
STATUTORY INSTRUMENTS

2015 No. 912

**The International Interests in Aircraft Equipment
(Cape Town Convention) Regulations 2015**

PART 3

EFFECT OF INTERNATIONAL INTEREST

Priority of interests

Priority of competing interests

16.—(1) A registered interest has priority over any other interest subsequently registered and over an unregistered interest (but this regulation is subject to regulations 17 and 51).

(2) The priority of the registered interest under paragraph (1) applies—

(a) even if the interest was acquired or registered with actual knowledge of the other interest; and

(b) even as regards value given by the holder of the interest with such knowledge.

(3) The buyer of an aircraft object under a registered sale acquires its interest in it subject to an interest previously registered.

(4) The conditional buyer or lessee acquires its interest in or right over that aircraft object—

(a) subject to an interest registered prior to the registration of the international interest held by its conditional seller or lessor; and

(b) free from an interest not so registered at that time even if it has actual knowledge of that interest.

(5) A buyer of an aircraft object under a registered sale or a registered prospective sale acquires its interest in that aircraft object free from an interest subsequently registered and from an unregistered interest, even if the buyer has actual knowledge of the unregistered interest.

(6) Ownership of or another right or interest in an aircraft engine is not affected by its installation on or removal from an aircraft.

(7) The priority of competing interests or rights under this regulation may be varied by agreement between the holders of those interests, but an assignee of a subordinated interest is not bound by an agreement to subordinate that interest unless at the time of the assignment a subordination had been registered relating to that agreement.

(8) Any priority given by this regulation to an interest in an aircraft object extends to proceeds.

(9) Regulation 14(1) and 15(1) have effect in accordance with Article 19(4) of the Cape Town Convention (which provides that an interest first registered as a prospective international interest becomes an international interest and must be treated as registered from the time of registration of the prospective international interest provided that the registration was still current immediately before the international interest was constituted as provided for by Article 7 of the Cape Town Convention).

(10) Paragraph (9) applies in relation to registration whether the registration of an international interest or of a prospective assignment of an international interest with the necessary modifications.

(11) These Regulations—

- (a) do not affect the rights of a person in an item, other than an aircraft object, installed on an airframe, aircraft engine or helicopter, held prior to its installation if under the law of the United Kingdom those rights continue to exist after the installation; and
- (b) do not prevent the creation of rights in an item, other than an aircraft object, which has previously been installed on an aircraft object where under the law of the United Kingdom those rights are created.

Overriding non-consensual rights and interests

17.—(1) The categories of non-consensual right and interest listed in paragraph (2) —

- (a) have priority over an interest in an aircraft object equivalent to that of the holder of a registered international interest, and
- (b) have priority over a registered international interest (whether in or outside insolvency proceedings).

(2) Those rights and interests are—

- (a) a possessory lien in respect of work done on the aircraft object (whether before or after the creation or registration of the international interest or equivalent interest) on the express or implied authority of any persons lawfully entitled to possession of the aircraft object; and
- (b) any right to detain the aircraft object under an enactment (including an Act of the Scottish Parliament, of the Northern Ireland Assembly or of the National Assembly for Wales).

(3) Nothing in these Regulations or the Cape Town Convention affects the right of a public authority to arrest or detain an aircraft object under the law of the United Kingdom for payment of amounts owed to a public authority directly relating to public services in respect of the aircraft object or another aircraft object.

(4) In paragraph (3) “public authority” means—

- (a) a public authority of the United Kingdom (including any Part of the United Kingdom),
- (b) a public authority of another State,
- (c) an intergovernmental organisation, and
- (d) a private provider of public services in the United Kingdom or elsewhere.

(5) This regulation applies to categories of rights and interests whether created before or after the deposit by the United Kingdom of the declaration under Article 39 of the Cape Town Convention to which this regulation gives effect.

(6) A right or interest which has priority or is preserved by virtue of this regulation has priority irrespective of whether the relevant international interest was registered before or after—

- (a) any action taken by the United Kingdom in respect of the Cape Town Convention, or
- (b) the enactment or commencement of these Regulations.

Remedies in case of default

Meaning of “default”

18.—(1) The debtor and the creditor may at any time agree in writing as to the events that constitute a default or otherwise give rise to the rights and remedies specified in regulations 19 to 21 and 25.

(2) Where the debtor and the creditor have not so agreed, “default” for the purposes of regulations 19 to 21 and 25 means a default which substantially deprives the creditor of what it is entitled to expect under the agreement.

Remedies of chargee

19.—(1) This regulation applies—

- (a) where a default has occurred, but
- (b) only to the extent that the chargor has at any time agreed that the remedies specified in this regulation should apply.

(2) The chargee may exercise any one or more of the following remedies—

- (a) it may take possession or control of any aircraft object charged to it;
- (b) it may sell or grant a lease of any such aircraft object;
- (c) it may collect or receive any income or profits arising from the management or use of any such aircraft object.

(3) The chargee may alternatively apply to the court for an order authorising or directing any of the acts referred to in paragraph (2).

(4) A chargee proposing to sell or grant a lease of an aircraft object under paragraph (2) must give reasonable prior notice in writing of the proposed sale or lease to—

- (a) a debtor or guarantor and
- (b) any person other than a debtor or guarantor having rights in or over aircraft objects who has given notice of their rights to the chargee within a reasonable time prior to the sale or lease.

(5) A chargee giving ten or more working days’ prior written notice of a proposed sale or lease to interested persons is deemed to satisfy the requirement of providing reasonable prior notice in paragraph (4) (but this paragraph does not prevent a chargee and a chargor or guarantor from agreeing to a longer period of prior notice).

(6) A sum collected or received by the chargee as a result of exercise of any of the remedies set out in paragraph (2) or (3) is to be applied towards discharge of the amount of the secured obligations.

(7) Where the sums collected or received by the chargee as a result of the exercise of any remedy set out in paragraph (2) or (3) exceed the amount secured by the security interest and any reasonable costs incurred in the exercise of any such remedy, then unless otherwise ordered by the court the chargee must distribute the surplus among holders of subsequently ranking interests which have been registered or of which the chargee has been given notice, in order of priority, and pay any remaining balance to the chargor.

Vesting of aircraft objects in satisfaction; and redemption

20.—(1) This regulation applies at any time after a default has occurred.

(2) The chargee and all the interested persons may agree that ownership of (or any other interest of the chargor in) any aircraft object covered by the security interest is to vest in the chargee in or towards satisfaction of the secured obligations.

(3) The court may on the application of the chargee order that ownership of (or any other interest of the chargor in) any aircraft object covered by the security interest is to vest in the chargee in or towards satisfaction of the secured obligations.

(4) The court may grant an application under the preceding paragraph only if the amount of the secured obligations to be satisfied by such vesting is commensurate with the value of the aircraft object after taking account of any payment to be made by the chargee to any of the interested persons.

(5) At any time before sale of the charged aircraft object or the making of an order under paragraph (3), the chargor or any interested person may discharge the security interest by paying in full the amount secured, subject to any lease granted by the chargee under regulation 19(2)(b) or ordered under regulation 19(3).

(6) Where, after such default, the payment of the amount secured is made in full by an interested person other than the debtor, that person is subrogated to the rights of the chargee.

(7) Ownership or any other interest of the chargor passing on a sale under regulation 19(2)(b) or passing under paragraph (2) or (3) is free from any other interest over which the chargee's security interest has priority under the provisions of regulation 16.

Remedies of conditional seller or lessor

21.—(1) This regulation applies in the event of default under a title reservation agreement or under a leasing agreement.

(2) The conditional seller or the lessor, as the case may be, may—

- (a) subject to any declaration that may be made by the United Kingdom under Article 54 of the Cape Town Convention, terminate the agreement and take possession or control of any aircraft object to which the agreement relates; or
- (b) apply to the court for an order authorising or directing either of these acts.

De-registration and transfer of aircraft

22.—(1) In addition to the remedies specified in the preceding provisions of this Part, the creditor may, to the extent that the debtor has at any time so agreed and in the event of a default—

- (a) procure the de-registration of the aircraft; and
- (b) procure the export and physical transfer of the aircraft object from the territory in which it is situated.

(2) The creditor may not exercise the remedies specified in paragraph (1) without the prior consent in writing of the holder of any registered interest ranking in priority to that of the creditor.

(3) The Civil Aviation Authority must, subject to any applicable safety laws and regulations, honour a request for de-registration and export if—

- (a) the request is properly submitted by the authorised party under a recorded irrevocable de-registration and export request authorisation; and
- (b) the authorised party certifies to the Authority that all registered interests ranking in priority to that of the creditor in whose favour the authorisation has been issued have been discharged or that the holders of such interests have consented to the de-registration and export.

(4) A chargee proposing to procure the de-registration and export of an aircraft under paragraph (1) otherwise than pursuant to a court order must give reasonable prior notice in writing of the proposed de-registration and export to—

- (a) A debtor or creditor; and
- (b) Any person other than a debtor or creditor who has given notice of their rights to the chargee within a reasonable time prior to the de-registration and export.

(5) Where the debtor has issued an irrevocable de-registration and export request authorisation substantially in the form annexed to the Aircraft Protocol and has submitted such authorisation for record to the Civil Aviation Authority, the Authority must record the authorisation.

(6) The person in whose favour the authorisation has been issued (the “authorised party”) or its certified designee is the only person entitled to exercise the remedies specified in paragraph (1).

(7) The authorised party may exercise those remedies only in accordance with the authorisation and applicable aviation safety enactments.

(8) The authorisation may not be revoked by the debtor without the consent in writing of the authorised party.

(9) The Civil Aviation Authority must remove an authorisation from the registry at the request of the authorised party.

(10) The Civil Aviation Authority must exercise its functions under the Civil Aviation Act 1982⁽¹⁾ and any other enactment in order to co-operate expeditiously with and assist an authorised party in the exercise of the remedies specified in paragraph (1).

(11) Any other public authority must exercise any relevant function for that purpose.

Additional remedies

23. Any additional remedies available in accordance with the applicable law, including any remedies agreed upon by the parties, may be exercised to the extent that they are not inconsistent with provisions which may not be waived by agreement under these Regulations or the Cape Town Convention.

Requirement of commercial reasonableness

24.—(1) Any remedy given by these Regulations in relation to an aircraft object must be exercised in a commercially reasonable manner.

(2) A remedy is deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of the agreement except where such a provision is manifestly unreasonable.

Relief pending final determination

25.—(1) A creditor who adduces evidence of default by the debtor may, pending final determination of its claim and to the extent that the debtor has at any time so agreed, obtain from the court relief in the form of such one or more of the following orders as the creditor requests—

- (a) preservation of the aircraft object and its value;
- (b) possession, control or custody of the aircraft object;
- (c) immobilisation of the aircraft object;
- (d) lease or, except where covered by paragraphs (a) to (c), management of the aircraft object and the income from it; and
- (e) if at any time the debtor and the creditor specifically agree, sale and application of proceeds.

(2) In making any order under paragraph (1), the court may impose such terms as it considers necessary to protect the interested persons in the event that the creditor—

- (a) in implementing any order granting such relief, fails to perform any of its obligations to the debtor under these Regulations (or the Cape Town Convention or the Aircraft Protocol); or
- (b) fails to establish its claim, wholly or in part, on the final determination of that claim.

(3) Before making an order under paragraph (1), the court may require notice of the request to be given to any of the interested persons.

(1) 1982 c.16.

(4) Nothing in this regulation affects the application of regulation 24 or limits the availability of forms of interim relief other than those set out in paragraph (1).

Position where no default

Debtor's rights

26.—(1) In the absence of a default, the debtor is entitled to the quiet possession and use of the aircraft object in accordance with the agreement as against—

- (a) its creditor and the holder of any interest from which the debtor takes free pursuant to regulation 16(4) or, in the capacity of buyer, regulation 16(5), unless and to the extent that the debtor has otherwise agreed; and
- (b) the holder of any interest to which the debtor's right or interest is subject pursuant to regulation 16(4) or, in the capacity of buyer, regulation 16(3) but only to the extent, if any, that such holder has agreed.

(2) Nothing in these Regulations (or the Cape Town Convention or Aircraft Protocol) affects the liability of a creditor for any breach of the agreement under the law of any Part of the United Kingdom in so far as that agreement relates to an aircraft object.

Assignment

Effect of assignment

27.—(1) Except as otherwise agreed by the parties, an assignment of associated rights made in conformity with regulation 28 also transfers to the assignee—

- (a) the related international interest; and
- (b) all the interests and priorities of the assignor under these Regulations and the Cape Town Convention.

(2) Nothing in these Regulations prevents a partial assignment of the assignor's associated rights.

(3) In the case of a partial assignment the assignor and assignee may agree as to their respective rights concerning the related international interest assigned under paragraph (1) but not so as adversely to affect the debtor without its consent.

(4) Subject to paragraph (5), the applicable law determines the defences and rights of set-off available to the debtor against the assignee.

(5) The debtor may at any time by agreement in writing waive all or any of the defences and rights of set-off referred to in paragraph (4) other than defences arising from fraudulent acts on the part of the assignee.

(6) In the case of an assignment by way of security, the assigned associated rights re-vest in the assignor, to the extent that they are still subsisting, when the obligations secured by the assignment have been discharged.

Formal requirements of assignment

28.—(1) An assignment of associated rights transfers the related international interest only if it—

- (a) is in writing;
- (b) enables the associated rights to be identified under the contract from which they arise; and

- (c) in the case of an assignment by way of security, enables the obligations secured by the assignment to be determined in accordance with the Aircraft Protocol but without the need to state a sum or maximum sum secured.
- (2) An assignment of an international interest created or provided for by a security agreement is not valid unless some or all related associated rights also are assigned.
- (3) These Regulations do not apply to an assignment of associated rights which is not effective to transfer the related international interest.

Debtor's duty to assignee

- 29.**—(1) To the extent that associated rights and the related international interest have been transferred in accordance with regulations 27 and 28, the debtor in relation to those rights and that interest is bound by the assignment and has a duty to make payment or give other performance to the assignee, if (but only if)—
- (a) the debtor has been given notice of the assignment in writing by or with the authority of the assignor,
 - (b) the notice identifies the associated rights, and
 - (c) the debtor has consented in writing (whether or not the consent is given in advance of the assignment or identifies the assignee).
- (2) Irrespective of any other ground on which payment or performance by the debtor discharges the latter from liability, payment or performance is effective for this purpose if made in accordance with paragraph (1).
- (3) Nothing in this regulation affects the priority of competing assignments.

Default remedies in respect of assignment by way of security

- 30.** In the event of default by the assignor under the assignment of associated rights and the related international interest made by way of security, regulations 18, 19, 20, 23, 25 and 48 apply in the relations between the assignor and the assignee (and, in relation to associated rights, apply in so far as those provisions are capable of application to intangible property) as if references—
- (a) to the secured obligation and the security interest were references to the obligation secured by the assignment of the associated rights and the related international interest and the security interest created by that assignment;
 - (b) to the chargee or creditor and chargor or debtor were references to the assignee and assignor;
 - (c) to the holder of the international interest were references to the assignee; and
 - (d) to the aircraft object were references to the assigned associated rights and the related international interest.

Priority of competing assignments

- 31.**—(1) Where there are competing assignments of associated rights, and—
- (a) at least one of the assignments includes the related international interest, and
 - (b) the assignment of the international interest is registered,
- the provisions of regulation 16 apply as if—
- (a) references to a registered or unregistered interest were references to a registered or unregistered assignment, and

(b) references to a registered interest were references to a prospective assignment of the associated rights.

(2) Regulation 36 applies to an assignment of associated rights as if the references to an international interest were references to an assignment of the associated rights and the related international interest.

Assignee's priority with respect to associated rights

32.—(1) The assignee of associated rights and the related international interest whose assignment has been registered only has priority under regulation 31(1) over another assignee of the associated rights—

(a) if the contract under which the associated rights arise states that they are secured by or associated with the aircraft object; and

(b) to the extent that the associated rights are related to an aircraft object.

(2) For the purposes of paragraph (1)(b), associated rights are related to an aircraft object only to the extent that they consist of rights to payment or performance that relate to—

(a) a sum advanced and utilised for the purchase of the aircraft object;

(b) a sum advanced and utilised for the purchase of another aircraft object in which the assignor held another international interest if the assignor transferred that interest to the assignee and the assignment has been registered;

(c) the price payable for the aircraft object;

(d) the rentals payable in respect of the aircraft object; or

(e) other obligations arising from a transaction referred to in any of sub-paragraphs (a) to (d).

(3) In all other cases, the priority of the competing assignments of the associated rights is to be determined by the applicable law.

Effect of assignor's insolvency

33. The provisions of regulation 36 apply to insolvency proceedings against the assignor as if references to the debtor were references to the assignor.

Subrogation

34.—(1) Subject to paragraph (2), nothing in these Regulations affects the acquisition of associated rights and the related international interest by legal or contractual subrogation under the applicable law.

(2) The priority between any interest within paragraph (1) and a competing interest may be varied by agreement in writing between the holders of the respective interests; but an assignee of a subordinated interest is not bound by an agreement to subordinate that interest unless at the time of the assignment a subordination had been registered relating to that agreement.

Application to Scotland

35. In the application of regulation 16(7) and regulations 27 to 34 to Scotland—

(a) a reference to an assignment means a contract or conveyance or any other form of transfer which, whether by security or otherwise, confers on the assignee associated rights with or without a transfer of the related international interest,

(b) a reference to assignment is a reference to assignation,

(c) a reference to an assignor is a reference to a cedent, and

- (d) a reference to intangible property is a reference to incorporeal property.

Insolvency

Effects of insolvency

36.—(1) In insolvency proceedings against the debtor an international interest is effective if prior to the commencement of the insolvency proceedings that interest was registered in conformity with the Cape Town Convention and the Aircraft Protocol.

(2) Nothing in this regulation impairs the effectiveness of an international interest in the insolvency proceedings where that interest is effective under the law of the United Kingdom or the applicable law.

(3) Nothing in this regulation affects—

- (a) any rules of law applicable in insolvency proceedings relating to the avoidance of a transaction as a preference or a transfer to the detriment of creditors; or
- (b) any rules of procedure relating to the enforcement of rights to property which is under the control or supervision of the insolvency office holder.

Remedies on insolvency

37.—(1) Upon the occurrence of an insolvency-related event, the insolvency office holder must, subject to paragraph (5), give possession of any aircraft object, in respect of which an international interest has been registered, to the creditor no later than the earlier of—

- (a) the end of the waiting period; and
- (b) the date on which the creditor would be entitled to possession of the aircraft object if this regulation did not apply.

(2) For the purposes of this regulation, the “waiting period” is 60 days from the date of the insolvency-related event.

(3) References in this regulation to the “insolvency office holder” are references to that person in an official, not in a personal capacity.

(4) Unless and until the creditor is given the opportunity to take possession under paragraph (1)—

- (a) the insolvency office holder must preserve the aircraft object and maintain it and its value in accordance with the agreement; and
- (b) the creditor is entitled to apply for any other forms of interim relief available under the law of the United Kingdom.

(5) Paragraph (4)(a) does not preclude the use of the aircraft object under arrangements designed to preserve the aircraft object and maintain it and its value.

(6) The insolvency office holder may retain possession of the aircraft object where, by the time specified in paragraph (1), it has cured all defaults other than a default constituted by the commencement of insolvency proceedings and has agreed to perform all continuing obligations under the agreement; and a second waiting period does not apply in respect of a default in the performance of such continuing obligations.

(7) With regard to the remedies in regulation 22(1)—

- (a) they must be made available by the Civil Aviation Authority, no later than five working days after the date on which the creditor notifies the Authority that it is entitled to procure those remedies in accordance with the Cape Town Convention; and

- (b) the Civil Aviation Authority must exercise its functions under the Civil Aviation Act 1982⁽²⁾ and any other enactment in order expeditiously to co-operate with and assist the creditor in the exercise of such remedies.
- (8) No exercise of remedies permitted by these Regulations may be prevented or delayed after the date specified in paragraph (1).
- (9) No obligations of the debtor under the agreement may be modified without the consent of the creditor.
- (10) Nothing in paragraph (9) affects the authority, if any, of the insolvency office holder under the law of the United Kingdom to terminate the agreement.
- (11) No rights or interests, except for non-consensual rights or interests of a category covered by regulation 17, have priority in insolvency proceedings over registered interests.
- (12) In the application of this regulation—
- (a) the provisions of this regulation are in addition to the provisions of Part 1 of the Insolvency Act 1986 (in the case of company voluntary arrangements) and Schedule B1 to that Act (in the case of administration);
 - (b) paragraph 43 (moratorium on other legal process) and paragraph 44 (interim moratorium) of Schedule B1 do not apply after the end of the waiting period under this regulation;
 - (c) a payment made for the purpose of maintaining and preserving the aircraft object in accordance with paragraph (4) is an expense of administration;
 - (d) a payment made for the purpose of curing a default as mentioned in paragraph (6) for the purpose of retaining possession is an expense of administration;
 - (e) paragraphs 71 and 72 of Schedule B1 (court’s power to permit disposal of property subject to security or hire-purchase agreement) do not apply;
 - (f) the end of the waiting period under this regulation is without prejudice to the continuation of insolvency proceedings in respect of assets to which these Regulations do not apply;
 - (g) the notice under paragraph 46 of Schedule B1 must include a statement that this regulation applies, together with a statement of the effect of the application of this regulation;
 - (h) the statement of the administrator’s proposals under paragraph 49 of Schedule B1 must include details of what the administrator proposes in respect of assets to which this regulation applies;
 - (i) the application of Schedule A1 to the 1986 Act (moratorium where company voluntary arrangement proposed) is subject to paragraphs (a) to (h) (with any necessary modifications);
 - (j) sections 254(1)(b) and 256(4) and (5) of the 1986 Act (individual voluntary arrangements: interim orders) do not apply after the end of the waiting period under this regulation.
 - (k) the statement of information under section 256(2)(b)(ii) must include a statement that this regulation applies, together with a statement of the effect of the application of this regulation.
- (13) In this regulation “insolvency-related event” means the commencement of insolvency proceedings, or the declared intention to suspend or actual suspension of payments by the debtor where the creditor’s right to institute insolvency proceedings against the debtor or to exercise remedies under the Cape Town Convention is prevented or suspended by law or State action.
- (14) In this regulation references to the Insolvency Act 1986 include references to the equivalent provisions of the Insolvency (Northern Ireland) Order 1989⁽³⁾.

(2) 1982 c.16.

(3) S.I. 1989/2405 (N.I. 19).

