ireland), 1958 (which determine the time at which an arbitration is deemed to be commenced), shall apply for the purposes of this subsection.

6 Contributory negligence

It is hereby declared that for the purposes of Article 21 in the First Schedule to this Act the Law Reform (Contributory Negligence) Act, 1945 (including that Act as applied to Scotland), and section two of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland), 1948, are provisions of the law of the United Kingdom under which a court may exonerate the carrier wholly or partly from his liability.

7 Power to exclude aircraft in use for military purposes

- (1) Her Majesty may from time to time by Order in Council direct that this section shall apply, or shall cease to apply, to the United Kingdom or any other State specified in the Order.
- (2) The Convention as set out in the First Schedule to this Act shall not apply to the carriage of persons, cargo and baggage for the military authorities of a State to which this section applies in aircraft registered in that State if the whole capacity of the aircraft has been reserved by or on behalf of those authorities.

8 Actions against High Contracting Parties

Every High Contracting Party to the Convention who has not availed himself of the provisions of the Additional Protocol at the end of the Convention as set out in the First Schedule to this Act shall, for the purposes of any action brought in a court in the United Kingdom in accordance with the provisions of Article 28 in the said Schedule to enforce a claim in respect of carriage undertaken by him, be deemed to have submitted to the jurisdiction of that court, and accordingly rules of court may provide for the manner in which any such action is to be commenced and carried on ; but nothing in this section shall authorise the issue of execution against the property of any High Contracting Party.

9 Application to British possessions, etc.

- (1) Her Majesty may by Order in Council direct that this Act shall extend, subject to such exceptions, adaptations and modifications as may be specified in the Order, to—
 - (a) the Isle of Man ;
 - (b) any of the Channel Islands ;
 - (c) any colony or protectorate, protected state or United Kingdom trust territory.

The references in this subsection to a protectorate, to a protected state and to a United Kingdom trust territory shall be construed as if they were references contained in the British Nationality Act, 1948.

- (2) An Order in Council under this section may contain such transitional and other consequential provisions as appear to Her Majesty to be expedient, and may be varied or revoked by a subsequent Order in Council.

10 Application to carriage by air not governed by Convention

- (1) Her Majesty may by Order in Council apply the First Schedule to this Act, together with any other provisions of this Act, to carriage by air, not being carriage by air to which the Convention applies, of such descriptions as may be specified in the Order, subject to such exceptions, adaptations and modifications, if any, as may be so specified.
- (2) An Order in Council under this section may be made to apply to any of the countries or places mentioned in paragraphs (a), (b) and (c) of subsection (1) of the last foregoing section.
- (3) An Order in Council under this section may contain such transitional and other consequential provisions as appear to Her Majesty to be expedient, and may confer any functions under the Order on a Minister of the Crown in the United Kingdom or on any Governor or other authority in any of the countries or places mentioned in paragraphs (a), (b) and (c) of subsection (1) of the last foregoing section, including a power to grant exemptions from any requirements imposed by such an Order.
- (4) An Order in Council under this section may be varied or revoked by a subsequent Order in Council.
- (5) An Order in Council under this section shall not be made unless a draft of the Order has been laid before Parliament and approved by a resolution of each House of Parliament:

Provided that this subsection shall not apply to an Order which applies only to the Isle of Man or all or any of the Channel Islands.

11 Application to Scotland

In the application of this Act to Scotland—

- (a) there shall be substituted—
- (i) for any reference to a tort, a reference to a wrongful act or a negligent act or omission;
 - (ii) for any reference to a tortfeasor, a reference to a person who has been or might be held liable for loss or damage arising from any such act or omission;
 - (iii) for any reference to the obtaining of judgment, a reference to the pronouncing of decree;
 - (iv) for any reference to the issuing of execution, a reference to the execution of diligence ;
 - (v) for any reference to an arbitrator, a reference to an arbiter ; and
 - (vi) for any reference to a plaintiff, a reference to a pursuer;
- (b) for section three there shall be substituted the following section—

“3 Fatal accidents.

The reference in Article 17 in the First Schedule to this Act to the liability of a carrier for damage sustained in the event of the death of a passenger shall be construed as including liability to such persons as are entitled, apart from this Act, to sue the carrier (whether for patrimonial damage or solatium or both) in respect of the death.”;

- (c) in section five, subsection (1) shall have effect notwithstanding anything in section six of the Law Reform (Limitation of Actions, &c.) Act, 1954; and in subsection (3), for the words from " and subsections (3) and (4)" to the end of the subsection there shall be substituted the words " and for the purpose of this subsection an arbitration shall be deemed to be commenced when one party to the arbitration serves on the other party or parties a notice requiring him or them to appoint an arbiter or to agree to the appointment of an arbiter, or, where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring him or them to submit the dispute to the person so named or designated. "

12 Application to Northern Ireland

In the application of this Act to Northern Ireland any reference to an enactment of the Parliament of Northern Ireland, or to an enactment which that Parliament has power to amend, shall be construed as a reference to that enactment as amended by any Act of that Parliament, whether passed before or after this Act, and to any enactment of that Parliament passed after this Act and re-enacting the said enactment with or without modification.

13 Application to Crown

This Act shall bind the Crown.

14 Short title, interpretation and repeals

- (1) This Act may be cited as the Carriage by Air Act, 1961.
- (2) In this Act the expression "court" includes (in an arbitration allowed by the Convention) an arbitrator.
- (3) On the date on which section one of this Act comes into force the Acts specified in the Second Schedule to this Act shall be repealed to the extent specified in the third column of that Schedule:

Provided that, without prejudice to section thirty-eight of the Interpretation Act, 1889 (which relates to the effect of repeals), this subsection shall not affect any rights or liabilities arising out of an occurrence before that date.