1964 No. 693

CIVIL AVIATION

The Carriage by Air (Non-international Carriage) (United Kingdom) Order 1964

Made - - - -	12*th May* 1964
Laid before Parliament	20*th May* 1964
Coming into Operation	21*st May* 1964

At the Court at Buckingham Palace, the 12th day of May 1964.

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 4 of the Carriage by Air Act 1932(a), as applied by section 5(2) and (3) of the Carriage by Air (Supplementary Provisions) Act 1962(b), and of all other powers enabling Her in that behalf is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation and operation

1. This Order may be cited as the Carriage by Air (Non-international Carriage) (United Kingdom) Order 1964 and shall come into operation on 21st May 1964.

Interpretation

2.—(1) In this Order,

" the principal Act " means the Carriage by Air Act 1932;

" the principal Order " means the Carriage by Air (Non-International Carriage) (United Kingdom) Order 1952(c), as amended (d);

" the principal Rules " means the provisions of the First Schedule to the principal Act as adapted and modified by the principal Order.

(2) The Interpretation Act 1889(e) applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

Application of Guadalajara Convention to Non-international Carriage

3. The provisions of Part I of the Schedule to the Carriage by Air (Supplementary Provisions) Act 1962 shall, subject to the exceptions, adaptations and modifications specified in Schedule 1 to this Order, apply to all carriage by air not being international carriage as defined in Article 1(2) of the First Schedule to the principal Act, and not for the time being excepted from the application of the principal Rules by a direction given under Article 3 of the principal Order. The said provisions, as so adapted and modified, are for convenience of reference set out in Schedule 2 to this Order.

(a) 22 & 23 Geo. 5. c. 36.
(b) 10 & 11 Eliz. 2. c. 43.
(c) S.I. 1952/158 (1952 I, p. 548).
(d) S.I. 1959/1770 (1959 I, p. 685).
(e) 52 & 53 Vict. c. 63.

4. Sections 2(3) and 4 of the Carriage by Air (Supplementary Provisions) Act 1962 shall apply to the carriage by air specified in Article 3 of this Order as if references in those sections to " the Schedule to this Act " were references to that Schedule as applied by this Order, and as if the reference to " the Convention set out in the First Schedule to the said Act of 1932 " and to " that Convention " were references to the principal Rules.

5. This Order shall not apply so as to affect rights or liabilities arising out of an occurrence before this Order comes into operation.

W. G. Agnew.

SCHEDULE 1

Exceptions, Adaptations and Modifications

In Part I of the Schedule to the Act of 1962:—

1. The heading " 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 " shall be omitted.

2. In Article I—

For the word " Convention " there shall be substituted the word " Schedule ".

Paragraph (*a*) shall be omitted.

In paragraph (*b*) the words " governed by the Warsaw Convention " shall be omitted.

In paragraph (*c*) for the words " Warsaw Convention " there shall be substituted the words " principal Rules ".

3. In Article II—

The words " which, according to the agreement referred to in Article I, paragraph (*b*), is governed by the Warsaw Convention ", shall be omitted.

For the words " this Convention " there shall be substituted the words " this Schedule ".

For the words " rules of the Warsaw Convention " there shall be substituted the words " principal Rules ".

After the word " agreement " there shall be inserted the words " for carriage ".

4. In Article III, in paragraph 2—

For the words " Warsaw Convention " wherever they occur there shall be substituted the words " principal Rules ".

For the words " that Convention " there shall be substituted the words " those Rules ".

For the words " declaration of interest in delivery at destination " there shall be substituted the words " contract in writing ".

For the words " Article 22 of the said Convention " there shall be substituted the words " the said Article ".

5. In Article IV—

For the words " Warsaw Convention " wherever they occur there shall be substituted the words " principal Rules "

6. In Article V—

For the word " Convention " there shall be substituted the word " Schedule ".

For the words " Warsaw Convention " there shall be substituted the words " principal Rules ".

7. In Article VI—

For the word " Convention " there shall be substituted the word " Schedule ".

8. In Article VII—

The second sentence shall be omitted.

9. Article VIII shall not apply.

10. In Article IX—

For the word "Convention" wherever it occurs there shall be substituted the word "Schedule".

In paragraph 3, the words "whether", "or by altering the rules as to jurisdiction" and "if the arbitration is to take place in one of the jurisdictions referred to in Article VIII" shall be omitted.

11. In Article X—

For the word "Convention" there shall be substituted the word "Schedule".

12. Articles XI to XVIII shall not apply.

SCHEDULE 2

ARTICLE I

In this Schedule:

(*b*) "contracting carrier" means a person who as a principal makes an agreement for carriage 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 principal Rules. 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, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Schedule, be subject to the principal Rules, the former for the whole of the carriage contemplated in the agreement for carriage, 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 principal Rules. Any special agreement under which the contracting carrier assumes obligations not imposed by the principal Rules or any waiver of rights conferred by those Rules or any special contract in writing contemplated in the said Article 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 principal Rules 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 principal Rules 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 and of the contracting carrier shall, if he proves that he acted within the scope of his employment, be entitled to avail himself of the limits of liability which are applicable under this Schedule to the carrier whose servant or agent he is unless it is proved that he acted in a manner which, under the principal Rules, prevents the limits of liability from being invoked.

ARTICLE VI

In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the contracting carrier, and from their servants and agents acting within the scope of their employment, shall not exceed the highest amount which could be awarded against either the contracting carrier or the actual carrier under this 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.

ARTICLE IX

1. Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Schedule or to fix a lower limit than that which is applicable according to 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 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 this Schedule by deciding the law to be applied, shall be null and void. Nevertheless, for the carriage of cargo arbitration clauses are allowed, subject to this Schedule.

ARTICLE X

Except as provided in Article VII, nothing in this Schedule shall affect the rights and obligations of the two carriers between themselves.

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

The Guadalajara Convention of 1962, which unifies certain rules relating to international carriage by air performed by a person other than the contracting carrier, is given effect in the United Kingdom by the Carriage by Air (Supplementary Provisions) Act 1962. This Order applies the rules of the Convention, with adaptations and modifications, to carriage which is not international. It also applies section 4 of the Act thereby extending to non-international carriage the rights enjoyed by servants and agents of the carrier in the case of international carriage.