

SCHEDULES

SCHEDULE 6

Section 183.

CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA

PART I

TEXT OF CONVENTION

ARTICLE 1

Definitions

In this Convention the following expressions have the meaning hereby assigned to them:

- 1 (a) “carrier” means a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actually performed by him or by a performing carrier;
- (b) “performing carrier” means a person other than the carrier, being the owner, charterer or operator of a ship, who actually performs the whole or a part of the carriage;
- 2 “contract of carriage” means a contract made by or on behalf of a carrier for the carriage by sea of a passenger or of a passenger and his luggage, as the case may be;
- 3 “ship” means only a seagoing vessel, excluding an air-cushion vehicle;
- 4 “passenger” means any person carried in a ship,
 - (a) under a contract of carriage, or
 - (b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods not governed by this Convention;
- 5 “luggage” means any article or vehicle carried by the carrier under a contract of carriage, excluding:
 - (a) articles and vehicles carried under a charter party, bill of lading or other contract primarily concerned with the carriage of goods, and
 - (b) live animals;
- 6 “cabin luggage” means luggage which the passenger has in his cabin or is otherwise in his possession, custody or control. Except for the application of paragraph 8 of this Article and Article 8, cabin luggage includes luggage which the passenger has in or on his vehicle.
- 7 “loss of or damage to luggage” includes pecuniary loss resulting from the luggage not having been re-delivered to the passenger within a reasonable time after the

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arrival of the ship on which the luggage has been or should have been carried, but does not include delays resulting from labour disputes;

- 8 “carriage” covers the following periods:
- (a) with regard to the passenger and his cabin luggage, the period during which the passenger and/or his cabin luggage are on board the ship or in the course of embarkation or disembarkation, and the period during which the passenger and his cabin luggage are transported by water from land to the ship or vice versa, if the cost of such transport is included in the fare or if the vessel used for the purpose of auxiliary transport has been put at the disposal of the passenger by the carrier. However, with regard to the passenger, carriage does not include the period during which he is in a marine terminal or station or on a quay or in or on any other port installation;
 - (b) with regard to cabin luggage, also the period during which the passenger is in a marine terminal or station or on a quay or in or on any other port installation if that luggage has been taken over by the carrier or his servant or agent and has not been re-delivered to the passenger;
 - (c) with regard to other luggage which is not cabin luggage, the period from the time of its taking over by the carrier or his servant or agent onshore or on board until the time of its re-delivery by the carrier or his servant or agent;
- 9 “international carriage” means any carriage in which, according to the contract of carriage, the place of departure and the place of destination are situated in two different States, or in a single State if, according to the contract of carriage or the scheduled itinerary, there is an intermediate port of call in another State.

ARTICLE 2

Application

- 1 This Convention shall apply to any international carriage if:
- (a) the ship is flying the flag of or is registered in a State Party to this Convention, or
 - (b) the contract of carriage has been made in a State Party to this Convention, or
 - (c) the place of departure or destination, according to the contract of carriage, is in a State Party to this Convention.
- 2 Notwithstanding paragraph 1 of this Article, this Convention shall not apply when the carriage is subject, under any other international convention concerning the carriage of passengers or luggage by another mode of transport, to a civil liability regime under the provisions of such convention, in so far as those provisions have mandatory application to carriage by sea.

ARTICLE 3

Liability of the carrier

- 1 The carrier shall be liable for the damage suffered as a result of the death of or personal injury to a passenger and the loss of or damage to luggage if the incident which caused the damage so suffered occurred in the course of the carriage and was

due to the fault or neglect of the carrier or of his servants or agents acting within the scope of their employment.

- 2 The burden of proving that the incident which caused the loss or damage occurred in the course of the carriage, and the extent of the loss or damage, shall lie with the claimant.
- 3 Fault or neglect of the carrier or of his servants or agents acting within the scope of their employment shall be presumed, unless the contrary is proved, if the death of or personal injury to the passenger or the loss of or damage to cabin luggage arose from or in connection with the shipwreck, collision, stranding, explosion or fire, or defect in the ship. In respect of loss of or damage to other luggage, such fault or neglect shall be presumed, unless the contrary is proved, irrespective of the nature of the incident which caused the loss or damage. In all other cases the burden of proving fault or neglect shall lie with the claimant.

ARTICLE 4

Performing carrier

- 1 If the performance of the carriage or part thereof has been entrusted to a performing carrier, the carrier shall nevertheless remain liable for the entire carriage according to the provisions of this Convention. In addition, the performing carrier shall be subject and entitled to the provisions of this Convention for the part of the carriage performed by him.
- 2 The carrier shall, in relation to the carriage performed by the performing carrier, be liable for the acts and omissions of the performing carrier and of his servants and agents acting within the scope of their employment.
- 3 Any special agreement under which the carrier assumes obligations not imposed by this Convention or any waiver of rights conferred by this Convention shall affect the performing carrier only if agreed by him expressly and in writing.
- 4 Where and to the extent that both the carrier and the performing carrier are liable, their liability shall be joint and several.
- 5 Nothing in this Article shall prejudice any right of recourse as between the carrier and the performing carrier.

ARTICLE 5

Valuables

The carrier shall not be liable for the loss of or damage to monies, negotiable securities, gold, silverware, jewellery, ornaments, works of art, or other valuables, except where such valuables have been deposited with the carrier for the agreed purpose of safe-keeping in which case the carrier shall be liable up to the limit provided for in paragraph 3 of Article 8 unless a higher limit is agreed upon in accordance with paragraph 1 of Article 10.

ARTICLE 6

Contributory fault

If the carrier proves that the death of or personal injury to a passenger or the loss of or damage to his luggage was caused or contributed to by the fault or neglect of the passenger, the court seized of the case may exonerate the carrier wholly or partly from his liability in accordance with the provisions of the law of that court.

ARTICLE 7

Limit of liability for personal injury

- 1 The liability of the carrier for the death of or personal injury to a passenger shall in no case exceed 46,666 units of account per carriage. Where in accordance with the law of the court seized of the case damages are awarded in the form of periodical income payments, the equivalent capital value of those payments shall not exceed the said limit.
- 2 Notwithstanding paragraph 1 of this Article, the national law of any State Party to this Convention may fix, as far as carriers who are nationals of such State are concerned, a higher *per capita* limit of liability.

ARTICLE 8

Limit of liability for loss of or damage to luggage

- 1 The liability of the carrier for the loss of or damage to cabin luggage shall in no case exceed 833 units of account per passenger, per carriage.
- 2 The liability of the carrier for the loss of or damage to vehicles including all luggage carried in or on the vehicle shall in no case exceed 3,333 units of account per vehicle, per carriage.
- 3 The liability of the carrier for the loss of or damage to luggage other than that mentioned in paragraphs 1 and 2 of this Article shall in no case exceed 1,200 units of account per passenger, per carriage.
- 4 The carrier and the passenger may agree that the liability of the carrier shall be subject to a deduction not exceeding 117 units of account in the case of damage to a vehicle and not exceeding 13 units of account per passenger in the case of loss of or damage to other luggage, such sum to be deducted from the loss or damage.

ARTICLE 9

Unit of account and conversion

The Unit of Account mentioned in this Convention is the special drawing right as defined by the International Monetary Fund. The amounts mentioned in Articles 7 and 8 shall be converted into the national currency of the State of the court seized of the case on the basis of the value of that currency on the date of the judgment or the date agreed upon by the Parties.

ARTICLE 10

Supplementary provisions on limits of liability

- 1 The carrier and the passenger may agree, expressly and in writing, to higher limits of liability than those prescribed in Articles 7 and 8.
- 2 Interest on damages and legal costs shall not be included in the limits of liability prescribed in Articles 7 and 8.

ARTICLE 11

Defences and limits for carriers' servants

If an action is brought against a servant or agent of the carrier or of the performing carrier arising out of damage covered by this Convention, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the defences and limits of liability which the carrier or the performing carrier is entitled to invoke under this Convention.

ARTICLE 12

Aggregation of claims

- 1 Where the limits of liability prescribed in Articles 7 and 8 take effect, they shall apply to the aggregate of the amounts recoverable in all claims arising out of the death of or personal injury to any one passenger or the loss of or damage to his luggage.
- 2 In relation to the carriage performed by a performing carrier, the aggregate of the amounts recoverable from the carrier and the performing 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 carrier or the performing carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.
- 3 In any case where a servant or agent of the carrier or of the performing carrier is entitled under Article 11 of this Convention to avail himself of the limits of liability prescribed in Articles 7 and 8, the aggregate of the amounts recoverable from the carrier, or the performing carrier as the case may be, and from that servant or agent, shall not exceed those limits.

ARTICLE 13

Loss of right to limit liability

- 1 The carrier shall not be entitled to the benefit of the limits of liability prescribed in Articles 7 and 8 and paragraph 1 of Article 10, if it is proved that the damage resulted from an act or omission of the carrier done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.
- 2 The servant or agent of the carrier or of the performing carrier shall not be entitled to the benefit of those limits if it is proved that the damage resulted from an act

or omission of that servant or agent done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

ARTICLE 14

Basis for claims

No action for damages for the death of or personal injury to a passenger, or for the loss of or damage to luggage, shall be brought against a carrier or performing carrier otherwise than in accordance with this Convention.

ARTICLE 15

Notice of loss or damage to luggage

- 1 The passenger shall give written notice to the carrier or his agent:
- (a) in the case of apparent damage to luggage:
 - (i) for cabin luggage, before or at the time of disembarkation of the passenger;
 - (ii) for all other luggage, before or at the time of its re-delivery;
 - (b) in the case of damage to luggage which is not apparent, or loss of luggage, within 15 days from the date of disembarkation or re-delivery or from the time when such re-delivery should have taken place.
- 2 If the passenger fails to comply with this Article, he shall be presumed, unless the contrary is proved, to have received the luggage undamaged.
- 3 The notice in writing need not be given if the condition of the luggage has at the time of its receipt been the subject of joint survey or inspection.

ARTICLE 16

Time-bar for actions

- 1 Any action for damages arising out of the death of or personal injury to a passenger or for the loss of or damage to luggage shall be time-barred after a period of two years.
- 2 The limitation period shall be calculated as follows:
- (a) in the case of personal injury, from the date of disembarkation of the passenger;
 - (b) in the case of death occurring during carriage, from the date when the passenger should have disembarked, and in the case of personal injury occurring during carriage and resulting in the death of the passenger after disembarkation, from the date of death, provided that this period shall not exceed three years from the date of disembarkation;
 - (c) in the case of loss of or damage to luggage, from the date of disembarkation or from the date when disembarkation should have taken place, whichever is later.

- 3 The law of the court seized of the case shall govern the grounds of suspension and interruption of limitation periods, but in no case shall an action under this Convention be brought after the expiration of a period of three years from the date of disembarkation of the passenger or from the date when disembarkation should have taken place, whichever is later.
- 4 Notwithstanding paragraphs 1, 2 and 3 of this Article, the period of limitation may be extended by a declaration of the carrier or by agreement of the parties after the cause of action has arisen. The declaration or agreement shall be in writing.

ARTICLE 17

Competent jurisdiction

- 1 An action arising under this Convention shall, at the option of the claimant, be brought before one of the courts listed below, provided that the court is located in a State Party to this Convention:
- (a) the court of the place of permanent residence or principal place of business of the defendant, or
 - (b) the court of the place of departure or that of the destination according to the contract of carriage, or
 - (c) a court of the State of the domicile or permanent residence of the claimant, if the defendant has a place of business and is subject to jurisdiction in that State, or
 - (d) a court of the State where the contract of carriage was made, if the defendant has a place of business and is subject to jurisdiction in that State.
- 2 After the occurrence of the incident which has caused the damage, the parties may agree that the claim for damages shall be submitted to any jurisdiction or to arbitration.

ARTICLE 18

Invalidity of contractual provisions

Any contractual provision concluded before the occurrence of the incident which has caused the death of or personal injury to a passenger or the loss of or damage to his luggage, purporting to relieve the carrier of his liability towards the passenger or to prescribe a lower limit of liability than that fixed in this Convention except as provided in paragraph 4 of Article 8, and any such provision purporting to shift the burden of proof which rests on the carrier, or having the effect of restricting the option specified in paragraph 1 of Article 17, shall be null and void, but the nullity of that provision shall not render void the contract of carriage which shall remain subject to the provisions of this Convention.

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ARTICLE 19

Other conventions on limitation of liability

This Convention shall not modify the rights or duties of the carrier, the performing carrier, and their servants or agents provided for in international conventions relating to the limitation of liability of owners of seagoing ships.

ARTICLE 20

Nuclear damage

No liability shall arise under this Convention for damage caused by a nuclear incident:

- (a) if the operator of a nuclear installation is liable to such damage under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by its Additional Protocol of 28 January 1964, or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, or
- (b) if the operator of a nuclear installation is liable for such damage by virtue of a national law governing the liability for such damage, provided that such law is in all respects as favourable to persons who may suffer damage as either the Paris or the Vienna Conventions.

ARTICLE 21

Commercial carriage by public authorities

This Convention shall apply to commercial carriage undertaken by States or Public Authorities under contracts of carriage within the meaning of Article 1.

PART II

PROVISIONS HAVING EFFECT IN CONNECTION WITH CONVENTION

Interpretation

- 1 In this Part of this Schedule any reference to a numbered article is a reference to the article of the Convention which is so numbered and any expression to which a meaning is assigned by article 1 of the Convention has that meaning.

Provisions adapting or supplementing specified articles of the Convention

- 2 For the purposes of paragraph 2 of article 2, provisions of such an international convention as is mentioned in that paragraph which apart from this paragraph do not have mandatory application to carriage by sea shall be treated as having mandatory application to carriage by sea if it is stated in the contract of carriage for the carriage in question that those provisions are to apply in connection with the carriage.
- 3 The reference to the law of the court in article 6 shall be construed as a reference to the Law Reform (Contributory Negligence) Act 1945 except that in relation to

Northern Ireland it shall be construed as a reference to section 2 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948.

4 The Secretary of State may by order provide that, in relation to a carrier whose principal place of business is in the United Kingdom, paragraph 1 of article 7 shall have effect with the substitution for the limit for the time being specified in that paragraph of a different limit specified in the order (which shall not be lower than 46,666 units of account).

5 (1) For the purpose of converting from special drawing rights into sterling the amounts mentioned in articles 7 and 8 of the Convention in respect of which a judgment is given, one special drawing right shall be treated as equal to such a sum in sterling as the International Monetary Fund have fixed as being the equivalent of one special drawing right for—

- (a) the day on which the judgment is given; or
- (b) if no sum has been so fixed for that day, the last day before that day for which a sum has been so fixed.

(2) A certificate given by or on behalf of the Treasury stating—

- (a) that a particular sum in sterling has been fixed as mentioned in subparagraph (1) above for a particular day; or
- (b) that no sum has been so fixed for that day and a particular sum in sterling has been so fixed for a day which is the last day for which a sum has been so fixed before the particular day,

shall be conclusive evidence of those matters for the purposes of articles 7 to 9 of the Convention; and a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

6 It is hereby declared that by virtue of article 12 the limitations on liability there mentioned in respect of a passenger or his luggage apply to the aggregate liabilities of the persons in question in all proceedings for enforcing the liabilities or any of them which may be brought whether in the United Kingdom or elsewhere.

7 Article 16 shall apply to an arbitration as it applies to an action; and section 34(3) and (4) of the Limitation Act 1980 and Article 73(2) and (4) of the Limitation (Northern Ireland) Order 1989 (which determine when an arbitration is deemed to commence) shall apply for the purposes of article 16 as they apply for the purposes of that Act and Order.

8 The court before which proceedings are brought in pursuance of article 17 to enforce a liability which is limited by virtue of article 12 may at any stage of the proceedings make such orders as appear to the court to be just and equitable in view of the provisions of article 12 and of any other proceedings which have been or are likely to be begun in the United Kingdom or elsewhere to enforce the liability in whole or in part; and without prejudice to the generality of the preceding provisions of this paragraph such a court shall, where the liability is or may be partly enforceable in other proceedings in the United Kingdom or elsewhere, have jurisdiction to award an amount less than the court would have awarded if the limitation applied solely to the proceedings before the court or to make any part of its award conditional on the results of any other proceedings.

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Other provisions adapting or supplementing the Convention

- 9 Any reference in the Convention to a contract of carriage excludes a contract of carriage which is not for reward.
- 10 If Her Majesty by Order in Council declares that any State specified in the Order is a party to the Convention in respect of a particular country the Order shall, subject to the provisions of any subsequent Order made by virtue of this paragraph, be conclusive evidence that the State is a party to the Convention in respect of that country.
- 11 The Secretary of State may by order make provision—
- (a) for requiring a person who is the carrier in relation to a passenger to give to the passenger, in a manner specified in the order, notice of such of the provisions of Part I of this Schedule as are so specified;
 - (b) for a person who fails to comply with a requirement imposed on him by the order to be guilty of an offence and liable on summary conviction to a fine of an amount not exceeding level 4 on the standard scale or not exceeding a lesser amount.

Application of ss. 185 and 186 of this Act

- 12 It is hereby declared that nothing in the Convention affects the operation of section 185 of this Act (which limits a shipowner's liability in certain cases of loss of life, injury or damage).
- 13 Nothing in section 186 of this Act (which among other things limits a shipowner's liability for the loss or damage of goods in certain cases) shall relieve a person of any liability imposed on him by the Convention.