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*Changes to legislation: There are currently no known outstanding effects for the Carriage by Air and Road Act 1979, Chapter III. (See end of Document for details)*

PROSPECTIVE

## SCHEDULES

### SCHEDULE 1

#### THE WARSAW CONVENTION AS AMENDED AT THE HAGUE IN 1955 AND BY PROTOCOLS NO. 3 AND NO. 4 SIGNED AT MONTREAL IN 1975

##### **Modifications etc. (not altering text)**

- C1** The text of Ss. 1(1)(2), 2(1), 3, 4(1)–(3), 6(4), Schs. 1, 2 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not represent any amendments or repeals which may have been made prior to 1.2.1991

### CHAPTER III

#### LIABILITY OF THE CARRIER

##### *Article 17*

- (1) The carrier is liable for damage sustained in case of death or personal injury of a passenger upon condition only that the event 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. However, the carrier is not liable if the death or injury resulted solely from the state of health of the passenger.
- (2) The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or in the course of any of the operations of embarking or disembarking or during any period within which the baggage was in charge of the carrier. However, the carrier is not liable if the damage resulted solely from the inherent defect, quality or vice of the baggage.
- (3) Unless otherwise specified, in this Convention the term “baggage” means both checked baggage and objects carried by the passenger.

##### *Article 18*

- (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 occurrence which caused the damage so sustained took place during the carriage by air.
- (2) However, the carrier is not liable if he proves that the destruction, loss of, or damage to, the cargo resulted solely from one or more of the following:
  - (a) inherent defect, quality or vice of that cargo ;

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- (b) defective packing of that cargo performed by a person other than the carrier or his servants or agents ;
- (c) an act of war or an armed conflict ;
- (d) an act of public authority carried out in connection with the entry, exit or transit of the cargo.
- (3) The carriage by air within the meaning of paragraph (1) of this Article comprises the period during which the cargo is in the charge of the carrier, whether in an airport or on board an aircraft, or, in the case of a landing outside an airport, in any place whatsoever.
- (4) The period of the carriage by air does not extend to any carriage by land, by sea or by river 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 transhipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

#### *Article 19*

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo.

#### *Article 20*

In the carriage of passengers, baggage and cargo, the carrier shall not be liable for damage occasioned by delay if he proves that he and his servants and agents have taken all necessary measures to avoid the damage or that it was impossible for them to take such measures.

#### *Article 21*

- (1) In the carriage of passengers and baggage, 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, the carrier shall be wholly or partly exonerated from his liability to such person to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When by reason of the 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 his liability to the extent that he proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger.
- (2) In the carriage of cargo, if the carrier proves that the damage was caused by or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he derives his rights, the carrier shall be wholly or partly exonerated from his liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage.

#### *Article 22*

- (1) (a) In the carriage of persons the liability of the carrier is limited to the sum of 100,000 special drawing rights for the aggregate of the claims, however founded, in respect of damage suffered as a result of the death or personal injury of each passenger. Where,

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in accordance with the law of the court seised of the case, damages may be awarded in the form of periodic payments, the equivalent capital value of the said payments shall not exceed 100,000 special drawing rights.

- (b) In the case of delay in the carriage of persons the liability of the carrier for each passenger is limited to 4,150 special drawing rights.
  - (c) 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.
- (2) (a) The courts of the High Contracting Parties which are not authorised under their law to award the costs of the action, including lawyers' fees, shall, in actions relating to the carriage of passengers and baggage to which this Convention applies, have the power to award, in their discretion, to the claimant the whole or part of the costs of the action, including lawyers' fees which the court considers reasonable.
- (b) The costs of the action including lawyers' fees shall be awarded in accordance with \*subparagraph (a) only if the claimant gives a written notice to the carrier of the amount claimed including the particulars of the calculation of that amount and the carrier does not make, within a period of six months after Ins receipt of such notice, a written offer of settlement in an amount at least equal to the compensation awarded within the applicable limit. This period will be extended until the time of commencement of the action if that is later.
- (c) The costs of the action including lawyers' fees shall not be taken into account in applying the limits under this Article.
- (3) The sums mentioned in terms of special drawing right in this Article shall be deemed to refer to the special drawing right as defined by the \*International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the special drawing right at the date of the judgment.

#### *Article 22A*

- (1) (a) In the carriage of cargo, the liability of the carrier is limited to a sum of 17 special drawing rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the consignor's actual interest in delivery at destination.
  - (b) In the case of 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 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, the total weight of such package or packages shall also be taken into consideration in determining the Emit of liability.
- (2) The limits prescribed in this Article shall not prevent the court in an action relating to the carriage of cargo 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. 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

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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.

- (3) The sums mentioned in terms of special drawing right in this Article shall be deemed to refer to the special drawing right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the special drawing right at the date of the judgment.

#### *Article 23*

- (1) 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.
- (2) Paragraph (1) of this Article shall not apply to provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried.

#### *Article 24*

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 limits of liability 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. Such limits of liability constitute maximum limits and may not be exceeded whatever the circumstances which gave rise to the liability.

#### *Article 25A*

- (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 he proves that he acted within the scope of his employment, shall be entitled to avail himself of the limits of liability which that carrier himself is entitled to invoke under this Convention.
- (2) The aggregate of the amounts recoverable from the carrier, his servants and agents, in that case, shall not exceed the said limits.

#### *Article 26*

- (1) Receipt by the person entitled to delivery of baggage or cargo without complaint is prima facie evidence that the same has been delivered in good condition and in accordance with the document of carriage.
- (2) In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of 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 disposal.
- (3) Every complaint must be made in writing upon the document of carriage or by separate notice in writing despatched within the times aforesaid.
- (4) Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

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#### *Article 27*

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 estate.

#### *Article 28*

- (1) An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the contract has been made or before the court having jurisdiction at the place of destination.
- (2) In respect of damage resulting from the death, injury or delay of a passenger or the destruction, loss, damage or delay of baggage, the action may be brought before one of the courts mentioned in paragraph (1) of this Article, or in the territory of one of the High Contracting Parties, before the court within the jurisdiction of which the carrier has an establishment if the passenger has his ordinary or permanent residence in the territory of the same High Contracting Party.
- (3) Questions of procedure shall be governed by the law of the court seised of the case.

#### *Article 29*

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

#### *Article 30*

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

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### *Article 30A*

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.

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