

CIVIL AVIATION ACT 2009

Principal Act

Act. No. 2009-05	Commencement (LN. 2009/001)	29.1.2009*
	Assent	15.1.2009

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AN ACT TO MAKE PROVISION GENERALLY FOR THE REGULATION OF CIVIL AVIATION (SAVE FOR AVIATION SECURITY) IN GIBRALTAR; TO PROVIDE FOR THE MANAGEMENT AND CONTROL OF THE COMMERCIAL AND CIVIL USE OF THE AIRPORT AND OF THE AIR TERMINAL AND AIRCRAFT USING ITS FACILITIES; AND FOR CONNECTED PURPOSES.

PART I PRELIMINARY PROVISIONS

Title and commencement.

1.(1) This Act may be cited as the Civil Aviation Act 2009.

(2) This Act comes into operation on the day appointed by the Government and different days may be appointed for different provisions and for different purposes and “the appointed day” shall be construed accordingly.

Interpretation.

2.(1) In this Act, except where the context otherwise requires—

“Air Navigation Regulations” means regulations adopted under section 33;

“air navigation services” includes information, directions and other facilities furnished, issued or provided in connection with the navigation or movement of aircraft;

“air transport service” means a service for the carriage by air of passengers or cargo;

“cargo” includes mail and (for the avoidance of doubt) animals;

“the Chicago Convention” means the Convention on International Civil Aviation which was, on 7th December 1944, signed on behalf of the Government of the United Kingdom at the International Civil Aviation Conference held at Chicago and which has been extended to apply to Gibraltar;

“Civil Airport” has the meaning given in section 25;

“civil air terminal” has the meaning given in section 29;

“Director of Civil Aviation” or “Director” means the person who—

(a) holds the office of Director of Civil Aviation; or

(b) is, for the time being, discharging the functions of that office;

“electronic communications network” has the same meaning as in section 2 (1) of the Communications Act;

“Eurocontrol” and “the Eurocontrol Convention” have the meanings respectively given to them in section 24;

“flight” and “to fly” have the meanings respectively given to them in subsection (2);

“functions” includes powers and duties;

“Gibraltar Airport” has the meaning given in section 25;

“loss or damage” includes, in relation to persons, loss of life and personal injury;

“manager or operator” means the manager or operator of the Civil Airport appointed under section 26;

“member of MoD personnel” means a serving member of Her Majesty’s armed forces, MoD employees and employees of contractors to the MoD performing duties as such at the Gibraltar Airport;

“the Minister” means the Minister with responsibility for transport;

“MoD” means the Ministry of Defence of Her Majesty’s Government in the United Kingdom;

“modifications” includes additions, omissions and amendments, and “modify” shall be construed accordingly;

“motor vehicle” means any vehicle propelled by mechanical power and constructed for the use on roads and not on rails or specially prepared ways, and any vehicle of a class declared by regulations under the Traffic Act to be motor vehicles;

“operator”, in relation to an aircraft, means the person having the management of the aircraft for the time being or, in relation to a time, at that time;

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“police officer” means any member of the police force established under the Police Act and designated the Royal Gibraltar Police or any other person empowered to act as a police officer under that Act;

“prescribed” means prescribed by regulations made by the Minister;

“RAF Gibraltar” has the meaning given in section 25;

“reward”, in relation to a flight, includes any form of consideration received or to be received wholly or partly in connection with the flight irrespective of the person by whom or to whom the consideration has been or is to be given;

“vehicle” includes animal drawn vehicles, motor vehicles, bicycles, tricycles, handcarts and all other contrivances, the primary purpose of which is the conveyance of goods or persons.

(2) An aircraft shall be deemed to be in flight—

- (a) in the case of a piloted flying machine, from the moment when, after the embarkation of its crew for the purpose of taking off, it first moves under its own power until the moment when it next comes to rest after landing;
- (b) in the case of a pilotless flying machine, or a glider, from the moment when it first moves for the purpose of taking off until the moment when it next comes to rest after landing;
- (c) in the case of an airship, from the moment when it first becomes detached from the surface until the moment when it next becomes attached thereto or comes to rest thereon;
- (d) in the case of a free balloon, from the moment when the balloon, including the canopy and basket, becomes separated from the surface until the moment it next comes to rest thereon; and
- (e) in the case of a captive balloon, from the moment when the balloon, including the canopy and basket, becomes separated from the surface, apart from a restraining device attaching it to the surface, until the moment when it next comes to rest thereon,

and the expressions ‘a flight’ and ‘to fly’ shall be construed accordingly.

(3) Without prejudice to any transitional or transitory provision made by this Act or by Part IV of the Interpretation and General Clauses Act (repeal and re-enactment), any reference in any enactment contained in this Act (including a reference to a provision of that enactment or to any other enactment so contained) to a provision which is a re-enactment of a repealed enactment or to things done or falling to be done under such a provision shall, so far as the context permits, be construed as including, in relation to times, circumstances and purposes in relation to which the repealed enactment had effect, a reference to, or to things done or falling to be done under that repealed enactment; and where the repealed enactment was itself a re-enactment of an earlier provision the reference shall extend in the same way to that earlier provision, and so on.

(4) Any reference in this Act to the re-enactment of a provision includes a reference to its re-enactment with modifications.

(5) Any reference in this Act to the carrying out of works on land shall be construed as including a reference to the making of excavations on the land or to the carrying out of leveling operations on the land; and references to the maintenance of works or to interference with works shall be construed accordingly.

(6) Any power conferred by this Act to make regulations or to issue a direction shall be construed as including a power exercisable in the like manner and subject to the like provisions (if any) to vary or revoke the regulations or direction.

PART II DUTIES AND FUNCTIONS OF THE MINISTER AND THE DIRECTOR OF CIVIL AVIATION

The Minister

Duties of the Minister.

3.(1) The Minister shall be charged with the general duty of organising, carrying out and encouraging measures for the development and safety of civil aviation.

(2) The Minister shall have a duty to perform the functions assigned to or conferred upon him by or under this Act.

(3) Subject to the provisions of this or any other Act, the Minister may do anything that appears to him to be incidental or conducive to the carrying out of his duties.

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The Director of Civil Aviation

Director of Civil Aviation.

4.(1) There is established the office of Director of Civil Aviation.

(2) The Director is responsible to the Minister for the discharge of his duties and functions under this Act.

Duties of Director of Civil Aviation.

5.(1) The Director of Civil Aviation shall have a duty to perform the functions assigned to or conferred upon his office by this or any other Act.

(2) Subject to the provisions of this or any other Act, the Director may do anything that appears to him to be incidental or conducive to the carrying out of his duties.

Appointment of a person to the office of Director of Civil Aviation.

6.(1) The Government shall, from time to time, by notice in the Gazette, appoint a person to hold the office of Director of Civil Aviation. Given the Governor's constitutional responsibilities for internal security and defence, the Government shall consult the Governor before making such an appointment.

(2) The person must—

- (a) have adequate relevant experience and expertise in the regulation of civil aviation; and
- (b) be a fit and proper person to hold the office of Director.

(3) An appointment under subsection (1) shall be for such a period, and subject to such terms and conditions, as may be specified in the instrument of appointment.

(4) The period of the appointment referred to in subsection (3) shall be established by the Government at the time of the appointment.

(5) A person appointed to hold the office of Director may at any time resign by delivering a letter to that effect to the Government.

(6) The Government may remove a person from the office of Director on any of the following grounds—

- (a) for misbehaviour;
- (b) for neglect of duty;
- (c) for material breach of any provision of any applicable contract of employment;
- (d) for incapacity;
- (e) for incompetence; or
- (f) if the person becomes bankrupt,

but may not do so on any other ground, provided that nothing shall prevent the Government from not renewing the appointment of a person where the period of that appointment has expired.

(7) The Government may suspend a person from the office of Director pending an investigation or inquiry as to whether the Director should be removed from office under subsection (6), but may not do so for any other reason.

(8) A person whose appointment to hold the office of Director has terminated, is eligible for re-appointment except where the appointment has been terminated by virtue of subsection (6) or where the appointment would have been so terminated but for his resignation.

Power to appoint a person to act on a temporary basis.

7.(1) If a person appointed to hold the office of Director of Civil Aviation is at any time unable to perform the functions of the office, the Government may appoint another person to perform those functions. Given the Governor's constitutional responsibilities for internal security and defence, the Government shall consult the Governor before making such an appointment.

(2) A person appointed under subsection (1) shall be so appointed for such period, and subject to such terms and conditions, as may be specified in the instrument appointing him.

Government to secure resources for Director.

8. The Government shall ensure that the Director of Civil Aviation is provided with sufficient resources, in the reasonable opinion of the Government, to enable the Director to perform the functions of his office

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and to do all things necessary for, or ancillary or reasonably incidental to, the performance of such functions.

Delegation of functions.

9.(1) The Director of Civil Aviation may delegate the performance of any of the functions of his office to—

- (a) a public officer designated by the Minister to assist the Director; or
- (b) any person or agency suitably qualified to perform the function.

(2) A delegation of the nature referred to in paragraph (b) of subsection (1) shall—

- (a) not be valid unless and until the Minister has given his written approval to that effect;
- (b) specify the extent and duration of the delegation and such other terms and conditions as are agreed between the parties; and
- (c) be made only on terms which allow the Director to revoke the delegation—
 - (i) in the Director's absolute discretion; or
 - (ii) upon the direction of the Minister.

(3) A revocation made pursuant to paragraph (c) of subsection (2) shall not engage the liability of either the Director or the Minister.

(4) The delegation by the Director of any of the functions of his office shall not affect the exercise by the Director of those functions nor any power or function of the Minister.

Director to provide annual report.

10.(1) The Director of Civil Aviation shall prepare, within three months after the end of each financial year, a report on the activities of his office during that year and shall submit each such report to the Minister as soon as it has been finalised.

(2) The Minister shall lay before Parliament a copy of every report referred to in subsection (1) within four months of receipt of it by him.

Provision of information by the Director.

11.(1) It shall be the duty of the Director—

- (a) to furnish to the Minister such information as the Minister may request and that the Director has or can reasonably be expected to obtain with respect to any matter relating to civil aviation; and
- (b) to permit the Minister to have access to, and at the Minister's request provide to him copies of, all documents which are under the Director's control and that relate to the matters specified in paragraph (a).

(2) Without prejudice to the generality of subsection (1), it shall be the duty of the Director to furnish the Minister with such information reasonably required by the Minister for the purpose of enabling the Minister to monitor, assess or secure compliance with an international or European Union obligation applicable to Gibraltar or to consider policy in relation to any aspect of civil aviation.

(3) At the request of the Governor, the Minister shall ask the Director—

- (a) to furnish to the Governor such information as the Governor may request and that the Director has or can reasonably be expected to obtain with respect to any matter falling within the Governor's areas of responsibility; and
- (b) to permit the Governor to have access to, and at the Governor's request provide to him copies of, all documents which are under the Director's control and that relate to the matters specified in paragraph (a).

(4) Information that is required to be provided by the Director to the Minister or the Governor pursuant to this section must be provided in such manner and at such times as the Minister may reasonable specify.

Functions of the Director.

12.(1) The functions of the Director of Civil Aviation are—

- (a) those functions conferred on his office by this Act;
- (b) such functions as are for the time being conferred on his office by or under Air Navigation Regulations;

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- (c) such other functions as are for the time being conferred on his office under this Act or by or under any other enactment,

and nothing in this Act relating to the Director shall be construed as derogating from any power exercisable by virtue of any enactment whatsoever (including an enactment contained in this Act) to make regulations conferring a function on the Director.

(2) It shall be a function of the Director to investigate any breach of any one or more of the following—

- (a) this Act;
- (b) regulations made under this Act;
- (c) any approval or permission granted to a person by or under this Act;
- (d) any condition, requirement or obligation imposed on a person by or under this Act,

and for such purposes, the Director may institute and carry on criminal proceedings for an offence relating to a matter in relation to which he has functions.

(3) The Director shall—

- (a) keep under review the operation of this Act; and
- (b) make recommendations to the Minister regarding such amendments to this Act as the Director considers necessary or desirable.

(4) The Director shall give such information, advice and assistance to the Minister as the Minister considers appropriate on matters concerning civil aviation and, without prejudice to the generality of the foregoing, the Director shall give information, advice and assistance to the Minister on—

- (a) any matter connected with the Minister's functions and duties in relation to civil aviation;
- (b) the safety of civil aviation in Gibraltar;
- (c) co-ordination and co-operation in respect of civil aviation with other civil aviation authorities, agencies and bodies outside Gibraltar;

- (d) the Chicago Convention ;
- (e) European Union obligations in respect to civil aviation; and
- (f) other international agreements and international obligations in respect to civil aviation which apply to Gibraltar.

(5) A requirement imposed pursuant to paragraph (a) of subsection (4) may be expressed so as to operate as a continuing requirement on the Director to provide information, advice and assistance in connection with that function or duty.

(6) The Director shall discharge his functions in the manner that he thinks will best achieve compliance with—

- (a) the Chicago Convention;
- (b) European Union obligations in respect to civil aviation; and
- (c) other international agreements and international obligations in respect to civil aviation which apply to Gibraltar.

(7) It shall be the duty of the Director, in performing his functions, to—

- (a) have regard to policy statements, published by or on behalf of the Government and notified to the Director, in relation to—
 - (i) civil aviation; and
 - (ii) the economic and social development of Gibraltar; and
- (b) comply with any direction given to him by the Minister in pursuance of—
 - (i) any of the policies referred to in paragraph (a);
 - (ii) any provision of this Act.

(8) For the purpose of meeting expenses properly incurred by the Director in the discharge of his duties and functions under this Act, the Government may by regulations—

- (a) provide for the payment of charges and the amount of those charges or the method of calculating those charges, or both that amount and that method;

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- (b) prescribe the principles and criteria in accordance with which those charges are to be calculated;
- (c) prescribe the person by whom, and the time or intervals in which, those charges are to be paid;
- (d) prescribe the person to whom those charges are to be paid;
- (e) provide for persons, whether individually or generally, to be exempted from the payment of those charges;
- (f) prescribe any penalties for non-payment or late payment of those charges; and
- (g) provide for the publication of those charges or the method of calculating them, or both, in such a manner and in such detail as it shall consider appropriate.

(9) Any charge which is imposed by the Government in accordance with subsection (8) shall be imposed in a manner which is objective, transparent and proportionate.

PART III ADMINISTRATION OF THE ACT

Power to require information etc.

13.(1) The Minister and the Director may each, for the purpose of performing the functions assigned to or conferred respectively upon them by or under this Act, by notice—

- (a) require any person to produce, at a time and place specified in the notice, to the Minister or the Director, as the case may be, or to any person appointed by either of them for the purpose, any information which is specified or described in the notice and is in that person's custody or control; or
- (b) require any person carrying on any business to furnish to the Minister or the Director, as the case may be, such estimates, returns or other information as may be specified or described in the notice, and specify the time, the manner and the form in which any such estimates, returns or information are to be furnished,

but no person shall be compelled for any such purpose to produce any documents which he could not be compelled to produce in civil proceedings before the court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in such proceedings.

(2) A notice issued under subsection (1) shall—

- (a) be proportionate to the use to which the information is to be put in the carrying out of the Minister's or Director's functions; and
- (b) give the reasons justifying the requirement for the information, including a statement as to which of the Minister's or Director's functions gives rise to the request.

(3) A person served with a notice pursuant to subsection (1) must provide the information requested in the notice in such manner, detail and within such reasonable period as may be specified in the notice.

(4) A person who refuses or, without reasonable excuse, fails to do anything duly required of him by a notice under subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) If a person makes default in complying with a notice under subsection (1), the court may, on the application of the Minister or the Director, as the case may be, make such order as the court thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of, and incidental to, the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.

(6) The Minister may by regulations prescribe—

- (a) any further particulars which may apply in specific cases and circumstances to a requirement to provide information pursuant to this section; and
- (b) the cases and circumstances under which a financial penalty may be imposed on a person who fails to comply with a notice issued under this section.

(7) Save with the consent of the Governor, no notice under this section shall be issued to any member of MoD personnel in respect of information held by him in his capacity as such a member.

Making false or misleading statements.

14.(1) A person who—

- (a) intentionally alters, suppresses or destroys any document, including a document in electronic form, which he has been required to produce by a notice under subsection 13(1);
- (b) by furnishing any estimate, return or other information required of him under a notice under subsection 13(1), or otherwise in purported compliance with a requirement under this Act, furnishes information or makes any statement which he knows to be false or misleading in a material particular, or recklessly furnishes information or makes a statement which is false or misleading in a material particular; or
- (c) with intent to avoid detection of an offence or liability to a penalty under this Act removes from Gibraltar, destroys, conceals or fraudulently alters any books or papers including any material held electronically,

is guilty of an offence.

(2) A person guilty of an offence under subsection (1) is liable—

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

General restrictions on disclosure of information.

15.(1) Subject to the following provisions of this section, no information with respect to a particular business which—

- (a) has been obtained under or by virtue of this Act; and
- (b) relates to the private affairs of any individual or to any particular business,

shall during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.

(2) Subsection (1) does not apply to any disclosure of information which is made for any one or more of the following reasons—

- (a) for the purpose of section 11;
- (b) for the purpose of facilitating the performance of any duties or functions assigned to or conferred on the Minister or the Director by or under this Act;
- (c) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;
- (d) for the purpose of any civil proceedings brought under or by virtue of this Act;
- (e) to comply with directions of the Supreme Court;
- (f) in pursuance of an international or European Union obligation.

(3) Nothing in subsection (1) shall be construed as any one or more of the following—

- (a) limiting the matters which may be included in, or made public as part of, a report of the Minister or the Director under this Act;
- (b) applying to any information which has been so published or has been made public as part of such a report;
- (c) limiting the matters which may be published under any regulations made under this Act.

(4) Any person who discloses any information in contravention of this section is guilty of an offence and is liable—

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

Regulations.

16.(1) The Government may make regulations in respect of any matter and for any purpose relating to the application of this Act and for more effectually carrying into effect the objects of this Act, and without in any manner restricting the foregoing powers, such regulations may provide for the following—

- (a) for the implementation of international and European Union obligations relating to civil aviation which apply to Gibraltar and for any matter or purpose connected therewith;
 - (b) for the management, control and supervision of the Civil Airport;
 - (c) for the authorisation and licensing of scheduled air services to and from Gibraltar;
 - (d) for the charging of fees for the grant, approval, endorsement or recognition of licences;
 - (e) for the charging of airport charges for the use of, or for services provided at, the Gibraltar Airport or at the civil air terminal; and
 - (f) the procedure and principles for the imposition of financial penalties on a person who fails to comply with a condition or obligation imposed on that person under, or pursuant to, this Act or with any other requirement as may be specified under, or pursuant to, this Act.
- (2) Regulations made under this Act may, without prejudice to subsection (1)–
- (a) as far as the contravention of any one or more of those regulations is concerned, prescribe that a contravention is an offence;
 - (b) as far as the liability of a person guilty of an offence of the nature referred to in paragraph (a) is concerned, prescribe any one or more of the following and whether jointly or in the alternative–
 - (i) on summary conviction to imprisonment for a term not exceeding six months;
 - (ii) on summary conviction to a fine not exceeding level 5 on the standard scale;
 - (iii) on conviction on indictment, to imprisonment for a term not exceeding two years;
 - (iv) on conviction on indictment, to a fine;

- (c) make different provision for different cases, including different provision in relation to different persons, services, circumstances or localities;
- (d) exempt any person, or provide for any person to be exempted, from any of the provisions of this Act.

(3) Regulations made under this Act which prescribe a period within which things are to be done may, without prejudice to their generality, provide for extending the period so prescribed.

(4) Any power conferred by this Act to make regulations includes power, by subsequent regulations, to vary or revoke any regulations so made.

Directions by the Minister and the Director.

17.(1) The Minister and the Director may each, without prejudice to section 13, issue directions to persons who are subject to the provisions of this Act, whether individually or generally, requiring them to do or refrain from doing anything which the Minister or the Director, as the case may be, may consider necessary for such person to comply with any provision of, or any condition, obligation or other requirement applicable to such person by or under this Act and such person shall give effect to any such direction.

(2) A direction may be issued by the Minister to the Director pursuant to subsection (1) and, without prejudice to the generality of the foregoing, the Minister may give the Director directions to do or refrain from doing a particular thing which the Director has power to do or refrain from doing if the Minister considers it appropriate to give such directions in order to discharge or facilitate the discharge of an international or European Union obligation applicable to Gibraltar.

(3) A person who refuses or, without reasonable excuse, fails to do anything duly required of him by a direction issued under subsection (1) is guilty of an offence.

(4) A person guilty of an offence under subsection (3) is liable—

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

(5) Save with the consent of the Governor, a member of MoD personnel may not be given a direction pursuant to this section.

Directions in the interests of the security of Gibraltar etc.

18.(1) Without prejudice to the generality of subsection 17(2) and to subsection (2) below, the Minister may give the Director such directions of a general character as to the performance of the Director's functions as the Minister thinks it appropriate to give in the interests of the security of Gibraltar and the Minister shall give any such directions as may be specified by the Governor in the interests of the security of Gibraltar.

(2) The Minister may give the Director directions to do or refrain from doing a particular thing which the Director has power to do or refrain from doing if the Minister considers it appropriate to give such directions and the Minister shall give the Director any such directions as may be specified by the Governor in the interests of the security of Gibraltar.

(3) Nothing in this Act shall prejudice the Governor's responsibility for the internal security of Gibraltar.

Power to issue and publish notices.

19.(1) Without prejudice to sections 13 and 17, the Minister may, after consultation with the Director, cause to be published in the form of administrative notices statements setting out the criteria and any variation in the criteria from time to time by reference to which the Minister or the Director or both, as the case may be, propose to exercise their respective functions under this Act.

(2) The Minister may, after consultation with the Director, publish in the form of administrative notices criteria to facilitate compliance in Gibraltar with any relevant international or European Union obligation.

(3) The Director may, with the consent of the Minister, cause to be published in the form of notices any matter for which he is responsible under or pursuant to this Act including any international or European Union obligation which the Director is required to comply with.

Requirements to be complied with by the Minister and the Director when issuing documents.

20.(1) Where the Minister or the Director issue a document under this Act, the document shall—

- (a) be in writing;

- (b) be signed by the Minister or the Director, as the case may be, or by such other person as the Minister or the Director may appoint for the purpose;
- (c) state the reasons on which it is based;
- (d) where applicable, be addressed to the person concerned; and
- (e) comply with the relevant requirements set out in sections 21 to 23.

(2) In this section “document” includes anything in writing.

Service of documents.

21.(1) This section applies where a provision made (in whatever terms) by or under this Act authorises or requires a document of any description (including a copy of a document) to be sent to any person.

(2) The document may be given or sent to the person in question—

- (a) by delivering it to him;
- (b) by leaving it at his proper address; or
- (c) by sending it by post to him at that address.

(3) The document may be given or sent to a body corporate by being given or sent to the secretary or clerk of that body.

(4) The document may be given or sent to a firm by being given or sent to—

- (a) a partner in the firm; or
- (b) a person having the control or management of the partnership business.

(5) The document may be given or sent to an unincorporated body or association by being given or sent to a member of the governing body of the body or association.

(6) For the purposes of this section, the proper address of a person is—

- (a) in the case of body corporate, the address of the registered or principal office of the body;

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- (b) in the case of a firm, unincorporated body or association, the address of the principal office of the partnership, body or association;
- (c) in the case of a person to whom the document is given or sent in reliance on any of subsections (3) to (5), the proper address of the body corporate, firm or (as the case may be) other body or association in question; and
- (d) in any other case, the last known address of the person in question.

(7) In the case of–

- (a) a company registered outside Gibraltar;
- (b) a firm carrying on business outside Gibraltar; or
- (c) an unincorporated body or association with offices outside Gibraltar,

the references in subsection (6) to its principal office include references to its principal office within Gibraltar (if any).

(8) In this section document has the same meaning as in subsection 20 (2) and references in this section to giving or sending a notification or other document to a person include references to transmitting it to him and to serving it on him.

(9) This section has effect subject to section 22.

Documents in electronic form.

22.(1) This section applies where–

- (a) section 21 authorises the giving or sending of a document by its delivery to a particular person (“the recipient”); and
- (b) the document is transmitted to the recipient–
 - (i) by means of an electronic communications network; or
 - (ii) by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible.

(2) The transmission has effect for the purposes of this Act as a delivery of the document to the recipient, but only if the requirements imposed by or under this section are complied with.

(3) Where the recipient is the Minister or the Director—

- (a) they must have indicated their willingness to receive the document in a manner mentioned in paragraph (b) of subsection (1);
- (b) the transmission must be made in such manner and satisfy such other conditions as they may require; and
- (c) the document must take such form as they may require.

(4) Where the person making the transmission is the Minister or the Director, they may (subject to subsection (5)) determine—

- (a) the manner in which the transmission is made; and
- (b) the form in which the document is transmitted.

(5) Where the recipient is a person other than the Minister or the Director—

- (a) the recipient; or
- (b) the person on whose behalf the recipient receives the document,

must have indicated to the person making the transmission the recipient's willingness to receive documents transmitted in the form and manner used.

(6) An indication to any person for the purposes of subsection (5)—

- (a) must be given to that person in such manner as he may require;
- (b) may be a general indication or one that is limited to notifications or documents of a particular description;
- (c) must state the address to be used and must be accompanied by such other information as that person requires for the making of the transmission; and
- (d) may be modified or withdrawn at any time by a notice given to that person in such manner as he may require.

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(7) An indication, requirement or determination given, imposed or made by the Minister or the Director for the purposes of this section is to be given, imposed or made by being published in such manner as they consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.

(8) Subsection 20(2) and subsection 21(8) apply for the purposes of this section as they apply for the purposes of those sections.

Timing and location of things done electronically.

23.(1) The Minister may by regulations make provision specifying, for the purposes of this Act, the manner of determining—

- (a) the times at which things done under this Act by means of electronic communications networks are done; and
- (b) the places at which such things are so done, and at which things transmitted by means of such networks are received.

(2) The provision made by subsection (1) may include provision as to the country or territory in which an electronic address is to be treated as located.

(3) Regulations made by the Minister for the purpose of this section may also make provision about the manner of proving in any legal proceedings—

- (a) that something done by means of an electronic communications network satisfies the requirements of this Act for the doing of that thing; and
- (b) the matters mentioned in paragraphs (a) and (b) of subsection (1).

(4) Regulations under this section may provide for such presumptions to apply (whether conclusive or not) as the Minister considers appropriate.

Eurocontrol.

24. Schedule 1 shall have effect in relation to the European Organisation for the Safety of Air Navigation established by the International Convention relating to co-operation for the safety of air navigation (entitled Eurocontrol) concluded at Brussels on 13th December 1960; and in this Act—

“Eurocontrol” means that organisation, including, except where the context otherwise requires, the Permanent Commission for the

Safety of Air Navigation and the Air Traffic Services Agency comprised in that Organisation; and

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

PART IV THE GIBRALTAR AIRPORT AND OTHER LAND

The Gibraltar Airport

The Gibraltar Airport.

25.(1) The Gibraltar Airport is the aggregate of the land, buildings and works comprising the Civil Airport and RAF Gibraltar.

(2) The Civil Airport is the aggregate of the land, buildings and works comprising the civil air terminal as defined in section 29 and associated aprons under the management and control of the Government.

(3) RAF Gibraltar is the aggregate of the land, buildings and works at the Gibraltar Airport with the exclusion of those parts that comprise the Civil Airport and which are managed and operated by the Royal Air Force on behalf of the MoD.

(4) A plan of the Gibraltar Airport referred to in subsection (1) shall be published by the Government in the Gazette and such plan will specify which parts of the Gibraltar Airport comprise the Civil Airport referred to in subsection (2) and which parts of the Gibraltar Airport comprise RAF Gibraltar referred to in subsection (3).

(5) This Act shall not affect the application to RAF Gibraltar of applicable military rules.

(6) Nothing in this Act shall prejudice or displace the powers and rights of the MoD as owner and operator of RAF Gibraltar.

(7) This Act shall not apply to activities undertaken in RAF Gibraltar by any aircraft belonging to or operated by the armed forces of any State.

(8) For the purposes of this section the term “applicable military rules” shall mean all military aviation policy regulations and directives issued by the MoD and the Royal Air Force.

Appointment of manager or operator of the Civil Airport.

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26.(1) The Government may appoint a manager or operator of the Civil Airport who shall exercise general control and supervision over the Civil Airport on behalf of, and subject to, the direction of the Government and over all persons in the Civil Airport and perform such functions as may be conferred upon him by or under this or any other Act.

(2) The Government may appoint under subsection (1) a commercial entity under a contract of services or for services on such terms as the Government shall decide.

(3) The manager or operator may delegate such function as may be necessary or desirable to ensure the orderly and efficient administration of the Civil Airport to such a person or persons as may be approved by the Minister for the purpose.

(4) Where a delegation of the nature described in subsection (3) has been made, any reference in this Act to the manager or operator of the Civil Airport shall be understood as including a reference to the person to whom that delegation has been made in relation to the function so delegated.

(5) In the exercise of control and supervision or the carrying out of any function under this section, the manager or operator of the Civil Airport shall have regard to, and implement the policy of, the Government as communicated by the Minister and shall observe and implement any direction issued by the Minister.

Trespassing.

27.(1) Subject to subsection (2), if any person trespasses on any land forming part of the Gibraltar Airport, he shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

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

Warning of presence of obstructions near the Gibraltar Airport.

28.(1) Subject to the provisions of this section, if the Minister is satisfied with respect to any building, structure or erection in the vicinity of the Gibraltar Airport that, in order to avoid danger to aircraft flying in that vicinity in darkness or conditions of poor visibility, provision ought to be made (whether by lighting or otherwise) for giving to such aircraft warning of the presence of that building, structure or erection, he may by direction

authorise (subject to any conditions specified in the direction) the Director, and any person acting under the Director's instructions—

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

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

(3) The Minister shall, before making a direction under this section—

- (a) cause to be published, in such manner as he thinks best for informing persons concerned, notice of the proposal to make the direction and of the place where copies of the draft direction may be obtained free of charge; and
- (b) take into consideration any representations with respect to the direction which may, within such period not being less than two months (unless the Minister certifies that the urgency of the matter requires a shorter period) after the publication of the notice as may be specified therein, be made to him by any person appearing to him to have an interest in any land which would be affected by the direction,

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

(4) Every direction under this section shall provide—

- (a) that, except in a case of emergency, no works shall be executed on any land in pursuance of the direction, unless, at least fourteen days previously, the Director has served in the manner specified in the direction on the occupier of that land, and on every other person known by the Director to have an interest therein, a written notice containing such particulars of the

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nature of the proposed works, and the manner in which and the time at which it is proposed to execute them, as may be specified in or in accordance with the direction; and

- (b) that if, within fourteen days after service of the said notice on any person having such an interest, the Director receives a written intimation of objection on the part of that person to the proposals contained in the notice, being an intimation which specifies the grounds of objection, then, unless and except in so far as the objection is withdrawn, no steps shall be taken in pursuance of the notice without the specific sanction of the Minister,

and shall also provide for requiring the Director to pay to any person having an interest in any land affected by the direction such compensation for any loss or damage which that person may suffer in consequence of the direction as may, in default of agreement, be determined by the Supreme Court.

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

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

(7) If any person contravenes the provisions of subsection (6), he shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 4 on the standard scale or to both; and every person who willfully obstructs a person in the exercise of any of the powers conferred by a direction under this section shall be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

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

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

The Civil Airport

The Civil Air Terminal.

29.(1) The civil air terminal is that area at the Gibraltar Airport situated to the east of the public highway known as Winston Churchill Avenue measuring on the east side three hundred and fifty eight feet or thereabouts and bounded on the north and south by fencing and on the east partly by fencing and partly by the east side of the Air Terminal Building and on the west by the said public highway, together with any present or future Air Terminal Building and any other buildings and appurtenances in the said area, which area is more particularly delineated and coloured pink on Plan-E.A.T. 1A deposited in the offices of the Government and or such other additional or different areas as the Minister may specify by notice in the Gazette.

(2) A certified copy of the plan of the civil air terminal referred to in subsection (1) purporting to be signed by the Town Planner or such other person as may be appointed by the Minister for that purpose shall be received as evidence as to the boundaries of the civil air terminal and as to whether any place is or is not within the civil air terminal, without any further proof.

Regulations for the purpose of the Civil Airport.

30. Without prejudice to the generality of the powers conferred by section 16, regulations under that section may provide for all or any of the following matters—

- (a) regulating or restricting admission of persons or classes of persons to the Civil Airport or to any part thereof;
- (b) regulating or restricting the use of vehicles in the Civil Airport;
- (c) preventing nuisances and obstructions and encroachment in or on the Civil Airport, and interference with its use;

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- (d) regulating the conduct of persons employed at or using the Civil Airport;
- (e) the preservation of good order and conduct in the Civil Airport;
- (f) the safe custody and re-delivery or disposal of any property left unclaimed at the Civil Airport, and fixing the charges to be made in respect thereof;
- (g) the reception, handling, storage and disposal of baggage, mails and freight within the Civil Airport;
- (h) securing the safety of the Civil Airport or anything erected, growing or being therein or thereon;
- (i) regulating the handling and flow of passengers and other persons using the Civil Airport;
- (j) making provision for the operation or use of the Civil Airport or for the nature and manner of delivery of any service, function or commercial activity therein;
- (k) regulating the grant of concessions to operate any business within the Civil Airport and the manner in, and times at, which such businesses shall be operated.

Offences in relation to the Civil Airport.

31.(1) A person who contravenes any of the provisions of any regulations made for the purpose of the Civil Airport or any order, direction or requirement, lawfully given or imposed by any person for the purpose of the Civil Airport, is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Without prejudice to his liability to be prosecuted, a person who contravenes any of the provisions of any such regulations or any such order, direction or requirement as are referred to in subsection (1) may be removed or ejected from the Civil Airport or from any part thereof by any police officer, or by the manager or operator of the Civil Airport.

Special provision relating to control and use of roads, etc. within the Civil Airport.

32. Notwithstanding anything in the Traffic Act or the Insurance (Motor Vehicles) (Third Party Risks) Act, any road or place capable of being used by vehicles within the Civil Airport shall, for the purposes of those Acts, be

deemed to be a road; and those Acts shall have effect accordingly in relation to the use of any such road or place by vehicles.

PART V
REGULATION OF CIVIL AVIATION

General

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

33.(1) The Minister may by regulations under this section (in this Act referred to as “Air Navigation Regulations”) make such provision as is authorised by subsections (2) and (3) or otherwise by this Act or any other enactment.

(2) Air Navigation Regulations may contain such provision as appears to the Minister to be requisite or expedient—

- (a) for carrying out the Chicago Convention, any Annex thereto relating to international standards and recommended practices (being an Annex adopted in accordance with the Convention) and any amendment of the Convention or any such Annex made in accordance with the Convention; or
- (b) generally for regulating air navigation.

(3) Without prejudice to the generality of subsection (2) or to any other provision of this Act, Air Navigation Regulations may contain provisions—

- (a) restricting or controlling the entry into or use of Gibraltar airspace;
- (b) for prohibiting aircraft from flying unless certificates of airworthiness issued or validated under the regulations are in force with respect to them and except upon compliance with such conditions as to maintenance or repair as may be specified in the regulations;
- (c) for the inspection and regulation of the Gibraltar Airport, for access to the Gibraltar Airport and places where aircraft have landed, for access to aircraft factories for the purpose of inspecting work therein carried on in relation to aircraft or parts thereof;

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- (d) for prohibiting persons from engaging in, or being employed in or in connection with, air navigation in such capacities as may be specified in the regulations except in accordance with provisions in that behalf contained in the regulations, and for the licensing of those employed at the Gibraltar Airport in the inspection or supervision of aircraft;
- (e) as to the conditions under which aircraft entering or leaving Gibraltar may fly;
- (f) as to the conditions under which passengers may be carried by air and under which aircraft may be used for other commercial, industrial or gainful purposes;
- (g) as to the conditions under which goods may be carried by air, for prohibiting the carriage by air of goods of such classes as may be specified in the regulations, and for conferring, on such persons as may be so specified, powers relating to the enforcement of any such condition or prohibition (including powers to examine, take samples of, seize and detain any goods, powers to open any baggage or packages containing goods or to require them to be opened and powers to require the production of any documents);
- (h) for minimising or preventing interference with the use or effectiveness of apparatus used in connection with air navigation, and for prohibiting or regulating the use of such apparatus as aforesaid and the display of signs and lights liable to endanger aircraft;
- (i) generally for securing the safety, efficiency and regularity of air navigation and the safety of aircraft and of persons and property carried therein, for preventing aircraft endangering other persons and property and, in particular, for the detention of aircraft for any of the purposes specified in this paragraph;
- (j) for safeguarding the health of persons on board aircraft;
- (k) for requiring persons engaged in, or employed in or in connection with, air navigation to supply meteorological information for the purposes of air navigation;
- (l) for regulating the making of signals and other communications by or to aircraft and persons carried therein;
- (m) for prohibiting civil aircraft from flying over Gibraltar;

- (n) subject to the consent of the Minister for Finance, for applying, adapting or modifying the enactments for the time being in force relating to customs or excise in relation to the Civil Airport and to aircraft and to persons and property carried therein and for preventing smuggling by air, and for permitting in connection with air navigation, subject to such conditions as appear to the Minister for Finance to be requisite or expedient for the protection of the revenue, the importation of goods into Gibraltar without payment of duty;
- (o) as to the manner and conditions of the issue, validation, renewal, extension, endorsement or variation of any certificate, licence or other document required by the regulations (including the examinations and tests to be undergone), and as to the form, custody, production, cancellation, suspension, endorsement and surrender of any such document;
- (p) as to the qualifications that may be recognised and validated for the purposes of this Act;
- (q) for specifying, subject to the consent of the Minister for Finance, the fees to be paid in respect of the issue, validation, renewal, extension, endorsement or variation of any certificate, licence or other document or the undergoing of any examination or test required by the regulations and in respect of any other matters in respect of which it appears to the Minister to be expedient for the purpose of the regulations to charge fees;
- (r) for exempting from the provisions of the regulations or any of them any aircraft or persons or classes of aircraft or persons;
- (s) for prohibiting aircraft from taking off or landing in Gibraltar unless there are in force in respect of those aircraft such certificates of compliance with standards as to noise as may be specified in the regulations and except upon compliance with the conditions of those certificates; and
- (t) for regulating or prohibiting the flight of aircraft over Gibraltar at speeds of or in excess of Flight Mach 1.

(4) Air Navigation Regulations may make different provision with respect to different classes of aircraft, persons or property and with respect to different circumstances but shall, so far as practicable, be so framed as not

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to discriminate in like circumstances between aircraft operated on charter terms, notably on account of their place of registration.

(5) In this section a reference to goods shall include a reference to mail or animals.

Air Navigation Regulations etc: supplemental.

34.(1) Air Navigation Regulations may, for the purpose of securing compliance with their provisions, provide—

- (a) subject to subsection (2), for persons to be guilty of offences in such circumstances as may be specified in the regulations and to be liable on conviction of those offences to such penalties as may be so specified; and
- (b) in the case of a provision having effect by virtue of paragraph (m) of subsection 33(3), for the taking of such steps (including firing on aircraft) as may be specified in the regulations.

(2) The power conferred by virtue of paragraph (a) of subsection (1) shall not include power—

- (a) to provide for offences to be triable only on indictment;
- (b) to authorise the imposition, on summary conviction of any offence, of any term of imprisonment or of a fine exceeding level 5 on the standard scale;
- (c) to authorise the imposition, on conviction on indictment of an offence, of a term of imprisonment exceeding two years.

(3) Subsection (2) shall have effect with the substitution of “five years” for “two years” in the case of a provision about endangering an aircraft or a person in an aircraft.

(4) Summary proceedings for an offence against Air Navigation Regulations may be instituted at any time within twelve months from the commission of the offence if—

- (a) it was committed in connection with the flight of an aircraft in the course of which an accident occurred; and
- (b) not more than six months after the commission of the offence—

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- (i) public notice has been given that an investigation into the accident is being carried out in accordance with regulations under section 39; or
- (ii) the Minister has directed that a public inquiry into the accident be held in accordance with those regulations.

(5) In subsection (4) “accident” has the same meaning as it has for the time being for the purposes of section 39; and for the purposes of that subsection, the flight of an aircraft shall be deemed to include any period from the moment when the power is applied for the purpose of the aircraft taking off on a flight until the moment when the landing run (if any) at the termination of that flight ends.

(6) The fact that any such direction as is mentioned in subparagraph (b)(ii) of subsection (4) has been given on any date may be proved by the production of a certificate to that effect purporting to be signed by the Minister.

(7) All sums received by way of fees paid under Air Navigation Regulations shall be paid to such person or into such fund as the Minister for Finance shall from time to time specify, and in the absence of any such specification to the contrary shall be paid into the Consolidated Fund.

Air transport, etc.

Regulation of carriage by air for reward.

35.(1) No aircraft shall be used for the carriage for reward of passengers or cargo on a flight beginning or ending in Gibraltar unless the operator of the aircraft holds—

- (a) a valid air operator’s certificate specifying activities which include the operation of aircraft on such flights as the flight in question; and
- (b) a valid operating licence issued in accordance with the European Union Regulation,

authorising him to operate aircraft on such flights as the flight in question.

(2) Subsection (1) does not apply where—

- (a) the aircraft is registered in a country other than a Member State;

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- (b) pursuant to Air Navigation Regulations under section 33 permission for the flight has been duly granted;
- (c) the Minister has duly authorised the use of the Civil Airport in relation to such flights; and
- (d) the conditions to which the permission referred to in paragraph (b) and the authorisation referred to in paragraph (c) may be subject are complied with.

(3) Where an aircraft is used for the carriage of passengers or cargo in pursuance of an arrangement made between a member of an incorporated or unincorporated body of persons and that body or another member of it, then, if by reason of relationships arising from membership of the body the carriage is not apart from this subsection carriage for reward, it shall be treated for the purposes of this section as carriage for reward.

(4) Where an aircraft is used on a flight in contravention of subsection (1), then—

- (a) if before the flight began the operator of the aircraft knew or ought to have known that the use of the aircraft on that flight was likely to be in contravention of that subsection, he shall be guilty of an offence under this subsection; and
- (b) if any other person, either by negotiating a contract or otherwise howsoever, made available accommodation for the carriage of passengers or cargo on the aircraft on the flight when he knew or ought to have known before the flight began that the accommodation was likely to be provided on an aircraft when used on a flight in contravention of the said subsection (1), that person shall be guilty of an offence under this subsection,

but a person shall not (except in pursuance of subsection 55(1) or the law relating to persons who aid, abet, counsel or procure the commission of offences) be guilty of an offence by virtue of paragraph (b) in consequence of the contravention by another person of a term of a licence.

(5) For the purpose of determining in pursuance of subsection (4) whether an offence relating to a flight has been committed by the operator of the aircraft used on the flight, it is immaterial that the relevant contravention mentioned in that subsection occurred outside Gibraltar if when it occurred the operator—

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- (a) was a British citizen or a British Overseas Territory citizen by virtue of a connection with Gibraltar; or
- (b) was a body incorporated or registered under the law of Gibraltar; or
- (c) was (other than a person described in paragraph (a) or a body described in paragraph (b)) maintaining a place of business in Gibraltar,

and for the purpose of determining in pursuance of that subsection whether an offence relating to a flight has been committed by a person who made available such accommodation as is mentioned in that subsection it is immaterial that the relevant contravention there mentioned occurred outside Gibraltar and that at any relevant time that person was not a person or body described in paragraph (a), (b) or (c) above if any part of the negotiations resulting in the making available of the accommodation in question took place, whether by means of the post or otherwise, in Gibraltar.

(6) Where the Director has reason to believe that an aircraft is intended to be used in contravention of subsection (1) on a particular flight beginning in Gibraltar, the Director may—

- (a) give to the person appearing to him to be in command of the aircraft a direction that he shall not permit the aircraft to take off until the Director has informed him that the direction is cancelled;
- (b) whether or not he has given such a direction, detain the aircraft until he is satisfied that the aircraft will not be used on the flight in contravention of the said subsection (1),

and a person who fails to comply with a direction given to him in pursuance of this subsection shall be guilty of an offence under this subsection.

(7) A person guilty of an offence under subsection (4) or (6) shall be liable—

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

(8) In this section—

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“air operator’s certificate” means a document issued to an undertaking or a group of undertakings by a Member State which affirms that the operator in question is competent to secure the safe operation of aircraft of the types specified in the certificate on flights of the description and for the purposes so specified;

“the European Union Regulation” means Regulation (EC) No. 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community, any Regulation or other European Union instrument that replaces, amends or builds on that Regulation, or that deals with the licensing of air carriers;

“operating licence” means an authorisation by a Member State to an undertaking, permitting it to carry passengers, mail or cargo by air for remuneration or hire.

Licensing of air carriers.

36.(1) The Minister may make regulations under this section setting the procedure for the grant of an operating licence to air carriers established in Gibraltar in accordance with, and in order to give full effect to, the European Union Regulation.

(2) Regulations made by the Minister under this section may make provision as to—

- (a) the competent authority in Gibraltar for performing functions pursuant to the European Union Regulation;
- (b) the circumstances in which any licence under the regulations may or shall be granted, refused, revoked, varied or suspended;
- (c) the circumstances in which any licence under the regulations shall or may be transferred or treated as if granted to a person other than the person to whom it was granted;
- (d) the conditions which may be attached to any licence under the regulations and for securing compliance with any conditions so attached;
- (e) the information to be furnished by an applicant for, or the holder of, any licence under the regulations to the competent authority and to such other authorities as may be specified in the regulations;

- (f) the fees to be paid in respect of the grant of any licence under the regulations, or enabling such fees to be prescribed by the competent authority ;
- (g) appeals by persons of prescribed descriptions against any decision taken by the competent authority in relation to the grant, refusal, revocation, variation or suspension of any licence under the regulations;
- (h) for establishing offences and imposing penalties for contraventions of the regulations,

and such regulations may make different provision as respects different classes of aircraft and different classes of licences.

(3) In this section “European Union Regulation” shall have the same meaning as in section 35.

Regulation of provision of accommodation in aircraft.

37.(1) Provision may be made by regulations made by the Minister for securing that a person does not in Gibraltar—

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

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

(2) Regulations made by the Minister for the purposes of subsection (1) may contain such provisions as the Minister considers appropriate for those purposes and may, without prejudice to the generality of the preceding provisions of this subsection, include provision—

- (a) as to the circumstances in which licences shall or shall not be issued in pursuance of the regulations;
- (b) as to the terms of licences, which may include terms as to the minimum charges which are to be made and the goods, services and other benefits which are or are not to be furnished by any

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person whatsoever under or in connection with any contract which includes provision for the making available of accommodation on flights to which the licences in question relate;

- (c) for the variation, suspension and revocation of licences;
- (d) for appeals against refusals, variations, suspensions or revocations of licences to lie to a prescribed body or person (which may be a court, a body or person constituted or appointed by or under the regulations or such other body or person as the Minister thinks fit) and for applying the provisions of any enactment, with or without modifications, in relation to such appeals; and
- (e) for imposing penalties for contraventions of the regulations not exceeding in the case of each contravention a fine at level 5 on the standard scale on summary conviction and a fine and imprisonment for a term not exceeding two years on conviction on indictment.

Enforcement of foreign judgments etc in respect of route charges.

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

(2) For the purposes of the enforcement in Gibraltar of any determination which is enforceable by Eurocontrol under this section, the provisions of sections 4, 5(1) and 7(2) and (3) of the Judgments (Reciprocal Enforcement) Act (registration of judgments, rules of court and powers of court on application to set aside registration) shall apply, with the necessary modifications, in relation to the determination as they apply in relation to a judgment to which Part I of that Act applies; and accordingly, for the purposes of this section, in subsection 7(2) of that Act—

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

(3) On an application for the purpose made by any person against whom a determination registered by virtue of subsection (2) may be enforced, the registration shall (subject to subsection (7)) be set aside if the court to which the application to register is made is satisfied—

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

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

- (a) that Contracting State is not the country, or one of the countries, in which, under subsection (5), proceedings in respect of that sum should have been brought;
- (b) the determination is not final;
- (c) the determination is manifestly contrary to public policy in Gibraltar;
- (d) the person against whom the proceedings resulting in the determination were brought did not (notwithstanding that process may have been duly served on him in the Contracting State in which those proceedings were brought) receive notice of the proceedings in sufficient time to enable him to defend them or, as the case may require, to apply for the proceedings to be reviewed;
- (e) proceedings relating to the same sum have been brought previously, and are pending, in Gibraltar;
- (f) the determination is incompatible with the judgment of any court in Gibraltar; or
- (g) the determination—
 - (i) involved the application of rules of private international law to a question concerning the status or legal capacity of natural persons, or concerning rights in property

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arising out of matrimonial relationships or concerning wills or succession (being rules different from the corresponding rules of private international law applicable in Gibraltar), and

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

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

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

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

- (a) no appeal or review is provided for in that State in respect of the determination, being a determination made by a court or tribunal;
- (b) the time within which an appeal must be brought, or an application for review must be made, has expired;
- (c) an appeal which has been brought, or an application for review which has been made, has been withdrawn; or

- (d) the determination has been confirmed by, or made in pursuance of a direction contained in, a determination which was made by a relevant authority and is itself final.

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

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

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

(8) In this section—

“Contracting State” means a country which is a party to the Multilateral Agreement relating to Route Charges signed at Brussels on 12th February 1981 at the Diplomatic Conference on the Protocol amending the Eurocontrol International Convention relating to Co-operation for the Safety of Air Navigation of 13th December 1960 and includes any territory (for example, Gibraltar) to which that Agreement applies or extends;

“relevant authority”, in relation to a Contracting State, means—

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

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- (c) any court or tribunal which, under that law, has jurisdiction to determine any appeal from, or carry out any review of, a determination made in respect of any such question by another relevant authority.

Investigation of accidents

Investigation of accidents.

39.(1) Without prejudice to sections 16 and 33, the Minister may by regulations under this section make such provision as appears to him to be requisite or expedient—

- (a) for the investigation of any accident arising out of or in the course of air navigation and occurring in or over Gibraltar; and
- (b) for carrying out any Annex to the Chicago Convention (being an Annex adopted in accordance with the Convention and relating to the investigation of accidents involving aircraft) as it has effect from time to time with any amendment made in accordance with the Convention (hereafter in this section referred to as “the Annex”).

(2) The power to make regulations under this section includes power to make provision—

- (a) for the purpose of implementing Council Directive 94/56/EC of 21 November 1994 establishing the fundamental principles governing the investigation of civil aviation accidents and incidents, any directive or other European Union instrument that replaces, amends or builds on that Directive, or that deals with the investigation of civil aviation accidents and incidents;
- (b) for the purpose of dealing with matters arising out of or related to any such obligation.

(3) Without prejudice to the generality of paragraph (b) of subsection (1), the provision there authorised includes provision with respect to any of the following matters, that is to say—

- (a) the definition of “accident” for the purposes of this section so as to correspond to the meaning adopted for the time being in the Annex;
- (b) the participation of any persons authorised for the purpose in accordance with the regulations in any investigation held in

accordance with the requirements of the Annex by the competent authorities of a State; and

- (c) the investigation of any accident other than one to which subsection (1)(a) applies for the purpose of securing any information, articles or other material which it is the duty of Gibraltar, in accordance with any requirements of the Annex, to furnish to a State.

(4) Without prejudice to the generality of subsection (1), regulations under this section may contain provisions—

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

(5) Without prejudice to paragraph (a) of subsection (3), in this section “accident” shall be construed as including any fortuitous or unexpected event by which the safety of an aircraft or any person is threatened.

(6) If any person contravenes or fails to comply with any regulations under this section that person shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding one year.

(7) Nothing in this section shall limit the powers of any authority under section 165 and sections 168 to 170 of the Merchant Shipping Act or any enactment amending those sections.

Trespass by aircraft and aircraft nuisance, noise, etc.

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

40.(1) No action shall lie in respect of trespass or in respect of nuisance, by reason only of the flight of an aircraft over any property at a height above the ground which, having regard to wind, weather and all the circumstances of the case is reasonable, or the ordinary incidents of such flight, so long as the provisions of any Air Navigation Regulations have been duly complied with and there has been no breach of section 43.

(2) Subject to subsection (3), where material loss or damage is caused to any person or property on land or water by, or by a person in, or an article, animal or person falling from, an aircraft while in flight, taking off or landing, then unless the loss or damage was caused or contributed to by the negligence of the person by whom it was suffered, damages in respect of the loss or damage shall be recoverable without proof of negligence or intention or other cause of action, as if the loss or damage had been caused by the wilful act, neglect, or default of the owner of the aircraft.

(3) Where material loss or damage is caused as aforesaid in circumstances in which—

- (a) damages are recoverable in respect of the said loss or damage by virtue only of subsection (2); and
- (b) a legal liability is created in some person other than the owner to pay damages in respect of the said loss or damage,

the owner shall be entitled to be indemnified by that other person against any claim in respect of the said loss or damage.

(4) Where the aircraft concerned has been bona fide demised, let or hired out for any period exceeding fourteen days to any other person by the owner thereof, and no pilot, commander, navigator or operative member of the crew of the aircraft is in the employment of the owner, this section shall have effect as if for references to the owner there were substituted references to the person to whom the aircraft has been so demised, let or hired out.

Nuisance caused by aircraft at the Gibraltar Airport.

41.(1) Air Navigation Regulations may provide for regulating the conditions under which noise and vibration may be caused by aircraft at the Gibraltar Airport.

(2) No action shall lie in respect of nuisance by reason only of the noise and vibration caused by aircraft at the Gibraltar Airport, as long as the provisions of any regulations referred to in subsection (1) are duly complied with.

Regulation of noise and vibration from aircraft.

42.(1) The Minister may by a notice published in the Gazette provide that it shall be the duty of the person who is the operator of the aircraft which is to take off or land at the Gibraltar Airport to secure that, after the aircraft takes off or, as the case may be, before it lands at the Gibraltar Airport, such requirements as are specified in the notice are complied with in relation to the aircraft, being requirements appearing to the Minister to be appropriate for the purpose of limiting or of mitigating the effect of noise and vibration connected with the taking off or landing of aircraft at the Gibraltar Airport.

(2) If it appears to the Minister that any requirement specified in relation to the Gibraltar Airport in a notice published in pursuance of subsection (1) has not been complied with as respects any aircraft he may, after affording to the person who at the relevant time was the operator of the aircraft an opportunity of making representations to him with respect to the matter and after considering any representations then made by that person, take such steps as may be necessary to ensure that facilities for using the Gibraltar Airport are withheld, to such extent as the Minister may determine, from aircraft of which the person aforesaid is the operator and from his servants.

(3) If the Minister considers it appropriate, for the purpose of avoiding, limiting or mitigating the effect of noise and vibration connected with the taking-off or landing of aircraft at the Gibraltar Airport, to prohibit aircraft from taking off or landing, or limit the number of occasions on which they may take off or land, at the Gibraltar Airport during certain periods, he may by a notice published in the Gazette do all or any of the following, that is to say—

- (a) prohibit aircraft of descriptions specified in the notice from taking off or landing at the Gibraltar Airport (otherwise than in an emergency of a description so specified) during periods so specified;
- (b) specify the maximum number of occasions on which aircraft of descriptions so specified may be permitted to take off or land at the Gibraltar Airport (otherwise than as aforesaid) during periods so specified; and
- (c) determine the persons who shall be entitled to arrange for aircraft of which they are the operators to take off or land at the Gibraltar Airport during the periods specified under paragraph

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(b) and, as respects each of those persons, the number of occasions on which aircraft of a particular description of which he is the operator may take off or land at the Gibraltar Airport during those periods.

(4) Without prejudice to paragraph (d) of subsection (5), a particular occasion or series of occasions on which aircraft take off or land at the Gibraltar Airport shall be disregarded for the purposes of any notice under subsection (3) if—

- (a) on that occasion or series of occasions the aircraft take off or land in circumstances specified for the purposes of this subsection in relation to the Gibraltar Airport by the Minister in a notice published in the Gazette; and
- (b) the Minister determines that that occasion or series of occasions should be so disregarded.

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

- (a) it shall be the duty of the Minister, before he makes a determination in pursuance of paragraph (c) of that subsection, to consult any body appearing to him to be representative of operators of aircraft using the Gibraltar Airport;
- (b) a notice under that subsection may make, in relation to the Gibraltar Airport, provision as respects any period notwithstanding that the period is included in or that there is included in the period, any other period as respects which provision relating to the Gibraltar Airport is made by the notice or by another notice under that subsection;
- (c) if it appears to the Minister that an aircraft is about to take off in contravention of any prohibition or restriction imposed in pursuance of that subsection, then, any person authorised by the Minister for the purpose may detain the aircraft for such period as the Minister considers appropriate for preventing the contravention and may, for the purpose of detaining the aircraft, enter upon any land;
- (d) the Minister may, by a notice published in the Gazette determine that a particular occasion or series of occasions on which aircraft take off or land at the Gibraltar Airport shall be disregarded for the purposes of the notice under that subsection.

(6) Any notice published in pursuance of subsection (1), (3) or (4) may contain such incidental or supplementary provisions as the Minister considers appropriate for the purposes of that subsection and may be varied or revoked by a subsequent notice published in pursuance of that subsection.

Dangerous flying.

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

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

(3) The provisions of this section shall be in addition to and not in derogation of the powers conferred on the Minister by section 33.

**PART VI
AIRCRAFT**

Rights etc. in relation to aircraft

Application of law of wreck and salvage to aircraft.

44.(1) Any services rendered in assisting, or in saving life from, or in saving the cargo or apparel of, an aircraft in, on or over the sea or any tidal water, or on or over the shores of the sea or any tidal water, shall be deemed to be salvage services in all cases in which they would have been salvage services if they had been rendered in relation to a vessel.

(2) Where salvage services are rendered by an aircraft to any property or person, the owner of the aircraft shall be entitled to the same reward for those services as he would have been entitled to if the aircraft had been a vessel.

(3) Subsections (1) and (2) shall have effect notwithstanding that the aircraft concerned is a foreign aircraft and notwithstanding that the services in question are rendered elsewhere than within the limits of the territorial waters of Gibraltar.

(4) The Minister may by regulations direct that any provisions of any law of Gibraltar for the time being in force which relate to wreck, to salvage of

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life or property or to the duty of rendering assistance to vessels in distress shall, with such modifications, if any, as may be specified in the regulations apply in relation to aircraft as those provisions apply in relation to vessels.

(5) For the purposes of this section, any provision of any law of Gibraltar which relates to vessels laid by or neglected as unfit for sea service shall be deemed to be provisions relating to wreck.

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

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

(2) Subject to subsection (3), the importation into, and storage in, Gibraltar of spare parts and spare equipment for an aircraft to which this section applies and the use and installation thereof in the repair of such an aircraft shall not entail any seizure or detention of the aircraft or of the spare parts or spare equipment or any proceedings being brought against the owner or operator of the aircraft or the owner of the spare parts or spare equipment or any other interference with the aircraft by or on behalf of any person in Gibraltar on the ground that the spare parts or spare equipment or their installation are or is an infringement of any patent, design or model.

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

(4) This section applies to an aircraft other than an aircraft used in military, customs or police services, registered in any country or territory in the case of which there is for the time being in force a notice issued by the Minister that the benefits of this section apply to that country or territory.

(5) Schedule 2 shall have effect with respect to detention on patent claims in respect of foreign aircraft other than aircraft to which this section applies.

Power to give effect to Convention on Rights in Aircraft.

46.(1) The Minister may by regulations make such provision as appears to him to be necessary or expedient for giving effect to the Convention on the International Recognition of Rights in Aircraft which was signed at Geneva

on behalf of the United Kingdom on 19th June 1948 and which has been extended to Gibraltar (in this section referred to as “the Convention”).

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

- (a) for the recognition in Gibraltar of rights of the kind specified in the Convention in or over aircraft registered in a State party to the Convention, being rights registered or recorded in those States in accordance with the Convention and recognised as valid by the law of the State party to the Convention in which the aircraft in question was registered when the rights were constituted;
- (b) for subordinating to any such rights as aforesaid, to such extent as may be required under the Convention, any other rights in or over such aircraft as aforesaid;
- (c) as respects the operation, in relation to such aircraft as aforesaid, of any of the enactments in force in Gibraltar relating to bills of sale or the registration of charges on the property or undertaking of companies;
- (d) for prohibiting the sale in execution of any such aircraft as aforesaid without an order of a court, and otherwise for safeguarding in the case of such a sale any such rights as are mentioned in paragraph (a);
- (e) for the recognition in Gibraltar, in priority to other rights in or over any such aircraft as aforesaid, of any charge consequent on salvage or similar operations in respect of the aircraft, being a charge arising in accordance with the law of any State party to the Convention in which those operations terminated;
- (f) for the application, in accordance with the Convention, of provisions corresponding to those made by virtue of paragraphs (a) to (d) above to cases where a right such as is mentioned in the said paragraph (a) (being a right created as security for the payment of indebtedness) extends to any store of spare parts for the aircraft in question.

Jurisdiction in civil matters.

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47. The Minister may by regulations make provision as to the courts in which proceedings may be taken for enforcing any claim in respect of aircraft, and in particular may provide—

- (a) for conferring jurisdiction in any such proceedings on any court exercising Admiralty jurisdiction; and
- (b) for applying to such proceedings any rules of practice or procedure applicable to proceedings in Admiralty.

Application of criminal law to aircraft.

48.(1) Any act or omission taking place on board a Gibraltar-controlled aircraft or, (subject to subsection (2)), a foreign aircraft while in flight elsewhere than in or over Gibraltar which, if taking place in Gibraltar, would constitute an offence under the law in force in Gibraltar shall constitute that offence; but this subsection shall not apply to any act or omission which is expressly or impliedly authorised by or under that law when taking place outside Gibraltar.

(2) Subsection (1) shall only apply to an act or omission which takes place on board a foreign aircraft where—

- (a) the next landing of the aircraft is in Gibraltar; and
- (b) the act or omission would, if taking place in the country where the aircraft is registered, also constitute an offence under the law in force in that country.

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

(4) The requirement in paragraph (b) of subsection (2) shall be taken to be met unless, not later than the rules of court may provide, the defence serve on the prosecution a notice—

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

(5) The court, if it thinks fit, may permit the defence to require the prosecution to prove that the requirement is met without the prior service of a notice under subsection (4).

(6) In the Supreme Court the question whether the requirement is met is to be decided by the judge alone.

(7) For the purpose of conferring jurisdiction, any offence under the law in force in Gibraltar committed on board an aircraft in flight shall be deemed to have been committed in Gibraltar wherever the offender may for the time being be.

(8) For the purposes of this section the period during which an aircraft is in flight shall be deemed to include any period from the moment when power is applied for the purpose of the aircraft taking off on a flight until the moment when the landing run (if any) at the termination of that flight ends; and any reference in this section to an aircraft in flight shall include a reference to an aircraft during any period when it is on the surface of the sea or land but not within the territorial limits of any country.

(9) In this section, except where the context otherwise requires—

“aircraft” means any aircraft, whether or not a Gibraltar-controlled aircraft, other than—

- (a) a military aircraft; or
- (b) an aircraft which, not being a military aircraft, belongs to or is exclusively employed in the service of Her Majesty in right of the United Kingdom;

“foreign aircraft” means any aircraft other than a Gibraltar-controlled aircraft;

“Gibraltar-controlled” aircraft” means an aircraft—

- (a) which is not for the time being registered in any country but in the case of which either the operator of the aircraft or each person entitled as owner to any legal or beneficial interest in it resides or has his principal place of business in Gibraltar; or
- (b) which, being for the time being registered in some other country, is for the time being chartered by demise to a person who, or to persons each of whom, satisfies the requirements aforesaid;

“military aircraft” means–

- (a) an aircraft of the naval, military or air forces of any country; or
- (b) any other aircraft in respect of which there is in force a certificate issued in the United Kingdom by the Secretary of State, acting in accordance with a provision of an Air Navigation Order in force in the United Kingdom, that the aircraft is to be treated for the purposes of that Order as a military aircraft and an equivalent provision as to the one upon which the Secretary of State has so acted is in force under the laws of Gibraltar,

and a certificate of the Secretary of State that any aircraft is or is not a military aircraft for the purposes of section 92 of the United Kingdom’s Civil Aviation Act 1982 shall be conclusive evidence of the fact certified for the purpose of this section.

Powers of commander of aircraft

Powers of commander of aircraft.

49.(1) The provisions of subsections (2) to (5) shall have effect for the purposes of any proceedings before any court in Gibraltar.

(2) If the commander of an aircraft in flight, wherever that aircraft may be, has reasonable grounds to believe in respect of any person on board the aircraft–

- (a) that the person in question has done or is about to do any act on the aircraft while it is in flight which jeopardises or may jeopardise–
 - (i) the safety of the aircraft or of persons or property on board the aircraft; or
 - (ii) good order and discipline on board the aircraft, or
- (b) that the person in question has done on the aircraft while in flight any act which in the opinion of the commander is a serious offence under any law in force in the country in which the aircraft is registered, not being a law of a political nature or based on racial or religious discrimination,

then, subject to subsection (4), the commander may take with respect to that person such reasonable measures, including restraint of his person, as may be necessary—

- (i) to protect the safety of the aircraft or of persons or property on board the aircraft;
- (ii) to maintain good order and discipline on board the aircraft; or
- (iii) to enable the commander to disembark or deliver that person in accordance with subsection (5).

(3) Any member of the crew of an aircraft and any other person on board the aircraft may, at the request or with the authority of the commander of the aircraft, and any such member shall if so required by that commander, render assistance in restraining any person whom the commander is entitled under subsection (2) to restrain; and at any time when the aircraft is in flight any such member or other person may, without obtaining the authority of the commander, take with respect to any person on board the aircraft any measures such as are mentioned in that subsection which he has reasonable grounds to believe are immediately necessary to protect the safety of the aircraft or of persons or property on board the aircraft.

(4) Any restraint imposed on any person on board an aircraft under the powers conferred by the preceding provisions of this section shall not be continued after the time when the aircraft first thereafter ceases to be in flight unless before or as soon as is reasonably practicable after that time the commander of the aircraft causes notification of the fact that a person on board the aircraft is under restraint and of the reasons therefor to be sent to an appropriate authority of the country in which the aircraft so ceases to be in flight, but subject to such notification may be continued after that time—

- (a) for any period (including the period of any further flight) between that time and the first occasion thereafter on which the commander is able with any requisite consent of the appropriate authorities to disembark or deliver the person under restraint in accordance with subsection (5); or
- (b) if the person under restraint agrees to continue his journey under restraint on board that aircraft.

(5) The commander of an aircraft—

- (a) if in the case of any person on board the aircraft he has reasonable grounds—

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- (i) to believe as mentioned in paragraph (a) of subsection (2); and
- (ii) to believe that it is necessary so to do in order to protect the safety of the aircraft or of persons or property on board the aircraft or to maintain good order and discipline on board the aircraft,

may disembark that person in any country in which that aircraft may be; and

- (b) if in the case of any person on board the aircraft he has reasonable grounds to believe as mentioned in paragraph (b) of subsection (2), may deliver that person—
 - (i) in Gibraltar, to a police or immigration officer; or
 - (ii) in any country which is a Convention country, to an officer having functions corresponding to the functions in Gibraltar either of a police or of an immigration officer.

(6) The commander of an aircraft—

- (a) if he disembarks any person in pursuance of paragraph (a) of subsection (5), in the case of a Gibraltar-controlled aircraft in any country or, in the case of any other aircraft in Gibraltar, shall report the fact of, and the reasons for, that disembarkation to—
 - (i) an appropriate authority in the country of disembarkation; and
 - (ii) the appropriate diplomatic or consular office of the country of nationality of that person;
- (b) if he intends to deliver any person in accordance with paragraph (b) of subsection (5) in Gibraltar or, in the case of a Gibraltar-controlled aircraft, in any other country which is a Convention country, shall before or as soon as reasonably practicable after landing give notification of his intention and of the reasons therefor—
 - (i) where the country in question is Gibraltar, to a police or immigration officer or, in the case of any other country, to an officer having functions corresponding to the

functions in Gibraltar either of a police or of an immigration officer;

- (ii) in either case to the appropriate diplomatic or consular office of the country of nationality of that person,

and any commander of an aircraft who without reasonable cause fails to comply with the requirements of this subsection shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) In this section—

“commander” in relation to an aircraft, means the member of the crew designated as commander of that aircraft by the operator thereof, or, failing such a person, the person who is for the time being the pilot in command of the aircraft; and

“pilot in command” in relation to an aircraft, means a person who for the time being is in charge of the piloting of the aircraft without being under the direction of any other pilot in the aircraft;

and, subject to subsection (8), subsections 48(8) and (9) shall apply for the purposes of this section as they apply for the purposes of that section.

(8) The time during which an aircraft is in flight shall, for the purposes of this section, be deemed to include, in addition to such a period as is mentioned in subsection 48(8)—

- (a) any further period from the moment when all external doors, if any, of the aircraft are closed following embarkation for a flight until the moment when any such door is opened for disembarkation after that flight; and
- (b) if the aircraft makes a forced landing, any period thereafter until the time when competent authorities of the country in which the forced landing takes place take over the responsibility for the aircraft and for the persons and property on board the aircraft (being, if the forced landing takes place in Gibraltar, the time when a police officer arrives at the place of landing).

Evidence, etc.

Provisions as to evidence in connection with aircraft.

50.(1) Where in any proceedings before a court in Gibraltar for an offence committed on board an aircraft the testimony of any person is required and the court is satisfied that the person in question cannot be found in Gibraltar, there shall be admissible in evidence before that court any deposition relating to the subject matter of those proceedings previously made on oath by that person outside Gibraltar which was so made—

- (a) in the presence of the person charged with the offence; and
- (b) before a judge or magistrate of a country such as is mentioned in Schedule 3 to the United Kingdom's British Nationality Act 1981 as for the time being in force or which was part of Her Majesty's dominions at the time the deposition was made or in which Her Majesty had jurisdiction at that time, or before a consular officer of Her Majesty's Government in the United Kingdom.

(2) Any such deposition shall be authenticated by the signature of the judge, magistrate or consular officer before whom it was made who shall certify that the person charged with the offence was present at the taking of the deposition.

(3) It shall not be necessary in any proceedings to prove the signature or official character of the person appearing so to have authenticated any such deposition or to have given such a certificate, and such a certificate shall, unless the contrary is proved, be sufficient evidence in any proceedings that the person charged with the offence was present at the making of the deposition.

(4) In this section—

“deposition” includes any affidavit, affirmation or statement made upon oath; and

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

and subsections 48(8) and (9) shall apply for the purposes of this section as they apply for the purposes of that section.

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

Use of records and documentary evidence.

51.(1) In any legal proceedings a document purporting to be certified by such authority or person as may be designated for the purpose by regulations made by the Minister as being, or being a true copy of, or of part of, a document issued or record kept in pursuance of Air Navigation Regulations by, or by the Minister in charge of, a Government department, by an official of a Government department specified for the purpose in Air Navigation Regulations or by the Director of Civil Aviation shall be evidence of the matters appearing from the document.

(2) In any legal proceedings any record made by any such authority or person as may be designated for the purposes of this subsection by regulations made by the Minister, or by a person acting under the control of such an authority or person, being a record purporting to show—

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

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

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

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

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

(5) In this section “record” includes in addition to a record in writing—

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- (a) any disc, tape, sound-track or other device in which sounds or signals are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced therefrom;
- (b) any film, tape or other device in which visual images are embodied so as to be capable (as aforesaid) of being reproduced therefrom; and
- (c) any photograph,

and any reference to a copy of a record includes in the case of a record falling within paragraph (a) only of this definition, a transcript of the sounds or signals embodied therein, in the case of a record falling within paragraph (b) only of this definition, a still reproduction of the images embodied therein, and in the case of a record falling within both those paragraphs, such a transcript together with a still reproduction.

Seaplanes

Seaplanes.

52.(1) Subject to subsection (2), any power or duty to regulate ships or vessels exercisable by any authority in Gibraltar shall be construed as including a power or duty to regulate seaplanes when on the surface of the water, and a power to authorise a harbour master or other officer of the authority to exercise, as respects seaplanes on the surface of the water, all or any of the functions which he is authorised to exercise as respects ships or vessels.

(2) The powers conferred by subsection (1) do not include power to require, or to authorise a harbour master or other officer to require, the dismantling of a seaplane or any part thereof or the making of any alteration whatever of the structure or equipment of a seaplane.

(3) In this section “seaplane” includes a flying boat and any other aircraft designed to manoeuvre on the water, and seaplanes taking off from or alighting on the water shall be deemed to be on the surface of the water while in contact therewith.

Supplemental

Construction of certain provisions of Part VI.

53.(1) If the Minister is satisfied that the requirements of Article 18 of the Tokyo Convention have been satisfied (which Article makes provision as to the country which is to be treated as the country of registration of certain

aircraft operated by joint air transport organisations or international operating agencies established by two or more Convention countries) the Minister may by direction provide that for the purposes of sections 48, 49 and 50 such aircraft as may be specified in the direction shall be treated as registered in such Convention country as may be so specified.

(2) In subsection (1)–

“Convention country” means a country or territory in which the Tokyo Convention is for the time being in force; and

“Tokyo Convention” means the Convention on Offences and Certain other Acts Committed on Board Aircraft, which was signed at Tokyo on 14th September 1963.

Carriage of dangerous goods.

54.(1) Without prejudice to any other provisions of this Act, the Minister may make regulations prescribing–

- (a) the classification of certain articles and substances as dangerous goods;
- (b) the categories of dangerous goods which an aircraft may not carry;
- (c) the conditions which apply to the loading on, suspension beneath and carriage by an aircraft of dangerous goods;
- (d) the manner in which dangerous goods must be packed, marked, labelled and consigned before being loaded on, suspended beneath or carried by an aircraft;
- (e) any other provisions for securing the safety of aircraft and any apparatus attached thereto, and the safety of persons and property on the surface in relation to the loading on, suspension beneath or carriage by an aircraft of dangerous goods;
- (f) the persons to whom information about the carriage of dangerous goods must be provided;
- (g) the documents which must be produced to the Director or an authorised person on request; and
- (h) the powers to be conferred on an authorised person relating to the enforcement of the regulations made hereunder.

(2) It shall be an offence to contravene or permit the contravention of or fail to comply with any regulations made hereunder.

(3) The provisions of this section and of any regulations made thereunder shall be additional to provisions on weapons and munitions of war contained in Air Navigation Regulations adopted under this Act.

PART VII MISCELLANEOUS AND GENERAL

Offences (General Matters)

Offences by a corporate body.

55.(1) Where an offence to which this subsection applies has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

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

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

(4) Subsection (1) applies to any offence under section 13.

(5) Subsection (3) applies to any offence under any provision made by or under this Act, except, without prejudice to subsection 48(7), an offence under subsection 49(6).

Offences by others.

56.(1) Where the commission by any person of an offence under this Act is due to the act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this section whether or not proceedings are taken against the first-mentioned person.

(2) In any proceedings for an offence under this Act, it shall, subject to subsection (3), be a defence for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(3) Where the defence provided by subsection (2) involves an allegation that the commission of the offence was due to the act or default of another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending seven clear days before the hearing, he has served on the Attorney General a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

Continuation of the offence.

57. Without prejudice to the right to bring separate proceedings for contraventions of this Act taking place on separate occasions, a person who is convicted of an offence under this Act shall, where the offence continues after the conviction—

- (a) be deemed to commit a separate offence in respect of every day on which the offence so continues; and
- (b) be liable on summary conviction or on conviction on indictment as the case may be, together with such liability as may be stipulated in this Act, to a fine not exceeding level 5 on the standard scale for each such day.

Summary proceedings.

58. Proceedings for any offence under this Act which is punishable on summary conviction may be commenced at any time within twelve months after the commission of the offence.

Civil proceedings.

59. Nothing in this Act shall limit any right of any person to bring civil proceedings in respect of any act or omission rendered unlawful by any provision of this Act, and, without prejudice to the generality of the preceding words, compliance with the provisions of this Act contraventions of which are declared to be offences under this Act shall be enforceable by civil proceedings by the Minister or the Director, as the case may be, for an injunction or for any other appropriate relief.

Appeals

Appeals against decisions of the Minister or the Director.

60.(1) This section applies to any person who, on or after the appointed date, is aggrieved by a decision taken by the Minister or the Director, as the case may be, pursuant to any power granted to them by or under this Act.

(2) Subject to subsection (5), a person aggrieved by a decision to which this section applies may appeal against that decision on any one or more of the following grounds—

- (a) that a material error as to the facts has been made;
- (b) that there was a material procedural error;
- (c) that a material error of law has been made;
- (d) that there was some other material illegality.

(3) An appeal of the nature referred to in subsection (2) lies to the Supreme Court.

(4) The Supreme Court, determining an appeal of the nature referred to in subsection (2), may:

- (a) dismiss the appeal; or
- (b) quash the decision and may refer the matter to the Minister or the Director, as the case may be, with a direction to reconsider it and adopt a decision in accordance with the findings of the Supreme Court.

(5) No appeal under this section shall be brought unless the leave of the Supreme Court has been obtained in accordance with such rules as may be made under paragraph (a) of subsection (11).

(6) An appeal under this section shall be brought as soon as reasonably practicable and in any event not later than three weeks from the date on which the Minister or the Director, as the case may be, adopted the decision or within such other shorter period as may be specified in such rules as may be made under paragraph (b) of subsection (11).

(7) The bringing of an appeal under this section shall not operate to suspend the effect of the decision appealed against.

(8) Except as provided by this section, the validity of a decision to which this section applies shall not be questioned in any legal proceedings whatsoever.

(9) If by reason of any default on the part of the person who has instituted an appeal in accordance with this section, the appeal has not been determined by the Supreme Court within three months of the date of the notice of appeal or application by which the appeal was instituted, the Minister or the Director, as the case may be, may apply to the Supreme Court, by a summons served on the person who has instituted the appeal in accordance with this section, to show cause why the appeal should not be dismissed for want of prosecution; and upon the making of such an application the Supreme Court may dismiss the appeal or make such other order as it considers just.

(10) A decision of the Supreme Court under this section shall be final as to any question of fact, but an appeal shall lie to the Court of Appeal on any question of law.

(11) The Chief Justice may make rules prescribing any one or more of the following—

- (a) a procedure for obtaining the leave referred to in subsection (5);
- (b) the other period referred to in subsection (6);
- (c) the court fees payable in making an appeal of the nature referred to in subsection (2);
- (d) the forms and the procedure for such appeals.

General

Power to apply certain provisions to Crown aircraft.

61. The Minister shall, with the consent of the Governor, cause to be notified the provisions of this Act that shall apply to Crown aircraft in right of Her Majesty's Government in the United Kingdom.

Application of Act to territorial waters.

62.(1) Except where the context otherwise requires, in any provision of this Act to which this section applies a reference to a country or territory or to the territorial limits of any country shall be construed as including a reference to the territorial waters of the country or territory, as the case may

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be; and a reference to Gibraltar shall be construed as including a reference to so much of the territorial waters of Gibraltar as are adjacent to it.

(2) This section applies to Parts V and VI of this Act, except sections 35 and 37.

(3) Nothing in this section shall prejudice the construction of any provision of this Act to which this section does not apply.

Governor's constitutional responsibilities.

63. Nothing in this Act or in any regulations made under this Act shall derogate from the responsibility of the Governor under the Constitution for defence, internal security or any other matter for which the Governor may have responsibility under the Constitution.

Transitional provisions and repeals.

64.(1) The enactments mentioned in Schedule 3 are hereby repealed to the extent specified in the third column of that Schedule.

(2) The Minister shall, by regulations made under this Act, set out the transitional provisions that shall apply as from the appointed day.

Payments to the Consolidated Fund.

65. Any money receivable by the Minister or the Director under this Act, which the Minister for Finance shall not have directed should be paid otherwise, shall be paid into the Consolidated Fund.

SCHEDULE 1

Section 24

EUROCONTROL

1.(1) Eurocontrol shall have the legal capacity of a body corporate; and anything which may be required or authorised by law to be done by or to Eurocontrol may be done by or to the Agency on behalf of Eurocontrol.

(2) Eurocontrol shall be entitled to the exemptions and reliefs described in paragraphs 3 to 5 of the Schedule to the Diplomatic Privileges (International Organisations) Act (rates and taxes, import duties and import and export restrictions).

(3) Subject to sub-paragraph (4), the inviolability which, in accordance with the 1961 Convention Articles, is accorded in respect of the official archives and premises of a diplomatic mission, shall extend to the official archives of Eurocontrol, and to premises occupied by Eurocontrol wholly or mainly for the housing of its installations; and without prejudice to the foregoing provisions, no judgment or order of any court shall be enforced by the levying of execution or by diligence upon anything forming part of any such installations.

(4) Sub-paragraph (3) (except so far as it relates to execution or diligence) shall not preclude access to any premises or the inspection of any record or document where the Director-General of the Agency is given advance notice of the exercise of the power conferred by this sub-paragraph and the access or inspection is—

- (a) by a police officer or other person acting in the execution of a warrant or other legal process;
- (b) by a Court of Inquiry or an Inspector of Accidents acting in pursuance of regulations made under section 39 of this Act; or
- (c) by a police officer having reason to believe that an offence has been or is being or is about to be committed on the premises.

(5) Without prejudice to the preceding provisions of this paragraph, the property and assets of Eurocontrol shall be immune from the exercise by any person of any right or power without the leave of a court to seize or otherwise interfere with such property or assets.

(6) No court or tribunal in Gibraltar shall have jurisdiction in respect of any matter involving Eurocontrol and any of its officers or servants, being a

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matter which by virtue of any international agreement to which the United Kingdom is a party and which extends to Gibraltar is within the exclusive jurisdiction of the Administrative Tribunal of the International Labour Organisation.

(7) For the purposes of sub-paragraph (6), a certificate of the Director that any matter is or is not, as mentioned in that sub-paragraph, within the exclusive jurisdiction of the Administrative Tribunal of the International Labour Organisation shall be conclusive of what is certified.

(8) In this paragraph—

“the Agency” means the Air Traffic Services Agency comprised in Eurocontrol;

“installations” means apparatus for locating, directing, affording navigational aid to, or otherwise communicating with, aircraft in flight, including apparatus for recording or processing material received or transmitted by such apparatus, and any other apparatus for use in connection with any such apparatus as aforesaid;

“the 1961 Convention Articles” means the Articles (being certain Articles of the Convention on Diplomatic Relations signed in 1961) which are set out in Schedule 1 to the United Kingdom’s Diplomatic Privileges Act 1964;

(9) For the purposes of this paragraph a record includes (in addition to a record in writing)—

- (a) a disc, tape, sound-track or other device in which sounds or signals are embodied so as to be capable of being reproduced from it (with or without the aid of some other instrument);
- (b) a film, tape or other device in which visual images are embodied so as to be capable of being reproduced from it (with or without the aid of some other instrument);
- (c) a photograph.

2.(1) Subject to paragraph 1 and sub-paragraph (2), a court in Gibraltar shall have jurisdiction to hear and determine a claim against Eurocontrol for damages in respect of any wrongful act, neglect or default, notwithstanding that the act, neglect or default did not take place within the jurisdiction of the court or that Eurocontrol is not present within the jurisdiction of the court.

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(2) A court shall not have jurisdiction by virtue of sub-paragraph (1) in respect of damage or injury sustained wholly within or over a country to which the provisions of this Act relating to Eurocontrol do not extend.

SCHEDULE 2

Section 45

**PATENT CLAIMS AGAINST AIRCRAFT NOT PROTECTED
UNDER CHICAGO CONVENTION**

1. Where it is alleged by any person interested that a foreign aircraft which is not an aircraft to which section 45 of this Act applies, and which is making a passage through or over Gibraltar, infringes in itself or in any part of it any invention, design or model which is entitled to protection in Gibraltar, it shall be lawful, subject to and in accordance with rules of court, to detain the aircraft until the owner thereof deposits or secures in respect of the alleged infringement a sum (in this Schedule referred to as “the deposited sum”); and thereupon the aircraft shall not during the continuance or in the course of the passage be subject to any lien, arrest, detention or prohibition (whether by order of a court or otherwise) in respect or on account of the alleged infringement.

2. The deposited sum shall be such sum as may be agreed between the parties interested or, in default of agreement, fixed by the Minister or some person duly authorised on his behalf; and payment thereof shall be made or secured to the Minister in such manner as the Minister shall approve.

3. The deposited sum shall be dealt with by such tribunal and in accordance with such procedure as may be specified by rules of court, and such rules may provide generally for carrying this Schedule into effect.

4. For the purposes of this Schedule—

“owner” shall include the actual owner of an aircraft and any person claiming through or under him; and

“passage” shall include all reasonable landings and stoppages in the course or for the purpose of the passage.

SCHEDULE 3

Section 64

**REPEALS
REPEALS COMING INTO FORCE ON APPOINTED DAY**

Chapter or number	Short Title	Extent of Repeal
Act 1964 No. 10	The Civil Air Terminal Act	The whole Act