

Draft Order in Council laid before Parliament under section 2(2) of the European Communities Act 1992 and section 10 of the Carriage by Air Act 1961, for approval by resolution of each House of Parliament. This draft supersedes the previous printed draft (ISBN 0-11-079051-0) and will be issued free of charge to all known recipients of the previous draft.

DRAFT STATUTORY INSTRUMENTS

1998 No.

CIVIL AVIATION

Air Carrier Liability Order 1998

Made - - - - 1998
Coming into force - - 17th October 1998

At the Court at , the day of 1998
Present,
The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 10 of the Carriage by Air Act 1961(1), as applied by section 5(2) of the Carriage by Air (Supplementary Provisions) Act 1962(2) and section 2(2) of the European Communities Act 1972(3), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered as follows:

Citation and commencement

1. This Order may be cited as the Air Carrier Liability Order 1998 and shall come into force on 17th October 1998.

Interpretation

2. In this Order—

“Council Regulation” means Council Regulation (EC) No. 2027/97 of 9th October 1997 on air carrier liability in the event of accidents(4);

(1) 1961 c. 27 (9 & 10 Eliz. 2).
(2) 1962 c. 43 (10 & 11 Eliz. 2).
(3) 1972 c. 68.
(4) OJ No. L285 of 17.10.97, p.1.

“non-Community air carrier” means an air carrier established outside the Community operating to, from or within the Community; and
 other expressions have, in so far as the context admits, the same meaning as in the Council Regulation.

Amendments

3. The Carriage by Air Act 1961 shall be amended as follows:

(1) After section 1(1) there shall be inserted the following subsection—

“(1A) In relation to Community air carriers—

(a) in respect of damages up to the equivalent in ecus of 100,000 SDR arising from the death, wounding or other bodily injury suffered by a passenger, the provisions of Article 20 of the Convention; and

(b) in respect of damages arising from the death, wounding or other bodily injury suffered by a passenger the provisions of Articles 21 and 22(1) of the Convention, do not have the force of law in the United Kingdom.”.

(2) For section 14(2) there shall be substituted the following:

“(2) In this Act—

“the Council Regulation” means Council Regulation (EC) No. 2027/97 of 9th October 1997 on air carrier liability in the event of accidents;

“Community air carrier”, “SDR” and “ecu” have the meaning given by Article 2 of the Council Regulation; and

“court” includes (in an arbitration allowed by the Convention) an arbitrator.”.

4. In the Carriage by Air Acts (Application of Provisions) Order 1967(5), after article 5A there shall be inserted the following article:

“Application of the air carrier liability Regulation

5B.—(1) In relation to Community air carriers:

(a) in respect of damages up to the equivalent in ecus of 100,000 SDR arising from the death, wounding or other bodily injury suffered by a passenger, Article 20 of Part III of Schedule 1 and Article 20(1) of Part B of Schedules 2 and 3 to this Order;

(b) in respect of damages arising from the death, wounding or other bodily injury suffered by a passenger Article 21 of Part III of Schedule 1 and of Part B of Schedules 2 and 3 to this Order; and

(c) in respect of damages arising from the death, wounding or other bodily injury suffered by a passenger Article 22(1) of Part III of Schedule 1 and of Part B of Schedules 2 and 3 to this Order,

do not have the force of law in the United Kingdom.”.

5. In the Licensing of Air Carriers Regulations 1992(6), regulation 11(1)(b) shall be deleted.

(5) S.I. 1967/480; relevant amending instruments are S.I. 1979/931, 1981/440 and 1998/1058.

(6) S.I. 1992/2992, to which there are amendments not relevant to this Order.

Offences

6.—(1) A Community air carrier which fails to include the provisions contained in Articles 3 and 5 of the Council Regulation in its conditions of carriage in accordance with Article 6.1 of that Regulation shall be guilty of an offence.

(2) A Community air carrier which fails to ensure that:

- (a) the information required to be made available on request to passengers by paragraph 2 of Article 6 of the Council Regulations is so made available; or
- (b) its ticket document or an equivalent contains the summary of the requirements contained in Articles 3 and 5 of the Council Regulation as required by paragraph 2 of Article 6 of that Regulation,

shall be guilty of an offence unless it proves that the failure to do so occurred without its consent or connivance and that it exercised all due diligence to prevent the failure.

(3) A non-Community carrier which does not apply the provisions in Articles 3 and 5 of the Council Regulation and which fails to ensure that the information or the form required to be provided to passengers by paragraph 3 of Article 6 of the Council Regulation is so provided shall be guilty of an offence unless it proves that the failure to do so occurred without its consent or connivance and that it exercised all due diligence to prevent the failure.

7.—(1) A person guilty of an offence under this Order shall be liable—

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale, and
- (b) on conviction on indictment, to a fine.

(2) Where an offence under these Regulations has been 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 such person who was purporting to act in such capacity, he, as well as the body corporate, shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, paragraph (2) above 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 body corporate.

(4) Where a Scottish partnership is guilty of an offence under these Regulations in Scotland and that offence is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a partner, he, as well as the partnership, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Clerk to the Privy Council

EXPLANATORY NOTE

(This note is not part of the Regulations)

This Order implements Council Regulation (EC) No. 2027/97 of 9th October 1997 on air carrier liability in the event of accidents.

The principal provisions are as follows—

(1) The limits on carrier liability imposed by the Warsaw Convention (the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12th October 1929), the Warsaw Convention as amended at the Hague on 28th September 1955 and the Convention supplementary to the Warsaw Convention done at Guadalajara on 18th September 1961 in the event of passenger death, wounding or bodily injury are removed in relation to Community air carriers from the Carriage by Air Act 1961 and the Carriage by Air Acts (Application of Provisions) Order 1967 (articles 3 and 4 respectively).

(2) The minimum liability limit required by regulation 11(1)(b) of the Licensing of Air Carriers Regulations 1992 is deleted (article 5).

(3) Community air carriers are no longer entitled to rely on the defence in Article 20(1) of the Warsaw Convention (or that Convention as amended) (taking all necessary measures to avoid the damage or that it was impossible to take such measures) in relation to damages for passenger death, wounding or bodily injury of up to 100,000 Special Drawing Rights (articles 3 and 4).

(4) Criminal offences are created for the breach of certain requirements set out in Article 6 of the Council Regulation (article 6).