



ST. CHRISTOPHER AND NEVIS

CHAPTER 4.39

TOKYO CONVENTION ACT

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CHAPTER 4.39 TOKYO CONVENTION ACT

AN ACT TO MAKE PROVISION TO ENABLE THE EXTENSION TO THE STATE OF THE CONVENTION ON OFFENCES AND CERTAIN OTHER ACTS COMMITTED ON BOARD AIRCRAFT, SIGNED IN TOKYO ON 14TH SEPTEMBER, 1963 AND TO GIVE EFFECT TO CERTAIN PROVISIONS, RELATING TO PIRACY ON THE HIGH SEAS, OF THE CONVENTION SIGNED IN GENEVA ON 29TH APRIL, 1958 AND FOR PURPOSES CONNECTED WITH THE MATTERS AFORESAID.

Short title.

1. This Act may be cited as the Tokyo Convention Act.

Interpretation.

2. (1) In this Act, except where the context otherwise requires, the following expressions have the following meanings, respectively, that is to say—

“Aircraft” means any aircraft, whether or not a State-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 State,

but the Governor-General may, by Order, which may be varied or revoked by a subsequent Order, provide that any of the provisions of this Act shall apply with or without modifications to aircraft, such as are mentioned in paragraph (b) of this definition;

“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;

“Convention country” means a country in which the Tokyo convention is for the time being in force; and the Governor-General may, by Order published in the *Gazette*, certify that any country specified in such Order is for the time being a Convention country and any such Order for the time being in force shall be conclusive evidence that the country in question is for the time being a Convention country but may be varied or revoked by a subsequent Order;

“military aircraft” means—

- (a) an aircraft of the naval, military or air forces of any country; or
- (b) any other aircraft in respect of which there is in force a certificate issued in accordance with any Order-in-Council in force in the State under the Civil Aviation Act, 1949 C.67 of the United Kingdom that the aircraft is to be treated for the purposes of that Order-in-Council as a military aircraft,

and a certificate of the Governor-General that any aircraft is or is not a military aircraft for the purposes of this Act shall be conclusive evidence of the fact certified;

“Minister” means the Minister responsible for the subject of Civil Aviation;

“operator”, in relation to any aircraft at any time, means the person who at that time has the management of that aircraft;

“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;

“State-controlled aircraft” means an aircraft—

- (a) which is for the time being registered in the State; or
- (b) which is not for the time being registered in any country but in the case of which either the operator of the aircraft or each person entitled as owner to any legal or beneficial interest in it satisfies the following requirements, namely—
 - (i) that he or she is a person qualified to be the owner of a legal or beneficial interest in an aircraft registered in the State; and
 - (ii) which, 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;

“Tokyo Convention” means the Convention on Offences and certain other Acts committed on board aircraft signed at Tokyo on 14th September, 1963.

(2) For the purposes of this Act, the period during which an aircraft is in flight shall be deemed to include—

- (a) 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
- (b) for the purposes of section 3 of this Act—
 - (i) 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
 - (ii) if the aircraft makes a forced landing, any period thereafter until the time when competent authorities of the country in which the forced landing takes place take over the responsibility for the aircraft and for the persons and property on board the aircraft (being, if the forced landing takes place in the State, the time when a constable arrives at the place of landing),

and any reference in this Act 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.

(3) In this Act, except where the context otherwise requires, any reference to a country or the territorial waters thereof shall be construed as including a reference to the territorial waters, if any, of that country.

(4) If the Cabinet 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 Cabinet may, by Order, provide that for the purposes of this Act such aircraft as may be specified in the Order shall be treated as

registered in such Convention country as may be so specified; and any such Order may be varied or revoked by a subsequent Order under this subsection.

Application of criminal law to aircraft.

3. (1) Any act or omission taking place on board a State controlled aircraft while in flight elsewhere than in or over the State which, if taking place in the State, would constitute an offence under the law in force in the State shall constitute that offence:

Provided that this subsection shall not apply to any act or omission which is expressly or impliedly authorised by or under that law when taking place outside the State.

(2) No proceedings for any offence under the law in force in the State committed on board an aircraft while in flight elsewhere than in or over the State (other than an offence under, or under any instrument made under the Civil Aviation Act 1949, C.67 of the United Kingdom as in force in the State) shall be instituted except by or with the consent of the Director of Public Prosecutions but the foregoing provisions of this subsection shall not prevent the arrest, or the issue of a warrant for the arrest, of any person in respect of any offence, or the remanding in custody or on bail of any person charged with any offence.

(3) For the purpose of conferring jurisdiction, any offence under the law in force in the State committed on board an aircraft in flight shall be deemed to have been committed in any place in the State where the offender may for the time being be; and section 62(1) of the Civil Aviation Act 1949 C.67 of the United Kingdom as set out with the modifications and adaptations in Schedule 1 to the Colonial Civil Aviation (Application of Act) Order, 1952 (S.I. 1952/68) is hereby revoked in its application to the State.

Provisions as to extradition.

4. (1) For the purposes of the application of the Extradition Act 1870 to crimes committed on board an aircraft in flight, any aircraft registered in a Convention country shall at any time while that aircraft is in flight be deemed to be within the jurisdiction of that country, whether or not it is for the time being also within the jurisdiction of any other country; and paragraphs (1) to (3) of section 16 of that Act as in force in the State shall have effect also where a person's surrender is sought in respect of a crime committed on board an aircraft in flight which lands in the State, but as if in the said paragraph (3) for references to the port where the vessel lies there were substituted references to the place at which the person whose surrender is sought is disembarked.

(2) Sections 17 and 22 of the Extradition Act of 1870 shall apply to subsection (1) of this section as if that subsection were included in that Act.

Powers of commander of aircraft.

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

(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) of this section, the commander may take with respect to that person such reasonable measures, including restraint of his or her 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) of this section,

and for the purposes of paragraph (b) of this subsection, any State-controlled aircraft shall be deemed to be registered in the State whether or not it is in fact so registered and whether or not it is in fact registered in some other country.

(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 sub-section (2) of this section 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 the said subsection (2) which he or she 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 foregoing 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) of this section; or
 - (b) if the person under restraint agrees to continue his or her 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 or she has reasonable grounds—
 - (i) to believe as mentioned in subsection (2)(a) of this section; 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 or she has reasonable grounds to believe as mentioned in subsection (2)(b) of this section may deliver that person—
 - (i) in the State, to a Constable or Immigration Officer; or
 - (ii) in the United Kingdom or in any of the Territories specified in Schedule 2 to the Tokyo Convention Act, 1967 (Overseas Territories) Order S. I. 1968 No. 1864 or in any amendment of that order or in any other country which is a Convention country, to an officer having functions corresponding to the functions in the State either of a Constable or of an Immigration Officer.
- (6) The commander of an aircraft—
 - (a) if he or she disembarks any person in pursuance of subsection (5)(a) of this section, in the case of a State controlled aircraft, in any country or, in the case of any other aircraft, in the State, 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 or she intends to deliver any person in accordance with subsection (5)(b) of this section in the State, or in the United Kingdom or in any Territory or in the case of a State 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 or her intention and of the reasons therefor—
 - (i) where the country in question is the State, to a constable or immigration officer or, in the case of any other country, to an officer having functions corresponding to the functions in the State either of a constable or of an immigration officer;
 - (ii) in either case to the appropriate diplomatic or consular office in 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 before a Magistrate, to a fine not exceeding seven hundred and fifty dollars.

Piracy.

6. For the avoidance of doubt, it is hereby declared that for the purposes of any proceedings before a court in the State in respect of piracy, the provisions set out in the Schedule to this Act of the Convention on the High Seas signed at Geneva on 29th April, 1958 modified and adapted as in the said Schedule shall be treated as constituting part of the law of nations; and any such court having jurisdiction in respect of piracy committed on the high seas shall have jurisdiction in respect of piracy committed by or against an aircraft wherever that piracy is committed.

Provisions as to evidence in connection with aircraft.

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

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

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

(4) If a complaint is made to a consular officer of Her Majesty's Government in the United Kingdom as aforesaid that any offence has been committed on a British controlled aircraft while in flight elsewhere than in or over the State, that officer may inquire into the case on oath.

(5) In this section—

- (a) the expression "deposition" includes any affidavit, affirmation or statement made upon oath; and
- (b) the expression "oath" includes an affirmation or declaration in the case of persons allowed by law to affirm or declare instead of swearing,

and nothing in this section shall prejudice the admission as evidence of any deposition which is admissible in evidence apart from this section.

Provisions as to documentary evidence.

8. (1) In any legal proceedings—

- (a) a document purporting to be certified by such authority or person as may be designated for the purpose by any regulations made by the Governor-General under this Act as being a true copy of, or of part of, a document issued or record kept in pursuance of—

- (i) an Order-in-Council made under section 8 of the Civil Aviation Act, 1949 of the United Kingdom; or
- (ii) the Civil Aviation (Licensing) Act, 1960 C. 38 of the United Kingdom or this Act,

by, or by the Minister in charge of, a Government Department, by an official of a Government Department, who is specified for the purpose in any such Order-in-Council, or by the Air Transport Licensing Authority of the State or by any competent authority in any country for the registration or licensing of aircraft; or

- (b) a document printed by Her Majesty's Stationery Office and purporting to be the publication known as the "United Kingdom Air Pilot" or a

publication of a series known as “Notam-United Kingdom” or a publication in the Official *Gazette* for any country of a notice similar to a “Notam-United Kingdom” but notifying matters related to any Territory,

shall be evidence of the matters appearing from that document.

(2) Any records that are admissible in evidence in any legal proceedings in the United Kingdom by virtue of section 5 of the Civil Aviation (Eurocontrol) Act 1962 C.8 of the United Kingdom as modified by section 8(2) of this Act as in force in the State, and of any regulations or Orders-in-Council made under or continued in force by either of those provisions, shall be admissible in evidence in any legal proceedings in the State.

SCHEDULE

(Section 6)

PROVISIONS OF GENEVA CONVENTION ON THE HIGH SEAS TO BE TREATED AS PART OF THE LAW OF NATIONS

Article 15

Piracy consists of any of the following acts:

(1) Any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed—

- (a) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
- (b) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State.

(2) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft.

(3) Any act of inciting or of intentionally facilitating an act described in sub-paragraph (1) or sub-paragraph (2) of this article.

Article 16

The acts of piracy, as defined in article 15, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship.

Article 17

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the person in dominant control to be used for the purpose of committing one of the acts referred to in article 15. The same applies if the ship or aircraft has been used to commit any such act so long as it remains under the control of the person guilty of that act.
