

PROJET DE LOI

ENTITLED

The Aviation (Bailiwick of Guernsey) Law, 2008 *

[CONSOLIDATED TEXT]

NOTE

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* No. XXVIII of 2008; as amended by the: Aviation (Amendment) (Bailiwick of Guernsey) Law, 2012 (No. X of 2013); Air Navigation (Bailiwick of Guernsey) Law, 2012 (No. XI of 2013); Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015 (No. XX of 2015); Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016); Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018 (No. XXVI of 2018); Charities etc. (Guernsey and Alderney) Ordinance, 2021 (No. XXIV of 2021); Aviation (Bailiwick of Guernsey) Law, 2008 (Amendment of Schedule 2) Regulations, 2008 (G.S.I. No. 90 of 2008); Aviation (Bailiwick of Guernsey) Law, 2008 (Amendment of Schedule 13) Regulations, 2008 (G.S.I. No. 91 of 2008). See also the: Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978 (Ordres en Conseil Vol. XXVI, p. 264); Police Force (Bailiwick of Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207); Law Reform (Age of Majority) (Sark) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 378); Age of Majority (Alderney) Law, 2001 (No. XXV of 2001, Ordres en Conseil Vol. XLI, p. 738); Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009 (No. VII of 2010); Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (*supra*); Resolution of the States of Guernsey of 28th July, 2011 (Billet XIII, Article VII); Charities etc. (Guernsey and Alderney) Ordinance, 2021 (*supra*).

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The Aviation (Bailiwick of Guernsey) Law, 2008

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The Aviation (Bailiwick of Guernsey) Law, 2008

THE STATES, in pursuance of their Resolution of the 26th day of July, 2006^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

PART I

OFFICE OF DIRECTOR OF CIVIL AVIATION

Office of the Director of Civil Aviation

Establishment of the Office of the Director of Civil Aviation.

1. (1) There is established an office known as the Office of the Director of Civil Aviation, and the holder of that office shall be known as the Director of Civil Aviation.

(2) The States shall, on the recommendation of [the Committee], appoint the Director of Civil Aviation in accordance with Schedule 1, and the provisions of that Schedule shall have effect.

(3) The Director of Civil Aviation shall carry out the functions in sections 4 and 5, and all his other functions in accordance with section 2 and shall exercise the powers in section 6.

^a Article XI of Billet d'État No. XIII of 2006.

(4) The Office of the Director of Civil Aviation is not a department, servant or agent of the States and, except to the extent provided otherwise in this Law or any other enactment –

(a) is not subject to any rule of law relating to departments of the States, and

(b) does not have any of the rights or privileges vested in departments of the States.

(5) The Director of Civil Aviation shall hold office for a term not exceeding five years, and a person may be appointed to that office for more than one term of office, as the States may decide, on the recommendation of [the Committee] pursuant to subsection (2).

(6) The Director of Civil Aviation may resign his office at any time by notice in writing addressed to [the Committee].

(7) The States may remove any person from the office of Director of Civil Aviation on the grounds of permanent incapacity, misbehaviour or gross incompetence, in each case on the recommendation of [the Committee].

(8) [the Committee] may suspend a person from the office of Director of Civil Aviation, pending an investigation or inquiry as to whether he should be removed from office under paragraph (7), provided that such suspension may not last for a period of more than 3 months unless extended by a decision of the States.

(9) Subject to subsections (2), (5), (6), (7) and (8), the Director of Civil Aviation shall hold and vacate his office in accordance with the terms and

conditions of his appointment which shall be determined by [the Committee].

- (10) The states may by Ordinance amend Schedule 1.

NOTES

In section 1, the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

In accordance with the provisions of the Charities etc. (Guernsey and Alderney) Ordinance, 2021, section 52(3), Schedule 8, paragraph 4(1)(c) and paragraph 4(2)(c), with effect from 29th April, 2022, for any reference in this enactment, however expressed, to an organisation that is a charity or other non profit organisation, there is substituted a reference to an organisation that is a non profit organisation.

Objectives and functions of Director of Civil Aviation

General aviation objectives.

2. The Director of Civil Aviation shall carry out his functions under [the provisions of] this Law in the manner that he thinks is best calculated to achieve the following general objectives –

- (a) ensuring a high standard of safety in operating air transport services to, from and within the Bailiwick,
- (b) the provision of air transport services to, from and within the Bailiwick,
- (c) the furthering of the reasonable interests of users of air transport services to, from and within the Bailiwick, and

- (d) the furthering of the reasonable interests of aerodrome users in the Bailiwick.

NOTE

In section 2, the words in square brackets were inserted by the Aviation (Amendment) (Bailiwick of Guernsey) Law, 2012, section 2(a), with effect from 16th September, 2013.

States' Directions.

3. (1) The States may, on the recommendation of [the Committee] made after consultation with the Director of Civil Aviation, by Resolution give to the Director directions ("**States' Directions**") –

- (a) specifying any requirements to be imposed on any person, or class of persons, holding a licence, certificate, approval, authorization, permission or exemption granted under [the provisions of] this Law in the light of any international obligations to which the Bailiwick may from time to time be subject, or
- (b) requiring him to take into account, for the purposes of the carrying out of his functions under sections 2(b) to (d), such policies relating to aviation and air transport services as may be approved by resolution of the States or [the Committee].

(2) In carrying out his functions the Director shall comply with any States' Directions, except where to do so –

- (a) would be in contravention of the duty imposed on him by section 2, or

- (b) would materially impede the proper carrying out of any of his other functions under [the provisions of] this Law.

NOTES

In section 3,

the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016;

the words in square brackets in paragraph (a) of subsection (1) were inserted by the Aviation (Amendment) (Bailiwick of Guernsey) Law, 2012, section 2(b), with effect from 16th September, 2013.

General functions of the Director.

4. (1) The Director of Civil Aviation has the following general functions, in addition to the specific functions provided for under [the provisions of] this Law –

- (a) to regulate the safety of aerodromes, air traffic and air transport services in the Bailiwick,
- (b) to grant, renew and validate, or to refuse to grant, renew and validate, licences, certificates, authorizations, approvals, permissions and exemptions in a manner consistent with States' Directions and the provisions of this Law,
- (c) to monitor, enforce, modify, suspend, revoke or consent to the surrender of licences, certificates, authorizations,

approvals, permissions and exemptions in a manner consistent with States' Directions and the provisions of this Law,

- (d) subject to the approval of [the Committee], to determine and to prescribe the fees and levies payable on an application for, or the grant, issue, renewal or validation of, or over the term of licences, certificates, authorizations, approvals, permissions and exemptions and the interest and penalties payable in the event of default in the due payment of such fees or levies,
- (e) to receive and to conduct inquiries and investigations (which may include inspections of any part of an aerodrome, aircraft and aviation facility) and to hear complaints by any person regarding aviation activities, [...]
- (f) to carry out such other functions as may be assigned or transferred to him by or under this Law or any other enactment[, and]
- [(g) to regulate aviation security within the Bailiwick, including, without limitation, to be responsible for maintaining standards of aviation security equivalent to those in place in the UK and Europe, ensuring all relevant persons in the Bailiwick are appropriately audited for compliance with those standards, and enforcing those standards, as appropriate.]

- (2) The Director shall carry out his functions –

- (a) with fairness, impartiality and independence,
- (b) in a manner that is timely, transparent, objective and (subject to the exception set out in section 3) consistent with States' Directions and the provisions of this Law, and
- (c) where reasonably practicable –
 - (i) where the interests of Alderney are likely to be effected, following consultation with the Policy and Finance Committee of the States of Alderney, and
 - (ii) where the interests of Sark are likely to be effected, following consultation with the [Policy and Finance Committee] of the Chief Pleas of Sark.

(3) The fees, levies, interest and penalties which may be determined and prescribed by the Director under subsection (1)(d) shall be of such an amount as may, in the opinion of the Director, be necessary to meet the costs and expenditure incurred or anticipated by the Director in connection with the carrying out of his functions.

(4) The States may, on the recommendation of [the Committee] made after consultation with the Director of Civil Aviation, by Resolution assign or transfer to the Director such other functions as the States may decide are necessary or expedient in relation to the regulation of aviation activities.

(5) The Director may refrain, in whole or in part, and conditionally or unconditionally, from the exercise of his functions where to do so would in his opinion be consistent with the duty imposed on him by section 2.

NOTES

In section 4,

the words in the first pair of square brackets in subsection (1) were inserted, the word omitted in square brackets in paragraph (e) of subsection (1) was repealed, the punctuation and word in the fourth pair of square brackets in subsection (1) were substituted and paragraph (g) of subsection (1) was inserted by the Aviation (Amendment) (Bailiwick of Guernsey) Law, 2012, section 2(c), respectively paragraph (i), paragraph (ii), paragraph (iii) and paragraph (iv), with effect from 16th September, 2013;

the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016;

the words "Policy and Finance Committee" in square brackets in subsection (2) were substituted by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018, section 2, Schedule, with effect from 24th October, 2018.¹

In accordance with their Resolution of 28th July, 2011, concerning Billet d'État No. XIII, dated 17th June, 2011, the States resolved to assign to the Director of Civil Aviation the function of regulating aviation security within the Bailiwick of Guernsey including, without limitation, responsibility for maintaining standards of aviation security equivalent to those in the United Kingdom, ensuring that all relevant persons in the Bailiwick are appropriately audited for compliance with those standards, and enforcing those standards, as appropriate.

The functions, rights and liabilities of the Sark Policy and Performance Committee and of its Chairman arising under or by virtue of this Law were transferred to and vested in, respectively, the Sark Policy and Finance Committee and its Chairman by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, Schedule, with effect from 24th October, 2018, subject to the savings and transitional provisions in section 3 of the 2018 Ordinance.²

Functions of the Director arising under the Chicago Convention.

5. (1) The Director of Civil Aviation must ensure that the Bailiwick complies, so far as possible, with the Chicago Convention and the Annexes thereto, and for that purpose, in particular, he –

- (a) may enter into an agreement with an appropriate person to provide –
 - (i) a meteorological service in accordance with Annex 3,
 - (ii) aeronautical charts in accordance with Annex 4, or
 - (iii) an aeronautical information service in accordance with Annex 15,
- (b) shall ensure, and may take action and make arrangements to ensure, that the units of measurement used in air and ground operations comply with Annex 5,
- (c) shall ensure that appropriate arrangements are in place for search and rescue operations to comply, so far as possible, with the requirements of Annex 12,
- (d) shall ensure that the applicable standards detailed in Schedule 2 are met, and
- (e) may take whatever steps are necessary to ensure that the Bailiwick complies, so far as possible, with the other relevant Annexes to the extent that these

requirements are not met by the other provisions of[...] this Law.

(2) In subsection (1) a reference to a numbered Annex is a reference to the relevant Annex to the Chicago Convention.

NOTE

In section 5, the words and punctuation omitted in square brackets were repealed by the Aviation (Amendment) (Bailiwick of Guernsey) Law, 2012, section 2(d), with effect from 16th September, 2013.

Powers of the Director of Civil Aviation.

6. (1) The Director may, having regard to the provisions of sections 2 to 5, do anything that appears to him to be necessary or expedient for the purpose of carrying out his functions [under the provisions of this Law] and, without prejudice to the generality of the foregoing, he shall have power –

- (a) to determine the conditions to be included in a licence, certificate, approval, authorization, permission or exemption,
- (b) to require the production of such documents, accounts or information from applicants for licences, certificates approvals, permissions or exemptions, and holders or recipients of such in relation to aviation activities within such time periods or at such intervals as the Director of Civil Aviation may require,
- (c) subject to any provision to the contrary in this Law, to publish information, reports and other documents,

- (d) subject to the provisions of States' Directions, to determine which obligations may be imposed on a licensee or the holder or recipient of a certificate, approval, permission or exemption, and on what conditions, and how and by whom such obligations should be funded,
- (e) to give directions to a licensee or the holder or recipient of a certificate, approval, permission or exemption, concerning aviation activities in cases where he is authorised to do so [...], or any condition of a licence,
- (f) to determine when and in respect of which aviation activities a person may be made exempt from an obligation to obtain a licence, certificate, approval, authorization, permission or exemption,
- (g) to impose any direction, requirement or other sanction under this Law,
- (h) to appoint any person or body to advise him in relation to the carrying out of any of his functions, and
- (i) to institute proceedings for injunctions under section 8.

(2) The Director may sue and be sued as Director of Civil Aviation.

NOTE

In section 6, the words in the first pair of square brackets were inserted and

the words omitted in the second pair of square brackets were repealed by the Aviation (Amendment) (Bailiwick of Guernsey) Law, 2012, section 2, respectively paragraph (e) and paragraph (f), with effect from 16th September, 2013.

Reasons for decisions.

7. If under this Law or any other enactment, the Director of Civil Aviation –

- (a) determines any application,
- (b) acting of his own motion, varies any term or condition of a licence, certificate, approval, authorization, permission or exemption, or
- (c) suspends or revokes, or refuses to validate, such a licence, certificate, approval, authorization, permission or exemption,

the Director shall state in writing his reasons for doing so.

Power to obtain injunctions.

8. (1) If on the application of the Director of Civil Aviation the Court is satisfied that –

- (a) there is a reasonable likelihood that a person will contravene –
 - (i) a provision of [the Aviation Laws] which prohibits an act except under the authority of a licence, certificate, approval, authorization, permission or exemption,

- (ii) a condition of a licence, certificate, approval, authorization, permission or exemption, or
 - (iii) a direction or requirement of the Director of [Civil Aviation] under [the Aviation Laws], or
- (b) a person may have been guilty of such a contravention and there is a reasonable likelihood that the contravention will continue or be repeated,

the Court may grant an injunction restraining the contravention.

(2) An injunction under subsection (1) may be granted on such terms and conditions, and may contain such incidental, ancillary, consequential or supplementary provision, as the Court thinks fit.

(3) An application by the Director of Civil Aviation for an injunction under this section may, with the approval of the Court, and on such terms as the Court may direct, be made *ex parte*.

(4) In this section "**the Court**" means –

- (a) where the person against whom the injunction under this section is sought is within the jurisdiction of the Court of Alderney or the Court of the Seneschal of Sark, the Court of Alderney or, as the case may be, the Court of the Seneschal of Sark, and
- (b) in any other case, the Royal Court.

(5) The powers conferred upon the Royal Court by this section are in addition to and not in derogation from the powers conferred by the Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987^b; and the provisions of Parts I and V of that Law (apart from sections 1(1) and (7)) shall apply in relation to injunctions of the Royal Court under this section.

NOTE

In section 8, the words in, first, the first and third pairs of square brackets were substituted and, second, the words in the second pair of square brackets were inserted by the Aviation (Amendment) (Bailiwick of Guernsey) Law, 2012, section 2(g), respectively paragraph (i) and paragraph (ii), with effect from 16th September, 2013.

Confidentiality.

9. (1) Any document or information from which an individual or body may be identified and which is acquired by the Director of Civil Aviation in the carrying out of his functions shall be regarded as confidential by the Director and by his officers and servants.

(2) No document or information of a description referred to in subsection (1) may be disclosed without the consent of every individual who, and every body which, can be identified from that document or information, except to the extent that its disclosure is expressly authorised or required by or under [the provisions of] this Law or appears to the Director to be necessary –

- (a) to enable him to carry out his functions,
- (b) in the interests of the investigation, detection, prevention or prosecution of crime,

^b Ordres en Conseil Vol. XXX, p. 145.

- (c) in connection with the discharge of any international obligation to which the Bailiwick may from time to time be subject,
- (d) to assist, in the public interest, any authority that appears to the Director to carry out, in a place outside the Bailiwick, functions corresponding to his, or
- (e) to comply with an order of a court.

(3) Without prejudice to subsections (1) and (2), any document or information communicated to the Director by a department of the States shall, if that department so requests, be regarded as confidential by the Director and by his officers and servants; and no such document or information shall be disclosed except –

- (a) in compliance with an order of a court, or
- (b) with the leave of that department, for any reason set out in subsections (2)(a) to (d).

(4) A person who discloses any document or information or who causes or permits the disclosure of any document or information in contravention of this section shall be guilty of an offence and liable –

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both, or
- (b) on summary conviction, to a fine not exceeding level 5 on the uniform scale.

NOTE

In section 9, the words in square brackets were inserted by the Aviation (Amendment) (Bailiwick of Guernsey) Law, 2012, section 2(h), with effect from 16th September, 2013.

Annual report.

10. (1) The Director of Civil Aviation shall not later than 31st March in each year submit to [the Committee] a report on –

- (a) the carrying out of his functions, and
- (b) the steps taken by him to uphold the duty imposed on him by section 2,

in the preceding year.

(2) The Director of Civil Aviation's report made under subsection (1) shall set out any States' Directions which were in force during the period of the report.

(3) [The Committee] –

- (a) shall submit the Director of Civil Aviation's report made under subsection (1) to the States, and
- (b) may at the same time submit their own report to the States covering –
 - (i) the period of the Director's report, and
 - (ii) the matters described in subsection (1).

NOTE

In section 10, the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

Appeals

Right of appeal.

11. (1) A person aggrieved by a decision of the Director of Civil Aviation made in the carrying out of his functions, being a decision of a description set out in subsection (2), may appeal against the decision to the Royal Court on any of the grounds set out in subsection (3).

(2) The decisions of the Director of Civil Aviation against which an appeal shall lie under this section are decisions of the following descriptions –

- (a) to refuse to grant, issue or validate, a licence, certificate, approval, authorization, permission or exemption,
- (b) to impose a condition on a licence, certificate, approval, authorization, permission or exemption,
- (c) to amend or modify a licence, certificate, approval, authorization, permission or exemption,
- (d) to revoke a licence, certificate, approval, authorization, permission or exemption,

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- (e) to impose a direction, requirement or other sanction under this Law, and
 - (f) such other class or description of decision as the States may by Ordinance determine.
- (3) The grounds of an appeal under this section are that –
- (a) the decision was *ultra vires* or there was some other error of law,
 - (b) the decision was unreasonable,
 - (c) the decision was made in bad faith,
 - (d) there was a lack of proportionality, or
 - (e) there was a material error as to the facts or as to the procedure.
- (4) An appeal under this section shall be instituted –
- (a) within a period of 28 days immediately following the date of the Director of Civil Aviation's decision,
 - (b) by summons served on the Director of Civil Aviation stating the grounds and material facts on which the appellant relies.
- (5) On an appeal under this section the Court may –

- (a) set the decision of the Director of Civil Aviation aside and, if the Court considers it appropriate to do so, remit the matter to the Director with such directions as the Court thinks fit, or
- (b) confirm the decision, in whole or in part.

(6) The effect of a decision to which an appeal under this section relates shall not, except where the Royal Court orders otherwise, be suspended in consequence of the bringing of the appeal.

(7) The Director may, where an appeal under this section is not determined by the Royal Court within a period of three months immediately following the date of the summons by which the appeal was instituted, apply to the Royal Court, by summons served on the appellant, for an order that the appeal be dismissed for want of prosecution; and upon hearing such an application the Royal Court may –

- (a) dismiss the appeal or dismiss the application (in either case upon such terms and conditions as the Royal Court may direct), or
- (b) make such other order as the Royal Court considers just.

(8) For the purposes of determining an appeal under this section, the Royal Court –

- (a) may appoint one or more assessors to assist it, and
- (b) is properly constituted by the Bailiff sitting

unaccompanied by the Jurats.

Appeals from Royal Court to Court of Appeal.

12. (1) A person aggrieved by a decision of the Royal Court on an appeal under section 11 may, with leave of the Royal Court, or the Court of Appeal, appeal to the Court of Appeal on a question of law.

(2) Section 21 of the Court of Appeal (Guernsey) Law, 1961^c ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under this section as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

Miscellaneous

Exclusion of liability.

- 13.** (1) No liability shall be incurred by –
- (a) the States or any department thereof,
 - (b) the Director of Civil Aviation or any person –
 - (i) to whom the Director has, under paragraph 4 of Schedule 1, delegated any function,
 - (ii) appointed as Deputy Director of Civil Aviation under paragraph 6 of Schedule 1, or
 - (iii) appointed as Acting Director of Civil Aviation under paragraph 7 of Schedule 1, or

^c Ordres en Conseil Vol. XVIII, p. 315.

- (c) any officer, servant or member of the States or officer or servant of the Director of Civil Aviation,

in respect of anything done or omitted to be done after the commencement of this Law in the discharge or purported discharge of their functions and powers [under the provisions of this Law].

- (2) Subsection (1) does not apply –
 - (a) if the thing done or omitted to be done is shown to have been in bad faith, or
 - (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful by virtue of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000^d.

NOTE

In section 13, the words in square brackets were inserted by the Aviation (Amendment) (Bailiwick of Guernsey) Law, 2012, section 2(i), with effect from 16th September, 2013.

^d Order in Council No. XIV of 2000 and No. I of 2005.

PART II
REGULATION OF CIVIL AVIATION

Aerodromes

Duty of Director of Civil Aviation to consider environmental factors when licensing aerodromes.

14. Subject to sections 4 to 6 and any other provision of, or made under, this Law, it shall be the duty of the Director of Civil Aviation in carrying out any aerodrome licensing function in relation to any aerodrome to which this section applies, to have regard to the need to minimise so far as reasonably practicable –

- (a) any adverse effects on the environment, and
- (b) any disturbance to the public,

from noise, vibration, atmospheric pollution or any other cause attributable to the use of aircraft for the purpose of civil aviation.

Health control at aerodromes.

15. The States may by Ordinance make such provision as they think fit in respect of –

- (a) preventing danger to public health from aircraft arriving at any aerodrome, and
- (b) preventing the spread of infection by means of any aircraft leaving any aerodrome.

Aerodrome charges: noise and emissions.

16. (1) Without prejudice to any power of any aerodrome authority to enter into an agreement on such terms as it thinks fit, an aerodrome authority may, for the purposes mentioned below, fix its charges in respect of an aircraft, or a class of aircraft, by reference (among other things) to –

- (a) any fact or matter relevant to the amount of noise caused by the aircraft or the extent or nature of any inconvenience resulting from such noise in order to encourage the use of quieter aircraft and to reduce inconvenience from aircraft noise,
- (b) any fact or matter relevant to the amount or nature of emissions produced by the aircraft or the extent or nature of any atmospheric pollution resulting from such emissions in order to encourage the use of aircraft which produce lower emissions of any substance (including gas or vapour) which contributes to atmospheric pollution,
- (c) any fact or matter relevant to the effect of the aircraft on the level of noise or atmospheric pollution at any place in or in the vicinity of the aerodrome, in order to control the level of noise or atmospheric pollution in or in the vicinity of the aerodrome so far as attributable to aircraft taking off or landing at the aerodrome, or
- (d) any failure by the operator of the aircraft to secure that any noise or emissions requirements applying to the aircraft are complied with in order to promote compliance with noise or emissions requirements

(2) In subsection (1)(d), "**noise or emissions requirements**" means requirements imposed in relation to aircraft taking off or landing at the aerodrome, which are either –

- (a) requirements imposed under section 30 for the purpose of limiting, or mitigating the effect of, noise caused by such aircraft, or
- (b) requirements imposed by the aerodrome authority (otherwise than under that section) for the purpose of limiting, or mitigating the effect of, noise caused by, or emissions produced by, such aircraft.

(3) This section has effect subject to any provision relating to the use of, or charges for the use of, aerodromes which is made by or under any other provision of this Law or any other enactment.

(4) In this section –

"aerodrome authority" means a person owning or managing an aerodrome which is licensed under this Law, and

"charges", means the charges the authority makes for the use of an aerodrome so licensed which is owned or managed by the authority.

Noise control schemes.

17. (1) An aerodrome operator may establish and maintain a scheme (referred to in this section and sections 18 and 19 as a "**noise control scheme**") for the purpose of avoiding, limiting or mitigating the effect of noise connected with the taking off or landing of aircraft at the aerodrome.

- (2) A noise control scheme may –
- (a) require operators of aircraft which are to take off or land at the aerodrome to secure that specified requirements are complied with in relation to the aircraft after they take off, or before they land, at the aerodrome,
 - (b) prohibit aircraft of specified descriptions from taking off or landing at the aerodrome during specified periods,
 - (c) specify the maximum number of occasions on which aircraft of specified descriptions may take off or land at the aerodrome during specified periods, and
 - (d) impose other restrictions for limiting the cumulative amount of noise caused by aircraft of specified descriptions taking off or landing at the aerodrome during specified periods, and

in this subsection "**specified**" means specified in the scheme.

- (3) A noise control scheme which contains –
- (a) provision under subsection (2)(c), or
 - (b) provision under subsection (2)(d) which has the effect of limiting the number of occasions on which aircraft may take off or land at the aerodrome during the

periods specified,

shall make provision for determining the matters mentioned in subsection (4).

- (4) The matters mentioned in this subsection are –
 - (a) the persons who shall be entitled to arrange for aircraft of which they are the operators to take off or land at the aerodrome during the periods in question, and
 - (b) as respects each of those persons, the number of occasions (whether determined by reference to a maximum number or otherwise) on which aircraft of a particular description of which he is the operator may take off or land at the aerodrome during those periods.

(5) Before making, amending or revoking any noise control scheme under this section, the aerodrome operator shall consult the operators of aircraft using the aerodrome or any body appearing to it to be representative of operators of aircraft using the aerodrome.

(6) A noise control scheme may make provision as respects any period even if that period is included in, or there is included in that period, any other period as respects which provision relating to the aerodrome is made by the scheme.

- (7) A noise control scheme may –
 - (a) provide for circumstances in which the scheme (or any provision of the scheme) is not to apply,
 - (b) contain such incidental or supplementary provisions as

the aerodrome operator considers appropriate, and

(c) be amended or revoked by the aerodrome operator.

(8) A noise control scheme shall not be established in relation to an aerodrome which is designated for the purposes of section 30 and on such a designation coming into force in relation to an aerodrome any noise control scheme which has effect in relation to the aerodrome shall cease to have effect.

(9) The amendment or revocation of a noise control scheme, or its ceasing to have effect by virtue of subsection (8), shall not affect the validity of anything previously done under the scheme.

(10) The powers conferred on an aerodrome operator by this section and sections 18 and 19 are in addition to, and do not prejudice, any other power of the aerodrome operator to take steps for the purpose of avoiding, limiting or mitigating the effect of noise connected with the taking off or landing of aircraft at the aerodrome.

(11) In this section and sections 18 to 20, "**aerodrome operator**" means a person owning or managing an aerodrome.

Noise control schemes: supplementary.

18. (1) This section applies where a noise control scheme imposes requirements under section 17(2)(a) in relation to aircraft taking off or landing at an aerodrome.

(2) The requirements so imposed shall have effect in relation to such an aircraft only –

(a) while it is within such area as may be specified in

relation to the aerodrome by the aerodrome operator, or

- (b) if no area has been so specified, while it is within the area represented by a circle with a radius of 3 miles from the centre of the longest runway at the aerodrome.

(3) An area may be specified for the purposes of subsection (2)(a) by description, by reference to a map or in any other way.

(4) Before specifying any area under subsection (2)(a), the aerodrome operator shall consult –

- (a) the Director of Civil Aviation,
- (b) operators of aircraft using the aerodrome or any body appearing to the aerodrome operator to be representative of operators of aircraft using the aerodrome, and
- (c) any body appearing to the operator to be representative of persons concerned with the locality in which the aerodrome is situated.

Breaches of noise control schemes.

19. (1) This section also applies where a noise control scheme imposes requirements under section 17(2)(a) in relation to aircraft taking off or landing at an aerodrome.

(2) The scheme may provide for the aerodrome operator to require the payment of a penalty if any such requirement is not complied with in relation to an aircraft taking off or landing at the aerodrome.

- (3) Any such penalty shall be –
 - (a) of an amount specified in the scheme, and
 - (b) paid to the aerodrome operator by the operator of the aircraft in question.

(4) The scheme shall afford the operator of the aircraft an opportunity to make representations to the aerodrome operator with respect to the matter either before or after the penalty is imposed.

(5) If the scheme affords an opportunity to make representations after the penalty is imposed, it shall provide for the aerodrome operator to cancel the penalty if it considers it appropriate to do so having considered those representations.

Unauthorised entry to licensed aerodromes.

20. (1) Subject to subsection (2), if any unauthorised person enters any land forming part of a licensed aerodrome, he shall be liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

(2) No person shall be liable under this section unless it is proved that, at the material time, notices warning persons of their liability under this section were posted so as to be readily seen and read by members of the public, in such positions on or near the boundary of the aerodrome as appear to the court to be proper.

(3) For the purposes of this section, an unauthorised person is a person who has not been authorised to enter any land forming part of an aerodrome by the relevant aerodrome operator.

Warning of presence of obstructions near licensed aerodromes.

21. (1) Subject to the provisions of this section, if the relevant department is satisfied with respect to any building, structure or erection in the vicinity of a licensed aerodrome that, in order to avoid danger to aircraft flying in that vicinity in darkness or conditions of poor visibility, provision ought to be made (whether by lighting or otherwise) for giving to such aircraft warning of the presence of that building, structure or erection, it may by order authorise (subject to any conditions specified in the order) the proprietor of the aerodrome, and any person acting under the proprietor's instructions –

- (a) to execute, install, maintain, operate and, as occasion requires, to repair and alter, such works and apparatus as may be necessary for enabling such warning to be given in the manner specified in the order, and
- (b) so far as may be necessary for exercising any of the powers conferred by the order to enter upon and pass over (with or without vehicles) any such land as may be specified in the order.

(2) An order shall not be made under this section in relation to any building, structure or erection if it appears to the relevant department that there have been made, and are being carried out, satisfactory arrangements for the giving of such warning as aforesaid of the presence of the building, structure or erection.

(3) The relevant department shall, before making an order under this section –

- (a) cause to be published, in such manner as it thinks best for informing persons concerned, notice of the proposal to make the order and of the place where copies of the

draft order may be obtained free of charge, and

- (b) take into consideration any representations with respect to the order which may, within such period not being less than two months after the publication of the notice as may be specified therein, be made to it by any person appearing to it to have an interest in any land which would be affected by the order,

and at the end of that period the order may, subject to the provisions of this section, be made with such modifications (if any) of the original draft as the relevant department thinks proper.

- (4) Every order under this section shall provide –

- (a) that, except in a case of emergency, no works shall be executed on any land in pursuance of the order, unless, at least 14 days previously, the proprietor of the aerodrome to which the order relates has served in the manner specified in the order on the occupier of that land, and on every other person known by the proprietor to have an interest therein, a written notice containing such particulars of the nature of the proposed works, and the manner in which and the time at which it is proposed to execute them, as may be specified in or in accordance with the order, and
- (b) that if, within 14 days after service of the said notice on any person having such an interest, the proprietor of the aerodrome receives a written intimation of objection on the part of that person to the proposals contained in the

notice, being an intimation which specifies the grounds of objection, then, unless and except in so far as the objection is withdrawn, no steps shall be taken in pursuance of the notice without the specific sanction of the relevant department,

and shall also provide for requiring the proprietor of the aerodrome to which the order relates to pay to any person having an interest in any land affected by the order such compensation for any loss or damage which that person may suffer in consequence of the order as may, in default of agreement, be determined from time to time by a single arbitrator appointed by the President of the Royal Institution of Chartered Surveyors.

(5) For the purposes of subsection (4), any expense reasonably incurred in connection with the lawful removal of any apparatus installed in pursuance of an order under this section, and so much of any expense incurred in connection with the repair, alteration, demolition or removal of any building, structure or erection to which such an order relates as is attributable to the operation of the order, shall be deemed to be loss or damage suffered in consequence of the order.

(6) The ownership of anything shall not be taken to be affected by reason only that it is placed in, or affixed to, any land in pursuance of an order under this section; and (subject to the provisions of subsection (8)) so long as any such order in respect of an aerodrome is in force, no person shall, except with the consent of the proprietor of the aerodrome, wilfully interfere with any works or things which, to the knowledge of that person, are works or things executed or placed, in, on or over any land in pursuance of the order.

(7) If any person contravenes the provisions of subsection (6), he shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the uniform scale or to both, and every

person who wilfully obstructs a person in the exercise of any of the powers conferred by an order under this section shall be liable, on summary conviction, to a fine not exceeding level 5 on the uniform scale.

(8) Nothing in this section shall operate, in relation to any building, structure or erection, so as to restrict the doing of any work for the purpose of repairing, altering, demolishing or removing the building, structure or erection if –

- (a) notice of the doing of that work is given as soon as may be to the proprietor of the aerodrome, and
- (b) the giving of warning of the presence of the building, structure or erection in the manner provided by any order under this section in force in relation thereto is not interrupted.

(9) The following provisions shall have effect, without prejudice to the general application of subsections (4) and (5), for the protection of statutory undertakers –

- (a) any order made under this section affecting any property held by such undertakers for the purposes of their undertaking shall be so framed as to avoid interference with the proper carrying on of the undertaking,
- (b) no person shall, except in a case of emergency, enter, in pursuance of such an order, upon any land held by such undertakers for the purposes of their undertaking, unless he has given to the undertakers at least three clear days' notice of his intention so to do, and any

person so entering on any such land shall comply with any reasonable directions given to him by or on behalf of the undertakers for preventing interference with the proper carrying on of the undertaking,

- (c) if any such undertakers show that, by reason of the operation of such an order, they have been obliged to take special measures for the purpose of ensuring the safety of persons so entering on any such land or otherwise acting under the order in relation to any property of the undertakers, the amount of any expenses reasonably incurred by the undertakers in taking such measures shall be paid to them by the proprietor of the aerodrome to which the order relates, and any dispute as to whether any sum is payable under this paragraph, or as to the amount of any sum so payable, shall, unless the parties otherwise agree, be referred for determination to a single arbitrator appointed by the President of the Royal Institution of Chartered Surveyors.

(10) In this section and section 22 –

"proprietor of the aerodrome" means, in relation to any premises used or appropriated for use as an aerodrome, the person carrying on or entitled to carry on the business of an aerodrome in those premises,

"relevant department" means –

- (a) in relation to Guernsey, the [Committee for the Environment & Infrastructure],

- (b) in relation to Alderney, the General Services Committee of the States of Alderney, and
- (c) in relation to Sark, the [Policy and Finance Committee] of the Chief Pleas of Sark, and

"statutory undertaker" means any undertaker prescribed by regulations made by [the Committee] under this subsection.

NOTES

In section 21,

the words in the first pair of square brackets in subsection (10) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 12(a), with effect from 1st May, 2016;

the words in the second pair of square brackets in subsection (10) were substituted by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018, section 2, Schedule, with effect from 24th October, 2018;³

the words in the third pair of square brackets in subsection (10) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

The functions, rights and liabilities of the Sark Policy and Performance Committee and of its Chairman arising under or by virtue of this Law were transferred to and vested in, respectively, the Sark Policy and Finance Committee and its Chairman by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, Schedule, with effect from 24th October, 2018, subject to the savings and transitional provisions in section 3 of the 2018 Ordinance.⁴

The functions, rights and liabilities of the Public Services Department and of its Minister or Deputy Minister arising under or by virtue of section 21 of this Law (warning of presence of obstructions near licensed aerodromes) were transferred to and vested in, respectively, the Committee for the Environment & Infrastructure and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016,

section 1, Schedule 1, paragraph 12(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

Power to enter on property in connection with aerodrome.

22. (1) Subject to subsection (2), a relevant department may authorise any person to enter upon any property where it is reasonably necessary for the purpose of enabling that person, or any person authorised by that person, to undertake any survey relating to the safety, or extension or re-alignment, of a licensed aerodrome, or any part of a licensed aerodrome.

(2) The power exercisable under subsection (1) shall only be exercised –

- (a) with the consent of the owner or occupier of the property concerned, or
- (b) where it is not possible to obtain the consent of the owner or occupier, upon notice in writing given by the relevant department to any person who appears to be the owner or occupier.

Eurocontrol

Eurocontrol.

23. Schedule 3 shall have effect in relation to the European Organisation for the Safety of Air Navigation established by the International Convention relating to co-operation for the safety of air navigation (entitled Eurocontrol) concluded at Brussels on 13th December 1960, and in this Law –

"Eurocontrol" means that Organisation, including, except where the

context otherwise requires, the Permanent Commission for the Safety of Air Navigation and the Air Traffic Services Agency comprised in that Organisation, and

"the Eurocontrol Convention" means that Convention as from time to time amended with the agreement of the contracting parties thereto.

Air transport, etc.

Regulation of provision of accommodation in aircraft.

24. (1) Provision may be made by regulations made by [the Committee] for securing that a person does not in the Bailiwick –

- (a) make available, as a principal or an agent, accommodation for the carriage of persons or cargo on flights, or
- (b) hold himself out as a person who, either as a principal or an agent or without disclosing his capacity, may make such accommodation available,

unless he is the operator of the relevant aircraft or holds and complies with the terms of a licence issued in pursuance of the regulations or is exempted by or under the regulations from the need to hold such a licence.

(2) Regulations made by [the Committee] for the purposes of subsection (1) may contain such provisions as [the Committee], after consultation with the Director of Civil Aviation, considers appropriate for those purposes and may, without prejudice to the generality of the preceding provisions of this subsection, include provision –

Consolidated text

- (a) as to the circumstances in which licences shall or shall not be issued in pursuance of the regulations,
- (b) as to the terms of licences, which may include terms as to the minimum charges which are to be made and the goods, services and other benefits which are or are not to be furnished by any person whatsoever under or in connection with any contract which includes provision for the making available of accommodation on flights to which the licences in question relate,
- (c) for the variation, suspension and revocation of licences,
- (d) for appeals against refusals, variations, suspensions or revocations of licences to lie to a prescribed body or person (which may be a court, a body or person constituted or appointed by or under the regulations or such other body or person as [the Committee] thinks fit) and for applying the provisions of any enactment, with or without modifications, in relation to such appeals, and
- (e) for imposing penalties for contraventions of the regulations not exceeding in the case of each contravention a fine of twice level 5 on the uniform scale on summary conviction and a fine and imprisonment for a term not exceeding two years on conviction on indictment.

NOTE

In section 24, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

Contributions by licence holders to an Air Travel Fund.

25. (1) An Air Travel Fund may be created by Ordinance of the States.

(2) [The Committee] may by regulations make provision for and in connection with requiring persons applying for licences by virtue of section 24 to make contributions to such an Air Travel Fund in relation to the periods for which their licences are to be issued.

(3) The regulations may, in particular, make provision –

- (a) prescribing the factors by reference to which such contributions are to be calculated by [the Committee] (other than the rate by reference to which they are to be so calculated),
- (b) authorising [the Committee], after complying with prescribed consultation requirements, to set in respect of different classes, or descriptions, of persons the rates by reference to which such contributions are to be calculated and the dates from which those rates are to have effect,
- (c) requiring contributions to be paid, or undertakings as to payment of contributions to be given, in advance of licences being issued,
- (d) requiring licence holders to pay additional amounts by

way of contributions where the applicable contribution rate increases during the term of their licences,

- (e) requiring additional amounts to be paid by way of contributions, or undertakings as to the payment of such amounts to be given, in advance of licences being varied,
- (f) for [the Committee] to reimburse to persons, or credit persons with, amounts paid by them by way of contributions (and for [the Committee] to exercise in that connection such discretion as is conferred by the regulations),
- (g) for contributions that are not paid in accordance with the regulations or any undertaking as to payment to bear interest at the rate specified in the regulations, and for such contributions and interest to be recoverable as debts due to the Air Travel Fund,
- (h) for [the Committee] to collect and recover contributions, and for the reimbursement of costs incurred by it in so doing,
- (i) for [the Committee], after complying with prescribed consultation requirements, to suspend, either generally or in relation to any description of persons, the requirement to make contributions in respect of a period,
- (j) for [the Committee] to exempt persons from the

requirement to make contributions on such conditions as [the Committee] thinks fit, and

(k) for creating criminal offences to be triable summarily and punishable with a fine not exceeding twice level 5 on the uniform scale or such lower amount as is prescribed in the regulations.

(4) Regulations under section 24 may authorise [the Committee] –

(a) to refuse to issue a licence to a person,

(b) to refuse to vary a licence held by a person, or

(c) to vary, suspend or revoke a licence held by a person,

where that person has failed to comply with a prescribed requirement of regulations under this section or has breached an undertaking given as mentioned in subsection (3)(c) or (e).

(5) Before making any regulations under this section, [the Committee] must consult the Director of Civil Aviation and, so far as it considers it reasonably practicable to do so –

(a) persons who hold licences issued in pursuance of regulations made under section 24(1), and

(b) any other person or body appearing to it to have an interest in the matter.

NOTE

In section 25, the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

Air navigation services

Enforcement of foreign judgments etc. in respect of route charges.

26. (1) Subject to the following provisions of this section, where a relevant authority in a Contracting State, has made a determination as to whether or not any sum is due to Eurocontrol in respect of air navigation services provided by Eurocontrol or by some other person, that determination shall, in the Bailiwick, be enforceable or, as the case may be, recognised in accordance with the following provisions of this section, but not otherwise.

(2) For the purposes of the enforcement in any part of the Bailiwick of any determination which is enforceable by Eurocontrol under this section, the provisions of sections 4, 5(1), 7(1) and (2) of the Judgments (Reciprocal Enforcement) (Guernsey) Law 1957^e shall apply, with the necessary modifications, in relation to the determination as they apply in relation to a judgment to which that Law applies; and accordingly, for the purposes of this section, in section 7(2) of that Law –

- (a) the reference to subsection (1) of that section shall have effect as a reference to subsection (7), and
- (b) the reference to an appeal shall include a reference to an application for review of a determination.

(3) On an application for the purpose made by any person against

^e Ordres en Conseil Vol. XVII, p. 178 and Orders in Council No. IX of 1994.

whom a determination registered by virtue of subsection (2) may be enforced, the registration shall (subject to subsection (7)) be set aside if the court to which the application to register is made is satisfied –

- (a) that the determination is not a determination to which this section applies,
- (b) that the determination was registered in contravention of any provision applied by subsection (2), or
- (c) that, by virtue of any of the following provisions of this section, the determination is not to be enforced in the part of the Bailiwick in which it is sought to enforce it.

(4) Subject to subsection (7), a determination in respect of any sum by a relevant authority in a Contracting State shall not under this section be enforced or recognised in a part of the Bailiwick if –

- (a) that Contracting State is not the country, or one of the countries, in which, under subsection (5), proceedings in respect of that sum should have been brought, or
- (b) the determination is not final,
- (c) the determination is manifestly contrary to public policy in the part of the Bailiwick in which it is sought to enforce the determination or, as the case may be, in which recognition of the determination is sought,
- (d) the person against whom the proceedings resulting in the determination were brought did not

(notwithstanding that process may have been duly served on him in the Contracting State in which those proceedings were brought) receive notice of the proceedings in sufficient time to enable him to defend them or, as the case may require, to apply for the proceedings to be reviewed, or

(e) proceedings relating to the same sum have been brought previously, and are pending, in any part of the Bailiwick,

(f) the determination is incompatible with the judgment of any court in any part of the Bailiwick, or

(g) the determination –

(i) involved the application of rules of private international law to a question concerning the status or legal capacity of natural persons, or concerning rights in property arising out of matrimonial relationships or concerning wills or succession (being rules different from the corresponding rules of private international law applicable in the part of the Bailiwick in which it is sought to enforce the determination, or as the case may be, in which recognition of the determination is sought), and

(ii) was different from the determination which would have been made if those corresponding rules had been applied.

(5) For the purposes of this section proceedings in respect of a sum payable to Eurocontrol must be brought against the person liable to pay the sum –

- (a) in the Contracting State (if any) in which that person's residence or, as the case may be, his registered office is situated,
- (b) if that person's residence or, as the case may be, his registered office is not situated in a Contracting State, in any Contracting State in which he has a place of business,
- (c) if that person's residence or, as the case may be, his registered office is not situated in a Contracting State and he has no place of business in any Contracting state, in any Contracting State in which he has assets,
- (d) if that person's residence or, as the case may be, his registered office is not situated in a Contracting State and he has neither a place of business nor any assets in any Contracting State, in the country in which Eurocontrol for the time being has its headquarters.

(6) For the purposes of this section a determination by a relevant authority in a Contracting State shall be final if neither an appeal from nor an application for review of that determination is pending in that State and it is not possible, for any of the following reasons, for such an appeal to be brought or such an application to be made, that is to say –

- (a) no appeal or review is provided for in that State in

respect of the determination, being a determination made by a court or tribunal,

- (b) the time within which an appeal must be brought, or an application for review must be made, has expired,
- (c) an appeal which has been brought, or an application for review which has been made, has been withdrawn, or
- (d) the determination has been confirmed by, or made in pursuance of a direction contained in, a determination which was made by a relevant authority and is itself final.

(7) If, on an application to set aside the registration by virtue of subsection (2) of any determination, the applicant satisfies the court to which the application to register is made that the determination is not final, the court may, on such terms as it may think fit, either –

- (a) set aside the registration, or
- (b) adjourn the application to set aside the registration until such time as the determination has become final,

but nothing in this section shall require that court to take either of these courses where there is no other ground for setting aside the registration and the court is not satisfied that the applicant intends to continue with any appeal or application for review which is pending or, as the case may be, to bring any appeal or make any such application which it is possible for him to bring or make in respect of the determination.

(8) In this section –

"Contracting State" means a country which is a party to the Multilateral Agreement relating to Route Charges signed at Brussels on 12th February 1981 at the Diplomatic Conference on the Protocol amending the Eurocontrol International Convention relating to Co-operation for the Safety of Air Navigation of 13th December 1960,

"relevant authority", in relation to a Contracting State, means –

- (a) any court or tribunal which, under the law of the State, has jurisdiction to determine questions as to whether or not a sum is due to Eurocontrol in respect of air navigation services provided by Eurocontrol or some other person,
- (b) any administrative authority which, under that law, has jurisdiction to make, or is otherwise authorised to make, determinations in respect of such questions, being determinations which in that State are subject to appeal to, or review by, a court or tribunal,
- (c) any court or tribunal which, under that law, has jurisdiction to determine any appeal from, or carry out any review of, a determination made in respect of any such question by another relevant authority.

Investigation of accidents

Investigation of accidents.

27. (1) Without prejudice to [any provision relating to the investigation of accidents in the Air Navigation (Bailiwick of Guernsey) Law, 2012],

the States may by Ordinance make such provision as appears to them to be requisite or expedient –

- (a) for the investigation of any accident arising out of or in the course of air navigation and either occurring in or over the Bailiwick [or occurring elsewhere to aircraft registered in the Bailiwick], and
- (b) for carrying out any Annex to the Chicago Convention (being an Annex adopted in accordance with the Convention and relating to the investigation of accidents involving aircraft) as it has effect from time to time with any amendment made in accordance with the Convention (hereafter in this section referred to as "**the Annex**").

(2) Without prejudice to the generality of subsection (1)(b), an Ordinance under that subsection may make provision with respect to any of the following matters, that is to say –

- (a) defining "accident" for the purposes of this section so as to correspond to the meaning adopted for the time being in the Annex,
- (b) requiring the participation of any persons authorised for the purpose in accordance with any Ordinance in any investigation held in accordance with the requirements of the Annex by the competent authorities of any other state, and
- (c) requiring the investigation of any accident other than

one to which subsection (1)(a) applies for the purpose of securing any information, articles or other material which it is the duty of the Bailiwick in accordance with any requirements of the Annex to furnish to any other state.

(3) Without prejudice to the generality of subsection (1), an Ordinance under this section may contain provisions –

- (a) requiring notice to be given of any such accident as is mentioned in subsection (1)(a) in such manner and by such persons as may be specified [...],
- (b) prohibiting, pending investigation, access to or interference with aircraft to which an accident has occurred, and authorising any person so far as may be necessary for the purposes of an investigation, or for the purpose of determining whether an investigation should be held, to have access to, examine, remove, test, take measures for the preservation of, or otherwise deal with, any such aircraft and any other aircraft, and
- (c) authorising or requiring the cancellation, suspension, endorsement or surrender of any licence, certificate, approval, authorization, permission or exemption granted, renewed or validated under this Law where it appears on an investigation that the licence, certificate, approval, authorization, permission or exemption ought to be cancelled, suspended, endorsed or surrendered and requiring the production of any such licence, certificate, approval, authorization, permission or

exemption for the purpose of being so dealt with.

(4) Without prejudice to subsection (2)(a), in this section "**accident**" shall be construed as including any fortuitous or unexpected event by which the safety of an aircraft or any person is threatened.

(5) Nothing in this section shall limit the powers of any authority under sections 235 to 237 and sections 242 to 244 of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002^f.

[(6) If any person contravenes or fails to comply with any Ordinance under this section he shall be liable on summary conviction to a fine not exceeding twice level 5 on the uniform scale or to imprisonment for a term not exceeding three months.]

NOTE

In section 27, the words in the first pair of square brackets were substituted, the words in the second pair of square brackets were inserted, the words omitted in the third pair of square brackets were repealed and subsection (6) was inserted by the Aviation (Amendment) (Bailiwick of Guernsey) Law, 2012, section 3(a), respectively paragraph (i), paragraph (ii), paragraph (iii) and paragraph (iv), with effect from 16th September, 2013.

Trespass by aircraft and aircraft nuisance, noise, etc

Liability of aircraft in respect of trespass, nuisance and surface damage.

28. (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

^f Order in Council No. VIII of 2004.

provisions of this Law, and any Ordinance or subordinate legislation made under this Law, have been duly complied with and there has been no breach of section 33.

(2) Subject to subsection (3), 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, animal 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.

(3) 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 subsection (2), 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.

(4) 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 section shall have effect as if for references to the owner there were substituted references to the person to whom the aircraft has been so demised, let or hired out.

Nuisance caused by aircraft on aerodromes.

29. (1) The States may by Ordinance provide for regulating the conditions under which noise and vibration may be caused by aircraft on aerodromes and may provide that subsection (2) 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 Ordinance made under subsection (1), as long as the provisions of any such Ordinance are duly complied with.

Regulation of noise and vibration from aircraft.

30. (1) The Director of Civil Aviation may by a notice published in the prescribed manner provide that it shall be the duty of the person who is the operator of the aircraft which is to take off or land at a designated aerodrome to secure that, after the aircraft takes off or, as the case may be, before it lands at the aerodrome, such requirements as are specified in the notice are complied with in relation to the aircraft, being requirements appearing to the [States' Trading Supervisory Board] to be appropriate for the purpose of limiting or of mitigating the effect of noise and vibration connected with the taking off or landing of aircraft at the aerodrome.

(2) If it appears to the Director of Civil Aviation that any requirement specified in relation to a designated aerodrome in a notice published in pursuance of subsection (1) has not been complied with as respects any aircraft he may, after affording to the person who at the relevant time was the operator of the aircraft an opportunity of making representations to him with respect to the matter and after considering any representations then made by that person, give to the person managing the aerodrome a direction requiring him to secure that, until the Director revokes the direction, facilities for using the aerodrome are withheld to the extent specified in the direction from aircraft of which the person aforesaid is the operator

and from his servants; and it shall be the duty of the person for the time being managing the aerodrome to comply with the direction.

(3) If the Director of Civil Aviation considers it appropriate, for the purpose of avoiding, limiting or mitigating the effect of noise and vibration connected with the taking-off or landing of aircraft at a designated aerodrome, to prohibit aircraft from taking off or landing, or limit the number of occasions on which they may take off or land, at the aerodrome during certain periods, he may by a notice published in the prescribed manner, which may make provision as respects any period, do all or any of the following, that is to say –

- (a) prohibit aircraft of descriptions specified in the notice from taking off or landing at the aerodrome (otherwise than in an emergency of a description so specified) during periods so specified,
- (b) specify the maximum number of occasions on which aircraft of descriptions so specified may be permitted to take off or land at the aerodrome (otherwise than as aforesaid) during periods so specified,
- (c) after consulting any body appearing to him to be representative of operators of aircraft using the aerodromes, determine the persons who shall be entitled to arrange for aircraft of which they are the operators to take off or land at the aerodrome during the periods specified under paragraph (b) and, as respects each of those persons, the number of occasions on which aircraft of a particular description of which he is the operator may take off or land at the aerodrome during those periods, and

- (d) by notice given to the person managing an aerodrome, determine that a particular occasion or series of occasions on which aircraft take off or land at the aerodrome shall be disregarded,

and subject to subsection (4) it shall be the duty of the person for the time being managing the aerodrome to secure that the prohibitions or restrictions relating to the aerodrome which are imposed by the notice are complied with save that nothing in this subsection requires a person managing an aerodrome to prevent an aircraft from landing at the aerodrome.

(4) A particular occasion or series of occasions on which aircraft take off or land at an aerodrome shall be disregarded for the purposes of any notice under subsection (3) in respect of that aerodrome if –

- (a) on that occasion or series of occasions the aircraft take off or land in circumstances specified for the purposes of this subsection in relation to that aerodrome by the Director of Civil Aviation in a notice published in the prescribed manner, and
- (b) the person for the time being managing the aerodrome or a person authorised by him for the purpose, determines that that occasion or series of occasions should be so disregarded,

but it shall be the duty of the first-mentioned person to notify the Director of Civil Aviation in writing, within one week from its occurring, of any occasion (whether a single occasion or one of a series of occasions) to which this subsection applies.

(5) The following supplementary provisions shall have effect for the purposes of subsection (3), that is to say –

- (a) if it appears to the Director of Civil Aviation that an aircraft is about to take off in contravention of any prohibition or restriction imposed under that subsection, then, without prejudice to the powers exercisable by virtue of that subsection by the person managing the relevant aerodrome, any person authorised by the Director of Civil Aviation for the purpose may detain the aircraft for such period as that person considers appropriate for preventing the contravention and may, for the purpose of detaining the aircraft, enter upon any land,
- (b) if it appears to a person ("Person A") authorised for the purpose by the person for the time being managing the relevant aerodrome that an aircraft is about to take off in contravention of any prohibition or restriction imposed under that subsection, then without prejudice to paragraph (a) or the powers mentioned therein, Person A, or a person authorised by him for the purpose, may detain the aircraft for such period as Person A, considers appropriate for preventing the contravention and may, for the purpose of detaining the aircraft, enter upon any land.

(6) The Director of Civil Aviation may give to the person managing a designated aerodrome such directions as the Director of Civil Aviation considers appropriate for the purpose of avoiding, limiting, or mitigating the effect of, noise and vibration connected with the taking-off or landing of aircraft at the

aerodrome; and it shall be the duty of the person for the time being managing the aerodrome to comply with the directions. Without prejudice to the generality of the foregoing, such directions may be given for the purpose of avoiding, limiting, or mitigating the effect of, such noise and vibration either –

- (a) generally, or
- (b) in any particular area or areas.

(7) The Director of Civil Aviation may, after consultation with the person managing a designated aerodrome, by order require him at his own expense –

- (a) to provide in an area and within a period so specified in the order, and to maintain and operate in accordance with any instructions so specified, such equipment for measuring noise in the vicinity of the aerodrome as is so specified, and
- (b) to make to the Director of Civil Aviation such reports as are specified with respect to the noise measured by the equipment and to permit any person authorised by the Director of Civil Aviation for the purpose to inspect the equipment on demand at any time,

and it shall be the duty of the person for the time being managing the aerodrome to comply with the requirements of the order.

(8) If a person fails to perform any duty imposed on him under subsection (7), the Director of Civil Aviation may, after affording him an opportunity of making representations to the Director of Civil Aviation with respect to the matter and after considering any representations then made by him –

- (a) take such steps as the Director of Civil Aviation considers appropriate for remedying the failure, which may include steps to secure the provision, maintenance and operation of equipment by the Director of Civil Aviation, and
- (b) recover in any court of competent jurisdiction from the person aforesaid any expense attributable to the taking of those steps which is incurred by the Director of Civil Aviation from time to time.

(9) If a person fails to perform any duty imposed on him under subsection (7)(b), then without prejudice to subsection (8) he shall –

- (a) be guilty of an offence and liable on summary conviction to a fine not exceeding twice level 5 on the uniform scale, and
- (b) if the failure continues after his conviction of an offence under this subsection arising from the failure, be guilty of a separate offence under this subsection on each day on which the failure continues thereafter and liable on summary conviction to a fine not exceeding 20% of level 1 on the uniform scale.

(10) Subsection (8)(b) is without prejudice to any power of the Director of Civil Aviation apart from that subsection to recover the expenses mentioned therein.

(11) In this section, "**designated aerodrome**" means any

aerodrome in the Bailiwick which is designated for the purposes of this section by an order made by [the Committee].

NOTES

In section 30,

the words in square brackets in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 12(b), Schedule 2, Part 8, with effect from 1st May, 2016;

the words in square brackets in subsection (11) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

Penalty schemes.

31. (1) The person for the time being managing an aerodrome (referred to in this section and section 32 as the "**relevant manager**") may establish and maintain a penalty scheme.

(2) In this section and section 32, "**penalty scheme**" means a scheme which requires a penalty to be paid if any requirement imposed under section 30(1) in relation to an aircraft taking off or landing at the aerodrome is not complied with.

(3) Any such penalty shall be –

(a) of an amount specified in the scheme, and

(b) paid to the relevant manager by the operator of the aircraft in question.

(4) The penalty scheme shall afford the operator of the aircraft an

opportunity to make representations to the relevant manager with respect to the matter either before or after the penalty is imposed.

(5) If the scheme affords an opportunity to make representations after the penalty is imposed, it shall provide for the relevant manager to cancel the penalty if he considers it appropriate to do so having considered those representations.

(6) A penalty scheme may –

- (a) contain such incidental or supplementary provisions as the relevant manager considers appropriate, and
- (b) be amended or revoked by the relevant manager.

(7) The amendment or revocation of a penalty scheme shall not affect the validity of anything previously done under the scheme.

Penalty schemes: supplemental.

32. (1) The Director of Civil Aviation may direct a relevant manager

–

- (a) to establish a penalty scheme, or
- (b) to amend or revoke a penalty scheme.

(2) The Director of Civil Aviation shall publish any direction given under subsection (1) in such manner as appears to him to be appropriate.

(3) A direction under subsection (1) which requires a relevant manager to establish or amend a penalty scheme may include directions as to the

provisions which are to be included in the scheme.

(4) Before giving a direction under subsection (1) the Director of Civil Aviation shall consult –

- (a) the relevant manager, and
- (b) any operators, or body appearing to him to be representative of operators, of aircraft using the aerodrome in question.

(5) If a relevant manager fails to comply with a direction given to him under subsection (1) he shall –

- (a) be guilty of an offence and liable on summary conviction to a fine not exceeding twice level 5 on the uniform scale, and
- (b) if the failure continues after his conviction of an offence under this subsection arising from the failure, be guilty of a separate offence under this subsection on each day on which the failure continues thereafter and be liable on summary conviction to a fine not exceeding 20% of level 5 on the uniform scale.

Dangerous flying.

33. (1) Where an aircraft is flown in such a manner as to be the cause of unnecessary danger to any person or property on land or water, the pilot or the person in charge of the aircraft, and also the owner thereof, unless he proves to the satisfaction of the court that the aircraft was so flown without his actual fault or privity, shall be liable on summary conviction to a fine not exceeding twice level 4 on

the uniform scale or to imprisonment for a term not exceeding six months or to both.

(2) In this section, the expression "**owner**" in relation to an aircraft includes any person by whom the aircraft is hired at the time of the offence.

Prohibition of aerial advertising and propaganda.

34. (1) Save in such circumstances as may be prescribed, no aircraft while in the air over any part of the Bailiwick shall be used, whether wholly or partly for emitting or displaying any advertisement or other communication in such a way that the advertisement or communication is audible or visible from the ground.

(2) Any person who uses an aircraft, or knowingly causes or permits an aircraft to be used, in contravention of subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding twice level 4 on the uniform scale.

Records and provision of information, etc

Provision by others of information for the Director of Civil Aviation and [the Committee].

35. (1) The Director of Civil Aviation may, by a notice in writing served in the prescribed manner on a person of any of the following descriptions, that is to say –

- (a) a holder or recipient of a licence, certificate, approval, authorization, permission or exemption, granted, issued or validated by the Director of Civil Aviation under this Law,
- (b) a person who in the Bailiwick has, at any time during the period of two years ending with the date of service

of the notice, held himself out as one who may as a principal or otherwise enter into a contract to make available accommodation for the carriage of persons or cargo on flights in any part of the world in aircraft of which he is not the operator, or

- (c) a person carrying on business in the Bailiwick as a manufacturer of aircraft or engines or other equipment for aircraft or as an insurer of aircraft,

require him to furnish to the Director of Civil Aviation, in such form and at such times as may be specified in the notice, information of such descriptions as may be so specified, being –

- (i) in the case of such a holder or recipient (other than the holder of an aerodrome licence), descriptions of information which relate to his past, present or future activities as the holder or recipient of the licence, certificate, approval, authorization, permission or exemption in question or his past activities as the holder or recipient of any similar licence, certificate, approval, authorization, permission or exemption or is of a kind which the Director of Civil Aviation considers that he requires for the purpose of reviewing the licence, certificate, approval, authorization, permission or exemption in question,
- (ii) in the case of such a person as is mentioned in paragraph (b), descriptions of information

which relate to his past, present or future activities in the Bailiwick connected with the making available of accommodation so mentioned, and

- (iii) in the case of such a person as is mentioned in paragraph (c), or the holder of an aerodrome licence, descriptions of information which relate to his past, present or future activities (including in the case of the holder of an aerodrome licence, information as to the numbers of aircraft and passengers and the quantity of cargo passing and expected to pass through the relevant aerodrome) and is of a kind which the Director of Civil Aviation considers that he requires for the purpose of performing any of his functions.

In this subsection, "**aerodrome licence**" means a licence to operate an aerodrome issued by the Director of Civil Aviation under [the Air Navigation (Bailiwick of Guernsey) Law, 2012].

(2) Provision may be made by regulations made by [the Committee] for requiring a person of any description specified in subsection (1) to furnish [the Committee], in such form and at such times as may be prescribed, with information of such descriptions as may be prescribed, being descriptions of information relating to civil aviation which [the Committee] considers that it requires for the purpose of performing any of its functions or descriptions of information which it considers that it requires in order to facilitate the performance by the Director of Civil Aviation of any of his functions.

(3) If a person required to furnish information by virtue of any of the preceding provisions of this section fails to comply with the requirement or in purported compliance with the requirement knowingly or recklessly furnishes information which is false in a material particular, then –

- (a) in the case of a failure to comply with the requirement he shall be guilty of an offence and liable on summary conviction to a fine of an amount not exceeding twice level 3 on the uniform scale, and
- (b) in any other case he shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine or to imprisonment for a term not exceeding two years or to both, and
- (c) if the requirement was made by virtue of subsection (1), the Director of Civil Aviation may, whether or not any proceedings in respect of the requirement have been brought under paragraph (a) or (b) of this subsection, revoke any licence or certificate or approval which was issued or given by the Director of Civil Aviation and to which the requirement related,

and a person who fails to comply with a requirement imposed on him in pursuance of this section shall be guilty of an offence by virtue of paragraph (a) of this subsection notwithstanding that at any relevant time he is outside the Bailiwick and is neither a resident person nor [a legal person established] under the law of a part of the Bailiwick.

NOTES

In section 35,

the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016;

the words in, first, square brackets in subsection (1) and, second, square brackets in subsection (3) were substituted by the Aviation (Amendment) (Bailiwick of Guernsey) Law, 2012, section 3(b), respectively paragraph (i) and paragraph (ii), with effect from 16th September, 2013.

[Recording and registration of births and deaths, etc.]

35A. (1) [The Committee] may, by regulations, require such persons as may be specified therein to keep records and make returns to the Director of Civil Aviation –

- (a) of births and deaths occurring in any part of the world in any aircraft registered in Guernsey, and
- (b) of the death, outside the Bailiwick, of any person who, being a traveller on such an aircraft, is killed on the journey in consequence of an accident,

and make provision for the keeping by the Director of a record of any returns made to him in accordance with any such requirement.

(2) Any person who fails to comply with any such requirement shall be liable on summary conviction to a fine not exceeding level 3 on the uniform scale.

(3) Where regulations made under subsection (1) provide for the keeping of records by the Director of Civil Aviation, they shall also provide for the

transmission of certified copies to the Registrar-General of Births and Deaths for the Bailiwick of Guernsey (which office was created under the Loi relative à l'Enregistrement des Naissances et Décès dans le Bailliage de l'Île de Guernesey, 1935).

(4) The Registrar-General shall cause the certified copies to be filed and preserved in a book to be kept by him for the purpose and to be called the Air Register Book of Births and Deaths.

(5) Regulations made under subsection (1) shall provide for the rectification of any records kept by the Director of Civil Aviation in pursuance of the regulations and for the transmission of certified copies of any corrected entry in the records to the Registrar-General of Births and Deaths for the Bailiwick of Guernsey.

(6) On receipt of a certified copy of any such corrected entry, the Registrar-General shall cause the corrected entry to be substituted for the corresponding entry for the time being made in the Air Register Book of Births and Deaths.

(7) The enactments relating to the registration of births and deaths in the Bailiwick of Guernsey shall have effect as if the Air Register Book of Births and Deaths were a certified copy or duplicate register transmitted to the Registrar-General in accordance with those enactments.

(8) [The Committee] may by regulations provide –

(a) for the keeping by the Director of Civil Aviation of a record of persons reported to him as missing, being persons with respect to whom there are reasonable grounds for believing that they have died in

consequence of an accident to an aircraft registered in the Bailiwick of Guernsey,

- (b) for the rectification of any such records, and
- (c) for the transmission of information as to the matters for the time being entered on the record to the Registrar-General of Births and Deaths for the Bailiwick of Guernsey.]

NOTES

Section 35A was inserted by the Aviation (Amendment) (Bailiwick of Guernsey) Law, 2012, section 3(c), with effect from 16th September, 2013.

In section 35A, the words "The Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

*Detention of aircraft, exemption from seizure and power to give effect to Convention
on Rights in Aircraft*

Detention and sale of aircraft for unpaid airport charges.

36. (1) Where default is made in the payment of airport charges incurred in respect of any aircraft at an aerodrome to which this section applies, the aerodrome authority may, subject to the provisions of this section –

- (a) detain, pending payment, either –
 - (i) the aircraft in respect of which the charges were incurred (whether or not they were incurred by the person who is the operator of the aircraft at

the time when the detention begins), or

- (ii) any other aircraft of which the person in default is the operator at the time when the detention begins, and
- (b) if the charges are not paid within 56 days of the date when the detention begins, sell the aircraft in order to satisfy the charges.

(2) An aerodrome authority shall not detain or continue to detain an aircraft under this section by reason of any alleged default in the payment of airport charges if the operator of the aircraft or any other person claiming an interest therein –

- (a) disputes that the charges, or any of them, are due or, if the aircraft is detained under subsection (1)(a)(i), that the charges in question were incurred in respect of that aircraft, and
- (b) gives to the authority, pending the determination of the dispute, sufficient security for the payment of the charges which are alleged to be due.

(3) An aerodrome authority shall not sell an aircraft under this section without the leave of the court; and the court shall not give leave except on proof –

- (a) that a sum is due to the authority for airport charges,
- (b) that default has been made in the payment thereof, and

- (c) that the aircraft which the authority seek leave to sell is liable to sale under this section by reason of the default.

(4) An aerodrome authority proposing to apply for leave to sell an aircraft under this section shall take such steps as may be prescribed –

- (a) for bringing the proposed application to the notice of persons whose interests may be affected by the determination of the court thereon, and
- (b) for affording to any such person an opportunity of becoming a party to the proceedings on the application,

and, if leave is given, the aerodrome authority shall secure that the aircraft is sold for the best price that can reasonably be obtained.

(5) Failure to comply with any requirement of subsection (4) in respect of any sale, while actionable as against the aerodrome authority concerned at the suit of any person suffering loss in consequence thereof, shall not, after the sale has taken place, be a ground for impugning its validity.

(6) The proceeds of any sale under this section shall be applied as follows, and in the following order, that is to say –

- (a) in payment of any duty (whether of customs or excise) chargeable on imported goods or any tax which is due in consequence of the aircraft's having been brought into the Bailiwick,
- (b) in payment of the expenses incurred by the aerodrome

authority in detaining, keeping and selling the aircraft, including their expenses in connection with the application to the court,

- (c) in payment of the airport charges which the court has found to be due,

and the surplus, if any, shall be paid to or among the person or persons whose interests in the aircraft have been divested by reason of the sale.

(7) The power of detention and sale conferred by this section in respect of an aircraft extends to the equipment of the aircraft and any stores for use in connection with its operation (being equipment and stores carried in the aircraft) whether or not the property of the person who is its operator, and references to the aircraft in subsections (2) to (6) include, except where the context otherwise requires, references to any such equipment and stores.

(8) The power of detention conferred by this section in respect of an aircraft extends to any aircraft documents carried in it, and any such documents may, if the aircraft is sold under this section, be transferred by the aerodrome authority to the purchaser.

(9) The power conferred by this section to detain an aircraft in respect of which charges have been incurred may be exercised on the occasion on which the charges have been incurred or on any subsequent occasion when the aircraft is on the aerodrome on which those charges were incurred or on any other aerodrome owned or managed by the aerodrome authority concerned.

(10) This section applies to any aerodrome designated for the purposes of this section by an order made by [the Committee] and in this section –

"aerodrome authority" in relation to any aerodrome, means the person owning or managing it,

"airport charges" means charges payable to an aerodrome authority for the use of, or for services provided at, an aerodrome but does not include charges payable by virtue of section 19 or 31, and

"aircraft documents", in relation to any aircraft, means any certificate of registration, maintenance or airworthiness of that aircraft, any log book relating to the use of that aircraft or its equipment and any similar document.

(11) Nothing in this section shall prejudice any right of an aerodrome authority to recover any charges, or any part thereof, by action.

NOTE

In section 36, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

Exemption of aircraft and parts thereof from seizure on patent claims.

37. (1) Any lawful entry into the Bailiwick or any lawful transit across the Bailiwick, with or without landings, of an aircraft to which this section applies shall not entail any seizure or detention of the aircraft or any proceedings being brought against the owner or operator thereof or any other interference therewith by or on behalf of any person in the Bailiwick, on the ground that the construction, mechanism, parts, accessories or operation of the aircraft is or are an infringement of any patent, design or model.

(2) Subject to subsection (3), the importation into, and storage in, the Bailiwick of spare parts and spare equipment for an aircraft to which this section

applies and the use and installation thereof in the repair of such an aircraft shall not entail any seizure or detention of the aircraft or of the spare parts or spare equipment or any proceedings being brought against the owner or operator of the aircraft or the owner of the spare parts or spare equipment or any other interference with the aircraft by or on behalf of any person in the Bailiwick on the ground that the spare parts or spare equipment or their installation are or is an infringement of any patent, design or model.

(3) Subsection (2) does not apply in relation to any spare parts or spare equipment which are sold or distributed in the Bailiwick or are exported from the Bailiwick for sale or distribution.

(4) This section applies –

(a) to an aircraft other than an aircraft used in military, customs or police services, registered in any country in the case of which there is for the time being in force a declaration made by Her Majesty by Order in Council with a view to the fulfilment of the provisions of the Chicago Convention to which this section relates, that the benefits of those provisions apply to that country, and

(b) to such other aircraft as [the Committee] may by regulation specify.

(5) Schedule 4 shall have effect with respect to detention on patent claims in respect of aircraft other than aircraft to which this section applies.

NOTE

In section 37, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

Power to give effect to Convention on Rights in Aircraft.

38. (1) The States may by Ordinance give effect to the Convention on the International Recognition of Rights in Aircraft which was signed at Geneva by the United Kingdom on behalf of the Bailiwick on 19th June 1948.

(2) Without prejudice to the generality of the powers conferred by subsection (1), an Ordinance under this section may, in particular, make provision –

- (a) for the recognition in the Bailiwick of rights of the kind specified in the Convention,
- (b) for subordinating to any such rights to such extent as may be required under the Convention, any other rights in or over such aircraft as aforesaid, including possessory liens for work done to such aircraft and rights under section 36,
- (c) as respects the operation, in relation to such aircraft, of any of the enactments in force in any part of the Bailiwick relating to bills of sale or the registration of charges on the property or undertaking of companies,
- (d) for prohibiting the sale in execution of any such aircraft as aforesaid without an order of a court, and otherwise for safeguarding in the case of such a sale any such rights as are mentioned in paragraph (a),

- (e) for the recognition in the Bailiwick, in priority to other rights in or over any such aircraft of any charge consequent on salvage or similar operations in respect of the aircraft, being a charge arising in accordance with the law of any other state party to the Convention in which those operations terminated, and
- (f) for the application, in accordance with the Convention, of provisions corresponding to those made by virtue of paragraphs (a) to (d) to cases where a right such as is mentioned in the said paragraph (a) (being a right created as security for the payment of indebtedness) extends to any store of spare parts for the aircraft in question.

Application of criminal law to aircraft

Application of criminal law to aircraft.

39. (1) Any act or omission taking place on board [a Bailiwick controlled aircraft or (subject to subsection (2)) any other aircraft] while in flight elsewhere than in or over the Bailiwick which, if taking place in, or in a part of, the Bailiwick, would constitute an offence under the law in force in, or in that part of, the Bailiwick shall constitute that offence; but 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 Bailiwick.

(2) Subsection (1) shall only apply to an act or omission which takes place on board an aircraft [which is not a Bailiwick controlled aircraft] where –

- (a) the next landing of the aircraft is in the Bailiwick, and

[(b) in the case of an aircraft registered in a country other than Guernsey, the act or omission would, if taking place there, also constitute an offence under the law in force in that country.]

(3) Any act or omission punishable under the law in force in any country [...] is an offence under that law for the purposes of subsection (2), however it is described in that law.

[(3A) The requirement in subsection (2)(b) shall be taken to be met unless, not later than the rules of court may provide, the defence serves on the prosecution a notice –

- (a) stating that, on the facts as alleged with respect to the act or omission, the requirement is not in their opinion met,
- (b) showing the grounds for their opinion, and
- (c) requiring the prosecution to prove that it is met.]

[(3B) The court, if it thinks fit, may permit the defence to require the prosecution to prove that the requirement is met without the prior service of a notice under subsection (3A).]

(4) For the purpose of conferring jurisdiction, any offence under the law in force in, or in a part of, the Bailiwick committed on board an aircraft in flight shall be deemed to have been committed in any place in the Bailiwick (or, as the case may be, in that part thereof) where the offender may for the time being be.

(5) For the purposes of this section, the period during which an

aircraft is in flight shall be deemed to include 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 any reference in this section 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.

(6) In this section –

"aircraft" means any aircraft[, whether or not a Bailiwick 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, and

[**"Bailiwick controlled aircraft"** means an aircraft –

- (a) which is for the time being registered in Guernsey, 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 Guernsey, and

- (ii) that he resides or has his principal place of business in the Bailiwick, or
- (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,]

"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 an order of [the Committee] that the aircraft is to be treated as a military aircraft,

and a certificate of [the Committee] that any aircraft is or is not a military aircraft for the purposes of this section shall be conclusive evidence of the fact certified.

NOTES

In section 39,

first, the words in square brackets in subsection (1) were substituted, second, the words in the first pair of square brackets in subsection (2) were inserted, third, paragraph (b) of subsection (2) was substituted, fourth, the words omitted in square brackets in subsection (3) were repealed, fifth, subsection (3A) and subsection (3B) were inserted, sixth, the words in the first pair of square brackets in subsection (6) were inserted and, seventh, the definition of the expression "Bailiwick controlled aircraft" in the second pair of square brackets in subsection (6) was inserted by the Aviation (Amendment) (Bailiwick of Guernsey) Law, 2012, section 3(d), respectively

paragraph (i), paragraph (ii)(A), paragraph (ii)(B), paragraph (iii), paragraph (iv), paragraph (v)(A) and paragraph (v)(B), with effect from 16th September, 2013;

the words "The Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

Powers of commander of aircraft

Powers of commander of aircraft.

40. (1) The provisions of subsections (2) to (6) shall have effect for the purposes of any proceedings before any court in the Bailiwick.

(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 (5), the commander may take with respect to that person such reasonable measures, including restraint of his person, for the purposes listed in subsection (3).

(3) Under subsection (2), the commander may take such measures as may be necessary –

- (a) to protect the safety of the aircraft or of persons or property on board the aircraft,
- (b) to maintain good order and discipline on board the aircraft, or
- (c) to enable the commander to disembark or deliver that person in accordance with subsection (6)[...]

[and for the purposes of subsection (2)(b) any Bailiwick controlled aircraft shall be deemed to be registered in Guernsey whether or not it is in fact so registered and whether or not it is in fact registered in some other country.]

(4) 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 to restrain under this section; 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 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.

(5) Any restraint imposed on any person on board an aircraft under this section shall not be continued after the time when the aircraft first 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 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 (6), or
- (b) if the person under restraint agrees to continue his journey under restraint on board that aircraft.

(6) If, in the case of any person on board the aircraft, the commander of an aircraft has reasonable grounds to believe as mentioned in –

- (a) subsection (2)(a), and 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, he may disembark that person in any country in which that aircraft may be, and
- (b) subsection (2)(b), he may deliver that person –

- (i) in the Bailiwick, to an officer of police, or
 - (ii) in any country which is a Convention country, to an officer having functions corresponding to the functions in the Bailiwick of an officer of police.
- (7) The commander of an aircraft –
- (a) if he disembarks any person in pursuance of subsection (6)(a) [in the case of a Bailiwick controlled aircraft, in any country or, in the case of any other aircraft, in the Bailiwick,] 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 (6)(b) in the Bailiwick, or [in the case of a Bailiwick controlled aircraft registered in Guernsey,] [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 –
 - (i) where the country in question is the Bailiwick,

to an officer of police or, in the case of any country which is a Convention country, to an officer having functions corresponding to the functions in the Bailiwick of an officer of police, and

- (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 to a fine not exceeding level 3 on the uniform scale.

- (8) In this section –

"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, and

subject to subsection (9), sections 39(4) and (5) shall apply for the purposes of this section as they apply for the purposes of that section.

- (9) The time during which an aircraft is in flight shall, for the purposes of this section, be deemed to include, in addition to such a period as is mentioned in section 39(4) –

- (a) 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

- (b) 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 Bailiwick, the time when an officer of police arrives at the place of landing).

NOTE

In section 40, first, the word in square brackets in subsection (2) was inserted, second, the punctuation omitted in the first pair of square brackets in subsection (3) was repealed and the words immediately thereafter in the second pair of square brackets were inserted, third, the words in square brackets in paragraph (a) of subsection (7) were inserted, fourth, the words in the first pair of square brackets in paragraph (b) of subsection (7) were inserted and, fifth, the words in the second pair of square brackets therein were substituted by the Aviation (Amendment) (Bailiwick of Guernsey) Law, 2012, respectively section 3(e), section 3(f), section 3(g)(i), section 3(g)(ii)(A) and section 3(g)(ii)(B), with effect from 16th September, 2013.

Evidence, etc

Provisions as to evidence in connection with aircraft.

41. (1) Where in any proceedings before a court in the Bailiwick 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 Bailiwick, 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 Bailiwick 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 Schedule 3 to the British Nationality Act 1981 as it applies to the Bailiwick or which was part of Her Majesty's dominions at the time the deposition was made or in which Her Majesty had jurisdiction at that time, or before a 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 [–

- (a) any offence has been committed on a Bailiwick controlled aircraft while in flight elsewhere than in or over the Bailiwick, or
- (b) there has taken place on board on any other aircraft an act or omission which constitutes an offence by virtue

of section 39(1), that officer may inquire into the case upon oath.]

(5) In this section –

"deposition" includes any affidavit, affirmation or statement made upon oath, and

"oath" includes an affirmation or declaration in the case of persons allowed by law to affirm or declare instead of swearing,

and sections 39(4) and (5) shall apply for the purposes of this section as they apply for the purposes of that section.

(6) Nothing in this section shall prejudice the admission as evidence of any deposition which is admissible in evidence apart from this section.

NOTE

In section 41, the symbol and words in square brackets in subsection (4) were substituted by the Aviation (Amendment) (Bailiwick of Guernsey) Law, 2012, section 3(h), with effect from 16th September, 2013.

Use of records and documentary evidence.

42. (1) In any legal proceedings a document purporting to be certified by such authority or person as may be designated for the purpose by regulations made by [the Committee] as being, or being a true copy of, or of part of, a document issued or record kept in pursuance of this Law, or any Ordinance or subordinate legislation made under this Law, shall be evidence of the matters appearing from the document.

(2) In any legal proceedings any record made by any such authority or person as may be designated for the purposes of this subsection by

regulations made by [the Committee], or by a person acting under the control of such an authority or person, being a record purporting to show –

- (a) the position of an aircraft at any material time, or
- (b) the terms or content of any message or signal transmitted to any aircraft, either alone or in common with other aircraft, or received from any aircraft, by the first-mentioned authority or person, or by a person acting under the control of that authority or person,

shall, if produced from the custody of that authority or person, be evidence of the matters appearing from the record.

(3) The references in subsection (2) to a record made by or under the control of any authority or person include references to a document or article purporting to be a copy of a record so made, and certified to be a true copy by or on behalf of that authority or person; and in relation to such a copy that subsection shall have effect as if the words "if produced from the custody of that authority or person" were omitted.

(4) Any person who wilfully certifies any document or article to be a true copy of any such record as is mentioned in subsection (2) knowing it not to be a true copy shall be liable –

- (a) on summary conviction, to a fine not exceeding the twice level 5 on the uniform scale or to imprisonment for a term not exceeding three months or to both, and
- (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding two years or to

both.

NOTE

In section 42, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

Seaplanes

Seaplanes.

43. (1) Subject to subsection (2), any enactment which confers or imposes on a harbour authority any power or duty to make rules for the regulation of ships or vessels shall be construed as if the power or duty so conferred or imposed included a power or duty to make rules for the regulation of seaplanes when on the surface of the water, and also a power to include in the rules provisions authorising the harbour master or other officer of the authority to exercise, as respects seaplanes on the surface of the water, all or any of the functions which he is authorised by the enactment in question to exercise as respects ships or vessels.

(2) Rules made by virtue of subsection (1) shall not in any circumstances require, or authorise a harbour master or other officer to require, the dismantling of a seaplane or any part thereof or the making of any alteration whatever of the structure or equipment of a seaplane.

(3) Where any enactment, whether by virtue of subsection (1) or not, confers or imposes on a harbour authority a power or duty to make rules for the regulation of seaplanes when on the surface of the water, or to include in the rules such provisions as are mentioned in that subsection, the authority shall consult with the [States' Trading Supervisory Board] before exercising the power or performing the duty.

(4) In this section –

"harbour authority" shall have the same meaning as in the Merchant Shipping (Bailiwick of Guernsey) Law, 2002^g,

"rules" include regulations, and

"seaplane" includes a flying boat and any other aircraft designed to manoeuvre on the water,

and, for the purposes of this section, seaplanes taking off from or alighting on the water shall be deemed to be on the surface of the water while in contact therewith.

NOTE

In section 44, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 12(b), Schedule 2, Part 8, with effect from 1st May, 2016.

Construction and Offences

Construction of certain provisions of Part II.

44. If [the Committee] is satisfied that the requirements of Article 18 of the Tokyo Convention have been satisfied (which Article makes provision as to the country which is to be treated as the country of registration of certain aircraft operated by joint air transport organisations or international operating agencies established by two or more Convention countries) [the Committee] may by order provide that for the purposes of sections 39 to 41 such aircraft as may be specified in the order shall be

^g Order in Council No. VIII of 2004.

treated as registered in such Convention country as may be so specified.

NOTE

In section 44, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

[Offences by legal persons, etc.]

45. (1) Where an offence to which this section applies has been committed by a legal person and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of –

- (a) any director, manager, secretary or other similar officer, or any foundation official of the legal person or
- (b) any person who was purporting to act in any such capacity,

he as well as the legal person shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a legal person are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the legal person.

(3) Any offence to which this section applies shall, for the purpose of conferring jurisdiction, be deemed to have been committed in any place where the offender may for the time being be.

(4) This section applies to any offence under section 34 or 35(4) or under regulations made by virtue of section 24.

(5) Subsection (3) applies to any offence under any provision made by, or under, this Law, except, without prejudice to section 39(4) an offence under section 40(7).]

NOTE

Section 45 was substituted by the Aviation (Amendment) (Bailiwick of Guernsey) Law, 2012, section 3(i), with effect from 16th September, 2013.

PART III
PROVISIONS RELATING TO AIR NAVIGATION

CHAPTER I
REGISTRATION AND MARKING OF AIRCRAFT

Aircraft to be registered.

46. ...

NOTE

Part III, and section 46 thereof, were repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Nationality and registration marks.

47. ...

NOTE

Section 47 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

CHAPTER II
AIRWORTHINESS AND EQUIPMENT OF AIRCRAFT

Certificate of airworthiness to be in force.

48. ...

NOTE

Section 48 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Issue, re-issue etc of permits to fly.

49. ...

NOTE

Section 49 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Licensing and certification of maintenance engineers.

50. ...

NOTE

Section 50 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Prohibition on maintenance or manufacture of aircraft.

51. ...

NOTE

Section 51 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Equipment of aircraft.

52. ...

NOTE

Section 52 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Radio equipment of aircraft.

53. ...

NOTE

Section 53 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Access and inspection for airworthiness purposes.

54. ...

NOTE

Section 54 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

CHAPTER III

AIRCRAFT CREW AND LICENSING

Composition of crew of aircraft.

55. ...

NOTE

Section 55 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Members of flight crew – requirement for licence.

56. ...

NOTE

Section 56 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Instruction in flying.

57. ...

NOTE

Section 57 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Glider pilot-minimum age.

58. ...

NOTE

Section 58 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

CHAPTER IV
PROTECTION OF CREW

Fatigue of crew – responsibilities of crew.

59. ...

NOTE

Section 59 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Protection of aircrew from cosmic radiation.

60. ...

NOTE

Section 60 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Keeping and production of records of exposure to cosmic radiation.

61. ...

NOTE

Section 61 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

CHAPTER V
MOVEMENT OF AIRCRAFT

Rules of the Air.

62. ...

NOTE

Section 62 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Power to prohibit or restrict flying.

63. ...

NOTE

Section 63 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Balloons, kites, airships, gliders and parascending parachutes.

64. ...

NOTE

Section 64 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Regulation of small aircraft.

65. ...

NOTE

Section 65 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Regulation of rockets.

66. ...

NOTE

Section 66 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

CHAPTER VI
OPERATION OF AIRCRAFT

Operation of aircraft.

67. ...

NOTE

Section 67 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Non-public transport aircraft – aerodrome operating minima.

68. ...

NOTE

Section 68 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Pilots to remain at controls.

69. ...

NOTE

Section 69 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Pre-flight action by pilot-in-command of an aircraft.

70. ...

NOTE

Section 70 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Operation of radio in aircraft.

71. ...

NOTE

Section 71 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Height keeping performance.

72. ...

NOTE

Section 72 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Area navigation and required navigation performance capabilities.

73. ...

NOTE

Section 73 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Use of airborne collision avoidance system.

74. ...

NOTE

Section 74 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Use of flight recording systems and preservation of records.

75. ...

NOTE

Section 75 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Carriage of sporting weapons and munitions of war.

76. ...

NOTE

Section 76 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Carriage of dangerous goods – Air Navigation (Dangerous Goods) Regulations.

77. ...

NOTE

Section 77 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Duties of pilot-in-command – search and rescue.

78. ...

NOTE

Section 78 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Method of carriage of persons.

79. ...

NOTE

Section 79 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

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80. ...

NOTE

Section 80 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

CHAPTER VII

PUBLIC TRANSPORT OPERATIONS

Public transport operations at night or in Instrument Meteorological Conditions by single engine aeroplanes.

81. ...

NOTE

Section 81 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Public transport aircraft – aerodrome-operating minima.

82. ...

NOTE

Section 82 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

CHAPTER VIII
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Grant of aerial work certificates.

83. ...

NOTE

Section 83 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Towing of gliders.

84. ...

NOTE

Section 84 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Towing, picking up and raising of persons and articles.

85. ...

NOTE

Section 85 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Dropping of articles and animals.

86. ...

NOTE

Section 86 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Dropping of persons.

87. ...

NOTE

Section 87 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

CHAPTER IX
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Requirement for air traffic control approval for the provision of air traffic services.

88. ...

NOTE

Section 88 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Duty of person in charge to satisfy himself as to competence of controllers.

89. ...

NOTE

Section 89 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Manual of air traffic services.

90. ...

NOTE

Section 90 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Provision of air traffic services.

91. ...

NOTE

Section 91 was repealed by the Air Navigation (Bailiwick of Guernsey) Law,

2012, section 148(a), with effect from 16th September, 2013.

Use of radio call signs at aerodromes.

92. ...

NOTE

Section 92 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

CHAPTER X
LICENSING OF AIR TRAFFIC CONTROLLERS

Prohibition of unlicensed air traffic controllers and student air traffic controllers.

93. ...

NOTE

Section 93 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Licensing of air traffic controllers and student air traffic controllers.

94. ...

NOTE

Section 94 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Approval of courses and persons.

95. ...

NOTE

Section 95 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Requirement for medical certificate.

96. ...

NOTE

Section 96 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Incapacity of air traffic controllers.

97. ...

NOTE

Section 97 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Fatigue of air traffic controllers and responsibilities of air traffic controllers.

98. ...

NOTE

Section 98 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Licensing of flight information service officers.

99. ...

NOTE

Section 99 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Prohibition of unlicensed flight information service officers.

100. ...

NOTE

Section 100 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Flight information service manual.

101. ...

NOTE

Section 101 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

CHAPTER XI

AERONAUTICAL TELECOMMUNICATIONS SERVICE

Aeronautical telecommunications service.

102. ...

NOTE

Section 102 was repealed by the Air Navigation (Bailiwick of Guernsey)

Law, 2012, section 148(a), with effect from 16th September, 2013.

Aeronautical telecommunications service records.

103. ...

NOTE

Section 103 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

CHAPTER XII

AERODROMES, AERONAUTICAL LIGHTS AND DANGEROUS LIGHTS

Aerodromes – aircraft operations required to use licensed or notified aerodromes.

104. ...

NOTE

Section 104 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Licensing of aerodromes.

105. ...

NOTE

Section 105 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Instrument flight procedures.

106. ...

NOTE

Section 106 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Aeronautical lights.

107. ...

NOTE

Section 107 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Lighting of obstacles.

108. ...

NOTE

Section 108 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Dangerous lights.

109. ...

NOTE

Section 109 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Aviation fuel at aerodromes.

110. ...

NOTE

Section 110 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

CHAPTER XIII
DOCUMENTS AND RECORDS

Operator to record information.

111. ...

NOTE

Section 111 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Documents to be carried.

112. ...

NOTE

Section 112 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Production of documents and records.

113. ...

NOTE

Section 113 was repealed by the Air Navigation (Bailiwick of Guernsey)

Law, 2012, section 148(a), with effect from 16th September, 2013.

Production of aeronautical telecommunications service documents and records.

114. ...

NOTE

Section 114 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Power to inspect and copy documents and records.

115. ...

NOTE

Section 115 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Preservation of documents, etc.

116. ...

NOTE

Section 116 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Validity of, licences, certificates, authorisations, approvals, permissions and exemptions.

117. ...

NOTE

Section 117 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Revocation, suspension and variation of certificates, licences and other documents.

118. ...

NOTE

Section 118 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Offences in relation to documents and records.

119. ...

NOTE

Section 119 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

CHAPTER XIV
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Endangering safety of aircraft.

120. ...

NOTE

Section 120 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Endangering safety of any person or property.

121. ...

NOTE

Section 121 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Drunkenness in aircraft.

122. ...

NOTE

Section 122 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Authority of pilot-in-command and members of the crew of an aircraft.

123. ...

NOTE

Section 123 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Acting in a disruptive manner.

124. ...

NOTE

Section 124 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Obstruction of persons.

125. ...

NOTE

Section 125 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Enforcement of directions.

126. ...

NOTE

Section 126 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Stowaways.

127. ...

NOTE

Section 127 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Penalties.

128. ...

NOTE

Section 128 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

CHAPTER XV

GENERAL

Flights over country other than the Bailiwick.

129. ...

NOTE

Section 129 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Mandatory occurrence reporting.

130. ...

NOTE

Section 130 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Mandatory occurrence reporting of birdstrikes.

131. ...

NOTE

Section 131 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Power to prevent aircraft flying.

132. ...

NOTE

Section 132 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Right of access to aerodromes and other places.

133. ...

NOTE

Section 133 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Application of Law to the Crown and visiting forces, etc.

134. ...

NOTE

Section 134 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Exemption from Part III.

135. ...

NOTE

Section 135 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Regulations by the Director of Civil Aviation: Fees.

136. ...

NOTE

Section 136 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Exceptions for certain classes of aircraft.

137. ...

NOTE

Section 137 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Publication of requirements.

138. ...

NOTE

Section 138 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Public transport and aerial work – general rules.

139. ...

NOTE

Section 139 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Public transport and aerial work – exception for flying displays etc.

140. ...

NOTE

Section 140 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Public transport and aerial work – exception for charity flights.

141. ...

NOTE

Section 141 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Public transport and aerial work – exception for cost sharing.

142. ...

NOTE

Section 142 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Public transport and aerial work – exception for recovery of direct costs.

143. ...

NOTE

Section 143 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Public transport and aerial work – exception for jointly owned aircraft.

144. ...

NOTE

Section 144 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Public transport and aerial work – parachuting designation by the Director of Civil Aviation.

145. ...

NOTE

Section 145 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Power to give effect to Chicago Convention and to regulate air navigation etc. by Ordinance.

146. ...

NOTE

Section 146 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Supplemental provisions for Ordinances under section 146.

147. ...

NOTE

Section 147 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

Saving.

148. ...

NOTE

Section 148 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

PART IV
CARRIAGE BY AIR

Conventions to have the force of law.

149. (1) Subject to the other provisions of this Part, the applicable provisions of the Carriage by Air Conventions have the force of law in the Bailiwick in relation to any carriage by air to which they apply, irrespective of the nationality of the aircraft performing that carriage.

(2) If more than one of the Carriage by Air Conventions applies to a carriage by air, the applicable provisions that have the force of law in the Bailiwick are those of whichever is the most recent applicable Convention in force. For the avoidance of doubt, the conventions are listed in subsection (3) with the earliest first, and the most recent last.

(3) **"The Carriage by Air Conventions"** are –

(a) **"the Warsaw Conventions"** which are –

(i) the Convention known as "the Warsaw Convention 1929" (**"the Warsaw Convention"**),

(ii) the Convention known as "the Warsaw

Convention as amended by Additional Protocol No. 1 of Montreal, 1975" ("**the Warsaw/MAP1 Convention**"),

(iii) the Convention known as "the Warsaw Convention as amended at The Hague, 1955" ("**the Warsaw/Hague Convention**"),

(iv) the Convention known as "the Warsaw Convention as amended at The Hague, 1955, and by Additional Protocol No. 2 of Montreal, 1975" ("**the Warsaw/Hague/MAP2 Convention**"), and

(v) the Convention known as "the Warsaw Convention as amended at The Hague, 1955, and by Additional Protocol No. 4 of Montreal, 1975" ("**the Warsaw/Hague/MAP4 Convention**"), and

(b) the Convention known as "the Montreal Convention 1999" ("**the Montreal Convention**").

(4) "**The applicable provisions**" means –

(a) the provisions of the Warsaw Convention set out in Schedule 5,

(b) the provisions of the Warsaw/MAP 1 Convention as detailed and set out in Schedule 6,

- (c) the provisions of the Warsaw/Hague Convention set out in Schedule 7,
- (d) the provisions of the Warsaw/Hague/MAP2 Convention as detailed and set out in Schedule 8,
- (e) the provisions of the Warsaw/Hague/MAP2 Convention as set out in Schedule 9, and
- (f) the provisions of the Montreal Convention set out in Schedule 10,

so far as they relate to the rights and liabilities of carriers, carriers' servants and agents, passengers, consignors, consignees and other persons.

(5) The provisions of the Guadalajara Convention 1961, supplementary to the Warsaw Convention ("**the Guadalajara Convention**"), for the unification of certain rules relating to international carriage by air performed by a person other than the contracting carrier, as set out in Schedule 11, 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 Bailiwick in relation to any carriage by air to which any of the Carriage by Air Conventions apply, irrespective of the nationality of the aircraft performing that carriage.

(6) In this Law a reference to an Article of, or Protocol to, any of the Carriage by Air Conventions is a reference to that Article or Protocol as it appears in the Schedule in which it is set out.

(7) If there is any inconsistency between the text in English in Part I of Schedule 5, Schedule 7, Schedule 9 or Schedule 11 and the text in French in Part

II of those Schedules, the French text shall prevail.

Interpretation of the Guadalajara Convention.

150. In Schedule 11, "**the Warsaw Convention**" means whichever is applicable to the carriage in question of the Carriage by Air Conventions.

Fatal Accidents.

151. References in Article 1 of the Law entitled "Loi relative à la compensation qui pourra être accordée aux familles de personnes dont la mort aura été causée par accident"^j to "un acte blâmable, négligence ou impéritie" shall include references to any occurrence which gives rise to a liability under –

- (a) Article 17 of the Warsaw Conventions, or
- (b) Article 17.1 of the Montreal Convention.

Limitation of liability.

152. (1) It is hereby declared that the limitations on liability in the applicable provisions mentioned in subsection (2) apply whatever the nature of the proceedings by which liability may be enforced.

- (2) The provisions are –
 - (a) Article 22 of the Warsaw Conventions, and
 - (b) Articles 21 and 22 of the Montreal Convention.
- (3) The limitation for each passenger in –

^j Ordres en Conseil Vol. III, p. 235; as amended by Vol XVIII, p.281, Vol. XXVII, p.50, extended to Alderney and Sark by Vol. XX, p. 95, and extended to Herm by Recueil D'Ordonnance Tome IX, p.247.

- (a) paragraph (1) of Article 22 of the Warsaw Conventions,
and
- (b) Article 21 and paragraph (1) of Article 22 of the
Montreal Convention,

applies to the aggregate liability of the carrier in all proceedings which may be brought against it under the law of any part of the Bailiwick, together with any proceedings brought against it outside the Bailiwick.

(4) A court before which proceedings are brought to enforce a liability which is limited by a provision mentioned in subsection (6) may at any stage of the proceedings make any such order as appears to the court to be just and equitable in view of that provision, and of any other proceedings which have been, or are likely to be, commenced in the Bailiwick or elsewhere to enforce the liability in whole or in part.

(5) Without prejudice to subsection (4), a court before which proceedings are brought to enforce a liability which is limited by a provision mentioned in subsection (6) shall, where the liability is, or may be, partly enforceable in other proceedings in the Bailiwick 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 or the result of any other proceedings.

- (6) The provisions are –
 - (a) Article 22 of the Warsaw Conventions,
 - (b) Articles 21, 22 and 44 of the Montreal Convention, and

(c) Article VI of the Guadalajara Convention.

(7) [The Committee] may from time to time by order specify the respective amounts which for the purposes of a provision mentioned in subsection (6), are to be taken as equivalent to the sums expressed in francs, which are mentioned in that provision.

(8) References in this section to Article 22 of the Warsaw Conventions include, subject to any necessary modifications, references to that Article as applied by Article 25A of the Warsaw/Hague Convention, the Warsaw/Hague/MAP2 Convention, and the Warsaw/Hague/MAP4 Convention.

NOTE

In section 152, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

Notice of partial loss.

153. (1) References to damage in the provisions mentioned in subsection (2) shall be construed as including loss of part of the baggage or cargo in question and the reference to the receipt of baggage or cargo shall, in relation to loss of part of it, be construed as receipt of the remainder of it.

(2) The provisions are –

(a) Article 26(2) of the Warsaw Conventions, and

(b) Article 31(2) of the Montreal Convention.

Time for bringing proceedings.

154. (1) No action against a carrier's servant or agent which arises out of damage to which any of the Carriage by Air Conventions or the Guadalajara Convention applies 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) References to a carrier in this section include an actual carrier and a contracting carrier as defined in Article I of the Guadalajara Convention.

(3) The provisions mentioned in subsection (5) shall not be read as applying to any proceedings for contribution between persons liable for any damage to which any of the Carriage by Air Conventions relates.

(4) Subsections (1) and (3) and the provisions mentioned in subsection (5) shall have effect as if references in those provisions to an action included references to arbitral proceedings.

(5) The provisions are –

(a) Article 29 of the Warsaw Conventions, and

(b) Article 35 of the Montreal Convention.

(6) If the Montreal Convention applies, "**carrier**" in this section includes an actual carrier as defined by Article 39 thereof.

Contributory negligence.

155. (1) It is hereby declared that the provisions mentioned in subsection (2) are provisions of the law of the Islands of Guernsey, Alderney and Sark under which a court may exonerate a carrier wholly or partly from its liability by

virtue of section 1 of the Law Reform (Tort) (Guernsey) Law, 1979^k, and for the purposes of this Law only that section shall have effect in the islands of Alderney and Sark.

- (2) The provisions are –
 - (a) Article 21 of the Warsaw Conventions, and
 - (b) Article 20 of the Montreal Convention.

Power to exclude aircraft in use for military purposes.

156. (1) The States may from time to time by Ordinance direct that this section shall apply, or shall cease to apply, to the Bailiwick or any other State specified in the Ordinance.

(2) This Part 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.

Action against parties to Convention.

157. (1) Each party to a Carriage by Air Convention or the Guadalajara Convention, for the purposes of any action brought in a court in the Bailiwick in accordance with a provision mentioned in subsection (5) to enforce a claim in respect of carriage undertaken by him, is deemed to have submitted to the jurisdiction of that court.

(2) Accordingly, rules of court may provide for the manner in which any such action is to be commenced and carried on.

^k Ordres en Conseil Vol. XXVII, p. 50.

(3) But nothing in this section shall authorise the issue of execution against the property of any party to a Carriage by Air Convention or the Guadalajara Convention.

(4) Subsections (1) and (2) do not apply to a party to a Carriage by Air Convention or the Guadalajara Convention who has availed himself, in relation to a provision mentioned in subsection (5), of –

(a) the Additional Protocol at the end of the Warsaw Conventions, or

(b) Article 57(a) of the Montreal Convention.

(5) The provisions are –

(a) Article 28 of the Warsaw Conventions,

(b) Articles 33 and 46 of the Montreal Convention,

(c) Article VIII of the Guadalajara Convention.

(6) In this section "**party**" means –

(a) in relation to the Warsaw Conventions, and the Guadalajara Convention, a High Contracting Party, and

(b) in relation to the Montreal Convention, a State Party.

Application to carriage by air not governed by the Conventions.

158. Where carriage by air is not carriage to which any of the Carriage by

Air Conventions apply, the provisions of Schedule 12 have effect.

Application to the Crown.

159. This Part shall bind the Crown and shall apply to both gratuitous carriage and carriage for value by the Crown, save that it shall not apply to carriage of Her Majesty's forces undertaken during a time of actual or imminent hostilities or of severe international tension or of great national emergency.

Interpretation of this Part.

160. (1) In this Part "**court**" includes, in an arbitration allowed by the Carriage by Air Conventions, an arbitrator.

(2) The provisions of the Carriage by Air Conventions mentioned in subsection (3) shall not be read as extending references in the applicable provisions 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) The provisions are –

- (a) Article 40A(2) of the Warsaw/Hague Convention,
- (b) Article 40A(2) of the Warsaw/Hague/MAP2 Convention,
- (c) Article 40A(2) of the Warsaw/Hague/MAP4 Convention, and
- (d) paragraph 1 of Article 56 of the Montreal Convention.

PART V

AVIATION SAFETY AND SECURITY

Alcohol and Drug Offences

Aviation functions.

- 161.** (1) For the purpose of this Part, an "**aviation function**" means –
- (a) acting as a pilot of an aircraft during flight,
 - (b) acting as flight navigator of an aircraft during flight,
 - (c) acting as flight engineer of an aircraft during flight,
 - (d) acting as flight radio-telephony operator of an aircraft during flight,
 - (e) acting as a member of the cabin crew of an aircraft during flight,
 - (f) attending the flight deck of an aircraft during flight to give or supervise training, to administer a test, to observe a period of practice or to monitor or record the gaining of experience,
 - (g) acting as an air traffic controller in pursuance of a licence granted under Part III (other than a licence granted to a student air traffic controller), and
 - (h) acting as –
 - (i) a licensed aircraft maintenance engineer,

- (ii) an aircraft dispatcher, or
- (iii) an aircraft refueller.

(2) For the purposes of subsection (1)(h)(i) a person acts as a licensed aircraft maintenance engineer if –

- (a) he issues a document relating to the maintenance, condition or use of an aircraft or equipment in reliance on a licence granted under this Law or any other enactment relating to aviation, or
- (b) he carries out or supervises work on an aircraft or equipment with a view to, or in connection with, the issue by him of a document of the kind specified in paragraph (a).

(3) For the purposes of this Part a reference to "**an activity ancillary to an aviation function**" is a reference to –

- (a) an activity undertaken –
 - (i) by a person who has reported for a period of duty in respect of the aviation function, and
 - (ii) as a requirement of, for the purpose of, or in connection with, the performance of the function during that period of duty,
- (b) an activity undertaken by a person who, in accordance

with the terms of an employment or undertaking, holds himself ready to perform an aviation function if called upon, and

- (c) anything done by a person by way of preparing to perform an aviation function,

but references in this subsection to an aviation function do not include the functions detailed in subsections (1)(h)(ii) and (1)(h)(iii).

(4) For the purposes of this Part, it is immaterial whether a person performs a function or carries out an activity in the course of an employment or trade or otherwise.

- (5) [The Committee] may amend this section by regulation.

NOTE

In section 161, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

Being unfit for duty.

162. A person commits an offence if –

- (a) he performs an aviation function at a time when his ability to perform the function is impaired because of drink or drugs, or
- (b) he carries out an activity ancillary to an aviation function at a time when his ability to perform the function is impaired because of drink or drugs.

Prescribed limit.

163. (1) A person commits an offence if –

- (a) he performs an aviation function at a time when the proportion of alcohol in his breath, blood or urine exceeds the prescribed limit, or
- (b) he carries out an activity ancillary to an aviation function at a time when the proportion of alcohol in his breath, blood or urine exceeds the prescribed limit.

(2) The prescribed limit of alcohol is (subject to subsection (3)) –

- (a) in the case of breath, 9 microgrammes of alcohol in 100 millilitres,
- (b) in the case of blood, 20 milligrammes of alcohol in 100 millilitres, and
- (c) in the case of urine, 27 milligrammes of alcohol in 100 millilitres.

(3) In relation to the aviation function specified in section 161(1)(h) the prescribed limit is –

- (a) in the case of breath, 35 microgrammes of alcohol in 100 millilitres,
- (b) in the case of blood, 80 milligrammes of alcohol in 100 millilitres, and

- (c) in the case of urine, 107 milligrammes of alcohol in 100 millilitres.
- (4) [The Committee] may make regulations amending subsection (2) or (3).

NOTE

In section 163, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

Enforcement

Penalty.

- 164.** A person guilty of an offence under this Part shall be liable –
- (a) on summary conviction, to a fine not exceeding twice level 5 on the uniform scale or to imprisonment for a term not exceeding three months, or to both, and
 - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

Taking of specimens.

165. (1) Schedule 13 shall have effect in relation to an offence under this Part.

(2) [The Committee] may by regulations amend Schedule 13, so as to ensure that the provisions remain similar to the provisions in the Road Traffic

(Drink Driving) (Guernsey) Law, 1989^l.

NOTES

In section 165, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

The following Regulations have been made under section 165:

Aviation (Bailiwick of Guernsey) Law, 2008 (Amendment of Schedule 13) Regulations, 2008.

Arrest without warrant.

166. (1) An officer of police may arrest a person without a warrant if the officer reasonably suspects that the person –

- (a) is committing an offence under section 162, or
- (b) has committed an offence under that section and is still under the influence of drink or drugs.

(2) Notwithstanding subsection (1), a person may not be arrested under this section while he is at a hospital as a patient.

(3) Arrest under this section shall be treated as arrest for an offence for the purposes of Part IV (Detention) of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003^m.

Right of entry.

^l Order in Council No. XXVI of 1989.

^m Order in Council No. XXIII of 2003.

167. (1) An officer of police in uniform may board an aircraft if he reasonably suspects that he may wish to exercise a power by virtue of section 165 or under section 166 in respect of a person who is or may be on the aircraft.

(2) An officer of police in uniform may enter any place if he reasonably suspects that he may wish to exercise a power by virtue of section 165 or under section 166 in respect of a person who is or may be in that place.

(3) For the purposes of boarding an aircraft or entering a place under this section an officer of police –

- (a) may use reasonable force, and
- (b) may be accompanied by one or more persons.

General

Application to the Crown and to the military.

168. (1) This Part shall apply to a function or activity performed or carried out in relation to an aircraft which belongs to or is employed in the service of the Crown.

(2) This Part shall not apply to a function or activity which is performed or carried out by –

- (a) a member of Her Majesty's forces acting in the course of his duties,
- (b) a member of a visiting force or a member of a civilian component of a visiting force, acting in the course of his duties, within the meaning of the Visiting Forces

Act 1952ⁿ, provided that that Act has been extended to the Bailiwick by Order in Council by virtue of section 15 thereof, or

- (c) a military or civilian member of a headquarters acting in the course of his duties, within the meaning of the International Headquarters and Defence Organisations Act 1964^o, provided that that Act has been extended to the Bailiwick by Order in Council by virtue of section 2 thereof.

Police Powers

Exercise of police powers at aerodromes.

169. For the avoidance of doubt, all areas of licensed aerodromes in the Bailiwick are places to which the public have access for the purpose of section 1(a) of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003^p, and the police may exercise their powers under that Law accordingly.

[Aviation Security and Safety

Aviation Security: transfer of functions.

169A. The powers, functions and duties conferred on the Public Services Department under and by virtue of the Aviation Security Act, are hereby transferred to [the Committee].]

ⁿ An Act of Parliament, 1952 ch.67.

^o An Act of Parliament, 1964 ch.5.

^p Order in Council No. XXIII of 2003.

NOTES

Section 169A and the cross heading thereto were inserted by the Aviation (Amendment) (Bailiwick of Guernsey) Law, 2012, section 4, with effect from 16th September, 2013.

In section 169A, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

The following Directions have been made under section 169A:

*Aviation Security (Guernsey) Direction, 2024;
Aviation Security (Amendment) (Bailiwick of Guernsey) Direction, 2024.*

In accordance with the provisions of the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 12(b), Schedule 2, Part 8, with effect from 1st May, 2016, the Public Services Department has since been replaced by the States' Trading Supervisory Board; and the functions, rights and liabilities of the Public Services Department and of its Minister or Deputy Minister arising under or by virtue of this Law (other than functions under section 21) were transferred to and vested in, respectively, the States' Trading Supervisory Board and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 12(b), Schedule 2, Part 8, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

[Confidentiality of Aviation Security Directions.]

169B. (1) Where any power to make directions under the Aviation Security Act, or under section 169C, is exercised in such a manner that it includes information disclosure of which is prohibited, or controlled by, the Official Secrets Act 1989, or any other information which, if disclosed might –

- (a) endanger the interests of the Bailiwick abroad,
- (b) seriously obstruct the promotion or protection of the interests of the Bailiwick abroad, or

- (c) endanger or prejudice the safety or security of residents of the Bailiwick,

then that information shall be kept confidential, and the directions shall make provision to ensure that such information remains confidential and is only disclosed in circumstances prescribed by the directions.

(2) If such directions provide that any part thereof is confidential, and any person breaches such duty of confidentiality he shall be liable on summary conviction to a fine not exceeding twice level 5 on the uniform scale or to imprisonment for a term not exceeding three months.

(3) This provision has retrospective effect, save that no proceedings for an offence created under subsection (2) may be brought where the act forming the basis of the offence was committed prior to the commencement of this provision.]

NOTES

Section 169B was inserted by the Aviation (Amendment) (Bailiwick of Guernsey) Law, 2012, section 4, with effect from 16th September, 2013.

The following Directions have been made under section 169B:

*Aviation Security (Guernsey) Direction, 2024;
Aviation Security (Amendment) (Bailiwick of Guernsey) Direction,
2024.*

Power to make Aviation Security Directions.

169C. (1) Where the Director of Civil Aviation considers it necessary or expedient to implement any international or European rules, regulations or other instruments regulating aviation security ("**aviation security rules**") –

- (a) to preserve the security of the Bailiwick, or
- (b) in the interests of passengers flying in, to or from the Bailiwick,

he may recommend to [the Committee] that directions be made by [the Committee] (and subsequently repealed or amended) to implement any aviation security rules, with such modifications as may be necessary or appropriate for the Bailiwick.

(2) Where the Director of Civil Aviation considers it that it is necessary or expedient to implement any particular provisions to ensure aviation security –

- (a) to preserve the security of the Bailiwick, or
- (b) in the interests of passengers flying in, to or from the Bailiwick,

he may recommend to [the Committee] that directions be made by [the Committee] (and subsequently repealed or amended) to implement such provisions.

(3) On receipt of a recommendation under subsection (1) or (2) [the Committee] may make (and subsequently repeal or amend) the necessary directions in such form as it considers appropriate.

(4) If any person breaches any provision of a direction made under this section he shall be liable on summary conviction to a fine not exceeding twice level 5 on the uniform scale or to imprisonment for a term not exceeding three months.

(5) Without prejudice to subsection (4), any directions made under

this section may also prescribe a financial penalty up to a maximum of £200,000 in relation to any breach of those directions, which penalty shall be without prejudice to any other power, penalty, sanction or remedy (criminal, civil or administrative) imposed under the provisions of this Law, which penalty –

- (a) shall be recoverable as a civil debt, and
- (b) may be appealed under section 11.]

NOTES

Section 169C was inserted by the Aviation (Amendment) (Bailiwick of Guernsey) Law, 2012, section 4, with effect from 16th September, 2013.

In section 169C, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

The following Directions have been made under section 169C:

*Aviation Security (Guernsey) Direction, 2024;
Aviation Security (Amendment) (Bailiwick of Guernsey) Direction,
2024.*

[Power to make Aviation Safety Directions.]

169D. (1) Where the Director of Civil Aviation considers it necessary or expedient to implement any international or European rules, regulations or other instruments regulating aviation safety ("**aviation safety rules**") –

- (a) to preserve the safety of the aircraft, aerodromes, aerodrome users in the Bailiwick, or
- (b) in the interests of passengers flying in, to or from the Bailiwick,

he may recommend to [the Committee] that directions be made by [the Committee] (and subsequently repealed or amended) to implement the aviation safety rules, with such modifications as may be necessary or appropriate for the Bailiwick.

(2) Where the Director of Civil Aviation considers that it is necessary or expedient to implement any particular provisions to ensure aviation safety –

- (a) to preserve the safety of the aircraft, aerodromes or aerodrome users in the Bailiwick, or
- (b) in the interests of passengers flying in, to or from the Bailiwick,

he may recommend to [the Committee] that directions be made by [the Committee] (and subsequently repealed or amended) to implement such provisions.

(3) On receipt of a recommendation under subsection (1) or (2) [the Committee] may make (and subsequently repeal or amend) the necessary directions in such form as it considers appropriate.

(4) If any person breaches any provision of a direction made under this section he shall be liable on summary conviction to a fine not exceeding twice level 5 on the uniform scale or to imprisonment for a term not exceeding three months.

(5) Without prejudice to subsection (4), any directions made under this section may also prescribe a financial penalty up to a maximum of £200,000 in relation to any breach of those directions, which penalty shall be without prejudice to any other power, penalty, sanction or remedy (criminal, civil or administrative)

imposed under the provisions of this Law, which penalty –

- (a) shall be recoverable as a civil debt, and
- (b) may be appealed under section 11.]

NOTES

Section 169D was inserted by the Aviation (Amendment) (Bailiwick of Guernsey) Law, 2012, section 4, with effect from 16th September, 2013.

In section 169D, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

PART VI
OFFENCES

False or misleading information.

- 170.** (1) A person who –
- (a) in making any statement or providing any information or document to the Director of Civil Aviation or any officer or servant of his when acting in the exercise of his functions and powers [under the provisions of this Law], or
 - (b) otherwise than as mentioned in paragraph (a) but in circumstances in which the person making the statement or providing the information or document knows or could reasonably be expected to know that the statement, information or document would or might be

used by the Director of Civil Aviation for the purpose of exercising his functions and powers [under the provisions of this Law] –

- (i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (ii) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (iii) provides or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (iv) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

shall be guilty of an offence.

(2) A licensee who fails to provide the Director of Civil Aviation with any information in his possession knowing or having reasonable cause to believe that –

- (a) the information is relevant to the exercise by the

Director of his functions and powers [under the provisions of this Law], and

- (b) the withholding of the information is likely to result in the Director being misled as to any matter which is relevant and of material significance to the exercise of his functions and powers in relation to the licensee,

shall be guilty of an offence.

(3) A person guilty of an offence under subsection (1) or (2) is liable –

- (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale, or to imprisonment for a term not exceeding 3 months, or to both,
- (b) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding 2 years, or to both.

NOTE

In section 170, the words in, first, the first and second and, second, the third pairs of square brackets were inserted by the Aviation (Amendment) (Bailiwick of Guernsey) Law, 2012, section 5, respectively paragraph (a)(i) and paragraph (a)(ii), with effect from 16th September, 2013.

Criminal liabilities of directors, etc.

171. (1) Subject to section 45, where an offence under this Law is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any

director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate shall be guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

Defence of due diligence.

172. In any proceedings for an offence under section 170, it shall be a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself and by any person under his control.

Breaching obligations imposed by State of registration.

173. ...

NOTE

Section 173 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

PART VII
GENERAL

Service of documents.

174. (1) Where a provision of this Law authorises or requires any document to be served, the document may, be served on –

- (a) an individual, by being delivered to him, or by being left at, or sent by post or transmitted to, his usual or last

- known place of abode,
- (b) a body corporate with a registered office in Guernsey or Alderney, by being left at, or sent by post or transmitted to, that office,
 - (c) a body corporate without a registered office in Guernsey or Alderney, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in Guernsey or Alderney or, if there is no such place, its registered office or principal or last known principal place of business elsewhere,
 - (d) an unincorporated body –
 - (i) by being served on any partner, member of the committee or other similar governing body, manager, director or other similar officer thereof in accordance with paragraph (a), or
 - (ii) by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in Guernsey or Alderney or, if there is no such place, its principal or last known principal place of business elsewhere, and
 - (e) a department or committee of the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, by being left at, or sent by post or transmitted to, the principal offices of that department or committee in

Guernsey, Alderney or Sark, as the case may be.

(2) If a person notifies a department or committee of the States of Guernsey, the States of Alderney or the Chief Pleas of Sark of an address for service within the Bailiwick for the purposes of this Law, any document to be served on that person under this Law may be served by being left at, or sent by post to, that address.

(3) Where this Law authorises or requires any document to be served on a person who is –

(a) a minor, or

(b) a person under legal disability,

the document may, be served on his guardian; and if there is no guardian, the party wishing to effect service may apply to the Royal Court (or the Court of Alderney or the Court of the Seneschal, as the case may be, if the person is in Alderney or Sark) for the appointment of a person to act as guardian for the purposes of this Law.

(4) If service of a document cannot, after reasonable enquiry, be effected in accordance with this section, the document may be served by being published on two occasions in *La Gazette Officielle* or, in the case of service in Alderney, the Alderney Official Gazette.

(5) Subsections (1) to (4) are without prejudice to any other lawful method of service.

(6) Where a document is sent by post it shall, unless the contrary is shown, be deemed for the purposes of this Law to have been received –

(a) in the case of a document sent to an address in the

United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,

- (b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any non-business day.

(7) Service of any document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

(8) Without prejudice to any other provision of this section, where this Law requires or authorises any document to be served on the owner or occupier of any premises within the Bailiwick, the document may be served –

- (a) by sending it by post to him at those premises,
- (b) by addressing it by name to him and delivering it to some responsible person who is or appears to be resident or employed in the premises, or
- (c) if there is no such person to whom it can be delivered under paragraph (b), by affixing it or a copy of it to some conspicuous part of or about the premises.

(9) For the purposes of subsection (8), if the name or address of any owner or occupier of premises on whom the document is to be served cannot after reasonable inquiry be ascertained, the document may be served in accordance with that subsection by addressing it to the person on whom it is to be served by the description of "**owner**" or "**occupier**" of the premises (describing them) to which the document relates.

(10) In this section –

"by post" means by registered post, recorded delivery service or ordinary letter post,

"document" does not include a summons,

"non-business day" means –

- (a) a Saturday, a Sunday, Christmas Day and Good Friday, and
- (b) any day appointed as a public holiday by Ordinance of the States of Deliberation, the States of Alderney or, as the case may be, the Chief Pleas of Sark under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958^q,

"premises" includes any land or building,

"served" includes given,

"summons" includes any document compelling a person's attendance before a court, and

"transmitted" means transmitted by electronic communication, facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication (in which

^q Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; Orders in Council No. XI of 1993; No. XIV of 1994 and No. IX of 2001.

event the document shall be regarded as served when it is received).

NOTES

In accordance with the provisions of, first, the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978, section 1(1) and section 1(2), with effect from 1st July, 1978 and subject to the saving provision in section 1(6) of the 1978 Law, second, the Law Reform (Age of Majority) (Sark) Law, 1986, section 1(1) and section 1(2), with effect from 3rd February, 1987 and subject to the savings in section 1(3) of, and the Schedule to, the 1986 Law and, third, the Age of Majority (Alderney) Law, 2001, section 1(1) and section 1(3), with effect from 14th December, 2001 and subject to the transitional and savings provisions in section 1(5) of, and the Schedule to, the 2001 Law, the reference in this section to a "minor" shall be construed as a reference to a person under the age of 18 years.

In accordance with the provisions of the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 2, with effect from 4th January, 2010 (in Guernsey and Alderney but not in Sark), and having regard to the references in this section to "guardian", a guardian or person referred to as such has parental responsibility in respect of a child if the conditions in paragraph (a) or paragraph (b) of that section are satisfied.

Repeals.

175. (1) Without prejudice to the generality of the powers conferred by any other provision of this Law, the States may by Ordinance made under this section repeal, amend, extend, adapt, modify or disapply, and make transitional and savings provisions in relation to –

- (a) any of the enactments set out in Schedule 18 to this Law, and
- (b) any other enactment relating to aviation.

(2) For the avoidance of doubt, an Ordinance under this section may amend any subordinate legislation made under any enactment to which subsection (1) applies.

Power to make regulations concerning savings and transitional provisions.

176. (1) [The Committee] may make regulations containing such savings and transitional provisions as it thinks fit in connection with the commencement of any provision of, or made under, this Law.

(2) Regulations under this section may, without limitation, make such adaptations and modifications –

- (a) to this Law,
- (b) to any other enactment,
- (c) to any other instrument having legislative effect in the Bailiwick, or any part of the Bailiwick (including for the avoidance of doubt any orders or regulations made by the [States' Trading Supervisory Board], or any department previously exercising powers exercisable by that [Board], immediately before the coming into force of this section, relating to aviation), and
- (d) to any rule of customary or common law,

as [the Committee] thinks fit in connection with the commencement of any provision of this Law.

(3) Savings and transitional provisions made under this section are additional and without prejudice to those made by or under any other provision of this Law.

NOTES

In section 176,

the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016;

the words in the first and second pairs of square brackets in subsection (2) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 2, Schedule 1, paragraph 12(b), Schedule 2, Part 8 and section 5(1), Schedule 3, paragraph 12, with effect from 1st May, 2016.

Ordinances of the States not to have effect in Alderney and Sark.

177. (1) An Ordinance made under this Law does not have effect unless approved by the States of Alderney and the Chief Pleas of Sark.

(2) For the purposes of subsection (1), an Ordinance shall be deemed to have been approved by the States of Alderney or the Chief Pleas of Sark at the expiration of a period of four months immediately following the day of its approval by the States of Deliberation unless, within that period –

- (a) the States of Alderney resolve to disapprove its application to Alderney or, as the case may be,
- (b) the Chief Pleas of Sark resolve to disapprove its application to Sark.

General provisions as to Ordinances and subordinate legislation.

178. (1) Any Ordinance, or subordinate legislation under this Law –

- (a) may be amended, repealed or revoked by a subsequent Ordinance, or subordinate legislation, as the case may be, hereunder,

- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient, and
- (c) may, without limitation, contain provision –
 - (i) subject to subsection (2), as to the creation of new liabilities, obligations, penalties and offences,
 - (ii) making consequential amendments to this Law and any other enactment,
 - (iii) repealing, replacing, amending, extending, adapting, modifying or disapplying any rule of customary or common law, and
 - (iv) authorising [the Committee], or the Director of Civil Aviation, to make subordinate legislation in relation to any matter in relation to which the Ordinance can make provision.

(2) The power conferred by virtue of subsection (1)(c)(i) shall not include power –

- (a) to provide for offences to be triable only on indictment,
- (b) to authorise the imposition, on summary conviction of any offence, of any term of imprisonment or of a fine exceeding the limits of jurisdiction imposed on the

Magistrate's Court by section 9 of the Magistrate's Court (Guernsey) Law, 2008, or

- (c) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding two years.

(3) Any power conferred by this Law to make any Ordinance, or subordinate legislation, may be exercised –

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases, and

- (b) so as to make, as respects the cases in relation to which it is exercised –

- (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes, and

- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(4) Any subordinate legislation made under this Law shall be laid

before a meeting of the States as soon as may be after being made and if at that meeting or the next subsequent meeting the States resolve that the legislation be annulled, the legislation shall cease to have effect but without prejudice to anything done under that legislation or to the making of new subordinate legislation.

NOTE

In section 178, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

Interpretation.

179. (1) In this Law, and in any Ordinance or subordinate legislation made under this Law, unless the context otherwise requires –

"an activity ancillary to an aviation function" has the meaning assigned to it in section 161(3),

"aerial work" has the meaning assigned to it by section 139,

"aerial work undertaking" means an undertaking whose business includes the performance of aerial work,

"aerobatic manoeuvres" includes loops, spins, rolls, bunts, stall turns, inverted flying and any other similar manoeuvre,

"aerodrome" means any area of land or water designed, equipped, set apart or commonly used for affording facilities for the landing and departure of aircraft and includes any area or space, whether on the ground, on the roof of a building or elsewhere, which is designed, equipped or set apart for affording facilities for the landing and departure of aircraft capable of descending or climbing vertically, but shall not include any area the use of

which for affording facilities for the landing and departure of aircraft has been abandoned and has not been resumed,

"aerodrome control service" means an air traffic control service for any aircraft on the manoeuvring area or apron of the aerodrome in respect of which the service is being provided or which is flying in, or in the vicinity of, the aerodrome traffic zone of that aerodrome by visual reference to the surface,

"aerodrome licence" means a licence granted under section 105,

"aerodrome operating minima" in relation to the operation of an aircraft at an aerodrome means the cloud ceiling and runway visual range for take-off, and the decision height or minimum descent height, runway visual range and visual reference for landing, which are the minimum for the operation of that aircraft at that aerodrome,

"aerodrome operator" has the meaning assigned to it in section 17(11),

"aerodrome traffic zone" means the airspace specified below, being airspace in the vicinity of an aerodrome which is notified for the purposes of rule 45 of the Rules of the Air –

- (a) in relation to such an aerodrome at which the length of the longest runway is notified as 1850 metres or less –
 - (i) subject to subparagraph (ii), the airspace extending from the surface to a height of 2000 feet above the level of the aerodrome within the area bounded by a circle centred on the notified

mid-point of the longest runway and having a radius of 2 nautical miles, or

- (ii) where such an aerodrome traffic zone would extend less than 1½ nautical miles beyond the end of any runway at the aerodrome and this sub-paragraph is notified as being applicable, paragraph (b) applies as though the length of the longest runway is notified as greater than 1850 metres,

- (b) in relation to such an aerodrome at which the length of the longest runway is notified as greater than 1850 metres, the airspace extending from the surface to a height of 2000 ft above the level of the aerodrome within the area bounded by a circle centred on the notified mid-point of the longest runway and having a radius of 2½ nautical miles,

except any part of that airspace which is within the aerodrome traffic zone of another aerodrome which is notified for the purposes of this Law as being the controlling aerodrome,

"aeronautical beacon" means an aeronautical ground light which is visible either continuously or intermittently to designate a particular point on the surface of the earth,

"aeronautical ground light" means any light specifically provided as an aid to air navigation, other than a light displayed on an aircraft,

"aeronautical radio station" means a radio station on the surface,

which transmits or receives signals for the purpose of assisting aircraft,

"aeronautical telecommunications service" means a service consisting of the emission, transmission, switching, conveyance or reception of messages to, or by, aircraft within the Bailiwick by means of a telecommunications network,

"aeroplane" a power-driven heavier-than-air aircraft, deriving its lift in flight chiefly from aerodynamic reactions on surfaces which remain fixed under given conditions of flight,

"airborne collision avoidance system" means an aircraft system based on secondary surveillance radar (SSR) transponder signals which operates independently of groundbased equipment to provide advice to the pilot on potential conflicting aircraft that are equipped with SSR transponders,

"aircraft" means any machine that can derive support in the atmosphere from the reactions of the air other than the reactions of the air against the earth's surface,

"aircraft maintenance engineer's licence" means a licence granted by the Director under section 50(1) or rendered valid for the purposes of the Law under section 50(4),

"aircrew" means every person employed or engaged in an aircraft in flight on the business of the aircraft,

"the Air Navigation (Dangerous Goods) Regulations" means the regulations set out in Schedule 16 as amended or repealed, from time to time, by the Director of Civil Aviation under section 77 or 178 and otherwise having effect under this Law,

"air navigation services" includes information, directions and other facilities furnished, issued or provided in connection with the navigation or movement of aircraft, and includes the control of movement of vehicles in any part of an aerodrome used for the movement of aircraft,

"air traffic" means all aircraft in flight or operating within an aerodrome traffic zone,

"air traffic controller" means any individual who provides any service for the purpose of –

- (a) preventing collisions between, or involving, aircraft, and
- (b) expediting and maintaining an orderly flow of air traffic,

"air traffic control unit" means a person appointed by the Director of Civil Aviation or by any other person maintaining an aerodrome or place to give instructions, advice or information by means of radio signals to aircraft in the interests of safety but does not include a person so appointed solely to provide a flight information service to aircraft, and **"air traffic control service"** shall be construed accordingly,

"air transport services" includes both public transport and all other transport by air,

"air transport undertaking" means an undertaking whose business includes the undertaking of flights for the purposes of public transport of passengers or cargo,

"Air Travel Fund" means the fund referred to in section 25,

"annual costs" in relation to the operation of an aircraft means the best estimate reasonably practicable at the time of a particular flight in respect of the year commencing on the first day of January preceding the date of the flight, of the costs of keeping and maintaining and the indirect costs of operating the aircraft, such costs in either case excluding direct costs and being those actually and necessarily incurred without a view to profit,

"annual flying hours" means the best estimate reasonably practicable at the time of a particular flight by an aircraft of the hours flown or to be flown by the aircraft in respect of the year commencing on the first day of January preceding the date of the flight,

"the applicable provisions" for the purpose of section 149 has the meaning assigned in section 149(4),

"approach control service" means an air traffic control service for any aircraft not receiving an aerodrome control service, which is flying in, or in the vicinity of the aerodrome traffic zone of the aerodrome in respect of which the service is being provided, whether or not the aircraft is flying by visual reference to the surface,

"approach to landing" means that portion of the flight of the aircraft when approaching to land, in which it is descending below a height of 1000 ft above the relevant specified decision height or minimum descent height,

"appropriate aeronautical radio station" means in relation to an aircraft an aeronautical radio station serving the area in which the aircraft is for the time being,

"appropriate air traffic control unit" means in relation to an aircraft either the air traffic control unit notified as serving the area in which the aircraft is for the time being, or the air traffic control unit notified as serving the area which the aircraft intends to enter and with which unit the aircraft is required to communicate prior to entering that area, as the case may be,

"apron" means the part of an aerodrome provided for the stationing of aircraft for the embarkation and disembarkation of passengers, for loading and unloading of cargo and for parking,

"area control centre" means an air traffic control unit established to provide an area control service to aircraft flying within a notified flight information region which are not receiving an aerodrome control service or an approach control service,

"area control service" means an air traffic control service for any aircraft which is flying neither in nor in the vicinity of an aerodrome traffic zone except for an aerodrome traffic zone which has been notified as being subject to an area control service,

"area navigation equipment" means equipment carried on board an aircraft which enables the aircraft to navigate on any desired flight path within the coverage of appropriate ground based navigation aids or within the limits of that on-board equipment or a combination of the two,

"authorised person" means any person authorised by the Director of Civil Aviation either generally or in relation to a particular case or class of cases, and references to a person authorised by the Director include references to the Director in the Bailiwick and the holder for the time being of any office designated by the Director,

[...]

"aviation activities" means such activities relating to aviation as may be specified by regulations of [the Committee],

[**"aviation facility"** means any premises or property which is used in whole, or in part, or permanently or temporarily for any function related to aviation,]

"aviation fuel", for the purpose of section 110, has the meaning assigned to it by section 110(6),

"aviation fuel installation", for the purpose of section 110, has the meaning assigned to it by section 110(6),

"aviation function" has the meaning assigned to it by section 161(1),

[**"Aviation Laws"** means –

- (a) this Law,
- (b) the Aviation Security Act,
- (c) the Air Navigation (Bailiwick of Guernsey) Law, 2012,
and
- (d) any other enactment or statutory instrument prescribed for the purposes of this section by regulations of [the Committee],

"Aviation Security Act" means the Aviation Security Act 1982,]

"Bailiff" means the Bailiff, Deputy Bailiff, Judge of the Royal Court, Lieutenant-Bailiff or Juge Délégué,

"the Bailiwick" means the Bailiwick of Guernsey,

"the Bailiwick of Guernsey" includes the territorial sea adjacent to the Bailiwick, the breadth thereof being measured from the baselines established by the Territorial Waters Order in Council 1964^r,

[...]

"Bailiwick of Guernsey reduced vertical separation minimum airspace" means Bailiwick airspace that has been notified as reduced vertical separation minimum airspace for the purposes of section 72,

"CAA" means the Civil Aviation Authority established by Parliament,

"cabin crew" in relation to an aircraft means those persons on a flight carried for the purpose of performing in the interests of the safety of passengers duties to be assigned by the operator or the pilot-in-command of the aircraft but who shall not act as a member of the flight crew,

"captive balloon" means a balloon which when in flight is attached by a restraining device to the surface,

"captive flight" means flight by an uncontrollable balloon during which it is attached to the surface by a restraining device,

^r Order in Council of the 25th September 1964.

"cargo" includes mail and animals,

"the Carriage by Air Conventions" has the meaning assigned to it in section 149(3),

"Category II, Category IIIA and Category IIIB approach and landing" for the purposes of sections 68 and 82, have the meanings assigned under section 82(7),

"certificate of airworthiness" includes any validation thereof and any flight manual, performance schedule or other document, whatever its title, incorporated by reference in that certificate relating to the certificate of airworthiness,

"the Chicago Convention" means the convention on International Civil Aviation which was signed on behalf of the Bailiwick at the International Civil Aviation Conference held at Chicago on 7th December 1944, and which came into force on 4th April 1947,

"circling approach" means an extension of an instrument approach procedure which provides for visual circling by an aircraft of an aerodrome prior to landing,

"Class A airspace", "Class B airspace", "Class C airspace", "Class D airspace" and "Class E airspace" mean airspace respectively notified as such,

"cloud ceiling" in relation to an aerodrome means the vertical distance from the elevation of the aerodrome to the lowest part of any cloud visible from the aerodrome which is sufficient to obscure more than one-half

of the sky so visible,

"the Commonwealth" means the Bailiwick, Jersey, the Isle of Man, the United Kingdom, the countries mentioned in Schedule 3 to the British Nationality Act 1981 and all other territories forming part of Her Majesty's dominions or in which Her Majesty has jurisdiction,

"competent authority" means in relation to the Bailiwick, the Director of Civil Aviation, and in relation to any other country the authority responsible under the law of that country for promoting the safety of civil aviation,

"congested area" means any area that is designated for the purpose by the Director,

"Contracting State" means any State that is a party to the Chicago Convention,

"controllable balloon" means a balloon, not being a small balloon, which is capable of free controlled flight,

"controlled airspace" means airspace that has been notified as Class A, Class B, Class C, Class D or Class E airspace,

"Control zone" means controlled airspace which has been further notified as a control zone and which extends upwards from the surface,

"Convention country" means a country in which the Tokyo Convention is for the time being in force; and Her Majesty may by Order in Council certify that any country specified in the Order is for the time being a Convention country and any such Order in Council for the time being in force

shall be conclusive evidence that the country in question is for the time being a Convention country,

"co-pilot" in relation to an aircraft means a pilot who in performing his duties as such is subject to the direction of another pilot carried in the aircraft,

"country" includes a territory,

"court" in Part IV includes, in an arbitration allowed by the Carriage by Air Conventions, an arbitrator,

"Danger Area" means airspace which has been notified as such within which activities dangerous to the flight of aircraft may take place or exist at such times as may be notified,

"day" for the purpose of Part III and Schedule 17 means the time from half an hour before sunrise until half an hour after sunset (both times exclusive), sunset and sunrise being determined at surface level,

"decision height" in relation to the operation of an aircraft at an aerodrome means the height in a precision approach at which a missed approach must be initiated if the required visual reference to continue that approach has not been established,

"declared distances" has the meaning that has been notified,

"department" means any department, council or committee (however called) of the States of Guernsey,

"[the Committee]" means the [Committee for Economic

Development] of the States of Guernsey,

"designated aerodrome" for the purpose of section 30 has the meaning assigned to it by section 30(11),

"designated required navigation performance airspace" means airspace that has been notified, prescribed or otherwise designated by the competent authority for the airspace as requiring specified navigation performance capabilities to be met by aircraft flying within it,

"direct costs" means, in respect of a flight, the costs actually and necessarily incurred in connection with that flight without a view to profit but excluding any remuneration payable to the pilot for his services as such,

"the Director" means the Director of Civil Aviation,

"Director of Civil Aviation" has the meaning assigned to it in section 1,

"dropping" includes projecting and lowering,

"drug" includes any intoxicant other than alcohol,

"enactment" means a Law, an Ordinance and subordinate legislation,

"EC carrier" means an air carrier with a valid EC operating licence,

"EC operating licence" means an authorization, granted by the European Community Member State responsible for an undertaking, permitting the undertaking to carry out carriage by air of passengers, mail and/or cargo, as stated in the operating licence, for remuneration and/or hire,

in accordance with Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers,

"EEA Agreement" means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993,

"EEA State" means a State which is a Contracting Party to the EEA Agreement but until the EEA Agreement comes into force in relation to Liechtenstein does not include the State of Liechtenstein,

"Eurocontrol" and **"the Eurocontrol Convention"** have the meanings respectively assigned to them by section 23,

"flight" and **"to fly"** have the meanings respectively assigned to them by subsection (2),

"flight crew" means, in relation to an aircraft, those members of the crew of the aircraft who respectively undertake to act as pilot, flight navigator, flight engineer and flight radiotelephony operator of the aircraft,

"flight information service unit" means a person appointed by the Director of Civil Aviation or by any other person maintaining an aerodrome or area control centre –

- (a) in the case of such a unit appointed in respect of an aerodrome to –
 - (i) give information by means of radio signals to aircraft flying in or intending to fly within the aerodrome traffic zone of that aerodrome, and

- (ii) grant or refuse permission, under Rule 35 or 36(2) of the Rules of the Air,
- (b) in the case of such a unit appointed in respect of an area control centre, to give information by means of radio signals to aircraft,

and "**flight information service**", "**aerodrome flight information service**" and "**aerodrome flight information service unit**" shall be construed accordingly,

"**flight level**" means one of a series of levels of equal atmospheric pressure, separated by notified intervals and each expressed as the number of hundreds of feet which would be indicated at that level on a pressure altimeter calibrated in accordance with the International Standard Atmosphere and set to 1013.2 hectopascals,

"**flight manual**" means a manual approved under the type certification for the aircraft, associated with the certificate of airworthiness, containing limitations within which the aircraft may be considered airworthy, and instructions and information necessary to the flight crew for the safe operation of the aircraft,

"**flight recording system**" means a system comprising either a flight data recorder or a cockpit voice recorder or both,

"**flying display**" means any flying activity deliberately performed for the purpose of providing an exhibition or entertainment at an advertised event open to the public,

"flying display director" has the meaning assigned to it in section 80,

"free balloon" means a balloon which, when in flight, is not attached by any form of restraining device to the surface,

"free controlled flight" means flight during which a balloon is not attached to the surface by any form of restraining device (other than a tether not exceeding 5 metres in length which may be used as part of the take-off procedure) and during which the height of the balloon is controllable by means of a device attached to the balloon and operated by the pilot-in-command of the balloon or by remote control,

"a function" includes a power and a duty and the carrying out a function includes the exercise of a power and the performance of a duty,

"general lighthouse authority" has the same meaning as in section 203 of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002^s,

"the Guadalajara Convention" has the meaning assigned to it in section 149(5),

"helicopter" means a heavier-than-air aircraft supported in flight chiefly by the reactions of the air on one or more powerdriven rotors on substantially vertical axes,

"Her Majesty's forces" means Her Majesty's air forces, military forces or naval forces, within the meaning of the Army Act 1955^t,

^s Order in Council No. VIII of 2004.

^t An Act of Parliament, Chapter 18 of 1955, as extended to the Bailiwick of Guernsey by the Army Act 1955 (Bailiwick of Guernsey) Order 1996 (UK S.I. No.

"holding company" has the same meaning as in section 531 of the Companies (Guernsey) Law, 2008,

"hospital" means an institution which provides medical or surgical treatment for in-patients or out-patients,

"instructor's rating" means a flying instructor's rating, an assistant flying instructor's rating, a flight instructor rating (aeroplane), a flight instructor rating (helicopter), a type rating instructor rating (multi-pilot aeroplane), a type rating instructor rating (helicopter), a class rating instructor rating (single pilot aeroplane), an instrument rating instructor rating (aeroplane) or an instrument rating instructor rating (helicopter),

"instrument approach procedure" means a series of predetermined manoeuvres by reference to flight instruments, with specified protection from obstacles, from a specified point to a point from which a landing can be completed and thereafter, if a landing is not completed, to a position at which holding or other obstacle clearance criteria apply,

"instrument flight procedure" means a generic term to include individually, in whole or in part, **"instrument approach procedure"**, **"standard instrument arrival"**, **"standard instrument departure"**, **"circling approach"** and **"holding procedure"** designed in accordance with International Civil Aviation Organisation Procedures for Air Navigation Services (PANS-OPS),

"IFR" means the Instrument Flight Rules,

"Instrument Flight Rules" means Instrument Flight Rules specified

722 of 1996).

in the Rules of the Air,

"Instrument Meteorological Conditions" means weather that precludes flight in compliance with the Visual Flight Rules,

"International headquarters" means an international headquarters designated by Order in Council under section 1 of the International Headquarters and Defence Organisations Act 1964, as extended to the Bailiwick,

"to land" in relation to aircraft includes alighting on the water,

"large rocket" means a rocket of which the total impulse of the motor or combination of motors is more than 10,240 Newton-seconds,

"licence" includes any certificate of competency or certificate of validity issued with the licence or required to be held in connection with the licence by the law of the country under which the licence is granted,

"licensed aerodrome" means any premises in respect of which a licence, granted by the Director of Civil Aviation under [the Air Navigation (Bailiwick of Guernsey) Law, 2012], is in force,

"licensed aircraft maintenance engineer" means a person who holds a licence granted under section 50,

"log book" in the case of an aircraft log book, engine log book or variable pitch propeller log book, or personal flying log book, includes a record kept either in a book, or by any other means approved by the Director of Civil Aviation in the particular case,

"loss or damage" includes, in relation to persons, loss of life and personal injury,

"Magistrate's Court" means the court established under the Magistrate's Court (Guernsey) Law, 1954^u,

"maintenance" means any one, or combination of, overhaul, repair, inspection, replacement, modification or defect rectification of an aircraft or component, with the exception of pre-flight inspection,

"manoeuvring area" means the part of an aerodrome provided for the take-off and landing of aircraft and for the movement of aircraft on the surface, excluding the apron and any part of the aerodrome provided for the maintenance of aircraft,

"maximum total weight authorised" in relation to an aircraft means the maximum total weight of the aircraft and its contents at which the aircraft may take off anywhere in the world, in the most favourable circumstances in accordance with the certificate of airworthiness in force in respect of the aircraft,

"microlight" means an aeroplane designed to carry not more than two persons which has –

- (a) a maximum total weight authorised not exceeding –
 - (i) 300 kg for a single seat landplane,
 - (ii) 450 kg for a two seat landplane,

^u Ordres en Conseil Vol. XVI, p. 103.

- (iii) 330 kg for a single seat amphibian or floatplane,
or
 - (iv) 495 kg for a two seat amphibian or floatplane,
and
- (b) either a wing loading at the maximum total weight authorised not exceeding 25 kg per square metre or a stalling speed at the maximum total weight authorised not exceeding 35 knots calibrated airspeed,

["**military aircraft**" has the meaning given in section 39(6),]

"minimum descent height" in relation to the operation of an aircraft at an aerodrome means the height in a non-precision approach below which descent may not be made without the required visual reference,

"modifications" to any aircraft or of any of its equipment, includes additions, omissions and amendments, and **"modify"** shall be construed accordingly,

"munition of war" has, for the purpose of section 76, the meaning assigned to it by section 76(5)(a),

"the Montreal Convention" has the meaning assigned to it in section 149(3)(b),

"nautical mile" means the International Nautical Mile, that is to say, a distance of 1852 metres,

"night" means the time from half an hour after sunset until half an hour before sunrise (both times inclusive), sunset and sunrise being determined at surface level,

"non-precision approach" means an instrument approach using non-visual aids for guidance in azimuth or elevation but which is not a precision approach,

"notified" means shown in any of the following publications for the time being in force and issued in the Bailiwick whether before or after the coming into operation of this Law, that is to say, "Notams (Notices to Airmen)" and "Aeronautical Information Publications (AIP)",

"Office of the Director of Civil Aviation" has the meaning assigned to it in section 1,

"officer of police" means a member of the salaried police force of the Island of Guernsey, and within the limits of his jurisdiction, a member of the Special Constabulary of the Island of Guernsey,

"Operator" has the meaning assigned to it by subsection (3),

"operating staff" means the servants and agents employed by the Operator, whether or not as members of the crew of the aircraft, to ensure that the flights of the aircraft are conducted in a safe manner, and includes an Operator who himself performs those functions,

"parascending parachute" means a parachute which is towed by cable in such a manner as to cause it to ascend,

"passenger" means a person other than a member of the crew,

"penalty scheme" has, for the purposes of sections 31 and 32 the meaning assigned to it by section 31(2),

"period of duty" means the period between the commencement and end of a shift during which an air traffic controller performs, or could be called upon to perform, any of the functions specified in respect of a rating included in his licence,

"pilot-in-command" means the pilot designated by the Operator as being in command and charged with the safe conduct of a flight, or, if no such designation has been made, the person who for the time being is in charge of piloting the aircraft without being under the direction of any other pilot in the aircraft,

"pilot's licence" means a licence, certificate or other permission granted, issued or validated by a competent authority that entitles the holder to be in charge of the piloting of an aircraft under the law of the country in which the aircraft is registered,

"Precision approach" means an instrument approach using Instrument Landing System, Microwave Landing System or Precision Approach Radar for guidance in both azimuth and elevation,

"prescribed" means prescribed by regulations made by the Director of Civil Aviation under this Law, and the expression **"prescribe"** shall be construed accordingly,

"pressurised aircraft" means an aircraft provided with means of maintaining in any compartment a pressure greater than that of the surrounding atmosphere,

"private flight" means a flight which is neither for the purpose of aerial work nor public transport,

[**"provisions of this Law"** means any provision of this Law or of any Ordinance, regulations or rules hereunder and the provisions of the Aviation Laws and any Ordinance, regulations or rules thereunder,]

"psychoactive substance" means alcohol, opioids, cannabinoids, sedatives and hypnotics, cocaine, other psychostimulants, hallucinogens, and volatile solvents but not coffee and tobacco,

"[States' Trading Supervisory Board]" means the States of Guernsey [States' Trading Supervisory Board],

"public transport" has the meaning assigned to it by sections 139 to 145,

"public transport aircraft" means an aircraft flying, or intended by the Operator to fly, for the purpose of public transport,

"radio navigation equipment" includes an airborne collision avoidance system and a flight recording system,

"record" includes, in addition to a record in writing –

- (a) any disc, tape, sound-track or other device in which sounds or signals are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced therefrom,

- (b) any film, tape or other device in which visual images are embodied so as to be capable (as aforesaid) of being reproduced therefrom, and
- (c) any photograph,

and any reference to a copy of a record includes, in the case of a record falling within paragraph (a) only of this definition, a transcript of the sounds or signals embodied therein, in the case of a record falling within paragraph (b) only of this definition, a still reproduction of the images embodied therein, and in the case of a record falling within both those paragraphs, such a transcript together with such a still reproduction,

"reduced vertical separation minimum airspace" means any airspace between flight level 290 and flight level 410 inclusive designated by the relevant competent authority as being airspace within which a vertical separation minimum of 1000 feet or 300 metres shall be applied,

"registered charity" means an organisation which is a Guernsey Registered Charity under [the Charities etc. (Guernsey and Alderney) Ordinance, 2021],

"relevant manager" has, for the purposes of sections 31 and 32 the meaning assigned to it by section 31,

"requirements" means requirements published by the Director of Civil Aviation under the provisions of section 138,

[**"resident person"** means a person who is a British citizen and who is ordinarily resident in the Bailiwick,]

"rocket" means a device which is propelled by ejecting expanding gasses generated in its motor from self contained propellant and which is not dependent on the intake of outside substances and includes any part of the device intended to become separated during operation,

"Royal Court" means the Royal Court sitting as an Ordinary Court,

"Rules of the Air" means the rules set out in Schedule 15 as amended or repealed, from time to time, by the Director of Civil Aviation under section 62 or 178 and otherwise having effect under this Law,

"runway visual range" in relation to a runway means the distance in the direction of take-off or landing over which the runway lights or surface markings may be seen from the touchdown zone as calculated by either human observation or instruments in the vicinity of the touchdown zone or where this is not reasonably practicable in the vicinity of the mid-point of the runway, and the distance, if any, communicated to the pilot-in-command of an aircraft by or on behalf of the person in charge of the aerodrome as being the runway visual range shall be taken to be the runway visual range for the time being,

"safety management system" means a systematic approach to managing safety, including the necessary organisational structures, accountabilities, policies and procedures,

"scheduled journey" means one of a series of journeys that are undertaken between the same two places and which together amount to a systematic service,

"seaplane" includes a flying boat and any other aircraft designed to manoeuvre on water,

"sector" means part of the airspace controlled from an area control centre or other place,

"small aircraft" means any unmanned aircraft, other than a balloon or a kite, weighing not more than 20 kg without its fuel but including any articles or equipment installed in or attached to the aircraft at the commencement of its flight,

"small balloon" means a balloon not exceeding 2 metres in any linear dimension at any stage of its flight, including any basket or other equipment attached to the balloon,

"special VFR flight" means a flight which is a special VFR flight for the purposes of the Rules of the Air,

"sporting weapon" has, for the purpose of section 76, the meaning assigned to it by section 76(5)(b),

"standard instrument arrival" means a designated IFR arrival route linking a significant point, normally on an air traffic service route, with a point from which an instrument approach procedure can be commenced,

"standard instrument departure" means a designated IFR departure route linking the aerodrome or a specified runway at the aerodrome with a specified significant point, normally on a designated air traffic service route, at which the en-route phase of a flight commences,

"state of the operator" means the State in which the Operator of an aircraft has his principal place of business or, if he has no such place of business, his permanent residence, in circumstances where –

- (a) that aircraft is registered in another Contracting State,
- (b) the Operator is operating that aircraft under an agreement for its lease, charter or interchange or any similar arrangement,
- (c) the State in which the aircraft is registered has, by agreement with the State in which the Operator of the aircraft has his principal place of business or, if he has no such place of business, his permanent residence, agreed to transfer to it its functions and duties as State of registry in respect of that aircraft in relation to, in the case of section 48(1), airworthiness, in the case of section 53(1), aircraft radio equipment, in the case of section 56(3), flight crew licensing or in the case of section 71(1), radio licensing, and
- (d) the agreement has been registered with the Council of the International Civil Aviation Organisation or the existence and scope of the agreement have been directly communicated to the Director of Civil Aviation,

"States" means the States of Guernsey,

"subordinate legislation" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any Law or Ordinance and having legislative effect,

"tethered flight" means flight by a controllable balloon throughout which it is flown within limits imposed by a restraining device that attaches

the balloon to the surface,

"telecommunications equipment" means equipment designed, constructed or adapted for use in connection with the establishment or operation of a telecommunications network or the provision of a telecommunications service, including telecommunications apparatus, poles, structures, ducts, man-holes and other tangible property,

"telecommunications network" means a network comprising telecommunications equipment for the emission, transmission, switching, conveyance or reception of messages through the agency of electric, magnetic, electro-magnetic, electro-chemical, electro-mechanical or electro-optical energy or by optic-electronic means,

"Tokyo Convention" means the Convention on Offences and certain other Acts Committed on board Aircraft, which was signed at Tokyo on 14th September 1963,

"type certification" means, in respect of an aircraft, its type as certified under the law of the country in which the aircraft is registered,

"UK Aeronautical Information Publication (AIP)" means the publication of that title published by the CAA,

"uncontrollable balloon" means a balloon, not being a small balloon, which is not capable of free controlled flight,

"uniform scale" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law,

1989^v,

"value", in relation to a flight, includes any form of consideration received, or to be received, wholly or partly in connection with the flight, irrespective of the person by whom or to whom the consideration has been or is to be given,

"vessel" means any ship or craft, or any structure capable of navigation,

"VFR" means the Visual Flight Rules,

"Visual Flight Rules" means Visual Flight Rules prescribed by the Rules of the Air,

"Visual Meteorological Conditions" means weather that permits flight in accordance with the Visual Flight Rules,

"the Warsaw Convention" has the meaning assigned to it in section 149(3)(a)(i),

"the Warsaw Conventions" has the meaning assigned to it in section 149(3)(a),

"the Warsaw/Hague Convention" has the meaning assigned to it in section 149(3)(a)(iii),

"the Warsaw/MAP1 Convention" has the meaning assigned to it in

^v Ordres en Conseil Vol. XXXI, p. 278 (amended by Recueil d'Ordonnances Tome XXV, p. 344 and Ordinance No. XXII of 1998).

section 149(3)(a)(ii), and

"the Warsaw/Hague/MAP2 Convention" has the meaning assigned to it in section 149(3)(a)(iv), and

"the Warsaw/Hague/MAP4 Convention" has the meaning assigned to it in section 149(3)(a)(v).

(2) An aircraft shall be deemed to be in flight [for the purposes of the Aviation Laws] –

- (a) in the case of a piloted aeroplane, from the moment when, after the embarkation of its crew for the purpose of taking off, it first moves under its own power until the moment when it next comes to rest after landing,
- (b) in the case of a pilotless aeroplane, or a glider, from the moment when it first moves for the purpose of taking off until the moment when it next comes to rest after landing,
- (c) in the case of an airship, from the moment when it first becomes detached from the surface until the moment when it next becomes attached thereto or comes to rest thereon,
- (d) in the case of a free balloon, from the moment when the balloon, including the canopy and basket, becomes separated from the surface until the moment it next comes to rest thereon, and

- (e) in the case of a captive balloon, from the moment when the balloon, including the canopy and basket, becomes separated from the surface, apart from a restraining device attaching it to the surface, until the moment when it next comes to rest thereon,

and the expressions "**a flight**" and "**to fly**" shall be construed accordingly.

(3) For the purposes of the application of any provision of [the Aviation Laws] in relation to any particular aircraft, "**Operator**" means –

- (a) the person who at the particular time has management of an aircraft, and
- (b) when the aircraft is chartered, hired, leased or loaned, responsibility for airworthiness and equipment passes immediately to the charterer, hirer, lessee or borrower, except
- (c) when a person other than an air transport undertaking or an aerial work undertaking has chartered, hired, leased or borrowed the aircraft for a period not exceeding 14 days he shall not be considered to be the operator.

(4) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(5) The Interpretation (Guernsey) Law, 1948^W applies to the

^W Ordres en Conseil Vol. XIII, p. 355.

interpretation of this Law throughout the Bailiwick.

NOTES

In section 179,

first, the definition of the expression "aviation facility" in subsection (1) was repealed and reinserted, second, the definitions of the expressions "Aviation Laws" and "Aviation Security Act" therein were inserted, third, the words in square brackets in the definition of the expression "licensed aerodrome" therein were substituted, fourth, the definition of the expression "military aircraft" therein was substituted, fifth, the definition of the expression "provisions of this Law" therein was inserted, sixth, the definition of the expression "resident person" therein was substituted, seventh, the words in square brackets in subsection (2) were inserted and, eighth, the words in square brackets in subsection (3) were substituted by the Aviation (Amendment) (Bailiwick of Guernsey) Law, 2012, section 5(b), respectively paragraph (i), paragraph (ii), paragraph (iii), paragraph (iv), paragraph (v), paragraph (vi), paragraph (vii) and paragraph (viii), with effect from 16th September, 2013;

the words, first, "the Committee" and, second, "Committee for Economic Development" in square brackets in the definition of the expression "the Committee" in subsection (1) and, third, the words "the Committee" in square brackets, wherever else occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 2, section 2, Schedule 1, paragraph 1(a) and section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016;

the words omitted in square brackets immediately after the definition of the expression "the Bailiwick of Guernsey" in subsection (1) were repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(b), with effect from 16th September, 2013;

the words "States' Trading Supervisory Board" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 12(b), Schedule 2, Part 8, with effect from 1st May, 2016;

the words in square brackets in the definition of the expression "registered charity" in subsection (1) were substituted by the Charities etc. (Guernsey and Alderney) Ordinance, 2021, section 52(3), Schedule 8, paragraph 4(1)(a) and paragraph 4(2)(c), with effect from 29th April, 2022.

The functions, rights and liabilities of the Commerce and Employment Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for

Economic Development and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 1(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

The functions, rights and liabilities of the Public Services Department and of its Minister or Deputy Minister arising under or by virtue of this Law (other than functions under section 21) were transferred to and vested in, respectively, the States' Trading Supervisory Board and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 12(b), Schedule 2, Part 8, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

In accordance with the provisions of the Police Force (Bailiwick of Guernsey) Law, 1986, section 2(2), with effect from 19th August, 1986, the reference herein to a member of the salaried police force of the Island of Guernsey shall include a reference to a member of a force present in the Island by virtue of an agreement made under section 1 of the 1986 Law.

The Magistrate's Court (Guernsey) Law, 1954 has since been repealed by the Magistrate's Court (Guernsey) Law, 2008, section 46(b), with effect from 1st September, 2009, subject to the savings and transitional provisions in section 47 of the 2008 Law.

The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.

Extent.

180. For the avoidance of doubt, unless the context requires otherwise, this Law extends to the Bailiwick of Guernsey and the territorial sea adjacent to the Bailiwick the breadth thereof being measured from the baselines established by the Territorial Waters Order in Council 1964.

Citation.

181. This Law may be cited as the Aviation (Bailiwick of Guernsey) Law, 2008.

Commencement.

182. This Law shall come into operation on the day appointed by Ordinance of the States, and such an Ordinance may appoint different days for different provisions and different purposes.

NOTE

Part I, Part III, Part V, Part VI and Part VII of, and Schedule 1, Schedule 2 and Schedules 13 to 18 to, the Law were brought into force on the 1st February, 2009 by the Aviation (Bailiwick of Guernsey) Law, 2008 (Commencement) Ordinance, 2009, section 1.

SCHEDULE 1

Section 1

OFFICE OF DIRECTOR OF CIVIL AVIATION

Appointment of the Director of Civil Aviation.

1. [The Committee] may only recommend that a person be appointed as Director of Civil Aviation if it is satisfied that the person –

(a) is suitably qualified and competent to carry out the function, and

(b) is a fit and proper person to do so.

Salary of Director of Civil Aviation.

2. The Director of Civil Aviation shall be paid such salary, emoluments and other allowances as [the Committee] may determine.

Appointment of staff.

3. (1) The Director of Civil Aviation may appoint such officers and servants upon such terms and conditions (whether as to remuneration, expenses, pensions or otherwise) as he thinks necessary to carry out his functions, subject to the approval of [the Committee] as to the maximum number of officers and servants that may, from time to time, be engaged by him.

(2) The Director of Civil Aviation may establish and maintain such schemes or make such other arrangements as he thinks fit for the payment of pensions and other benefits in respect of his officers and servants.

Delegation of functions and powers.

4. (1) The Director of Civil Aviation may, by an instrument in writing, either generally or otherwise as specified in the instrument, arrange for any

of his functions to be carried out in his name by –

- (a) any of his officers or servants,
- (b) any States' employee, or
- (c) any other person, or body, with whom he has entered into a contract under paragraph 5 for the carrying out of that function,

named or described in the instrument.

(2) The power in paragraph (1) above may not be exercised where it relates to –

- (a) this power of delegation,
- (b) his obligation under section 10(1) to submit an annual report to [the Committee], or
- (c) any function which (however framed or worded) –
 - (i) requires him to consider representations concerning a decision which he proposes to make, or
 - (ii) empowers him to make a decision of a description set out in section 11(2).

(3) A function carried out by a delegate pursuant to an arrangement made under this paragraph is for all purposes carried out by the Director

of Civil Aviation and every decision taken or other thing done by a delegate pursuant to such an arrangement has the same effect as if taken or done by him.

(4) An arrangement made under this paragraph for the carrying out of a function by a delegate –

(a) may be varied or terminated at any time by the Director of Civil Aviation, but without prejudice to anything done pursuant to the arrangement or to the making of a new arrangement, and

(b) does not prevent the carrying out of the function by the Director while the arrangement subsists.

(5) In delegating a function, the Director of Civil Aviation may give to the delegate general or special directions, or impose on the delegate any conditions.

(6) Subject to paragraph (1), a delegation may be made either to a person or body specified.

(7) If the Director of Civil Aviation by whom a delegation is made is unable to carry out his functions or ceases to hold office, the delegation continues to have effect as if made by the person for the time being holding or acting in the office of Director.

Provision of services by other persons and bodies.

5. (1) If the Director of Civil Aviation considers that it is desirable or expedient to do so in order to carry the purposes of this Law into better effect, he may enter into a contract with any person or body for the carrying out by that person or body of any of the Director's functions.

(2) Before entering into such a contract, the Director of Civil Aviation shall satisfy himself or herself that the other party is suitably qualified and competent to carry out the function concerned, and is otherwise a fit and proper person or body to do so.

Appointment of Deputy Director of Civil Aviation.

6. Without prejudice to the generality of paragraph 4, the Director of Civil Aviation may appoint any of his officers or servants, or States employees, as Deputy Director of Civil Aviation with full authority to carry out the Director's functions during any period during which the Director of Civil Aviation is unavailable, and the provisions of paragraphs 4(3) and 4(4) shall apply in relation to an appointment under this paragraph as they apply to an arrangement under paragraph 4(1).

Appointment of Acting Director of Civil Aviation.

7. (1) Whilst –

- (a) the person holding the office of Director of Civil Aviation is unable to carry out the functions of the office, and has not appointed a Deputy Director of Civil Aviation, or
- (b) there is a vacancy in the office,

[the Committee] may appoint another person who is eligible for appointment as Director of Civil Aviation to be the Acting Director of Civil Aviation.

(2) An Acting Director of Civil Aviation has the functions of the Director of Civil Aviation.

(3) [The Committee] may at any time revoke the appointment of a person as Acting Director of Civil Aviation.

- (4) An appointment as Acting Director of Civil Aviation ceases –
- (a) on the resumption by the Director of Civil Aviation of any of his functions, or
 - (b) on the appointment of a Director of Civil Aviation.

Disclosure of interests.

8. (1) The Director of Civil Aviation shall, if he has any direct or indirect personal interest in the outcome of any matter of which he is seized under this Law, disclose the nature of his interest to [the Committee].

(2) For the purposes of this paragraph, a general notice given by the Director of Civil Aviation to the effect that he is a shareholder in, or a director of, a body corporate, and is to be regarded as interested in any matter concerning that body corporate, is a sufficient disclosure in relation to any such matter.

Official seal.

9. (1) The Director of Civil Aviation shall have an official seal for the authentication of documents required for the purpose of exercising his functions and powers.

- (2) Any document –
- (a) sealed with the official seal of the Director of Civil Aviation, and
 - (b) signed by the Director or by any of his officers or

servants to whom, pursuant to paragraph 4, he has delegated authority to affix his official seal,

shall be deemed to have been duly executed by or on behalf of the Director and shall be effective in law to bind him.

Proof of documents.

10. In any legal proceedings (including, without limitation, proceedings before the Royal Court) any document purporting to be issued by or on behalf of the Director of Civil Aviation or to be signed by the Director or any of his officers or servants –

- (a) shall be received in evidence,
- (b) shall, unless the contrary is proved, be deemed –
 - (i) to be the document which it purports to be, and
 - (ii) to have been issued by or on behalf of the Director or, as the case may be, to have been signed by the person by whom it purports to have been signed, without proof of his identity, signature or official capacity, and
- (c) shall be evidence of the matters stated therein.

Approval for persons to furnish reports.

11. Without prejudice to any other powers of the Director under this Law, the Director of Civil Aviation may, in relation to any of his functions under any of the provisions of this Law, approve a person as qualified to furnish reports to him and may accept such reports.

[Committee] under duty to make resources available.

12. (1) [The Committee] must make available to the Director of Civil Aviation such number and descriptions of staff as he may reasonably require for the proper and effectual carrying out of his functions.

(2) To the extent that the services of a States employee are made available to the Director of Civil Aviation as required by this paragraph, it is hereby declared for the avoidance of doubt that for the purposes of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991^x –

- (a) that employee is an officer responsible to the Director, and
- (b) the Director may arrange for any of the functions of his office to be carried out or performed in his name by that employee to the extent permitted by section 4 of that Law.

(3) [The Committee] must provide for the Director of Civil Aviation such accommodation and equipment, such secretarial and clerical services and such other facilities, as he may reasonably request for the proper and effectual carrying out of his functions.

(4) The costs of meeting the requirements of this paragraph, as also the agreed emoluments and expenses of the Director of Civil Aviation, shall be paid by [the Committee] from the general revenue account of the States.

^x Order in Council No. XXI of 1991.

NOTE

In Schedule 1, the words "Committee" and "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

SCHEDULE 2

Section 5

REQUIREMENTS FOR COMPLIANCE WITH CHICAGO CONVENTION
ANNEXES

Interpretation of this Schedule.

1. (1) In this Schedule –

- (a) "**CAP**" means a Civil Aviation Publication of the United Kingdom's Civil Aviation Authority, and
- (b) references to Annexes are references to Annexes to the Chicago Convention.

(2) Unless the context requires otherwise, where any CAP is referred to it shall be interpreted in the following manner –

- (a) any reference to the CAA shall be read as a reference to the Director of Civil Aviation, and
- (b) any reference to the United Kingdom shall be read as a reference to the Bailiwick.

[Applicable requirements of specified annexes of the Chicago Convention.]

2. Insofar as it is necessary to meet the requirements of –

- (a) annex 1, the requirements of CAP 624, Rating Requirements for Air Traffic Controllers,
- (b) annex 2, the requirements of –
 - (i) CAP 032, Aeronautical information Publication,

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- (ii) CAP 493 Manual of Air Traffic Services,
 - (iii) CAP 637, Visual Aids Handbook,
 - (iv) CAP 642, Airside Safety Management,
 - (v) CAP 694, The UK Flight Planning Guide, and
 - (vi) CAP 768, Guidance Material for Operators,
- (c) annex 3, the requirements of –
- (i) CAP 493, Manual of Air Traffic Services,
 - (ii) CAP 670, ATS Safety Requirements, and
 - (iii) CAP 746, Meteorological Observations,
- (d) annex 4, the requirements of –
- (i) CAP 232, Aerodrome Survey Information,
 - (ii) CAP 709 Radar Minimum Altitude Charts in UK Airspace, Policy and Design Criteria, and
 - (iii) CAP 779, Aeronautical Information Management Services,
- (e) annex 10, the requirements of –

Consolidated text

- (i) CAP 4 1 3, Radiotelephony Manual,
 - (ii) CAP670, ATS Safety Requirements, and
 - (iii) CAP 761, Operation of IFFISSR Interrogators in the UK – Planning, Principles and Procedures,
- (f) annex 1 1, the requirements of –
- (i) CAP 382, Mandatory Occurrence Reporting Scheme,
 - (ii) CAP 393, Air Navigation, The Order and the Regulations,
 - (iii) CAP 4 13, Radiotelephony Manual,
 - (iv) CAP 493, Manual of Air Traffic Services Part 1,
 - (v) CAP 584, Requirements for Initial Air Traffic Control Training,
 - (vi) CAP 624, Rating Requirements for Air Traffic Controllers,
 - (vii) CAP 670, ATS Safety Requirements,
 - (viii) CAP 736, Guide for the use of Lasers, Fireworks and Searchlights in UK Airspace,

Consolidated text

- (ix) CAP 744, UK Manual of Personnel Licensing – Air Traffic Controllers, and
 - (x) CAP 772, Birdstrike Risk Management for Aerodromes,
- (g) annex 14, the requirements of –
- (i) CAP 168, Licensing of Aerodromes,
 - (ii) CAP 232, Aerodrome Survey Information,
 - (iii) CAP 410, Manual of Flight Information Services,
 - (iv) CAP 493, Manual of Air Traffic Services,
 - (v) CAP 637, Visual Aids Handbook,
 - (vi) CAP 642, Airside Safety Management,
 - (vii) CAP 670, ATS Safety Requirements,
 - (viii) CAP 683, The Assessment of Runway Surface Friction for Maintenance Purposes,
 - (ix) CAP 699, Standards for the Competency of Rescue and Firefighting Service Personnel,
 - (x) CAP 719, Fundamental Human Factors Concepts,

- (xi) CAP 729, Guidance on Airport Development Procedures,
 - (xii) CAP 736, Guide for the use of Lasers, Fireworks and Searchlights in UK Airspace,
 - (xiii) CAP 738, Safeguarding of Aerodromes,
 - (xiv) CAP 748, Aircraft Fuelling and Fuel Installation Management,
 - (xv) CAP 760, Guidance on the Conduct of Hazard ID, Risk Assessment,
 - (xvi) CAP 772, Birdstrike Risk Management for Aerodromes, and
 - (xvii) CAP 78 1, Runway Rehabilitation,
- (h) annex 15, the requirements of CAP 032, UK Aeronautical Information Publication,

shall be met.]

Applicable requirements for Annex 4: Aeronautical Charts.

3. ..

Applicable Requirements for Annex 10: Aeronautical Telecommunications.

4. ..

Applicable Requirements for Annex 11: Air Traffic Services.

5. ..

Applicable Requirements for Annex 14: Aerodrome Licensing.

6. ..

Applicable Requirements for Annex 15: Aeronautical Information Services.

7. ..

Amendment to the applicable standards.

8. [The Committee] may, after consultation with the Director of Civil Aviation, at any time amend this Schedule by regulation provided that such amendment shall not have the effect of lessening the Bailiwick's compliance with the Annexes to the Chicago Convention.

NOTES

In Schedule 2,

paragraph 2 was substituted, and paragraph 3, paragraph 4, paragraph 5, paragraph 6 and paragraph 7 were repealed, by the Aviation (Bailiwick of Guernsey) Law, 2008 (Amendment of Schedule 2) Regulations, 2008, regulation 1, with effect from 1st February, 2009;

the words in square brackets in paragraph 8 were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016;

SCHEDULE 3

Section 23

EUROCONTROL

1. (1) Eurocontrol shall have the legal capacity of a body corporate; and anything which may be required or authorised by law to be done by or to Eurocontrol may be done by or to the Agency on behalf of Eurocontrol.

(2) Eurocontrol shall be entitled to the following exemptions and reliefs –

(a) it is not subject to income tax under the Income Tax (Guernsey) Law, 1975^y,

(b) exemption from duties (whether of customs or excise) and taxes on the importation of goods imported by or on behalf of the organisation for its official use in the Bailiwick, or on the importation of any publications of the organisation imported by it or on its behalf, such exemption to be subject to compliance with such conditions as the Chief Officer of Customs and Excise may prescribe for the protection of the revenue, and

(c) exemption from prohibitions and restrictions on importation or exportation in the case of goods imported or exported by the organisation for its official use and in the case of any publications of the organisation imported or exported by it.

^y Ordres en Conseil Vol. XXV, p. 124; there are amendments which are not material to this Law.

(3) The States may by Ordinance grant privileges and immunities to any premises of Eurocontrol that shall extend to the official archives of Eurocontrol, and to premises occupied by Eurocontrol wholly or mainly for the housing of its installations in the Bailiwick, in accordance with the Privileges and Immunities (Bailiwick of Guernsey) Law, 2004^z.

(4) Any Ordinance made under subparagraph (3) (except so far as it relates to execution or diligence) shall not preclude access to any premises or the inspection of any record or document where the Director-General of the Agency is given advance notice of the exercise of the power conferred by this subparagraph and the access or inspection is –

- (a) by an officer of police or other person acting in the execution of a warrant or other legal process,
- (b) by an officer of police having reason to believe that an offence has been or is being or is about to be committed on the premises.

(5) Without prejudice to the preceding provisions of this paragraph, the property and assets of Eurocontrol shall be immune from the exercise by any person of any right or power without the leave of a court to seize or otherwise interfere with such property or assets.

(6) No court or tribunal in the Bailiwick shall have jurisdiction in respect of any matter involving Eurocontrol and any of its officers or servants, being a matter which by virtue of any international agreement to which the United Kingdom is a party on behalf of the Bailiwick, is within the exclusive jurisdiction of the Administrative Tribunal of the International Labour Organisation.

^z Order in Council No. XII of 2005.

(7) For the purposes of subparagraph (6), a certificate of [the Committee] that any matter is or is not, as mentioned in that subparagraph, within the exclusive jurisdiction of the Administrative Tribunal of the International Labour Organisation shall be conclusive of what is certified.

(8) In this paragraph –

"the Agency" means the Air Traffic Services Agency comprised in Eurocontrol,

"Chief Officer of Customs and Excise" has the same meaning as in the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972^{aa},

"installations" means apparatus for locating, directing, affording navigational aid to, or otherwise communicating with, aircraft in flight, including apparatus for recording or processing material received or transmitted by such apparatus, and any other apparatus for use in connection with any such apparatus as aforesaid, and

"a record" includes (in addition to a record in writing) –

- (a) a disc, tape, sound-track or other device in which sounds or signals are embodied so as to be capable of being reproduced from it (with or without the aid of some other instrument),

^{aa} Ordres en Conseil Vol. XXIII, p. 573, there are amendments which are not material to this Law.

- (b) a film, tape or other device in which visual images are embodied so as to be capable of being reproduced from it (with or without the aid of some other instrument), and
- (c) a photograph.

2. (1) Subject to paragraph 1 and subparagraph (2), a court in any part of the Bailiwick shall have jurisdiction to hear and determine a claim against Eurocontrol for damages in respect of any wrongful act, neglect or default, notwithstanding that the act, neglect or default did not take place within the jurisdiction of the court or that Eurocontrol is not present within the jurisdiction of the court.

(2) A court shall not have jurisdiction by virtue of subparagraph (1) in respect of damage or injury sustained wholly within or over a country to which the provisions of this Law relating to Eurocontrol do not extend.

NOTE

In Schedule 3, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

SCHEDULE 4

Section 37

PATENT CLAIMS AGAINST AIRCRAFT NOT PROTECTED UNDER
CHICAGO CONVENTION

1. Where it is alleged by any person interested that an aircraft which is not an aircraft to which section 37 applies, and which is making a passage through or over the Bailiwick, infringes in itself or in any part of it any invention, design or model which is entitled to protection in the Bailiwick, it shall be lawful, subject to and in accordance with rules of court, to detain the aircraft until the owner thereof deposits or secures in respect of the alleged infringement a sum (in this Schedule referred to as "**the deposited sum**"), and thereupon the aircraft shall not during the continuance or in the course of the passage be subject to any lien, arrest, detention or prohibition (whether by order of a court or otherwise) in respect or on account of the alleged infringement.

2. The deposited sum shall be such sum as may be agreed between the parties interested or, in default of agreement, fixed by [the Committee] or some person duly authorised on its behalf; and payment thereof shall be made or secured to [the Committee] in such manner as it shall approve.

3. The deposited sum shall be dealt with by such tribunal and in accordance with such procedure as may be specified by rules of court, and such rules may provide generally for carrying this Schedule into effect.

4. For the purposes of this Schedule –

"**owner**" shall include the actual owner of an aircraft and any person claiming through or under him, and

"**passage**" shall include all reasonable landings and stoppages in the course or for the purpose of the passage.

NOTE

In Schedule 4, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

SCHEDULE 5

Section 149(4)(a)

THE WARSAW CONVENTION 1929

Part I: The English Text

CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO
INTERNATIONAL CARRIAGE BY AIR

CHAPTER I

SCOPE — DEFINITIONS

Article 1

1. This Convention applies to all international carriage of persons, baggage or goods performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.

2. For the purposes of this Convention the expression "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 transshipment, are situated either within the territories of two High Contracting Parties, or within the territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another Power, even though that Power is not a party to this Convention. A carriage without such an agreed stopping place between territories subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party is not deemed to be international for the purposes of this Convention.

3. A carriage to be performed by several successive air carriers is deemed, for the purposes of this Convention, 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.

Article 2

1. This Convention applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1.

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

CHAPTER II
DOCUMENTS OF CARRIAGE

Section 1 — Passenger Ticket

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 this 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 Convention. 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 Convention which exclude or limit his liability.

Section 2 — Baggage check

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 this 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 Convention. 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 the Convention which exclude or limit his liability.

Section 3 — Air Consignment Note

Article 5

1. Every carrier of goods has the right to require the consignor to make out and hand over to him a document called an "air consignment note"; every consignor has the right to require the carrier to accept this document.

2. The absence, irregularity or loss of this document does not affect the existence or the validity of the contract of carriage which shall, subject to the provisions of Article 9, be none the less governed by the rules of this Convention.

Article 6

1. The air consignment note shall be made out by the consignor in three

original parts and be handed over with the goods.

2. The first part shall be marked "for the carrier", and shall be signed by the consignor. The second part shall be marked "for the consignee"; it shall be signed by the consignor and by the carrier and shall accompany the goods. The third part shall be signed by the carrier and handed by him to the consignor after the goods have been accepted.

3. The carrier shall sign on acceptance of the goods.

4. The signature of the carrier may be stamped; that of the consignor may be printed or stamped.

5. If, at the request of the consignor, the carrier makes out the air consignment note, he shall be deemed, subject to proof to the contrary, to have done so on behalf of the consigner.

Article 7

The carrier of goods has the right to require the consignor to make out separate consignment notes when there is more than one package.

Article 8

The air consignment note 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

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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 goods,
- (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 goods,
- (j) the apparent condition of the goods 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 goods are sent for payment on delivery, the price of the goods, 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 consignment note,

- (o) the documents handed to the carrier to accompany the air consignment note,
- (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 this Convention.

Article 9

If the carrier accepts goods without an air consignment note having been made out, or if the air consignment note 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 Convention which exclude or limit his liability.

Article 10

1. The consignor is responsible for the correctness of the particulars and statements relating to the goods which he inserts in the air consignment note.

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.

Article 11

1. The air consignment note is *prima facie* evidence of the conclusion of the contract, of the receipt of the goods and of the conditions of carriage.

2. The statements in the air consignment note relating to the weight, dimensions and packing of the goods, as well as those relating to the number of

packages, are *prima facie* evidence of the facts stated; those relating to the quantity, volume and condition of the goods do not constitute evidence against the carrier except so far as they both have been, and are stated in the air consignment note to have been, checked by him in the presence of the consignor, or relate to the apparent condition of the goods.

Article 12

1. Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the goods by withdrawing them at the aerodrome of departure or destination, or by stopping them in the course of the journey on any landing, or by calling for them to be delivered at the place of destination or in the course of the journey to a person other than the consignee named in the air consignment note, or by requiring them to be returned to the aerodrome of departure. He must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.

2. If it is impossible to carry out the orders of the consignor the carrier must so inform him forthwith.

3. If the carrier obeys the orders of the consignor for the disposition of the goods without requiring the production of the part of the air consignment note delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air consignment note.

4. The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the consignee declines to accept the consignment note or the goods, or if he cannot be communicated with, the consignor resumes his right of disposition.

Article 13

1. Except in the circumstances set out in the preceding Article, the consignee is entitled, on arrival of the goods at the place of destination, to require the carrier to hand over to him the air consignment note and to deliver the goods to him, on payment of the charges due and on complying with the conditions of carriage set out in the air consignment note.

2. Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the goods arrive.

3. If the carrier admits the loss of the goods, or if the goods have not arrived at the expiration of seven days after the date on which they ought to have arrived, the consignee is entitled to put into force against the carrier the rights which flow from the contract of carriage.

Article 14

The consignor and the consignee can respectively enforce all the rights given them by Articles 12 and 13, each in his own name, whether he is acting in his own interest or in the interest of another, provided that he carries out the obligations imposed by the contract.

Article 15

1. Articles 12, 13 and 14 do not affect either the relations of the consignor or the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

2. The provisions of Articles 12, 13 and 14 can only be varied by express provision in the air consignment note.

Article 16

1. The consignor must furnish such information and attach to the air

consignment note such documents as are necessary to meet the formalities of customs, octroi or police before the goods can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier or his agents.

2. The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

CHAPTER III LIABILITY OF THE CARRIER

Article 17

The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

Article 18

1. The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any registered baggage or any goods, if the occurrence which caused the damage so sustained took place during the carriage by air.

2. The carriage by air within the meaning of the preceding paragraph comprises the period during which the baggage or goods are in charge of the carrier, whether in an aerodrome or on board an aircraft, or, in the case of a landing outside an aerodrome, in any place whatsoever.

3. The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If, however, such a carriage

takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

Article 19

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or goods.

Article 20

1. The carrier is not liable if he proves that he and his servants or agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

2. In the carriage of goods 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.

Article 21

If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the Court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

Article 22

1. In the carriage of passengers the liability of the carrier for each passenger is limited to the sum of 125,000 francs. Where, in accordance with the law of the Court seised of the case, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed 125,000 francs. 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 goods, the liability of the carrier is limited to a sum of 250 francs per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery 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 that sum is greater than the actual value to the consignor at delivery.

3. As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 5,000 francs per passenger.

4. The sums mentioned above shall be deemed to refer to the French franc consisting of 65 ½ milligrams gold of millesimal fineness 900. These sums may be converted into any national currency in round figures.

Article 23

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

Article 24

1. In the cases covered by Articles 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Convention.

2. In the cases covered by Article 17 the provisions of the preceding paragraph also apply, without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights.

Article 25

1. The carrier shall not be entitled to avail himself of the provisions of this Convention which exclude or limit his liability, if the damage is caused by his wilful misconduct or by such default on his part as, in accordance with the law of the Court seised of the case, is considered to be equivalent to wilful misconduct.

2. Similarly the carrier shall not be entitled to avail himself of the said provisions, if the damage is caused as aforesaid by any agent of the carrier acting within the scope of his employment.

Article 26

1. Receipt by the person entitled to delivery of baggage or goods without complaint is *prima facie* evidence that the same have been delivered in good condition and in accordance with the document of carriage.

2. In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within three days from the date of receipt in the case of baggage and seven days from the date of receipt in the case of goods. In the case of delay the complaint must be made at the latest within fourteen days from the date on which the baggage or goods have been placed at his disposal.

3. Every complaint must be made in writing upon the document of carriage or by separate notice in writing despatched within the times aforesaid.

4. Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

Article 27

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this Convention against those legally representing his

estate.

Article 28

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the Court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the contract has been made or before the Court having jurisdiction at the place of destination.

2. Questions of procedure shall be governed by the law of the Court seised of the case.

Article 29

1. The right to damages shall be extinguished if an action is not brought within 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. The method of calculating the period of limitation shall be determined by the law of the Court seised of the case.

Article 30

1. In the case of carriage to be performed by various successive carriers and falling within the definition set out in the third paragraph of Article 1, each carrier who accepts passengers, baggage or goods is subjected to the rules set out in this Convention, and is deemed to be one of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision.

2. In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage

during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

3. As regards baggage or goods, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier who performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

CHAPTER IV PROVISIONS RELATING TO COMBINED CARRIAGE

Article 31

1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.

2. Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention are observed as regards the carriage by air.

CHAPTER V GENERAL AND FINAL PROVISIONS

Article 32

Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless for the carriage of

goods arbitration clauses are allowed, subject to this Convention, if the arbitration is to take place within one of the jurisdictions referred to in the first paragraph of Article 28.

Article 33

Nothing contained in this Convention shall prevent the carrier either from refusing to enter into any contract of carriage, or from making regulations which do not conflict with the provisions of this Convention.

Article 34

This Convention does not apply to international carriage by air performed by way of experimental trial by air navigation undertakings with the view to the establishment of a regular line of air navigation, nor does it apply to carriage performed in extraordinary circumstances outside the normal scope of an air carrier's business.

Article 35

The expression "days" when used in this Convention means current days not working days.

(Articles 36, 37, 38, 39, 40 and 41 and the concluding words of the Convention are not reproduced. They deal with the coming into force of the Convention.)

ADDITIONAL PROTOCOL (with reference to Article 2)

The High Contracting Parties reserve to themselves the right to declare at the time of ratification or of accession that the first paragraph of Article 2 of this Convention shall not apply to international carriage by air performed directly by the State, its colonies, protectorates or mandated territories or by any other territory under its sovereignty, suzerainty or authority.

Part II: The French Text

CONVENTION POUR L'UNIFICATION DE CERTAINES REGLES RELATIVES
AU TRANSPORT AERIEN INTERNATIONAL

CHAPITRE IER
OBJET — DEFINITIONS

ARTICLE 1

1. La présente Convention s'applique à tout transport international de personnes, bagages ou marchandises, effectué par aéronef contre rémunération. Elle s'applique également aux transports gratuits effectués par aéronef par une entreprise de transports aériens.

2. Est qualifié transport international, au sens de la présente Convention, tout transport dans lequel, d'après les stipulations des parties le point de départ et le point de destination, qu'il y ait ou non interruption de transport ou transbordement, sont situés soit sur le territoire de deux Hautes Parties Contractantes, soit sur le territoire d'une seule Haute Partie Contractante, si une escale est prévue dans un territoire soumis à la souveraineté, à la suzeraineté, au mandat ou à l'autorité d'une autre Puissance même non Contractante. Le transport sans une telle escale entre les territoires soumis à la souveraineté, à la suzeraineté, au mandat ou à l'autorité de la même Haute Partie Contractante n'est pas considéré comme international au sens de la présente Convention.

3. Le transport à exécuter par plusieurs transporteurs par air successifs est censé constituer pour l'application de cette Convention un transport unique lorsqu'il a été envisagé par les parties comme une seule opération, qu'il ait été conclu sous la forme d'un seul contrat ou d'une série de contrats et il ne perd pas son caractère international par le fait qu'un seul contrat ou une série de contrats doivent être exécutés intégralement dans un territoire soumis à la souveraineté, à la suzeraineté, au mandat ou à l'autorité d'une même Haute Partie Contractante.

ARTICLE 2

1. La Convention s'applique aux transports effectués par l'État ou les autres personnes juridiques de droit public, dans les conditions prévues à l'article premier.

2. Sont exceptés de l'application de la présente Convention les transports effectués sous l'empire de conventions postales internationales.

CHAPITRE II

TITRE DE TRANSPORT

Section I — Billet de passage

ARTICLE 3

1. Dans le transport de voyageurs, le transporteur est tenu de délivrer un billet de passage qui doit contenir les mentions suivantes:

- (a) le lieu et la date de l'émission,
- (b) les points de départ et de destination,
- (c) les arrêts prévus, sous réserve de la faculté pour le transporteur de stipuler qu'il pourra les modifier en cas de nécessité et sans que cette modification puisse faire perdre au transport son caractère international,
- (d) le nom et l'adresse du ou des transporteurs,
- (e) l'indication que le transport est soumis au régime de la responsabilité établi par la présente Convention.

2. L'absence, l'irrégularité ou la perte du billet n'affecte ni l'existence, ni la validité du contrat de transport, qui n'en sera pas moins soumis aux règles de la présente Convention. Toutefois, si le transporteur accepte le voyageur sans qu'il ait été délivré un billet de passage, il n'aura pas le droit de se prévaloir des dispositions de cette Convention qui excluent ou limitent sa responsabilité.

Section II — Bulletin de bagages

ARTICLE 4

1. Dans le transport de bagages autres que les menus objets personnels dont le voyageur conserve la garde, le transporteur est tenu de délivrer un bulletin de bagages.

2. Le bulletin de bagages est établi en deux exemplaires, l'un pour le voyageur, l'autre pour le transporteur.

3. Il doit contenir les mentions suivantes:

- (a) le lieu et la date de l'émission,
- (b) les points de départ et de destination,
- (c) le nom et l'adresse du ou des transporteurs,
- (d) le numéro du billet de passage,
- (e) l'indication que la livraison des bagages est faite au porteur du bulletin,
- (f) le nombre et le poids des colis,

- (g) le montant de la valeur déclarée conformément à l'article 22, alinéa 2,
- (h) l'indication que le transport est soumis au régime de la responsabilité établi par la présente Convention.

4. L'absence, l'irrégularité ou la perte du bulletin n'affecte ni l'existence, ni la validité du contrat de transport qui n'en sera pas moins soumis aux règles de la présente Convention. Toutefois, si le transporteur accepte les bagages sans qu'il ait été délivré un bulletin ou si le bulletin ne contient pas les mentions indiquées sous les lettres d), f), h), le transporteur n'aura pas le droit de se prévaloir des dispositions de cette Convention qui excluent ou limitent sa responsabilité.

Section III — Lettre de transport aérien

ARTICLE 5

1. Tout transporteur de marchandises a le droit de demander à l'expéditeur l'établissement et la remise d'un titre appelé: lettre de transport aérien ; tout expéditeur a le droit de demander au transporteur l'acceptation de ce document.

2. Toutefois, l'absence, l'irrégularité ou la perte de ce titre n'affecte ni l'existence, ni la validité du contrat de transport qui n'en sera pas moins soumis aux règles de la présente Convention, sous réserve des dispositions de l'article 9.

ARTICLE 6

1. La lettre de transport aérien est établie par l'expéditeur en trois exemplaires originaux et remise avec la marchandise.

2. Le premier exemplaire porte la mention pour le transporteur ; il est signé par l'expéditeur. Le deuxième exemplaire porte la mention pour le destinataire ; il est signé par l'expéditeur et le transporteur et il accompagne la marchandise. Le

troisième exemplaire est signé par le transporteur et remis par lui à l'expéditeur après acceptation de la marchandise.

3. La signature du transporteur doit être apposée dès l'acceptation de la marchandise.

4. La signature du transporteur peut être remplacée par un timbre; celle de l'expéditeur peut être imprimée ou remplacée par un timbre.

5. Si, à la demande de l'expéditeur, le transporteur établit la lettre de transport aérien, il est considéré jusqu'à preuve contraire, comme agissant pour le compte de l'expéditeur.

ARTICLE 7

Le transporteur de marchandises a le droit de demander à l'expéditeur l'établissement de lettres de transport aérien différentes lorsqu'il y a plusieurs colis.

ARTICLE 8

La lettre de transport aérien doit contenir les mentions suivantes:

- (a) le lieu où le document a été créé et la date à laquelle il a été établi,
- (b) les points de départ et de destination,
- (c) les arrêts prévus, sous réserve de la faculté, pour le transporteur, de stipuler qu'il pourra les modifier en cas de nécessité et sans que cette modification puisse faire perdre au transport son caractère international,
- (d) le nom et l'adresse de l'expéditeur,

- (e) le nom et l'adresse du premier transporteur,
- (f) le nom et l'adresse du destinataire, s'il y a lieu,
- (g) la nature de la marchandise,
- (h) le nombre, le mode d'emballage, les marques particulières ou les numéros des colis,
- (i) le poids, la quantité, le volume ou les dimensions de la marchandise,
- (j) l'état apparent de la marchandise et de l'emballage,
- (k) le prix du transport, s'il est stipulé, la date et le lieu de paiement et la personne qui doit payer,
- (l) si l'envoi est fait contre remboursement, le prix des marchandises et, éventuellement, le montant des frais,
- (m) le montant de la valeur déclarée conformément à l'article 22, alinéa 2,
- (n) le nombre d'exemplaires de la lettre de transport aérien,
- (o) les documents transmis au transporteur pour accompagner la lettre de transport aérien,
- (p) le délai de transport et l'indication sommaire de la voie à suivre (*via*) s'ils ont été stipulés,

- (q) l'indication que le transport est soumis au régime de la responsabilité établi par la présente Convention.

ARTICLE 9

Si le transporteur accepte des marchandises sans qu'il ait été établi une lettre de transport aérien, ou si celle-ci ne contient pas toutes les mentions indiquées par l'article 8 [a) à i) inclusivement et q)], le transporteur n'aura pas le droit de se prévaloir des dispositions de cette Convention qui excluent ou limitent sa responsabilité.

ARTICLE 10

1. L'expéditeur est responsable de l'exactitude des indications et déclarations concernant la marchandise qu'il inscrit dans la lettre de transport aérien.

2. Il supportera la responsabilité de tout dommage subi par le transporteur ou toute autre personne à raison de ses indications et déclarations irrégulières, inexactes ou incomplètes.

ARTICLE 11

1. La lettre de transport aérien fait foi, jusqu'à preuve contraire, de la conclusion du contrat, de la réception de la marchandise et des conditions du transport.

2. Les énonciations de la lettre de transport aérien, relatives au poids, aux dimensions et à l'emballage de la marchandise ainsi qu'au nombre des colis font foi jusqu'à preuve contraire; celles relatives à la quantité, au volume et à l'état de la marchandise ne font preuve contre le transporteur qu'autant que la vérification en a été faite par lui en présence de l'expéditeur, et constatée sur la lettre de transport aérien, ou qu'il s'agit d'énonciations relatives à l'état apparent de la marchandise.

ARTICLE 12

1. L'expéditeur a le droit, sous la condition d'exécuter toutes les obligations résultant du contrat de transport, de disposer de la marchandise, soit en la retirant à l'aérodrome de départ ou de destination, soit en l'arrêtant en cours de route lors d'un atterrissage, soit en la faisant délivrer au lieu de destination ou en cours de route à une personne autre que le destinataire indiqué sur la lettre de transport aérien, soit en demandant son retour à l'aérodrome de départ pour autant que l'exercice de ce droit ne porte préjudice ni au transporteur, ni aux autres expéditeurs et avec l'obligation de rembourser les frais qui en résultent.

2. Dans le cas où l'exécution des ordres de l'expéditeur est impossible, le transporteur doit l'en aviser immédiatement.

3. Si le transporteur se conforme aux ordres de disposition de l'expéditeur, sans exiger la production de l'exemplaire de la lettre de transport aérien délivré à celui-ci, il sera responsable sauf son recours contre l'expéditeur, du préjudice qui pourrait être causé par ce fait à celui qui est régulièrement en possession de la lettre de transport aérien.

4. Le droit de l'expéditeur cesse au moment où celui du destinataire commence conformément à l'article 13 ci-dessous. Toutefois, si le destinataire refuse la lettre de transport ou la marchandise, ou s'il ne peut être atteint, l'expéditeur reprend son droit de disposition.

ARTICLE 13

1. Sauf dans les cas indiqués à l'article précédent, le destinataire a le droit, dès l'arrivée de la marchandise au point de destination, de demander au transporteur de lui remettre la lettre transport aérien et de lui livrer la marchandise contre le paiement du montant des créances et contre l'exécution des conditions de transport indiquées dans la lettre de transport aérien.

2. Sauf stipulation contraire, le transporteur doit aviser le destinataire dès l'arrivée de la marchandise.

3. Si la perte de la marchandise est reconnue par le transporteur ou si, à l'expiration d'un délai de sept jours après qu'elle aurait dû arriver, la marchandise n'est pas arrivée, le destinataire est autorisé à faire valoir vis-à-vis du transporteur les droits résultant du contrat de transport.

ARTICLE 14

L'expéditeur et le destinataire peuvent faire valoir tous les droits qui leur sont respectivement conférés par les articles 12 et 13, chacun en son propre nom, qu'il agisse dans son propre intérêt ou dans l'intérêt d'autrui, à condition d'exécuter les obligations que le contrat impose.

ARTICLE 15

1. Les articles 12, 13 et 14 ne portent aucun préjudice ni aux rapports de l'expéditeur et du destinataire entre eux, ni aux rapports des tiers dont les droits proviennent, soit de l'expéditeur, soit du destinataire.

2. Toute clause dérogeant aux stipulations des articles 12, 13 et 14 doit être inscrite dans la lettre de transport aérien.

ARTICLE 16

1. L'expéditeur est tenu de fournir les renseignements et de joindre à la lettre de transport aérien les documents qui, avant la remise de la marchandise au destinataire, sont nécessaires à l'accomplissement des formalités de douane, d'octroi ou de police. L'expéditeur est responsable envers le transporteur de tous dommages qui pourraient résulter de l'absence, de l'insuffisance ou de l'irrégularité de ces renseignements et pièces, sauf le cas de faute de la part du transporteur ou de ses préposés.

2. Le transporteur n'est pas tenu d'examiner si ces renseignements et documents sont exacts ou suffisants.

CHAPITRE III RESPONSABILITE DU TRANSPORTEUR

ARTICLE 17

Le transporteur est responsable du dommage survenu en cas de mort, de blessure ou de toute autre lésion corporelle subie par un voyageur lorsque l'accident qui a causé le dommage s'est produit à bord de l'aéronef ou au cours de toutes opérations d'embarquement et de débarquement.

ARTICLE 18

1. Le transporteur est responsable du dommage survenu en cas de destruction, perte ou avarie de bagages enregistrés ou de marchandises lorsque l'événement qui a causé le dommage s'est produit pendant le transport aérien.

2. Le transport aérien, au sens de l'alinéa précédent, comprend la période pendant laquelle les bagages ou marchandises se trouvent sous la garde du transporteur que ce soit dans un aéroport ou à bord d'un aéronef, ou dans un lieu quelconque, en cas d'atterrissage en dehors d'un aéroport.

3. La période du transport aérien ne couvre aucun transport terrestre, maritime ou fluvial effectué en dehors d'un aéroport. Toutefois, lorsqu'un tel transport est effectué dans l'exécution du contrat de transport aérien en vue du chargement, de la livraison ou du transbordement, tout dommage est présumé, sauf preuve contraire, résulter d'un événement survenu pendant le transport aérien.

ARTICLE 19

Le transporteur est responsable du dommage résultant d'un retard dans le transport aérien de voyageurs, bagages ou marchandises.

ARTICLE 20

1. Le transporteur n'est pas responsable s'il prouve que lui et ses préposés ont pris toutes les mesures nécessaires pour éviter le dommage ou qu'il leur était impossible de les prendre.

2. Dans les transports de marchandises et de bagages, le transporteur n'est pas responsable, s'il prouve que le dommage provient d'une faute de pilotage, de conduite de l'aéronef ou de navigation, et que, à tous autres égards, lui et ses préposés ont pris toutes les mesures nécessaires pour éviter le dommage.

ARTICLE 21

1. Dans le cas où le transporteur fait la preuve que la faute de la personne lésée a causé le dommage ou y a contribué, le tribunal pourra, conformément aux dispositions de sa propre loi, écarter ou atténuer la responsabilité du transporteur.

ARTICLE 22

1. Dans le transport des personnes, la responsabilité du transporteur envers chaque voyageur est limitée à la somme de cent vingt cinq mille francs. Dans le cas où, d'après la loi du tribunal saisi, l'indemnité peut être fixée sous forme de rente, le capital de la rente ne peut dépasser cette limite. Toutefois, par une convention spéciale avec le transporteur, le voyageur pourra fixer une limite de responsabilité plus élevée.

2. Dans le transport de bagages enregistrés et de marchandises, la responsabilité du transporteur est limitée à la somme de deux cent cinquante francs par kilogramme, sauf déclaration spéciale d'intérêt à la livraison faite par l'expéditeur au moment de la remise du colis au transporteur et moyennant le paiement d'une taxe supplémentaire éventuelle. Dans ce cas, le transporteur sera tenu de payer jusqu'à concurrence de la somme déclarée, à moins qu'il ne prouve qu'elle est supérieure à l'intérêt réel de l'expéditeur à la livraison.

3. En ce qui concerne les objets dont le voyageur conserve la garde, la responsabilité du transporteur est limitée à cinq mille francs par voyageur.

4. Les sommes indiquées ci-dessus sont considérées comme se rapportant au franc français constitué par soixante-cinq et demi milligrammes d'or au titre de neuf cents millièmes de fin. Elles pourront être converties dans chaque monnaie nationale en chiffres ronds.

ARTICLE 23

Toute clause tendant à exonérer le transporteur de sa responsabilité ou à établir une limite inférieure à celle qui est fixée dans la présente Convention est nulle et de nul effet, mais la nullité de cette clause n'entraîne pas la nullité du contrat qui reste soumis aux dispositions de la présente Convention.

ARTICLE 24

1. Dans les cas prévus aux articles 18 et 19 toute action en responsabilité, à quelque titre que ce soit, ne peut être exercée que dans les conditions et limites prévues par la présente Convention.

2. Dans les cas prévus à l'article 17, s'appliquent également les dispositions de l'alinéa précédent, sans préjudice de la détermination des personnes qui ont le droit d'agir et de leurs droits respectifs.

ARTICLE 25

1. Le transporteur n'aura pas le droit de se prévaloir des dispositions de la présente Convention qui excluent ou limitent sa responsabilité, si le dommage provient de son dol ou d'une faute qui, d'après la loi du tribunal saisi, est considérée comme équivalente au dol.

2. Ce droit lui sera également refusé si le dommage a été causé dans les

mêmes conditions par un de ses préposés agissant dans l'exercice de ses fonctions.

ARTICLE 26

1. La réception des bagages et marchandises sans protestation par le destinataire constituera présomption, sauf preuve contraire, que les marchandises ont été livrées en bon état et conformément au titre de transport.

2. En cas d'avarie le destinataire doit adresser au transporteur une protestation immédiatement après la découverte de l'avarie et, au plus tard, dans un délai de trois jours pour les bagages et de sept jours pour les marchandises à dater de leur réception. En cas de retard la protestation devra être faite au plus tard dans les quatorze jours à dater du jour où le bagage ou la marchandise auront été mis à sa disposition.

3. Toute protestation doit être faite par réserve inscrite sur le titre de transport ou par un autre écrit expédié dans le délai prévu pour cette protestation.

4. À défaut de protestation dans les délais prévus, toutes actions contre le transporteur sont irrecevables, sauf le cas de fraude de celui-ci.

ARTICLE 27

En cas de décès du débiteur, l'action en responsabilité, dans les limites prévues par la présente Convention, s'exerce contre ses ayants droit.

ARTICLE 28

1. L'action en responsabilité devra être portée, au choix du demandeur, dans le territoire d'une des Hautes Parties Contractantes, soit devant le tribunal du domicile du transporteur, du siège principal de son exploitation ou du lieu où il possède un établissement par le soin duquel le contrat a été conclu, soit devant le tribunal du lieu de destination.

2. La procédure sera réglée par la loi du tribunal saisi.

ARTICLE 29

1. L'action en responsabilité doit être intentée, sous peine de déchéance, dans le délai de deux ans à compter de l'arrivée à destination ou du jour où l'aéronef aurait dû arriver, ou de l'arrêt du transport.

2. Le mode du calcul du délai est déterminé par la loi du tribunal saisi.

ARTICLE 30

1. Dans les cas de transport régis par la définition du troisième alinéa de l'article premier, à exécuter par divers transporteurs successifs, chaque transporteur acceptant des voyageurs, des bagages ou des marchandises est soumis aux règles établies par cette Convention et est censé être une des parties contractantes du contrat de transport, pour autant que ce contrat ait trait à la partie du transport effectuée sous son contrôle.

2. Au cas d'un tel transport, le voyageur ou ses ayants droit ne pourront recourir que contre le transporteur ayant effectué le transport au cours duquel l'accident ou le retard s'est produit, sauf dans le cas où, par stipulation expresse, le premier transporteur aura assuré la responsabilité pour tout le voyage.

3. S'il s'agit de bagages ou de marchandises, l'expéditeur aura recours contre le premier transporteur et le destinataire qui a le droit à la délivrance contre le dernier, et l'un et l'autre pourront, en outre, agir contre le transporteur ayant effectué le transport au cours duquel la destruction, la perte, l'avarie ou le retard se sont produits. Ces transporteurs seront solidairement responsables envers l'expéditeur et le destinataire.

CHAPITRE IV

DISPOSITIONS RELATIVES AUX TRANSPORTS COMBINÉS

ARTICLE 31

1. Dans le cas de transports combinés effectués en partie par air et en partie par tout autre moyen de transport, les stipulations de la présente Convention ne s'appliquent qu'au transport aérien et si celui-ci répond aux conditions de l'article premier.

2. Rien dans la présente Convention n'empêche les parties, dans le cas de transports combinés, d'insérer dans le titre de transport aérien des conditions relatives à d'autres modes de transport, à condition que les stipulations de la présente Convention soient respectées en ce qui concerne le transport par air

CHAPITRE V

DISPOSITIONS GENERALES ET FINALES

ARTICLE 32

Sont nulles toutes clauses du contrat de transport et toutes conventions particulières antérieures au dommage par lesquelles les parties dérogeraient aux règles de la présente Convention soit par une détermination de la loi applicable, soit par une modification des règles de compétence. Toutefois, dans le transport des marchandises, les clauses d'arbitrage sont admises, dans les limites de la présente Convention, lorsque l'arbitrage doit s'effectuer dans les lieux de compétence des tribunaux prévus à l'article 28, alinéa 1.

ARTICLE 33

Rien dans la présente Convention ne peut empêcher un transporteur de refuser la conclusion d'un contrat de transport ou de formuler des règlements qui ne sont pas en contradiction avec les dispositions de la présente Convention.

ARTICLE 34

La présente Convention n'est applicable ni aux transports aériens

internationaux exécutés à titre de premiers essais par des entreprises de navigation aérienne en vue de l'établissement de lignes régulières de navigation aérienne ni aux transports effectués dans des circonstances extraordinaires en dehors de toute opération normale de l'exploitation aérienne.

ARTICLE 35

Lorsque dans la présente Convention il est question de jours, il s'agit de jours courants et non de jours ouvrables.

Protocole additionnel – Ad Article 2

Les Hautes Parties Contractantes se réservent le droit de déclarer au moment de la ratification ou de l'adhésion que l'article 2, alinéa premier de la présente Convention, ne s'appliquera pas aux transports internationaux aériens effectués directement par l'État, ses colonies, protectorats, territoires sous mandat ou tout autre territoire sous sa souveraineté, sa suzeraineté ou son autorité.

THE WARSAW CONVENTION 1929 AS AMENDED BY ADDITIONAL
PROTOCOL NO. 1 OF MONTREAL

1. The provisions of the Warsaw/MAP1 Convention are the same as the provisions of the Warsaw Convention set out in Schedule 5 save that –

(a) references in the Warsaw Convention to 'this Convention' and cognate expressions, shall for the purpose of this Schedule be construed as references to the Warsaw Convention as amended by Additional Protocol No. 1 of Montreal, 1975, and

(b) Article 22 shall be replaced with the following –

"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 high 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 monetary units per passenger with respect to paragraph 1 of Article 22; 250 monetary units per kilogramme with respect to paragraph 2 of Article 22; and 5,000 monetary units per passenger with respect to paragraph 3 of Article 22. This monetary unit corresponds to sixty-five and a half

milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into the national currency concerned in round figures. The conversion of these sums into national currency shall be made according to the law of the State concerned."

THE WARSAW CONVENTION WITH THE AMENDMENTS MADE IN IT BY
THE HAGUE PROTOCOL:

Part I: The English Text

CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO
INTERNATIONAL CARRIAGE BY AIR

CHAPTER I

Scope — Definitions

Article 1

(1) This Convention applies to all international carriage of persons, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.

(2) For the purposes of this Convention, the expression international carriage means any carriage in which, according to the agreement between 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 High Contracting Parties or within the territory of a single High Contracting Party if there is an agreed stopping place within the territory of another State, even if that State is not a High Contracting Party. Carriage between two points within the territory of a single High Contracting Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention.

(3) Carriage to be performed by several successive air carriers is deemed, for the purposes of this Convention, 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 the territory of the same State.

Article 2

(1) This Convention applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1.

(2) This Convention shall not apply to carriage of mail and postal packages.

CHAPTER II

Documents of Carriage

Section 1 — Passenger Ticket

Article 3

(1) In respect of the carriage of passengers a ticket shall be delivered containing

- (a) an indication of the places of departure and destination,
- (b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place,
- (c) a notice to the effect that, if the passenger's journey involves an ultimate destination or stop in a country other than the country of departure, the Warsaw

Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers for death or personal injury and in respect of loss of or damage to baggage.

(2) The passenger ticket shall constitute prima facie evidence of the conclusion and conditions of the contract of carriage. 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 Convention. Nevertheless, if, with the consent of the carrier, the passenger embarks without a passenger ticket having been delivered, or if the ticket does not include the notice required by paragraph (1) (c) of this Article, the carrier shall not be entitled to avail himself of the provisions of Article 22.

Section 2 — Baggage Check

Article 4

(1) In respect of the carriage of registered baggage, a baggage check shall be delivered, which, unless combined with or incorporated in a passenger ticket which complies with the provisions of Article 3, paragraph (1), shall contain:

- (a) an indication of the places of departure and destination,
- (b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place,
- (c) a notice to the effect that, if the carriage involves an ultimate destination or stop in a country other than the

Consolidated text

country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to baggage.

(2) The baggage check shall constitute prima facie evidence of the registration of the baggage and of the conditions of the contract of carriage. The absence, irregularity or loss of the baggage check does not affect the existence of the validity of the contract of carriage which shall, none the less, be subject to the rules of this convention. Nevertheless, if the carrier takes charge of the baggage without a baggage check having been delivered or if the baggage check (unless combined with or incorporated in the passenger ticket which complies with the provisions of Article 3, paragraph (1) (c)) does not include the notice required by paragraph (1) (c) of this Article, he shall not be entitled to avail himself of the provisions of Article 22, paragraph (2).

Section 3 — Air Waybill

Article 5

(1) Every carrier of cargo has the right to require the consignor to make out and hand over to him a document called an "air waybill"; every consignor has the right to require the carrier to accept this document.

(2) The absence, irregularity or loss of this document does not affect the existence or the validity of the contract of carriage which shall, subject to the provisions of Article 9, be none the less governed by the rules of this Convention.

Article 6

(1) The air waybill shall be made out by the consignor in three original parts and be handed over with the cargo.

(2) The first part shall be marked "for the carrier", and shall be signed by the consignor. The second part shall be marked "for the consignee"; it shall be signed by the consignor and by the carrier and shall accompany the cargo. The third part shall be signed by the carrier and handed by him to the consignor after the cargo has been accepted.

(3) The carrier shall sign prior to the loading of the cargo on board the aircraft.

(4) The signature of the carrier may be stamped; that of the consignor may be printed or stamped.

(5) If, at the request of the consignor, the carrier makes out the air waybill, he shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

Article 7

The carrier of cargo has the right to require the consignor to make out separate waybills when there is more than one package.

Article 8

The air waybill shall contain:

- (a) an indication of the places of departure and destination,
- (b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place,

- (c) a notice to the consignor to the effect that, if the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to cargo.

Article 9

If, with the consent of the carrier, cargo is loaded on board the aircraft without an air waybill having been made out, or if the air waybill does not include the notice required by Article 8, paragraph (c), the carrier shall not be entitled to avail himself of the provisions of Article 22, paragraph (2).

Article 10

(1) The consignor is responsible for the correctness of the particulars and statements relating to the cargo which he inserts in the air waybill.

(2) The consignor shall indemnify the carrier against all damage suffered by him, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor.

Article 11

(1) The air waybill is prima facie evidence of the conclusion of the contract, of the receipt of the cargo and of the conditions of carriage.

(2) The statements in the air waybill relating to the weight, dimensions and packing of the cargo, as well as those relating to the number of packages, are prima facie evidence of the facts stated; those relating to the quantity, volume and condition of the cargo do not constitute evidence against the carrier except so far as they both have been, and are stated in the air waybill to have been,

checked by him in the presence of the consignor, or relate to the apparent condition of the cargo.

Article 12

(1) Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the aerodrome of departure or destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee named in the air waybill, or by requiring it to be returned to the aerodrome of departure. He must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.

(2) If it is impossible to carry out the orders of the consignor the carrier must so inform him forthwith.

(3) If the carrier obeys the orders of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill.

(4) The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the consignee declines to accept the waybill or the cargo, or if he cannot be communicated with, the consignor resumes his right of disposition.

Article 13

(1) Except in the circumstances set out in the preceding Article, the consignee is entitled, on arrival of the cargo at the place of destination, to require

the carrier to hand over to him the air waybill and to deliver the cargo to him, on payment of the charges due and on complying with the conditions of carriage set out in the air waybill.

(2) Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives.

(3) If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of seven days after the date on which it ought to have arrived, the consignee is entitled to put into force against the carrier the rights which flow from the contract of carriage.

Article 14

The consignor and the consignee can respectively enforce all the rights given them by Articles 12 and 13, each in his own name, whether he is acting in his own interest or in the interest of another, provided that he carries out the obligations imposed by the contract.

Article 15

(1) Articles 12, 13 and 14 do not affect either the relations of the consignor or the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

(2) The provisions of Articles 12, 13 and 14 can only be varied by express provision in the air waybill.

(3) Nothing in this Convention prevents the issue of a negotiable air waybill.

Article 16

(1) The consignor must furnish such information and attach to the

air waybill such documents as are necessary to meet the formalities of customs, octroi or police before the cargo can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier or his servants or agents.

(2) The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

CHAPTER III

Liability of the Carrier

Article 17

The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

Article 18

(1) The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any registered baggage or any cargo, if the occurrence which caused the damage so sustained took place during the carriage by air.

(2) The carriage by air within the meaning of the preceding paragraph comprises the period during which the baggage or cargo is in charge of the carrier, whether in an aerodrome or on board an aircraft, or, in the case of a landing outside an aerodrome, in any place whatsoever.

(3) The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If, however,

such a carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

Article 19

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo.

Article 20

The carrier is not liable if he proves that he and his servants or agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

Article 21

If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

Article 22

(1) In the carriage of persons the liability of the carrier for each passenger is limited to the sum of two hundred and fifty thousand francs. Where, in accordance with the law of the court seised of the case, damages may be awarded in the form of periodical payments the equivalent capital value of the said payments shall not exceed two hundred and fifty thousand francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

(2)

(a) In the carriage of registered baggage and of cargo, the liability of the carrier is limited to a sum of two hundred and fifty francs per kilogramme, unless the

passenger or 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 that sum is greater than the passenger's or consignor's actual interest in delivery at destination.

- (b) In the case of loss, damage or delay of part of registered baggage or cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the loss, damage or delay of a part of the registered baggage or cargo, or of an object contained therein, affects the value of other packages covered by the same baggage check or the same air waybill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

(3) As regards objects of which the passenger takes charge himself the liability of the carrier is limited to five thousand francs per passenger.

(4) The limits prescribed in this Article shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the

date of the occurrence causing the damage, or before the commencement of the action, if that is later.

(5) The sums mentioned in francs in this Article shall be deemed to refer to a currency unit consisting of 65 ½ milligrams of gold of millesimal fineness 900. These sums may be converted into national currencies in round figures. Conversion of the sums into national currencies other than gold shall, in case of judicial proceedings, be made according to the gold value of such currencies at the date of the judgment.

Article 23

(1) Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

(2) Paragraph (1) of this Article shall not apply to provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried.

Article 24

(1) In the case covered by Articles 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Convention.

(2) In the cases covered by Article 17 the provisions of the preceding paragraph also apply, without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights.

Article 25

The limits of liability specified in Article 22 shall not apply, if it is proved that

the damage resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that he was acting within the scope of his employment.

Article 25A

(1) If an action is brought against a servant or agent of the carrier arising out of damage to which this Convention relates, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the limits of liability which that carrier himself is entitled to invoke under Article 22.

(2) The aggregate of the amounts recoverable from the carrier, his servants and agents, in that case, shall not exceed the said limits.

(3) The provisions of paragraphs (1) and (2) of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Article 26

(1) Receipt by the person entitled to delivery of baggage or cargo without complaint is prima facie evidence that the same has been delivered in good condition and in accordance with the document of carriage.

(2) In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his disposal.

(3) Every complaint must be made in writing upon the document of carriage or by separate notice in writing despatched within the times aforesaid.

(4) Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

Article 27

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this Convention against those legally representing his estate.

Article 28

(1) An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the contract has been made or before the court having jurisdiction at the place of destination.

(2) Questions of procedure shall be governed by the law of the court seised of the case.

Article 29

(1) The right to damages shall be extinguished if an action is not brought within 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) The method of calculating the period of limitation shall be determined by the law of the court seised of the case.

Article 30

(1) In the case of carriage to be performed by various successive carriers and falling within the definition set out in the third paragraph of Article 1, each carrier who accepts passengers, baggage or cargo is subjected to the rules set out in this Convention, and is deemed to be one of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision.

(2) In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

(3) As regards baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier who performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

CHAPTER IV

Provisions relating to Combined Carriage

Article 31

(1) In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.

(2) Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention

are observed as regards the carriage by air.

CHAPTER V

General and Final Provisions

Article 32

Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless for the carriage of cargo arbitration clauses are allowed, subject to this Convention, if the arbitration is to take place within one of the jurisdictions referred to in the first paragraph of Article 28.

Article 33

Nothing contained in this Convention shall prevent the carrier either from refusing to enter into any contract of carriage, or from making regulations which do not conflict with the provisions of this Convention.

Article 34

The provisions of Articles 3 to 9 inclusive relating to documents of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of an air carrier's business.

Article 35

The expression "days" when used in this Convention means current days not working days.

Article 36

The Convention is drawn up in French in a single copy which shall remain deposited in the archives of the Ministry for Foreign Affairs of Poland and of which

one duly certified copy shall be sent by the Polish Government to the Government of each of the High Contracting Parties.

Article 40A

(1) (This paragraph is not reproduced. It defines "High Contracting Party".)

(2) For the purposes of the Convention the word territory means not only the metropolitan territory of a State but also all other territories for the foreign relations of which that State is responsible.

(Articles 37, 38, 39, 40 and 41 and the concluding words of the Convention are not reproduced. They deal with the coming into force of the Convention.)

Additional Protocol

(With reference to Article 2)

The High Contracting Parties reserve to themselves the right to declare at the time of ratification or of accession that the first paragraph of Article 2 of this Convention shall not apply to international carriage by air performed directly by the State, its colonies, protectorates or mandated territories or by any other territory under its sovereignty, suzerainty or authority.

Part II: The French Text

CONVENTION POUR L'UNIFICATION DE CERTAINES REGLES RELATIVES
AU TRANSPORT AERIEN INTERNATIONAL

CHAPITRE I^{ER}
Objet — Définitions

Article 1^{er}

(1) La présente Convention s'applique à tout transport international de personnes, bagages ou marchandises, effectué par aéronef contre rémunération. Elle s'applique également aux transports gratuits effectués par aéronef par une entreprise de transports aériens.

(2) Est qualifié transport international, au sens de la présente Convention, tout transport dans lequel, d'après les stipulations des parties, le point de départ et le point de destination, qu'il y ait ou non interruption de transport ou transbordement, sont situés soit sur le territoire de deux Hautes Parties Contractantes, soit sur le territoire d'une seule Haute Partie Contractante si une escale est prévue sur le territoire d'un autre Etat, même si cet Etat n'est pas une Haute Partie Contractante. Le transport sans une telle escale entre deux points du territoire d'une seule Haute Partie Contractante n'est pas considéré comme international au sens de la présente Convention.

(3) Le transport à exécuter par plusieurs transporteurs par air successifs est censé constituer pour l'application de la présente Convention un transport unique lorsqu'il a été envisagé par les parties comme une seule opération, qu'il ait été conclu sous la forme d'un seul contrat ou d'une série de contrats, et il ne perd pas son caractère international par le fait qu'un seul contrat ou une série de contrats doivent être exécutés intégralement dans le territoire d'un même Etat.

Article 2

(1) La Convention s'applique aux transports effectués par l'État ou les autres personnes juridiques de droit public, dans les conditions prévues à l'article 1er.

(2) La présente Convention ne s'applique pas au transport du courrier et des colis postaux.

CHAPITRE II

Titre de Transport

SECTION 1 — BILLET DE PASSAGE

Article 3

(1) Dans le transport de passagers, un billet de passage doit être délivré, contenant:

- (a) l'indication des points de départ et de destination,
- (b) si les points de départ et de destination sont situés sur le territoire d'une même Haute Partie Contractante et qu'une ou plusieurs escales soient prévues sur le territoire d'un autre Etat, l'indication d'une de ces escales,
- (c) un avis indiquant que si les passagers entreprennent un voyage comportant une destination finale ou une escale dans un pays autre que le pays de départ, leur transport peut être régi par la Convention de Varsovie qui, en général, limite la responsabilité du transporteur en cas de mort ou de lésion corporelle, ainsi qu'en cas de perte ou d'avarie des bagages.

(2) Le billet de passage fait foi, jusqu'à preuve contraire, de la conclusion et des conditions du contrat de transport. L'absence, l'irrégularité ou la perte du billet n'affecte ni l'existence ni la validité du contrat de transport, qui n'en sera pas moins soumis aux règles de la présente Convention. Toutefois, si, du consentement du transporteur, le passager s'embarque sans qu'un billet de passage ait été délivré, ou si le billet ne comporte pas l'avis prescrit à l'alinéa 1(c) du présent article, le transporteur n'aura pas le droit de se prévaloir des dispositions de l'article

22.

SECTION 2 — BULLETIN DE BAGAGES

Article 4

(1) Dans le transport de bagages enregistrés, un bulletin de bagages doit être délivré qui, s'il n'est pas combiné avec un billet de passage conforme aux dispositions de l'article 3, alinéa 1er, ou n'est pas inclus dans un tel billet, doit contenir:

- (a) l'indication des points de départ et de destination,
- (b) si les points de départ et de destination sont situés sur le territoire d'une même Haute Partie Contractante et qu'une ou plusieurs escales soient prévues sur le territoire d'un autre Etat, l'indication d'une de ces escales,
- (c) un avis indiquant que, si le transport comporte une destination finale ou une escale dans un pays autre que le pays de départ, il peut être régi par la Convention de Varsovie qui, en général, limite la responsabilité du transporteur en cas de perte ou d'avarie des bagages.

(2) Le bulletin de bagages fait foi, jusqu'à preuve contraire, de l'enregistrement des bagages et des conditions du contrat de transport. L'absence, l'irrégularité ou la perte du bulletin n'affecte ni l'existence ni la validité du contrat de transport, qui n'en sera pas moins soumis aux règles de la présente Convention. Toutefois, si le transporteur accepte la garde des bagages sans qu'un bulletin ait été délivré ou si, dans le cas où le bulletin n'est pas combiné avec un billet de passage conforme aux dispositions de l'article 3, alinéa 1(c), ou n'est pas inclus dans un tel

billet, il ne comporte pas l'avis prescrit à l'alinéa 1(c) du présent article, le transporteur n'aura pas le droit de se prévaloir des dispositions de l'article 22, alinéa 2.

SECTION 3 — LETTRE DE TRANSPORT AERIEN

Article 5

(1) Tout transporteur de marchandises a le droit de demander à l'expéditeur l'établissement et la remise d'un titre appelé: "lettre de transport aérien"; tout expéditeur a le droit de demander au transporteur l'acceptation de ce document.

(2) Toutefois, l'absence, l'irrégularité ou la perte de ce titre n'affecte ni l'existence, ni la validité du contrat de transport qui n'en sera pas moins soumis aux règles de la présente Convention, sous réserve des dispositions de l'article 9.

Article 6

(1) La lettre de transport aérien est établie par l'expéditeur en trois exemplaires originaux et remise avec la marchandise.

(2) Le premier exemplaire porte la mention "pour le transporteur"; il est signé par l'expéditeur. Le deuxième exemplaire porte la mention "pour le destinataire"; il est signé par l'expéditeur et le transporteur et il accompagne la marchandise. Le troisième exemplaire est signé par le transporteur et remis par lui à l'expéditeur après acceptation de la marchandise.

(3) La signature du transporteur doit être apposée avant l'embarquement de la marchandise à bord de l'aéronef.

(4) La signature du transporteur peut être remplacée par un timbre; celle de l'expéditeur peut être imprimée ou remplacée par un timbre.

(5) Si, à la demande de l'expéditeur, le transporteur établit la lettre de transport aérien, il est considéré jusqu'à preuve contraire, comme agissant pour le compte de l'expéditeur.

Article 7

Le transporteur de marchandises a le droit de demander à l'expéditeur l'établissement de lettres de transport aérien différentes lorsqu'il y a plusieurs colis.

Article 8

La lettre de transport aérien doit contenir:

- (a) l'indication des points de départ et de destination,
- (b) si les points de départ et de destination sont situés sur le territoire d'une même Haute Partie Contractante et qu'une ou plusieurs escales soient prévues sur le territoire d'un autre Etat, l'indication d'une de ces escales,
- (c) un avis indiquant aux expéditeurs que, si le transport comporte une destination finale ou une escale dans un pays autre que le pays de départ, il peut être régi par la Convention de Varsovie qui, en général, limite la responsabilité des transporteurs en cas de perte ou d'avarie des marchandises.

Article 9

Si, du consentement du transporteur, des marchandises sont embarquées à bord de l'aéronef sans qu'une lettre de transport aérien ait été établie ou si celle-ci ne comporte pas l'avis prescrit à l'article 8, alinéa (c), le transporteur n'aura pas le droit de se prévaloir des dispositions de l'article 22, alinéa 2.

Article 10

(1) L'expéditeur est responsable de l'exactitude des indications et déclarations concernant la marchandise qu'il inscrit dans la lettre de transport aérien.

(2) Il supportera la responsabilité de tout dommage subi par le transporteur ou par toute autre personne à l'égard de laquelle la responsabilité du transporteur est engagée à raison de ses indications et déclarations irrégulières, inexactes ou incomplètes.

Article 11

(1) La lettre de transport aérien fait foi, jusqu'à preuve contraire, de la conclusion du contrat, de la réception de la marchandise et des conditions du transport.

(2) Les énonciations de la lettre de transport aérien, relatives au poids, aux dimensions et à l'emballage de la marchandise ainsi qu'au nombre des colis, font foi jusqu'à preuve contraire; celles relatives à la quantité au volume et à l'état de la marchandise ne font preuve contre le transporteur qu'autant que la vérification en a été faite par lui en présence de l'expéditeur, et constatée sur la lettre de transport aérien, ou qu'il s'agit d'énonciations relatives à l'état apparent de la marchandise.

Article 12

(1) L'expéditeur a le droit, sous la condition d'exécuter toutes les obligations résultant du contrat de transport, de disposer de la marchandise, soit en la retirant à l'aérodrome de départ ou de destination, soit en l'arrêtant en cours de route lors d'un atterrissage, soit en la faisant délivrer au lieu de destination ou en cours de route à une personne autre que le destinataire indiqué sur la lettre de transport aérien, soit en demandant son retour à l'aérodrome de départ, pour autant que l'exercice de ce droit ne port préjudice ni au transporteur, ni aux autres expéditeurs et avec

l'obligation de rembourser les frais qui en résultent.

(2) Dans le cas où l'exécution des ordres de l'expéditeur est impossible, le transporteur doit l'en aviser immédiatement.

(3) Si le transporteur se conforme aux ordres de disposition de l'expéditeur, sans exiger la production de l'exemplaire de la lettre de transport aérien délivré à celui-ci, il sera responsable, sauf son recours contre l'expéditeur, du préjudice qui pourrait être causé par ce fait à celui qui est régulièrement en possession de la lettre de transport aérien.

(4) Le droit de l'expéditeur cesse au moment où celui du destinataire commence, conformément à l'article 13 ci-dessous. Toutefois, si le destinataire refuse la lettre de transport ou la marchandise, ou s'il ne peut être atteint, l'expéditeur reprend son droit de disposition.

Article 13

(1) Sauf dans les cas indiqués à l'article précédent, le destinataire a le droit, dès l'arrivée de la marchandise au point de destination, de demander au transporteur de lui remettre la lettre de transport aérien et de lui livrer la marchandise contre le paiement du montant des créances et contre l'exécution des conditions de transport indiquées dans la lettre de transport aérien.

(2) Sauf stipulation contraire, le transporteur doit aviser le destinataire dès l'arrivée de la marchandise.

(3) Si la perte de la marchandise est reconnue par le transporteur ou si, à l'expiration d'un délai de sept jours après qu'elle aurait dû arriver, la marchandise n'est pas arrivée, le destinataire est autorisé à faire valoir vis-à-vis du transporteur les droits résultant du contrat de transport.

Article 14

L'expéditeur et le destinataire peuvent faire valoir tous les droits qui leur sont respectivement conférés par les articles 12 et 13, chacun en son propre nom, qu'il agisse dans son propre intérêt ou dans l'intérêt d'autrui, à condition d'exécuter les obligations que le contrat impose.

Article 15

(1) Les articles 12, 13 et 14 ne portent aucun préjudice ni aux rapports de l'expéditeur et du destinataire entre eux, ni aux rapports des tiers dont les droits proviennent, soit de l'expéditeur, soit du destinataire.

(2) Toute clause dérogeant aux stipulations des articles 12, 13 et 14 doit être inscrite dans la lettre de transport aérien.

(3) Rien dans la présente Convention n'empêche l'établissement d'une lettre de transport aérien négociable.

Article 16

(1) L'expéditeur est tenu de fournir les renseignements et de joindre à la lettre de transport aérien les documents qui, avant la remise de la marchandise au destinataire, sont nécessaires à l'accomplissement des formalités de douane, d'octroi ou de police. L'expéditeur est responsable envers le transporteur de tous dommages qui pourraient résulter de l'absence, de l'insuffisance ou de l'irrégularité de ces renseignements et pièces, sauf le cas de faute de la part du transporteur ou de ses préposés.

(2) Le transporteur n'est pas tenu d'examiner si ces renseignements et documents sont exacts ou suffisants.

CHAPITRE III

Responsabilité du Transporteur

Article 17

Le transporteur est responsable du dommage survenu en cas de mort, de blessure ou de toute autre lésion corporelle subie par un voyageur lorsque l'accident qui a causé le dommage s'est produit à bord de l'aéronef ou au cours de toutes opérations d'embarquement et de débarquement.

Article 18

(1) Le transporteur est responsable du dommage survenu en cas de destruction, perte ou avarie de bagages enregistrés ou de marchandises lorsque l'événement qui a causé le dommage s'est produit pendant le transport aérien.

(2) Le transport aérien, au sens de l'alinéa précédent, comprend la période pendant laquelle les bagages ou marchandises se trouvent sous la garde du transporteur, que ce soit dans un aéroport ou à bord d'un aéronef ou dans un lieu quelconque en cas d'atterrissage en dehors d'un aéroport.

(3) La période du transport aérien ne couvre aucun transport terrestre, maritime ou fluvial effectué en dehors d'un aéroport. Toutefois lorsqu'un tel transport est effectué dans l'exécution du contrat de transport aérien en vue du chargement, de la livraison ou du transbordement, tout dommage est présumé, sauf preuve contraire, résulter d'un événement survenu pendant le transport aérien.

Article 19

Le transporteur est responsable du dommage résultant d'un retard dans le transport aérien de voyageurs, bagages ou marchandises.

Article 20

Le transporteur n'est pas responsable s'il prouve que lui et ses préposés ont pris toutes les mesures nécessaires pour éviter le dommage ou qu'il leur était impossible de les prendre.

Article 21

Dans le cas où le transporteur fait la preuve que la faute de la personne lésée a causé le dommage on y a contribué, le tribunal pourra, conformément aux dispositions de sa propre loi, écarter ou atténuer la responsabilité du transporteur.

Article 22

(1) Dans le transport des personnes, la responsabilité du transporteur relative à chaque passager est limitée à la somme de deux cent cinquante mille francs. Dans le cas où, d'après la loi du tribunal saisi, l'indemnité peut être fixée sous forme de rente, le capital de la rente ne peut dépasser cette limite. Toutefois par une convention spéciale avec le transporteur, le passager pourra fixer une limite de responsabilité plus élevée.

(2)

- (a) Dans le transport de bagages enregistrés et de marchandises, la responsabilité du transporteur est limitée à la somme de deux cent cinquante francs par kilogramme, sauf déclaration spéciale d'intérêt à la livraison faite par l'expéditeur au moment de la remise du colis au transporteur et moyennant le paiement d'une taxe supplémentaire éventuelle. Dans ce cas, le transporteur sera tenu de payer jusqu'à concurrence de la somme déclarée, à moins qu'il ne prouve qu'elle est supérieure à l'intérêt réel de l'expéditeur à la livraison.
- (b) En cas de perte, d'avarie ou de retard d'une partie des bagages enregistrés ou des marchandises, ou de tout objet qui y est contenu, seul le poids total du ou des colis dont il s'agit est pris en considération pour déterminer la limite de responsabilité du transporteur.

Toutefois, lorsque la perte, l'avarie ou le retard d'une partie des bagages enregistrés ou des marchandises, ou d'un objet qui y est contenu, affecte la valeur d'autres colis couverts par le même bulletin de bagages ou la même lettre de transport aérien, le poids total de ces colis doit être pris en considération pour déterminer la limite de responsabilité.

(3) En ce qui concerne les objets dont le passager conserve la garde, la responsabilité du transporteur est limitée à cinq mille par passager.

(4) Les limites fixées par le présent article n'ont pas pour effet d'enlever au tribunal la faculté d'allouer en outre, conformément à sa loi, une somme correspondant à tout ou partie des dépens et autres frais du procès exposés par le demandeur. La disposition précédente ne s'applique pas lorsque le montant de l'indemnité allouée, non compris les dépens et autres frais de procès, ne dépasse pas la somme que le transporteur a offerte par écrit au demandeur dans un délai de six mois à dater du fait qui a causé le dommage ou avant l'introduction de l'instance si celle-ci est postérieure à ce délai.

(5) Les sommes indiquées en francs dans le présent article sont considérées comme se rapportant à une unité monétaire constituée par soixante-cinq milligrammes et demi d'or au titre de neuf cents millièmes de fin. Ces sommes peuvent être converties dans chaque monnaie nationale en chiffres ronds. La conversion de ces sommes en monnaies nationales autres que la monnaie-or s'effectuera en cas d'instance judiciaire suivant la valeur-or de ces monnaies à la date du jugement.

Article 23

(1) Toute clause tendant à exonérer le transporteur de sa responsabilité ou à établir une limite inférieure à celle qui est fixée dans la présente

Convention est nulle et du nul effet, mais la nullité de cette clause n'entraîne pas la nullité du contrat qui reste soumis aux dispositions de la présente Convention.

(2) L'alinéa 1er du présent article ne s'applique pas aux clauses concernant le perte ou le dommage résultant de la nature ou du vice propre des marchandises transportées.

Article 24

(1) Dans les cas prévus aux articles 18 et 19 toute action en responsabilité, à quelque titre que ce soit, ne peut être exercée que dans les conditions et limites prévues par la présente Convention.

(2) Dans les cas prévus à l'article 17, s'appliquent également les dispositions de l'alinéa précédent, sans préjudice de la détermination des personnes qui ont le droit d'agir et de leurs droits respectifs.

Article 25

Les limites de responsabilité prévues à l'article 22 ne s'appliquent pas s'il est prouvé que le dommage résulte d'un acte ou d'une omission du transporteur ou de ses préposés fait, soit avec l'intention de provoquer un dommage, soit témérairement et avec conscience qu'un dommage en résultera probablement, pour autant que, dans le cas d'un acte ou d'une omission de préposés, la preuve soit également apportée que ceux-ci ont agi dans l'exercice de leur fonctions.

Article 25A

(1) Si une action est intentée contre un préposé du transporteur à la suite d'un dommage visé par la présente Convention, ce préposé, s'il prouve qu'il a agi dans l'exercice de ses fonctions, pourra se prévaloir des limites de responsabilité que peut invoquer ce transporteur en vertu de l'article 22.

(2) Le montant total de la réparation qui, dans ce cas, peut être

obtenu du transporteur et de ses préposés ne doit pas dépasser lesdites limites.

(3) Les dispositions des alinéas 1 et 2 du présent article ne s'appliquent pas s'il est prouvé que le dommage résulte d'un acte ou d'une omission du préposé fait, soit avec l'intention de provoquer un dommage, soit témérement et avec conscience qu'un dommage en résultera probablement.

Article 26

(1) La réception des bagages et marchandises sans protestation par le destinataire constituera présomption, sauf preuve contraire, que les marchandises ont été livrées en bon état et conformément au titre de transport.

(2) En cas d'avarie, le destinataire doit adresser au transporteur une protestation immédiatement après la découverte de l'avarie et, au plus tard, dans un délai de sept jours pour les bagages et de quatorze jours pour les marchandises à dater de leur réception. En cas de retard, la protestation devra être faite au plus tard dans les vingt et un jours à dater du jour où le bagage ou la marchandise auront été mis à sa disposition.

(3) Toute protestation doit être faite par réserve inscrite sur le titre de transport ou par un autre écrit expédié dans le délai prévu pour cette protestation.

(4) A défaut de protestation dans les délais prévus, toutes actions contre le transporteur sont irrecevables, sauf le cas de fraude de celui-ci.

Article 27

En cas de décès du débiteur, l'action en responsabilité, dans les limites prévues par la présente Convention, s'exerce contre ses ayants droit.

Article 28

(1) L'action en responsabilité devra être portée, au choix du

demandeur, dans le territoire d'une des Hautes Parties Contractantes, soit devant le tribunal du domicile du transporteur, du siège principal de son exploitation ou du lieu où il possède un établissement par le soin duquel le contrat a été conclu, soit devant le tribunal du lieu de destination.

- (2) La procédure sera réglée par la loi du tribunal saisi.

Article 29

(1) L'action en responsabilité doit être intentée, sous peine de déchéance, dans le délai de deux ans à compter de l'arrivée à destination ou du jour où l'aéronef aurait dû arriver, ou de l'arrêt du transport.

(2) Le mode du calcul du délai est déterminé par la loi du tribunal saisi.

Article 30

(1) Dans les cas de transport régis par la définition du troisième alinéa de l'article 1er, à exécuter par divers transporteurs successifs, chaque transporteur acceptant des voyageurs, des bagages ou des marchandises est soumis aux règles établies par cette Convention, et est censé être une des parties contractantes du contrat de transport, pour autant que ce contrat ait trait à la partie du transport effectuée sous son contrôle.

(2) Au cas d'un tel transport, le voyageur ou ses ayants droit ne pourront recourir que contre le transporteur ayant effectué le transport au cours duquel l'accident ou le retard s'est produit, sauf dans le cas où, par stipulation expresse, le premier transporteur aura assuré la responsabilité pour tout le voyage.

(3) S'il s'agit de bagages ou de marchandises, l'expéditeur aura recours contre le premier transporteur et le destinataire qui a le droit à la délivrance contre le dernier, et l'un et l'autre pourront, en outre, agir contre le transporteur ayant

effectué le transport au cours duquel la destruction, la perte, l'avarie ou le retard se sont produits. Ces transporteurs seront solidairement responsables envers l'expéditeur et le destinataire.

CHAPITRE IV

Dispositions Relatives aux Transports Combinés

Article 31

(1) Dans le cas de transports combinés effectués en partie par air et en partie par tout autre moyen de transport, les stipulations de la présente Convention ne s'appliquent qu'au transport aérien et si celui-ci répond aux conditions de l'article 1er.

(2) Rien dans la présente Convention n'empêche les parties, dans le cas de transports combinés, d'insérer dans le titre de transport aérien des conditions relatives à d'autres modes de transport, à condition que les stipulations de la présente Convention soient respectées en ce qui concerne le transport par air.

CHAPITRE V

Dispositions Générales et Finales

Article 32

Sont nulles toutes clauses du contrat de transport et toutes conventions particulières antérieures au dommage par lesquelles les parties dérogeraient aux règles de la présente Convention soit par une détermination de la loi applicable, soit par une modification des règles de compétence. Toutefois, dans le transport des marchandises, les clauses d'arbitrage sont admises, dans les limites de la présente Convention, lorsque l'arbitrage doit s'effectuer dans les lieux de compétence des tribunaux prévus à l'article 28, alinéa 1.

Article 33

Rien dans la présente Convention ne peut empêcher un transporteur de refuser la conclusion d'un contrat de transport ou de formuler des règlements qui ne sont pas en contradiction avec les dispositions de la présente Convention.

Article 34

Les dispositions des articles 3 à 9 inclus relative aux titres de transport ne sont pas applicables au transport effectué dans des circonstances extraordinaires en dehors de toute opération normale de l'exploitation aérienne.

Article 35

Lorsque dans la présente Convention il est question de jours, il s'agit de jours courants et non de jours ouvrables.

Article 36

La présente Convention est rédigée en français en un seul exemplaire qui restera déposé aux archives du Ministère des Affaires Etrangères de Pologne, et dont une copie certifiée conforme sera transmise par les soins du Gouvernement polonais au Gouvernement de chacune des Hautes Parties Contractantes.

Article 40A

(1) ...

(2) Aux fins de la Convention, le mot territoire signifie non seulement le territoire métropolitain d'un Etat, mais aussi tous les territoires qu'il représente dans les relations extérieures.

PROTOCOLE ADDITIONNEL (Ad Article 2)

Les Hautes Parties Contractantes se réservent le droit de déclarer au moment de la ratification ou de l'adhésion que l'article 2, alinéa premier, de la présente Convention ne s'appliquera pas aux transports internationaux aériens effectués directement par l'Etat, ses colonies, protectorats, territoires sous mandat ou tout autre territoire sous sa

souveraineté, sa suzeraineté ou son autorité.

SCHEDULE 8

Section 149(4)(d)

THE WARSAW CONVENTION WITH THE AMENDMENTS MADE IN IT BY
THE HAGUE PROTOCOL AND BY ADDITIONAL PROTOCOL NO. 2 OF
MONTREAL, 1975

1. The provisions of the Warsaw/Hague/MAP2 Convention are the same as the provisions of the Warsaw Convention/Hague set out in Schedule 7 save that –

- (a) references in the Warsaw/Hague Convention to 'this Convention' and cognate expressions, shall for the purpose of this Schedule be construed as references to the Warsaw/Hague Convention as amended by Additional Protocol No. 1 of Montreal, 1975, and
- (b) Article 22 shall be replaced with the following –

"Article 22

(1) In the carriage of passengers the liability of the carrier for each passenger is limited to the sum of 16,600 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 high limit of liability.

(2)

- (a) 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 passenger or 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 that sum is greater than the passenger's or consignor's actual interest in delivery at destination.

- (b) In the case of loss, damage or delay of part of registered baggage or cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the loss, damage or delay of a part of the registered baggage or cargo, or of an object contained therein, affects the value of other packages covered by the same baggage check or the same air waybill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

(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 limits prescribed in this Article shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation

incurred by the plaintiff. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

(5) 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 judgment."

THE WARSAW CONVENTION WITH THE AMENDMENTS MADE IN IT BY
THE HAGUE PROTOCOL AND PROTOCOL NO 4 OF MONTREAL, 1975

PART I : THE ENGLISH TEXT

CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO
INTERNATIONAL CARRIAGE BY AIR

CHAPTER I

Scope — Definitions

Article 1

(1) This Convention applies to all international carriage of persons, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.

(2) For the purposes of this Convention, the expression international carriage means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two High Contracting Parties or within the territory of a single High Contracting Party if there is an agreed stopping place within the territory of another State, even if that State is not a High Contracting Party. Carriage between two points within the territory of a single High Contracting Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention.

(3) Carriage to be performed by several successive air carriers is deemed, for the purposes of this Convention, 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 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 the territory of the same State.

Article 2

(1) This Convention applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1.

(2) In the carriage of postal items the carrier shall be liable only to the relevant postal administration in accordance with the rules applicable to the relationship between the carriers and the postal administrations.

(3) Except as provided in paragraph (2) of this Article, the provisions of this Convention shall not apply to the carriage of postal items.

CHAPTER II

Documents of Carriage

Section 1 — Passenger Ticket

Article 3

(1) In respect of the carriage of passengers a ticket shall be delivered containing:

- (a) an indication of the places of departure and destination,
- (b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place,

- (c) a notice to the effect that, if the passenger's journey involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers for death or personal injury and in respect of loss of or damage to baggage.

(2) The passenger ticket shall constitute prima facie evidence of the conclusion and conditions of the contract of carriage. 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 Convention. Nevertheless, if, with the consent of the carrier, the passenger embarks without a passenger ticket having been delivered, or if the ticket does not include the notice required by paragraph (1)(c) of this Article, the carrier shall not be entitled to avail himself of the provisions of Article 22.

Section 2 — Baggage Check

Article 4

(1) In respect of the carriage of registered baggage, a baggage check shall be delivered, which, unless combined with or incorporated in a passenger ticket which complies with the provisions of Article 3, paragraph (1), shall contain:

- (a) an indication of the places of departure and destination,
- (b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such

stopping place,

- (c) a notice to the effect that, if the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers in respect of loss or damage to baggage.

(2) The baggage check shall constitute prima facie evidence of the registration of the baggage and of the conditions of the contract of carriage. 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 Convention. Nevertheless, if the carrier takes charge of the baggage without a baggage check having been delivered or if the baggage check (unless combined with or incorporated in the passenger ticket which complies with the provisions of Article 3, paragraph (1)(c)) does not include the notice required by paragraph (1)(c) of this Article, he shall not be entitled to avail himself of the provisions of Article 22, paragraph (2).

Section 3 — Documentation Relating to Cargo

Article 5

(1) In respect of the carriage of cargo an air waybill shall be delivered.

(2) Any other means which would preserve a record of the carriage to be performed may, with the consent of the consignor, be substituted for the delivery of an air waybill. If such other means are used, the carrier shall, if so requested by the consignor, deliver to the consignor a receipt for the cargo permitting identification of the consignment and access to the information contained in the

record preserved by such other means.

(3) The impossibility of using, at points of transit and destination, the other means which would preserve a record of the carriage referred to in paragraph (2) of this Article does not entitle the carrier to refuse to accept the cargo for carriage.

Article 6

(1) The air waybill shall be made out by the consignor in three original parts.

(2) The first part shall be marked "for the carrier"; it shall be signed by the consignor. The second part shall be marked "for the consignee"; it shall be signed by the consignor and the carrier. The third part shall be signed by the carrier and handed by him to the consignor after the cargo has been accepted.

(3) The signature of the carrier and that of the consignor may be printed or stamped.

(4) If, at the request of the consignor, the carrier makes out the air waybill, he shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

Article 7

Where there is more than one package:

- (a) the carrier of the cargo has the right to require the consignor to make out separate air waybills,
- (b) the consignor has the right to require the carrier to deliver separate receipts when the other means referred

to in paragraph (2) of Article 5 are used.

Article 8

The air waybill and receipt for the cargo shall contain:

- (a) an indication of the places of departure and destination,
- (b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place, and

an indication of the weight of the consignment.

Article 9

Non-compliance with the provisions of Articles 5 to 8 shall not affect the existence or the validity of the contract of carriage, which shall, none the less, be subject to the rules of this Convention including those relating to limitation of liability.

Article 10

(1) The consignor is responsible for the correctness of the particulars and statements relating to the cargo inserted by him or on his behalf in the air waybill or furnished by him or on his behalf to the carrier for insertion in the receipt for the cargo or for insertion in the record preserved by the other means referred to in paragraph (2) of Article 5.

(2) The consignor shall indemnify the carrier against all damage suffered by him, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements

furnished by the consignor or on his behalf.

(3) Subject to the provisions of paragraphs (1) and (2) of this Article, the carrier shall indemnify the consignor against all damage suffered by him, or by any other person to whom the consignor is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements inserted by the carrier or on his behalf in the receipt for the cargo or in the record preserved by the other means referred to in paragraph (2) of Article 5.

Article 11

(1) The air waybill or the receipt for the cargo is prima facie evidence of the conclusion of the contract, of the acceptance of the cargo and of the conditions of carriage mentioned therein.

(2) Any statements in the air waybill or the receipt for the cargo relating to the weight, dimensions and packing of the cargo, as well as those relating to the number of packages, are prima facie evidence of the facts stated; those relating to the quantity, volume and condition of the cargo do not constitute evidence against the carrier except so far as they both have been, and are stated in the air waybill to have been, checked by him in the presence of the consignor, or relate to the apparent condition of the cargo.

Article 12

(1) Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the airport of departure or destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee originally designated, or by requiring it to be returned to the airport of departure. He must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this

right.

(2) If it is impossible to carry out the orders of the consignor the carrier must so inform him forthwith.

(3) If the carrier obeys the orders of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill or the receipt for the cargo delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill or the receipt for the cargo.

(4) The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the consignee declines to accept the cargo, or if he cannot be communicated with, the consignor resumes his right of disposition.

Article 13

(1) Except when the consignor has exercised his right under Article 12, the consignee is entitled, on the arrival of the cargo at the place of destination, to require the carrier to deliver the cargo to him, on payment of the charges due and on complying with the conditions of carriage.

(2) Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives.

(3) If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of seven days after the date on which it ought to have arrived, the consignee is entitled to enforce against the carrier the rights which flow from the contract of carriage.

Article 14

The consignor and the consignee can respectively enforce all the rights given them by Articles 12 and 13, each in his own name, whether he is acting in his own interest or in the interest of another, provided that he carries out the obligations imposed by the contract of carriage.

Article 15

(1) Articles 12, 13 and 14 do not affect the relations of the consignor and the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

(2) The provisions of Articles 12, 13 and 14 can only be varied by express provision in the air waybill or the receipt for the cargo.

Article 16

(1) The consignor must furnish such information and such documents as are necessary to meet the formalities of customs, octroi or police before the cargo can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier, his servants or agents.

(2) The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

CHAPTER III

Liability of the Carrier

Article 17

The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the

accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

Article 18

(1) The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, any registered baggage, if the occurrence which caused the damage so sustained took place during the carriage by air.

(2) The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, cargo upon condition only that the occurrence which caused the damage so sustained took place during the carriage by air.

(3) However, the carrier is not liable if he proves that the destruction, loss of, or damage to, the cargo resulted solely from one or more of the following:

- (a) inherent defect, quality or vice of that cargo,
- (b) defective packing of that cargo performed by a person other than the carrier or his servants or agents,
- (c) an act of war or an armed conflict,
- (d) an act of a public authority carried out in connection with the entry, exit or transit of the cargo.

(4) The carriage by air within the meaning of the preceding paragraphs of this Article comprises the period during which the baggage or cargo is in the charge of the carrier, whether in an airport or on board an aircraft, or, in the case of a landing outside an airport, in any place whatsoever.

(5) The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an airport. If, however, such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transhipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

Article 19

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo.

Article 20

In the case of passengers and baggage, and in the case of damage occasioned by delay in the carriage of cargo, the carrier shall not be liable if he proves that he and his servants and agents have taken all necessary measures to avoid the damage or that it was impossible for them to take such measures.

Article 21

(1) In the carriage of passengers and baggage, if the carrier proves that the damage was caused by or contributed to by the negligence of the person suffering the damage the Court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

(2) In the carriage of cargo, if the carrier proves that the damage was caused by or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he derives his rights, the carrier shall be wholly or partly exonerated from his liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage.

Article 22

(1) In the carriage of persons the liability of the carrier for each passenger is limited to the sum of 16,600 Special Drawing Rights. Where, in accordance with the law of the court seised of the case, damages may be awarded in the form of periodical 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)

- (a) In the carriage of registered baggage, the liability of the carrier is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the passenger or consignor has made, at the same time when the package was handed over to the carrier, a special declaration or 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 that sum is greater than the passenger's or the consignor's actual interest in delivery at destination.

- (b) In the carriage 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 same 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 that sum is greater than the consignor's actual interest in delivery at destination.

(c) In the case of loss, damage or delay of part of registered baggage or cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the loss, damage or delay of a part of the registered baggage or cargo, or of an object contained therein, affects the value of other packages covered by the same baggage check or the same air waybill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

(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 limits prescribed in this Article shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

(5) 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 judgment.

(6) 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 judgment 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 paragraph (2)(b) 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 two hundred and fifty monetary units per kilogramme. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. This sum may be converted into the national currency concerned in round figures. The conversion of this sum into national currency shall be made according to the law of the State concerned.

Article 23

(1) Any provision tending to relieve the carrier of liability or to fix a lower limit than that laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

(2) Paragraph (1) of this Article shall not apply to provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried.

Article 24

(1) In the carriage of passengers and baggage, any action for

damages, however founded, can only be brought subject to the conditions and limits set out in this Convention, without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights.

(2) In the carriage of cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and limits of liability set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. Such limits of liability constitute maximum limits and may not be exceeded whatever the circumstances which give rise to the liability.

Article 25

In the carriage of passengers and baggage, the limits of liability specified in Article 22 shall not apply if it is proved that the damage resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that he was acting within the scope of his employment.

Article 25A

(1) If an action is brought against a servant or agent of the carrier arising out of damage to which this Convention relates, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the limits of liability which that carrier himself is able to invoke under Article 22.

(2) The aggregate of the amounts recoverable from the carrier, his servants or agents, in that case, shall not exceed the said limits.

(3) In the carriage of passengers and baggage, the provisions of

paragraphs (1) and (2) of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Article 26

(1) Receipt by the person entitled to delivery of baggage or cargo without complaint is prima facie evidence that the same have been delivered in good condition and in accordance with the document of carriage.

(2) In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo has been placed at his disposal.

(3) Every complaint must be made in writing upon the document of carriage or by separate notice in writing despatched within the times aforesaid.

(4) Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

Article 27

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this Convention against those legally representing his estate.

Article 28

(1) An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the court having jurisdiction where the carrier is ordinarily resident, or has his principal place

of business, or has an establishment by which the contract has been made or before the court having jurisdiction at the place of destination.

(2) Questions of procedure shall be governed by the law of the court seised of the case.

Article 29

(1) The right to damages shall be extinguished if an action is not brought within 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) The method of calculating the period of limitation shall be determined by the law of the court seised of the case.

Article 30

(1) In the case of carriage to be performed by various successive carriers and falling within the definition set out in the third paragraph of Article 1, each carrier who accepts passengers, baggage or cargo is subjected to the rules set out in this Convention, and is deemed to be one of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision.

(2) In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

(3) As regards baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each

may take action against the carrier who performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

Article 30A

Nothing in this Convention shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any other person.

CHAPTER IV

Provisions Relating to Combined Carriage

Article 31

(1) In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention apply only to the carriage by air, provided that carriage by air falls within the terms of Article 1.

(2) Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention are observed as regards the carriage by air.

CHAPTER V

General and Final Provisions

Article 32

Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction shall be null and void. Nevertheless for the carriage of cargo arbitration clauses are allowed subject to this Convention, if the arbitration is to

take place within one of the jurisdictions referred to in the first paragraph of Article 28.

Article 33

Except as provided in paragraph (3) of Article 5, nothing in this Convention shall prevent the carrier either from refusing to enter into any contract of carriage or from making regulations which do not conflict with the provisions of this Convention.

Article 34

The provisions of Articles 3 to 8 inclusive relating to documents of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of an air carrier's business.

Article 35

The expression "days" when used in this Convention means current days not working days.

Article 36

The Convention is drawn up in French in a single copy which shall remain deposited in the archives of the Ministry of Foreign Affairs of Poland and of which one duly certified copy shall be sent by the Polish Government to the Government of each of the High Contracting Parties.

Article 40A

(1) *[This paragraph is not reproduced. It defines "High Contracting Party".]*

(2) For the purposes of the Convention the word territory means not only the metropolitan territory of a State but also all other territories for the foreign relations of which that state is responsible.

[Articles 37, 38, 39, 40 and 41 and the concluding words of the Convention are not reproduced. They deal with the coming into force of the Convention.]

ADDITIONAL PROTOCOL (with Reference to Article 2)

The High Contracting Parties reserve to themselves the right to declare at the time of ratification or of accession that the first paragraph of Article 2 of this Convention shall not apply to international carriage by air performed directly by the State, its colonies, protectorates or mandated territories or by any other territory under its sovereignty, suzerainty or authority.

Part II: The French Text

CONVENTION POUR L'UNIFICATION DE CERTAINES REGLES RELATIVES
AU TRANSPORT AERIEN INTERNATIONAL

CHAPITRE 1ER

Objet — Définitions

Article 1er

(1) La présente Convention s'applique à tout transport international de personnes, bagages ou marchandises, effectué par aéronef contre rémunération. Elle s'applique également aux transports gratuits effectués par aéronef par une entreprise de transports aériens.

(2) Est qualifié transport international, au sens de la présente Convention, tout transport dans lequel, d'après les stipulations des parties, le point de départ et le point de destination, qu'il y ait ou non interruption de transport ou transbordement, sont situés soit sur le territoire de deux Hautes Parties Contractantes, soit sur le territoire d'une seule Haute Partie Contractante si une escale est prévue sur le territoire d'un autre Etat, même si cet Etat n'est pas une Haute Partie Contractante.

Le transport sans une telle escale entre deux points du territoire d'une seule Haute Partie Contractante n'est pas considéré comme international au sens de la présente Convention.

(3) Le transport à exécuter par plusieurs transporteurs par air successifs est censé constituer pour l'application de la présente Convention un transport unique lorsqu'il a été envisagé par les parties comme une seule opération, qu'il ait été conclu sous la forme d'un seul contrat ou d'une série de contrats, et il ne perd pas son caractère international par le fait qu'un seul contrat ou une série de contrats doivent être exécutés intégralement dans le territoire d'un même Etat.

Article 2

(1) La Convention s'applique aux transports effectués par l'Etat ou les autres personnel juridiques de droit public, dans les conditions prévues à l'article 1^{er}.

(2) Dans le transport des envois postaux, le transporteur n'est responsable qu'envers l'administration postale compétente conformément aux règles applicables dans les rapports entre les transporteurs et les administrations postales.

(3) Les dispositions de la présente Convention autres que celles de l'alinéa 2 ci-dessus ne s'appliquent pas au transport des envois postaux.

CHAPITRE II

Titre de Transport

Section I — Billet de Passage

Article 3

(1) Dans le transport de passagers, un billet de passage doit être délivré, contenant:

- (a) l'indication des points de départ et de destination,
- (b) si les points de départ et de destination sont situés sur le territoire d'une même Haute Partie Contractante et qu'une ou plusieurs escales soient prévues sur le territoire d'un autre Etat, l'indication d'une de ces escales,
- (c) un avis indiquant que si les passagers entreprennent un voyage comportant une destination finale ou une escale dans un pays autre que le pays de départ, leur transport peut être régi par la Convention de Varsovie qui, en général, limite la responsabilité du transporteur en cas de mort ou de lésion corporelle, ainsi qu'en cas de perte ou d'avarie des bagages.

(2) Le billet de passage fait foi, jusqu'à preuve contraire, de la conclusion et des conditions du contrat de transport. L'absence, l'irrégularité ou la perte du billet n'affecte ni l'existence ni la validité du contrat de transport, qui n'en sera pas moins soumis aux règles de la présente Convention. Toutefois, si, du consentement du transporteur, le passager s'embarque sans qu'un billet de passage ait été délivré, ou si le billet ne comporte pas l'avis prescrit à l'alinéa 1 (c) du présent article, le transporteur n'aura pas le droit de se prévaloir des dispositions de l'article 22.

Section II – Bulletin de Bagages

Article 4

(1) Dans le transport de bagages enregistrés, un bulletin de bagages doit être délivré qui, s'il n'est pas combiné avec un billet de passage

conforme aux dispositions de l'article 3, alinéa 1^{er} ou n'est pas inclus dans un tel billet, doit contenir:

- (a) l'indication des points de départ et de destination,
- (b) si les points de départ et de destination sont situés sur le territoire d'une même Haute Partie Contractante et qu'une ou plusieurs escales soient prévues sur le territoire d'un autre Etat, l'indication d'une de ces escales,
- (c) un avis indiquant que, si le transport comporte une destination finale ou une escale dans un pays autre que le pays de départ, il peut être régi par la Convention de Varsovie qui, en général, limite la responsabilité du transporteur en cas de perte ou d'avarie des bagages.

(2) Le bulletin de bagages fait foi, jusqu'à preuve contraire, de l'enregistrement des bagages et des conditions du contrat de transport. L'absence, l'irrégularité ou la perte du bulletin n'affecte ni l'existence ni la validité du contrat de transport, qui n'en sera pas moins soumis aux règles de la présente Convention. Toutefois, si le transporteur accepte la garde des bagages sans qu'un bulletin ait été délivré ou si, dans le cas où le bulletin n'est pas combiné avec un billet de passage conforme aux dispositions de l'article 3, alinéa 1 (c), ou n'est pas inclus dans un tel billet, il ne comporte pas l'avis prescrit à l'alinéa 1 (c) du présent article, le transporteur n'aura pas le droit de se prévaloir des dispositions de l'article 22, alinéa 2.

Section III – Documentation Relative aux Marchandises

Article 5

- (1) Pour le transport de marchandises une lettre de transport aérien

est émise.

(2) L'emploi de tout autre moyen constatant les indications relatives au transport à exécuter peut, avec le consentement de l'expéditeur, se substituer à l'émission de la lettre de transport aérien. Si de tels autres moyens sont utilisés, le transporteur délivre l'expéditeur, à la demande de ce dernier, un récépissé de la marchandise permettant l'identification de l'expédition et l'accès aux indications enregistrées par ces autres moyens.

(3) L'impossibilité d'utiliser, aux points de transit et de destination, les autres moyens permettant de constater les indications relatives au transport, visés à l'alinéa 2 ci-dessus, n'autorise pas le transporteur à refuser l'acceptation des marchandises en vue du transport.

Article 6

(1) La lettre de transport aérien est établie par l'expéditeur en trois exemplaires originaux.

(2) Le premier exemplaire porte la mention "pour le transporteur"; il est signé par l'expéditeur. Le deuxième exemplaire porte la mention "pour le destinataire"; il est signé par l'expéditeur et le transporteur. Le troisième exemplaire est signé par le transporteur et remis par lui à l'expéditeur après acceptation de la marchandise.

(3) La signature du transporteur et celle de l'expéditeur peuvent être imprimées ou remplacées par un timbre.

(4) Si, à la demande de l'expéditeur, le transporteur établit la lettre de transport aérien, il est considéré, jusqu'à preuve contraire, comme agissant au nom de l'expéditeur.

Article 7

Lorsqu'il y a plusieurs colis:

- (a) le transporteur de marchandises a le droit de demander l'expéditeur l'établissement de lettres de transport aérien distinctes,
- (b) l'expéditeur a le droit de demander au transporteur la remise de récépissés distincts, lorsque les autres moyens visés l'alinéa 2 de l'article 5 sont utilisés.

Article 8

La lettre de transport aérien et le récépissé de la marchandise contiennent:

- (a) l'indication des points de départ et de destination,
- (b) si les points de départ et de destination sont situés sur le territoire d'une même Haute Partie Contractante et qu'une ou plusieurs escales soient prévues sur le territoire d'un autre Etat, l'indication d'une de ces escales,
- (c) la mention du poids de l'expédition.

Article 9

L'inobservation des dispositions des articles 5 à 8 n'affecte ni l'existence ni la validité du contrat de transport, qui n'en sera pas moins soumis aux règles de la présente Convention, y compris celles qui portent sur la limitation de responsabilité.

Article 10

- (1) L'expéditeur est responsable de l'exactitude des indications et

déclarations concernant la marchandise inscrites par lui ou en son nom dans la lettre de transport aérien, ainsi que de celles fournies et faites par lui ou en son nom au transporteur en vue d'être insérées dans le récépissé de la marchandise ou pour insertion dans les données enregistrées par les autres moyens prévus à l'alinéa 2 de l'article 5.

(2) L'expéditeur assume la responsabilité de tout dommage subi par le transporteur ou par toute autre personne à l'égard de laquelle la responsabilité du transporteur est engagée, à raison des indications et déclarations irrégulières, inexactes ou incomplètes fournies et faites par lui ou en son nom.

(3) Sous réserve des dispositions des alinéas 1 et 2 du présent article, le transporteur assume la responsabilité de tout dommage subi par l'expéditeur ou par toute autre personne à l'égard de laquelle la responsabilité de l'expéditeur est engagée, à raison des indications et déclarations irrégulières, inexactes ou incomplètes insérées par lui ou en son nom dans le récépissé de la marchandise ou dans les données enregistrées par les autres moyens prévus l'alinéa 2 de l'article 5.

Article 11

(1) La lettre de transport aérien et le récépissé de la marchandise font foi, jusqu'à preuve contraire, de la conclusion du contrat, de la réception de la marchandise et des conditions du transport qui y figurent.

(2) Les énonciations de la lettre de transport aérien et du récépissé de la marchandise, relatives au poids, aux dimensions et à l'emballage de la marchandise ainsi qu'au nombre des colis font foi jusqu'à preuve contraire; celles relatives à la quantité, au volume et à l'état de la marchandise ne font preuve contre le transporteur qu'autant que la vérification en a été faite par lui en présence de l'expéditeur, et constatée sur la lettre de transport aérien, ou qu'il s'agit d'énonciations relatives à l'état apparent de la marchandise.

Article 12

(1) L'expéditeur a le droit, sous la condition d'exécuter toutes les obligations résultant du contrat de transport, de disposer de la marchandise, soit en la retirant l'aérodrome de départ ou de destination, soit en l'arrentant en cours de route lors d'un atterrissage, soit en la faisant délivrer au lieu de destination ou en cours de route à une personne autre que le destinataire initialement désigné, soit en demandant son retour à l'aérodrome de départ, pour autant que l'exercice de ce droit ne porte préjudice ni au transporteur, ni aux autres expéditeurs et avec l'obligation de rembourser les frais qui en résultent.

(2) Dans le cas où l'exécution des ordres de l'expéditeur est impossible, le transporteur doit l'en aviser immédiatement.

(3) Si le transporteur se conforme aux ordres de disposition de l'expéditeur, sans exiger la production de l'exemplaire de la lettre de transport aérien ou du récépissé de la marchandise délivré à celui-ci, il sera responsable, sauf son recours contre l'expéditeur, du préjudice qui pourra être causé par ce fait à celui qui est régulièrement en possession de la lettre de transport aérien ou du récépissé de la marchandise.

(4) Le droit de l'expéditeur cesse au moment où celui du destinataire commence, conformément à l'article 13. Toutefois, si le destinataire refuse la marchandise, ou s'il ne peut être atteint, l'expéditeur reprend son droit de disposition.

Article 13

(1) Sauf lorsque l'expéditeur a exercé le droit qu'il tient de l'article 12, le destinataire a le droit, dès l'arrivée de la marchandise au point de destination, de demander au transporteur de lui livrer la marchandise contre la paiement du montant des créances et contre l'exécution des conditions de transport.

(2) Sauf stipulation contraire, le transporteur doit aviser le destinataire dès l'arrivée de la marchandise.

(3) Si la perte de la marchandise est reconnue par le transporteur ou si, à l'expiration d'un délai de sept jours après qu'elle aurait dû arriver, la marchandise n'est pas arrivée, le destinataire est autorisé à faire valoir vis-à-vis du transporteur les droits résultant du contrat de transport.

Article 14

L'expéditeur et le destinataire peuvent faire valoir tous les droits qui leur sont respectivement conférés par les articles 12 et 13, chacun en son propre nom, qu'il agisse dans son propre intérêt ou dans l'intérêt d'autrui, à condition d'exécuter les obligations que le contrat de transport impose.

Article 15

(1) Les articles 12, 13 et 14 ne portent aucun préjudice ni aux rapports de l'expéditeur et du destinataire entre eux, ni aux rapports des tiers dont les droits proviennent, soit de l'expéditeur, soit du destinataire.

(2) Toute clause dérogeant aux stipulations des articles 12, 13 et 14 doit être inscrite dans la lettre de transport aérien ou dans le récépissé de la marchandise.

Article 16

(1) L'expéditeur est tenu de fournir les renseignements et les documents qui, avant la remise de la marchandise au destinataire, sont nécessaires à l'accomplissement des formalités de douane, d'octroi ou de police. L'expéditeur est responsable envers le transporteur de tous dommages qui pourraient résulter de l'absence, de l'insuffisance ou de l'irrégularité de ces renseignements et pièces, sauf le cas de faute de la part du transporteur ou de ses préposés.

(2) Le transporteur n'est pas tenu d'examiner si ces renseignements et documents sont exacts ou suffisants.

CHAPITRE III

Responsabilité du Transporteur

Article 17

Le transporteur est responsable du dommage survenu en cas de mort, de blessure ou de toute autre lésion corporelle subie par un voyageur lorsque l'accident qui a causé le dommage s'est produit à bord de l'aéronef ou au cours de toutes opérations d'embarquement et de débarquement.

Article 18

(1) Le transporteur est responsable du dommage survenu en cas de destruction, perte ou avarie de bagages enregistrés lorsque l'événement qui a causé le dommage s'est produit pendant le transport aérien.

(2) Le transporteur est responsable du dommage survenu en cas de destruction, perte ou avarie de la marchandise par cela seul que le fait qui a causé le dommage s'est produit pendant le transport aérien.

(3) Toutefois, le transporteur n'est pas responsable s'il établit que la destruction, la perte ou l'avarie de la marchandise résulte uniquement de l'un ou de plusieurs des faits suivants:

- (a) la nature ou le vice propre de la marchandise,
- (b) l'emballage défectueux de la marchandise par une personne autre que le transporteur ou ses préposes,
- (c) un fait de guerre ou un conflit armé,

- (d) un acte de l'autorité publique accompli en relation avec l'entrée, la sortie ou le transit de la marchandise.

(4) Le transport aérien, au sens des alinéas précédents, comprend la période pendant laquelle les bagages ou marchandises se trouvent sous la garde du transporteur, que ce soit dans un aéroport ou à bord d'un aéronef ou dans un lieu quelconque en cas d'atterrissage en dehors d'un aéroport.

(5) La période du transport aérien ne couvre aucun transport terrestre, maritime ou fluvial effectué en dehors d'un aéroport. Toutefois, lorsqu'un tel transport est effectué dans l'exécution du contrat de transport aérien en vue du chargement, de la livraison ou du transbordement, tout dommage est présumé, sauf preuve contraire, résulter d'un événement survenu pendant le transport aérien.

Article 19

Le transporteur est responsable du dommage résultant d'un retard dans le transport aérien de voyageurs, bagages ou marchandises.

Article 20

Dans le transport de passagers et de bagages et en cas de dommage résultant d'un retard dans le transport de marchandises, le transporteur n'est pas responsable s'il prouve que lui et ses préposés ont pris toutes les mesures nécessaires pour éviter le dommage ou qu'il leur était impossible de les prendre.

Article 21

(1) Dans le transport de passagers et de bagages, dans le cas où le transporteur fait la preuve que la faute de la personne lésée a causé le dommage ou y a contribué, le tribunal pourra, conformément aux dispositions de sa propre loi, écarter ou atténuer la responsabilité du transporteur.

(2) Dans le transport de marchandises, le transporteur est exonéré, en tout ou en partie, de sa responsabilité dans la mesure où il prouve que la faute de la personne qui demande réparation ou de la personne dont elle tient ses droits a causé le dommage ou y a contribué.

Article 22

(1) Dans le transport des personnes, la responsabilité du transporteur relative à chaque passager est limitée à la somme de 16 600 Droits de Tirage spéciaux. Dans le cas où, d'après la loi du tribunal saisi, l'indemnité peut être fixée sous forme de rente, le capital de la rente ne peut dépasser cette limite. Toutefois par une convention spéciale avec le transporteur, le passager pourra fixer une limite de responsabilité plus élevée.

(2)

(a) Dans le transport de bagages enregistrés, la responsabilité du transporteur est limitée à la somme de 17 Droits de Tirage spéciaux par kilogramme, sauf déclaration spéciale d'intérêt à la livraison faite par l'expéditeur au moment de la remise du colis au transporteur et moyennant le paiement d'une taxe supplémentaire, éventuelle. Dans ce cas, le transporteur sera tenu de payer jusqu'à concurrence de la somme déclarée, à moins qu'il ne prouve qu'elle est supérieure à l'intérêt réel de l'expéditeur à la livraison.

(b) Dans le transport de marchandises, la responsabilité du transporteur est limitée à la somme de 17 Droits de Tirage spéciaux par kilogramme, sauf déclaration spéciale d'intérêt à la livraison faite par l'expéditeur au moment de la remise du colis au transporteur et

moyennant le paiement d'une taxe supplémentaire, éventuelle. Dans ce cas, le transporteur sera tenu de payer jusqu' à concurrence de la somme déclarée, à moins qu'il ne prouve qu'elle est supérieure à l'intérêt réel de l'expéditeur à la livraison.

- (c) En cas de perte, d'avarie ou de retard d'une partie des bagages enregistrés ou des marchandises, ou de tout objet qui y est contenu, seul le poids total du ou des colis dont il s'agit est pris en considération pour déterminer la limite de responsabilité du transporteur. Toutefois, lorsque la perte, l'avarie ou le retard d'une partie des bagages enregistrés ou des marchandises, ou d'un objet qui y est contenu, affecte la valeur d'autres colis couverts par le même bulletin de bagages ou la même lettre de transport aérien, le poids total de ces colis doit être pris en considération pour déterminer la limite de responsabilité.

(3) En ce qui concerne les objets dont le passager conserve la garde, la responsabilité du transporteur est limitée à 332 Droits de Tirage spéciaux par passager.

(4) Les limites fixées par le présent article n'ont pas pour effet d'enlever au tribunal la faculté d'allouer en outre, conformément à sa loi, une somme correspondant à tout ou partie des dépens et autres frais du procès exposés par le demandeur. La disposition précédente ne s'applique pas lorsque le montant de l'indemnité allouée, non compris les dépens et autres frais de procès, ne dépasse pas la somme que le transporteur a offerte par écrit au demandeur dans un délai de six mois à dater du fait qui a causé le dommage ou avant l'introduction de l'instance si celle-ci est postérieure à ce délai.

(5) Les sommes indiquées en Droits de Tirage spéciaux dans le présent article sont considérées comme se rapportant au Droit de Tirage spécial tel que défini par le Fonds Monétaire International. La conversion de ces sommes en monnaies nationales s'effectuera en cas d'instance judiciaire suivant la valeur de ces monnaies en Droit de Tirage spécial à la date du jugement.

(6) Les sommes indiquées en Droits de Tirage spéciaux dans le présent article sont considérées comme se rapportant au Droit de Tirage spécial tel que défini par le Fonds Monétaire International. La conversion de ces sommes en monnaies nationales s'effectuera en cas d'instance judiciaire suivant la valeur de ces monnaies en Droit de Tirage spécial à la date du jugement. La valeur, en Droit de Tirage spécial, d'une monnaie nationale d'une Haute Partie Contractante qui est membre du Fonds Monétaire International, est calculée selon la méthode d'évaluation appliquée par le Fonds Monétaire International à la date du jugement pour ses propres opérations et transactions. La valeur, en Droit de Tirage spécial, d'une monnaie nationale d'une Haute Partie Contractante qui n'est pas membre du Fonds Monétaire International, est calculée de la façon déterminée par cette Haute Partie Contractante.

Toutefois, les Etats qui ne sont pas membres du Fonds Monétaire International et dont la législation ne permet pas d'appliquer les dispositions de l'alinéa 2 (b) de l'article 22, peuvent au moment de la ratification ou de l'adhésion, ou à tout moment par la suite, déclarer que la limite de responsabilité de transporteur est fixée, dans les procédures judiciaires sur leur territoire, à la somme de deux cent cinquante unités monétaires par kilogramme, cette unité monétaire correspondant à soixante-cinq milligrammes et demi d'or au titre de neuf cents millièmes de fin. Cette somme peut être convertie dans la monnaie nationale concernée en chiffres ronds. La conversion de cette somme en monnaie nationale s'effectuera conformément à la législation de l'Etat en cause.

Article 23

(1) Toute clause tendant à exonérer le transporteur de sa responsabilité ou à établir une limite inférieure à celle qui est fixée dans la présente Convention est nulle et de nul effet, mais la nullité de cette clause n'entraîne pas la nullité du contrat qui reste soumis aux dispositions de la présente Convention.

(2) L'alinéa 1^{er} du présent article ne s'applique pas aux clauses concernant la perte ou le dommage résultant de la nature ou du vice propre des marchandises transportées.

Article 24

(1) Dans le transport de passagers et de bagages, toute action en responsabilité, à quelque titre que ce soit, ne peut être exercée que dans les conditions et limites prévues par la présente Convention, sans préjudice de la détermination des personnel qui ont le droit d'agir et de leurs droits respectifs.

(2) Dans le transport de marchandises, toute action en réparation introduite, à quelque titre que ce soit, que ce soit en vertu de la présente Convention, en raison d'un contrat ou d'un acte illicite ou pour toute autre cause, ne peut être exercée que dans les conditions et limites de responsabilité prévues par la présente Convention, sans préjudice de la détermination des personnes qui ont le droit d'agir et de leurs droits respectifs. Ces limites de responsabilité constituent un maximum et sont infranchissables quelles que soient les circonstances qui sont à l'origine de la responsabilité.

Article 25

Dans le transport de passagers et de bagages, les limites de responsabilité prévues à l'article 22 ne s'appliquent pas s'il est prouvé que le dommage résulte d'un acte ou d'une omission du transporteur ou de ses préposés fait, soit avec l'intention de provoquer un dommage, soit témérement et avec conscience qu'un dommage en résultera probablement, pour autant que, dans le cas d'un acte ou d'une omission de préposés, la preuve soit également apportée que ceux-ci ont agi dans l'exercice de

leurs fonctions.

Article 25A

(1) Si une action est intentée contre un préposé du transporteur à la suite d'un dommage visé par la présente Convention, ce préposé, s'il prouve qu'il a agi dans l'exercice de ses fonctions, pourra se prévaloir des limites de responsabilité que peut invoquer ce transporteur en vertu de l'article 22.

(2) Le montant total de la réparation qui, dans ce cas, peut être obtenu du transporteur et de ses préposés ne doit pas dépasser lesdites limites.

(3) Dans le transport de passagers et de bagages, les dispositions des alinéas 1 et 2 du présent article ne s'appliquent pas s'il est prouvé que le dommage résulte d'un acte ou d'une omission du préposé fait, soit avec l'intention de provoquer un dommage, soit témérement et avec conscience qu'un dommage en résultera probablement.

Article 26

(1) La réception des bagages et marchandises sans protestation par le destinataire constituera présomption, sauf preuve contraire, que les marchandises ont été livrées en bon état et conformément au titre de transport.

(2) En cas d'avarie, le destinataire doit adresser au transporteur une protestation immédiatement après la découverte de l'avarie et, au plus tard, dans un délai de sept jours pour les bagages et de quatorze jours pour les marchandises à dater de leur réception. En cas de retard, la protestation devra être faite au plus tard dans les vingt et un jours à dater du jour où le bagage ou la marchandise auront été mis à sa disposition.

(3) Toute protestation doit être faite par réserve inscrite sur le titre de transport ou par un autre écrit expédié dans le délai prévu pour cette protestation.

(4) A défaut de protestation dans les délai prévus, toutes actions contre le transporteur sont irrecevables, sauf le cas de fraude de celui-ci.

Article 27

En cas de décès du débiteur, l'action en responsabilité, dans les limites prévues par la présente Convention, s'exerce contre ses ayants droit.

Article 28

(1) L'action en responsabilité devra être portée, au choix du demandeur, dans le territoire d'une des Hautes Parties Contractantes, soit devant le tribunal du domicile du transporteur, du siège principal de son exploitation ou du lieu où il possède un établissement par la soin duquel le contrat a été conclu, soit devant le tribunal du lieu de destination.

(2) La procédure sera réglée par la loi du tribunal saisi.

Article 29

(1) L'action en responsabilité doit être intentée, sous peine de déchéance, dans le délai de deux ans à compter de l'arrivée à destination ou du jour où l'aéronef aurait du arriver, ou de l'arrêt du transport.

(2) Le mode du calcul du délai est déterminé par la loi du tribunal saisi.

Article 30

(1) Dans les cas de transport régis par la définition du troisième alinéa de l'article 1er à exécuter par divers transporteurs successifs, chaque transporteur acceptant des voyageurs, des bagages ou des marchandises est soumis aux règles établies par cette Convention, et est censé être une des parties contractantes du contrat de transport, pour autant que ce contrat ait trait à la partie du transport

effectué sous son contrôle.

(2) Au cas d'un tel transport, le voyageur ou ses ayants droit ne pourront recourir que contre le transporteur ayant effectué le transport au cours duquel l'accident ou le retard s'est produit, sauf dans le cas où, par stipulation expresse, le premier transporteur aura assuré la responsabilité pour tout le voyage.

(3) S'il s'agit de bagages ou de marchandises, l'expéditeur aura recours contre le premier transporteur et le destinataire qui a le droit à la délivrance contre le dernier, et l'un et l'autre pourront, en outre, agir contre le transporteur ayant effectué le transport au cours duquel la destruction, la perte, l'avarie ou le retard se sont produits. Ces transporteurs seront solidairement responsables envers l'expéditeur et le destinataire.

Article 30A

La présente Convention ne préjuge en aucune manière la question de savoir si la personne tenue pour responsable en vertu de ses dispositions a ou non un recours contre toute autre personne.

CHAPITRE IV

Dispositions Relatives aux Transports Combinés

Article 31

(1) Dans le cas de transports combinés effectués en partie par air et en partie par tout autre moyen de transport, les stipulations de la présente Convention ne s'appliquent qu'au transport aérien et si celui-ci répond aux conditions de l'article 1^{er}.

(2) Rien dans la présente Convention n'empêche les parties, dans le cas de transports combinés, d'insérer dans le titre de transport aérien des conditions relatives à d'autres modes de transport, à condition que les stipulations de la présente

Convention soient respectées en ce qui concerne le transport par air.

CHAPITRE V

Dispositions Générales et Finales

Article 32

Sont nulles toutes clauses du contrat de transport et toutes conventions particulières antérieures au dommage par lesquelles les parties dérogeraient aux règles de la présente Convention soit par une détermination de la loi applicable, soit par une modification des règles de compétence. Toutefois, dans le transport des marchandises, les clauses d'arbitrage sont admises, dans les limites de la présente Convention, lorsque l'arbitrage doit s'effectuer dans les lieux de compétence des tribunaux prévus à l'article 28, alinéa 1.

Article 33

Sous réserve des dispositions de l'alinéa 3 de l'article 5, rien dans la présente Convention ne peut empêcher un transporteur de refuser la conclusion d'un contrat de transport ou de formuler des règlements qui ne sont pas en contradiction avec les dispositions de la présente Convention.

Article 34

Les dispositions des articles 3 à 8 inclus relatives aux titres de transport ne sont pas applicables au transport effectué dans des circonstances extraordinaires en dehors de toute opération normale de l'exploitation aérienne.

Article 35

Lorsque dans la présente Convention il est question de jours, il s'agit de jours courants et non de jours ouvrables.

Article 36

La présente Convention est rédigée en français en un seul exemplaire qui

restera déposé aux archives du Ministère des Affaires Etrangères de Pologne, et dont une copie certifiée conforme sera transmise par les soins du Gouvernement polonais au Gouvernement de chacune des Hautes Parties Contractantes.

Article 40A

(1) ...

(2) Aux fins de la Convention, le mot territoire signifie non seulement le territoire métropolitain d'un Etat, mais aussi tous les territoires qu'il représente dans les relations extérieures.

Protocol Additionnel (ad Article 2)

Les Hautes Parties Contractantes se réservent le droit de déclarer au moment de la ratification ou de l'adhésion que l'article 2, alinéa premier, de la présente Convention ne s'appliquera pas aux transports internationaux aériens effectués directement par l'Etat, ses colonies, protectorats, territoires sous mandat ou tout autre territoire sous sa souveraineté, sa suzeraineté ou son autorité.]

MONTREAL CONVENTION 1999

CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR
INTERNATIONAL CARRIAGE BY AIR

THE STATES PARTIES TO THIS CONVENTION

RECOGNIZING the significant contribution of the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed in Warsaw on 12th October 1929, hereinafter referred to as the "Warsaw Convention", and other related instruments to the harmonization of private international air law;

RECOGNIZING the need to modernize and consolidate the Warsaw Convention and related instruments;

RECOGNIZING the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution;

REAFFIRMING the desirability of an orderly development of international air transport operations and the smooth flow of passengers, baggage and cargo in accordance with the principles and objectives of the Convention on International Civil Aviation, done at Chicago on 7 December 1944;

CONVINCED that collective State action for further harmonization and codification of certain rules governing international carriage by air through a new Convention is the most adequate means of achieving an equitable balance of interests;

HAVE AGREED AS FOLLOWS:

CHAPTER I

General Provisions

Article 1 — Scope of Application.

1 This Convention applies to all international carriage of persons, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.

2 For the purposes of this Convention, the expression international carriage means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two States Parties, or within the territory of a single State Party if there is an agreed stopping place within the territory of another State, even if that State is not a State Party. Carriage between two points within the territory of a single State Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention.

3 Carriage to be performed by several successive carriers is deemed, for the purposes of this Convention, 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 the territory of the same State.

4 This Convention applies also to carriage as set out in Chapter V, subject to the terms contained therein.

Article 2 — Carriage Performed by State and Carriage of Postal Items.

1 This Convention applies to carriage performed by the State or by

legally constituted public bodies provided it falls within the conditions laid down in Article 1.

2 In the carriage of postal items, the carrier shall be liable only to the relevant postal administration in accordance with the rules applicable to the relationship between the carriers and the postal administrations.

3 Except as provided in paragraph 2 of this Article, the provisions of this Convention shall not apply to the carriage of postal items.

CHAPTER II

Documentation and Duties of the Parties relating to the Carriage of Passengers, Baggage and Cargo

Article 3 — Passengers and Baggage.

1 In respect of carriage of passengers, an individual or collective document of carriage shall be delivered containing:

- (a) an indication of the places of departure and destination,
- (b) if the places of departure and destination are within the territory of a single State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place.

2 Any other means which preserves the information indicated in paragraph 1 may be substituted for the delivery of the document referred to in that paragraph. If any such other means is used, the carrier shall offer to deliver to the passenger a written statement of the information so preserved.

3 The carrier shall deliver to the passenger a baggage identification tag

for each piece of checked baggage.

4 The passenger shall be given written notice to the effect that where this Convention is applicable it governs and may limit the liability of carriers in respect of death or injury and for destruction or loss of, or damage to, baggage, and for delay.

5 Non-compliance with the provisions of the foregoing paragraphs shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

Article 4 — Cargo.

1 In respect of the carriage of cargo, an air waybill shall be delivered.

2 Any other means which preserves a record of the carriage to be performed may be substituted for the delivery of an air waybill. If such other means are used, the carrier shall, if so requested by the consignor, deliver to the consignor a cargo receipt permitting identification of the consignment and access to the information contained in the record preserved by such other means.

Article 5 — Contents of Air Waybill or Cargo Receipt.

The air waybill or the cargo receipt shall include:

- (a) an indication of the places of departure and destination,
- (b) if the places of departure and destination are within the territory of a single State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place, and

- (c) an indication of the weight of the consignment.

Article 6 — Document Relating to the Nature of the Cargo.

The consignor may be required, if necessary to meet the formalities of customs, police and similar public authorities, to deliver a document indicating the nature of the cargo. This provision creates for the carrier no duty, obligation or liability resulting therefrom.

Article 7 — Description of Air Waybill.

1 The air waybill shall be made out by the consignor in three original parts.

2 The first part shall be marked "for the carrier"; it shall be signed by the consignor. The second part shall be marked "for the consignee"; it shall be signed by the consignor and by the carrier. The third part shall be signed by the carrier who shall hand it to the consignor after the cargo has been accepted.

3 The signature of the carrier and that of the consignor may be printed or stamped.

4 If, at the request of the consignor, the carrier makes out the air waybill, the carrier shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

Article 8 — Documentation for Multiple Packages.

When there is more than one package:

- (a) the carrier of cargo has the right to require the consignor to make out separate air waybills,
- (b) the consignor has the right to require the carrier to

deliver separate cargo receipts when the other means referred to in paragraph 2 of Article 4 are used.

Article 9 — Non-compliance with Documentary Requirements.

Non-compliance with the provisions of Articles 4 to 8 shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

Article 10 — Responsibility for Particulars of Documentation.

1 The consignor is responsible for the correctness of the particulars and statements relating to the cargo inserted by it or on its behalf in the air waybill or furnished by it or on its behalf to the carrier for insertion in the cargo receipt or for insertion in the record preserved by the other means referred to in paragraph 2 of Article 4. The foregoing shall also apply where the person acting on behalf of the consignor is also the agent of the carrier.

2 The consignor shall indemnify the carrier against all damage suffered by it, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor or on its behalf.

3 Subject to the provisions of paragraphs 1 and 2 of this Article, the carrier shall indemnify the consignor against all damage suffered by it, or by any other person to whom the consignor is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements inserted by the carrier or on its behalf in the cargo receipt or in the record preserved by the other means referred to in paragraph 2 of Article 4.

Article 11 — Evidentiary Value of Documentation.

1 The air waybill or the cargo receipt is prima facie evidence of the

conclusion of the contract, of the acceptance of the cargo and of the conditions of carriage mentioned therein.

2 Any statements in the air waybill or the cargo receipt relating to the weight, dimensions and packing of the cargo, as well as those relating to the number of packages, are prima facie evidence of the facts stated; those relating to the quantity, volume and condition of the cargo do not constitute evidence against the carrier except so far as they both have been, and are stated in the air waybill or the cargo receipt to have been, checked by it in the presence of the consignor, or relate to the apparent condition of the cargo.

Article 12 — Right of Disposition of Cargo

1 Subject to its liability to carry out all its obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the airport of departure or destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee originally designated, or by requiring it to be returned to the airport of departure. The consignor must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and must reimburse any expenses occasioned by the exercise of this right.

2 If it is impossible to carry out the instructions of the consignor, the carrier must so inform the consignor forthwith.

3 If the carrier carries out the instructions of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill or the cargo receipt delivered to the latter, the carrier will be liable, without prejudice to its right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill or the cargo receipt.

4 The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the consignee declines to accept the cargo, or cannot be communicated with, the consignor resumes its right of disposition.

Article 13 — Delivery of the Cargo.

1 Except when the consignor has exercised its right under Article 12, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to deliver the cargo to it, on payment of the charges due and on complying with the conditions of carriage.

2 Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives.

3 If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of seven days after the date on which it ought to have arrived, the consignee is entitled to enforce against the carrier the rights which flow from the contract of carriage.

Article 14 — Enforcement of the Rights of Consignor and Consignee.

The consignor and the consignee can respectively enforce all the rights given to them by Articles 12 and 13, each in its own name, whether it is acting in its own interest or in the interest of another, provided that it carries out the obligations imposed by the contract of carriage.

Articles 15 — Relations of Consignor and Consignee or Mutual Relations of Third Parties.

1 Articles 12, 13 and 14 do not affect either the relations of the consignor and the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

2 The provisions of Articles 12, 13 and 14 can only be varied by express provision in the air waybill or the cargo receipt.

Article 16 — Formalities of Customs, Police or Other Public Authorities.

1 The consignor must furnish such information and such documents as are necessary to meet the formalities of customs, police and any other public authorities before the cargo can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier, its servants or agents.

2 The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

CHAPTER III

Liability of the Carrier and Extent of Compensation for Damage

Article 17 — Death and Injury of Passengers—Damage to Baggage.

1 The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

2 The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault or that of its servants or agents.

3 If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of twenty-one days after the date on which it ought to have arrived, the passenger is entitled to enforce against the carrier the rights which flow from the contract of carriage.

4 Unless otherwise specified, in this Convention the term "baggage" means both checked baggage and unchecked baggage.

Article 18 — Damage to Cargo.

1 The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, cargo upon condition only that the event which caused the damage so sustained took place during the carriage by air.

2 However, the carrier is not liable if and to the extent it proves that the destruction, or loss of, or damage to, the cargo resulted from one or more of the following:

- (a) inherent defect, quality or vice of that cargo,
- (b) defective packing of that cargo performed by a person other than the carrier or its servants or agents,
- (c) an act of war or an armed conflict,
- (d) an act of public authority carried out in connection with the entry, exit or transit of the cargo.

3 The carriage by air within the meaning of paragraph 1 of this Article comprises the period during which the cargo is in the charge of the carrier.

4 The period of the carriage by air does not extend to any carriage by land, by sea or by inland waterway performed outside an airport. If, however, such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air. If a carrier, without the consent of the consignor, substitutes carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air.

Article 19 — Delay.

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

Article 20 — Exoneration.

If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When by reason of death or injury of a passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger. This Article applies to all the liability provisions in this Convention, including paragraph 1 of Article 21.

Article 21 — Compensation in Case of Death or Injury of Passengers.

1 For damages arising under paragraph 1 of Article 17 not exceeding 100,000 Special Drawing Rights for each passenger, the carrier shall not be able to exclude or limit its liability.

2 The carrier shall not be liable for damages arising under paragraph 1 of Article 17 to the extent that they exceed for each passenger 100,000 Special Drawing Rights if the carrier proves that:

- (a) such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents, or
- (b) such damage was solely due to the negligence or other wrongful act or omission of a third party.

Article 22 — Limits of Liability in Relation to Delay, Baggage and Cargo.

1 In the case of damage caused by delay as specified in Article 19 in the carriage of persons, the liability of the carrier for each passenger is limited to 4,150 Special Drawing Rights.

2 In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1,000 Special Drawing Rights for each passenger unless the passenger has made, at the time when the checked baggage 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 it proves that the sum is greater than the passenger's actual interest in delivery at destination.

3 In the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage or delay 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 it proves that the sum is greater than the consignor's actual interest in delivery at destination.

4 In the case of destruction, loss, damage or delay of part of the cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the destruction, loss, damage or delay of a part of the cargo, or of an object contained therein, affects the value of other packages covered by the same air waybill, or the same receipt or, if they were not issued, by the same record preserved by the other means referred to in paragraph 2 of Article 4, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

5 The foregoing provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the carrier, its servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that such servant or agent was acting within the scope of its employment.

6 The limits prescribed in Article 21 and in this Article shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff, including interest. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

Article 23 — Conversion of Monetary Units.

1 The sums mentioned in terms of Special Drawing Right in this Convention 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 State 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 State Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that State.

2 Nevertheless, those States which are not Members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 of this Article may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier prescribed in Article 21 is fixed at a sum of 1,500,000 monetary units per passenger in judicial proceedings in their territories; 62,500 monetary units per passenger with respect to paragraph 1 of Article 22; 15,000 monetary units per passenger with respect to paragraph 2 of Article 22; and 250 monetary units per kilogramme with respect to paragraph 3 of Article 22. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into the national currency concerned in round figures. The conversion of these sums into national currency shall be made according to the law of the State concerned.

3 The calculation mentioned in the last sentence of paragraph 1 of this Article and the conversion method mentioned in paragraph 2 of this Article shall be made in such manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in Articles 21 and 22 as would result

from the application of the first three sentences of paragraph 1 of this Article. States Parties shall communicate to the depositary the manner of calculation pursuant to paragraph 1 of this Article, or the result of the conversion in paragraph 2 of this Article as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

Article 24 — Review of Limits.

1 Without prejudice to the provisions of Article 25 of this Convention and subject to paragraph 2 below, the limits of liability prescribed in Articles 21, 22 and 23 shall be reviewed by the Depositary at five-year intervals, the first such review to take place at the end of the fifth year following the date of entry into force of this Convention, or if the Convention does not enter into force within five years of the date it is first open for signature, within the first year of its entry into force, by reference to an inflation factor which corresponds to the accumulated rate of inflation since the previous revision or in the first instance since the date of entry into force of the Convention. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in paragraph 1 of Article 23.

2 If the review referred to in the preceding paragraph concludes that the inflation factor has exceeded 10 per cent, the Depositary shall notify States Parties of a revision of the limits of liability. Any such revision shall become effective six months after its notification to the States Parties. If within three months after its notification to the States Parties a majority of the States Parties register their disapproval, the revision shall not become effective and the Depositary shall refer the matter to a meeting of the States Parties. The Depositary shall immediately notify all States Parties of the coming into force of any revision.

3 Notwithstanding paragraph 1 of this Article, the procedure referred to in paragraph 2 of this Article shall be applied at any time provided that one-third of

the States Parties express a desire to that effect and upon condition that the inflation factor referred to in paragraph 1 has exceeded 30 per cent since the previous revision or since the date of entry into force of this Convention if there has been no previous revision. Subsequent reviews using the procedure described in paragraph 1 of this Article will take place at five-year intervals starting at the end of the fifth year following the date of the reviews under the present paragraph.

Article 25 — Stipulation on Limits.

A carrier may stipulate that the contract of carriage shall be subject to higher limits of liability than those provided for in this Convention or to no limits of liability whatsoever.

Article 26 — Invalidity of Contractual Provisions.

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

Article 27 — Freedom to Contract.

Nothing contained in this Convention shall prevent the carrier from refusing to enter into any contract of carriage, from waiving any defences available under the Convention, or from laying down conditions which do not conflict with the provisions of this Convention.

Article 28 — Advance Payments.

In the case of aircraft accidents resulting in death or injury of passengers, the carrier shall, if required by its national law, make advance payments without delay to a natural person or persons who are entitled to claim compensation in order to meet the immediate economic needs of such persons. Such advance payments shall not constitute a recognition of liability and may be offset against any amounts subsequently paid as damages by the carrier.

Article 29 — Basis of Claims.

In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.

Article 30 — Servants, Agents — Aggregation of Claims.

1 If an action is brought against a servant or agent of the carrier arising out of damage to which the Convention relates, such servant or agent, if they prove that they acted within the scope of their employment, shall be entitled to avail themselves of the conditions and limits of liability which the carrier itself is entitled to invoke under this Convention.

2 The aggregate of the amounts recoverable from the carrier, its servants and agents, in that case, shall not exceed the said limits.

3 Save in respect of the carriage of cargo, the provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Article 31 — Timely Notice of Complaints.

1 Receipt by the person entitled to delivery of checked baggage or cargo without complaint is prima facie evidence that the same has been delivered in good condition and in accordance with the document of carriage or with the record preserved by the other means referred to in paragraph 2 of Article 3 and paragraph 2 of Article 4.

2 In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of checked baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay, the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his or her disposal.

3 Every complaint must be made in writing and given or dispatched within the times aforesaid.

4 If no complaint is made within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on its part.

Article 32 — Death of Person Liable.

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this Convention against those legally representing his or her estate.

Article 33 — Jurisdiction.

1 An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the court at the place of destination.

2 In respect of damage resulting from the death or injury of a passenger, an action may be brought before one of the courts mentioned in paragraph 1 of this Article, or in the territory of a State Party in which at the time of the accident the passenger has his or her principal and permanent residence and to or from which the carrier operates services for the carriage of passengers by air, either on its own

aircraft, or on another carrier's aircraft pursuant to a commercial agreement, and in which that carrier conducts its business of carriage of passengers by air from premises leased or owned by the carrier itself or by another carrier with which it has a commercial agreement.

3 For the purposes of paragraph 2,

- (a) "commercial agreement² means an agreement, other than an agency agreement, made between carriers and relating to the provision of their joint services for carriage of passengers by air,
- (b) "principal and permanent residence" means the one fixed and permanent abode of the passenger at the time of the accident. The nationality of the passenger shall not be the determining factor in this regard.

4 Questions of procedure shall be governed by the law of the court seised of the case.

Article 34 — Arbitration.

1 Subject to the provisions of this Article, the parties to the contract of carriage for cargo may stipulate that any dispute relating to the liability of the carrier under this Convention shall be settled by arbitration. Such agreement shall be in writing.

2 The arbitration proceedings shall, at the option of the claimant, take place within one of the jurisdictions referred to in Article 33.

3 The arbitrator or arbitration tribunal shall apply the provisions of this Convention.

4 The provisions of paragraphs 2 and 3 of this Article shall be deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement which is inconsistent therewith shall be null and void.

Article 35 — Limitation of Actions.

1 The right to damages shall be extinguished if an action is not brought within a period of 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 The method of calculating that period shall be determined by the law of the court seised of the case.

Article 36 — Successive Carriage.

1 In the case of carriage to be performed by various successive carriers and falling within the definition set out in paragraph 3 of Article 1, each carrier which accepts passengers, baggage or cargo is subject to the rules set out in this Convention and is deemed to be one of the parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under its supervision.

2 In the case of carriage of this nature, the passenger or any person entitled to compensation in respect of him or her can take action only against the carrier which performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

3 As regards baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier which performed the carriage during which the

destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

Article 37 — Right of Recourse against Third Parties.

Nothing in this Convention shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any other person.

CHAPTER IV

Combined Carriage

Article 38 — Combined Carriage.

1 In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention shall, subject to paragraph 4 of Article 18, apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.

2 Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention are observed as regards the carriage by air.

CHAPTER V

Carriage by Air Performed by a Person other than the Contracting Carrier

Article 39 — Contracting Carrier — Actual Carrier.

The provisions of this Chapter apply when a person (hereinafter referred to as "the contracting carrier") as a principal makes a contract governed by this Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor, and another person (hereinafter referred to as "the actual carrier") performs, by virtue of authority from the contracting carrier, the whole or part of the

carriage, but is not with respect to such part a successive carrier within the meaning of this Convention. Such authority shall be presumed in the absence of proof to the contrary.

Article 40 — Respective Liability of Contracting and Actual Carriers.

If an actual carrier performs the whole or part of carriage which, according to the contract referred to in Article 39, is governed by this Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Chapter, be subject to the rules of this Convention, the former for the whole of the carriage contemplated in the contract, the latter solely for the carriage which it performs.

Article 41 — Mutual Liability.

1 The acts and omissions of the actual carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.

2 The acts and omissions of the contracting carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the amounts referred to in Articles 21, 22, 23 and 24. Any special agreement under which the contracting carrier assumes obligations not imposed by this Convention or any waiver of rights or defences conferred by this Convention or any special declaration of interest in delivery at destination contemplated in Article 22 shall not affect the actual carrier unless agreed to by it.

Article 42 — Addressee of Complaints and Instructions.

Any complaint to be made or instruction to be given under this Convention to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Nevertheless, instructions referred to in Article 12 shall only be

effective if addressed to the contracting carrier.

Article 43 — Servants and Agents.

In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if they prove that they acted within the scope of their employment, be entitled to avail themselves of the conditions and limits of liability which are applicable under this Convention to the carrier whose servant or agent they are, unless it is proved that they acted in a manner that prevents the limits of liability from being invoked in accordance with this Convention.

Article 44 — Aggregation of Damages.

In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the contracting carrier, and from their servants and agents acting within the scope of their employment, shall not exceed the highest amount which could be awarded against either the contracting carrier or the actual carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to that person.

Article 45 — Addressee of Claims.

In relation to the carriage performed by the actual carrier, an action for damages may be brought, at the option of the plaintiff, against that carrier or the contracting carrier, or against both together or separately. If the action is brought against only one of those carriers, that carrier shall have the right to require the other carrier to be joined in the proceedings, the procedure and effects being governed by the law of the court seised of the case.

Article 46 — Additional Jurisdiction.

Any action for damages contemplated in Article 45 must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before a court in which an action may be brought against the contracting carrier, as provided in Article 33, or before the court having jurisdiction at the place where the actual carrier

has its domicile or its principal place of business.

Article 47 — Invalidity of Contractual Provisions.

Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Chapter or to fix a lower limit than that which is applicable according to this Chapter shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Chapter.

Article 48 — Mutual Relations of Contracting and Actual Carriers.

Except as provided in Article 45, nothing in this Chapter shall affect the rights and obligations of the carriers between themselves, including any right of recourse or indemnification.

CHAPTER VI

Other Provisions

Article 49 — Mandatory Application.

Any clause contained in the contract of carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void.

Article 50 — Insurance.

States Parties shall require their carriers to maintain adequate insurance covering their liability under this Convention. A carrier may be required by the State Party into which it operates to furnish evidence that it maintains adequate insurance covering its liability under this Convention.

Article 51 — Carriage Performed in Extraordinary Circumstances.

The provisions of Articles 3 to 5, 7 and 8 relating to the documentation of

carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of a carrier's business.

Article 52 — Definition of Days.

The expression "days" when used in this Convention means calendar days, not working days.

CHAPTER VII

Final Clauses

Article 53 — Signature, Ratification and Entry into Force.

2 For the purpose of this Convention, a "Regional Economic Integration Organisation" means any organisation which is constituted by sovereign States of a given region which has competence in respect of certain matters governed by this Convention and has been duly authorized to sign and to ratify, accept, approve or accede to this Convention. A reference to a "State Party" or "States Parties" in this Convention, otherwise than in paragraph 2 of Article 1, paragraph 1(b) of Article 3, paragraph (b) of Article 5, Articles 23, 33, 46 and paragraph (b) of Article 57, applies equally to a Regional Economic Integration Organisation. For the purpose of Article 24, the references to "a majority of the States Parties" and "one-third of the States Parties" shall not apply to a Regional Economic Integration Organisation.

Article 55 — Relationship with other Warsaw Convention Instruments.

This Convention shall prevail over any rules which apply to international carriage by air:

1 between States Parties to this Convention by virtue of those States commonly being Party to:

- (a) the Convention for the Unification of Certain Rules

Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 (hereinafter called the Warsaw Convention),

- (b) the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929, Done at The Hague on 28 September 1955 (hereinafter called The Hague Protocol),
- (c) the Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier, signed at Guadalajara on 18 September 1961 (hereinafter called the Guadalajara Convention),
- (d) the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 as Amended by the Protocol Done at The Hague on 28 September 1955 Signed at Guatemala City on 8 March 1971 (hereinafter called the Guatemala City Protocol),
- (e) Additional Protocol Nos. 1 to 3 and Montreal Protocol No 4 to amend the Warsaw Convention as amended by The Hague Protocol or the Warsaw Convention as amended by both The Hague Protocol and the Guatemala City Protocol Signed at Montreal on 25 September 1975 (hereinafter called the Montreal Protocols), or

2 within the territory of any single State Party to this Convention by virtue of that State being Party to one or more of the instruments referred to in subparagraphs (a) to (e) above.

Article 57 — Reservations.

No reservation may be made to this Convention except that a State Party may at any time declare by a notification addressed to the Depositary that this Convention shall not apply to:

- (a) international carriage by air performed and operated directly by that State Party for non-commercial purposes in respect to its functions and duties as a sovereign State, and/or
- (b) the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by that State Party, the whole capacity of which has been reserved by or on behalf of such authorities.

[Paragraphs 53 (save for part of paragraph 2), 54 and 56 and the concluding words of the Convention are not reproduced. They deal with signature, ratification, coming into force, denunciation and territorial extent where a State has more than one system of law]

SCHEDULE 11
GUADALAJARA CONVENTION 1961

Section 149(5)

PART I THE ENGLISH TEXT

CONVENTION

SUPPLEMENTARY TO THE WARSAW CONVENTION, FOR THE
UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL
CARRIAGE BY AIR PERFORMED BY A PERSON OTHER THAN THE
CONTRACTING CARRIER

Article I

In this Convention:

- (a) ...
- (b) **"contracting carrier"** means a person who as a principal makes an agreement for carriage governed by the Warsaw Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor,
- (c) **"actual carrier"** means a person, other than the contracting carrier, who, by virtue of authority from the contracting carrier, performs the whole or part of the carriage contemplated in paragraph (b) but who is not with respect to such part a successive carrier within the meaning of the Warsaw Convention. Such authority is presumed in the absence of proof to the contrary.

Article II

If an actual carrier performs the whole or part of carriage which, according to

the agreement referred to in Article I, paragraph (b), is governed by the Warsaw Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Convention, be subject to the rules of the Warsaw Convention, the former for the whole of the carriage contemplated in the agreement, the latter solely for the carriage which he performs.

Article III

1 The acts and omissions of the actual carrier and of his servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.

2 The acts and omissions of the contracting carrier and of his servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the limits specified in Article 22 of the Warsaw Convention. Any special agreement under which the contracting carrier assumes obligations not imposed by the Warsaw Convention or any waiver of rights conferred by that Convention or any special declaration of interest in delivery at destination contemplated in Article 22 of the said Convention, shall not affect the actual carrier unless agreed to by him.

Article IV

Any complaint to be made or order to be given under the Warsaw Convention to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Nevertheless, orders referred to in Article 12 of the Warsaw Convention shall only be effective if addressed to the contracting carrier.

Article V

In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if he proves that he acted within the

scope of his employment, be entitled to avail himself of the limits of liability which are applicable under this Convention to the carrier whose servant or agent he is unless it is proved that he acted in a manner which, under the Warsaw Convention, prevents the limits of liability from being invoked.

Article VI

In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the contracting carrier, and from their servants and agents acting within the scope of their employment, shall not exceed the highest amount which could be awarded against either the contracting carrier or the actual carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.

Article VII

In relation to the carriage performed by the actual carrier, an action for damages may be brought, at the option of the plaintiff, against that carrier or the contracting carrier, or against both together or separately. If the action is brought against only one of those carriers, that carrier shall have the right to require the other carrier to be joined in the proceedings, the procedure and effects being governed by the law of the court seised of the case.

Article VIII

Any action for damages contemplated in Article VII of this Convention must be brought, at the option of the plaintiff, either before a court in which an action may be brought against the contracting carrier, as provided in Article 28 of the Warsaw Convention, or before the court having jurisdiction at the place where the actual carrier is ordinarily resident or has his principal place of business.

Article IX

1 Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Convention or to fix a lower limit than that

which is applicable according to this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole agreement, which shall remain subject to the provisions of this Convention.

2 In respect of the carriage performed by the actual carrier, the preceding paragraph shall not apply to contractual provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried.

3 Any clause contained in an agreement for carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless, for the carriage of cargo arbitration clauses are allowed, subject to this Convention, if the arbitration is to take place in one of the jurisdictions referred to in Article VIII.

Article X

Except as provided in Article VII, nothing in this Convention shall affect the rights and obligations of the two carriers between themselves.

Articles XI–XVIII

...

Article I: para (a) (omitted) defines “Warsaw Convention”.

Articles XI–XVIII: (omitted) deal with the coming into force of the Convention and provide that in the case of inconsistency the text in French shall prevail.

PART II THE FRENCH TEXT

CONVENTION

**COMPLEMENTAIRE A LA CONVENTION DE VARSOVIE, POUR
L'UNIFICATION DE CERTAINES REGLES RELATIVES AU TRANSPORT
AERIEN INTERNATIONAL EFFECTUE PAR UNE PERSONNE AUTRE QUE**

LE TRANSPORTEUR CONTRACTUEL

Article Premier

Dans la présente Convention:

- (a) ...
- (b) **"transporteur contractuel"** signifie une personne partie à un contrat de transport régi par la Convention de Varsovie et conclu avec un passager ou un expéditeur ou avec une personne agissant pour le compte du passager ou de l'expéditeur,
- (c) **"transporteur de fait"** signifie une personne, autre que le transporteur contractuel, qui, en vertu d'une autorisation donnée par le transporteur contractuel, effectue tout ou partie du transport prévu à l'alinéa (b) mais n'est pas, en ce qui concerne cette partie, un transporteur successif au sens de la Convention de Varsovie. Cette autorisation est présumée, sauf preuve contraire.

Article II

Sauf disposition contraire de la présente Convention, si un transporteur de fait effectue tout ou partie du transport qui, conformément au contrat visé à l'article premier, alinéa (b), est régi par la Convention de Varsovie, le transporteur contractuel et le transporteur de fait sont soumis aux règles de la Convention de Varsovie, le premier pour la totalité du transport envisagé dans le contrat, le second seulement pour le transport qu'il effectue.

Article III

1 Les actes et omissions du transporteur de fait ou de ses préposés agissant dans l'exercice de leurs fonctions, relatifs au transport effectué par le transporteur de fait, sont réputés être également ceux du transporteur contractuel.

2 Les actes et omissions du transporteur contractuel ou de ses préposés agissant dans l'exercice de leurs fonctions, relatifs au transport effectué par le transporteur de fait, sont réputés être également ceux du transporteur de fait. Toutefois, aucun de ces actes ou omissions ne pourra soumettre le transporteur de fait à une responsabilité dépassant les limites prévues à l'article 22 de la Convention de Varsovie. Aucun accord spécial aux termes duquel le transporteur contractuel assume des obligations que n'impose pas la Convention de Varsovie, aucune renonciation à des droits prévus par ladite Convention ou aucune déclaration spéciale d'intérêt à la livraison, visée à l'article 22 de ladite Convention, n'auront d'effet à l'égard du transporteur de fait, sauf consentement de ce dernier.

Article IV

Les ordres ou protestations à notifier au transporteur, en application de la Convention de Varsovie, ont le même effet qu'ils soient adressés au transporteur contractuel ou au transporteur de fait. Toutefois, les ordres visés à l'article 12 de la Convention de Varsovie n'ont d'effet que s'ils sont adressés au transporteur contractuel.

Article V

En ce qui concerne le transport effectué par le transporteur de fait, tout préposé de ce transporteur ou du transporteur contractuel, s'il prouve qu'il a agi dans l'exercice de ses fonctions, peut se prévaloir des limites de responsabilité applicables, en vertu de la présente Convention, au transporteur dont il est préposé, sauf s'il est prouvé qu'il a agi de telle façon que les limites de responsabilité ne puissent être invoquées aux termes de la Convention de Varsovie.

Article VI

En ce qui concerne le transport effectué par le transporteur de fait, le montant total de la réparation qui peut être obtenu de ce transporteur, du transporteur contractuel et de leurs préposés quand ils ont agi dans l'exercice de leurs fonctions, ne peut pas dépasser l'indemnité la plus élevée qui peut être mise à charge soit du transporteur contractuel, soit du transporteur de fait, en vertu de la présente Convention, sous réserve qu'aucune des personnes mentionnées dans le présent article ne puisse être tenue pour responsable au delà de la limite qui lui est applicable.

Article VII

Toute action en responsabilité, relative au transport effectuée par le transporteur de fait, peut être intentée, au choix du demandeur, contre ce transporteur ou le transporteur contractuel ou contre l'un et l'autre, conjointement ou séparément. Si l'action est intentée contre l'un seulement de ces transporteurs, ledit transporteur aura le droit d'appeler l'autre transporteur en intervention devant le tribunal saisi, les effets de cette intervention ainsi que la procédure qui lui est applicable étant réglés par la loi de ce tribunal.

Article VIII

Toute action en responsabilité, prévue à l'article VII de la présente Convention, doit être portée, au choix du demandeur, soit devant l'un des tribunaux où une action peut être intentée au transporteur contractuel, conformément à l'article 28 de la Convention de Varsovie, soit devant le tribunal du domicile du transporteur de fait ou du siège principal de son exploitation.

Article IX

1 Toute clause tendant à exonérer le transporteur contractuel ou le transporteur de fait de leur responsabilité en vertu de la présente Convention ou à établir une limite inférieure à celle qui est fixée dans la présente Convention est nulle et de nul effet, mais la nullité de cette clause n'entraîne pas la nullité du contrat qui reste soumis aux dispositions de la présente Convention.

2 En ce qui concerne le transport effectué par le transporteur de fait, le paragraphe précédent ne s'applique pas aux clauses concernant la perte ou le dommage résultant de la nature ou du vice propre des marchandises transportées.

3 Sont nulles toutes clauses du contrat de transport et toutes conventions particulières antérieures au dommage par lesquelles les parties dérogeraient aux règles de la présente Convention soit par une détermination de la loi applicable, soit par une modification des règles de compétence. Toutefois, dans le transport des marchandises, les clauses d'arbitrage sont admises, dans les limites de la présente Convention, lorsque l'arbitrage doit s'effectuer dans les lieux de compétence des tribunaux prévus à l'article VIII.

Article X

Sous réserve de l'article VII, aucune disposition de la présente Convention ne peut être interprétée comme affectant les droits et obligations existant entre les deux transporteurs.

SCHEDULE 12

Section 158

MONTREAL CONVENTION AMENDED

for the purposes of non-international carriage in the Bailiwick of Guernsey

CHAPTER I

General Provisions

Article 1 — Scope of Application.

1 This Schedule applies to all carriage of persons, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.

4 This Schedule applies also to carriage as set out in Chapter V, subject to the terms contained therein.

Article 2 — Carriage Performed by State and Carriage of Postal Items.

1 This Schedule applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1.

2 In the carriage of postal items, the carrier shall be liable only to the relevant postal administration in accordance with the rules applicable to the relationship between the carriers and the postal administrations.

3 Except as provided in paragraph 2 of this Article, the provisions of this Schedule shall not apply to the carriage of postal items.

CHAPTER II

*Documentation and Duties of the Parties relating to the Carriage of Passengers,
Baggage and Cargo*

Article 3 — Passengers and Baggage.

3 The carrier shall deliver to the passenger a baggage identification tag for each piece of checked baggage.

5 Non-compliance with the provisions of the foregoing paragraphs shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Schedule including those relating to limitation of liability.

CHAPTER III

Liability of the Carrier and Extent of Compensation for Damage

Article 17 — Death and Injury of Passengers—Damage to Baggage.

1 The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

2 The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault or that of its servants or agents.

3 If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of twenty-one days after the date on which it ought to have arrived, the passenger is entitled to enforce against the carrier the rights which flow from the contract of carriage.

4 Unless otherwise specified, in this Schedule the term "baggage" means both checked baggage and unchecked baggage.

Article 18 — Damage to Cargo.

1 The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, cargo upon condition only that the event which caused the damage so sustained took place during the carriage by air.

2 However, the carrier is not liable if and to the extent it proves that the destruction, or loss of, or damage to, the cargo resulted from one or more of the following:

- (a) inherent defect, quality or vice of that cargo,
- (b) defective packing of that cargo performed by a person other than the carrier or its servants or agents,
- (c) an act of war or an armed conflict,
- (d) an act of public authority carried out in connection with the entry, exit or transit of the cargo.

3 The carriage by air within the meaning of paragraph 1 of this Article comprises the period during which the cargo is in the charge of the carrier.

4 The period of the carriage by air does not extend to any carriage by land, by sea or by inland waterway performed outside an airport. If, however, such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transhipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the

carriage by air. If a carrier, without the consent of the consignor, substitutes carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air.

Article 19 — Delay.

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

Article 20 — Exoneration.

If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When by reason of death or injury of a passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger. This Article applies to all the liability provisions in this Schedule, including paragraph 1 of Article 21.

Article 21 — Compensation in Case of Death or Injury of Passengers.

1 For damages arising under paragraph 1 of Article 17 not exceeding 100,000 Special Drawing Rights for each passenger, the carrier shall not be able to exclude or limit its liability.

2 The carrier shall not be liable for damages arising under paragraph 1 of

Article 17 to the extent that they exceed for each passenger 100,000 Special Drawing Rights if the carrier proves that:

- (a) such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents, or
- (b) such damage was solely due to the negligence or other wrongful act or omission of a third party.

Article 22 — Limits of Liability in Relation to Delay, Baggage and Cargo.

1 In the case of damage caused by delay as specified in Article 19 in the carriage of persons, the liability of the carrier for each passenger is limited to 4,150 Special Drawing Rights.

2 In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1,000 Special Drawing Rights for each passenger unless the passenger has made, at the time when the checked baggage 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 it proves that the sum is greater than the passenger's actual interest in delivery at destination.

3 In the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage or delay 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 it proves that the sum is greater than the consignor's actual interest in delivery at destination.

4 In the case of destruction, loss, damage or delay of part of the cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the destruction, loss, damage or delay of a part of the cargo, or of an object contained therein, affects the value of other packages covered by the same air waybill, or the same receipt or any alternative record, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

5 The foregoing provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the carrier, its servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that such servant or agent was acting within the scope of its employment.

6 The limits prescribed in Article 21 and in this Article shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff, including interest. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

Article 23 — Conversion of Monetary Units.

1 The sums mentioned in terms of Special Drawing Right in this Schedule 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.

2 The value on a particular day of one Special Drawing Right shall be treated as equal to such a sum in sterling as the International Monetary Fund has fixed as being the equivalent of one Special Drawing Right –

- (a) for that day, or
- (b) if no sum has been fixed for that day, for the last day before that day for which a sum has been fixed.

3 A certificate given by or on behalf of [the Committee] stating –

- (a) that a particular sum in sterling has been fixed by the International Monetary Fund as referred to in paragraph 2 for a particular day, or
- (b) that no sum has been so fixed for a particular day and that a particular sum in sterling has been so fixed for a day which is the last day for which a sum has been fixed before the particular day.

shall be conclusive evidence of those matters for the purposes of this article, and a document purporting to be such a certificate shall in any proceedings be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

Article 25 — Stipulation on Limits.

A carrier may stipulate that the contract of carriage shall be subject to higher limits of liability than those provided for in this Schedule or to no limits of liability whatsoever.

Article 26 — Invalidity of Contractual Provisions.

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Schedule shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Schedule.

Article 27 — Freedom to Contract.

Nothing contained in this Schedule shall prevent the carrier from refusing to enter into any contract of carriage, from waiving any defences available under the Schedule, or from laying down conditions which do not conflict with the provisions of this Schedule.

Article 28 — Advance Payments.

In the case of aircraft accidents resulting in death or injury of passengers, the carrier shall, if required by its national law, make advance payments without delay to a natural person or persons who are entitled to claim compensation in order to meet the immediate economic needs of such persons. Such advance payments shall not constitute a recognition of liability and may be offset against any amounts subsequently paid as damages by the carrier.

Article 29 — Basis of Claims.

In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Schedule or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Schedule without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.

Article 30 — Servants, Agents — Aggregation of Claims.

1 If an action is brought against a servant or agent of the carrier arising out of damage to which the Schedule relates, such servant or agent, if they prove that

they acted within the scope of their employment, shall be entitled to avail themselves of the conditions and limits of liability which the carrier itself is entitled to invoke under this Schedule.

2 The aggregate of the amounts recoverable from the carrier, its servants and agents, in that case, shall not exceed the said limits.

3 Save in respect of the carriage of cargo, the provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Article 31 — Timely Notice of Complaints.

1 Receipt by the person entitled to delivery of checked baggage or cargo without complaint is prima facie evidence that the same has been delivered in good condition.

2 In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of checked baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay, the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his or her disposal.

3 Every complaint must be made in writing and given or dispatched within the times aforesaid.

4 If no complaint is made within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on its part.

Article 32 — Death of Person Liable.

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this Schedule against those legally representing his or her estate.

Article 34 — Arbitration.

1 Subject to the provisions of this Article, the parties to the contract of carriage for cargo may stipulate that any dispute relating to the liability of the carrier under this Schedule shall be settled by arbitration. Such agreement shall be in writing.

3 The arbitrator or arbitration tribunal shall apply the provisions of this Schedule.

4 The provisions of paragraphs 2 and 3 of this Article shall be deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement which is inconsistent therewith shall be null and void.

Article 35 — Limitation of Actions.

1 The right to damages shall be extinguished if an action is not brought within a period of 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 The method of calculating that period shall be determined by the law of the court seised of the case.

Article 36 — Successive Carriage.

1 In the case of carriage to be performed by various successive carriers, each carrier which accepts passengers, baggage or cargo is subject to the rules set out in this Schedule and is deemed to be one of the parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under its supervision.

2 In the case of carriage of this nature, the passenger or any person entitled to compensation in respect of him or her can take action only against the carrier which performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

3 As regards baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier which performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

Article 37 — Right of Recourse against Third Parties.

Nothing in this Schedule shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any other person.

CHAPTER IV

Combined Carriage

Article 38 — Combined Carriage.

1 In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Schedule shall, subject to paragraph 4 of Article 18, apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.

2 Nothing in this Schedule shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Schedule are observed

as regards the carriage by air.

CHAPTER V

Carriage by Air Performed by a Person other than the Contracting Carrier

Article 39 — Contracting Carrier — Actual Carrier.

The provisions of this Chapter apply when a person (hereinafter referred to as "the contracting carrier") as a principal makes a contract governed by this Schedule with a passenger or consignor or with a person acting on behalf of the passenger or consignor, and another person (hereinafter referred to as "the actual carrier") performs, by virtue of authority from the contracting carrier, the whole or part of the carriage, but is not with respect to such part a successive carrier within the meaning of this Schedule. Such authority shall be presumed in the absence of proof to the contrary.

Article 40 — Respective Liability of Contracting and Actual Carriers.

If an actual carrier performs the whole or part of carriage which, according to the contract referred to in Article 39, is governed by this Schedule, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Chapter, be subject to the rules of this Schedule, the former for the whole of the carriage contemplated in the contract, the latter solely for the carriage which it performs.

Article 41 — Mutual Liability.

1 The acts and omissions of the actual carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.

2 The acts and omissions of the contracting carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual

carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the amounts referred to in Articles 21, 22, 23 and 24. Any special agreement under which the contracting carrier assumes obligations not imposed by this Schedule or any waiver of rights or defences conferred by this Schedule or any special declaration of interest in delivery at destination contemplated in Article 22 shall not affect the actual carrier unless agreed to by it.

Article 42 — Addressee of Complaints and Instructions.

Any complaint to be made or instruction to be given under this Schedule to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier.

Article 43 — Servants and Agents.

In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if they prove that they acted within the scope of their employment, be entitled to avail themselves of the conditions and limits of liability which are applicable under this Schedule to the carrier whose servant or agent they are, unless it is proved that they acted in a manner that prevents the limits of liability from being invoked in accordance with this Schedule.

Article 44 — Aggregation of Damages.

In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the contracting carrier, and from their servants and agents acting within the scope of their employment, shall not exceed the highest amount which could be awarded against either the contracting carrier or the actual carrier under this Schedule, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to that person.

Article 45 — Addressee of Claims.

In relation to the carriage performed by the actual carrier, an action for damages may be brought, at the option of the plaintiff, against that carrier or the

contracting carrier, or against both together or separately.

Article 47 — Invalidity of Contractual Provisions.

Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Chapter or to fix a lower limit than that which is applicable according to this Chapter shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Chapter.

Article 48 — Mutual Relations of Contracting and Actual Carriers.

Except as provided in Article 45, nothing in this Chapter shall affect the rights and obligations of the carriers between themselves, including any right of recourse or indemnification.

CHAPTER VI

Other Provisions

Article 49 — Mandatory Application.

Any clause contained in the contract of carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Schedule shall be null and void.

Article 52 — Definition of Days.

The expression "days" when used in this Schedule means calendar days, not working days.

NOTE

In Schedule 12, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

SCHEDULE 13

Section 165

TAKING OF SPECIMENS

Breath tests.

1. (1) Where an officer of police in uniform has reasonable cause to suspect that a person –

- (a) is committing an offence under section 162 or section 163, or
- (b) has committed an offence under section 162 or section 163 and that that person still has alcohol or a drug in his body,

he may, subject to paragraph 5, require him to provide a specimen of breath for a breath test.

(2) If an aircraft is involved in an accident, an officer of police may, subject to paragraph 5, require any person who he has reasonable cause to believe performed an aviation function or carried out an activity ancillary to an aviation function, in relation to the aircraft at the time of the accident to provide a specimen of breath for a breath test.

(3) If an aircraft is involved in an accident, an officer of police may, subject to paragraph 5, require any person who he has reasonable cause to believe performed an aviation function or carried out an activity ancillary to an aviation function, in relation to the aircraft to provide a specimen of breath for a breath test.

(4) A person may be required under subparagraph (1) or subparagraph (2) to provide a specimen either at or near the place where the

requirement is made or, if the requirement is made under subparagraph (2) and the officer of police making the requirement thinks fit, at a police station.

(5) A person who, without reasonable excuse, fails to provide a specimen of breath when required to do so in pursuance of this paragraph is guilty of an offence.

(6) An officer of police may arrest a person without warrant if –

(a) as a result of a breath test he has reasonable cause to suspect that the proportion of alcohol in that person's breath or blood exceeds the prescribed limit, or

(b) that person has failed to provide a specimen of breath for a breath test when required to do so in pursuance of this paragraph and the officer of police has reasonable cause to suspect that he has alcohol or a drug in his body or is under the influence of a drug,

but a person shall not be arrested by virtue of this subparagraph when he is at a hospital as a patient.

(7) An officer of police may, for the purpose of requiring a person to provide a specimen of breath under subparagraph (2) in a case where he has reasonable cause to suspect that the accident involved injury to another person or for the purpose of arresting him in such a case under subparagraph (6), enter (if need be by force) any place where that person is or where the officer of police, with reasonable cause, suspects him to be.

Ordinances as to provision of samples for detection of drugs.

2. The States may by Ordinance provide for –

- (a) the provision of samples by a person performing an aviation function or carrying out an activity ancillary to an aviation function in order to ascertain whether he has any drug in his body,
- (b) the approval by the States [Committee for Home Affairs] of devices to test whether a person performing an aviation function or carrying out an activity ancillary to an aviation function has any drug in his body, and
- (c) the creation of an offence of failing to provide a sample to ascertain whether a person performing an aviation function or carrying out an activity ancillary to an aviation function has any drug in his body.

Provision of specimens for analysis.

3. (1) In the course of an investigation whether a person has committed an offence under section 162 or section 163 of this Law, an officer of police may, subject to the following provisions of this paragraph and paragraph 5, require him –

- (a) to provide two specimens of breath for analysis by means of a device approved by the [Committee for Home Affairs], or
- (b) to provide a specimen of blood or urine for a laboratory test.

(2) A requirement under this paragraph to provide specimens of breath can only be made at a police station.

(3) A requirement under this paragraph to provide a specimen of blood or urine can only be made at a police station or at a hospital; and it cannot be made at a police station unless –

- (a) the officer of police making the requirement has reasonable cause to believe that for medical reasons a specimen of breath cannot be provided or should not be required,
- (b) at the time the requirement is made a device or reliable device of the type mentioned in subparagraph (1)(a) is not available at the police station or it is then for any other reason not practicable to use such a device there,
- (c) a device of the type mentioned in subparagraph (1)(a) has been used at the Police Station but the officer of police who required the specimens of breath has reasonable cause to believe that the device has not produced a reliable indication of the proportion of alcohol in the breath of the person concerned, or
- (d) the suspected offence is one under section 162 of this Law and the officer of police making the requirement has been advised by a medical practitioner that the condition of the person required to provide the specimen might be due to some drug,

but may then be made notwithstanding that the person required to provide the specimen has already provided or been required to provide two specimens of breath.

(4) If the provision of a specimen other than of breath may be required under this paragraph, the question of whether it is to be a specimen of blood or a specimen of urine shall be at the discretion of the officer of police making the requirement, except that if a medical practitioner is of the opinion that for medical reasons a specimen of blood cannot or should not be taken, the specimen shall be a specimen of urine.

(5) An officer of police making a requirement under subparagraph (3) above shall not be obliged to mention to the person required to provide the specimen what the alternatives were.

(6) The specimen of urine shall be provided within one hour of the requirement for the provision being made and after the provision of a previous specimen of urine.

(7) Subject to subparagraph (8) of any two specimens of breath provided by any person in pursuance of this paragraph that with the lower proportion of alcohol in the breath shall be used and the other shall be disregarded.

(8) Where the person providing the specimen was performing an aviation function specified in –

- (a) section 161(1)(a) to 161(1)(g) or carrying out an activity ancillary thereto, if the specimen with the lower proportion of alcohol contains no more than 15 microgrammes of alcohol in 100 millilitres of breath,
- (b) section 161(1)(h) or carrying out an activity ancillary thereto, if the specimen with the lower proportion of alcohol contains no more than 35 microgrammes of alcohol in 100 millilitres of breath,

the person who provided it may claim that it should be replaced by such specimen as may be required under subparagraph (4) and, if he then provides such a specimen, neither specimen of breath shall be used.

Provided that the proportion specified in subparagraphs (a) and (b) may be varied by Ordinance of [the Committee].

(9) A person who, without reasonable excuse, fails to provide a specimen when required to do so in pursuance of this paragraph shall be guilty of an offence.

(10) On requiring any person to provide a specimen in pursuance of this paragraph an officer of police shall warn him that a failure to provide it may render him liable to prosecution.

(11) If it is established that the accused, when requested by an officer of police under this paragraph, refused to consent to the taking or providing of a specimen of breath, blood or urine for analysis, his refusal may, unless reasonable cause therefore is shown, be treated as supporting any evidence given on behalf of the prosecution, or as rebutting any evidence given on behalf of the defence with respect to his state of mind or condition at that time.

Specimens of blood taken from persons incapable of consenting.

4. (1) An officer of police may make a request to a medical practitioner for him to take a specimen of blood from a person ("**the person concerned**") irrespective of whether that person consents if –

- (a) that person is a person from whom the officer of police would (in the absence of any incapacity of that person and of any objection under paragraph 5) be entitled

Consolidated text

under paragraph 3 to require the provision of a specimen of blood for a laboratory test,

- (b) it appears to the officer of police that that person has been involved in an accident that constitutes or is comprised in the matter that is under investigation or the circumstances of that matter,
- (c) it appears to the officer of police that that person is or may be incapable (whether or not he has purported to do so) of giving a valid consent to the taking of a specimen of blood, and
- (d) it appears to the officer of police that that person's incapacity is attributable to medical reasons.

(2) A request under this paragraph –

- (a) shall not be made to a medical practitioner who for the time being has any responsibility (apart from the request) for the clinical care of the person concerned, and
- (b) shall not be made to a medical practitioner other than a police medical practitioner unless –
 - (i) it is not reasonably practicable for the request to be made to a police medical practitioner, or
 - (ii) it is not reasonably practicable for such a medical practitioner (assuming him to be

willing to do so) to take the specimen.

(3) It shall be lawful for a medical practitioner to whom the request is made under this paragraph, if he thinks fit –

- (a) to take a specimen of blood from the person concerned irrespective of whether that person consents, and
- (b) to provide the sample to an officer of police.

(4) If a specimen is taken in pursuance of a request under this paragraph, the specimen shall not be subjected to a laboratory test unless the person from whom it was taken –

- (a) has been informed that it was taken, and
- (b) has been required by an officer of police to give his permission for a laboratory test of the specimen, and
- (c) has given his permission.

(5) An officer of police must, on requiring a person to give his permission for the purposes of this paragraph for a laboratory test of a specimen, warn that person that a failure to give the permission may render him liable to prosecution.

(6) A person who, without reasonable excuse, fails to give his permission for a laboratory test of a specimen of blood taken from him under this paragraph is guilty of an offence.

(7) In this paragraph, "**police medical practitioner**" means a

medical practitioner who is engaged under any agreement to provide medical services for purposes connected with the activities of the salaried police force of the Island of Guernsey.

Protection for hospital patients.

5. (1) While a person is at a hospital as a patient he shall not be required to provide a specimen of breath for a breath test or to provide a specimen for a laboratory test unless the medical practitioner immediately in charge of his case has been notified of the proposal to make the requirement, and –

- (a) if the requirement is made, it shall be for the provision of a specimen at the hospital, but
- (b) if the medical practitioner objects on the ground specified in [subparagraph (3)] the requirement shall not be made.

[(2) While a person is at a hospital as a patient, no specimen of blood may be taken from him under paragraph 4 and he shall not be required by an officer of police to give his permission for a laboratory test of a specimen taken under that paragraph unless the medical practitioner immediately in charge of his case –

- (a) has been notified of the proposal to take the specimen or to make the requirement, and
- (b) has not objected on the ground specified in subparagraph (3).

(3) The ground on which the medical practitioner may object is –

- (a) in a case falling within subparagraph (1), that the

requirement, the provision of the specimen or the warning required under paragraph 3(10) would be prejudicial to the proper care or treatment of the patient,

- (b) in a case falling within subparagraph (2), that the taking of the specimen, the requirement or the warning required under paragraph 4(5) would be so prejudicial.]

Evidence in proceedings for an offence under section 162 or section 163.

6. (1) The following provisions apply to proceedings for an offence under section 162 or section 163 of this Law.

(2) Evidence of the proportion of alcohol or any drug [in a specimen] of breath, blood or urine provided by [or taken from] the accused shall, in all cases, be taken into account, and it shall be assumed that the proportion of alcohol in the accused's breath, blood or urine at the time of the alleged offence was not less than in the specimen, but in a case where the accused is alleged to have been unfit through drink, the assumption shall not be made if the accused proves –

- (a) that he consumed alcohol after the time of the alleged offence and before he provided the specimen [or had it taken from him], and
- (b) that if he had not done so the proportion of alcohol in his breath, blood or urine would not have exceeded the prescribed limit, and, if it is alleged that he was unfit to perform an aviation function or an activity ancillary thereto through drink, would not have been such as to impair his ability to perform an aviation function or carry out an activity ancillary to an aviation function.

(3) Evidence of the proportion of alcohol or a drug in a specimen of breath, blood or urine may, subject to subparagraphs (5) and (6) below, be given by the production of a document purporting to be whichever of the following is appropriate –

- (a) a statement (including any test record document) automatically produced by the device by which the proportion of alcohol in a specimen of breath was measured and a certificate signed by an officer of police (which may but need not be contained in the same document as the statement) that the statement relates to a specimen provided by the accused at the date and time shown in the statement, and
- (b) a certificate signed by an authorised analyst as to the proportion of alcohol or any drug found in a specimen of blood or urine identified in the certificate.

[(4) A specimen of blood shall be disregarded unless –

- (a) it was taken from the accused with his consent by a medical practitioner, or
- (b) it was taken from the accused by a medical practitioner under paragraph 4 and the accused subsequently gave his permission for a laboratory test of the specimen,

and evidence that a specimen of blood was taken by a medical practitioner –

- (i) with the consent of the accused, or

- (ii) in pursuance of a request of an officer of police under paragraph 4,

may be given by the production of a document purporting to certify that fact and to be signed by that medical practitioner.]

(5) A document purporting to be [such a statement or certificate], or both, as is mentioned in subparagraph (3)(a) above is admissible in evidence under this paragraph only if a copy of it either has been handed to the accused when the document was produced or has been served on him not less than 7 days before the hearing, and any other document is so admissible only if a copy of it has been served on the accused not later than 7 days before the hearing; but no document is admissible if the accused not later than 3 days before the hearing, or within such time as the court may in exceptional circumstances allow, has served notice on Her Majesty's Procureur requiring the attendance at the hearing of the purported signatory of the document.

(6) Where at the time a specimen of blood or urine was provided by the accused, he asked to be supplied with such a specimen, evidence of the proportion of alcohol or any drug found in the specimen is not to be admissible on behalf of the prosecution unless –

- (a) the specimen in which the alcohol or drug was found is one of [two] parts into which the specimen provided by the accused was divided at the time it was provided, and
- (b) the other part was supplied to the accused within a reasonable time.

[(6A) Where a specimen of blood was taken from the accused under

paragraph 4, evidence of the proportion of alcohol or any drug found in the specimen is not admissible on behalf of the prosecution unless –

- (a) the specimen in which the alcohol or drug was found is one of two parts into which the specimen taken from the accused was divided at the time it was taken, and
- (b) any request to be supplied with the other part which was made by the accused at the time when he gave his permission for a laboratory test of the specimen was complied with.]

(7) A copy of a certificate required by this paragraph to be served on the accused or a notice required by this paragraph to be served on Her Majesty's Procureur may be served personally or sent by registered post or recorded delivery service.

Detention of persons affected by alcohol or a drug.

7. A person required to provide a specimen of breath, blood or urine may thereafter be detained at a police station until it appears to an officer of police that, were that person then performing an aviation function of the kind in respect of which the requirement to provide a specimen was imposed, he would not be committing an offence under section 162 or section 163 of this Law; but –

- (a) a person shall not be detained in pursuance of this paragraph if it appears to an officer of police that there is no likelihood of his performing an aviation function whilst his ability to do so is impaired or whilst the proportion of alcohol in his breath, blood or urine exceeds the prescribed limit, and

- (b) an officer of police shall consult a medical practitioner on any question arising under this paragraph whether a person's ability to perform an aviation function is or might be impaired through drugs and shall act on the medical practitioner's advice.

Interpretation.

8. In this Schedule –

"authorised analyst" means a person for the time being authorised to act as an analyst for the purposes of this Law by the [Committee for Home Affairs],

"breath test" means a preliminary test for the purpose of obtaining, by means of a device of a type approved by the States [Committee for Home Affairs], an indication of whether the proportion of alcohol in a person's breath or blood is likely to exceed the prescribed limit,

"fail" includes refuse,

"Her Majesty's Procureur" includes Her Majesty's Comptroller,

"[Committee for Home Affairs]" means the States of Guernsey [Committee for Home Affairs],

"laboratory test" means the analysis of a specimen provided for the purpose,

"medical practitioner" means a person authorised to practise in Guernsey as a medical practitioner according to the law for the time being in force,

"police medical practitioner" has the meaning given by paragraph 4(7), and

"prescribed limit" has the meaning given by section 163.

NOTES

In Schedule 13,

the words "Committee for Home Affairs" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 6(a), with effect from 1st May, 2016;

the words in the second pair of square brackets in paragraph 3 were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016;

the words in square brackets in subparagraph (1)(b) of paragraph 5 were substituted by the Aviation (Bailiwick of Guernsey) Law, 2008 (Amendment of Schedule 2) Regulations, 2008, regulation 1(a), with effect from 1st February, 2009;

subparagraph (2) of paragraph 5 was substituted, and subparagraph (3) was inserted, by the Aviation (Bailiwick of Guernsey) Law, 2008 (Amendment of Schedule 2) Regulations, 2008, regulation 1(b), with effect from 1st February, 2009;

the words in the first, second and third pairs of square brackets in subparagraph (2) of paragraph 6 were, respectively, substituted, inserted and inserted by the Aviation (Bailiwick of Guernsey) Law, 2008 (Amendment of Schedule 2) Regulations, 2008, respectively regulation 2(a)(i), regulation 2(a)(ii) and regulation 2(a)(iii), with effect from 1st February, 2009;

subparagraph (4) of paragraph 6 was substituted by the Aviation (Bailiwick of Guernsey) Law, 2008 (Amendment of Schedule 2) Regulations, 2008, regulation 2(b), with effect from 1st February, 2009;

the words in square brackets in, first, subparagraph (5) and, second, subparagraph (6)(a) of paragraph 6 were substituted and, third, paragraph (6A) thereof was inserted by the Aviation (Bailiwick of Guernsey) Law, 2008 (Amendment of Schedule 2) Regulations, 2008, respectively regulation 2(c), regulation 2(d) and regulation 2(e), with effect from 1st February, 2009.

The functions, rights and liabilities of the Home Department and its Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Home Affairs and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 6(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

SCHEDULE 14
PENALTIES UNDER PART III

Section 128

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NOTE

Schedule 14 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

SCHEDULE 15
RULES OF THE AIR

Section 62

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NOTE

Schedule 15 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

SCHEDULE 16

Section 77

THE AIR NAVIGATION (DANGEROUS GOODS) REGULATIONS

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NOTE

Schedule 16 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

SCHEDULE 17
THE AERODROME MANUAL

...

NOTE

Schedule 17 was repealed by the Air Navigation (Bailiwick of Guernsey) Law, 2012, section 148(a), with effect from 16th September, 2013.

SCHEDULE 18
REPEALS

Section 175

1. The Aerodrome (Indication of Obstructions) Law, 1938^{bb}.
2. The Airport Service Charge (Guernsey) Law, 1958^{cc}.

¹ These words were previously substituted by the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015, section 2, Schedule, with effect from 26th February, 2015.

² The functions, rights and liabilities of the Sark Policy and Performance Committee and its Chairman arising under or by virtue of this Law were previously transferred to and vested in them from, respectively, the Sark General Purposes and Advisory Committee and its Chairman by the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015, section 1, Schedule, with effect from 26th February, 2015, subject to the savings and transitional provisions in section 3 of the 2015 Ordinance.

³ These words were previously substituted by the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015, section 2, Schedule, with effect from 26th February, 2015.

⁴ The functions, rights and liabilities of the Sark Policy and Performance Committee and its Chairman arising under or by virtue of this Law were previously transferred to and vested in them from, respectively, the Sark General Purposes and Advisory Committee and its Chairman by the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015, section 1, Schedule, with effect from 26th February, 2015, subject to the savings and transitional provisions in section 3 of the 2015 Ordinance.

bb Ordres en Conseil Vol. XI, p. 221.

cc Ordres en Conseil Vol. XVII, p. 448.