



Martin · McClean · Martin · Brooks · Bristow

Shawcross and Beaumont

AIR LAW

FOURTH EDITION
VOLUME 1 • GENERAL TEXT

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Preface

The first edition of *Air Law* published in 1945 was the result of a project conceived by the late Christopher Shawcross QC and the late Major Beaumont in 1936, but publication was delayed by the war. The second edition was published in 1950. The third edition, prepared by a new team of editors, was published in 1965 and was divided into two volumes of text and materials. That edition was kept up to date by seven service issues, and over the years the volume of materials became so extensive that an additional binder became necessary. Thus the publishing history of *Air Law* covers nearly forty years of a period in which, self-evidently, air law has developed as fast as civil aviation itself.

The pace of this development has made the preparation of a new and fully revised edition imperative. However, the purpose of the fourth edition is not different from that of the first which was described by the original editors as being to produce a book which would—

- 1 provide a connected exposition of the principal legal rules governing the flight and operation of aircraft,
- 2 take into account in so doing those rules which derive from international law as well as those derived from common law and statutes, and
- 3 provide those persons interested in air transport with as complete a collection as possible of all international conventions and agreements, statutes and delegated legislation in connection with air law.

In the twelve years since the third edition was published the changes in air law have been very substantial. The most important developments are undoubtedly those brought about by the Civil Aviation Act 1971, namely, the creation of the Civil Aviation Authority and the British Airways Board. There have also been signed the Paris Agreement 1967, the Guatemala Protocol 1970, the Brussels Protocol 1970 and the Montreal Protocols 1975, all of which appear in volume 2 with details of their status.

Perhaps the most significant development in international air law has been the signature and ratification by many states of the Hague and Montreal Conventions intended to deal with the hijacking of aircraft and sabotage of installations which became such a feature of the late 1960s and the early 1970s.

The changes in English air law have also been significant. Apart from the Air Corporations Act 1967, now repealed by the Civil Aviation Act 1971, these twelve years have also seen the Civil Aviation Act 1968, the Hijacking Act 1971, the Concorde Aircraft Act 1973, the Protection of Aircraft Act 1973, the Policing of Airports Act 1974, the Air Travel Reserve Fund Act 1975 and the Airports

Authority Act 1975. The Carriage by Air Act 1961, although enacted before the date of the third edition and discussed there, came into force only in 1967, with significant consequential changes implemented by delegated legislation. Most of the statutes listed have been followed by delegated legislation of which the Civil Aviation Authority Regulations 1972 are of major importance. There have been constant changes in the delegated legislation dependent upon the Civil Aviation Act 1949 as well: the Air Navigation Order has undergone repeated changes and the current order is the Air Navigation Order 1976. According to our count, more than two hundred statutory instruments specifically related to civil aviation came into force during this period although, of course, not all remain in force. They are truly a labyrinth.

Because of the large circulation which the book has hitherto enjoyed abroad, the previous practice of giving fairly full accounts of aspects of English law which are of general application, but nevertheless particularly relevant in air law, has been followed and the material formerly published much expanded.

As in previous editions, reference has been made wherever appropriate to United States' and other decisions which, although not of binding authority in the English courts, may nevertheless prove helpful in dealing with issues not yet litigated in this country as well as being of value to overseas users of this work, particularly those in countries whose jurisprudence in this field is less well developed. A major trend in the United States, in the case of personal injury or death arising from international air carriage, is the action against the aircraft manufacturer in an attempt to augment the limited compensation available from carriers under the Warsaw/Hague/Montreal system. Given the inflation of the past years it is not a surprising trend. The solution of the problem of the inadequacy of the limited compensation system will not quickly or easily be found and the editors are not confident that a solution of universal application also embracing manufacturers, air traffic control authorities and others will be found at all.

The editors of the third edition wrote in their preface that the extent of the changes which were necessary in that edition could be measured by the fact that about half of the text was entirely new or rewritten while the other half had been substantially revised. In this edition no page of volume 1 of the third edition, as noted up from time to time, remains unchanged, nearly every chapter having been completely rewritten and the whole work rearranged. Thus volume 1 can be regarded as an entirely new text, while volume 2 continues to be a presentation of treaty, statutory and delegated legislative material on the lines first published in 1965.

In spite of all the changes which have been made, however, the aim of the book remains the same as it was in the days of Shawcross and Beaumont, namely, to satisfy the practical needs of the lawyer, the administrator, the operator and the legislator concerned with both the commercial and private operation of aircraft. This work does not claim to be a treatise of scholarly perfection and we hope that our errors and omissions will be forgiven by our readers who are likely to be men and women as busy as we are.

The work of preparing the new edition has been divided between us as follows—

Peter Martin co-ordinated the writing of and accepted editorial responsibility for the work as a whole in addition to writing chapter 1, and Elizabeth Martin and he prepared volume 2 for publication.

David McClean prepared all the material on carriage in chapter 9 and also wrote chapter 2 section 2, chapter 10 and chapter 12.

Elizabeth de Montlaur Martin wrote chapter 3 section 2, chapter 4 section 2, chapter 5, chapter 7, chapter 8 and that part of chapter 11 dealing with criminal sanctions for the promotion of safety.

John L. Brooks formulated a wholly new chapter 13 on insurance and aircraft services.

Jane Bristow wrote chapter 6 and chapter 11 sections 1 and 2.

Richard Woods contributed chapter 2 section 1, chapter 3 section 1, chapter 4 section 1 and that part of chapter 10 dealing with noise.

Peter Martin and David McClean would like to express their gratitude to their faithful secretaries Mrs Pauline Callan and Mrs Jean Hopewell who laboured good-naturedly to produce much of the typescript for final revision and co-ordination from some very complex drafts.

The editors are grateful to Mr Alastair Paterson QC, of the Ontario bar, an editor of the first and second editions, for agreeing to act as a consultant.

The editors of the third edition wrote that their edition demonstrated that air law was not only growing but was unfortunately growing out of hand in complexity and inconsistency. While the editors would be gratified if this new edition helped to expose the problems of air law which have yet to be clarified by international legislation, by Parliament and by the courts, nevertheless they are bound to comment that the growing volume of complex international and municipal legislation is becoming rapidly unmanageable. The growing complexities, inconsistencies and resulting injustices of the Warsaw system provide a major example at the international level and, in English law, the delegated legislation created and administered by the Department of Trade and the Civil Aviation Authority is a classic illustration of the heavy growth of bureaucratic barnacle encrusting commercial enterprise and innovation in civil aviation.

The law in volume 1 is stated in general as at 1st January 1977 but later developments have been noted wherever possible up to 1st March 1977.

In volume 2 the law is stated at the date given on the first page of that volume. It is the intention of the editors and the publishers to keep the work up to date by means of regular looseleaf service issues for insertion in volume 2.

March 1977

PETER MARTIN
DAVID MCCLEAN
ELIZABETH DE MONTLAUR MARTIN
JOHN L. BROOKS
JANE BRISTOW

References and abbreviations

A-G	Attorney General
affd.	affirmed
AIOA	Aviation Insurance Officers Association
AOC	Air Operator's Certificate
AOPA	Aircraft Owners and Pilots Association
App.	Appendix
art.	article
ARB	Airworthiness Requirements Board
Aust.	Australia
ATOL	Air Travel Organiser's Licence
BA	British Airways
BAA	British Airports Authority
BEA	British European Airways Corporation
BOAC	British Overseas Airways Corporation
C..	Command Paper (of a series published before 1900)
c..	chapter number of an Act
CA	Court of Appeal
CAA	Civil Aviation Authority
CAB	Civil Aeronautics Board (USA)
CCA	Court of Criminal Appeal
CCR	County Court Rules (S.R. & O. 1936 No. 626) as subsequently amended (see the current County Court Practice)
Can.	Canada
Cd.	Command Paper (of the series published 1900-18)
cert den.	certiorari denied (USA)
cf..	compare
ch..	chapter
cl..	clause
Cmd.	Command Paper (of the series published 1919-56)
Cmnd.	Command Paper (of the series published 1956 to date)
DC	Divisional Court
Digest (Reissue)	English and Empire Digest Reissue Volumes (Green Band)
DOI	Department of Industry
DOT	Department of Trade
ECAC	European Civil Aviation Conference
ECJ	Court of Justice of the European Communities
EEC	European Economic Community
Edn.	Edition
Eurocontrol	European Organisation for the Safety of Air Navigation
FAA	Federal Aviation Administration (USA)
FAI	Fédération Aéronautique Internationale
FC	Full Court
Fed.	Federal
HC	High Court
HL	House of Lords

References and abbreviations

H. of C.	House of Commons
Halsbury's Laws (4th Edn.)	Halsbury's Laws of England, 4th Edn. See note 2, <i>infra</i>
Halsbury's Statutes (3rd Edn.)	Halsbury's Statutes of England, 3rd Edn. See note 2, <i>infra</i>
IATA	International Air Transport Association
ICAO	International Civil Aviation Organisation
IMF	International Monetary Fund
Ir.	Ireland
IUAI	International Union of Aviation Insurers
J.	Justice
LAUA	Lloyd's Aviation Underwriters' Association
LC	Lord Chancellor
LCJ	Lord Chief Justice
LJ.	Lord Justice of Appeal
MR	Master of the Rolls
NATS	National Air Traffic Services
Ord.	Order
P.	President
PC	Judicial Committee of the Privy Council
pet dis.	petition dismissed
r.	rule
RSC	Rules of the Supreme Court 1965 (S.I. 1965 No. 1776) as subsequently amended (see the current Supreme Court Practice)
reg.	regulation
revd.	reversal
s.	section
S.A.	South Africa
SC	Supreme Court
S.I.	Statutory Instruments published by authority
S.R. & O.	Statutory Rules and Orders published by authority
Sch.	Schedule

NOTE 1. The abbreviations of law reports and other sources used in this work are listed on p. xiii, *post*.

NOTE 2. Where references are made to other publications, the volume number precedes and the paragraph or page number follows the name of the publication; e.g. the reference "2 Halsbury's Laws (4th Edn.) 44" refers to volume 2 of Halsbury's Laws of England (4th Edn.), para. 44.

NOTE 3. An English statute is cited by short title. In the case of a foreign statute, the mode of citation generally follows the style of citation in use in the country concerned with the addition, where necessary, of the name of the country in parentheses.

NOTE 4. A statutory instrument is cited by name, if any, followed by the year and number, or, if unnumbered, the date.

NOTE 5. The citation of American and other foreign cases and material follows "A Uniform System of Citation" published by the Harvard Law Review Association (1975).

List of Reports etc. used in this work

This list contains particulars of the Reports and other sources to which reference is made in this work together with the abbreviations used in connection therewith.

A	Atlantic Reporter (USA), 1885-1938
A 2d	Atlantic Reporter, Second Series (USA), 1938-(current)
AC (preceded by date)	Law Reports, Appeal Cases, House of Lords and Privy Council, since 1890 (e.g. [1891] AC)
All ER (preceded by date)	All England Law Reports, 1936-(current) (e.g. [1936] 2 All ER)
All ER Rep	All England Law Reports Reprint, 36 vols., 1843-1935
All ER Rep Ext	All England Law Reports Reprint Extension volumes (Australia), 16 vols., 1861-1935
App Cas	Law Reports, Appeal Cases, House of Lords, 15 vols., 1875-1890
App Div	Appellate Division Reports, New York Supreme Court, 1896-1955
App Div 2d	Appellate Division Reports, New York Supreme Court, Second Series, 1955-(current)
Avi Cas.	CCH Aviation Law Reporter 1822-(current). vol 1 1822-1946; 2 1947-1949; 3 1950-1953; 4 1953-1956; 5 1956-1958; 6 1958-1960; 7 1960-1962; 8 1962-1964; 9 1964-1967; 10 1967-1969; 11 1969-1971; 12 1972-1974; 13 1974-1976; 14 1976-(current) (e.g. 13 Avi Cas 13,953)
Burr	Burrow's Reports, King's Bench, 5 vols., 1756-1772
CBNS	Common Bench Reports, New Series, 20 vols., 1856-1865
CPD	Law Reports, Common Pleas Division, 5 vols., 1875-1880
Cal App 2d	California Appellate Reports Second Series, 1934-(current)
Cal Rptr.	California Reporter, 1959-(current)
Camp	Campbell's Reports, Nisi Prius, 4 vols., 1807-1816
ChD	Law Reports, Chancery Division, 45 vols., 1875-1890
Com Cas	Commercial Cases, 45 vols., 1895-1941
F	Federal Reporter (USA), 1880-1924
F 2d	Federal Reporter, Second Series (USA), 1924-(current)
F Supp	Federal Supplement, 1932-(current)
ICLQ	International and Comparative Law Quarterly
JALC	Journal of Air Law and Commerce
JBL	Journal of Business Law
JRAeS	Journal of the Royal Aeronautical Society
KB (preceded by date)	Law Reports, King's Bench Division, 1901-1952 (e.g. [1951] 2 KB)
LEd	Lawyers' Edition, United States Supreme Court Reports, 1754-1956
LEd 2d	Lawyers' Edition, United States Supreme Court Reports, Second Series, 1956-(current)
LJKB or QB	Law Journal, King's Bench or Queen's Bench, 1831-1946

List of Reports

LRCP	Law Reports, Common Pleas, 10 vols., 1865-1875
LRCh App	Law Reports, Chancery Appeals, 10 vols., 1865-1875
LREx	Law Reports, Exchequer, 10 vols., 1865-1875
LT	Law Times Reports, 177 vols., 1859-1947
LI L Rep	Lloyd's List Law Reports, 1919-1950
Lloyd's Rep (preceded by date)	Lloyd's List Law Reports, 1951-(current) (e.g. [1952] 1 Lloyd's Rep)
Misc	New York Miscellaneous, 1892-1955
Misc 2d	New York Miscellaneous, Second Series, 1955-(current)
Mod LR	Modern Law Review, 1937-(current)
NLJ	New Law Journal, 1965-(current)
NY 2d	New York Reports, Second Series, 1956-(current)
NYS	New York Supplement, 1888-1938
NYS 2d	New York Supplement, Second Series, 1938-(current)
P	Pacific Reporter (USA), 1883-1931
P 2d	Pacific Reporter, Second Series (USA), 1931-(current)
QB (preceded by date)	Law Reports, Queen's Bench Division, 1891-1901; and since 1952 (e.g. [1891] 1 QB)
QBD	Law Reports, Queen's Bench Division, 25 vols., 1875-1890
RFDA	Revue Française de Droit Aérien
SE.	South Eastern Reporter (USA), 1887-1939
SE 2d	South Eastern Reporter, Second Series (USA), 1939-(current)
SLT	Scots Law Times, 1893-(current)
So.	Southern Reporter (USA), 1887-1941
So 2d	Southern Reporter, Second Series (USA), 1941-(current)
Sol J	Solicitor's Journal, 1856-(current)
Taunt	Taunton's Reports, Common Pleas, 8 vols., 1807-1819
US	Reports of Cases in the Supreme Court of the United States of America, 1754-(current)
US Av	United States Aviation Reports, 1928-1970 (e.g. [1946] US Av)

Table of Statutes

In the following Table references to "Statutes" are to Halsbury's Statutes of England (Third Edition) showing the volume and page where the annotated text of the Act will be found.

A	PARA.		PARA.
Acquisition of Land (Authorisation Procedure)		Air Corporations Act 1967—continued	
Act 1946 (6 Statutes 154)	274, 278, 281	s. 28	161, 164
s. 1	147	(1)–(6)	161
(2) (a)	281	33	178
3	274	Air Corporations Act 1968	251
Sch. 1, Pt III	281	Air Corporations Act 1969 (40 Statutes 219): 12, 251	
Acquisition of Land (Authorisation Procedure)		s. 1	251
(Scotland) Act 1947	274	(2)	259
s. 1 (2) (a)	281	Air Corporations Act 1971 (41 Statutes 97)	251
Sch. 1, Pt VIII	281	s. 41 (2), (6)	258
Administration of Justice Act 1920	85	42 (1)–(4)	258
Administration of Justice Act 1956 (1 Statutes 20) 415		43	258
s. 1 (i) (j)	72, 155	(1)–(4)	258
(3), (4)	155	50	258
2 (1)–(4)	155	Air Navigation Act 1919	4, 143
55 (1)	155	s. 2	143
Sch. 1, Pt. I	155	Air Navigation Act 1920	2, 4, 143, 179, 602
Admiralty Offences Act 1844—		s. 7	7, 161
s. 4	646	9	590
Adoption Act 1968 (17 Statutes 779)—		(1)	607
s. 4 (3)	458	(2)	556
Aerial Navigation Act 1911	2, 143	15	166
Aerial Navigation Act 1913	2	Air Navigation Act 1936 (2 Statutes 511): 6, 143, 685	
Air Corporations Act 1949	12, 66, 251	s. 6	158
s. 24 (2)	251	14	166
41 (1)	143	21	6
Sch. 3	143	23	143, 145
Air Corporations Act 1953	12, 251	24	6
Air Corporations Act 1956	12	25	166
Air Corporations Act 1960	12, 251	26	6
Air Corporations Act 1962	12, 251	34 (2) (b)	143
Air Corporations Act 1964	12, 251	35	6
Air Corporations Act 1966 (2 Statutes 674)	12, 251, 255	(2)	143
Air Corporations Act 1967 (2 Statutes 676): 12, 66, 67, 153, 251, 255		Sch. 4	6
s. 3 (4) (c)	258	Sch. 7	143
7 (3)	260	Air Navigation Act 1947	11, 12
8	259	Airports Authority Act 1965 (2 Statutes 648)	12
10	260	s. 2 (4)	272
(1) (a)–(c)	260	6	272
(2)–(5)	260	(3)	272
14	259	12	272
15	259	14	156
23, 24	262	15	160, 614
		17	166
		Sch. 2	164
		Sch. 3	282

[illegible]

	PARA.
<i>Carriage by Air Act 1961—continued</i>	
s. 7	405, 423
8	73, 423, 489, 520, 550
9	403
10	59, 401, 484
(1), (2)	154
Sch. 1	87, 404, 411, 417, 448, 456, 483
art. 1.	422, 424
(1)	405, 406, 414, 416, 417
(2)	405, 407, 408, 411, 418, 420
(3)	407, 418, 419, 420, 421
2.	422
(1)	414, 422
(2)	405, 533
3.	414, 415, 447, 462
(1)	445, 447
(c)	412, 444, 446, 462
(2)	125, 445, 446, 447, 483
4.	415, 463
(1)	444, 463
(c)	444, 467
5. (1)	470
(2)	471
6. (1)–(5)	470
7.	470
8.	470
(c)	412, 444, 471, 476
9.	471, 476
10 (1), (2)	470
11 (1)	125, 470
(2)	470
12	478, 479, 480
(1)–(4)	480
13	478, 480
(1)	479, 480, 660
(2)	479
(3)	479, 480
14	478
15 (1), (2)	478
(3)	472, 478
16 (1)	473
(2)	473
17	402, 405, 414, 424, 431, 448, 449, 455, 456, 468
18	431, 434
(1)	434, 436, 465, 474
(2)	424, 431, 443, 465, 474
(3)	424, 431, 465, 474
19	414, 430, 431, 433, 436, 465, 468, 474, 504, 508
20	87, 432, 449, 465, 468, 474
21	449, 465, 468, 474
(1)	457
22	414, 431, 446, 447, 453, 483
(1)	449, 450, 451, 453, 461, 462, 496
(2)	464, 471, 476
(a)	467, 476
(b)	467, 470, 476
(3)	468, 472
(4), (5)	452, 496
23 (1)	421, 426, 433, 456, 476
(2)	426, 450
24	431
(1)	430
25	467, 468, 476, 483
25A	127, 482
(1)–(3)	483

	PARA.
<i>Carriage by Air Act 1961—continued</i>	
art. 26	426, 468
(1)–(4)	466, 475
27	437
28	72
(1)	426, 438, 439, 440, 441, 442, 491, 525
(2)	438
29	426, 443, 449, 460
(1)	443, 456
(2)	443
30 (1)	418, 419
(2)	418, 419, 454, 554
(3)	468, 477
31 (1)	424
32	426, 438
33	380
34	444
35	479
36, 37	404, 411
38 (2)	411
39, 40	404, 411
40A (1)	404, 411
(2)	411
Additional Protocol	405, 411, 422
<i>Carriage by Air (Supplementary Provisions) Act 1962 (2 Statutes 639)</i>	
12, 56, 66, 67, 153, 154, 372, 398, 399, 415, 427, 454, 539, 540, 541	
s. 1 (1)	539
(2)	485, 540
2	539
(2)	548
3 (1)	549
(2)	551
(3)	73, 550
4	482
(1) (a)	549
(2), (3)	549
5 (2)	59, 154, 484
7 (2)	154
Schedule, Pt. I	540
art. I (b), (c)	541
II	542, 543, 554
III (1)	543, 544, 554
(2)	542, 543
IV	545, 546
VI	549
VII	548, 552
VIII	72, 547, 550
Pt. II.	540
IX (1)–(3)	547
X	552
<i>Carriage of Goods by Road Act 1965 (28 Statutes 436)</i>	
436)	496
Schedule	
art. 2 (1)	425
proviso	425
14	424
<i>Carriage of Goods by Sea Act 1924 (31 Statutes 523)</i>	
523)	415, 425, 443
<i>Carriers Act 1830 (3 Statutes 540)</i>	
540)	425
<i>Children Act 1975 (45 Statutes 669)—</i>	
s. 8	458
Sch. 1	458
<i>Church of England Assembly (Powers) Act 1919 (10 Statutes 47)—</i>	
s. 4	55

Table of Statutes

	PARA.
Civic Amenities Act 1967	272, 292
Civil Aviation Act 1946.	12, 143, 251
Civil Aviation Act 1949 (2 Statutes 514): 2, 4, 11, 12,	
59, 66, 67, 118, 147, 153, 154, 156,	
157, 161, 166, 167, 168, 179, 180, 182,	
185, 198, 224, 238, 248, 281, 282, 318,	
579, 602, 605, 610, 613, 614, 616, 637,	
647, 650, 651, 652	
s. 1	143
(1)	144, 166, 291
(2)	144, 146
(5)	291
2	143
3	143, 290
(1)	255
(2), (3)	166
4	143, 290
5	143
6	143
(1), (2)	145
(3)	145, 167
(4)	145
8	56, 149, 154, 156, 157, 161
(1)	59
(2)	157, 613, 652
(a)	182
(c)	157
(h)	158, 198, 653
(r)	156, 186
(s)	156
(4)	157, 652
(7)	157
9	157, 161, 164
(1)	161
(2)	157, 161, 651, 654
(3)	161
(6)	157, 198
10	156, 318
(1)	146, 153
(2)	318
(3)	157, 318, 651, 654
11	185, 198, 238, 241, 651
(1)	653
15 (2)	167
16	273
(2)	284
(3)	286
17	147, 286
18 (2)	147
19	147, 273
(1)	147, 288
(2), (3)	147, 274
(4), (5)	147
(6), (7)	274
(8)	147, 288
20	147, 164, 284
23	164, 166
(1)	166, 274
(2), (3), (5)	274
(7)	147, 274
(8), (9)	154, 274
(10)	154
24	164, 282
(1)-(5)	276
(8)	276, 651, 654
(9)	650
(10)	276
25	164, 273, 650

	PARA.
Civil Aviation Act 1949—continued	
s. 25 (1), (2)	279
(3)	273, 279
(4)	279, 651, 654
(5), (6)	650
26	164, 165, 277
(1)-(3)	277
(4)	164
(5)	147, 277
(7)	277
27	164, 166
(2), (3)	277
(4)	276, 277, 651, 654
(5)	277
(7) (b)	277
28	164, 166, 278
(1)-(3), (5), (6)	278
29	166
(1)	280
(b)	280
(2)	280, 651, 654
(3)	650
(5)	280
30 (1), (3), (4)	281
31	166
(1)-(3)	282
32	166, 283
(1)	244
33	147
36	160
(1)	180
37	167
(1)-(3)	290
38	284, 285
(1)	290, 651, 654
(2), (3)	290
40: 54, 72, 154, 224, 287, 590, 591, 598, 602, 618	
(1)	602, 603, 613, 618
(2)	120, 394, 556, 591, 602, 604, 612, 613,
	616, 617, 618, 619, 657, 662, 663, 685,
	687, 696
41	156
(2)	614
42	685
43	160
48	6
49 (1)	605
(2)	611, 616, 662, 663
(3)	618
50	154
51	72
(1)	318
(2)	156, 318
52	295
(1)	160, 198
(2)	198, 597
(3)	198
(4)	160
(5) (c)	178
54	429
(4)	429
55	160, 167, 248
(1)	248, 651, 654
(2)	248, 650
(5)	248
56	160, 167, 292
57 (1)	60, 156, 157
(2)	59

Table of Statutes

Civil Aviation Act 1949—continued		PARA.	Civil Aviation Act 1968—continued		PARA.
(3)		157	s. 20		65, 154, 181
58		158, 161, 198	21 (1)		147, 274
59		154, 185	23		157, 650
(1)		65, 185	(1) (b) (ii)		218
60		185, 650	(2)		318
61		618	(3), (4)		218, 650
(1)		154	26		154, 685
62		185	28 (3)		274
(1)		640, 650	(4)		271
(2)		155, 318	Civil Aviation Act 1971 (41 Statutes 105): 12, 58, 66,		
63 (1)	143, 145, 166, 180, 271, 281		67, 143, 148, 153, 156, 166, 169, 171,		
(2)		276	212, 218, 251, 282, 284, 288, 300, 301,		
(3)		605	613, 650, 651, 672, 685		
(8)		164	s. 1		148
64, 65, 67		154	(2)–(4)		149
68 (2)		160	2 (a)		171, 273, 296
69		146	(b)		171, 186, 284, 296
70 (2)	160, 167, 248, 318		3 (1)		165, 166, 169
Sch. 1		276, 279	(b)		252
Pt. I		276	(2)		163, 166, 169
Sch. 2		279	4		58, 163, 166
Sch. 3		277	(3)		165
Sch. 4		281	5 (1)		169, 675, 677
Sch. 8		198	(2)		156
Sch. 11		146, 147, 160	(a), (b)		169
Sch. 12		6, 143	6 (1)–(3)		150
Civil Aviation Act 1968 (40 Statutes 196)		6, 12,	7 (1), (3)–(7)		150
		153, 157, 198, 288, 300, 301, 302, 613,	8		288
		650, 651	(1), (2), (5)		150
s. 1		648	9		666
(2)–(4)		291	(1)		150, 288
(5)		290	(a)–(c)		150
2		647, 649	(2)		150, 288
(1)–(3)		290	(3) (a), (b)		150, 156
(4)		274	(7)		288
3		147, 647	10 (1) (b)		150
(1)		284	(2), (4)		150
4		647	11 (1)–(3)		150
(4)		147	12		150
5		290, 651, 654	13 (1)–(3)		150
6 (1)		288	(4) (b)		150
(2)		164, 284	14		164, 166, 171, 273
(3), (5)		147	(1)		280
7		147, 274	(2), (3)		274
8		268, 650	(5)		171
(3)		268	(a)		276
9, 10		59	(b)		279
11		59, 160	(c)		277
12 (1) (b)		288	(d)		278
(3)		288	(7)		283
14		59, 198, 302	(9)		274
(1) (a) (i), (ii)		289	15		164, 274, 280
(b)		198, 289	16		164, 171, 274
(2)–(4)		198, 289	(1), (2)		147
(a), (b)		289	(5), (6)		274
15		59, 156	17		164
(1), (2)		300	(1)–(5)		275
(3)		296, 301	18		281
(4)		302	19 (1)		171
16		59, 156, 164, 664	(2)		149, 171
(1)		665	21		171, 217, 218, 416
(2) (a)		664	(2), (3)		170
(f)		665	(5)		651
17		56, 59, 154, 664	(6)		650
18		59, 156, 164, 664	(7)		198
19 (1)		156, 186	(a)		651
(2)		59	(8)		654

Table of Statutes

	PARA.
Civil Aviation Act 1971— <i>continued</i>	
s. 22	171, 217
(1)	170
(2)	218, 685
(a) (i), (ii)	218
(b)	218
(3)	218
(5)	218, 219
(6)	219
23	171, 217
(1)	219
(3) (b)	219
(4)	170, 219
24	171, 217
(3)–(5)	218
(6)	156, 160, 218
(7)	218, 651, 654
25	171, 217, 218
26	156, 160, 171, 672, 677
(1)	672
(2)	654
27 (2)	187
28	171
(1), (2)	296
(3)	171, 296
(4)	171
29	156
(1)	613
(3) (a), (b)	613
(4) (c)	198
(5)	613
(7) (a)	613
(8)	613
(a), (b)	613
30	171
(1)	284
(2)	286
(3)	286, 288
(4)	286
(5)	284
31	170, 290
(2)	651, 654
(3)	170
32 (2), (4)	147
(5)	160
33 (1)–(5)	151
34	152
(1) (a), (b)	152
(d) (i), (ii)	152
35 (1) (a)–(d)	152
(i)–(iii)	152
(2), (3)	152
(4)	152, 650, 651, 654
36 (1) (a), (b)	152
(2), (3)	152
37	253
(5)	253
38	251
(1) (a), (b)	254
(c)	254, 256
(d)–(f)	254
(2) (a), (c), (d)	254
39	165, 251, 255, 256
(1)	257
(a)	255
(b)	255, 256
(2)	255
(3)	254, 255, 256, 257

	PARA.
Civil Aviation Act 1971— <i>continued</i>	
s. 40	58, 159, 165
(1)	255
(a)	257
(b), (c)	256, 257
(2) (a)	257
(3)	257
(4)	58, 257
41	256, 259
(1), (2)	259
(3)	256, 259, 260
(4)	256, 259
(5)	259
42	159, 259
(1)	258
(2)	257
43	258, 259
(2)	256
45	258, 259
46	259
(1)	259
(a)–(c)	259
(2) (b), (c)	259
(3), (4)	259
47 (1)–(4)	259
48 (1)	258, 260
(2)–(4)	260
49	256, 261
50	258, 261
(1)	256, 261
(2), (3)	256
(4), (5)	261
51	261
(2) (a)	258
(b)	261
52	257, 261
53 (1) (a), (b)	261
(2), (3)	261
55	255
57	164, 251, 256
(1)	256
58	255
59	251, 253
62 (1)	157
(5)	650
63 (1)	59, 156
(2)	59
64 (1)	150, 180, 217, 416
65, 66	154
70 (2)	154
Sch. 1	149, 169
Sch. 2	150, 164
Sch. 3	165, 276, 277, 278, 279, 280, 281, 282, 650
Pt. II	171, 276
Sch. 4, 5	281
Sch. 7	170, 290
Sch. 8	253
Sch. 10	147, 161, 164, 167, 614
Sch. 11	156, 249
Civil Aviation (Declaratory Provisions) Act 1971	
(41 Statutes 98)	251
Civil Aviation (Eurocontrol) Act 1962 (2 Statutes	
630)	66, 67, 72, 153, 156, 198, 286, 296, 300, 302, 637
s. 2	296
3	280
(1), (2)	296

Table of Statutes

	PARA.
Civil Aviation (Eurocontrol) Act 1962— <i>continued</i>	
(3)	276
(b)	277
(4)	276, 280
(5)	280
4	72, 156, 289, 296
(1)	300, 301
(1A)	301
(2)	301
(3)	300, 301
(a)	361
(b)	300, 301
(4)	286, 296, 301
5	296
(1), (3)	640
6	296
(1)–(4)	651, 654
7	156, 296
(1)	59, 296
(2)	158, 302
(a)	198
(b)	198, 302
(3)	72
(a)	650
8	
(1)	300
10 (2)	136
Civil Aviation (Licensing) Act 1960 (2 Statutes 588)	12, 218, 249, 251, 637, 650, 651
s. 5 (4)	59
6 (7)	650
7	249
(1)	651
(2)	654
15	251
16 (3)	251
Colonial Laws Validity Act 1865 (4 Statutes 476)	57
Commonwealth Secretariat Act 1966 (4 Statutes 56)	68
Companies Act 1948 (5 Statutes 110)	707
s. 95 (1)	670
(2) (h)	670
(3), (5)	670
(10) (a), (b)	670
98 (2)	670
106	670
407 (1) (c)	70
Companies Act 1967	707
Company Purchase Act 1965 (6 Statutes 281)—	
s. 4–8, 10, 31, 38	147
Sch. 6	147
Consumer Credit Act 1974 (44 Statutes 746)	656
Contracts of Employment Act 1972 (42 Statutes 310)	262
County Courts Act 1959 (1 Statutes 41)—	
s. 56	72
(1) (f)	155
(2)–(5)	155
Courts Act 1971 (41 Statutes 827)—	
Sch. 11, Pt. IV	89
Criminal Law Act 1967 (8 Statutes 552)—	
s. 2, 3	649
10 (3)	456
Sch. 3	456
Crown Proceedings Act 1947 (8 Statutes 844)—	
s. 17 (1)	650

	PARA.
Customs and Excise Act 1952 (9 Statutes 55)—	
s. 15	271
(3)	271, 321
21, 25	198
152	246
(1)–(5)	246
155, 187, 284	246
D	
Defence (Transfer of Functions) Act 1964 (6 Statutes 795)—	
s. 1	161
Deposit of Poisonous Waste Act 1972 (42 Statutes 1543)	586
Dockyards Ports Regulations Act 1865 (31 Statutes 898)	597
E	
Employers' Liability (Compulsory Insurance) Act 1969 (40 Statutes 553)	498, 698
Employer's Liability (Defective Equipment) Act 1969 (40 Statutes 551)	698
s. 1 (2)	498
Employment Protection Act 1975	262
European Communities Act 1972 (42 Statutes 78)—	
s. 2	61
(1)–(3)	247
Exchange Control Act 1947 (22 Statutes 900)	687
Explosive Substances Act 1883 (8 Statutes 220)—	
s. 2	641, 643
Extradition Act 1870 (13 Statutes 249)	638, 642, 644
s. 2	154, 642
16 (1), (3)	640
17	154, 638
22	638
Sch. 1	642, 644
F	
Factories Act 1961 (13 Statutes 400)	286
Factors Act 1889 (1 Statutes 94)—	
s. 1 (4)	472
Fatal Accidents Act 1846 (23 Statutes 780)	80
Fatal Accidents Act 1959 (23 Statutes 801)	80
Fatal Accidents Act 1976 (46 Statutes 1115)	80, 117, 385, 395, 402, 443, 504, 527, 592, 600, 605
s. 1 (1)	456
(2), (3)	458
(4) (a), (b)	458
2	456
(2)	456
3, 4	457
Finance (1909–10) Act 1910—	
s. 49 (2)	246
52	246
Sch. 1C	246
Finance Act 1946—	
s. 9	246
Finance Act 1960—	
s. 6 (2)	246
Fires Prevention (Metropolis) Act 1774 (17 Statutes 829)	586