

HIGH COMMISSIONER'S NOTICE No. 31 OF 1922.

The following Order of His Majesty-in-Council, dated the 6th day of February, 1922, and entitled "The Air Navigation (Colonies and Protectorates) Order-in-Council 1922," is published for general information.

By Command of His Royal Highness the
High Commissioner,

H. J. STANLEY,
Imperial Secretary.

High Commissioner's Office,
Capetown, 6th April, 1922.

AT THE COURT AT BUCKINGHAM PALACE,
THE 6TH DAY OF FEBRUARY, 1922.

PRESENT,

THE KING'S MOST EXCELLENT MAJESTY.

LORD CHAMBERLAIN.
VISCOUNT ESHER.
LORD SOMERLEYTON.
MR. SECRETARY SHORTT.

MR. MUNRO.
SIR FREDERICK PONSONBY.
MR. J. F. HOPE.
SIR ERNEST POLLOCK.

Whereas by sub-section (1) of Section 4 of the Air Navigation Act, 1920, it is provided that His Majesty may, by Order-in-Council, extend, with any necessary modifications and exceptions, any of the provisions of the said Act to any British possessions other than those mentioned in the Schedule to the said Act and (save as therein provided) to any territory under His Majesty's protection:

And whereas it is expedient to extend certain provisions of the said Act to certain British Colonies and Protectorates:

Now, therefore, His Majesty, by virtue of and in exercise of the powers on this behalf by the Air Navigation Act, 1920, or otherwise in His Majesty vested, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as "The Air Navigation (Colonies and Protectorates) Order-in-Council, 1922."

2. In this Order and its schedules—

"Colony" means one of the British possessions or protectorates mentioned in the second schedule hereto;

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

"The Act" means the Air Navigation Act, 1920.

3. The provisions of Sections 7, 8 (1), 9, 10, 11, 12, and 18 of the Act, with the necessary modifications as set forth in the first schedule hereto, shall be and hereby are extended to the Colonies mentioned in the second schedule hereto.

4. This Order shall come into operation on the 1st day of April, 1922.

ALMERIC FITZROY.

FIRST SCHEDULE.

1. Section 7—(1) In time of war, whether actual or imminent, or of great national emergency the Governor may, by order, regulate or prohibit, either absolutely or subject to such conditions as may be contained in the order, the navigation of all or any descriptions of aircraft over the Colony or any portion thereof, or the territorial waters adjacent thereto; and, without prejudice to the generality of this provision, any such order may provide for taking possession of and using for the purposes of His Majesty's naval, military, or air forces any aerodrome or landing ground, or any aircraft, machinery, plant, material or things found therein or thereon, and for regulating or prohibiting the use, erection, building, maintenance, or establishment of any aerodrome, flying school, or landing ground, or any class or description thereof.

(2) The order may provide for the imposition of penalties to secure compliance with the order, not exceeding imprisonment for a term of six months and a fine of two hundred pounds, and may authorize such steps to be taken in order to secure such compliance as appear to the Governor to be necessary.

(3) Any person who suffers direct injury or loss, owing to the operation of an order of the Governor under this section, shall be entitled to receive compensation from the Governor from such public funds as he may lawfully apply for the purpose, the amount thereof to be fixed, in default of agreement, by an arbitrator to be agreed upon or failing agreement to be appointed by the Chief Justice or other Chief Judicial Officer of the Colony.

Provided that no compensation shall be payable by reason of the operation of a general order under this section prohibiting flying in the Colony or any part thereof.

(4) An order under this section may be revoked or varied by a subsequent order made by the Governor.

2. Section 8—(1) The Governor shall have power to establish and maintain aerodromes (including power to provide and maintain roads and approaches, buildings, and other accommodation and apparatus and equipment for such aerodromes), and to acquire land for that purpose by agreement or in accordance with the provisions of the law in force in the Colony relating to the acquisition of land for public purposes.

3. Section 9—(1) No action shall lie in respect of trespass or in respect of nuisance, by reason only of the flight of aircraft over any property at a height above the ground, which, having regard to wind, weather, and all the circumstances of the case is reasonable, or the ordinary incidents of such flight, so long as the provisions of this order and any other Order made under the Act and extended to the Colony are duly complied with; but where material damage or loss is caused by an aircraft in flight, taking off, or landing, or by any person in any such aircraft, or by any article falling from any such aircraft, to any person or property on land or water, damages shall be recoverable from the owner of the aircraft in respect of such damage or loss, without proof of negligence or intention or other cause of action, as though the same had been caused by his wilful act, neglect, or default, except where the damage or loss was caused by or contributed to by the negligence of the person by whom the same was suffered.

Provided that, where any damages recovered from or paid by the owner of an aircraft under this section arose from damage or loss caused solely by the wrongful or negligent action or omission of any person other than the owner or some person in his employment, the owner shall be entitled to recover from that person the amount of such damages, and in any such proceedings against the owner the owner may, on making such application to the court and on giving such undertaking in costs as may be prescribed by rules of court, join any such person as aforesaid as a defendant, but where such person is not so joined he shall not in any subsequent proceedings taken against him by the owner be precluded from disputing the reasonableness of any damages recovered from or paid by the owner.

(2) Where any aircraft has been bona fide demised, let, or hired out for a period exceeding fourteen days to any other person by the owner thereof, and no pilot, commander, navigator, or operative member of the crew of the aircraft is in the employment of the owner, this section shall have effect as though for references to the owner there were substituted references to the person to whom the aircraft has been so demised, let, or hired out.

4. Section 10—(1) Where an aircraft is flown in such a manner as to be the cause of unnecessary danger to any person or property on land or water, the pilot or the person in charge of the aircraft, and also the owner thereof, unless he proves to the satisfaction of the court that the aircraft was so flown without his actual fault or privity, shall be liable on summary conviction to a fine not exceeding two hundred pounds, or to imprisonment with or without hard labour for a term not exceeding six months, or to both such imprisonment and fine.

For the purposes of this section, the expression "owner" in relation to an aircraft includes any person by whom the aircraft is hired at the time of the offence.

(2) The provisions of this section shall be in addition to and not in derogation of any general safety or other regulations prescribed by Order-in-Council made under Part I of the Act, and extended to the Colony.

5. Section 11—The law of the Colony relating to wreck and to salvage of life or property, and to the duty of rendering assistance to vessels in distress shall apply to aircraft on or over the sea or tidal waters as it applies to vessels, and the owner of an aircraft shall be entitled to a reasonable reward for salvage services rendered by the aircraft to any property or persons in any case where the owner of a ship would be so entitled.

Provided that provision may be made by Order by the Governor with the approval of a Secretary of State for making modifications of and exemptions from the provisions of such law as aforesaid in their application to aircraft to such extent and in such manner as appears necessary or expedient.

6. Section 12—(1) The Governor may make regulations providing for the investigation in the Colony of any accident arising out of or in the course of air navigation and occurring in or over the Colony or the territorial waters adjacent thereto, or to British aircraft occurring elsewhere and likely in the absence of such provision to remain uninvestigated.

(2) Without prejudice to the generality of the foregoing provision, regulations under this section may contain provisions—

- (a) requiring notice to be given of any such accident as aforesaid in such manner and by such persons as may be specified in the Order;
- (b) applying, with or without modification for the purpose of investigations held with respect to any such accidents any of the provisions of any law in force in the Colony relating to the investigation of deaths or accidents;
- (c) prohibiting, pending investigation, access to or interference with aircraft to which an accident has occurred, and authorizing any person, so far as may be necessary for the purposes of an investigation, to have access to, examine, remove, take measures for the preservation of, or otherwise deal with any such aircraft;
- (d) authorizing the Governor, in regard to cases where it appears to the authority conducting an investigation that a licence or certificate granted under the Act or any Order made thereunder ought to be cancelled, suspended, endorsed, or surrendered, to transmit any recommendation to that effect made by the said authority for such action thereon as the Secretary of State for Air may consider just, and also authorizing the Governor pending the decision of the Secretary of State in any such cases provisionally to suspend the licence or certificate and providing for the production of any such licence or certificate for the purpose, of being so dealt with.

Provided that nothing in the section shall limit the powers of any authority under sections *five hundred and thirty to five hundred and thirty-seven* inclusive of the Merchant Shipping Act, 1894, or any enactment (including the Act) amending those sections.

(3) If any person contravenes or fails to comply with any regulations under this section, he shall be liable on summary conviction to a fine not exceeding fifty pounds or to imprisonment with or without hard labour for a term not exceeding three months.

7. Section 18—(1) This Order shall not apply to aircraft belonging to or exclusively employed in the service of His Majesty.

Provided that His Majesty may, by Order-in-Council, apply to any such aircraft, with or without modification, any of the provisions of this Order or of any Orders or regulations made under the Act and extended to the Colony.

(2) Nothing in this Order or in any regulations thereunder shall prejudice or affect the rights, powers, or privileges of any general or local lighthouse authority.

SECOND SCHEDULE.

Bahamas,
Barbados,
Bermuda,
British Guiana,
British Honduras,
Jamaica and its Dependencies,
Leeward Islands,
Trinidad and Tobago,
Grenada,
St. Lucia,
St. Vincent,
Falkland Islands and their Dependencies,
St. Helena,
Fiji,
The Islands of the Western Pacific,
The Colony and Protectorate of Kenya,
Uganda Protectorate,
Nyasaland Protectorate,
Zanzibar Protectorate,
Somaliland Protectorate,
Gibraltar,
Malta,
Cyprus,
The Colony and Protectorate of the Gambia,
Gold Coast Colony,
The Northern Territories of the Gold Coast,
Ashanti,
The Colony and Protectorate of Nigeria,
The Colony and Protectorate of Sierra Leone,
Ceylon,
Hong-Kong,
Mauritius,
Seychelles,
Straits Settlements,
Weihaiwei,
Basutoland,
Bechuanaland Protectorate,
Northern Rhodesia,
Southern Rhodesia,
Swaziland.