STATUTORY INSTRUMENTS

1987 No. 456

CIVIL AVIATION

The Tokyo Convention (Anguilla) Order 1987

Made - - - -	*18th March 1987*
Laid before Parliament	*26th March 1987*
Coming into force	*17th April 1987*

At the Court at Buckingham Palace, the 18th day of March 1987

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 8 of the Tokyo Convention Act 1967(**a**), section 108 of the Civil Aviation Act 1982(**b**), section 39 of the Aviation Security Act 1982(**c**), sections 2, 17 and 21 of the Extradition Act 1870(**d**), or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

1. This Order may be cited as the Tokyo Convention (Anguilla) Order 1987 and shall come into force on 17th April 1987.

2. Sections 92, 94, 95, 96, 101, 105 and 106 of the Civil Aviation Act 1982, modified and adapted as in Schedule 1 hereto, shall extend to Anguilla.

3. Section 4 of, and the Schedule to, the Tokyo Convention Act 1967 and section 5 of the Aviation Security Act 1982, modified and adapted as in Schedule 2 hereto, shall extend to Anguilla.

4. The Extradition (Tokyo Convention) Order 1971(**e**) is amended by the insertion of Anguilla in Schedule 2 thereto (territories to which the application of the Tokyo Convention is extended).

G. I. de Deney
Clerk of the Privy Council

(**a**) 1967 c. 52.
(**b**) 1982 c. 16.
(**c**) 1982 c. 36.
(**d**) 1870 c. 52.
(**e**) S.I. 1971/2103, amended by S.I. 1982/149, 1985/1993, 1986/2016.

SCHEDULE 1

Article 2

PROVISIONS OF THE CIVIL AVIATION ACT 1982 AS EXTENDED TO ANGUILLA

Application of criminal law to aircraft.

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

(2) No proceedings for any offence under the law in force in Anguilla committed on board an aircraft while in flight elsewhere than in or over Anguilla shall be instituted in Anguilla except by or with the consent of the person for the time being performing the functions of Attorney-General of Anguilla.

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

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

(5) In this section, except where the context otherwise requires–

"aircraft" means any aircraft, whether or not a British-controlled aircraft, other than–

(a) a military aircraft; or

(b) subject to section 101 below, an aircraft which, not being a military aircraft, belongs to or is exclusively employed in the service of Her Majesty in right of the United Kingdom or in right of Anguilla;

"British-controlled aircraft" means an aircraft–

(a) which is for the time being registered in the United Kingdom or in Anguilla; or

(b) which is not for the time being registered in any country but in the case of which either the operator of the aircraft or each person entitled as owner to any legal or beneficial interest in it satisfies the following requirements, namely–

(i) that he is a person qualified to be the owner of a legal or beneficial interest in an aircraft registered in the United Kingdom or in Anguilla; and

(ii) that he resides or has his principal place of business in the United Kingdom or in Anguilla; or

(c) which, being for the time being registered in some other country, is for the time being chartered by demise to a person who, or to persons each of whom, satisfies the requirements aforesaid;

"military aircraft" means–

(a) an aircraft of the naval, military or air forces of any country; or

(b) any other aircraft in respect of which there is in force a certificate issued in accordance with any Order in Council in force under section 60, 87, 89, 91, 101(1)(a) or 107(2) of this Act (as in force in the United Kingdom) that the aircraft is to be treated for the purposes of that Order in Council as a military aircraft;

and a certificate of the Secretary of State or of the Governor that any aircraft is or is not a military aircraft for the purposes of this section shall be conclusive evidence of the fact certified.

Powers of commander of aircraft.

94.—(1) The provisions of subsections (2) to (5) below shall have effect for the purposes of any proceedings before any court in Anguilla.

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

(a) that the person in question has done or is about to do any act on the aircraft while it is in flight which jeopardises or may jeopardise–

(i) the safety of the aircraft or of persons or property on board the aircraft, or

(ii) good order and discipline on board the aircraft, or

(b) that the person in question has done on the aircraft while in flight any act which in the opinion of the commander is a serious offence under any law in force in the country in which the aircraft is registered, not being a law of a political nature or based on racial or religious discrimination,

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

(i) to protect the safety of the aircraft or of persons or property on board the aircraft; or

(ii) to maintain good order and discipline on board the aircraft; or

(iii) to enable the commander to disembark or deliver that person in accordance with subsection (5) below,

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

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

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

(a) for any period (including the period of any further flight) between that time and the first occasion thereafter on which the commander is able with any requisite consent of the appropriate authorities to disembark or deliver the person under restraint in accordance with subsection (5) below; or

(b) if the person under restraint agrees to continue his journey under restraint on board that aircraft.

(5) The commander of an aircraft–

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

(i) to believe as mentioned in subsection (2)(a) above, and

(ii) to believe that it is necessary so to do in order to protect the safety of the aircraft or of persons or property on board the aircraft or to maintain good order and discipline on board the aircraft,

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

(b) if in the case of any person on board the aircraft he has reasonable grounds to believe as mentioned in subsection (2)(b) above, may deliver that person–

(i) in the United Kingdom, to a constable or immigration officer; or

(ii) in Anguilla or in any other colony or in any other country which is a Convention country, to an officer having functions corresponding to the functions in the United Kingdom either of a constable or of an immigration officer.

(6) The commander of an aircraft–

(a) if he disembarks any person in pursuance of subsection (5)(a) above, in the case of a British-controlled aircraft, in any country or, in the case of any other aircraft, in Anguilla, shall report the fact of, and the reasons for, that disembarkation to–

(i) an appropriate authority in the country of disembarkation; and

(ii) the appropriate diplomatic or consular office of the country of nationality of that person;

(b) if he intends to deliver any person in accordance with subsection (5)(b) above in the United Kingdom or in Anguilla or any other colony or, in the case of a British-controlled aircraft, in any other country which is a Convention country, shall before or as soon as reasonably practicable after landing give notification of his intention and of the reasons therefor–

(i) where the country in question is the United Kingdom, to a constable or immigration officer or, in the case of Anguilla or any other colony or any other country, to an officer having functions corresponding to the functions in the United Kingdom either of a constable or of an immigration officer;

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

and any commander of an aircraft who without reasonable cause fails to comply with the requirements of this subsection shall be liable on summary conviction in Anguilla to a fine not exceeding EC$500.

(7) In this section–

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

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

and, subject to subsection (8) below, subsections (4) and (5) of section 92 above shall apply for the purposes of this section as they apply for the purposes of that section.

(8) The time during which an aircraft is in flight shall, for the purposes of this section, be deemed to include, in addition to such a period as is mentioned in subsection (4) of section 92 above–

(a) any further period from the moment when all external doors, if any, of the aircraft are closed following embarkation for a flight until the moment when any such door is opened for disembarkation after that flight; and

(b) if the aircraft makes a forced landing, any period thereafter until the time when competent authorities of the country in which the forced landing takes place take over the responsibility for the aircraft and for the persons and property on board the aircraft (being, if the forced landing takes place in Anguilla, the time when an officer having functions corresponding to the functions in the United Kingdom of a constable arrives at the place of landing).

Provisions as to evidence in connection with aircraft.

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

(a) in the presence of the person charged with the offence; and

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

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

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

(4) If a complaint is made to such a consular officer as aforesaid that any offence has been committed on a British-controlled aircraft while in flight elsewhere than in or over Anguilla, that officer may inquire into the case upon oath.

(5) In this section–

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

"oath" includes an affirmation or declaration in the case of persons allowed by law to affirm or declare instead of swearing;

and subsections (4) and (5) of section 92 above shall apply for the purposes of this section as they apply for the purposes of that section.

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

Use of records and documentary evidence.

96.—(1) In any legal proceedings–

(a) a document purporting to be certified by such authority or person as may be designated for the purpose by regulations made by the Secretary of State or by the Governor as being, or being a true copy of, or of part of, a document issued or record kept in pursuance of–

(i) an Air Navigation Order, or

(ii) the Civil Aviation (Licensing) Act 1960(**b**),

by, or by the Minister in charge of, a government department, by an official of a government department specified for the purpose in an Air Navigation Order or by the Air Registration Board of the United Kingdom or the Air Transport Licensing Board of the United Kingdom or by the competent authority in Anguilla for the registration or licensing of aircraft, or

(b) a document printed by either Her Majesty's Stationery Office or the Civil Aviation Authority and purporting to be the publication known as the "United Kingdom Air Pilot" or a publication of the series known as "Notam—United Kingdom" or a publication in the Official Gazette of Anguilla of a notice similar to a "Notam—United Kingdom" but notifying matters related to Anguilla,

(**a**) 1981 c. 61.
(**b**) 1960 c. 38.

shall be evidence of the matters appearing from the document.

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

(a) the position of an aircraft at any material time, or

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

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

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

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

(a) on summary conviction, to a fine not exceeding EC$5000 or to imprisonment for a term not exceeding three months or to both; and

(b) on conviction on indictment to a fine or to imprisonment for a term not exceeding two years or to both.

(5) In this section, "record" includes, in additon to a record in writing–

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

(b) any film, tape or other device in which visual images are embodied so as to be capable (as aforesaid) of being reproduced therefrom; and

(c) any photograph;

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

Power to apply certain provisions to Crown aircraft.

101. The Governor with the approval of the Secretary of State may by order, which may be varied or revoked by a subsequent order, apply the provisions of sections 92, 94 and 95 above, with or without modifications, to aircraft such as are excluded from the definition of "aircraft" in subsection (5) of the said section 92 by paragraph (b) of the definition.

General interpretation.

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

"Air Navigation Order" means an Order in Council under section 60 of this Act as in force in the United Kingdom;

"Convention country" means a country in which the Tokyo Convention is for the time being in force; and any Order of Her Majesty in Council for the time being in force certifying that any country specified in the Order is for the time being a Convention country shall be conclusive evidence that the country in question is for the time being a Convention country;

"Governor" means the officer for the time being administering the Government of Anguilla;

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

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

"Tokyo Convention" means the Convention on Offences and certain other Acts Committed on board Aircraft, which was signed at Tokyo on 14th September 1963.

(2) Any order of the Secretary of State for the time being in force in the United Kingdom by virtue of section 98 of this Act as in force in the United Kingdom (which provides for specifying the Convention country in which aircraft operated by joint air transport organisations or international operating agencies established by two or more Convention countries shall be treated as registered) shall have effect in Anguilla.

Application of Act to territorial waters.

106. Except where the context otherwise requires, in sections 92, 94, 95 and 96 of this Act a reference to a country or territory or to the territorial limits thereof shall be construed as including a reference to the territorial waters of the country or territory, as the case may be.

SCHEDULE 2

Article 3

PROVISIONS OF THE TOKYO CONVENTION ACT 1967 AND THE AVIATION SECURITY ACT 1982 AS EXTENDED TO ANGUILLA

TOKYO CONVENTION ACT 1967

4. For the avoidance of doubt, it is hereby declared that for the purposes of any proceedings before a court in Anguilla in respect of piracy, the provisions set out in the Schedule to this Act of the Convention on the High Seas signed at Geneva on 29th April 1958 shall be treated as constituting part of the law of nations.

SCHEDULE TO THE TOKYO CONVENTION ACT 1967

Section 4

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

Article 15

Piracy consists of any of the following acts:

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

(a) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(b) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

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

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

Article 16

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

Article 17

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

AVIATION SECURITY ACT 1982

5.—(1) Any court in Anguilla having jurisdiction in respect of piracy committed on the high seas shall have jurisdiction in respect of piracy committed by or against an aircraft, wherever that piracy is committed.

(2) In subsection (1) above, "aircraft" has the same meaning as in section 92 of the Civil Aviation Act 1982 (application of criminal law to aircraft) as extended to Anguilla; and, for the purposes of this definition, section 101 of that Act (Crown aircraft) as extended to Anguilla shall apply to this section as it applies to the said section 92.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order extends to Anguilla, with adaptations and modifications, certain provisions of the Civil Aviation Act 1982 which were previously contained in the Tokyo Convention Act 1967. It also extends to Anguilla certain provisions of the Tokyo Convention Act 1967 and the Aviation Security Act 1982 relating to piracy.