



Department
for Business
Innovation & Skills

**THE INTERNATIONAL INTERESTS
IN AIRCRAFT EQUIPMENT (CAPE
TOWN CONVENTION)
REGULATIONS 2015**

Draft Guidance

MARCH 2015

GUIDANCE NOTES

These guidance notes have been produced to provide guidance to business on *The International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015* (“the Regulations), implementing the *Convention on international interests in mobile equipment* and *Protocol thereto on matters specific to aircraft equipment* and EU Council Decision 2009/370/EC on the accession of the European Community to the Convention on international interests in mobile equipment and its Protocol on matters specific to aircraft equipment.

However, they do not carry any legal authority and should be read in conjunction with the legislation itself.

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The International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2014

1. Introduction

1. The Regulations implement the Convention on international interests in mobile equipment (*"The Convention"*) and Protocol on matters specific to aircraft equipment (*"The Aircraft Protocol"*) which were signed at Cape Town on 16 November 2001. The Convention and Protocol are commonly known as the *"Cape Town Convention"*. The Convention and Protocol are together to be regarded as an EU Treaty as defined in section 1(2) of the European Communities Act 1972, by virtue of the European Union (Definition of Treaties)(Convention on International Interests in Mobile Equipment and its Protocol on matters specific to Aircraft Equipment) Order 2014.
2. These Regulations also implement EU Council Decision 2009/370/EC on the accession of the European Community to the Convention on international interests in mobile equipment and its Protocol on matters specific to aircraft equipment, adopted jointly in Cape Town on 16 November 2001.
3. The Convention and the Aircraft Protocol are private international law treaties, supported by the International Institute for the Unification of Private Law (UNIDROIT) and the International Civil Aviation Organization (ICAO). The treaty came into force on 1 March 2006. ICAO is the supervisory body for the treaty and UNIDROIT the depository.
4. The text of the Convention and the Aircraft Protocol are available at:
<http://www.unidroit.org/instruments/security-interests/cape-town-convention>
5. As the Cape Town Convention is a private international law treaty, these Regulations only affect private law and as such matters of public law are unaffected unless expressly stated otherwise.

2. Background to the treaty

6. The aim of the Cape Town Convention is to reduce the cost of raising finance for large, high value mobile assets which routinely cross borders. The Convention provides an over-arching framework for the financing of this type of asset whilst the accompanying protocols address issues raised by financing a specific type of asset. There are three protocols currently in existence – aircraft equipment, rolling railway stock and space objects. The UK is ratifying the Protocol on matters specific to aircraft equipment, therefore this guidance only relates to ratification of the Aircraft Protocol.

7. The Convention aims to reduce the cost of raising finance in two ways:
 - (i) Providing for the creation and registration of an “*international interest*” (such as a mortgage or lease)
 - (ii) Remedies available to creditors should an airline or other business default on repayments relating to an international interest

8. The Convention provides standard remedies in the event of default by a debtor including the ability to take possession or control of an object, sell or grant a lease of an object and collect or receive any income or profits arising from the management or use of any such object as well as vesting an object in satisfaction or redemption, remedies for conditional sellers or lessors and interim relief pending final determination of a claim.

9. The Aircraft Protocol modifies the Convention to meet the particular requirements of aircraft financing and leasing. The Aircraft Protocol offers creditors additional remedies, including the ability to require the removal of an aircraft from the national civil aircraft register and export it. The Aircraft Protocol applies the Convention to:
 - Aircraft which can carry at least eight people or goods in excess of 2,750 kilograms
 - Aircraft engines with thrust exceeding 1,750 pounds-force (7,800N) or 550 horsepower (410kW)
 - Helicopters carrying five or more passengersLight aircraft, such as those used by the general aviation community, are not covered by this treaty. The types of aircraft covered by the treaty are commercial aircraft and some business jets or helicopters. It does not include military, customs or police equipment.

10. The Cape Town treaty aims to give businesses involved in aircraft financing greater confidence in the remedies available to them if an airline defaults on an agreement. The resulting reduction in risk for financiers is expected to result in lower financing costs. Debtors are in turn protected from unwarranted seizure of the assets by creditors, provided they have maintained their obligations under the relevant documents.

11. Ratification of the Convention and Aircraft Protocol by the UK supports an international system to protect commercial interests in mobile aircraft equipment, and potentially enables UK aircraft operators and lessors to benefit from a reduction in the cost of raising finance for future acquisitions of aircraft objects.

3. The International Interest

12. The Convention sets out the criteria for the creation of an international interest. This is modified by the Aircraft Protocol as set out in the Regulations. The aircraft object to which an international interest relates must be identifiable. Aircraft equipment is identified by:

- Manufacturer's name
- Model Designator
- Manufacturer's serial number

It is also possible to register assignments, acquisitions by legal or contractual subrogations, notices of national interests and subordinations of interests. The Convention enables the registration of a prospective interest or prospective assignment. If the prospective interest becomes an international interest, it is treated as registered from the time of the registration of the prospective interest.

13. The Aircraft Protocol applies certain elements of the Convention to sales and prospective sales as if they were international interests or prospective international interests. This is set out in further detail in Article III of the Aircraft Protocol and the Regulations.

4. The International Registry

14. The International Registry is an electronic notification system for international interests. Parties can register international interests and prospective international interests twenty-four hours a day, seven days a week, with the consent of all parties. Searches of the International Registry can be made with respect to uniquely identifiable aircraft objects but not transaction parties. Searches of the International Registry can also be conducted with respect to a specific country in order to confirm any applicable declarations. The IR can be found at: <https://www.internationalregistry.aero/ir-web/>

International Registry User Guide

15. Further information on how to use the International Registry, make and remove entries as well as search the register can be found in the International Registry's user manual:

<https://www.internationalregistry.aero/ir-web/common/documentDownload?locale=en&documentId=9>

International Registry Fees

16. The user fees for the International Registry are set by the International Civil Organisation (ICAO) and are listed in the Regulations and Procedures of the International Registry. Further information can be found here:

<https://www.internationalregistry.aero/ir-web/registryFees>

International Civil Aviation Organisation Rules

17. ICAO, the Supervisory Body for the Aircraft Protocol, has published rules for using the International Registry. The ICAO rules can be viewed using the following link:

http://www.icao.int/secretariat/legal/Pages/Intl_registry.aspx

5. Prioritisation of International Interests

18. The Regulations set out the prioritisation of international interests as set out in the Convention and the Aircraft Protocol. Once an international interest, or prospective international interest, has been registered with the International Registry, it has priority over a subsequently registered international interests and over an unregistered interest, provided the conditions have been met for the creation of an international interest. The International Registry is a notification system only and registration of an international is no guarantee that an international interest is valid.
19. The Regulations provide for the registration of notices of national interest on the International Registry. A national interest is one where the aircraft object and all parties to the transaction are located in the United Kingdom when the interest is created.
20. Under the Regulations certain non-consensual rights and interests have priority over an international interest. There is no requirement to register the non-consensual right or interest. This priority extends to insolvency proceedings. The relevant rights and interests in the UK are:
- (i) a possessory lien in respect of work done on the aircraft (whether before or after the creation or registration of the international interest or equivalent interest) in the express or implied authority of any persons lawfully entitled to possession of the object; and
 - (ii) any right to detain the object under any enactment with effect in the UK.
21. In addition the Regulations do not affect the right of a public authority to arrest or detain an aircraft object under the laws of the United Kingdom for payment of amounts owed to the authority directly relating to public services in respect of the object or another object. This includes detention powers relating to non-payment of Eurocontrol charges for the provision of air navigation charges.

22. The Regulations apply to the categories and rights set out in the Regulations whether created before or after ratification of the treaty by the United Kingdom.
23. These Regulations do not apply to interests registered with the Civil Aviation Authority (CAA) prior to ratification of the treaty by the United Kingdom. Any interests registered with the CAA prior to ratification will retain their priority.
24. The registration of an international interest remains effective until either it is discharged or the period specified in the registration has expired.

6. National Register of Aircraft Mortgages

25. The United Kingdom National Register of Aircraft Mortgages is maintained by the CAA. The national register will remain open following ratification of the Cape Town Convention and parties can continue to register interests with the CAA. There is no obligation to register interests with the International Registry and parties are free to decide how best to protect their interests. Further information on the national register can be viewed from the following link:

<http://www.caa.co.uk/default.aspx?catid=56>

26. The CAA may issue its own guidance in relation to the operation of the Cape Town Convention, for example in relation to the de-registration and export of aircraft registered on the United Kingdom Register of Civil Aircraft. Any relevant guidance will be available on the CAA website.

7. Declarations made by the United Kingdom

27. The Convention and Aircraft Protocol contain a number of optional provisions which Contracting States can decide whether or not to adopt. These optional provisions are set out in the form of *declarations* and are an integral part of the treaty system.

28. Declarations made by Contracting States can be altered under the terms of the Convention and Aircraft Protocol. A list of up to date declarations for Contracting States can be found on the website of the International Institute for the Unification of Private Law (UNIDROIT):

<http://www.unidroit.org/depositary-2001capetown>

<http://www.unidroit.org/depositary-2001capetown-aircraft>

8. Further information

29. Further information on the Cape Town Convention and Protocol can be found:

- On the website of the International Registry
- On the website of ICAO
- On the website of UNIDROIT
- In the Official Commentary to the Convention on International Interests in Mobile Equipment and Protocol thereto on matters specific to Aircraft Equipment by Professor Sir Roy Goode
- On the website of the Aviation Working Group (AWG)

9. Frequently Asked Questions

Do I have to register interests with the International Registry?

No, it is not mandatory to register interests on the International Registry in the same way that it is not mandatory to register interests on the National Register of Aircraft Mortgages. Please be aware that the interests registered with the International Registry following ratification of the treaty will take priority over interests registered on the National Register of Aircraft Mortgages. Interests registered on the National Register of Aircraft Mortgages prior to ratification will retain their priority.

What happens if the aircraft and all parties are located within the UK?

Notices of national interest may be registered with the International Registry. The Cape Town Convention applies to your transaction if you meet the criteria set out under the Regulations

Will this affect light aircraft and general aviation?

No, light aircraft and aircraft used in general aviation are unlikely to meet the criteria for aircraft objects covered by the Aircraft Protocol. The airframes, helicopters and aircraft engines to which these Regulations apply are:

- airframes (other than those used in military, customs or police services) that, when appropriate aircraft engines are installed thereon, are type certified by the competent aviation authority to transport:
 - at least eight (8) persons including crew, or
 - goods in excess of 2,750 kilograms,
 together with all installed, incorporated or attached accessories, parts and equipment (other than aircraft engines), and all data, manuals and records relating thereto,

- Helicopters means heavier-than-air machines (other than those used in military, customs or police services) supported in flight chiefly by the reactions of the air on one or more power-driven rotors on substantially vertical axes and which are type certified by the competent aviation authority to transport:
 - at least five (5) persons including crew, or
 - goods in excess of 450 kilograms,
 together with all installed, incorporated or attached accessories, parts and equipment (including rotors), and all data, manuals and records relating thereto,
- Aircraft Engines (other than those used in military, customs or police services) powered by jet propulsion or turbine or piston technology and:
 - in the case of jet propulsion aircraft engines, have at least 1,750lb of thrust or its equivalent, and
 - in the case of turbine-powered or piston-powered aircraft engines, have at least 550 rated take-off shaft horsepower or its equivalent,
 together with all modules and other installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relating thereto.

Will existing laws in relation to taking security (such as transactions at an undervalue, preferences) continue to apply to interests registered under the Cape Town Convention?

Nothing in the Regulations disapplies provisions contained in insolvency legislation relating to antecedent transactions. The Insolvency Act 1986 provides various ways in which transactions entered into by a company or a debtor in the period leading up to insolvency, including the granting of security in certain circumstances, may be challenged and adjusted.

Where assets have been dissipated which would have otherwise been available to creditors on insolvency, or certain creditors have been preferred in the repayment of their debts, the insolvency office-holder will still be able to apply to court in the normal way under the Insolvency Act for an order to reverse or adjust the transactions in question.

What happens if filings to the International Register need to be amended?

Amendments can be made to the Internal Register, details of how to do this are given in the user guide:

<https://www.internationalregistry.aero/ir-web/common/documentDownload?locale=en&documentId=9>

Will UK ratification of the Cape Town Convention impact existing transactions?

No, once a valid interest has been correctly registered, it will have a priority over another interest subsequently registered with the International Registry and over

any unregistered interest. Any interests registered with the National Register of Aircraft Mortgages maintained by the Civil Aviation Authority (CAA) prior to ratification of the treaty will retain their priority.

Non-consensual rights and interests specified under the Regulations will have a priority over a registered interest whether in or outside insolvency proceedings.

Will I still need to search the National Register for Aircraft Mortgages maintained by the CAA in relation to mortgages over aircraft?

The CAA register will remain open and can still be used to register interests. However such registration will not confer priority over a validly created and registered international interest registered at the International Registry following ratification of the treaty. It is for the parties concerned to decide whether or not to search the National Register for Aircraft Mortgages.

What happens if a creditor fails to register an interest with the International Register?

It is a decision for the parties to decide how best to protect their interest and whether they wish to rely on remedies available for international interests under the treaty or on existing remedies under the law of the United Kingdom.

Do I need to register an international interest with Companies House?

International Interests do not have to be registered with Companies House. However, often a national interest will be created alongside the international interest. If in future you may wish to rely on a national interest and the remedies available to domestic interests under the law of the United Kingdom rather than the international interest, the domestic interest will need to meet any requirements under domestic law including registration with Companies House and conflict of laws rules (lex situs).

How do I discharge a registration?

The registration of an international interest remains effective until either it is discharged or the period specified in the registration has expired.

How does the treaty impact on public law?

This is a private law treaty and as such matters of public law are unaffected unless expressly stated otherwise. Matter of public and criminal law continue to apply to an international interest so that the powers of confiscation and restraint are exercisable in respect of any aircraft object.

What remedies are available to the holder of a registered interest?

The Regulations set out the remedies available in the event of a default. These include the ability to take possession or control of an object, sell or grant a lease of an object and collect or receive any income or profits arising from the management or use of any such object as well as vesting an object in satisfaction or redemption, remedies for conditional sellers or lessors and interim relief pending final determination of a claim.

What types of aircraft are covered by the treaty?

The following are examples of aircraft eligible for Cape Town, this list is not exhaustive:

- All Boeing Airliners
- All Airbus Airliners
- Agusta A109
- Agusta AW139
- Beech 90
- Beech 200
- Beech 300
- Beech 400
- Bell 206
- Bombardier BD-700 1A10
- Cessna 208
- Cessna 525
- Canadair CL600 2B16
- Embraer EMB135
- Embraer EMB145
- Embraer EMB505
- Embraer ERJ170
- Embraer ERJ190
- Gulfstream GV
- Robinson R66

The following are examples of aircraft that are not eligible for Cape Town, this list is not exhaustive:

- All microlights
- All Hot Air Balloons
- All Gliders
- Cessna 152
- Cessna 172
- Cessna 182
- De Havilland DCH1
- Grumman AA1
- Grumman AA5

- Piper PA28
- Piper PA32
- Piper PA46
- Robinson R22
- Robinson R44
- Yakovlev YAK52



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BIS/15/53