
STATUTORY INSTRUMENTS

1972 No. 1268

CIVIL AVIATION

The Mortgaging of Aircraft Order 1972

Laid before Parliament in draft

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| <i>Made</i> | - - - - | <i>14th August 1972</i> |
| <i>Coming into Operation</i> | | <i>1st October 1972</i> |

At the Court at Balmoral, the 14th day of August 1972

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 16 of the Civil Aviation Act 1968 and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation and Commencement

1. This Order may be cited as the Mortgaging of Aircraft Order 1972 and shall come into operation on 1st October 1972.

Interpretation

2.—(1) The Interpretation Act 1889 applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

(2) In this Order:

“appropriate charge” means the charge payable under section 9 of the Civil Aviation Act 1971;

“the Authority” means the Civil Aviation Authority;

“mortgage of an aircraft” includes a mortgage which extends to any store of spare parts for that aircraft but does not otherwise include a mortgage created as a floating charge;

“owner” means the person shown as the owner of a mortgaged aircraft on the form of application for registration of that aircraft in the United Kingdom nationality register;

“United Kingdom nationality register” means the register of aircraft maintained by the Authority in pursuance of an Order in Council under section 8 of the Civil Aviation Act 1949.

Mortgage of Aircraft

3. An aircraft registered in the United Kingdom nationality register or such an aircraft together with any store of spare parts for that aircraft may be made security for a loan or other valuable consideration.

Registration of Aircraft Mortgages

4.—(1) Any mortgage of an aircraft registered in the United Kingdom nationality register may be entered in the Register of Aircraft Mortgages kept by the Authority.

(2) Applications to enter a mortgage in the Register shall be made to the Authority by or on behalf of the mortgagee in the form set out in Part I of Schedule 1 hereto, and shall be accompanied by a copy of the mortgage, which the applicant shall certify to be a true copy, and the appropriate charge.

5.—(1) A notice of intention to make an application to enter a contemplated mortgage of an aircraft in the Register (hereinafter referred to as “a priority notice”) may also be entered in the Register.

(2) Applications to enter a priority notice in the Register shall be made to the Authority by or on behalf of the prospective mortgagee in the form set out in Part II of Schedule 1 hereto, and shall be accompanied by the appropriate charge.

6.—(1) Where two or more aircraft are the subject of one mortgage or where the same aircraft is the subject of two or more mortgages, separate applications shall be made in respect of each aircraft or of each mortgage, as the case may be.

(2) Where a mortgage is in a language other than English, the application to enter that mortgage in the Register shall be accompanied not only by a copy of that mortgage but also by a translation thereof, which the applicant shall certify as being, to the best of his knowledge and belief, a true translation.

7.—(1) When an application to enter a mortgage or priority notice in the Register is duly made, the Authority shall enter the mortgage or the priority notice, as the case may be, in the Register by placing the application form therein and by noting on it the date and the time of the entry.

(2) Applications duly made shall be entered in the Register in order of their receipt by the Authority.

(3) The Authority shall by notice in its Official Record specify the days on which and hours during which its office is open for registering mortgages and priority notices. Any application delivered when the office is closed for that purpose shall be treated as having been received immediately after the office is next opened.

(4) The Authority shall notify the applicant of the date and time of the entry of the mortgage or the priority notice, as the case may be, in the Register and of the register number of the entry and shall send a copy of the notification to the mortgagor and the owner.

Amendment of entries in the Register

8.—(1) Any change in the person appearing in the Register as mortgagee or as mortgagor or in the name or address of such person or in the description of the mortgaged property shall be notified to the Authority by or on behalf of the mortgagee, in the form set out in Part III of Schedule 1 hereto.

(2) On receipt of the said form, duly completed and signed by or on behalf of the mortgagor and the mortgagee and on payment of the appropriate charge, the Authority shall enter the notification in the Register and shall notify the mortgagor, the mortgagee and the owner that it has done so.

Discharge of Mortgages

9.—(1) Where a registered mortgage is discharged the mortgagor shall notify the Authority of the fact in the form set out in Part IV of Schedule 1 hereto.

(2) On receipt of the said form, duly completed and signed by or on behalf of the mortgagor and the mortgagee and of a copy of the mortgage with a discharge or receipt for the mortgage money duly endorsed thereon, or of any other document which shows, to the satisfaction of the Authority, that the mortgage has been discharged and on payment of the appropriate charge, the Authority shall enter the said form in the Register and mark the relevant entries in the Register “Discharged”, and shall notify the mortgagee, the mortgagor and the owner that it has done so.

Rectification of the Register

10. Any of the following courts, that is to say the High Court of Justice in England, the Court of Session in Scotland and the High Court of Justice in Northern Ireland may order such amendments to be made to the Register as may appear to the court to be necessary or expedient for correcting any error therein. On being served with the order the Authority shall make the necessary amendment to the Register.

Inspection of Register and copies of entries

11.—(1) On such days and during such hours as the Authority may specify in its Official Record, any person may, on application to the Authority and on payment to it of the appropriate charge inspect any entry in the Register specified in the application.

(2) The Authority shall, on the application of any person and on payment by him of the appropriate charge, supply to the applicant a copy, certified as a true copy, of the entries in the Register specified in the application.

(3) The Authority shall, on the application of any person and on payment by him of the appropriate charge, notify the applicant whether or not there are any entries in the Register relating to any aircraft specified in the application by reference to its nationality and registration marks.

(4) A document purporting to be a copy of an entry in the Register shall be admissible as evidence of that entry if it purports to be certified as a true copy by the Authority.

(5) Nothing done in pursuance of paragraph (2) or (3) of this Article shall affect the priority of any mortgage.

Removal of aircraft from the United Kingdom Nationality Register

12. The removal of an aircraft from the United Kingdom nationality register shall not affect the rights of any mortgagee under any registered mortgage and entries shall continue to be made in the Register in relation to the mortgage as if the aircraft had not been removed from the United Kingdom nationality register.

Register as notice of facts appearing in it

13. All persons shall at all times be taken to have express notice of all facts appearing in the Register, but the registration of a mortgage shall not be evidence of its validity.

Priority of Mortgages

14.—(1) Subject to the following provisions of this article, a mortgage of an aircraft entered in the Register shall have priority over any other mortgage of or charge on that aircraft, other than another mortgage entered in the Register:

provided that mortgages made before 1st October 1972, whether entered in the Register or not, shall up to and including 31st December 1972 have the same priority as they would have had if this Order had not been made.

(2) Subject to the following provisions of this article, where two or more mortgages of an aircraft are entered in the Register, those mortgages shall as between themselves have priority according to the times at which they were respectively entered in the Register:

Provided that:

- (i) mortgages of an aircraft made before 1st October 1972 which are entered in the Register before 31st December 1972 shall have priority over any mortgages of that aircraft made on or after 1st October 1972 and shall as between themselves have the same priority as they would have had if this Order had not been made;
- (ii) without prejudice to proviso (i), where a priority notice has been entered in the Register and the contemplated mortgage referred to therein is made and entered in the Register within 14 days thereafter that mortgage shall be deemed to have priority from the time when the priority notice was registered.

(3) In reckoning the period of 14 days under the preceding paragraph of this article, there shall be excluded any day which the Authority has by notice in its Official Record specified as a day on which its office is not open for registration of mortgages.

(4) The priorities provided for by the preceding provisions of this article shall have effect notwithstanding any express, implied or constructive notice affecting the mortgagee.

(5) Nothing in this article shall be construed as giving a registered mortgage any priority over any possessory lien in respect of work done on the aircraft (whether before or after the creation or registration of the mortgage) on the express or implied authority of any persons lawfully entitled to possession of the aircraft or over any right to detain the aircraft under any Act of Parliament.

Mortgage not affected by bankruptcy

15. A registered mortgage of an aircraft shall not be affected by any act of bankruptcy committed by the mortgagor after the date on which the mortgage is registered, notwithstanding that at the commencement of his bankruptcy the mortgagor had the aircraft in his possession, order or disposition, or was reputed owner thereof, and the mortgage shall be preferred to any right, claim or interest therein of the other creditors of the bankrupt or any trustee or assignee on their behalf.

Application of Bills of Sale Acts and registration provisions of the Companies Acts

16.—(1) The provisions of the Bills of Sale Acts 1878 and 1882 and the Bills of Sale (Ireland) Acts 1879 and 1883 insofar as they relate to bills of sale and other documents given by way of security for the payment of money shall not apply to any mortgage of an aircraft registered in the United Kingdom nationality register, which is made on or after 1st October 1972.

(2) Section 95(2)(h) of the Companies Act 1948, section 106A(2)(d) of that Act as set out in the Companies (Floating Charges) (Scotland) Act 1961 or any re-enactment thereof and section 93(2)(h) of the Companies Act (Northern Ireland) 1960 shall have effect as if after the word “ship” where it first occurs in each case there were inserted the words “or aircraft”:

Provided that nothing in this paragraph shall render invalid as against the liquidator or creditor of the company, any mortgage or charge created by a company before the date on which this Order comes into force which would not have been invalid against the liquidator or such a creditor if this Order had not been made.

False Statement and Forgery

17.—(1) If, in furnishing any information for the purpose of this Order, any person makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, he shall be guilty of an offence.

(2) Any person guilty of an offence under paragraph (1) of this article shall:—

- (a) on summary conviction be liable to a fine not exceeding £400;
- (b) on conviction on indictment be liable to a fine of such amount as the court think fit or to imprisonment for a term not exceeding 2 years or to both such a fine and such imprisonment.

(3) Without prejudice to any rule of the law of Scotland relating to forging and uttering, the Forgery Act 1913 shall apply in relation to documents forwarded to the Authority in pursuance of this Order as if such documents were included in the list of documents in section 3(3) of that Act.

Indemnity

18.—(1) Subject to paragraph (2) of this article, any person who suffers loss by reason of any error or omission in the Register or of any inaccuracy in a copy of an entry in the Register supplied pursuant to Article 11(2) of this Order or in a notification made pursuant to Article 11(3) of this Order shall be indemnified by the Authority.

(2) No indemnity shall be payable under this article:

- (a) where the person who has suffered loss has himself caused or substantially contributed to the loss by his fraud or has derived title from a person so committing fraud;
- (b) on account of costs or expenses incurred in taking or defending any legal proceedings without the consent of the Authority.

Application to Scotland

19. The provisions of Schedule 2 to this Order shall have effect for the purpose of the application of this Order to Scotland.

W.G. Agnew

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SCHEDULE 1

FORMS

Article 4(2)

PART I

REGISTER OF AIRCRAFT MORTGAGES

Entry of Aircraft Mortgage

Article 5(2)

PART II

REGISTER OF AIRCRAFT MORTGAGES

Entry of Priority Notice

Article 8(1)

PART III

REGISTER OF AIRCRAFT MORTGAGES

Change in Particulars

Article 9(1)

PART IV

REGISTER OF AIRCRAFT MORTGAGES

Discharge of registered mortgage

SCHEDULE 2

Article 19

PART I

APPLICATION OF THE ORDER TO SCOTLAND

- (a) (a) In this Schedule—
- “act of bankruptcy” has the meaning assigned to it in subparagraph (b)(ii) of this paragraph;
 - “aircraft mortgage” has the meaning assigned to it in paragraph 2 of this Schedule;
 - “mortgagee” means the creditor in an aircraft mortgage;

“mortgagor” means the person in security of whose indebtedness or obligation the aircraft mortgage is granted;

and references to an aircraft which is the subject of an aircraft mortgage include, where the mortgage so extends, a reference to a store of spare parts designated or appropriated to that aircraft.

(b) In the application of this Order to Scotland—

(i) in Article 14 there shall be added the following paragraph—

“6. Subject to paragraph 5 of this article, an aircraft mortgage may contain provisions regulating the order in which that mortgage shall rank with any other mortgage of that aircraft or any floating charge within the meaning of the Companies (Floating Charges) (Scotland) Act 1961 or any re-enactment thereof.”

(ii) in Article 15 the words “act of bankruptcy” shall mean—

(a) in the case of a company, a winding-up order, or a resolution for voluntary winding-up (other than a members' voluntary winding-up) or the taking of possession, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge;

(b) in the case of any other person, his notour bankruptcy, the execution of a trust deed for behoof of, or the making of a composition contract or arrangement with his creditors or in the event of his death, the appointment of a judicial factor under section 163 of the Bankruptcy (Scotland) Act 1913 to divide his insolvent estate among his creditors, or the making of an order for the administration of his estate according to the law of bankruptcy under section 130 of the Bankruptcy Act 1914 or the administration of his estate in accordance with the rules set out in Part I of Schedule 1 to the Administration of Estates Act 1925.

2. A security created in Scotland under Article 3 of this Order for a loan or other obligation shall be constituted by a mortgage in, or as nearly as may be in, the form specified in Part II of this Schedule which shall be known as an aircraft mortgage.

3. A mortgage registered under this Order shall have effect without any requirement of law that delivery of the aircraft shall be made to the mortgagee.

4. A mortgage so registered may be transferred, in whole or in part, by the mortgagee by a transfer in, or as nearly as may be in, the form specified in Part III of this Schedule.

5. An aircraft mortgage may be discharged, in whole or in part, by the mortgagee by a discharge in, or as nearly as may be in, the form specified in Part IV of this Schedule or by a receipt for the mortgage money duly endorsed on the aircraft mortgage.

6. The provisions of paragraphs 7 to 11 of this Schedule, with such variations as may have been agreed by the parties, shall regulate the rights and powers of parties under an aircraft mortgage.

7. Where the mortgagor, or the owner, is in default within the meaning of paragraph 8 of this Schedule, the mortgagee may exercise such of the rights conferred upon him by the following provisions of this Schedule as he may consider appropriate, and any such right shall be in addition to, and not in derogation from, any other remedy arising from the aircraft mortgage or any other agreement between the parties.

8. The mortgagor or the owner shall be in default if—

(a) the mortgagee has required the discharge or performance of the debt or obligation to which the aircraft mortgage relates and the mortgagor fails to meet that requirement, or

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- (b) the mortgagor or the owner has failed to comply with any other condition of the aircraft mortgage, or
- (c) the mortgagor or the owner has committed an act of bankruptcy.

9. Where default as aforesaid has occurred the mortgagee may sell the mortgaged aircraft in accordance with the following provisions of this paragraph:—

- (a) The mortgagee who intends to sell the aircraft shall give not less than 60 days notice in writing of that intention to the mortgagor, the owner and every person shown in the Register as holding a mortgage over the aircraft, but the said period of notice may be dispensed with or shortened with the consent of all the persons to whom notice is required to be given.
- (b) On the expiry of, or the dispensing with, the period of notice, or, as the case may be, of the reduced period of notice, the mortgagee may sell the aircraft with the consent in writing of every other mortgagee shown in the Register as holding a mortgage over the aircraft.
- (c) In the event of any mortgagee withholding his consent the mortgagee who has served the notice may apply to the Court of Session for a warrant to sell the aircraft; any such application shall be served upon any mortgagee who has withheld his consent and may be granted by the Court, subject to such conditions as it thinks reasonable in all the circumstances.

10. Moneys received by a mortgagee from the sale of the mortgaged aircraft shall be held by him in trust to be applied in accordance with the following order of priority:—

- (a) first, in payment of all expenses properly incurred by him in connection with the sale, or any prior attempted sale, of the aircraft;
- (b) secondly, in payment of the whole amount of principal and interest due under any prior aircraft mortgage to which the sale is not made conditional;
- (c) thirdly, in payment of the whole amount of principal and interest due under his aircraft mortgage and in payment in due proportion of the whole amount due under an aircraft mortgage, if any, ranking *pari passu* with his own mortgage;
- (d) fourthly, in payment of any amounts of principal and interest due under any duly registered mortgages over the aircraft, the ranking of which is postponed to that of his own mortgage; and
- (e) fifthly, in payment of any amount of principal and interest due under any mortgages over the aircraft ranked in accordance with the priorities provided for in Article 14 of this Order where the holder of any such mortgage has lodged in the hands of the mortgagee a claim in writing countersigned by the mortgagor,

and any residue of the moneys so received shall be paid to the owner or to any person authorised by the owner to give receipts therefor.

11.—(1) Where default as aforesaid has occurred the mortgagee may apply to the Court of Session for a warrant for possession of the mortgaged aircraft, and the application shall be served upon the mortgagor, the owner and every person shown in the Register as holding a mortgage over the aircraft and upon the owner or occupier of the land or premises where the aircraft is for the time being situated.

(2) Upon such an application being made the Court may—

- (a) grant warrant to the applicant to take interim possession of the aircraft pending further consideration of the application,
- (b) on further consideration grant the application for possession subject to such conditions as it shall consider reasonable in all the circumstances.

(3) Subject to any conditions imposed by the Court a warrant for possession shall empower the applicant to enter at any reasonable time on any land or into any premises where the mortgaged aircraft, or any part thereof, may be, and to remove the aircraft or part, to manage the aircraft and to receive all income accruing from freights or charter fees, to pay insurance premiums and expenses of such management, to effect repairs and make replacements of parts and to recover all expenses, payments and disbursements incurred by him in relation to the exercise of these powers as sums due under his mortgage with interest thereon at the rate stipulated therein from the respective dates of payment or disbursement.

(4) A mortgagee who has obtained a warrant for possession may at any time thereafter sell the mortgaged aircraft after giving not less than 30 days notice in writing of his intention to do so to the mortgagor, the owner and every person shown in the Register as holding a mortgage over the aircraft, provided that the said period of notice may be dispensed with or shortened with the consent of all the persons to whom notice is required to be given.

12. The Court of Session shall have jurisdiction to grant an application by a mortgagee in any mortgage of an aircraft registered in the United Kingdom for a warrant for possession or sale of the aircraft while the aircraft is situated in Scotland as if the mortgage had been an aircraft mortgage created in Scotland.

13. The provisions of section 16 of the Administration of Justice (Scotland) Act 1933 (power to regulate procedure, etc., by Act of Sederunt) shall apply to the provisions of this Order as it applies to the provisions of an Act of Parliament.

PART II

AIRCRAFT MORTGAGE

Particulars of Aircraft

PART III

AIRCRAFT MORTGAGE

TRANSFER OF MORTGAGE

PART IV

AIRCRAFT MORTGAGE

DISCHARGE OF MORTGAGE

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EXPLANATORY NOTE

This Order makes provision with respect to the mortgaging of aircraft registered in the United Kingdom. In particular it provides for the registration of mortgages of aircraft in a Register of Aircraft Mortgages to be kept by the Civil Aviation Authority and for the priority inter se of registered mortgages.