

Proactive Release

This document is proactively released by Te Manatū Waka the Ministry of Transport.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it. *Note - N/A (see below)

Listed below are the most commonly used grounds from the OIA.

N/A - Document released in full. No information has been withheld for this proactive release

<u>Section</u>	<u>Description of ground</u>
6(a)	as release would be likely to prejudice the security or defence of New Zealand or the international relations of the New Zealand Government
6(b)	as release would be likely to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by <ul style="list-style-type: none"> (i) the Government of any other country or any agency of such a Government; or (ii) any international organisation
6(c)	prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial
9(2)(a)	to protect the privacy of natural persons
9(2)(b)(ii)	to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information
9(2)(ba)(i)	to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public
9(2)(ba)(ii)	to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely otherwise to damage the public interest
9(2)(f)(ii)	to maintain the constitutional conventions for the time being which protect collective and individual ministerial responsibility
9(2)(f)(iv)	to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials
9(2)(g)(i)	to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any public service agency or organisation in the course of their duty
9(2)(h)	to maintain legal professional privilege
9(2)(i)	to enable a Minister of the Crown or any public service agency or organisation holding the information to carry out, without prejudice or disadvantage, commercial activities
9(2)(j)	to enable a Minister of the Crown or any public service agency or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)

In Confidence

Office of the Minister of Transport

Cabinet Legislation Committee

CIVIL AVIATION (MONTREAL CONVENTION) ORDER 2024

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the Civil Aviation (Montreal Convention) Order 2024 (the Order).

Relation to government priorities

- 2 This is a routine operational adjustment.

Policy

- 3 The Order amends Schedule 6 of the Civil Aviation Act 1990 (the 1990 Act) and of the Civil Aviation Act 2023 (the 2023 Act), which set out the full text of the Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention) to which New Zealand is a party. The 2023 Act repeals and replaces the 1990 Act on 5 April 2025.
- 4 The Montreal Convention imposes and sets limits on the liability of international aircraft operators for death or injury to passengers, and delay or damage to baggage and cargo.
- 5 The Montreal Convention enables these limits to be updated, through a tacit approval mechanism, by way of notification. This is a process by which recommended changes take effect six months after notification, unless within three months after the notification, a majority of States Parties registered their disapproval with ICAO. Article 24 of the Montreal Convention provides that the limits of liability be reviewed at five-year intervals to take account of inflation.
- 6 As consequence of this five-yearly review, on 16 October 2024, the International Civil Aviation Organization (ICAO) notified New Zealand, as a signatory to the Montreal Convention, of increases to these limits of liability, effective 28 December 2024.

The limits of liability are expressed in Special Drawing Rights (SDRs)¹, a unit established by the International Monetary Fund. The limits have increased as follows:

¹ Liability limits are expressed in Special Drawing Rights (SDRs), a unit established by the International Monetary Fund. The SDR is defined as a basket of currencies which reflect the relative importance of currencies in the world's trading and financial systems. It currently consists of the Euro, Japanese Yen, Pound Sterling, U.S. Dollar and Chinese Renminbi. New Zealand Dollar equivalents, as at 15 November 2024, are shown in parenthesis.

Circumstance	Reference in the Acts	Current limits	Updated limits	Approximate increase in \$NZ value
Damage sustained by death or bodily injury of a passenger	Schedule 6 Article 21	128 821 SDR's per passenger (NZ\$291,659.76)	151 880 SDRs per passenger (NZ\$343,866.95)	\$52,207.19 per passenger
Damage caused by delay in the carriage of persons	Schedule 6 Article 22.1	5,346 SDR's per passenger (NZ\$12,103.72)	6,303 SDRs per passenger (NZ\$14,270.43)	\$2,166.71 per passenger
Destruction, loss, damage or delay to baggage	Schedule 6 Article 22.2	1,288 SDRs per passenger (NZ\$2,916.00)	1,519 SDRs per passenger (NZ\$3,439.12)	\$523.12 per passenger
Destruction, loss, damage or delay related to the carriage of cargo	Schedule 6 Article 22.3	22 SDRs/kg (NZ\$49.81)	26 SDRs/kg (NZ\$58.87)	\$9.06/kg

- 8 Under section 91T(1)(c) of the 1990 Act and section 414 of the 2023 Act, the Governor General may amend Schedule 6 of the Acts by Order in Council to bring the text of the Montreal Convention set out in the Schedules up to date.
- 9 The limits of liability in the Act were last amended by the Civil Aviation (Montreal Convention) Order 2020 in accordance with a Montreal Convention notification in October 2020.
- 10 The Order updates the amounts set out in the Acts to bring the new limits of liability into force in New Zealand.
- 11 These updates are consistent with the terms of the Convention, therefore no new policy decision is required to make the Orders.
- 12 As a party to the Montreal Convention, New Zealand is bound under international law to bring the new limits of liability into effect.

Timing and the 28-day rule

- 13 I propose that the Order is made in Executive Council on 16 December 2024 and notified in the Gazette on 19 December 2024.
- 14 The Civil Aviation (Montreal Convention) Order 2024 will come into force on 28 December 2024, which is less than 28 days after it is notified in the Gazette. I seek a waiver of the 28-day rule on the grounds that the Order will confer only benefits on the public and early commencement is necessary to comply with international obligations.

Compliance

- 15 The Order complies with:
- 15.1 the principles of the Treaty of Waitangi;
 - 15.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 15.3 the principles and guidelines set out in the Privacy Act 2020;
 - 15.4 relevant international standards and obligations;
 - 15.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
- 16 The Order does not include any Treaty of Waitangi provisions and advice was not sought from the Treaty Provisions Officials Group.

Regulations Review Committee

- 17 No grounds have been identified for the Regulations Review Committee to draw the Regulations to the attention of the House of Representatives.

Certification by Parliamentary Counsel

- 18 The draft Civil Aviation (Montreal Convention) Order 2024 has been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

- 19 No regulatory impact statement is required because the Order is necessary for New Zealand to comply with existing international obligations.

Publicity

- 20 The affected airlines are aware of New Zealand's obligation under the Montreal Convention to increase limits of liability and have generally been supportive of the changes. Once the Order has been made, the Ministry of Transport will confirm the changes to the airlines by letter.

Proactive release

- 21 I propose to release this paper proactively subject to appropriate redactions within 30 business days of final decisions being made.

Consultation

- 22 The Ministry of Transport has consulted with the international airlines registered in New Zealand (Air New Zealand, Airwork, Air Chathams and Qantas) on which the change in liability limits would impact and the Board of Airline Representatives New Zealand (BARNZ).

- 23 No responses were received from any of the airlines or BARNZ.
- 24 The Treasury, the Ministry of Foreign Affairs and Trade, and the Parliamentary Counsel Office have been consulted on the Paper. The Department of the Prime Minister and Cabinet has been informed.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that the Civil Aviation Act 1990 and the Civil Aviation Act 2023 set out the full text, including limits of liability, of the Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention), of which New Zealand is a signatory;
- 2 **note** that as consequence of a five-yearly review provided for in the Montreal Convention, on 16 October 2024 the International Civil Aviation Organization notified New Zealand, as a signatory to the Montreal Convention, of increases to these limits of liability, effective from 28 December 2024;
- 3 **note** that the Civil Aviation (Montreal Convention) Order 2024 amends the text of the Montreal Convention in the Civil Aviation Act 1990 and the Civil Aviation Act 2023 to reflect the increases to limits of liability;
- 4 **authorise** the submission to the Executive Council of the Civil Aviation (Montreal Convention) Order 2024;
- 5 **note** that the Civil Aviation (Montreal Convention) Order 2024 comes into force on 28 December 2024;
- 6 **note** that a waiver of the 28-day rule is sought:
- 6.1 so that the Civil Aviation (Montreal Convention) Order 2024 can come into force on 28 December 2024
- 6.2 on the grounds that the Civil Aviation (Montreal Convention) Order confers only benefits on the public and early commencement is necessary to comply with international obligations;
- 7 **agree** to waive the 28-day rule so that the Civil Aviation (Montreal Convention) Order 2024 can come into force on 28 December 2024.

Authorised for lodgement

Hon Simeon Brown
Minister of Transport

Civil Aviation (Montreal Convention) Order 2024

Order in Council

At Wellington this day of 2024

Present:
in Council

This order is made under section 91(1)(c) of the Civil Aviation Act 1990 and section 414(1)(c) of the Civil Aviation Act 2023 on the advice and with the consent of the Executive Council.

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Order

- 1 Title
- This order is the Civil Aviation (Montreal Convention) Order 2024.

2 Commencement

This order comes into force on 28 December 2024.

*Amendments to Civil Aviation Act 1990***3 Principal Act**

Clause 4 amends the Civil Aviation Act 1990.

4 Schedule 6 amended

In Schedule 6,—

- (a) Article 21, paragraph 1, replace “128 821” with “151 880”; and
- (b) Article 21, paragraph 2, replace “128 821” with “151 880”; and
- (c) Article 22, paragraph 1, replace “5 346” with “6 303”; and
- (d) Article 22, paragraph 2, replace “1 288” with “1 519”; and
- (e) Article 22, paragraph 3, replace “22” with “26”.

*Amendments to Civil Aviation Act 2023***5 Principal Act**

Clause 6 amends the Civil Aviation Act 2023.

6 Schedule 6 amended

In Schedule 6,—

- (a) Article 21, paragraph 1, replace “128 821” with “151 880”; and
- (b) Article 21, paragraph 2, replace “128 821” with “151 880”; and
- (c) Article 22, paragraph 1, replace “5 346” with “6 303”; and
- (d) Article 22, paragraph 2, replace “1 288” with “1 519”; and
- (e) Article 22, paragraph 3, replace “22” with “26”.

Clerk of the Executive Council.

Explanatory note

This note is not part of the order but is intended to indicate its general effect.

This order, which comes into force on 28 December 2024, is made under section 91T(1)(c) of the Civil Aviation Act 1990 and section 414(1)(c) of the Civil Aviation Act 2023. The order updates the text of the Montreal Convention (the **Convention**) in Schedule 6 of the Civil Aviation Act 1990 and Schedule 6 of the Civil Aviation Act 2023 to reflect increases to certain liability limits specified in the Convention, which are expressed in Special Drawing Rights. A Special Drawing Right is a monetary unit

established by the International Monetary Fund (*see* section 91H of the Civil Aviation Act 1990, section 261 of the Civil Aviation Act 2023, and paragraph 1 of Article 23 of the Convention).

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*:

This order is administered by the Ministry of Transport.

PROACTIVELY RELEASED BY MINISTRY OF TRANSPORT TE MANATU WAKA



Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Civil Aviation (Montreal Convention) Order 2024

Portfolio Transport

On 12 December 2024, the Cabinet Legislation Committee:

- 1 **noted** that the Civil Aviation Act 1990 and the Civil Aviation Act 2023 set out the full text, including limits of liability, of the Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention), of which New Zealand is a signatory;
- 2 **noted** that as consequence of a five-yearly review provided for in the Montreal Convention, on 16 October 2024 the International Civil Aviation Organization notified New Zealand of increases to these limits of liability, effective from 28 December 2024;
- 3 **noted** that the Civil Aviation (Montreal Convention) Order 2024 amends the text of the Montreal Convention in the Civil Aviation Act 1990 and the Civil Aviation Act 2023 to reflect the increases to limits of liability;
- 4 **authorised** the submission to the Executive Council of the Civil Aviation (Montreal Convention) Order 2024 [PCO 26869/5.0];
- 5 **noted** that the Civil Aviation (Montreal Convention) Order 2024 comes into force on 28 December 2024;
- 6 **noted** that a waiver of the 28-day rule is sought:
 - 6.1 so that the Civil Aviation (Montreal Convention) Order 2024 can come into force on 28 December 2024;
 - 6.2 on the grounds that the Civil Aviation (Montreal Convention) Order confers only benefits on the public and early commencement is necessary to comply with international obligations;
- 7 **agreed** to waive the 28-day rule so that the Civil Aviation (Montreal Convention) Order 2024 can come into force on 28 December 2024.

Tom Kelly
Committee Secretary

Attendance: (See over)

Present:

Hon Simeon Brown (Chair)
Hon Shane Jones
Hon Paul Goldsmith
Hon Todd McClay
Hon Tama Potaka
Hon Casey Costello
Hon Nicole McKee
Hon Simon Watts
Hon Chris Penk
Hon Andrew Bayly
Hon Scott Simpson, MP
Jamie Arbuckle, MP
Todd Stephenson, MP

Officials present from:

Official's Committee for LEG

PROACTIVELY RELEASED BY MINISTRY OF TRANSPORT TE MANATU WAKA



Cabinet

Minute of Decision

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Report of the Cabinet Legislation Committee: Period Ended 14 December 2024

On 16 December 2024, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 14 December 2024:

Out of Scope

LEG-24-MIN-0264

Civil Aviation (Montreal Convention) Order 2024
Portfolio: Transport

CONFIRMED

Out of Scope

Out of Scope

Out of Scope

Out of Scope

Out of Scope

Out of Scope

Rachel Hayward
Secretary of the Cabinet