

# **Civil Aviation Amendment Bill**

Government Bill

As reported from the committee of the whole House

---

## Key to symbols used in reprinted bill

### As reported from a select committee

#### Struck out (majority)

Subject to this Act,

Text struck out by a majority

#### Struck out (unanimous)

Subject to this Act,

Text struck out unanimously

#### New (majority)

Subject to this Act,

Text inserted by a majority

#### New (unanimous)

Subject to this Act,

Text inserted unanimously

<Subject to this Act,>

Words struck out by a majority

(Subject to this Act,)

Words struck out unanimously

<Subject to this Act,>

Words inserted by a majority

Subject to this Act,

Words inserted unanimously

### As reported from the committee of the whole House

#### New

Subject to this Act,

Text inserted

((Subject to this Act,))

Words struck out

Subject to this Act,

Words inserted

---

# Civil Aviation Amendment Bill

## Government Bill

### Contents

1	Title	19	New section 80A inserted
2	Commencement	80A	Powers and duties of aviation security officer relating to dangerous goods
3	Purpose		
	<b>Part 1</b>		
	<b>Amendments to principal Act</b>	19A	Consequential amendments to rules
4	Interpretation	20	Interpretation
5	New section 15A inserted	21	Scheduled international air service not to be carried on in New Zealand except under licence
	15A Power of Director to investigate holder of aviation document	22	Renewal of scheduled international air service licence
6	Power of Director to suspend aviation document or impose conditions	23	Interpretation
7	New section 18 substituted	24	Conventions to have force of law
	18 Power to revoke aviation document or impose conditions	25	Fatal accidents
8	Criteria for action taken under section 17 or section 18	26	Contributory negligence
9	General power of entry	27	Limitation of liability
10	New section 26A inserted	28	Value of special drawing right
	26A Obligation to identify pilot in command	29	Time for bringing proceedings
11	Failure to comply with inspection or audit request	30	New section 91JA inserted
12	Failure to notify emergency breach of Act or regulations or rules		91JA Actions against Parties to Montreal Convention
13	New section 52C inserted	31	Designation of Parties
	52C Failure to provide identifying information	32	Power to exclude aircraft in use for military purposes
14	New section 66 substituted	33	New section 91RA inserted
	66 Appeal to District Court		91RA High Contracting Party or Party not Party to Montreal Convention
15	Decision of Director to continue in force pending appeal, etc	34	Regulations
17	Director of Civil Aviation	35	New Schedule 6 added
18	Powers of Director in relation to examinations, etc	36	Occurrences before commencement of sections 23 to 35
18A	New sections 77A, 77B, and 77C inserted	39	New sections 96C to 96F substituted
	77A Powers and duties of Minister to require screening		96C Procedure for offence of smoking on international flight
	77B Powers and duties of Director to require screening		96D Form of infringement notice
	77C Transitional provisions for screening		96E Payment of fees
18B	Functions and duties of Aviation Security Service	40	Information to be supplied to chief executive of the Ministry of Economic Development
		41	Administration of sections 99A to 99C
		42	Civil Aviation Authority

43	Consequential amendments	<i>Contract between event organiser and controlling authority</i>
	<b>Part 2</b>	
	<b>2002-2003 America's Cup Regatta</b>	
44	Commencement	52 Event organiser's contract with nominated controlling authority
45	Expiry of this Part	53 Controlling authority may act in accordance with contract
46	Purpose of this Part	<i>Disclosure of costs</i>
47	Interpretation	54 Event organiser may be required to disclose costs
	<i>Appointment and functions of event organiser</i>	<i>Cancellation of appointment of event organiser</i>
48	Who may apply, and how to apply, for appointment as event organiser	55 Minister may cancel appointment of event organiser
49	Appointment of event organiser	
50	Function and power of event organiser	
	<i>Accreditation system</i>	<b>Schedule 1</b>
51	Event organiser's accreditation system	<b>New Schedule 6 added to principal Act</b>
		<b>Schedule 2</b>
		<b>Consequential amendments to other Acts</b>

**The Parliament of New Zealand enacts as follows:**

**1 Title**

- (1) This Act is the Civil Aviation Amendment Act **2000**.
- (2) In this Act, the Civil Aviation Act 1990<sup>1</sup> is called "the principal Act".

5

<sup>1</sup> 1990 No 98

**2 Commencement**

- (1) Except as provided in **subsection (2) and section 44**, this Act comes into force on **(1 July 2001) ((1 November 2001)) 1 June 2002**.
- (2) **Sections 23 to 36 and Schedule 1** come into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more Orders in Council may be made appointing different dates for different provisions.

10

**3 Purpose**

The purpose of this Act is—

**Struck out (unanimous)**

- (a) to amend the principal Act by incorporating, with modifications, the provisions of New Zealand law relating to civil liability for injury or delay suffered by passengers

15

**Struck out (unanimous)**

- during domestic carriage by air currently located in Part II of the Carriage by Air Act 1967; and
- (b) to repeal the Carriage by Air Act 1967; and
- (c) to revise Part 9A of the principal Act by incorporating provisions implementing the Montreal Convention 1999 (which provides for a new international regime governing civil liability for injury, damage, or delay during international carriage by air); and 5
- (d) to make provision for the accrediting of persons permitted to enter air space for purposes connected with the 2002–2003 America’s Cup Regatta; and 10
- (e) to amend the principal Act to incorporate new powers to search for and seize dangerous goods; and
- (f) to amend the principal Act to include a number of miscellaneous changes. 15

## Part 1

### Amendments to principal Act

#### 4 Interpretation

- (1) Section 2 of the principal Act is amended by omitting from paragraph (b) of the definition of **accident** the expression “rotors,”. 20
- (2) Section 2 of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:

**Struck out (unanimous)**

- “**airline** means an air transport enterprise that is offering or operating a scheduled air service or intends to offer or operate a scheduled air service 25
- “**dangerous goods** means articles or substances that, when transported by air, are capable of posing a significant risk to health, safety, or property

**New (unanimous)**

- “**dangerous goods** means articles or substances that are— 30

**New (unanimous)**

- “(a) capable of posing significant risk to health, safety, or property when transported by air; and
- “(b) classified in Chapters 1 to 10 of Part 2 of the ICAO’s *Technical Instructions for the Safe Transport of Dangerous Goods by Air*”.

5

**Struck out (unanimous)**

“**postal operator** has the same meaning as in section 2(1) of the Postal Services Act 1998

“**unlawful dangerous goods** means dangerous goods that are carried or proposed to be carried (whether by an airline or a postal operator) in contravention of the rules.”

10

- (3) Section 2 of the principal Act is amended by repealing the definition of **Convention**, and substituting the following definition:

“**Convention** means the Convention on International Civil Aviation signed on behalf of the Government of New Zealand in Chicago on 7 December 1944, and includes—

15

“(a) any amendment to the Convention that has entered into force under Article 94(a) of the Convention and has been ratified by New Zealand; and

“(b) any Annex or amendment to any Annex accepted under Article 90 of the Convention, to the extent adopted by New Zealand; and

20

“(c) the international standards and recommended practices from time to time accepted and amended by the International Civil Aviation Organisation under Article 37 of the Convention, to the extent adopted by New Zealand”.

25

**5 New section 15A inserted**

The principal Act is amended by inserting, after section 15, the following section:

30

**Struck out (unanimous)****“15A Power of Director to investigate any person who holds aviation document**

The Director may, in writing, require any person who holds an aviation document to undergo an investigation if the Director believes, on reasonable grounds, that it is necessary in the interests of civil aviation safety and security.”

5

**New (unanimous)****“15A Power of Director to investigate holder of aviation document**

“(1) The Director may, in writing, require any holder of an aviation document to undergo an investigation conducted by the Director if the Director believes, on reasonable grounds, that it is necessary in the interests of civil aviation safety and security, and if the Director—

10

“(a) has reasonable grounds to believe that the holder has failed to comply with any conditions of an aviation document or with the requirements of section 12; or

15

“(b) considers that the privileges or duties for which the document has been granted are being carried out by the holder in a careless or incompetent manner.

“(2) If the Director requires a holder to undergo an investigation, the Director must—

20

“(a) conclude the investigation as soon as practicable; and

“(b) inform the holder, in writing, of—

“(i) the date on which the investigation will begin; and

25

“(ii) the results of the investigation, including—

“(A) any recommendations arising out of the investigation; and

“(B) the grounds for those recommendations.”

**6 Power of Director to suspend aviation document or impose conditions**

30

(1) Section 17 of the principal Act is amended by repealing subsections (3) and (4), and substituting the following subsections:

- “(3) The suspension of any aviation document and any conditions imposed under **subsection (1) or subsection (2)** remain in force until the Director determines what action, if any, referred to in **subsection (4)** is to be taken; but any such suspension or conditions expire *(14 days)*~~*10 working days*~~ after the date that the suspension or conditions are imposed unless, before the expiry of that *(14-day)*~~*10-working day*~~ period, the Director extends the suspension or conditions for a further specified period. 5
- “(4) The Director may take 1 or more of the following actions: 10
- “(a) impose conditions for a specified period:
  - “(b) withdraw any conditions:
  - “(c) suspend any aviation document for a specified period:
  - “(d) revoke or partially revoke any aviation document under **section 18**. 15
- “(4A) If notice of a proposed revocation of an aviation document is given in accordance with section 11, either at the same time as the suspension of the document under this section is imposed or while the suspension is in force, the document to which the notice relates remains suspended until the Director finally decides whether to revoke the document under **section 18**.” 20
- (2) Section 17(5) of the principal Act is amended by omitting the words “*<of>* this section”, and substituting the words “**subsection (4)**”.
- 7 New section 18 substituted** 25
- The principal Act is amended by repealing section 18, and substituting the following section:
- “18 ~~*<Power of Director to revoke aviation document >*~~**Power to revoke aviation document or impose conditions**
- “(1) The Director may, if he or she considers it necessary in the interests of aviation safety after an inspection, monitoring, or investigation carried out under this Act, revoke an aviation document or impose permanent conditions on an aviation document. 30
- “(2) Revocation under this section may be in respect of the whole or any part of an aviation document. 35
- “(3) If the Director proposes to take action under this section, he or she must give notice in accordance with section 11, which



applies as if the proposed action were a proposed adverse decision under this Act.

- “(4) A person whose aviation document is revoked <or made subject to permanent conditions>under this section must,—
- “(a) if the document is made subject to permanent conditions or revoked in part, immediately produce the document to the Director for appropriate endorsement: 5
- “(b) if the whole document is revoked, immediately surrender the document to the Director.
- “(5) Any person in respect of whom any decision is taken under this section may appeal against that decision to a District Court under **section 66.**” 10

## **8 Criteria for action taken under section 17 or section 18**

- (1) Section 19(1) of the principal Act is consequentially amended by inserting, after the words “or revoked”, the words “or made subject to conditions”. 15

### **New (majority)**

- (1A) Section 19(5) of the principal Act is amended by inserting, after the words “as soon as is practicable”, the words “, but, in the case of the suspension of an aviation document or the imposition of conditions under section 17, no later than 5 working days after suspending the aviation document or imposing conditions,”. 20

- (2) Section 19 of the principal Act is amended by repealing subsection (6), and substituting the following subsection:
- “(6) Nothing in subsection (5) or subsection (7) requires the Director to disclose— 25
- “(a) any information, the disclosure of which would endanger the safety of any person; or
- “(b) any information or the fact of non-disclosure of that information, before suspending an aviation document or imposing conditions in respect of an aviation document under section 17.” 30

## **9 General power of entry**

Section 24 of the principal Act is amended by repealing subsection (3), and substituting the following subsection: 35

**Struck out (majority)**

“(3) Every person who is authorised to enter any aircraft, aerodrome, building, or place under subsection (1) or subsection (2) may require any person who is in possession of an aviation document, certificate, book, manual, record, list, notice, or other document that is required by or under this Act to be kept by any person, to produce and surrender it.” 5

**New (majority)**

“(3) Every person who is authorised to enter any aircraft, aerodrome, building, or place under subsection (1) or subsection (2)—

“(a) may require any person who is in possession of an aviation document, or of any certificate, book, manual, record, list, notice, or other document that is required to be kept under this Act, to produce or surrender it; and 10

“(b) must, if a document is surrendered under **paragraph (a)**, inform the relevant aviation document holders orally, as soon as practicable, and in writing that the document has been surrendered.” 15

**10 New section 26A inserted**

The principal Act is amended by inserting, after section 26, the following section: 20

**“26A Obligation to identify pilot in command**

“(1) If a pilot in ~~(charge of an aircraft is alleged to have committed an offence the Director)~~command of an aircraft is alleged to have committed an offence under this Act or the rules, the Director or a member of the police may— 25

“(a) inform the operator of the aircraft or the holder of the certificate of registration for the aircraft of the alleged offence; and

“(b) require that person to give all information in that person’s possession or reasonably obtainable by that person that may lead to the identification of the pilot.” 30

“(2) A request under **subsection (1)** may be made orally or in writing, and the operator or holder of the certificate of registration (as

the case may be) must comply with the request within (*14 days*)10 working days.

“(3) **Subsection (1)** does not apply if the operator or holder of the certificate of registration has been arrested or detained in relation to the suspected offence.”

5

#### **11 Failure to comply with inspection or audit request**

The heading to section 44A of the principal Act is amended by omitting the word “**audit**”, and substituting the word “**monitoring**”.

#### **12 Failure to notify emergency breach of Act or regulations or rules**

10

Section 52A of the principal Act is amended by omitting the expression “section 13(1)(d)”, and substituting the expression “section 13A(6)”.

#### **13 New section 52C inserted**

15

The principal Act is amended by inserting, after section 52B, the following section:

##### **“52C Failure to provide identifying information**

“(1) Every operator of an aircraft or holder of a certificate of registration commits an offence who, without reasonable excuse, fails to comply with **section 26A(1)** (which relates to the identification of the pilot in command of an aircraft).

20

“(2) Every operator or holder of a certificate of registration who commits an offence against **subsection (1)** of this section is liable,—

25

“(a) in the case of an individual, to a fine not exceeding \$5,000; or

“(b) in the case of a body corporate, to a fine not exceeding \$30,000.”

#### **14 New section 66 substituted**

30

The principal Act is amended by repealing sections 66 and 67, and substituting the following section:

##### **“66 Appeal to District Court**

“(1) A person may appeal to a District Court against a specified decision made under this Act by the Director if another

35

section of this Act gives that person a right of appeal under this section, and—

“(a) the person—

“(i) is a person in respect of whom the decision was made; and

5

“(ii) is dissatisfied with the decision; or

“(b) ~~(the person has a legal interest in an)~~ the person is the owner, operator, or person for the time being in charge of the aircraft or aeronautical product that is the subject of the decision.

10

“(2) The Court may confirm, reverse, or modify the decision appealed against.

“(3) Every decision of the Director appealed against under this section continues in force pending the determination of the appeal, and no person is excused from complying with any of the provisions of this Act on the ground that any appeal is pending.

15

**Struck out (unanimous)**

“(4) Even though an appeal under this section may have been determined in favour of the appellant, the Director may, subject to the like right of appeal, refuse to deal with, in accordance with the provisions of this Act, the matter that was the subject of the appeal on any sufficient grounds supported by facts or evidence discovered since the hearing of the appeal.

20

**New (unanimous)**

“(4) Even though an appeal under this section may have been determined in favour of the appellant, the Director may, subject to the like right of appeal, refuse to grant, revoke, suspend, disqualify, or otherwise deal with, in accordance with the provisions of this Act, any aviation document, any person to which or to whom the appeal related, or any aviation document or approval granted or restored in compliance with the decision of the District Court on the appeal, on any sufficient grounds supported by facts or evidence discovered since the hearing of the appeal.

25

30

- “(5) In this section, a **specified decision** is a decision—
- “(a) concerning the grant, issue, revocation, or suspension of an aviation document:
  - “(b) to impose conditions on an aviation document: 5
  - “(c) to exercise powers under section 21:
  - “(d) to decline to register an aircraft under section 6.”

**15 Decision of Director to continue in force pending appeal, etc**

Section (68(2)) 68 of the principal Act is repealed.

**Struck out (unanimous)**

**16 Evidence and proof** 10

- (1) Section 71(1) of the principal Act is amended by inserting, after paragraph (c), the following paragraph:

“(ca) the production of a written statement signed by the Director to the effect that on a specified date a person was or was not the holder of a medical certificate issued under the rules is sufficient evidence of the matter stated, until the contrary is proved:” 15

- (2) Section 71(1) of the principal Act is amended by adding the following paragraph:

“(f) if the Court is satisfied, at the conclusion of the case for the informant, that there are reasonable grounds to believe that the carriage of goods or passengers on an aircraft was undertaken for hire or reward, it is to be presumed the carriage was undertaken for hire or reward, unless the contrary is proved.” 20  
25

**17 Director of Civil Aviation**

- (1) Section 72I(3) of the principal Act is amended by omitting from paragraph (b) the word “audits”, and substituting the word “monitoring”.
- (2) Section 72I(3A) of the principal Act is amended by omitting the words “the *Gazette*”, and substituting the word “writing”. 30
- (3) Section 72I of the principal Act is amended by repealing subsection (3B), and substituting the following subsections:
- “(3B) Notice (*of the issuing*) of an airworthiness directive issued under subsection (3A) must be given in the *Gazette*. 35

- “(3C) An airworthiness directive issued under subsection (3A) comes into force on the date specified in the directive, which may be a date earlier than the date of notification of the issuing of the directive in the *Gazette* under **subsection (3B)**, if—
- “(a) the Director considers that urgent action is required; 5  
and
  - “(b) the Director notifies the affected parties before the directive comes into force; and
  - “(c) notification of the issuing of the directive is given in the *Gazette* not later than 28 days after the directive comes 10  
into force.”

### 18 Powers of Director in relation to examinations, etc

Section 72K of the principal Act is amended by omitting the words “in respect of flight crew or aircraft maintenance personnel”. 15

#### New

### 18A New sections 77A, 77B, and 77C inserted

The principal Act is amended by inserting, after section 77, the following sections:

- “77A **Powers and duties of Minister to require screening** 20
- “(1) The Minister may, if necessary to improve or enhance aviation security to enable New Zealand to be part of a concerted international response to a threat to aviation security, direct an aviation security provider, by notice in the *Gazette*,—
- “(a) to screen—
    - “(i) any person boarding an aircraft; or 25
    - “(ii) any thing to be carried by an aircraft; and
  - “(b) if necessary, to undertake reasonable searches of—
    - “(i) any person boarding an aircraft; or
    - “(ii) any thing to be carried by an aircraft; or
    - “(iii) any (as specified in the *Gazette* notice)— 30
      - “(A) aircraft or class of aircraft; or
      - “(B) aerodrome or class of aerodrome; or
      - “(C) navigation installation or class of navigation installation.

## New

- “(2) Before directing an aviation security provider under **subsection (1)**, the Minister must, to determine whether or not the direction is necessary to improve or enhance aviation security to enable New Zealand to be part of a concerted international response to a threat to aviation security, consult— 5
- “(a) the Director; and
- “(b) as the Minister in each case considers appropriate, representative groups in the aviation industry, government departments, and Crown agencies.
- “(3) A direction made under **subsection (1)** takes effect on the date specified in the notice, which may be a date before the notice is published in the *Gazette* if the Minister— 10
- “(a) considers on reasonable grounds that urgent action is required; and
- “(b) has consulted the Director before that date; and 15
- “(c) has notified all affected parties (other than persons boarding an aircraft) before that date.
- “(4) If a direction takes effect on a date before the notice is published in the *Gazette*,— 20
- “(a) the direction expires 28 days after that date unless the notice is published in the *Gazette* within 28 days of that date; and
- “(b) if the notice is published in the *Gazette* within 28 days of that date, the direction expires 90 days after that date unless, before the expiry of the 90-day period, the Minister, after complying with **subsection (3)(b) and (c)**, extends the period for a further specified period not exceeding 90 days (the aggregate period may not exceed 180 days). 25
- “(5) If a direction takes effect on a date on or after the notice is published in the *Gazette*, the notice is a regulation for the purposes of the Regulations (Disallowance) Act 1989. 30
- “(6) The Minister may rescind a direction made under **subsection (1)**.
- “(7) Subject to **subsection (4)**, a direction remains in effect until it is rescinded. 35
- “(8) Nothing in this section empowers the Minister to exercise the Director’s powers under **section 77B**.

## New

- “77B Powers and duties of Director to require screening**
- “(1) The Director may, if he or she believes on reasonable grounds that a security risk exists, direct an aviation security provider, by notice in the *Gazette*,—
- “(a) to screen— 5
- “(i) any person boarding an aircraft; or
- “(ii) any thing to be carried by an aircraft; and
- “(b) if necessary, to undertake reasonable searches of—
- “(i) any person boarding an aircraft; or
- “(ii) any thing to be carried by an aircraft; or 10
- “(iii) any (as specified in the *Gazette* notice)—
- “(A) aircraft or class of aircraft; or
- “(B) aerodrome or class of aerodrome; or
- “(C) navigation installation or class of navigation installation. 15
- “(2) Before directing an aviation security provider under **subsection (1)**, the Director must, to determine whether or not the direction is necessary to meet the security risk, consult, as the Director in each case considers appropriate, representative groups in the aviation industry, government departments, and 20
- Crown agencies.
- “(3) A direction made under **subsection (1)** takes effect on the date specified in the notice, which may be a date before the notice is published in the *Gazette* if the Director—
- “(a) considers on reasonable grounds that urgent action is 25
- required; and
- “(b) has notified all affected parties (other than persons boarding an aircraft) before that date.
- “(4) If a direction takes effect on a date before the notice is published in the *Gazette*,— 30
- “(a) the direction expires 28 days after that date unless the notice is published in the *Gazette* within 28 days of that date; and
- “(b) if the notice is published in the *Gazette* within 28 days 35
- of that date, the direction expires 90 days after that date unless, before the expiry of the 90-day period, the Director, after complying with **subsection (3)(b)**, extends the period for a further specified period not exceeding



## New

- 90 days (the aggregate period may not exceed 180 days).
- “(5) If a direction takes effect on a date on or after the notice is published in the *Gazette*, the notice is a regulation for the purposes of the Regulations (Disallowance) Act 1989. 5
- “(6) The Director may rescind a direction made under **subsection (1)**.
- “(7) Subject to **subsection (4)**, a direction remains in effect until it is rescinded.
- “**77C Transitional provisions for screening** 10
- “(1) A direction requiring the screening of domestic aircraft passenger services made by the Director before **1 June 2002** continues in force until **1 September 2002**, on which date it expires; however, the Director may rescind the direction before **1 September 2002**.
- “(2) A person carrying out the screening of domestic aircraft passenger services under a direction to do so made before **1 June 2002** (or a search in accordance with such a direction) is entitled to continue to carry out that screening (or search) until **1 September 2002**, on which date the entitlement expires.” 15
- 18B Functions and duties of Aviation Security Service** 20
- Section 80 of the principal Act is amended by repealing paragraph (a), and substituting the following paragraphs:
- “(a) to carry out—
- “(i) crew, passenger, and baggage screening of all international aircraft passenger services; and 25
- “(ii) the screening specified in **section 77A(1) or section 77B(1)**;
- “(ab) to undertake, if necessary, reasonable searches of crew, passengers, baggage, cargo, aircraft, aerodromes, and navigation installations.” 30
- 19 (New sections 80A and 80B inserted) New section 80A inserted**
- The principal Act is amended by inserting, after section 80, the following section:

## Struck out (unanimous)

**“80A Powers of aviation security officer relating to dangerous goods**

“(1) Without limiting section 80(a), an aviation security officer may do all or any of the following:

- “(a) in the course of screening any passenger, checked baggage, hand baggage, postal article, cargo, or other receptacle, screen for the purpose of detecting dangerous goods: 5
- “(b) if dangerous goods are detected on the passenger’s person or in an accompanied receptacle, request the passenger to surrender the goods to enable an aviation security officer to determine whether the goods are unlawful dangerous goods: 10
- “(c) set aside dangerous goods that are surrendered to the aviation security officer so that it can be determined whether the goods are unlawful dangerous goods: 15
- “(d) if dangerous goods are detected in an unaccompanied receptacle, deal with the goods under **section 80B(3)**:
- “(e) notify the relevant airline representative if unlawful dangerous goods are detected: 20
- “(f) if the aviation security officer reasonably believes that the dangerous goods are unlawful dangerous goods, request the passenger in possession of the dangerous goods to surrender the goods to an aviation security officer: 25
- “(g) receive dangerous goods surrendered by passengers:
- “(h) seize dangerous goods if—
  - “(i) the aviation security officer reasonably believes that their presence creates an imminent risk to the safety of any person or property; or 30
  - “(ii) the rules require that the Director be notified of the dangerous goods; or
  - “(iii) the passenger concerned does not surrender the dangerous goods to an aviation security officer after being requested to do so under this section: 35
- “(i) in the case of dangerous goods seized under **paragraph (h)**, destroy or otherwise dispose of the dangerous goods if they are unlawful dangerous goods.

**Struck out (unanimous)**

“(2) Without limiting section 80(a) and despite **paragraph (i)**, an aviation security officer must, in the case of dangerous goods seized under **paragraph (h)**, return the dangerous goods to the passenger if they are not unlawful dangerous goods.”

**“80B Procedure for dealing with unlawful dangerous goods surrendered or in unaccompanied receptacle 5**

“(1) A departing passenger who surrenders unlawful dangerous goods to an aviation security officer may—

“(a) consent to the disposal of the goods; or

“(b) request that the relevant airline hold them for up to 20 working days. 10

“(2) If the passenger does not collect or arrange the collection of the unlawful dangerous goods within the 20-day period specified in the passenger’s request under **subsection (1)(b)**, the airline may destroy or dispose of the goods as it thinks fit. 15

“(3) An aviation security officer who detects dangerous goods in an unaccompanied receptacle and has reason to believe that the goods are unlawful may notify the relevant airline or postal operator of the goods detected.

**New (unanimous)**

**“80A Powers and duties of aviation security officer relating to dangerous goods 20**

“(1) Without limiting section 80(a) **and (ab)**, an aviation security officer may screen any person boarding an aircraft or any thing to be carried by an aircraft for the purpose of detecting dangerous goods. 25

“(2) If dangerous goods are detected and the aviation security officer has reasonable grounds to believe that they may not be lawfully carried on an aircraft, the aviation security officer may seize and detain the dangerous goods for the purpose of determining whether or not they may be lawfully carried on an aircraft. 30

“(3) If the aviation security officer determines that the dangerous goods may not be lawfully carried on an aircraft, the aviation

**New (unanimous)**

security officer must notify the relevant operator or delivery service as soon as practicable and—

“(a) may detain the dangerous goods until they are dealt with in accordance with **paragraph (b) or paragraph (c)**; or

“(b) may deliver the dangerous goods to the operator or delivery service; or 5

“(c) may, if the Director agrees, destroy or otherwise dispose of the dangerous goods.

“(4) If the aviation security officer determines that the dangerous goods may be lawfully carried on an aircraft, the aviation security officer must, as far as practicable, return the dangerous goods to the owner of the dangerous goods. 10

“(5) Despite anything in this section, if the aviation security officer has reasonable grounds to believe that the dangerous goods pose an imminent risk to safety, the aviation security officer may destroy or otherwise dispose of the dangerous goods. 15

“(6) The aviation security officer must report the detection of dangerous goods in accordance with the rules or, in the absence of rules, as the Director may direct.”

**New****19A Consequential amendments to rules 20**

(1) Rule 108.53(b)(5) (security requirements – domestic) is amended by inserting, before the word “cargo”, the word “baggage,”.

(2) Rule 108.53(b)(8) (security requirements – domestic) is amended by— 25

(a) omitting the words “passenger and baggage screening” in both places where they occur, and substituting in each case the words “passenger, crew, and baggage screening”; and

(b) omitting the words “an aviation security organisation”, and substituting the word “a”; and 30

(c) inserting, before the word “Director”, the words “Minister or the”.

## New

- |      |   |    |
|------|---|----|
| (3)  | Rule 108.55(b)(12) (security requirements – international) is amended by—   |    |
|      | (a) omitting the words “a passenger”, and substituting the words “passenger, crew,”; and  |    |
|      | (b) omitting the words “an aviation security organisation”, and substituting the word “a”.  | 5  |
| (4)  | Rule 139.203(d)(4) (requirements for security designated aerodromes – other requirements) is amended by inserting, after the word “passengers”, the word “, crew,”.       |    |
| (5)  | Rule 139.203(d)(4)(i) (requirements for security designated aerodromes – other requirements) is amended by—   | 10 |
|      | (a) inserting, after the word “passengers,” the words “crew, and”; and  |    |
|      | (b) omitting the words “, or both,”.  |    |
| (6)  | Rule 139.203(d)(4)(ii) (requirements for security designated aerodromes – other requirements) is amended by inserting, after the word “passengers”, the words “and crew”. | 15 |
| (7)  | Rule 139.203(d)(4)(iii) (requirements for security designated aerodromes – other requirements) is amended by—   |    |
|      | (a) omitting the word “transit”, and substituting the word “, transit,”; and  | 20 |
|      | (b) inserting, after the word “passengers” wherever it occurs, the words “and crew”.  |    |
| (8)  | Rule 139.203(d)(5) (requirements for security designated aerodromes – other requirements) is amended by—  | 25 |
|      | (a) inserting, after the words “necessary by”, the words “the Minister, or”; and  |    |
|      | (b) inserting, after the word “passengers” in both places where it occurs, the word “, crew,”.  |    |
| (9)  | Rule 139.205(1) (requirements for non-security designated aerodromes) is amended by—  | 30 |
|      | (a) inserting, after the word “passengers”, the word “, crew,”; and   |    |
|      | (b) inserting, after the words “required by”, the words “the Minister, or”.   | 35 |
| (10) | Rule 140.11(a)(1)(i) (functions and duties of certificate holder) is amended by—  |    |

---

**New**

---

- |      |  |    |
|------|--|----|
|      | (a) omitting the words “passenger and”, and substituting the words “passenger, crew, and”; and   |    |
|      | (b) omitting the words “and of such other services where the screening is judged advisable by the Director”, and substituting the words “and of any domestic aircraft passenger service or other service required to be screened by the Minister or the Director”. | 5  |
| (11) | Clause A.5(b)(2) of Appendix A to Part 140 of the rules (security operational standards – screening of the person) is amended by—  | 10 |
|      | (a) omitting the word “international”; and   |    |
|      | (b) inserting, after the word “passenger” wherever it occurs, the words “or crew member”; and  |    |
|      | (c) omitting the word “those”, and substituting the words “if the person is”.  | 15 |
- 

**20 Interpretation**

- |     |  |    |
|-----|--|----|
| (1) | Section 87A of the principal Act is amended by adding to the definition of <b>scheduled international air service</b> the words “; and, in relation to a New Zealand international airline, includes a seventh freedom service”. | 20 |
| (2) | Section 87A of the principal Act is amended by adding the following definition:  |    |
|     | “ <b>seventh freedom service</b> means a series of flights between 1 or more points in 1 country or territory other than New Zealand and 1 or more points in another country or territory other than New Zealand, if—            | 25 |
|     | “(a) the airline is designated by New Zealand under the air services agreement (or similar arrangement) between New Zealand and each country or territory in which the service is being performed; and                           | 30 |
|     | “(b) the service is performed according to the traffic rights allocated to the airline under those agreements (or arrangements); and   |    |
|     | “(c) the service is a scheduled service.”  |    |

- 21 Scheduled international air service not to be carried on in New Zealand except under licence**  
The heading to section 87B is amended by omitting the words “in New Zealand”.
- 22 Renewal of scheduled international air service licence** 5  
Section 87P(2) of the principal Act is amended by omitting the expression “3 months”, and substituting the expression “1 month”.
- 23 Interpretation**
- (1) Section 91A of the principal Act is amended by repealing the definition of **court**, and substituting the following definition: 10  
“**court**, in relation to an arbitration allowed by the Montreal Convention, the amended Convention, or the Guadalajara Convention, includes an arbitrator”.
- (2) Section 91A of the principal Act is amended by inserting, in its appropriate alphabetical order, the following definition: 15  
“**Montreal Convention** means the Convention, the English text of which is set out in **Schedule 6**, for the unification of certain rules for international carriage by air done at Montreal on 28 May 1999”. 20
- 24 Conventions to have force of law**
- (1) Section 91C(1) of the principal Act is amended by—  
(a) inserting, after the words “provisions of”, the words “the Montreal Convention,”; and  
(b) inserting, after the words “to which”, the words “the Montreal Convention,”. 25
- (2) Section 91C(2) of the principal Act is amended by inserting, after the words “provisions of”, the words “the Montreal Convention,”.
- (3) Section 91C(3) of the principal Act is amended by inserting, after the words “provisions of”, the words “the Montreal Convention,”. 30
- (4) Section 91C(4) of the principal Act is amended by inserting, after the words “provisions of”, the words “the Montreal Convention,”. 35

- (5) Section 91C(5) of the principal Act is amended by inserting, after the expression “Article 22”, the words “of the amended Convention”.
- 25 Fatal accidents**  
 Section 91E of the principal Act is amended by inserting, after the words “liability under”, the words “Article 17(1) of the Montreal Convention or”. 5
- 26 Contributory negligence**  
 Section 91F of the principal Act is amended by inserting, after the words “purposes of”, the words “Article 20 of the Montreal Convention or”. 10
- 27 Limitation of liability**
- (1) Section 91G(1) of the principal Act is amended by inserting, after the words “referred to”, the words “in Articles 21 and 22 of the Montreal Convention or”. 15
- (2) Section 91G(1)(b) is amended—
- (a) by inserting, after the words “referred to”, the words “in Article 21 of the Montreal Convention or”; and
- (b) by inserting, after the expression “Article 22”, the words “of the amended Convention”. 20
- (3) Section 91G(2) of the principal Act is amended by inserting, after the words “limited by”, the words “Articles 21 and 22 of the Montreal Convention or”.
- (4) Section 91G(2)(a) of the principal Act is amended—
- (a) by inserting, after the words “provisions of”, the words “Articles 21 and 22 of the Montreal Convention or”; and
- (b) by inserting, after the expression “Article 22”, the words “of the amended Convention”. 25
- (5) Section 91G(3) of the principal Act is amended by inserting, after the words “referred to”, the words “in Article 21 and Article 22 of the Montreal Convention or”. 30
- (6) Section 91G(5) of the principal Act is amended by inserting, after the expression “Article 22”, the words “of the amended Convention”. 35



**28 Value of special drawing right**

- (1) Section 91H(1) of the principal Act is amended by inserting, after the words “purposes of”, the words “Article 23 of the Montreal Convention or”.
- (2) Section 91H(4) of the principal Act is amended by inserting, after the expression “Article 22”, the words “of the amended Convention”. 5

**29 Time for bringing proceedings**

- (1) Section 91I of the principal Act is amended by repealing subsection (3), and substituting the following subsection: 10
- “(3) Neither Article 35 of the Montreal Convention nor Article 29 of the amended Convention apply to any proceedings for contribution between tortfeasors.”
- (2) Section 91I(4) of the principal Act is amended by omitting the expression “Article 29”, and substituting the words “Article 35 of the Montreal Convention or Article 29 of the amended Convention”. 15
- (3) Section 91I(5) of the principal Act is amended by omitting the expression “Article 29”, and substituting the words “Article 35 of the Montreal Convention and Article 29 of the amended Convention”. 20

**30 New section 91JA inserted**

The principal Act is amended by inserting, after section 91J, the following section:

- “**91JA Actions against Parties to Montreal Convention** 25
- “(1) Every Party to the Montreal Convention is to be regarded as having submitted to the jurisdiction of the court in the circumstances described in **subsection (2)**.
- “(2) **Subsection (1)** applies if any action is brought in a court in New Zealand by a Party to the Montreal Convention in accordance with Article 46 of the Montreal Convention to enforce a claim in respect of carriage undertaken by that Party. 30
- “(3) Rules of Court may provide for the manner in which any action to which **subsection (1)** applies is to be commenced and carried on. 35
- “(4) Nothing in this section authorises the issue of execution against the property of any Party to the Montreal Convention.”

**31 Designation of Parties**

- (1) Section 91K(1)(a) of the principal Act is amended by adding the following subparagraph:

“(viii) the Parties to the Montreal Convention; or”.

- (2) Section 91K(1)(b) of the principal Act is amended by omitting the expression “or (vii)”, and substituting the expression “(vii), or (viii)”. 5
- (3) Section 91K(4) of the principal Act is amended by inserting, after the words “Warsaw Convention”, the words “or the Parties to the Montreal Convention”. 10

**32 Power to exclude aircraft in use for military purposes**

Section 91M(2) of the principal Act is amended by omitting the words “The amended Convention does”, and substituting the words “The Montreal Convention or the amended Convention do”. 15

**33 New section 91RA inserted**

The principal Act is amended by inserting, after section 91R, the following section:

“**91RA High Contracting Party or Party not Party to Montreal Convention** 20

“(1) **Subsection (2)** applies if, by reason of the fact that any High Contracting Party or Party, as the case may be, is not a party to the Montreal Convention, the Montreal Convention does not apply.

“(2) If this subsection applies and the High Contracting Party or Party referred to in **subsection (1)** is a party to the Warsaw Convention or to the Hague Protocol or to Additional Protocol No 1 or Additional Protocol No 2 or to Protocol 4, the law applicable to any carriage by air is the law referred to in whichever of the following sections that is applicable to that High Contracting Party or Party: 25 30

“(a) sections 91A to 91M (as they read immediately before the commencement of **sections 23 to 35 of the Civil Aviation Amendment Act 2000**); or

“(b) section 91O; or 35

“(c) section 91P; or

“(d) section 91Q; or

“(e) section 91R.

- “(3) **Subsection (4)** applies if a High Contracting Party to the amended Convention is not a party to the Montreal Convention.
- “(4) If this subsection applies,—
- “(a) the law applicable to any carriage by air is the law set out in the amended Convention; and 5
- “(b) each version of Article 22 of the amended Convention set out in Schedule 4 applies in the circumstances outlined in the heading of that version.”
- 34 Regulations 10**
- (1) Section 91T(1) of the principal Act is amended by repealing paragraphs (a), (b), (c), and (d), and substituting the following paragraphs:
- “(a) prescribe any advance payments for compensation that carriers must make to natural persons under Article 28 of the Montreal Convention: 15
- “(b) prescribe any arrangements for making advance payments for compensation that carriers must make to natural persons under Article 28 of the Montreal Convention: 20
- “(c) amend **Schedule 6** by making such amendments to the text of the Montreal Convention set out in that schedule as are required to bring that text up to date:
- “(d) revoke **Schedule 6**, and substitute a new schedule setting out, in an up-to-date form, the text of the Montreal Convention.” 25
- 35 New Schedule 6 added**
- The principal Act is amended by adding the **Schedule 6** set out in **Schedule 1**.
- 36 Occurrences before commencement of sections 23 to 35 30**
- Sections 23 to 35** do not apply so as to affect rights or liabilities arising out of an occurrence before the commencement of **sections 23 to 35**.

## Struck out (unanimous)

**37 New Part 9B inserted**

The principal Act is amended by inserting, after Part 9A, the following Part:

**“Part 9B  
“Domestic carriage by air**

5

**“91U Interpretation**

“(1) In this Part, unless the context otherwise requires,—

“**actual carrier** means a person, other than the contracting carrier, who—

“(a) performs the whole or part of the carriage contracted for by the contracting carrier with the authority of the contracting carrier; but 10

“(b) is not, in relation to that carriage, a successive carrier

“**air transport service** means any service by aircraft, whether regular or casual, for the carriage of passengers for hire or reward 15

“**carrier** includes a contracting carrier and an actual carrier

“**contract** includes an arrangement made without consideration

“**contracting carrier** means a person who, as a principal, makes a contract for carriage with a passenger, or with a person acting on behalf of the passenger; and includes a successive carrier 20

“**international carriage**, in relation to carriage by air, means carriage in which, according to the contract between the parties, the place of departure and the place of destination, whether or not there is a break in the carriage or a transshipment, are— 25

“(a) within the territories of 2 countries; or

“(b) within the territory of a single country if there is an agreed stopping place within the territory of another country 30

“**passenger** means a person carried under a contract for carriage other than a person—

“(a) assigned by the carrier for duty as a member of the crew of the aircraft; or 35

**Struck out (unanimous)**

“(b) carried for the sole purpose of receiving or giving instruction in the control or navigation of aircraft in flight

“**personal injury** means actual bodily harm; and includes mental or nervous shock

5

“**successive carrier** means a person who performs part of the carriage if the carriage—

“(a) is performed by 2 or more persons in successive stages; and

“(b) has been regarded by the parties as a single operation, whether it has been agreed on by a single contract or by 2 or more contracts.

10

“(2) If any question arises as to whether or not an actual carrier has authority from a contracting carrier to perform any carriage, that authority is, in the absence of proof to the contrary, to be presumed.

15

Compare: 1967 No 151 s 18

**“91V Application of this Part**

“(1) This Part applies to any carriage by air (other than international carriage) in which, according to the contract between the parties,—

20

“(a) the place of departure and the place of destination are both in New Zealand; and

“(b) there is no agreed stopping place outside New Zealand.

“(2) **Subsection (1)** applies even if—

25

“(a) the aircraft in which the carriage takes place is at the same time engaged in international carriage; or

“(b) the contract for the carriage of any passenger is made without consideration.

“(3) This section applies subject to **section 91W**.

30

Compare: 1967 No 151 s 19(1)

**“91W Exclusions**

“(1) This Part does not apply to any carriage by air by an aircraft while it is being used solely for military purposes by the Armed Forces.

35

**Struck out (unanimous)**

- “(2) This Part does not apply to any carriage by air performed as part of an air transport service for the carriage of passengers operated by any club that is affiliated with the Royal New Zealand Aero Club (Incorporated) if—
- “(a) the carriage is performed in an aircraft owned or hired by the club; and 5
  - “(b) all persons carried on the aircraft, whether as crew or passengers, are members of the club with full rights of membership.
- “(3) **Subsection (2)** does not apply if any passenger is carried for the purpose of carrying out a function not related to the passenger’s membership of the club referred to in that subsection. 10
- Compare: 1967 No 151 s 19(3), (4)
- “91X Provisions if carriage performed by actual carrier**
- “(1) If the whole or any part of any carriage to which this Part applies is performed by an actual carrier,— 15
- “(a) both the contracting carrier and the actual carrier are subject to any liability imposed by this Part as follows:
    - “(i) the contracting carrier in respect of the whole of the carriage contemplated in the contract between the contracting carrier and the passenger; and 20
    - “(ii) the actual carrier solely in respect of the carriage that the actual carrier performs:
  - “(b) the acts and omissions of the actual carrier, and of the actual carrier’s servants and agents acting within the scope of their employment, must, in relation to the carriage performed by the actual carrier, be treated as also those of the contracting carrier: 25
  - “(c) the acts and omissions of the contracting carrier, and of the contracting carrier’s servants and agents acting within the scope of their employment, must, in relation to the carriage performed by the actual carrier, be treated as also those of the actual carrier: 30
  - “(d) any special agreement under which the contracting carrier assumes obligations not imposed by this Part, or any waiver of rights conferred by this Part, does not affect the actual carrier unless agreed to by the actual carrier. 35

**Struck out (unanimous)**

“(2) An act or omission specified in **subsection (1)(c)** does not subject the actual carrier to liability exceeding the limits specified in **section 91ZD**.

Compare: 1967 No 151 s 20

“91Y **Provisions if carriage performed by successive carriers** 5

If carriage is performed or is to be performed by successive carriers, the contracting carrier who is liable is,—

“(a) in the case of the death of or personal injury to a passenger, the successive carrier who performed the carriage during which the events on which the cause of action is based occurred: 10

“(b) in the case of damage caused by delay, the successive carrier who performed or was to perform the carriage where the delay occurred. 15

Compare: 1967 No 151 s 21

“91Z **Liability of carrier for death or injury**

“(1) A carrier is liable for damage caused by the death of, or personal injury to, a passenger resulting from an accident that takes place—

“(a) on board an aircraft; or 20

“(b) in the course of any of the operations of embarking or disembarking.

“(2) Any liability under **subsection (1)** does not extend to or include any passenger who, at the time of the accident, has cover in respect of the personal injury resulting from the accident under Part 3 of the Accident Insurance Act 1998. 25

“(3) This section applies subject to **sections 91ZB to 91Z0**.

Compare: 1967 No 151 s 22

“91ZA **Liability of carrier in respect of delay**

“(1) A carrier is liable for damage caused by delay in the carriage of passengers. 30

“(2) Despite **subsection (1)**, a carrier is not liable for damage caused by delay if the carrier proves that the delay—

“(a) arose by reason of—

“(i) meteorological conditions; or 35

**Struck out (unanimous)**

“(ii) compliance with instructions, advice, or information given by an air traffic control service; or

“(iii) obedience to orders or directions given by a lawful authority; or

“(b) was made necessary by *force majeure*; or 5

“(c) was necessary for the purpose of saving or attempting to save life.

Compare: 1967 No 151 s 25

**“91ZB Avoidance of liability**

The carrier is not liable under this Part if the carrier proves that— 10

“(a) the carrier, or the carrier’s servants and agents, had taken all necessary measures to avoid the damage; or

“(b) it was not possible for the carrier or the carrier’s servants and agents to have taken those measures. 15

Compare: 1967 No 151 s 26

**“91ZC Contributory negligence**

If the carrier proves that the damage was caused by, or contributed to, by the negligence of the passenger, the court may, in accordance with the provisions of the Contributory Negligence Act 1947, exonerate the carrier wholly or partly from liability. 20

Compare: 1967 No 151 s 27

**“91ZD Limitation of liability**

“(1) The liability of the carrier in respect of each passenger by reason of the passenger’s injury or death is limited to— 25

“(a) the sum of \$250,000 (exclusive of costs); or

“(b) any higher sum specified in the contract of carriage.

“(2) The liability of the carrier in respect of damage caused by delay is limited to the lesser of— 30

“(a) the amount of damage proved to have been sustained as a result of the delay; or

“(b) an amount representing 10 times the sum paid for the carriage.



**Struck out (unanimous)**

“(3) Despite **subsection (2)**, the carrier may, by special contract, increase the amount of the carrier’s liability under that subsection.

“(4) This Part does not affect any rule of law relating to remoteness of damage. 5

“(5) The provisions of this section apply in respect of loss or damage occurring before the commencement of this Part as if, for the expression “\$250,000” in **subsection (1)(a)**, there appeared the expression “\$42,000”.”. 10

Compare: 1967 No 151 s 28

**“91ZE Carriers to insure**

“(1) Every carrier must insure against liability for damage for which the carrier is liable under **section 91ZD** for an amount that will provide adequate insurance cover for that liability.

“(2) Every carrier who operates an aircraft carrying passengers in respect of whom insurance has not been arranged in accordance with this section, commits an offence and is liable on summary conviction to a fine not exceeding \$100,000. 15

“(3) For the purposes of this section, the **carrier**, in relation to any aircraft, is the person to whom the aircraft has been given, let, or hired out, if— 20

“(a) the aircraft has been given, let, or hired out for more than 14 days; and

“(b) none of the operative members of the crew, or the pilot, or commander, or navigator of the aircraft, are employed by the owner of the aircraft. 25

Compare: 1967 No 151 s 29

**“91ZF Contracting out**

“(1) A provision in a contract of carriage or in any bylaws made by a carrier purporting to relieve the carrier of liability, or to fix a lower limit than the appropriate limit of liability referred to in **section 91ZD**, has no effect. 30

**Struck out (unanimous)**

“(2) The invalidity under **subsection (1)** of a provision in a contract of carriage or in any bylaws does not, by itself, make any other provision of that contract or those bylaws invalid.

Compare: 1967 No 151 s 30

**“91ZG Wilful or reckless misconduct**

5

“(1) The limits of liability referred to in **section 91ZD** do not apply if it is proved that the damage resulted from an act or omission of the carrier done—

“(a) with intent to cause damage; or

“(b) recklessly and with knowledge that damage would probably result. 10

“(2) The limits of liability referred to in **section 91ZD** do not apply if it is proved that the damage resulted from an act or omission of the carrier’s servants or agents done—

“(a) with intent to cause damage; or 15

“(b) recklessly and with knowledge that damage would probably result; and

“(c) while the servant or agent was acting within the scope of that servant’s or agent’s employment. 20

Compare: 1967 No 151 s 31

**“91ZH Servants and agents of carrier**

“(1) If an action in respect of any damage is brought against a servant or agent of a carrier, and the servant or agent proves that the servant or agent acted within the scope of the servant’s or agent’s employment or authority, the servant or agent is entitled to rely on the limits of liability, if any, that the carrier would be entitled to invoke under **section 91ZD** in an action against the carrier in respect of that damage. 25

“(2) **Subsection (1)** does not apply if it is proved that the damage resulted from an act or omission of the servant or agent done— 30

“(a) with intent to cause damage or recklessly; and

“(b) with knowledge that damage would probably result.

Compare: 1967 No 151 s 32

**Struck out (unanimous)****“91ZI Aggregation of damages**

The aggregate of the amounts recoverable from the carriers, and from their servants and agents acting within the scope of their employment who are jointly and severally subject to liability under this Part, must not exceed the limits referred to in **section 91ZD**. 5

Compare: 1967 No 151 s 33

**“91ZJ Aggregate liability**

The limitations referred to in **section 91ZD** apply to the aggregate liability of a carrier, or a servant or agent of a carrier acting within the scope of the servant’s or agent’s employment, in all proceedings that are brought against the carrier or servant or agent under the law of New Zealand, together with any proceedings brought against the carrier or servant or agent outside New Zealand. 10  
15

Compare: 1967 No 151 s 34

**“91ZK Just and equitable orders and awards**

“(1) A court before which proceedings are brought to enforce a liability that is limited by this Part may, at any stage of the proceedings, make any order that appears to the court to be just and equitable in view of— 20

“(a) the provisions of this Part; and

“(b) any other proceedings that have been, or are likely to be, commenced in New Zealand or elsewhere to enforce the liability in whole or in part. 25

“(2) Without limiting **subsection (1)**, a court before which proceedings are brought to enforce a liability that is limited by this Part may, if the liability is, or may be, enforceable in other proceedings in New Zealand or elsewhere,— 30

“(a) award an amount less than the court would have awarded if the limitation applied solely to the proceedings before the court; or

“(b) make any part of its award conditional on the result of any other proceedings.

“(3) If the aggregate of the amounts recoverable in respect of the death or personal injury of a passenger exceeds, or appears 35

**Struck out (unanimous)**

likely to exceed, the limitation referred to in **section 91ZD**, claims established under the Deaths by Accidents Compensation Act 1952 (in the case of death) or by the passenger (in the case of personal injury) have priority over any other claims.

- “(4) A court before which proceedings are brought to enforce a liability that is limited by this Part may, after hearing those persons that the court directs, approve a compromise between the carrier and any claimant under the Deaths by Accidents Compensation Act 1952 (in the case of death) or a passenger (in the case of personal injury) as to the amount of damages to which the claimant is entitled. 5 10
- “(5) Any compromise approved under **subsection (4)** is binding on all persons entitled to damages in respect of the death or injury.
- “(6) References in section 4 of the Deaths by Accidents Compensation Act 1952 to a wrongful act, neglect, or default include references to any occurrence that gives rise to a liability under **section 91Z**. 15

Compare: 1967 No 151 s 35

**“91ZL Tortfeasors 20**

- “(1) The limitations on liability referred to in **section 91ZD** apply if— 20
- “(a) proceedings are brought by a tortfeasor to obtain a contribution from another tortfeasor; and
- “(b) the tortfeasor from whom contribution is sought is the carrier or a servant or agent of the carrier. 25
- “(2) Proceedings to which **subsection (1)** applies may not be brought by a tortfeasor to obtain a contribution from another tortfeasor after 2 years from the time when judgment is obtained against the tortfeasor seeking to obtain the contribution. 30
- “(3) This Part does not affect proceedings brought against any tortfeasor (other than the carrier or a servant or agent of the carrier).

Compare: 1967 No 151 s 36

**Struck out (unanimous)****91ZM Relationship between carriers**

This Part does not—

- “(a) prevent a carrier from entering into special contractual arrangements with another carrier; or
- “(b) affect the rights and obligations of the carriers between themselves. 5

Compare: 1967 No 141 s 37

**91ZN Limitation of actions**

- “(1) An action may not be brought under this Part against a carrier, or a servant or agent of a carrier acting within the scope of his or her employment, after 2 years from the later of the following dates: 10
  - “(a) the date of the arrival of the aircraft at the destination; or
  - “(b) if the aircraft did not arrive at the destination,— 15
    - “(i) the date on which the aircraft ought to have arrived at the destination; or
    - “(ii) the date on which the carriage stopped.
- “(2) Despite **subsection (1)**, application may be made to the court, after notice to the intended defendant, for leave to bring an action at any time within 6 years after the date on which the cause of action accrued as provided in **subsection (1)**. 20
- “(3) On application under **subsection (2)**, the court may grant leave accordingly if it considers that it is just to do so and if it considers that the delay in bringing the action was caused by— 25
  - “(a) mistake of fact; or
  - “(b) mistake of any matter of law other than the provisions of this subsection; or
  - “(c) any other reasonable cause; or 30
  - “(d) the intended defendant was not materially prejudiced in the defendant’s defence or otherwise by the delay.
- “(4) If the court grants leave under **subsection (3)**, that leave may be subject to such conditions (if any) that the court thinks just to impose. 35

**Struck out (unanimous)**

“(5) This section applies subject to the special provisions relating to tortfeasors in **section 91ZL**.

Compare: 1967 No 151 s 39

**“91ZO Combined carriage**

If a contract of carriage made with an air carrier provides for the carriage to be performed partly by air and partly by a mode of carriage other than by air, this Part applies only to the carriage by air. 5

Compare: 1967 No 151 s 40

**“91ZP Regulations**

The Governor-General may, by Order in Council, make regulations in respect of any carriage by air to which this Part applies for all or any of the following purposes: 10

“(a) prescribing, in relation to tickets, checks, waybills, and other documents relating to the carriage of passengers, the duties, obligations, rights, and liabilities of carriers, passengers, and other persons: 15

“(b) regulating the carriage of passengers on aircraft, and the provisions of contracts of carriage relating to that carriage: 20

“(c) prescribing offences against the regulations and penalties, not exceeding a fine of \$200, in respect of any of those offences:

“(d) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect. 25

Compare: 1967 No 151 s 44”.

**38 Repeal**

The Carriage by Air Act 1967 (1967 No 151) is repealed.

**39 New sections 96C to 96F substituted**

The principal Act is amended by repealing section 96C, and substituting the following sections: 30

- “96C **Procedure for offence of smoking on international flight** 5
- “(1) If an offence against section 96B(3) is alleged to have been committed by any person (the **defendant**), the pilot-in-command of the aircraft at the time of the alleged offence may, by any available means, notify either—
- “(a) ~~(a member of the Aviation Security Service)~~an aviation security officer; or
- “(b) a member of the police.
- “(2) If the ~~(member of the Aviation Security Service)~~aviation security officer or the member of the police (the **informant**) 10 has reason to believe that a defendant has committed an offence against section 96B(3),—
- “(a) the defendant may be proceeded against for the alleged offence under the Summary Proceedings Act 1957; or
- “(b) the informant may issue an infringement notice in 15 respect of the alleged offence.
- “(3) The defendant must, on request by the informant, produce his or her passport to the informant for the purpose of enabling the informant to verify the identity of the defendant.
- “(4) A passport produced by the defendant to the informant under 20 **subsection (3)** must be inspected immediately and returned to the defendant as soon as the inspection has concluded.
- “(5) Any informant ~~(member of the Aviation Security Service)~~ or a member of the police (not necessarily the informant)—
- “(a) may deliver an infringement notice (or a copy of it) to 25 the defendant personally; or
- “(b) may send it (or a copy of it) to the defendant by post addressed to the defendant’s last known place of residence or business.
- “96D **Form of infringement notice** 30
- An infringement notice under **section 96C** must be in the prescribed form, and must specify—
- “(a) sufficient details to inform the defendant fairly of the time, place, and nature of the offence alleged; and
- “(b) that the infringement fee is \$200; and 35
- “(c) where the fee may be paid; and
- “(d) the time within which the fee may be paid; and
- “(e) how and where payment may be made under **section 96E**; and

- “(f) a summary of how the provisions of section 21(10) of the Summary Proceedings Act 1957 apply to the offence alleged; and
- “(g) that the defendant has a right to request a hearing; and
- “(h) a statement of the consequences if the defendant neither pays the fee nor requests a hearing; and
- “(i) such other particulars as are prescribed by regulations made under this Act. 5
- “96E **Payment of fees**
- “(1) If an infringement notice under **section 96C** (or a copy of it) is served by delivering it to the defendant either before or after the defendant disembarks from the aircraft, the defendant may choose to pay immediately the infringement fee in the manner specified in the notice. 10
- “(2) All infringement fees received in respect of an infringement notice under **section 96C**, whether immediately after service or later, must be paid into the Crown Bank Account. 15
- “96F **Filing of notices**
- “(1) The informant or *(another member of the Aviation Security Service or the police)*an aviation security officer (not necessarily the informant) or a member of the police (not necessarily the informant), as the case may be, may file in a District Court a copy of the infringement notice under **section 96C** after a period of 14 days from the date of service of the infringement notice, or a copy of the infringement notice, if— 20
- “(a) the infringement fee for the offence has not by then been paid to the informant at the address specified in the notice (or immediately under **section 96E**); and
- “(b) the informant has not by then received at that address a notice requesting a hearing in respect of that offence. 25 30
- “(2) The copy of the infringement notice filed under **subsection (1)** must have recorded on it the date and method of service on the defendant.
- “(3) If an infringement notice under **section 96C** has been issued and served, the Summary Proceedings Act 1957 applies as if that notice were a reminder notice served under section 21(2) of that Act, and the provisions of that Act apply, with all necessary modifications, to the alleged offence as if— 35



- “(a) the reference in section 21(1)(b) to filing a copy of a reminder notice under the section were a reference to filing a copy of the infringement notice under **subsection (1)** of this section; and
- “(b) **subsection (1)** of this section were in the place of section 21(3); and 5
- “(c) the reference in section 21(3A) to a copy of a reminder notice not having been filed under section 21(3) were a reference to a copy of the infringement notice not having been filed under **subsection (1)** of this section; and 10
- “(d) the reference in section 21(5) to a copy of a reminder notice filed under section 21(3) were a reference to a copy of the infringement notice filed under **subsection (1)** of this section; and
- “(e) the reference in section 21(6)(b) and in section 21(10)(a) to a period of 28 days after the service of a reminder notice were a reference to the period of 14 days after the service of the infringement notice; and 15
- “(f) the references to reminder notices in the definition of **defendant** in section 2 and in section 78B, and in any other relevant provisions of that Act, were references to the infringement notice. 20
- “(4) Despite section 203(1) of the Summary Proceedings Act 1957, an infringement notice under **section 96C** may be issued and served on a Sunday. 25
- “(5) For the purpose of **subsection (1)**, an infringement notice sent by post is deemed to have been served on the defendant when it was posted.”
- 40 Information to be supplied to chief executive of the Ministry of Economic Development** 30  
Section 99B of the principal Act is amended by omitting the words “chief executive of the Ministry of Economic Development” wherever they appear, and substituting in each case the word “Secretary”.
- 41 Administration of sections 99A to 99C** 35  
Section 99D of the principal Act is repealed.

**42 Civil Aviation Authority**

The Third Schedule of the principal Act is amended by repealing clause 6, and substituting the following clause:

**Struck out (unanimous)**

“6 Any member may at any time be removed from office by the Minister.”

5

**New (unanimous)**

“6 Any member may, at any time, be removed from office by the Minister for inability to perform the functions of the office, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Minister.”

**43 Consequential amendments**

10

The Acts specified in **Schedule 2** are amended in the manner set out in that schedule.

**Part 2****2002–2003 America’s Cup Regatta****44 Commencement**

15

This Part comes into force on **1 July 2002**.

**45 Expiry of this Part**

This Part expires on the close of **30 June 2003**.

**46 Purpose of this Part**

20

The purpose of this Part is to make provision for the accrediting of persons permitted to enter airspace for purposes connected with the 2002–2003 America’s Cup regatta.

**47 Interpretation**

In this Part, unless the context otherwise requires,—

**Civil Aviation Rules** or **rules** means the ordinary rules made under Part III of the principal Act

25

**controlling authority** means the controlling authority responsible for controlling entry to and operation of aircraft within the designated airspace, as specified by the Director under the rules

**designated airspace** means the areas of airspace designated by the Director under the rules as restricted areas for purposes connected with the regatta, including the airspace above—

- (a) the area in which the regatta is conducted; and
- (b) the transit area between the Viaduct Basin and the area in which the regatta is conducted

**event organiser** means the person or persons appointed by the Minister under **section 49** to develop and administer an accreditation system in relation to access to the designated airspace

**nominated controlling authority**, in relation to a person's application for appointment as an event organiser, means the person nominated by the applicant to be specified by the Director as the controlling authority applicable to the proposed airspace

**proposed airspace**, in relation to a person's application for appointment as an event organiser, means the areas of airspace proposed by the applicant to be designated by the Director as restricted areas for purposes connected with the regatta

**regatta**—

- (a) means the yachting regatta known as the America's Cup which is to take place in the years 2002 and 2003; and
- (b) includes any preceding Challenger Selection Series.

*Appointment and functions of event organiser*

**48 Who may apply, and how to apply, for appointment as event organiser**

- (1) Any person or persons may apply to the Minister for appointment as an event organiser.
- (2) An applicant for appointment must—
  - (a) make an application in accordance with **subsection (3)**; and
  - (b) have a proposed accreditation system under **section 51**; and
  - (c) have entered into a binding contract under **section 52** with a nominated controlling authority.

- (3) An application must include, or be accompanied by,—
- (a) details of the applicant’s proposed accreditation system, including the matters specified in **section 51**; and
  - (b) a copy of the contract between the applicant and the applicant’s nominated controlling authority that complies with the requirements set out in **section 52**; and
  - (c) an indication that the proposed airspace is or is likely to be designated under the rules as a restricted area and that the applicant’s nominated controlling authority is or is likely to be the controlling authority applicable to the proposed airspace; and
  - (d) an assessment by the applicant of his or her anticipated costs of the type specified in **section 51(3)**.
- 49 Appointment of event organiser**
- (1) The Minister may make an appointment under **subsection (2)** if—
- (a) the applicant has submitted an application in accordance with **section 48**; and
  - (b) the Minister is satisfied that—
    - (i) the proposed airspace is or is likely to be designated under the rules as a restricted area and the applicant’s nominated controlling authority is or is likely to be the controlling authority applicable to the proposed airspace; and
    - (ii) the applicant is responsible for the management of any part of the regatta; and
    - (iii) the appointment will contribute to the effective management of any part of the regatta.
- (2) The Minister may, by notice in the *Gazette*, appoint any person or persons to be an event organiser.
- (3) The Minister may appoint, under **subsection (2)**, as many event organisers as the Minister thinks fit.
- (4) An appointment under **subsection (2)** may be made subject to reasonable conditions relating to the use of airspace for the regatta that the Minister thinks fit to impose after consultation with the persons or organisations that the Minister considers appropriate.
- (5) Without limiting **subsection (4)**, the Minister may impose under that subsection reasonable conditions relating to media coverage of the regatta.

**50 Function and power of event organiser**

An event organiser may, in accordance with the accreditation system developed and administered by the event organiser under this Part, determine which persons and organisations may enter the designated airspace.

5

*Accreditation system***51 Event organiser's accreditation system**

- (1) An event organiser must develop and administer an accreditation system.
- (2) The accreditation system must provide for all of the following matters: 10
- (a) the accreditation by the event organiser of any person or organisation permitted to enter the designated airspace:
  - (b) the imposition by the event organiser of terms and conditions, subject to any terms and conditions imposed by the Director under the rules, in respect of— 15
    - (i) the accreditation of a person or organisation:
    - (ii) entry to and operation within the designated airspace by an accredited person or organisation:
  - (c) the imposition by the event organiser of fees and charges payable by an accredited person or organisation in respect of entry to the designated airspace: 20
  - (d) the enforcement of any terms and conditions imposed by the event organiser under **paragraph (b)**.
- (3) Any fee or charge imposed by the event organiser under **subsection (2)(c)** must bear a proper relation to the cost to the event organiser of— 25
- (a) developing and administering the accreditation system; and
  - (b) administering any terms and conditions imposed under **subsection (2)(b)**. 30
- (4) The accreditation system must not provide for payment of a fee or charge in respect of the accreditation of a person or organisation.

*Contract between event organiser and controlling authority*

- 52 Event organiser’s contract with nominated controlling authority**
- (1) A contract between an applicant for appointment as an event organiser and the applicant’s nominated controlling authority may be conditional only upon all or any of the following: 5
- (a) the appointment of the applicant as an event organiser:
  - (b) the designation of the proposed airspace as a restricted area under the rules:
  - (c) the specification of the applicant’s nominated controlling authority as the controlling authority applicable to the proposed airspace. 10
- (2) The contract must—
- (a) provide that the controlling authority is responsible for ensuring that— 15
    - (i) only those persons and organisations accredited by the event organiser enter the designated airspace; and
    - (ii) pilots operating in the designated airspace do so in accordance with *(any conditions imposed by the Director under the rules and, subject to those conditions,)* any terms or conditions imposed by the event organiser; and 20
  - (b) specify any fees or charges payable by the event organiser to the controlling authority. 25
- (3) When the conditions specified in **subsection (1)** (if applicable) are satisfied, the contract is valid for the purposes of this Act.

**53 Controlling authority may act in accordance with contract**

Subject to any conditions imposed by the Director under the rules under which the controlling authority must operate, the controlling authority may act in accordance with the contract between itself and an event organiser referred to in **section 52**. 30

*Disclosure of costs*

- 54 Event organiser may be required to disclose costs** 35
- (1) An event organiser must, whenever so requested by the Minister, disclose to the Minister the costs of the type specified in **section 51(3)** that have been incurred by the event organiser.

- (2) Despite anything in the Official Information Act 1982, the Minister must, whenever so requested by any person, disclose to that person any information obtained under **subsection (1)**.

*Cancellation of appointment of event organiser*

- 55 Minister may cancel appointment of event organiser** 5
- (1) The Minister may, by notice in the *Gazette*, cancel an appointment made under **section 49** if—
- (a) the Minister is no longer satisfied that any of the requirements set out in **section 49(1)(b) or section 49(4)** are still being met; or 10
- (b) the Minister is satisfied, on the basis of information obtained under **section 54**, that fees and charges imposed on accredited persons or organisations by the event organiser do not bear a proper relation to the costs of the type specified in **section 51(3)** that have been incurred by the event organiser. 15
- (2) If the appointment of the event organiser is cancelled or, if there is more than 1 event organiser, the appointment of every event organiser is cancelled,—
- (a) the Director must remove the controlling authority applicable to the designated airspace; and 20
- (b) the Minister may appoint 1 or more new event organisers under **section 49**.
-

s 35

**Schedule 1**  
**New Schedule 6 added to principal Act**

s 3(2)

**Schedule 6**  
**The Montreal Convention**

The English Text

5

**CONVENTION**  
**FOR THE UNIFICATION OF CERTAIN RULES FOR**  
**INTERNATIONAL CARRIAGE BY AIR**

**THE STATES PARTIES TO THIS CONVENTION**

RECOGNIZING the significant contribution of the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed in Warsaw on 12 October 1929, hereinafter referred to as the “Warsaw Convention”, and other related instruments to the harmonization of private international air law;

10

15

RECOGNIZING the need to modernize and consolidate the Warsaw Convention and related instruments;

RECOGNIZING the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution;

20

REAFFIRMING the desirability of an orderly development of international air transport operations and the smooth flow of passengers, baggage and cargo in accordance with the principles and objectives of the Convention on International Civil Aviation, done at Chicago on 7 December 1944;

25

CONVINCED that collective State action for further harmonization and codification of certain rules governing international carriage by air through a new Convention is the most adequate means of achieving an equitable balance of interests;

30

HAVE AGREED AS FOLLOWS:



**Schedule 6**—continued**Chapter I**

## General Provisions

**Article 1 — Scope of Application**

1. This Convention applies to all international carriage of persons, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking. 5
2. For the purposes of this Convention, the expression *international carriage* means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two States Parties, or within the territory of a single State Party if there is an agreed stopping place within the territory of another State, even if that State is not a State Party. Carriage between two points within the territory of a single State Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention. 10  
15
3. Carriage to be performed by several successive carriers is deemed, for the purposes of this Convention, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State. 20  
25
4. This Convention applies also to carriage as set out in Chapter V, subject to the terms contained therein.

**Article 2 — Carriage Performed by State and Carriage of Postal Items**

1. This Convention applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1. 30
2. In the carriage of postal items, the carrier shall be liable only to the relevant postal administration in accordance with the rules applicable to the relationship between the carriers and the postal administrations. 35

**Schedule 6**—continued

3. Except as provided in paragraph 2 of this Article, the provisions of this Convention shall not apply to the carriage of postal items.

**Chapter II**

**Documentation and Duties of the Parties Relating to the Carriage of Passengers, Baggage and Cargo** 5

**Article 3 — Passengers and Baggage**

1. In respect of carriage of passengers, an individual or collective document of carriage shall be delivered containing:

- (a) an indication of the places of departure and destination; 10
- (b) if the places of departure and destination are within the territory of a single State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place. 15

2. Any other means which preserves the information indicated in paragraph 1 may be substituted for the delivery of the document referred to in that paragraph. If any such other means is used, the carrier shall offer to deliver to the passenger a written statement of the information so preserved. 20

3. The carrier shall deliver to the passenger a baggage identification tag for each piece of checked baggage.

4. The passenger shall be given written notice to the effect that where this Convention is applicable it governs and may limit the liability of carriers in respect of death or injury and for destruction or loss of, or damage to, baggage, and for delay. 25

5. Non-compliance with the provisions of the foregoing paragraphs shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability. 30

**Article 4 — Cargo**

1. In respect of the carriage of cargo, an air waybill shall be delivered.

**Schedule 6**—continued

2. Any other means which preserves a record of the carriage to be performed may be substituted for the delivery of an air waybill. If such other means are used, the carrier shall, if so requested by the consignor, deliver to the consignor a cargo receipt permitting identification of the consignment and access to the information contained in the record preserved by such other means. 5

**Article 5 — Contents of Air Waybill or Cargo Receipt**

The air waybill or the cargo receipt shall include:

- (a) an indication of the places of departure and destination; 10
- (b) if the places of departure and destination are within the territory of a single State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place; and 15
- (c) an indication of the weight of the consignment.

**Article 6 — Document Relating to the Nature of the Cargo**

The consignor may be required, if necessary, to meet the formalities of customs, police and similar public authorities to deliver a document indicating the nature of the cargo. This provision creates for the carrier no duty, obligation or liability resulting therefrom. 20

**Article 7 — Description of Air Waybill**

- 1. The air waybill shall be made out by the consignor in three original parts. 25
- 2. The first part shall be marked “for the carrier”; it shall be signed by the consignor. The second part shall be marked “for the consignee”; it shall be signed by the consignor and by the carrier. The third part shall be signed by the carrier who shall hand it to the consignor after the cargo has been accepted. 30
- 3. The signature of the carrier and that of the consignor may be printed or stamped.

**Schedule 6**—continued

4. If, at the request of the consignor, the carrier makes out the air waybill, the carrier shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

**Article 8 — Documentation for Multiple Packages**

When there is more than one package: 5

- (a) the carrier of cargo has the right to require the consignor to make out separate air waybills;
- (b) the consignor has the right to require the carrier to deliver separate cargo receipts when the other means referred to in paragraph 2 of Article 4 are used. 10

**Article 9 — Non-compliance with Documentary Requirements**

Non-compliance with the provisions of Articles 4 to 8 shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability. 15

**Article 10 — Responsibility for Particulars of Documentation**

1. The consignor is responsible for the correctness of the particulars and statements relating to the cargo inserted by it or on its behalf in the air waybill or furnished by it or on its behalf to the carrier for insertion in the cargo receipt or for insertion in the record preserved by the other means referred to in paragraph 2 of Article 4. The foregoing shall also apply where the person acting on behalf of the consignor is also the agent of the carrier. 20  
25

2. The consignor shall indemnify the carrier against all damage suffered by it, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor or on its behalf. 30

3. Subject to the provisions of paragraphs 1 and 2 of this Article, the carrier shall indemnify the consignor against all damage suffered by it, or by any other person to whom the consignor is liable, by

**Schedule 6**—continued

reason of the irregularity, incorrectness or incompleteness of the particulars and statements inserted by the carrier or on its behalf in the cargo receipt or in the record preserved by the other means referred to in paragraph 2 of Article 4.

**Article 11 — Evidentiary Value of Documentation** 5

1. The air waybill or the cargo receipt is *prima facie* evidence of the conclusion of the contract, of the acceptance of the cargo and of the conditions of carriage mentioned therein.
2. Any statements in the air waybill or the cargo receipt relating to the weight, dimensions and packing of the cargo, as well as those relating to the number of packages, are *prima facie* evidence of the facts stated; those relating to the quantity, volume and condition of the cargo do not constitute evidence against the carrier except so far as they both have been, and are stated in the air waybill or the cargo receipt to have been, checked by it in the presence of the consignor, or relate to the apparent condition of the cargo. 10 15

**Article 12 — Right of Disposition of Cargo**

1. Subject to its liability to carry out all its obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the airport of departure or destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee originally designated, or by requiring it to be returned to the airport of departure. The consignor must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and must reimburse any expenses occasioned by the exercise of this right. 20 25
2. If it is impossible to carry out the instructions of the consignor, the carrier must so inform the consignor forthwith.
3. If the carrier carries out the instructions of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill or the cargo receipt delivered to the latter, the carrier will be liable, without prejudice to its right of recovery from the consignor, for any damage which may be caused thereby to any 30

**Schedule 6**—continued

person who is lawfully in possession of that part of the air waybill or the cargo receipt.

4. The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the consignee declines to accept the cargo, or cannot be communicated with, the consignor resumes its right of disposition. 5

**Article 13 — Delivery of the Cargo**

1. Except when the consignor has exercised its right under Article 12, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to deliver the cargo to it, on payment of the charges due and on complying with the conditions of carriage. 10

2. Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives. 15

3. If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of seven days after the date on which it ought to have arrived, the consignee is entitled to enforce against the carrier the rights which flow from the contract of carriage.

**Article 14 — Enforcement of the Rights of Consignor and Consignee** 20

The consignor and the consignee can respectively enforce all the rights given to them by Articles 12 and 13, each in its own name, whether it is acting in its own interest or in the interest of another, provided that it carries out the obligations imposed by the contract of carriage. 25

**Article 15 — Relations of Consignor and Consignee or Mutual Relations of Third Parties**

1. Articles 12, 13 and 14 do not affect either the relations of the consignor and the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee. 30

**Schedule 6**—continued

2. The provisions of Articles 12, 13 and 14 can only be varied by express provision in the air waybill or the cargo receipt.

**Article 16 — Formalities of Customs, Police or Other Public Authorities**

1. The consignor must furnish such information and such documents as are necessary to meet the formalities of customs, police and any other public authorities before the cargo can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier, its servants or agents. 5  
10
2. The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

**Chapter III****Liability of the Carrier and Extent of Compensation for Damage** 15**Article 17 — Death and Injury of Passengers — Damage to Baggage**

1. The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking. 20
2. The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault or that of its servants or agents. 25  
30
3. If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of twenty-one days after the date on which it ought to have arrived, the passenger is

**Schedule 6**—continued

entitled to enforce against the carrier the rights which flow from the contract of carriage.

4. Unless otherwise specified, in this Convention the term “baggage” means both checked baggage and unchecked baggage.

**Article 18 — Damage to Cargo**

5

1. The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, cargo upon condition only that the event which caused the damage so sustained took place during the carriage by air.

2. However, the carrier is not liable if and to the extent it proves that the destruction, or loss of, or damage to, the cargo resulted from one or more of the following: 10

- (a) inherent defect, quality or vice of that cargo;
- (b) defective packaging of that cargo performed by a person other than the carrier or its servants or agents; 15
- (c) an act of war or an armed conflict;
- (d) an act of public authority carried out in connection with the entry, exit or transit of the cargo.

3. The carriage by air within the meaning of paragraph 1 of this Article comprises the period during which the cargo is in the charge of the carrier. 20

4. The period of the carriage by air does not extend to any carriage by land, by sea or by inland waterway performed outside an airport. If, however, such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air. If a carrier, without the consent of the consignor, substitutes carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air. 25 30



**Schedule 6—continued****Article 19 — Delay**

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures. 5

**Article 20 — Exoneration**

If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When by reason of death or injury of a passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger. This Article applies to all the liability provisions in the Convention, including paragraph 1 of Article 21. 10  
15  
20

**Article 21 — Compensation in Case of Death or Injury of Passengers**

1. For damages arising under paragraph 1 of Article 17 not exceeding 100 000 Special Drawing Rights for each passenger, the carrier shall not be able to exclude or limit its liability. 25
2. The carrier shall not be liable for damages arising under paragraph 1 of Article 17 to the extent that they exceed for each passenger 100 000 Special Drawing Rights if the carrier proves that:
  - (a) such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or 30
  - (b) such damage was solely due to the negligence or other wrongful act or omission of a third party.

**Schedule 6—continued****Article 22 — Limits of Liability in Relation to Delay,  
Baggage and Cargo**

1. In the case of damage caused by delay as specified in Article 19 in the carriage of persons, the liability of the carrier for each passenger is limited to 4 150 Special Drawing Rights. 5
2. In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1 000 Special Drawing Rights for each passenger unless the passenger has made, at the time when the checked baggage was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the passenger's actual interest in delivery at destination. 10
3. In the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage or delay is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the consignor's actual interest in delivery at destination. 15 20
4. In the case of destruction, loss, damage or delay of part of the cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the destruction, loss, damage or delay of a part of the cargo, or of an object contained therein, affects the value of other packages covered by the same air waybill, or the same receipt or, if they were not issued, by the same record preserved by the other means referred to in paragraph 2 of Article 4, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability. 25 30
5. The foregoing provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the carrier, its servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would 35

**Schedule 6**—continued

probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that such servant or agent was acting within the scope of its employment.

6. The limits prescribed in Article 21 and in this Article shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff, including interest. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

**Article 23 — Conversion of Monetary Units**

1. The sums mentioned in terms of Special Drawing Right in this Convention shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgement. The value of a national currency, in terms of the Special Drawing Right, of a State Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgement, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a State Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that State.

2. Nevertheless, those States which are not Members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 of this Article may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier prescribed in Article 21 is fixed at a sum of 1 500 000 monetary units per passenger in judicial proceedings in their territories; 62 500 monetary units per passenger with respect to paragraph 1 of Article 22; 15 000 monetary units per passenger with respect to paragraph 2 of Article 22; and 250 monetary units per kilogramme with respect to paragraph 3 of Article 22.

**Schedule 6**—continued

This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into the national currency concerned in round figures. The conversion of these sums into national currency shall be made according to the law of the State concerned.

5

3. The calculation mentioned in the last sentence of paragraph 1 of this Article and the conversion method mentioned in paragraph 2 of this Article shall be made in such manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in Articles 21 and 22 as would result from the application of the first three sentences of paragraph 1 of this Article. States Parties shall communicate to the depositary the manner of calculation pursuant to paragraph 1 of this Article, or the result of the conversion in paragraph 2 of this Article as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

10

15

**Article 24 — Review of Limits**

1. Without prejudice to the provisions of Article 25 of this Convention and subject to paragraph 2 below, the limits of liability prescribed in Articles 21, 22 and 23 shall be reviewed by the Depositary at five-year intervals, the first such review to take place at the end of the fifth year following the date of entry into force of this Convention, or if the Convention does not enter into force within five years of the date it is first open for signature, within the first year of its entry into force, by reference to an inflation factor which corresponds to the accumulated rate of inflation since the previous revision or in the first instance since the date of entry into force of the Convention. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in paragraph 1 of Article 23.

20

25

30

2. If the review referred to in the preceding paragraph concludes that the inflation factor has exceeded 10 per cent, the Depositary shall notify States Parties of a revision of the limits of liability. Any such revision shall become effective six months after its notification to the States Parties. If within three months after its notification to

35

**Schedule 6**—continued

the States Parties a majority of the States Parties register their disapproval, the revision shall not become effective and the Depositary shall refer the matter to a meeting of the States Parties. The Depositary shall immediately notify all States Parties of the coming into force of any revision.

5

3. Notwithstanding paragraph 1 of this Article, the procedure referred to in paragraph 2 of this Article shall be applied at any time provided that one-third of the States Parties express a desire to that effect and upon condition that the inflation factor referred to in paragraph 1 has exceeded 30 per cent since the previous revision or since the date of entry into force of this Convention if there has been no previous revision. Subsequent reviews using the procedure described in paragraph 1 of this Article will take place at five-year intervals starting at the end of the fifth year following the date of the reviews under the present paragraph.

10

15

**Article 25 — Stipulation on Limits**

A carrier may stipulate that the contract of carriage shall be subject to higher limits of liability than those provided for in this Convention or to no limits of liability whatsoever.

**Article 26 — Invalidity of Contractual Provisions**

20

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

25

**Article 27 — Freedom to Contract**

Nothing contained in this Convention shall prevent the carrier from refusing to enter into any contract of carriage, from waiving any defences available under the Convention, or from laying down conditions which do not conflict with the provisions of this Convention.

30

**Schedule 6—continued****Article 28 — Advance Payments**

In the case of aircraft accidents resulting in death or injury of passengers, the carrier shall, if required by its national law, make advance payments without delay to a natural person or persons who are entitled to claim compensation in order to meet the immediate economic needs of such persons. Such advance payments shall not constitute a recognition of liability and may be offset against any amounts subsequently paid as damages by the carrier. 5

**Article 29 — Basis of Claims**

In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable. 10 15

**Article 30 — Servants, Agents — Aggregation of Claims**

1. If an action is brought against a servant or agent of the carrier arising out of damage to which the Convention relates, such servant or agent, if they prove that they acted within the scope of their employment, shall be entitled to avail themselves of the conditions and limits of liability which the carrier itself is entitled to invoke under this Convention. 20 25
2. The aggregate of the amounts recoverable from the carrier, its servants and agents, in that case, shall not exceed the said limits.
3. Save in respect of the carriage of cargo, the provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result. 30

**Schedule 6—continued****Article 31 — Timely Notice of Complaints**

1. Receipt by the person entitled to delivery of checked baggage or cargo without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the document of carriage or with the record preserved by the other means referred to in paragraph 2 of Article 3 and paragraph 2 of Article 4. 5
2. In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of checked baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay, the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his or her disposal. 10
3. Every complaint must be made in writing and given or dispatched within the times aforesaid. 15
4. If no complaint is made within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on its part.

**Article 32 — Death of Person Liable**

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this Convention against those legally representing his or her estate. 20

**Article 33 — Jurisdiction**

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the court at the place of destination. 25
2. In respect of damage resulting from the death or injury of a passenger, an action may be brought before one of the courts mentioned in paragraph 1 of this Article, or in the territory of a State Party in which at the time of the accident the passenger has his or her principal and permanent residence and to or from which the carrier operates services for the carriage of passengers by air, either on its 30

**Schedule 6**—continued

own aircraft, or on another carrier's aircraft pursuant to a commercial agreement, and in which that carrier conducts its business of carriage of passengers by air from premises leased or owned by the carrier itself or by another carrier with which it has a commercial agreement.

5

3. For the purposes of paragraph 2,

(a) "commercial agreement" means an agreement, other than an agency agreement, made between carriers and relating to the provision of their joint services for carriage of passengers by air;

10

(b) "principal and permanent residence" means the one fixed and permanent abode of the passenger at the time of the accident. The nationality of the passenger shall not be the determining factor in this regard.

4. Questions of procedure shall be governed by the law of the court seised of the case.

15

**Article 34 — Arbitration**

1. Subject to the provisions of this Article, the parties to the contract of carriage for cargo may stipulate that any dispute relating to the liability of the carrier under this Convention shall be settled by arbitration. Such agreement shall be in writing.

20

2. The arbitration proceedings shall, at the option of the claimant, take place within one of the jurisdictions referred to in Article 33.

3. The arbitrator or arbitration tribunal shall apply the provisions of this Convention.

25

4. The provisions of paragraphs 2 and 3 of this Article shall be deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement which is inconsistent therewith shall be null and void.

30



**Schedule 6—continued****Article 35 — Limitation of Actions**

1. The right to damages shall be extinguished if an action is not brought within a period of two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped. 5
2. The method of calculating that period shall be determined by the law of the court seised of the case.

**Article 36 — Successive Carriage**

1. In the case of carriage to be performed by various successive carriers and falling within the definition set out in paragraph 3 of Article 1, each carrier which accepts passengers, baggage or cargo is subject to the rules set out in this Convention and is deemed to be one of the parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under its supervision. 10  
15
2. In the case of carriage of this nature, the passenger or any person entitled to compensation in respect of him or her can take action only against the carrier which performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey. 20
3. As regards baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier which performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee. 25

**Article 37 — Right of Recourse against Third Parties**

- Nothing in this Convention shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any other person. 30

**Schedule 6**—continued**Chapter IV****Combined Carriage****Article 38 — Combined Carriage**

1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention shall, subject to paragraph 4 of Article 18, apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1. 5
2. Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention are observed as regards the carriage by air. 10

**Chapter V****Carriage by Air Performed by a Person other than the Contracting Carrier** 15**Article 39 — Contracting Carrier — Actual Carrier**

The provisions of this Chapter apply when a person (hereinafter referred to as “the contracting carrier”) as a principal makes a contract of carriage governed by this Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor, and another person (hereinafter referred to as “the actual carrier”) performs, by virtue of authority from the contracting carrier, the whole or part of the carriage, but is not with respect to such part a successive carrier within the meaning of this Convention. Such authority shall be presumed in the absence of proof to the contrary. 20 25

**Article 40 — Respective Liability of Contracting and Actual Carriers**

If an actual carrier performs the whole or part of carriage which, according to the contract referred to in Article 39, is governed by this Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Chapter, be subject to the rules of this Convention, the former for the whole of the carriage 30

**Schedule 6**—continued

contemplated in the contract, the latter solely for the carriage which it performs.

**Article 41 — Mutual Liability**

1. The acts and omissions of the actual carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier. 5

2. The acts and omissions of the contracting carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the amounts referred to in Articles 21, 22, 23 and 24. Any special agreement under which the contracting carrier assumes obligations not imposed by this Convention or any waiver of rights or defences conferred by this Convention or any special declaration of interest in delivery at destination contemplated in Article 22 shall not affect the actual carrier unless agreed to by it. 10 15

**Article 42 — Addressee of Complaints and Instructions**

Any complaint to be made or instruction to be given under this Convention to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Nevertheless, instructions referred to in Article 12 shall only be effective if addressed to the contracting carrier. 20

**Article 43 — Servants and Agents** 25

In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if they prove that they acted within the scope of their employment, be entitled to avail themselves of the conditions and limits of liability which are applicable under this Convention to the carrier whose servant or agent they are, unless it is proved that they acted in a manner that prevents the limits of liability from being invoked in accordance with this Convention. 30

**Schedule 6**—continued**Article 44 — Aggregation of Damages**

In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the contracting carrier, and from their servants and agents acting within the scope of their employment, shall not exceed the highest amount which could be awarded against either the contracting carrier or the actual carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to that person.

5

**Article 45 — Addressee of Claims**

In relation to the carriage performed by the actual carrier, an action for damages may be brought, at the option of the plaintiff, against that carrier or the contracting carrier, or against both together or separately. If the action is brought against only one of those carriers, that carrier shall have the right to require the other carrier to be joined in the proceedings, the procedure and effects being governed by the law of the court seised of the case.

10

15

**Article 46 — Additional Jurisdiction**

Any action for damages contemplated in Article 45 must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before a court in which an action may be brought against the contracting carrier, as provided in Article 33, or before the court having jurisdiction at the place where the actual carrier has its domicile or its principal place of business.

20

**Article 47 — Invalidity of Contractual Provisions**

Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Chapter or to fix a lower limit than that which is applicable according to this Chapter shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Chapter.

25

30

**Schedule 6—continued****Article 48 — Mutual Relations of Contracting and Actual Carriers**

Except as provided in Article 45, nothing in this Chapter shall affect the rights and obligations of the carriers between themselves, including any right of recourse or indemnification.

5

**Chapter VI****Other Provisions****Article 49 — Mandatory Application**

Any clause contained in the contract of carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void.

10

**Article 50 — Insurance**

States Parties shall require their carriers to maintain adequate insurance covering their liability under this Convention. A carrier may be required by the State Party into which it operates to furnish evidence that it maintains adequate insurance covering its liability under this Convention.

15

**Article 51 — Carriage Performed in Extraordinary Circumstances**

20

The provisions of Articles 3 to 5, 7 and 8 relating to the documentation of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of a carrier's business.

25

**Article 52 — Definition of Days**

The expression "days" when used in this Convention means calendar days, not working days.

**Schedule 6**—continued**Chapter VII**

## Final Clauses

**Article 53 — Signature, Ratification and Entry into Force**

1. This Convention shall be open for signature in Montreal on 28 May 1999 by States participating in the International Conference on Air Law held at Montreal from 10 to 28 May 1999. After 28 May 1999, the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with paragraph 6 of this Article. 5 10
2. The Convention shall similarly be open for signature by Regional Economic Integration Organisations. For the purpose of this Convention, a “Regional Economic Integration Organisation” means any organisation which is constituted by sovereign States of a given region which has competence in respect of certain matters governed by this Convention and has been duly authorized to sign and to ratify, accept, approve or accede to this Convention. A reference to a “State Party” or “States Parties” in this Convention, otherwise than in paragraph 2 of Article 1, paragraph 1(b) of Article 3, paragraph (b) of Article 5, Articles 23, 33, 46 and paragraph (b) of Article 57, applies equally to a Regional Economic Integration Organisation. For the purpose of Article 24, the references to “a majority of the States Parties” and “one-third of the States Parties” shall not apply to a Regional Economic Integration Organisation. 15 20 25
3. This Convention shall be subject to ratification by States and by Regional Economic Integration Organisations which have signed it.
4. Any State or Regional Economic Integration Organisation which does not sign this Convention may accept, approve or accede to it at any time. 30
5. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depositary.
6. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession with the Depositary between 35

**Schedule 6**—continued

the States which have deposited such instrument. An instrument deposited by a Regional Economic Integration Organisation shall not be counted for the purpose of this paragraph.

7. For other States and for other Regional Economic Integration Organisations, this Convention shall take effect sixty days following the date of deposit of the instrument of ratification, acceptance, approval or accession. 5

8. The Depositary shall promptly notify all signatories and States Parties of:

- (a) each signature of this Convention and date thereof; 10
- (b) each deposit of an instrument of ratification, acceptance, approval or accession and date thereof;
- (c) the date of entry into force of this Convention;
- (d) the date of the coming into force of any revision of the limits of liability established under this Convention; 15
- (e) any denunciation under Article 54.

**Article 54 — Denunciation**

1. Any State Party may denounce this Convention by written notification to the Depositary.

2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depositary. 20

**Article 55 — Relationship with other Warsaw Convention Instruments**

This Convention shall prevail over any rules which apply to international carriage by air: 25

1. between State Parties to this Convention by virtue of those States commonly being Party to

- (a) the *Convention for the Unification of Certain Rules Relating to International Carriage by Air* Signed at Warsaw on 12 October 1929 (hereinafter called the Warsaw Convention); 30

**Schedule 6**—continued

- (b) the *Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929, Done at The Hague on 28 September 1955* (hereinafter called The Hague Protocol); 5
- (c) the *Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier*, signed at Guadalajara on 18 September 1961 (hereinafter called the Guadalajara Convention); 10
- (d) the *Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 as Amended by the Protocol Done at The Hague on 28 September 1955* Signed at Guatemala City on 8 March 1971 (hereinafter called the Guatemala City Protocol); 15
- (e) Additional Protocol Nos. 1 to 3 and Montreal Protocol No. 4 to amend the Warsaw Convention as amended by The Hague Protocol or the Warsaw Convention as amended by both The Hague Protocol and the Guatemala City Protocol Signed at Montreal on 25 September 1975 (hereinafter called the Montreal Protocols); 20  
or 25
2. within the territory of any single State Party to this Convention by virtue of that State being Party to one or more of the instruments referred to in sub-paragraphs (a) to (e) above.

**Article 56 — States with more than one System of Law**

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time. 30  
35



**Schedule 6**—continued

2. Any such declaration shall be notified to the Depositary and shall state expressly the territorial units to which the Convention applies.
3. In relation to a State Party which has made such a declaration:
- (a) references in Article 23 to “national currency” shall be construed as referring to the currency of the relevant territorial unit of that State; and 5
  - (b) the reference in Article 28 to “national law” shall be construed as referring to the law of the relevant territorial unit of that State. 10

**Article 57 — Reservations**

No reservation may be made to this Convention except that a State Party may at any time declare by a notification addressed to the Depositary that this Convention shall not apply to:

- (a) international carriage by air performed and operated directly by that State Party for non-commercial purposes in respect to its functions and duties as a sovereign State; and/or 15
- (b) the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by that State Party, the whole capacity of which has been reserved by or on behalf of such authorities. 20

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

DONE at Montreal on the 28th day of May of the year one thousand nine hundred and ninety-nine in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic. This Convention shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Depositary to all States Parties to this Convention, as well as to all States Parties to the Warsaw Convention, The Hague Protocol, the Guadalajara Convention, the Guatemala City Protocol, and the Montreal Protocols. 25 30

s 43

## Schedule 2

### Consequential amendments to other Acts

#### Aviation Crimes Act 1972 (1972 No 137)

Add to section 14, as subsection (2):

- “(2) For the purposes of this section, if any dangerous goods (as defined in section 2 of the Civil Aviation Act 1990) are found in the course of a search or examination made under this Act, the dangerous goods must be regarded as having been detected in the exercise of the powers conferred by sections **80(a) and (ab)** and **80A** of the Civil Aviation Act 1990 and not found under this Act.”

**Struck out (unanimous)**

#### Customs and Excise Act 1996 ( No 27)

Insert, after section 276:

- “**276A Customs officers may notify postal operator or airline of dangerous goods** 15
- “(1) A Customs officer who finds dangerous goods in the course of exercising any power of search or examination under this Act may, if he or she is satisfied that it is proposed that the dangerous goods be carried by an airline or postal operator, notify the airline or postal operator of the dangerous goods. 20
- “(2) In this section, **airline** and **dangerous goods** have the same meanings as they have in section 2 of the Civil Aviation Act 1990.”

## Civil Aviation Amendment

---

### Legislative history

29 November 2000	Introduction (Bill 91–1)
13 December 2000	First reading and referral to Transport and Industrial Relations Committee
14 September 2001	Reported from Transport and Industrial Relations Committee (Bill 91–2)
14 May 2002	Second reading
21 May 2002	Committee of the whole House (Bill 91–3)

---