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STATUTORY INSTRUMENTS

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**1968 No. 1864**

**CIVIL AVIATION**

**The Tokyo Convention Act 1967  
(Overseas Territories) Order 1968**

<i>Made</i>	- - - -	<i>22nd November</i>
		<i>1968</i>
<i>Coming into Operation</i>		<i>1st March 1969</i>

At the Court at Buckingham Palace, the 22nd day of November 1968

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 8 of the Tokyo Convention Act 1967 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 and commencement**

1. This Order may be cited as the Tokyo Convention Act 1967 (Overseas Territories) Order 1968 and shall come into operation on 1st March 1969.

**Interpretation**

2. The Interpretation Act 1889 shall apply, with the necessary adaptations, for the purpose of interpreting this Order and otherwise in relation thereto as it applies for the purpose of interpreting, and in relation to, Acts of Parliament.

**Extension of Act of 1967**

3. Sections 1, 3, 4, 5, 6 and 7 of, and the Schedule to, the Tokyo Convention Act 1967, modified and adapted as in Schedule 1 hereto, shall extend to the Territories specified in Schedule 2 hereto.

*W. G. Agnew*

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SCHEDULE 1  
TO THE ORDER

Article 3

“PROVISIONS OF TOKYO CONVENTION ACT 1967 AS EXTENDED TO THE TERRITORIES SPECIFIED IN SCHEDULE 2

**Application of criminal law to aircraft**

1.—(1) Any act or omission taking place on board a British-controlled aircraft while in flight elsewhere than in or over the Territory which, if taking place in the Territory, would constitute an offence under the law in force in the Territory shall constitute that offence:

Provided that this subsection shall not apply to any act or omission which is expressly or impliedly authorised by or under that law when taking place outside the Territory.

(2) No proceedings for any offence under the law in force in the Territory committed on board an aircraft while in flight elsewhere than in or over the Territory (other than an offence under, or under any instrument made under, the Civil Aviation Act 1949 shall be instituted except by or with the consent of the competent authority of the Territory, but the foregoing provisions of this subsection shall not prevent the arrest, or the issue of a warrant for the arrest, of any person in respect of any offence, or the remanding in custody or on bail of any person charged with any offence.

(3) For the purpose of conferring jurisdiction, any offence under the law in force in the Territory committed on board an aircraft in flight shall be deemed to have been committed in any place in the Territory where the offender may for the time being be; and section 62(1) of the Civil Aviation Act 1949 as set out with modifications and adaptations in the First Schedule to the Colonial Civil Aviation (Application of Act) Order 1952<sup>(1)</sup> is hereby revoked in its application to the Territory.

**Powers of commander of aircraft**

3.—(1) The provisions of subsections (2) to (5) of this section shall have effect for the purposes of any proceedings before any court in the Territory.

(2) If the commander of an aircraft in flight, wherever that aircraft may be, has reasonable grounds to believe in respect of any person on board the aircraft—

(a) that the person in question has done or is about to do any act on the aircraft while it is in flight which jeopardises or may jeopardise—

(i) the safety of the aircraft or of persons or property on board the aircraft; or

(ii) good order and discipline on board the aircraft; or

(b) that the person in question has done on the aircraft while in flight any act which in the opinion of the commander is a serious offence under any law in force in the country in which the aircraft is registered, not being a law of a political nature or based on racial or religious discrimination,

then, subject to subsection (4) of this section, the commander may take with respect to that person such reasonable measures, including restraint of his person, as may be necessary—

(i) to protect the safety of the aircraft or of persons or property on board the aircraft; or

(ii) to maintain good order and discipline on board the aircraft; or

(iii) to enable the commander to disembark or deliver that person in accordance with subsection (5) of this section;

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(1) (1952 1, p. 565).

and for the purposes of paragraph (b) of this subsection any British-controlled aircraft shall be deemed to be registered in the Territory whether or not it is in fact so registered and whether or not it is in fact registered in some other country.

(3) Any member of the crew of an aircraft and any other person on board the aircraft may, at the request or with the authority of the commander of the aircraft, and any such member shall if so required by that commander, render assistance in restraining any person whom the commander is entitled under subsection (2) of this section to restrain; and at any time when the aircraft is in flight any such member or other person may, without obtaining the authority of the commander, take with respect to any person on board the aircraft any measures such as are mentioned in the said subsection (2) which he has reasonable grounds to believe are immediately necessary to protect the safety of the aircraft or of persons or property on board the aircraft.

(4) Any restraint imposed on any person on board an aircraft under the powers conferred by the foregoing provisions of this section shall not be continued after the time when the aircraft first thereafter ceases to be in flight unless before or as soon as is reasonably practicable after that time the commander of the aircraft causes notification of the fact that a person on board the aircraft is under restraint and of the reasons therefor to be sent to an appropriate authority of the country in which the aircraft so ceases to be in flight, but subject to such notification may be continued after that time—

- (a) for any period (including the period of any further flight) between that time and the first occasion thereafter on which the commander is able with any requisite consent of the appropriate authorities to disembark or deliver the person under restraint in accordance with subsection (5) of this section; or
- (b) if the person under restraint agrees to continue his journey under restraint on board that aircraft.

(5) The commander of an aircraft—

- (a) if in the case of any person on board the aircraft he has reasonable grounds—
  - (i) to believe as mentioned in subsection (2)(a) of this section; and
  - (ii) to believe that it is necessary so to do in order to protect the safety of the aircraft or of persons or property on board the aircraft or to maintain good order and discipline on board the aircraft,

may disembark that person in any country in which that aircraft may be; and

- (b) if in the case of any person on board the aircraft he has reasonable grounds to believe as mentioned in subsection (2)(b) of this section, may deliver that person—
  - (i) in the United Kingdom, to a constable or immigration officer; or
  - (ii) in any Territory or in any other country which is a Convention country, to an officer having functions corresponding to the functions in the United Kingdom either of a constable or of an immigration officer.

(6) The commander of an aircraft—

- (a) if he disembarks any person in pursuance of subsection (5)(a) of this section, in the case of a British-controlled aircraft, in any country or, in the case of any other aircraft, in the Territory, shall report the fact of, and the reasons for, that disembarkation to—
  - (i) an appropriate authority in the country of disembarkation; and
  - (ii) the appropriate diplomatic or consular office of the country of nationality of that person;
- (b) if he intends to deliver any person in accordance with subsection (5)(b) of this section in the United Kingdom or in any Territory or, in the case of a British-controlled aircraft, in any other country which is a Convention country, shall before or as soon as reasonably practicable after landing give notification of his intention and of the reasons therefor—

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- (i) where the country in question is the United Kingdom, to a constable or immigration officer or, in the case of any Territory or any other country, to an officer having functions corresponding to the functions in the United Kingdom either of a constable or of an immigration officer;
- (ii) in either case to the appropriate diplomatic or consular office of the country of nationality of that person;

and any commander of an aircraft who without reasonable cause fails to comply with the requirements of this subsection shall be liable on summary conviction in the Territory to a fine not exceeding one hundred pounds.

### **Piracy**

4. For the avoidance of doubt, it is hereby declared that for the purposes of any proceedings before a court in the Territory in respect of piracy, the provisions set out in the Schedule to this Act of the Convention on the High Seas signed at Geneva on 29th April 1958 shall be treated as constituting part of the law of nations; and any such court having jurisdiction in respect of piracy committed on the high seas shall have jurisdiction in respect of piracy committed by or against an aircraft wherever that piracy is committed.

### **Provisions as to evidence in connection with aircraft**

5.—(1) Where in any proceedings before a court in the Territory for an offence committed on board an aircraft the testimony of any person is required and the court is satisfied that the person in question cannot be found in the Territory, there shall be admissible in evidence before that court any deposition relating to the subject matter of those proceedings previously made on oath by that person outside the Territory which was so made—

- (a) in the presence of the person charged with the offence; and
- (b) before a judge or magistrate of a country such as is mentioned in section 1(3) of the British Nationality Act 1948 as for the time being in force, or which is part of Her Majesty's dominions, or in which Her Majesty for the time being has jurisdiction, or before consular officer of Her Majesty's Government in the United Kingdom.

(2) Any such deposition shall be authenticated by the signature of the judge, magistrate or consular officer before whom it was made who shall certify that the person charged with the offence was present at the taking of the deposition.

(3) It shall not be necessary in any proceedings to prove the signature or official character of the person appearing so to have authenticated any such deposition or to have given such a certificate and such a certificate shall, unless the contrary is proved, be sufficient evidence in any proceedings that the person charged with the offence was present at the making of the deposition.

(4) If a complaint is made to such a consular officer as aforesaid that any offence has been committed on a British-controlled aircraft while in flight elsewhere than in or over the Territory, that officer may inquire into the case on oath.

(5) In the section—

- (a) the expression “deposition” includes any affidavit, affirmation or statement made upon oath; and
- (b) the expression “oath” includes an affirmation or declaration in the case of persons allowed by law to affirm or declare instead of swearing;

and nothing in this section shall prejudice the admission as evidence of any deposition which is admissible in evidence apart from this section.

## Provisions as to documentary evidence

### 6.—(1) In any legal proceedings—

- (a) a document purporting to be certified by such authority or person as may be designated for the purpose by any regulations made by the Board of Trade under this Act as in force in the United Kingdom or by the Governor of any Territory as being, or being a true copy of, or of part of, a document issued or record kept in pursuance of—
  - (i) an Order in Council made under section 8 of the Civil Aviation Act 1949, or
  - (ii) the Civil Aviation (Licensing) Act 1960 or this Act,by, or by the Minister in charge of, a Government Department, by an official of a Government Department who is specified for the purpose in any such Order in Council, or by the Air Registration Board of the United Kingdom or the Air Transport Licensing Board of the United Kingdom or by the competent authority in any Territory for the registration or licensing of aircraft; or
- (b) a document printed by Her Majesty's Stationery Office and purporting to be the publication known as the "United Kingdom Air Pilot" or a publication of the series known as "Notam-United Kingdom" or a publication in the Official Gazette for any Territory of a notice similar to a "Notam-United Kingdom" but notifying matters related to any Territory

shall be evidence of the matters appearing from that document.

(2) Any records that are admissible in evidence in any legal proceedings in the United Kingdom by virtue of section 5 of the Civil Aviation (Euro-control) Act 1962 as modified by section 6(2) of this Act as in force in the United Kingdom, and of any regulations or Orders in Council made under or continued in force by either of those provisions, shall be admissible in evidence in any legal proceedings in the Territory.

## Interpretation, etc

7.—(1) In this Act, except where the context otherwise requires, the following expressions have the following meanings respectively, that is to say—

"aircraft" means any aircraft, whether or not a British-controlled aircraft, other than—

- (a) a military aircraft; or
- (b) an aircraft which, not being a military aircraft, belongs to or is exclusively employed in the service of Her Majesty in right of the United Kingdom or in right of any Territory;

but the Governor of any Territory with the approval of the Secretary of State may by order, which may be varied or revoked by a subsequent order, provide that any of the provisions of this Act shall apply with or without modifications to aircraft such as are mentioned in paragraph (b) of this definition;

"British-controlled aircraft" means an aircraft—

- (a) which is for the time being registered in the United Kingdom or in any Territory; or
- (b) which is not for the time being registered in any country but in the case of which either the operator of the aircraft or each person entitled as owner to any legal or beneficial interest in it satisfies the following requirements, namely—
  - (i) that he is a person qualified to be the owner of a legal or beneficial interest in an aircraft registered in the United Kingdom or in any Territory; and
  - (ii) that he resides or has his principal place of business in the United Kingdom or in any Territory; or

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- (c) which, being for the time being registered in some other country, is for the time being chartered by demise to a person who, or to persons each of whom, satisfies the requirements aforesaid:

“commander” in relation to an aircraft means the member of the crew designated as commander of that aircraft by the operator thereof, or, failing such a person, the person who is for the time being the pilot in command of the aircraft;

“competent authority” means the Attorney-General of the Territory, or, where some other authority has general responsibility for and control of public prosecutions, that authority;

“Convention country” means a country in which the Tokyo convention is for the time being in force; and any Order of Her Majesty in Council made under this Act and for the time being in force certifying that any country specified in the Order is for the time being a Convention country shall be conclusive evidence that the country in question is for the time being a Convention country;

“Governor”, in relation to any Territory, means the officer for the time being administering the Government of that Territory;

“military aircraft” means—

- (a) an aircraft of the naval, military or air forces of any country; or
- (b) any other aircraft in respect of which there is in force a certificate issued in accordance with any Order in Council in force under the Civil Aviation Act 1949 that the aircraft is to be treated for the purposes of that Order in Council as a military aircraft;

and a certificate of the Secretary of State or of the Governor of any Territory that any aircraft is or is not a military aircraft for the purposes of this Act shall be conclusive evidence of the fact certified;

“operator” in relation to any aircraft at any time means the person who at that time has the management of that aircraft;

“pilot in command” in relation to an aircraft means a person who for the time being is in charge of the piloting of the aircraft without being under the direction of any other pilot in the aircraft;

“Tokyo Convention” means the Convention on Offences and certain other Acts Committed on board Aircraft signed at Tokyo on 14th September 1963.

(2) For the purposes of this Act, the period during which an aircraft is in flight shall be deemed to include—

- (a) any period from the moment when power is applied for the purpose of the aircraft taking off on a flight until the moment when the landing run (if any) at the termination of that flight ends; and
- (b) for the purposes of section 3 of this Act—
  - (i) any further period from the moment when all external doors, if any, of the aircraft are closed following embarkation for a flight until the moment when any such door is opened for disembarkation after that flight; and
  - (ii) if the aircraft makes a forced landing, any period thereafter until the time when competent authorities of the country in which the forced landing takes place take over the responsibility for the aircraft and for the persons and property on board the aircraft (being, if the forced landing takes place in the Territory, the time when an officer having functions corresponding to the functions in the United Kingdom of a constable arrives at the place of landing);

and any reference in this Act to an aircraft in flight shall include a reference to an aircraft during any period when it is on the surface of the sea or land but not within the territorial limits of any country.

(3) In this Act, except where the context otherwise requires, any reference to any Territory or to any other country or the territorial limits thereof shall be construed as including a reference to the territorial waters, if any, of that Territory or country, and any reference to any Act (including this Act) or to any provision thereof shall be construed as including a reference to that Act or to that provision as extended to any Territory.

(4) For the purpose of construing this Act as part of the law of any Territory to which it extends, “the Territory” means that Territory and “any Territory” means any of the Territories to which this Act extends.

(5) Any order of the Board of Trade for the time being in force in the United Kingdom by virtue of section 7(4) of this Act as in force in the United Kingdom (which subsection provides for specifying the Convention country in which aircraft operated by joint air transport organisations or international operating agencies established by two or more Convention countries shall be treated as registered) shall have effect in the Territory.

#### SCHEDULE TO THE ACT

Section 4

##### PROVISIONS OF GENEVA CONVENTION ON THE HIGH SEAS TO BE TREATED AS PART OF THE LAW OF NATIONS

“**Article 15.** Piracy consists of any of the following acts:

(1) Any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

- (a) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
- (b) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(2) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(3) Any act of inciting or of intentionally facilitating an act described in sub-paragraph (1) or sub-paragraph (2) of this article.

**Article 16.** The acts of piracy, as defined in article 15, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship.

**Article 17.** A ship or aircraft is considered a pirate ship or aircraft if it is intended by the person in dominant control to be used for the purpose of committing one of the acts referred to in article 15. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.””

#### SCHEDULE 2 TO THE ORDER

Article 3

Bahamas.

Bermuda.

British Antarctic Territory.

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British Honduras.  
British Indian Ocean Territory.  
British Solomon Islands Protectorate.  
Cayman Islands.  
Central and Southern Line Islands.  
Falkland Islands (Colony and Dependencies).  
Fiji.  
Gibraltar.  
Gilbert and Ellice Islands Colony.  
Hong Kong.  
Montserrat.  
Pitcairn, Henderson, Ducie and Oeno.  
St. Helena and its Dependencies.  
St. Vincent.  
Seychelles.  
Sovereign Base Areas of Akrotiri and Dhekelia.  
Turks and Caicos Islands.  
Virgin Islands.

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#### EXPLANATORY NOTE

This Order extends the provisions of the Tokyo Convention Act 1967, subject to exceptions, adaptations and modifications, to the territories specified in Schedule 2 thereto.

The purposes of the Act were to make provision with a view to the ratification on behalf of the United Kingdom of the Convention on Offences and certain other Acts Committed on board Aircraft signed in Tokyo on 14th September 1963 and to give effect to certain provisions relating to piracy of the Convention on the High Seas signed in Geneva on 29th April 1958.