

*Draft Order in Council laid before Parliament under section 10 of the Carriage by Air Act 1961, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2001 No.**

**CIVIL AVIATION**

**The Carriage by Air Acts (Application  
of Provisions) Order 2001**

*Made - - - - 2001*

*Coming into force in accordance with article 1*

At the Court at [        ], the [        ] day of [        ] 2001

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been laid before Parliament and has been approved by a resolution of each House of Parliament, in accordance with section 10 of the Carriage by Air Act 1961(1);

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

**Citation, commencement and effect**

1.—(1) This Order may be cited as the Carriage by Air Acts (Application of Provisions) Order 2001.

(2) This Order shall come into force on the tenth day after the day on which it is made.

(3) Nothing in this Order shall affect rights and liabilities arising out of an occurrence which took place before the coming into force of this Order.

**Interpretation**

2. In this Order —

“the Act of 1961” means the Carriage by Air Act 1961;

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(1) 1961 c. 27. Section 10 was amended by S.I. 2001/xxxx.

(2) 1962 c. 43

“the Act of 1962” means the Carriage by Air (Supplementary Provisions) Act 1962;

“the 1955 amended Convention” means the English text of the Warsaw Convention with the amendments made in it by the Hague Protocol as set out in Schedule 1 to the Act of 1961, and includes the Additional Protocol to the Warsaw Convention as set out at the end of that Schedule;

“Community air carrier” has the meaning given by Article 2 of the Council Regulation;

“the Council Regulation” means Council Regulation (EC) No. 2027/97 of 9 October 1997 on air carrier liability in the event of accidents<sup>(3)</sup>;

“the Guadalajara Convention” means the English text of 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, as set out in the Schedule to the Act of 1962;

“the MP4 Convention” means the English text of the Warsaw Convention with the amendments made in it by the Hague Protocol and as further amended by Protocol No. 4 of Montreal, 1975 as set out in Schedule 1A to the Act of 1961; and

“the Montreal Convention” means the Convention for the Unification of Certain Rules for International Carriage by Air done at Montreal on 28 May 1999.

### **Application**

**3.—**(1) This Order shall apply to all carriage by air, not being carriage to which the 1955 amended Convention, the MP4 amended Convention or the Montreal Convention applies.

(2) This Order shall not apply in relation to Community air carriers to the extent that the provisions of the Council Regulation have the force of law in the United Kingdom.

### **Non-international carriage**

**4.** Schedule 1 to this Order shall have effect in respect of carriage of which this Order applies being carriage which is not international carriage as defined in Schedule 2 or Schedule 3.

### **International carriage under the unamended Warsaw Convention**

**5.—**(1) Schedule 2 to this Order shall have effect in respect of carriage to which this Order applies, being carriage which is international carriage as defined in that Schedule and not international carriage as defined in Schedule 3.

(2) Section 2 of the Act of 1961 shall apply to such carriage as aforesaid with the following exceptions, adaptations and modifications:

- (a) for “any of the Carriage by Air Conventions” there shall be substituted “the Warsaw Convention”;
- (b) subsection (1)(b) and (c) shall be omitted;
- (c) subsection (1A) shall be omitted;
- (d) subsection (2A)(b) and (c) shall be omitted.

(3) Section 5 of the Act of 1961 shall apply to such carriage as aforesaid with the following exceptions, adaptations and modifications:

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(3) O.J. L 285 of 17.10.97, p1. Regulation 2027/97 has effect in accordance with 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 (Cm 2073 and 2183) as amended by the Decision of the EEA Joint Committee No. 34/98 of 30 April 1998 (O.J. L 310, 19.11.1998, p.21).

- (a) for “any of the Carriage by Air Conventions” there shall be substituted “the Warsaw Convention”;
  - (b) subsections (4)(b) and (c) and (5) shall be omitted.
- (4) Section 8 of the Act of 1961 shall apply to such carriage as aforesaid with the following exceptions, adaptations and modifications:
- (a) for “a Carriage by Air Convention” there shall be substituted “the Warsaw Convention”;
  - (b) subsections (4)(b) and (c), (5)(b) and (c) and (6)(b) shall be omitted;
  - (c) in subsection (6) “and the Convention as amended” shall be omitted.

**International carriage under the unamended Warsaw Convention as amended by Additional Protocol No. 1 of Montreal, 1975**

6.—(1) Schedule 3 to this Order shall have effect in respect of carriage to which this Order applies, being carriage which is international carriage as defined in that Schedule.

(2) Section 2 of the 1961 Act shall apply to such carriage as aforesaid with the following exceptions, adaptations and modifications:

- (a) for “a Carriage by Air Convention” there shall be substituted “the Warsaw Convention as amended by Additional Protocol No. 1 of Montreal 1975”;
- (b) subsection (1)(b) and (c) shall be omitted;
- (c) subsection (1A) shall be omitted;
- (d) subsection (2A)(b) and (c) shall be omitted.

(3) Section 5 of the Act of 1961 shall apply to such carriage as aforesaid with the following exceptions, adaptations and modifications:

- (a) for “any of the Carriage by Air Conventions” there shall be substituted “the Warsaw Convention as amended by Additional Protocol No. 1 of Montreal 1975”;
- (b) subsections (4)(b) and (c) and (5) shall be omitted.

(4) Section 8 of the Act of 1961 shall apply to such carriage as aforesaid, with the following exceptions, adaptations and modifications:

- (a) for “a Carriage by Air Convention” there shall be substituted “the Warsaw Convention as amended by Additional Protocol No. 1 of Montreal 1975”;
- (b) subsections (4)(b) and (c), (5)(b) and (c) and (6)(b) shall be omitted;
- (c) in subsection (6) “and the Convention as amended” shall be omitted.

**Application of certain provisions of the Acts**

7.—(1) Sections 3, 4, 4A, 6, 11 and 12 of the Act of 1961 shall apply to carriage to which Schedule 1 to this Order applies as if the references therein to the Convention and the Convention as amended and articles thereof were omitted and the reference to the Montreal Convention and articles thereof were references to the Montreal Convention and articles thereof as applied by this Order.

(2) Sections 3, 4, 4A, 6, 11 and 12 of the Act of 1961 shall apply to carriage to which Schedules 2 and 3 to this Order apply as if the references therein to the Convention as amended and the Montreal Convention and articles thereof were omitted and the reference to the Convention and articles thereof were references to the 1955 amended Convention and articles thereof as applied by this Order.

(3) Section 3(1) of the Act of 1962 shall apply to carriage to which Schedules 2 and 3 to this Order apply as if the reference therein to article VI in the Schedule to that Act was a reference to that article as applied by this Order.

### **Gratuitous carriage by the Crown**

8.—(1) Subject to paragraph 2, the Acts of 1961 and 1962, and this Order, shall apply to gratuitous carriage by the Crown as they apply to carriage by the Crown for reward.

(2) The Acts of 1961 and 1962, and this Order, shall not apply to gratuitous carriage by the Crown where the carriage is carriage of members of Her Majesty's naval, military or air forces undertaken during a time of actual or imminent hostilities or of severe international tension or of great national emergency.

### **Revocation**

9. The Orders specified in Schedule 4 are hereby revoked.

Clerk of the Privy Council

SCHEDULE 1

Article 4

**Non-international carriage**

**PART I—**

**APPLICATION OF THE MONTREAL CONVENTION**

The Montreal Convention as set out in Schedule 1B to the 1961 Act shall apply in respect of carriage described in article 4 of this Order subject to the following exceptions, adaptations and modifications—

- (1) For “Convention” wherever it appears, there shall be substituted “Schedule”.
- (2) In Article 1.1 the word “international” shall be omitted,
- (3) Article 1.2 and 1.3 shall not apply.
- (4) Save for Article 3.3 and 3.5 Chapter II shall not apply.
- (5) In Article 22.4 for “or, if they were not issued, by the same record preserved by the other means referred to in paragraph 2 of Article 4,” substitute “or any alternative record,”.
- (6) In Article 23.1 the second and third sentences shall be omitted.
- (7) For Article 23.2 the following shall be substituted—

“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 so fixed.”.
- (8) For Article 23.3 the following shall be substituted—

“A certificate given by or on behalf of the Treasury 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 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 so 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.”.
- (9) Article 24 shall be omitted.
- (10) Article 31.1 the words from “and” to the end shall be omitted.
- (11) Article 33 shall not apply.
- (12) Article 34.2 shall not apply.
- (13) In Article 36.1 the words from “and” where it first occurs to “Article 1” shall be omitted.
- (14) In Article 42 the second sentence shall not apply.
- (15) In Article 45 the second sentence shall not apply.
- (16) Article 46 shall not apply.
- (17) In Article 49 the words from “whether” to “jurisdiction” shall be omitted.

(18) Articles 50 and 51 shall not apply.

(19) Articles 53 to 57 shall not apply.

## PART II

For convenience of reference the Montreal Convention, with the exceptions, adaptations and modifications made by this Schedule is here set out:

### **Non-international carriage**

#### *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 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 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 damage 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 of 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 have 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 so fixed.

3. A certificate given by or on behalf of the Treasury 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 so 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 of carriage 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 instructions 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 an 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.

## SCHEDULE 2

Article 5

### **International carriage under the unamended Warsaw Convention**

#### **PART I**

1. The 1955 amended Convention and the Guadalajara Convention shall apply in respect of carriage which is “international carriage” as defined in paragraph 2 of this part of this Schedule, with the exceptions, adaptations and modifications set forth in paragraphs 3 and 4.

2. For the purposes of Article 5 of this Order and of this Schedule “international carriage” shall have the meaning assigned to it by paragraph 3(2) of this part of this Schedule.

3. The 1955 amended Convention shall apply to international carriage as aforesaid, with the following exceptions, adaptations and modifications:—

(1) For “Convention”, wherever it appears, there shall be substituted “Schedule”.

(2) For Article 1(2) there shall be substituted the following:—

“‘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 States Parties to the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on behalf of His Majesty on 12th October 1929, or within the territory of a single such State, if there is an agreed stopping place within the territory subject to the sovereignty, suzerainty, mandate or authority of another State, even though that State is not a party to the said Convention of 1929.”.

(3) The following shall be substituted for Article 1(3):—

“(3) A carriage to be performed by several successive air carriers is deemed for the purposes of this Schedule, 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.”.

(4) The following shall be substituted for Article 2:—

“(1) This Schedule applies to carriage performed by the State, not being a State which has availed itself of the Additional Protocol to the Warsaw Convention, or by legally constituted public bodies, provided it falls within the conditions laid down in Article 1.

(2) This Schedule does not apply to carriage performed under the terms of any international postal Convention.”.

(5) The following shall be substituted for 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 the Warsaw 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 Schedule. 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 Schedule which exclude or limit his liability.”.

(6) The following shall be substituted for 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 the Warsaw 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 Schedule. 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 this Schedule which excludes or limit his liability.”.

(7) The following shall be substituted for Article 6(3):—

“(3) The carrier shall sign on acceptance of the cargo.”.

(8) The following shall be substituted for Article 8:—

“The air waybill 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 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 cargo;
- (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 cargo;
- (j) the apparent condition of the cargo 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 cargo is sent for payment on delivery, the price of the cargo, 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 waybill;
- (o) the documents handed to the carrier to accompany the air waybill;
- (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 the Warsaw Convention.”.

- (9) The following shall be substituted for Article 9:—
- “If the carrier accepts cargo without an air waybill having been made out or if the air waybill 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 Schedule which exclude or limit his liability.”.
- (10) The following shall be substituted for Article 10(2):
- “(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.”.
- (11) Article 15(3) shall not apply.
- (12) The following shall be inserted as Article 20(2):
- “(2) In the carriage of cargo 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.”.
- (13) The following shall be substituted for 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 seized of the case, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed 25,000 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 cargo, the liability of the carrier is limited to a sum of 250 francs per kilogramme, 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 652 milligrammes gold of millesimal fineness 900. These sums may be converted into any national currency in round figures.”.
- (14) Article 23(2) shall not apply.
- (15) The following shall be substituted for Article 25:
- “(1) The carrier shall not be entitled to avail himself of the provisions of this Schedule 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 seized 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 servant or agent of the carrier acting within the scope of his employment.”.
- (16) Article 25A shall not apply.
- (17) The following shall be substituted for Article 26(2):
- “(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 cargo. In the case of delay the complaint must be made at the latest within fourteen days from the date on which the baggage or cargo has been placed at his disposal.”.

(18) In Article 28(1), after “High Contracting Parties” there shall be added “to the Warsaw Convention”.

(19) The following shall be substituted for Article 34:—

“This Schedule 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.”.

(20) Articles 36 and 40A shall not apply.

**4.** The Guadalajara Convention shall apply to international carriage within the meaning of this Schedule, with the following exceptions, adaptations and modifications:

(1) For “this Convention” wherever it appears there shall be substituted “the Guadalajara Convention as applied by this Schedule”.

(2) In Article 1, the following shall be added as paragraph (a):

““the Warsaw Convention” means the 1955 amended Convention as applied by this Schedule.”.

## PART II

For convenience of reference the 1955 amended Convention and the Guadalajara Convention, with the exceptions, adaptations and modifications by this Schedule, are here set out:—

### *A. The 1955 Warsaw Convention, as applied by Schedule 2*

#### INTERNATIONAL CARRIAGE UNDER THE UNAMENDED WARSAW CONVENTION

##### CHAPTER I

##### *Scope—Definitions*

#### **Article 1**

(1) This Schedule 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) “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 States Parties to the Convention for the Unification of Certain Rules relating to the International Carriage by Air signed at Warsaw on behalf of His Majesty on 12th October 1929, or within the territory of a single such State, if there is an agreed stopping place within the territory subject to the sovereignty, suzerainty, mandate or authority of another State, even though that State is not a party to the said Convention of 1929.

(3) A carriage to be performed by several successive air carriers is deemed, for the purposes of this Schedule, 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 of 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.

*A. The 1955 Warsaw Convention, as applied by Schedule 2*

INTERNATIONAL CARRIAGE UNDER THE UNAMENDED WARSAW CONVENTION

*CHAPTER I*

*Scope—Definitions*

**Article 2**

(1) This Schedule applies to carriage performed by the State, not being a State which has availed itself of the Additional Protocol to the Warsaw Convention, or by legally constituted public bodies, provided it falls within the conditions laid down in Article 1.

(2) This Schedule 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 the Warsaw 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 Schedule. 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 Schedule 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 the Warsaw 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 Schedule. 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 this Schedule which exclude or limit his liability.

### **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 of 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 Schedule.

#### **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 on acceptance of the cargo.

(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 air waybills when there is more than one package.

#### **Article 8**

The air waybill 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 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 cargo;
- (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 cargo;
- (j) the apparent condition of the cargo 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 cargo is sent for payment on delivery, the price of the cargo, 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 waybill;
- (o) the documents handed to the carrier to accompany the air waybill;
- (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 the Warsaw Convention.

#### **Article 9**

If the carrier accepts cargo without an air waybill having been made out, or if the air waybill 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 Schedule which exclude or limit his liability.

#### **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 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 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.

## **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 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 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 the 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 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**

(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 cargo 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 cargo, the liability of the carrier is limited to a sum of 250 francs per kilogramme, 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 the 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 65½ milligrammes 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 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 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 Schedule.

(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 Schedule 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 servant or agent of the carrier acting within the scope of his employment.

### **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 three days from the date of receipt in the case of baggage and seven 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 fourteen 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 Schedule 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 to the Warsaw Convention, 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 Schedule, 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 Schedule apply 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

### *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 Schedule, 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 Schedule, 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 Schedule 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 Schedule.

#### **Article 34**

This Schedule 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 Schedule means current days not working days.

### **ADDITIONAL PROTOCOL TO THE WARSAW CONVENTION**

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.

#### *B. The Guadalajara Convention as applied by Schedule 2*

### INTERNATIONAL CARRIAGE UNDER THE UNAMENDED WARSAW CONVENTION

#### **Article I**

In the Guadalajara Convention as applied by this Schedule:

- (a) "The Warsaw Convention" means the 1955 amended Convention as applied by this Schedule;
- (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 the Guadalajara Convention as applied by this Schedule, 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 the Guadalajara Convention as applied by this Schedule 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 the Guadalajara Convention as applied by this Schedule, 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 the Guadalajara Convention as applied by this Schedule 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 the Guadalajara Convention as applied by this Schedule or to fix a lower limit than that which is applicable according to the Guadalajara Convention as applied by this Schedule 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 the Guadalajara Convention as applied by this Schedule.

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 the Guadalajara Convention as applied by this Schedule, 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 the Guadalajara Convention as applied by this Schedule, 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 the Guadalajara Convention as applied by this Schedule shall affect the rights and obligations of the two carriers between themselves.

### SCHEDULE 3

Article 6

### **International carriage under the Warsaw Convention as amended by Additional Protocol No. 1 of Montreal 1975**

## **PART I**

1. The 1955 amended Convention and the Guadalajara Convention shall apply in respect of carriage which is “international carriage” as defined in paragraph 2 of this part of this Schedule, with the exceptions, adaptations and modifications set forth in paragraphs 3 and 4.

2. For the purposes of Article 6 of this Order and of this Schedule “international carriage” shall have the meaning assigned to it by paragraph 3(2) of this part of this Schedule.

3. The 1955 amended Convention shall apply to international carriage as aforesaid, with the following exceptions, adaptations and modifications:—

(1) For “Convention”, wherever it appears, there shall be substituted “Schedule”.

(2) The following shall be substituted for Article 1(2):—

“(2) ‘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 transhipment, are situated either within the territories of two States Parties to the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on behalf of His Majesty on 12th October 1929 as amended by Additional Protocol No. 1 of Montreal 1975, or within the territory of a single such State, if there is an agreed stopping place within the territory subject to the sovereignty, suzerainty, mandate or authority of another State, even though that State is not a party to the said Convention of 1929 as so amended.”.

(3) The following shall be substituted for Article 1(3):—

“(3) A carriage to be performed by several successive air carriers is deemed for the purposes of this Schedule, 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.”.

(4) The following shall be substituted for Article 2:—

“Article 2

(1) This Schedule applies to carriage performed by the State, not being a State which has availed itself of the Additional Protocol to the Warsaw Convention, or by legally constituted public bodies, provided it falls within the conditions laid down in Article 1.

(2) This Schedule does not apply to carriage performed under the terms of any international postal Convention.”.

(5) The following shall be substituted for Article 3:—

“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 the Warsaw 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 Schedule. 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 Schedule which exclude or limit his liability.”.

(6) The following shall be substituted for Article 4:—

“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 the Warsaw 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 Schedule. 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), (j) and (h) above, the carrier shall not be entitled to avail himself of those provisions of this Schedule which exclude or limit his liability.”.

(7) The following shall be substituted for Articles 6(3):—

“(3) The carrier shall sign on acceptance of the cargo.”.

(8) The following shall be substituted for Article 8:—

“Article 8

The airway bill 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 alteration shall not have the effect of depriving the carriage of its international character;
- (d) the name and address of 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 cargo;
- (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 cargo;
- (j) the apparent condition of the cargo 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 cargo is sent for payment on delivery, the price of the cargo, 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 waybill;
- (o) the documents handed to the carrier to accompany the air waybill;
- (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 the Warsaw Convention.”.

(9) The following shall be substituted for Article 9:—

“Article 9

If the carrier accepts cargo without an air waybill having been made out, or if the air waybill 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 Schedule which exclude or limit his liability.”.

(10) The following shall be substituted for Article 10(2):—

“(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.”.

(11) Article 15(3) shall not apply.

(12) The following shall be substituted for Article 20(2):—

“(2) In the carriage of cargo 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.”.

(13) The following shall be substituted for Article 22:—

“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.”.

(14) Article 23(2) shall not apply.

(15) The following shall be substituted for Article 25:

“Article 25

(1) The carrier shall not be entitled to avail himself of the provisions of this Schedule 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 servant or agent of the carrier acting within the scope of his employment.”.

(16) Article 25A shall not apply.

(17) The following shall be substituted for Article 26(2):

“(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 cargo. In the case of delay the complaint must be made at the latest within fourteen days from the date on which the baggage or cargo has been placed at his disposal.”.

(18) In Article 28(1), after “High Contracting Parties” there shall be added “to the Warsaw Convention as amended by Additional Protocol No. 1 of Montreal 1975”.

(19) The following shall be substituted for Article 34:

“Article 34

This Schedule 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.”.

(20) Articles 36 and 40A shall not apply

**4.** The Guadalajara Convention shall apply to international carriage within the meaning of this Schedule, with the following exceptions, adaptations and modifications:

(1) For “this Convention” wherever it appears there shall be substituted “the Guadalajara Convention as applied by this Schedule”.

(2) In Article 1, the following shall be added as paragraph (a):

““the Warsaw Convention” means the 1955 amended Convention as applied by this Schedule.”.

## PART II

For convenience of reference the 1955 amended Convention and the Guadalajara Convention, with the exceptions, adaptations and modifications by this Schedule, are here set out:—

### *A. The 1955 amended Warsaw Convention, as applied by Schedule 3*

#### INTERNATIONAL CARRIAGE UNDER THE UNAMENDED, WARSAW CONVENTION AS AMENDED BY ADDITIONAL PROTOCOL No. I OF MONTREAL 1975

### CHAPTER I

#### *Scope—Definitions*

#### **Article 1**

(1) This Schedule 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) “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 States Parties to the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on behalf of His Majesty on 12th October 1929 as amended by Additional Protocol No. 1 of Montreal 1975, or within the territory of a single such State, if there is an agreed stopping place within the territory subject to the sovereignty, suzerainty, mandate or authority of another State, even though that State is not a party to the said Convention of 1929 as so amended.

(3) A carriage to be performed by several successive air carriers is deemed, for the purposes of this Schedule, 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 Schedule applies to carriage performed by the State, not being a State which has availed itself of the Additional Protocol to the Warsaw Convention, or by legally constituted public bodies, provided it falls within the conditions laid down in Article 1.

(2) This Schedule 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 the Warsaw 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 nonetheless be subject to the rules of this Schedule. 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 Schedule 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 the Warsaw 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 Schedule. 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 this Schedule which exclude or limit his liability.

## **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 Schedule.

## **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 on acceptance of the cargo.

(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 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 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 cargo;
- (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 cargo;
- (j) the apparent condition of the cargo 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 cargo is sent for payment on delivery, the price of the cargo, 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 waybill;
- (o) the documents handed to the carrier to accompany the air waybill;
- (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 the Warsaw Convention.

## **Article 9**

If the carrier accepts cargo without an air waybill having been made out, or if the air waybill 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 Schedule which exclude or limit his liability.

## **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 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 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 the consignee.

(2) The provisions of Articles 12, 13 and 14 can only be varied by express provision in the 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 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 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**

(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 cargo 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 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 higher 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 that 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 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.

### **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 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 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 Schedule.

(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 Schedule which exclude or limit his liability, if the damage is caused by his 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 servant or agent of the carrier acting within the scope of his employment.

### **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 three days from the date of receipt in the case of baggage and seven 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 fourteen 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 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 Schedule 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 to the Warsaw Convention as amended by Additional Protocol No. 1 of Montreal 1975, 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 Schedule, 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 Schedule 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

### 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 Schedule, 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 Schedule, 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 Schedule 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 Schedule.

#### Article 34

This Schedule 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 Schedule means current days not working days.

#### **ADDITIONAL PROTOCOL TO THE WARSAW CONVENTION**

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.

#### *B. The Guadalajara Convention as applied by Schedule 3*

#### INTERNATIONAL CARRIAGE UNDER THE UNAMENDED WARSAW CONVENTION AS AMENDED BY ADDITIONAL PROTOCOL NO. 1 OF MONTREAL 1975

#### Article I

In the Guadalajara Convention as applied by this Schedule:

- (a) "the Warsaw Convention" means the 1955 amended Convention as applied by this Schedule;
- (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 1, paragraph (b), is governed by the Warsaw Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in the Guadalajara Convention as applied by this Schedule, 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 employments 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 the Guadalajara Convention as applied by this Schedule 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 the Guadalajara Convention as applied by this Schedule, 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 the Guadalajara Convention as applied by this Schedule 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 the Guadalajara Convention as applied by this Schedule or to fix a lower limit than that which is applicable according to the Guadalajara Convention as applied by this Schedule 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 the Guadalajara Convention as applied by this Schedule.

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 the Guadalajara Convention as applied by this Schedule, 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 the Guadalajara Convention as applied by this Schedule, 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 the Guadalajara Convention as applied by this Schedule shall affect the rights and obligations of the two carriers between themselves.

## SCHEDULE 4

Article 9

**Orders revoked**

	<i>References</i>
The Carriage by Air Acts (Application of Provisions) Order 1967	S.I. <a href="#">1967/480</a>
The Carriage by Air Acts (Application of Provisions) (Amendment) Order 1969	S.I. <a href="#">1969/1083</a>
The Carriage by Air Acts (Application of Provisions) (Second Amendment) Order 1979	S.I. <a href="#">1979/931</a>
The Carriage by Air Acts (Application of Provisions) (Third Amendment) Order 1981	S.I. <a href="#">1981/440</a>
The Carriage by Air Acts (Application of Provisions) (Fourth Amendment) Order 1998	S.I. <a href="#">1998/1058</a>

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<i>References</i>	
The Carriage by Air Acts (Application of Provisions) (Fifth Amendment) Order 1999	S.I. 1999/1737

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order consolidates with amendments earlier Orders made under section 10 of the Carriage by Air Act 1961 providing for the application of the Warsaw Convention 1929 as amended at the Hague 1955 and the Guadalajara Convention 1961 to carriage by air not being carriage to which the Conventions specified in the Schedules to those Acts apply.

The consolidation does not apply to Community air carriers to the extent that Council Regulation 2027/97 on air carrier liability in the event of accidents has the force of law in the UK (article 3).

The Montreal Convention 1999 is applied, with amendment, to carriage by air within the UK or carriage not governed by any of the Conventions listed in article 3(1) or set out in Schedules 2 or 3. It will supersede the application to such carriage of the Warsaw Convention as amended at the Hague and by Protocol No 4 of Montreal 1975. Unlike the 1967 Order as amended this Order does not extend to carriage of mail or postal packages. Under this Order the carrier will be liable for death or injury caused to passengers, for loss of or damage to baggage or cargo and for delay. His liability for death or injury is unlimited save that proof of an absence of fault on his part will limit liability to 100,000 SDRs (approximately £85,000). The principal amendments to the application of the Montreal Convention—

- exclude the application of documentation relating to carriage save for the requirement for the carrier to deliver a baggage identification tag
- modify the basis for the conversion of Monetary Units so as to provide for a basis simply for conversion into sterling with a certificate of the Treasury providing conclusive evidence of that matter
- exclude the provision for review of limits by the International Civil Aviation Organisation
- exclude the multiple jurisdictions otherwise provided for (article 4 and Schedule 1).

Parts of the Carriage by Air Act 1961 are applied to such carriage as if references in that Act to certain articles of the Montreal Convention were references to those articles in that Convention as applied by this Order (article 7).

The Warsaw Convention and that Convention as amended by Montreal Protocol No 1 1975 continue to be applied to international carriage as defined in Schedules 2 and 3 respectively (articles 5 and 6). The liability of an air carrier for passenger death or injury is limited to 125,000 francs and 8,300 SDRs respectively (approximately £7,000) in the absence of wilful misconduct, unless the carrier has contracted for a higher figure. Parts of the Carriage by Air Act 1961 and the Carriage by Air (Supplementary Provisions) Act 1962 are applied to such carriage as if references in those Acts to certain articles of the Warsaw Convention and of the Guadalajara Convention were references to those articles in those Conventions as applied by this Order (article 7).

The Order continues to provide for the application of the Acts of 1961 and 1962 and of the Order itself to gratuitous carriage by the Crown as they apply to carriage by the Crown for reward. However,

**Draft Legislation:** This is a draft item of legislation and has not yet been made as a UK Statutory Instrument.

excluded from this application is carriage undertaken by the Crown of its armed forces undertaken in times of hostilities or emergency. The former exception that the Crown may limit its liability although a passenger ticket has not been issued is omitted (article 8).

The Order no longer empowers the Secretary of State to grant exemptions.

For convenience of reference, the texts of the Montreal Convention, the Warsaw Convention and that Convention as amended as well as the Guadalajara Convention with the exceptions, adaptations and modifications made by this Order are set out in Part II of Schedules 1 to 3 to this Order.

The Order comes into force 10 days after it is made.

A regulatory impact assessment has been prepared in connection with this Order. It has been placed in the libraries of each of the Houses of Parliament. Copies can be obtained from the Multilateral Division of the Aviation Directorate, Zone 1/27, Department of Transport, Local Government and the Regions, Great Minster House, 76 Marsham Street, London SW1P 4DR (telephone 020 7944 5893).