

**Bills Committee on
Aviation Security (Amendment) Bill 2005**

**Administration's response to issues raised
at the First Bills Committee meeting on 12 April 2005**

Purpose

This paper sets out the Administration's response to the issues raised by the Bills Committee at its meeting on 12 April 2005.

Administration's Response

(a) To provide statistics on unruly passenger behaviour and breakdowns of such statistics by types and by region.

According to a survey conducted by the International Air Transport Association (IATA) to which 62 airlines responded, representing approximately 23% of the IATA member airlines worldwide, there were 1 132 reported cases of unruly passengers in 1994, 2 036 cases in 1995, 3 512 cases in 1996 and 5 416 cases in 1997. In 2000, the ICAO conducted a survey through a questionnaire, to which 62 Contracting States replied, representing some 80% of the total number of passengers carried worldwide in 1999 on scheduled services by the airlines of ICAO Contracting States. While many States have not yet established a reporting system, approximately 67% of the States replying to the questionnaire indicated that in recent years they had experienced an increase in the number of unruly passengers. Breakdowns of these statistics are not available.

(b) To provide information on the approach adopted by other jurisdictions in implementing the Model Legislation on Certain Offences Committed on Board Civil Aircraft developed by the International Civil Aviation Organisation (ICAO), including a comparison of unruly passenger offences and the penalty levels concerned with those proposed in the Bill.

- (i) According to the ICAO, some countries, including Australia, Canada and the UK, had extended their jurisdiction to certain offences committed on board foreign aircraft prior to the promulgation of the

ICAO Model Legislation. For these countries, certain acts or omissions taking place on board foreign aircraft subsequently landing in their territories would constitute an offence under their domestic laws and be subject to the penalties prescribed in the respective domestic laws. The relevant legislative provisions are outlined below –

Australia: The Australian Crimes (Aviation) Act (extract at **Annex A**) has extended its jurisdiction to foreign aircraft over certain offences.

Canada: The Canadian Criminal Code (extract at **Annex B**) has extended Canada's jurisdiction to cover any act or omission committed on board a foreign aircraft if such act or omission is an offence punishable by indictment under Canadian law.

UK: The Civil Aviation Act (extract at **Annex C**) has extended its jurisdiction to cover any act or omission which takes place on board a foreign aircraft subject to certain restrictive conditions.

- (ii) Following the promulgation of the Model Legislation by ICAO, New Zealand is one of the countries¹ which have enacted specific legislation to deal with unruly behaviour offences. A copy of the relevant New Zealand legislation, the Civil Aviation Act as amended in June 2004, is at **Annex D** for reference. In Canada, the Public Safety Act, 2002 was enacted in May 2004 to prohibit unruly or dangerous behaviour on board aircraft (extract at **Annex E**).
- (iii) In drawing up the proposals in the Bill, we have made reference to the two-pronged approach adopted by the New Zealand legislation, i.e. creation of specific unruly passenger offences and extension of New Zealand's jurisdiction to foreign aircraft over certain existing criminal acts and offences constituting unruly or disruptive behaviour. A comparison of the relevant provisions in the New

¹ According to the results of an ICAO survey conducted in November 2003, the following States have incorporated the whole or most of the text of the Model Legislation in their legislation: Bahrain, Colombia, Pakistan, Qatar, Republic of Korea, Trinidad and Tobago.

Zealand Civil Aviation Act and the proposals contained in the Bill is at **Annex F** for reference.

- (c) *To provide information on how the offence of disorderly behaviour was dealt with in other jurisdictions and the penalty levels concerned.*

As mentioned in (b)(ii) above, New Zealand has enacted specific unruly passenger legislation. Section 65K of its Civil Aviation Act as amended in June 2004 (**Annex D**) provides that “Any person who commits an act or omission on an aircraft in flight outside New Zealand that would, if it occurred in New Zealand, be an offence against sections 3 (disorderly behaviour) ... of the Summary Offences Act 1981, is liable under that Act as if the act or omission had occurred in New Zealand.” The offence of disorderly behaviour under the Summary Offences Act attracts a maximum of three months’ imprisonment or a fine not exceeding NZ \$ 1,000. We have also collected at **Annex G** extracts of legislative provisions concerning the offence of disorderly/offensive behaviour in some other jurisdictions for reference.

- (d) *To provide information on cases of prosecution against smoking and drunkenness in aircraft under the Air Navigation (Hong Kong) Order 1995;*

Relevant statistics are at **Annex H** for reference.

- (e) *To explain the difference between the proposals in the Bill in relation to drunkenness and smoking in the aircraft and the relevant provisions in the Air Navigation (Hong Kong) Order 1995 (AN(HK)O).*

- (i) Regarding the proposals in the Bill in relation to intoxication and smoking, viz the proposed new sections 12B(5) and 12B(6), and the relevant provisions in the AN(HK)O, there are differences in their coverage and applicability, as illustrated below.
- (ii) For drunkenness, Article 49 of the AN(HK)O (Cap 448C) stipulates the following –

- (1) *A person shall not enter any aircraft when drunk, or be drunk in any aircraft.*
- (2) *A person shall not, when acting as a member of the crew of any aircraft or being carried in any aircraft for the purpose of so acting, be under the influence of drink or a drug to such an extent as to impair his capacity so to act.*

Article 49 is applicable to Hong Kong-registered aircraft wherever they may be by virtue of Article 92(1)(c) of the AN(HK)O and to foreign aircraft only when they are in or over Hong Kong. The proposed new section 12B(5) has a wider scope and is applicable to Hong Kong-controlled aircraft wherever they may be and to non-Hong Kong-controlled aircraft whose next place of landing is in Hong Kong (subject to the restrictive conditions specified in the proposed new section 12C).

Article 49(1) of the AN(HK)O prohibits a person to enter any aircraft when drunk, or be drunk in any aircraft, while Article 49(2) prohibits a crew member from being under the influence of drink or a drug to such extent as to affect his ability to act as a crew member. The proposed new section 12B(5) covers a wider scope, namely drunkenness, intoxication resulting from the consumption of drugs and intoxication resulting from other intoxicating substances. Further, under the proposed new section 12B(5), being intoxicated in itself will not be an offence unless it is "to such an extent, as to jeopardise or be likely to jeopardise ---

a) the safety of the aircraft or of persons or property on board aircraft; or (b) good order and discipline on board the aircraft."

(iii) With respect to smoking, Article 50 of the AN(HK)O stipulates the following –

- (1) *Notices indicating when smoking is prohibited shall be exhibited in every aircraft registered in Hong Kong so as to be visible from each passenger seat therein.*
- (2) *A person shall not smoke in any compartment of an aircraft registered in Hong Kong at a time when smoking is prohibited in that compartment by a notice to that effect exhibited by or on behalf of the commander of the aircraft.*

Again, Article 50 of the AN(HK)O applies only to aircraft registered in Hong Kong, whereas the proposed new section 12B(6) has a wider scope. It prohibits smoking in both Hong Kong-controlled aircraft wherever they may be and to non-Hong Kong-controlled aircraft whose next place of landing is in Hong Kong (subject to the restrictive conditions specified in the proposed new section 12C).

- (iv) It is not unusual for there to be more than one offence available in respect of the same course of criminal conduct. Which offence is ultimately prosecuted is for the discretion of the prosecuting authority, and is dependent on the individual circumstances of the case. Regarding the two pieces of legislation in front of us, the penalties for the offences in the proposed new sections 12B(5) and 12B(6) are heavier than those for the offences under Articles 49 and 50 of the AN(HK)O. Therefore, it is likely that a suspected person will be prosecuted for an offence under the proposed new sections 12B(5) or 12B(6) if the act is caught by both the new provisions and the AN(HK)O provisions, but it would depend on the facts and circumstances of the particular case and the available evidence.

(f) To provide information on the parties consulted on the proposals in the Bill and the content of consultation.

According to the ICAO, the International Air Transportation Association (IATA) was involved in the drafting of the ICAO Model Legislation. The majority of participants in the aviation industry of Hong Kong, including both Hong Kong and foreign aircraft operators, are members of IATA. Locally, in drawing up the proposals in the Bill, we have consulted the Aviation Security Committee (ASC) and the Aviation Advisory Board (AAB), membership lists of which are at **Annexes I and J** for reference. The two committees expressed support for the legislative proposals. The Board of Airline Representatives on the ASC urged us to expedite action on these proposals.

(g) To consider whether the provision of alcoholic beverages on board aircraft by airline operators that caused a passenger to fall into a state of intoxication should be made an offence.

The policy objective of the Bill is to enable Hong Kong authorities to deal effectively with the problem of unruly passenger offences by incorporating, as far as practicable, the ICAO Model Legislation which serves as the guiding principles for Contracting States to follow. The ICAO Model Legislation does not include such an offence provision (as that suggested in the Question), and it is not our intent to go beyond the international consensus reflected in the Model Legislation.

Further, the provision of alcoholic beverages itself is a legal act and the effect of alcohol on the human body varies from person to person. It would be extremely difficult to prove criminal intent on the part of an airline operator to supply alcoholic beverages to a passenger to the extent that the latter would fall into a state of intoxication. Any such proposal would also have read-across implications for other establishments, e.g. bars and restaurants, which serve alcoholic beverages at their premises.

It is relevant to note that the majority of airline operators have drawn up internal guidelines for crew members to follow in serving alcoholic beverages to passengers. Further, the court would consider any mitigating factors advanced by the defence at trial, including whether the defendant was served with too much alcoholic beverage.

Security Bureau
27 April 2005

CRIMES (AVIATION) ACT 1991 (Commonwealth of Australia)

3 Definitions

(1) In this Act, unless the contrary intention appears:

Australia includes the external Territories.

Australian aircraft means:

- (a) an aircraft registered, or required to be registered, under the Civil Aviation Regulations as an Australian aircraft; or
- (b) a Commonwealth aircraft; or
- (c) a defence aircraft.

authorised person means:

- (a) in sections 30 and 33—any of the following persons:
 - (i) a protective service officer within the meaning of the *Australian Federal Police Act 1979*;
 - (ii) a member of the Australian Federal Police or an officer of the police force (however described) of a State or Territory;
 - (iii) the manager of any Commonwealth aerodrome or prescribed airport;
 - (iv) a person who is an authorised officer for the purposes of section 89 of the *Migration Act 1958*; or
- (b) in section 32:
 - (i) a member of the Australian Federal Police; or
 - (ii) an officer of the police force (however described) of a State or Territory of or above the rank of sergeant; or
- (c) in section 37—an SES employee or acting SES employee in the Attorney-General's Department who is appointed in writing by the Minister to be an authorised person for the purposes of that section; or
- (d) in section 49—a person engaged under the *Public Service Act 1999* who is appointed in writing by the Minister administering the *Air Navigation Act 1920* to be an authorised person for the purposes of that section;

and includes, in relation to any of those provisions, a person who is, under section 54, taken to be an authorised person for the purposes of that provision.

Civil Aviation Regulations means regulations made under the *Civil Aviation Act 1988*, and includes any of those regulations as in force under the law of a State.

commencing day means the day on which this Act commences.

Commonwealth aerodrome means:

- (a) an area of land or water in Australia that is owned by the Commonwealth and used, or intended for use, either wholly or partly, for, or in connection with, the arrival, departure or other movement of aircraft; or

- (b) a Federal airport;

and includes any building, structure, installation or equipment in that area, or on the land that forms the Federal airport, that is provided for use in connection

with the operation of that area or land as an aerodrome or Federal airport, as the case may be.

Commonwealth aircraft means an aircraft, other than a defence aircraft, that is owned by, or in the possession or control of, the Commonwealth or a Commonwealth authority.

Commonwealth air navigation facilities means buildings, structures, installations or equipment, anywhere in Australia, that are provided by the Commonwealth, or a Commonwealth authority, for use in connection with aircraft navigation, but does not include any building, structure, installation or equipment forming part of a Commonwealth aerodrome.

Convention offence means an offence against a provision of Division 1 or 4 of Part 2.

dangerous goods means:

- (a) firearms, ammunition, weapons and explosive substances; or
- (b) any substance or thing that, because of its nature or condition, may endanger the safety of an aircraft or of people on board an aircraft.

defence aircraft means an aircraft of any part of the Defence Force, and includes an aircraft that is being commanded or piloted by a member of that Force in the course of his or her duties as such a member.

Division 2 aircraft means:

- (a) an aircraft (including a foreign aircraft) that is:
 - (i) engaged in a flight in the course of trade and commerce with other countries or among the States; or
 - (ia) engaged in a flight within a Territory, between 2 Territories or between a State and a Territory; or
 - (ii) outside Australia while engaged in a flight that started in Australia; or
 - (iii) engaged in a flight between a part of Australia and a place outside Australia; or
- (b) an Australian aircraft (other than a Commonwealth aircraft or a defence aircraft) that is engaged in a flight wholly outside Australia; or
- (c) a Commonwealth aircraft or a defence aircraft that is engaged in any flight, including a flight wholly outside Australia.

Division 3 aircraft means:

- (a) an Australian aircraft (other than a Commonwealth aircraft or a defence aircraft) that is mainly used for the purpose of any of the following flights, or is engaged, or is intended or likely to be engaged, in such a flight:
 - (i) a prescribed flight;
 - (ii) a flight between a part of Australia and a place outside Australia;
 - (iii) a flight wholly outside Australia; or
- (b) a Commonwealth aircraft; or
- (c) a defence aircraft; or
- (d) a foreign aircraft that is in Australia; or
- (e) a foreign aircraft that is outside Australia while engaged in a flight that started in Australia or that was, when the flight started, intended to end in Australia.

Federal airport has the same meaning as in the *Federal Airports Corporation Act* 1986.

foreign aircraft means an aircraft other than an Australian aircraft, including such an aircraft owned or operated by the government of a foreign country.

Hague Convention means the Convention for the Suppression of Unlawful Seizure of Aircraft, ratified by Australia on 9 September 1972, and whose English text is set out in Schedule 1.

hijacking has the meaning given in section 9.

in flight, in relation to an aircraft, has, for the purposes of section 10 and Division 4 of Part 2, the same meaning as in the Montreal Convention.

(Note: see Article 2 of the Montreal Convention)

in service, in relation to an aircraft, has, for the purposes of section 10 and Division 4 of Part 2, the same meaning as in the Montreal Convention.

(Note: see Article 2 of the Montreal Convention)

landing includes alighting on water.

magistrate means:

- (a) a magistrate of a Territory other than the Australian Capital Territory, the Northern Territory or Norfolk Island; or
- (b) a magistrate of a State, the Australian Capital Territory, the Northern Territory or Norfolk Island to whom an arrangement in force under section 51 applies.

member of the crew, in relation to an aircraft, means a person having duties or functions on board the aircraft.

Montreal Convention means the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, ratified by Australia on 12 July 1973, and whose English text is set out in Schedule 2.

part of Australia means a State or Territory.

prescribed aircraft means:

- (a) an Australian aircraft, whether it is in Australia or not; or
- (b) any other aircraft that is in Australia or engaged in a prescribed flight; or
- (c) a visiting government aircraft.

prescribed flight means a flight of an aircraft:

- (a) in the course of trade and commerce with other countries or among the States; or
- (b) within a Territory, between 2 Territories or between a State and a Territory; or
- (c) within a State.

Protocol means the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, being the Protocol to which Australia acceded on 23 October 1990, and whose English text is set out in Schedule 3.

remand includes further remand.

repealed Acts means the Acts repealed by section 53.

threaten has the meaning given in section 4.

Tokyo Convention means the Convention on Offences and certain other Acts committed on board Aircraft, to which Australia acceded on 22 June 1970, and whose English text is set out in Schedule 4.

unlawful act, in Division 4 of Part 2, means an act described in section 10.

visiting government aircraft means an aircraft that:

- (a) is owned or operated by the government of a foreign country, or a part of such a country; and
- (b) is in Australia, or is engaged in a flight that started outside Australia and ends, or is intended to end, in Australia.

4 Meaning of threaten

For the purposes of this Act, a person is taken to threaten to do an act if the person makes any statement or does anything else indicating, or from which it could reasonably be inferred, that it is his or her intention to do that act.

12 Extra-territorial operation

This Act, and the provisions of the Tokyo Convention given the force of law by this Act, extend, unless the contrary intention appears:

- (a) to acts, omissions, matters and things outside Australia, whether or not in or over a foreign country; and
- (b) to all persons, irrespective of their nationality or citizenship.

Part 2—Offences

Division 1—Hijacking and other acts of violence on board aircraft

13 Hijacking an offence

(1) A person who hijacks an aircraft is guilty of an indictable offence if any of the following applies when the hijacking is committed:

- (a) the aircraft is in flight, within the meaning of the Hague Convention, and the Hague Convention requires Australia to make the hijacking punishable;
- (b) the aircraft is engaged in a prescribed flight;
- (c) the aircraft is a Commonwealth aircraft;
- (d) the aircraft is a visiting government aircraft.

(2) A person who hijacks an aircraft is guilty of an indictable offence if:

- (a) the hijacking is committed outside Australia; and
- (b) the person who commits the hijacking is an Australian citizen; and
- (c) the aircraft would, if the Hague Convention applied, be considered to be in flight.

(2A) Absolute liability applies to paragraphs (1)(a), (b), (c) and (d) and paragraphs (2)(a), (b) and (c).

Note: For absolute liability, see section 6.2 of the Criminal Code.

(3) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for life.

(4) A person cannot be tried for an offence against subsection (1) merely because paragraph (1)(a) applies, unless Article 4 of the Hague Convention requires Australia to establish its jurisdiction over the offence.

14 Other acts of violence

(1) Where:

- (a) a person on board an aircraft commits an act of violence against all or any of the passengers or crew; and
- (b) the act would, if committed in the Jervis Bay Territory, be an offence against a law in force in that Territory (other than this Act);

the person is guilty of an offence if any of the following applies when the act is committed:

- (c) Article 4 of the Hague Convention requires Australia to establish its jurisdiction over the act;
- (d) the aircraft is engaged in a prescribed flight;
- (e) the aircraft is a Commonwealth aircraft;
- (f) the aircraft is a visiting government aircraft;
- (g) the aircraft is outside Australia but the person who does the act is an Australian citizen.

(1A) Absolute liability applies to paragraphs (1)(b), (c), (d), (e), (f) and (g).

Note: For absolute liability, see section 6.2 of the Criminal Code.

(2) The punishment for an offence against subsection (1) is the same as that for the offence mentioned in paragraph (1)(b).

(3) This section extends to an act of violence that was committed, or may have been committed, in the Jervis Bay Territory.

Division 2—Other offences on board aircraft engaged in certain flights

15 Certain offences committed on aircraft

(1) Where:

- (a) a person on board a Division 2 aircraft does or omits to do anything; and
- (b) the act or omission, if it had taken place in, or in a public place in, the Jervis Bay Territory, would be an offence against:
 - (i) a law of the Commonwealth in force in that Territory; or
 - (ii) the Crimes Act 1900 of the Australian Capital Territory in its application to the Jervis Bay Territory; or
 - (iii) the *Prostitution Act 1992* of the Australian Capital Territory in its application to the Jervis Bay Territory;

the person is guilty of an offence.

(1A) For the purposes of an offence against subsection (1), absolute liability applies to the physical element of circumstance of the offence, that the aircraft is a Division 2 aircraft.

Note: For absolute liability, see section 6.2 of the Criminal Code.

(1B) Absolute liability applies to paragraph (1)(b).

Note: For absolute liability, see section 6.2 of the Criminal Code..

(2) The punishment for an offence against subsection (1) is the same as that for the offence mentioned in paragraph (1)(b).

- (3) This section extends to an act or omission that took place, or may have taken place, in the Jervis Bay Territory.

Division 3—Offences affecting aircraft and the safe operation of aircraft

16 Taking control of aircraft

- (1) A person who takes or exercises control of a Division 3 aircraft is guilty of an offence punishable on conviction by imprisonment for 7 years.

- (2) A person who takes or exercises control of a Division 3 aircraft and who does so while anyone else, other than an accomplice of the person, is on board the aircraft, is guilty of an offence punishable on conviction by imprisonment for 14 years.

- (3) A person who takes or exercises control of a Division 3 aircraft and who does so:

- (a) by force or threat of force, or by any trick or false pretence; and
- (b) while anyone else, other than an accomplice of the person, is on board the aircraft;

is guilty of an offence punishable on conviction by imprisonment for 20 years.

- (4) For the purposes of an offence against subsection (1), (2) or (3), absolute liability applies to the physical element of circumstance of the offence, that the aircraft is a Division 3 aircraft.

Note: For absolute liability, see section 6.2 of the Criminal Code.

17 Destruction of aircraft

- (1) A person must not intentionally destroy a Division 3 aircraft.

Penalty: Imprisonment for 14 years.

- (2) For the purposes of an offence against subsection (1), absolute liability applies to the physical element of circumstance of the offence, that the aircraft is a Division 3 aircraft.

Note: For absolute liability, see section 6.2 of the Criminal Code.

18 Destruction of aircraft with intent to kill

- (1) A person who destroys a Division 3 aircraft with the intention of causing anyone's death, or reckless as to the safety of anyone's life, is guilty of an indictable offence punishable on conviction by imprisonment for life.

- (2) For the purposes of an offence against subsection (1), absolute liability applies to the physical element of circumstance of the offence, that the aircraft is a Division 3 aircraft.

Note: For absolute liability, see section 6.2 of the Criminal Code.

19 Prejudicing safe operation of aircraft

- (1) A person must not do anything capable of prejudicing the safe operation of a Division 3 aircraft with the intention of prejudicing the safe operation of the aircraft.

Penalty: Imprisonment for 14 years.

- (2) For the purposes of an offence against subsection (1), absolute liability applies to the physical element of circumstance of the offence, that the aircraft is a Division 3 aircraft.

Note: For absolute liability, see section 6.2 of the Criminal Code.

20 Prejudicing safe operation of aircraft with intent to kill etc.

(1) A person who does anything capable of prejudicing the safe operation of a Division 3 aircraft:

- (a) with the intention of prejudicing the safe operation of the aircraft; and
- (b) with the intention of causing anyone's death, or reckless as to the safety of anyone's life;

is guilty of an indictable offence punishable on conviction by imprisonment for life.

(2) For the purposes of an offence against subsection (1), absolute liability applies to the physical element of circumstance of the offence, that the aircraft is a Division 3 aircraft.

Note: For absolute liability, see section 6.2 of the Criminal Code.

21 Assaulting crew

(1) A person must not, while on board a Division 3 aircraft, assault, threaten with violence, or otherwise intimidate, a member of the crew of the aircraft in a manner that results in:

- (a) an interference with the member's performance of functions or duties connected with the operation of the aircraft; or
- (b) a lessening of the member's ability to perform those functions or duties.

Penalty: Imprisonment for 14 years.

(2) For the purposes of an offence against subsection (1), absolute liability applies to the physical element of circumstance of the offence, that the aircraft is a Division 3 aircraft.

Note: For absolute liability, see section 6.2 of the Criminal Code.

22 Endangering safety of aircraft

(1) A person who, while on board a Division 3 aircraft, does an act, reckless as to whether the act will endanger the safety of the aircraft, is guilty of an offence.

Penalty: Imprisonment for 7 years.

(2) For the purposes of an offence against subsection (1), absolute liability applies to the physical element of circumstance of the offence, that the aircraft is a Division 3 aircraft.

Note: For absolute liability, see section 6.2 of the Criminal Code.

23 Dangerous goods

(1) A person must not:

- (a) carry or place dangerous goods on board a Division 3 aircraft; or
- (b) deliver dangerous goods to anyone else with the intention of placing the goods on board such an aircraft; or
- (c) have dangerous goods in his or her possession on board such an aircraft.

Penalty:

- (a) in the case of an individual—imprisonment for 7 years; and
- (b) in the case of a body corporate—\$100,000.

(2) Subsection (1) does not apply to:

- (a) anything done with the consent of the owner or operator of the aircraft given with knowledge of the nature of the goods concerned; or

- (b) the carrying or placing of dangerous goods, on board an aircraft with permission granted under the Air Navigation Act 1920 or regulations made under that Act, the Civil Aviation Act 1988 or regulations made under that Act; or
 - (c) in the case of a Commonwealth aircraft (other than one being used for commercial transport operations)—the carrying or placing of dangerous goods on board the aircraft by:
 - (i) a person appointed or engaged under the Public Service Act 1999, in the performance of his or her duties; or
 - (ii) an officer of, or a person employed by, an authority of the Commonwealth in the performance of his or her duties; or
 - (iii) a person acting in accordance with the instructions of such an officer or person given in the performance of his or her duties; or
 - (d) in the case of a defence aircraft—the carrying or placing of dangerous goods on board the aircraft by:
 - (i) a member of the Defence Force in the performance of his or her duties; or
 - (ii) a person acting in accordance with the instructions of such a member given in the performance of the member's duties.
- (3) For the purposes of an offence against paragraph (1)(a), (b) or (c), absolute liability applies to the physical element of circumstance of the offence, that the aircraft is a Division 3 aircraft.

Note: For absolute liability, see section 6.2 of the Criminal Code.

24 Threats and false statements

- (1) A person must not threaten to destroy, damage or endanger the safety of a Division 3 aircraft, or to kill or injure anyone on board such an aircraft.

Penalty: Imprisonment for 2 years.

- (2) A person must not make a statement or communicate information, being a statement or information that he or she knows to be false, to the effect, or from which it can reasonably be inferred, that there has been, is or is to be, a plan, proposal, attempt, conspiracy or threat:

- (a) to take or exercise control, by force, of a Division 3 aircraft; or
- (b) to destroy, damage or endanger the safety of such an aircraft; or
- (c) to kill or injure anyone on board such an aircraft.

Penalty: Imprisonment for 2 years.

- (3) For the purposes of an offence against subsection (1) or (2), absolute liability applies to the physical element of circumstance of the offence, that the aircraft is a Division 3 aircraft.

Note: For absolute liability, see section 6.2 of the Criminal Code.

Division 4—Offences relating to the safety of civil aviation and acts of violence at certain airports

25 Endangering the safety of aircraft in flight

- (1) A person who commits an unlawful act of the kind mentioned in subsection 10(1) is guilty of an offence if any of the following applies:

- (a) the Montreal Convention requires Australia to make the act punishable;
- (b) the aircraft concerned is:
 - (i) an aircraft in service in the course of, or in connection with, a prescribed flight; or
 - (ii) a Commonwealth aircraft; or
 - (iii) a defence aircraft; or
 - (iv) a visiting government aircraft;
- (c) the person is an Australian citizen who commits the act outside Australia.

Penalty: Imprisonment for 14 years.

(2) A person who commits an unlawful act of the kind mentioned in subsection 10(2) is guilty of an offence if any of the following applies:

- (a) the Montreal Convention requires Australia to make the act punishable;
- (b) except where paragraph (c) applies, the aircraft concerned is:
 - (i) an aircraft in service in the course of, or in connection with, a prescribed flight; or
 - (ii) a Commonwealth aircraft; or
 - (iii) a defence aircraft; or
 - (iv) a visiting government aircraft;
- (c) in the case of an act relating to air navigation facilities—the facilities are used in connection with:
 - (i) prescribed flights; or
 - (ii) flights of Commonwealth aircraft; or
 - (iii) flights of defence aircraft; or
 - (iv) flights of visiting government aircraft;
- (d) the person is an Australian citizen who commits the act outside Australia.

Penalty: Imprisonment for 7 years.

(2A) Absolute liability applies to paragraphs (1)(a), (b) and (c), and (2)(a), (b), (c) and (d).

Note: For absolute liability, see section 6.2 of the Criminal Code.

(3) A person cannot be tried for an offence against subsection (1) or (2) merely because paragraph (1)(a) or (2)(a), as the case may be, applies unless Article 5 of the Montreal Convention requires Australia to establish its jurisdiction over the offence.

Part 3—Provisions giving effect to the Tokyo Convention

29 Certain provisions of Tokyo Convention to have force of law

(1) The following provisions of the Tokyo Convention have the force of law:

- (a) the provisions of Chapter III;
- (b) the provisions of paragraph 1 of Article 16;
- (c) the provisions of Chapter I, to the extent that they affect the application or interpretation of the provisions of Chapter III or paragraph 1 of Article 16.

(2) For the purposes of a provision of the Tokyo Convention mentioned in subsection (1), an aircraft that is the subject of a notice given before, on or after the

commencing day under Article 18 of the Convention is taken to be registered in the State designated in the notice.

(3) For the purposes of section 38 of the *Judiciary Act 1903*, a matter arising under a provision of the Tokyo Convention mentioned in subsection (1) is taken not to be a matter arising directly under a treaty.

30 Authorised person may accept delivery of persons

(1) An authorised person may accept delivery of a person delivered under paragraph 1 of Article 9 of the Tokyo Convention.

(2) An authorised person who accepts delivery of a person must cause the person:

- (a) to be brought, as soon as practicable, before a magistrate to be dealt with under this Act; and
- (b) to be held in custody until the person can be so brought before a magistrate.

33 Taking offenders into custody

(1) Where an authorised person reasonably suspects that a person has committed a prohibited act, the authorised person may cause the person to be taken into custody.

(2) An authorised person who causes a person to be taken into custody must, unless subsection (2A) applies, cause the person:

- (a) to be brought, as soon as practicable, before a magistrate to be dealt with under this Act; and
- (b) to be held in custody until the person can be so brought before a magistrate.

(2A) Where an authorised person causes a person to be taken into custody on board an aircraft that is engaged in a flight that ends in a foreign country, the authorised person must cause the person:

- (a) to be delivered into the custody of a member, however described, of a police force of that foreign country; and
- (b) to be held in custody until the person can be so delivered.

(3) This section does not prevent the arrest of a person under any other law for an offence against this Act.

(4) In this section:

prohibited act means:

- (a) a Convention offence; or
- (b) an act resulting in Article 6 of the Hague Convention applying in respect of the relevant person; or
- (c) an act resulting in Article 6 of the Montreal Convention applying in respect of the relevant person; or
- (d) an act mentioned in paragraph 1 of Article 11 of the Tokyo Convention (other than an act covered by paragraph (a), (b) or (c)), or an attempt to do such an act.

34 Arrest of offenders

(1) The person in command of a prescribed aircraft may, with such assistance as is reasonably necessary, arrest, without warrant, anyone whom he or she finds

committing, or reasonably suspects has committed, an offence against a provision of Part 2 on board the aircraft.

(2) Where a person is arrested under subsection (1), the person in command of the prescribed aircraft concerned, or anyone authorised by the person in command, may hold the arrested person in custody until he or she can be taken into other custody under section 33 or brought before a magistrate to be dealt with in accordance with law.

(3) This section does not prevent the arrest of a person under any other law for an offence against this Act.

35 Restraining persons from committing offences

The person in command of a prescribed aircraft may, with such assistance as is necessary:

- (a) keep anyone who is on board the aircraft under restraint or in custody until the next landing of the aircraft; and
- (b) remove anyone from the aircraft at any place where the aircraft is on land;

if the person in command thinks it necessary to do so to prevent an offence against this Act being committed on board the aircraft.

CRIMINAL CODE (R.S. 1985, C. C-46) (Canada)

Offences committed on aircraft

7. (1) Notwithstanding anything in this Act or any other Act, every one who
- (a) on or in respect of an aircraft
 - (i) registered in Canada under regulations made under the *Aeronautics Act*, or
 - (ii) leased without crew and operated by a person who is qualified under regulations made under the *Aeronautics Act* to be registered as owner of an aircraft registered in Canada under those regulations, while the aircraft is in flight, or
 - (b) on any aircraft, while the aircraft is in flight if the flight terminated in Canada,

commits an act or omission in or outside Canada that if committed in Canada would be an offence punishable by indictment shall be deemed to have committed that act or omission in Canada.

Idem

- (2) Notwithstanding this Act or any other Act, every one who
- (a) on an aircraft, while the aircraft is in flight, commits an act or omission outside Canada that if committed in Canada or on an aircraft registered in Canada under regulations made under the *Aeronautics Act* would be an offence against section 76 or paragraph 77(a),
 - (b) in relation to an aircraft in service, commits an act or omission outside Canada that if committed in Canada would be an offence against any of paragraphs 77(b), (c) or (e),
 - (c) in relation to an air navigation facility used in international air navigation, commits an act or omission outside Canada that if committed in Canada would be an offence against paragraph 77(d),
 - (d) at or in relation to an airport serving international civil aviation, commits an act or omission outside Canada that if committed in Canada would be an offence against paragraph 77(b) or (f), or
 - (e) commits an act or omission outside Canada that if committed in Canada would constitute a conspiracy or an attempt to commit an offence referred to in this subsection, or being an accessory after the fact or counselling in relation to such an offence,

shall be deemed to have committed that act or omission in Canada if the person is, after the commission thereof, present in Canada.

(2.1), (2.2), (2.3) – (2.34), (3) ...

Offence of hostage taking

(3.1) Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission that if committed in Canada would be an offence against section 279.1 shall be deemed to commit that act or omission in Canada if

- (a) the act or omission is committed on a ship that is registered or licensed, or for which an identification number has been issued, pursuant to any Act of Parliament;
- (b) the act or omission is committed on an aircraft
 - (i) registered in Canada under regulations made under the *Aeronautics Act*, or
 - (ii) leased without crew and operated by a person who is qualified under regulations made under the *Aeronautics Act* to be registered as owner of an aircraft in Canada under such regulations;
- (c) the person who commits the act or omission
 - (i) is a Canadian citizen, or
 - (ii) is not a citizen of any state and ordinarily resides in Canada;
- (d) the act or omission is committed with intent to induce Her Majesty in right of Canada or of a province to commit or cause to be committed any act or omission;
- (e) a person taken hostage by the act or omission is a Canadian citizen; or
- (f) the person who commits the act or omission is, after the commission thereof, present in Canada.

(3.2) – (3.7) ...

Jurisdiction

(3.7) Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission that, if committed in Canada, would constitute an offence against, a conspiracy or an attempt to commit an offence against, being an accessory after the fact in relation to an offence against, or any counselling in relation to an offence against, section 269.1 shall be deemed to commit that act or omission in Canada if

- (a) the act or omission is committed on a ship that is registered or licensed, or for which an identification number has been issued, pursuant to any Act of Parliament;
- (b) the act or omission is committed on an aircraft
 - (i) registered in Canada under regulations made under the *Aeronautics Act*, or
 - (ii) leased without crew and operated by a person who is qualified under regulations made under the *Aeronautics Act* to be registered as owner of an aircraft in Canada under those regulations;
- (c) the person who commits the act or omission is a Canadian citizen;
- (d) the complainant is a Canadian citizen; or
- (e) the person who commits the act or omission is, after the commission thereof, present in Canada.

(3.71) ...

Offence involving explosive or other lethal device

(3.72) Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission that, if committed in Canada, would constitute an offence against, a conspiracy or an attempt to commit an offence against, or being an accessory after the fact or counselling in relation to an offence against, section 431.2 is deemed to commit that act or omission in Canada if

- (a) the act or omission is committed on a ship that is registered or licensed, or for which an identification number has been issued, under any Act of Parliament;
- (b) the act or omission is committed on an aircraft
 - (i) registered in Canada under regulations made under the *Aeronautics Act*,
 - (ii) leased without crew and operated by a person who is qualified under regulations made under the *Aeronautics Act* to be registered as owner of an aircraft in Canada under those regulations, or
 - (iii) operated for or on behalf of the Government of Canada;
- (c) the person who commits the act or omission
 - (i) is a Canadian citizen, or
 - (ii) is not a citizen of any state and ordinarily resides in Canada;
- (d) the person who commits the act or omission is, after the commission of the act or omission, present in Canada;
- (e) the act or omission is committed against a Canadian citizen;
- (f) the act or omission is committed with intent to compel the Government of Canada or of a province to do or refrain from doing any act; or
- (g) the act or omission is committed against a Canadian government or public facility located outside Canada.

(3.73) – (3.75), (4) – (4.3), ...

Jurisdiction

(5) Where a person is alleged to have committed an act or omission that is an offence by virtue of this section, proceedings in respect of that offence may, whether or not that person is in Canada, be commenced in any territorial division in Canada and the accused may be tried and punished in respect of that offence in the same manner as if the offence had been committed in that territorial division.

Appearance of accused at trial

(5.1) For greater certainty, the provisions of this Act relating to

- (a) requirements that an accused appear at and be present during proceedings, and
 - (b) the exceptions to those requirements,
- apply to proceedings commenced in any territorial division pursuant to subsection (5).

Where previously tried outside Canada

(6) Where a person is alleged to have committed an act or omission that is an offence by virtue of this section and that person has been tried and dealt with outside Canada in respect of the offence in such a manner that, if that person had been tried and dealt with in Canada, he would be able to plead *autrefois acquit*, *autrefois convict* or pardon, that person shall be deemed to have been so tried and dealt with in Canada.

If accused not Canadian citizen

(7) If the accused is not a Canadian citizen, no proceedings in respect of which courts have jurisdiction by virtue of this section shall be continued unless the consent of the Attorney General of Canada is obtained not later than eight days after the proceedings are commenced.

Definition of "flight" and "in flight"

(8) For the purposes of this section, of the definition "peace officer" in section 2 and of sections 27.1, 76 and 77, "flight" means the act of flying or moving through the air and an aircraft is deemed to be in flight from the time when all external doors are closed following embarkation until the later of

- (a) the time at which any such door is opened for the purpose of disembarkation, and
- (b) where the aircraft makes a forced landing in circumstances in which the owner or operator thereof or a person acting on behalf of either of them is not in control of the aircraft, the time at which control of the aircraft is restored to the owner or operator thereof or a person acting on behalf of either of them.

Definition of "in service"

(9) For the purposes of this section and section 77, an aircraft shall be deemed to be in service from the time when pre-flight preparation of the aircraft by ground personnel or the crew thereof begins for a specific flight until

- (a) the flight is cancelled before the aircraft is in flight,
- (b) twenty-four hours after the aircraft, having commenced the flight, lands, or
- (c) the aircraft, having commenced the flight, ceases to be in flight,

whichever is the latest.

(10) – (11) ...

R.S., 1985, c. C-46, s. 7; R.S., 1985, c. 27 (1st Supp.), s. 5, c. 10 (3rd Supp.), s. 1, c. 30 (3rd Supp.), s. 1, c. 1 (4th Supp.), s. 18(F); 1992, c. 1, ss. 58, 60(F); 1993, c. 7, s. 1; 1995, c. 5, s. 25; 1997, c. 16, s. 1; 1999, c. 35, s. 11; 2000, c. 24, s. 42; 2001, c. 27, s. 244, c. 41, ss. 3, 126; 2002, c. 13, s. 3; 2004, c. 12, s. 1.

Hijacking

76. Every one who, unlawfully, by force or threat thereof, or by any other form of intimidation, seizes or exercises control of an aircraft with intent

- (a) to cause any person on board the aircraft to be confined or imprisoned against his will,
 - (b) to cause any person on board the aircraft to be transported against his will to any place other than the next scheduled place of landing of the aircraft,
 - (c) to hold any person on board the aircraft for ransom or to service against his will, or
 - (d) to cause the aircraft to deviate in a material respect from its flight plan,
- is guilty of an indictable offence and liable to imprisonment for life.

1972, c. 13, s. 6.

Endangering safety of aircraft or airport

77. Every one who

- (a) on board an aircraft in flight, commits an act of violence against a person that is likely to endanger the safety of the aircraft,
 - (b) using a weapon, commits an act of violence against a person at an airport serving international civil aviation that causes or is likely to cause serious injury or death and that endangers or is likely to endanger safety at the airport,
 - (c) causes damage to an aircraft in service that renders the aircraft incapable of flight or that is likely to endanger the safety of the aircraft in flight,
 - (d) places or causes to be placed on board an aircraft in service anything that is likely to cause damage to aircraft, that will render it incapable of flight or that is likely to endanger the safety of the aircraft in flight,
 - (e) causes damage to or interferes with the operation of any air navigation facility where the damage or interference is likely to endanger the safety of an aircraft in flight,
 - (f) using a weapon, substance or device, destroys or causes serious damage to the facilities of an airport serving international civil aviation or to any aircraft not in service located there, or causes disruption of services of the airport, that endangers or is likely to endanger safety at the airport, or
 - (g) endangers the safety of an aircraft in flight by communicating to any other person any information that the person knows to be false,
- is guilty of an indictable offence and liable to imprisonment for life:

R.S., 1985, c. C-46, s. 77; 1993, c. 7, s. 3.

Offensive weapons and explosive substances

78. (1) Every one, other than a peace officer engaged in the execution of his duty, who takes on board a civil aircraft an offensive weapon or any explosive substance

(a) without the consent of the owner or operator of the aircraft or of a person duly authorized by either of them to consent thereto, or

(b) with the consent referred to in paragraph (a) but without complying with all terms and conditions on which the consent was given,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

Definition of "civil aircraft"

(2) For the purposes of this section, "civil aircraft" means all aircraft other than aircraft operated by the Canadian Forces, a police force in Canada or persons engaged in the administration or enforcement of the *Customs Act*, the *Excise Act* or the *Excise Act, 2001*.

R.S., 1985, c. C-46, s. 78; R.S., 1985, c. 1 (2nd Supp.), s. 213; 2002, c. 22, s. 325.

Offence outside Canada

481.2 Subject to this or any other Act of Parliament, where an act or omission is committed outside Canada and the act or omission, when committed in those circumstances, is an offence under this or any other Act of Parliament, proceedings in respect thereof may, whether or not the accused is in Canada, be commenced, and an accused may be charged, tried and punished within any territorial division in Canada in the same manner as if the offence had been committed in that territorial division.

UK

1996 Chapter 39

An Act to amend the Civil Aviation Act 1982 so as to provide for the prosecution of persons committing offences on foreign aircraft while in flight to the United Kingdom; and for connected purposes.

[18th July 1996]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

Application of criminal law to United Kingdom-bound foreign aircraft.

1. - (1) Section 92 of the Civil Aviation Act 1982 (application of criminal law to aircraft) shall be amended as follows.

(2) In subsection (1), after "British-controlled aircraft" there shall be inserted "or (subject to subsection (1A) below) a foreign aircraft".

(3) After that subsection there shall be inserted-

"(1A) Subsection (1) above shall only apply to an act or omission which takes place on board a foreign aircraft where-

(a) the next landing of the aircraft is in the United Kingdom, and

(b) in the case of an aircraft registered in a country other than the United Kingdom, the act or omission would, if taking place there, also constitute an offence under the law in force in that country.

(1B) Any act or omission punishable under the law in force in any country is an offence under that law for the purposes of subsection (1A) above, however it is described in that law."

(4) After subsection (2) there shall be inserted-

"(2A) The requirement in subsection (1A) (b) above shall be taken to be met unless, not later than the rules of court may provide, the defence serve on the prosecution a notice-

(a) stating that, on the facts as alleged with respect to the act or omission, the requirement is not in their opinion met;

(b) showing the grounds for their opinion; and

(c) requiring the prosecution to prove that it is met.

(2B) The court, if it thinks fit, may permit the defence to require the prosecution to prove that the requirement is met without the prior service of a notice under subsection (2A) above.

(2C) In the Crown Court the question whether the requirement is met is to be decided by the judge alone."

(5) In subsection (5), after the definition of "British-controlled aircraft" there shall be inserted-

"foreign aircraft" means any aircraft other than a British-controlled aircraft;".

Inquiry by consular officer.

2. - (1) Section 95 of the Civil Aviation Act 1982 (provisions as to evidence in connection with aircraft) shall be amended as follows.

(2) In subsection (4), for the words from "any" to "Kingdom" there shall be substituted "-

(a) any offence has been committed on a British-controlled aircraft while in flight elsewhere than in or over the United Kingdom, or

(b) there has taken place on board a foreign aircraft an act or omission which constitutes an offence by virtue of section 92(1) above,".

Short title and extent.

3. - (1) This Act may be cited as the Civil Aviation (Amendment) Act 1996.

(2) This Act extends to Northern Ireland.

[Other UK Acts](#) | [Home](#) | [Scotland Legislation](#) | [Wales Legislation](#) | [Northern Ireland Legislation](#) | [Her Majesty's Stationery Office](#)

New Zealand

Offences Punishable On Summary Conviction

65 Offences to be punishable on summary conviction

- (1) Subject to section 57(2) and Part 5A, every offence against this Act shall be punishable on summary conviction.
- (2) Notwithstanding anything in the Summary Proceedings Act 1957, any information for an offence against this Act may be laid at any time within 12 months after the date of the offence.

Part 5A Unruly passenger offences

Preliminary provisions

65A Application of this Part

- (1) This Part applies to any unruly passenger offence committed—
 - (a) on an aircraft in New Zealand, regardless of the nationality of the aircraft;
 - (b) outside New Zealand on an aircraft in flight, regardless of the nationality of the aircraft, if the next landing of the aircraft is New Zealand.
- (2) For the purposes of this Part, an aircraft is in flight from the time when all its external doors are closed after embarkation until the time when any external door is opened for disembarkation.
- (3) Despite subsection (2), in the case of a forced landing an aircraft is in flight until the time when the competent authorities of the country in which the forced landing takes place, or in the case of a forced landing in a place that is not within the territorial limits of any country, the competent authorities of any country, assume responsibility for the aircraft and for persons and property on board the aircraft.
- (4) A person authorised by the Director to exercise a power or function under this Part must carry a warrant of authority issued by the Director that specifies—
 - (a) the name of, and the office or offices held by, that person; and
 - (b) the powers and functions that the person is authorised to exercise under this Part.
- (5) A member of the police may exercise all or any of the powers and functions that may be conferred on a person authorised by the Director under this Part.
- (6) For the purposes of this Part, person authorised by the Director includes (but is not limited to) an aviation security officer authorised by the Director.

65B Liability for offences against this Part despite extraterritoriality

Any person who commits an act or omission on an aircraft in flight outside New Zealand that would be an offence against this Part if it occurred within New Zealand is, subject to this Act, liable as if the act or omission had occurred in New Zealand.

65C Liability for offences under Summary Offences Act 1981 despite extraterritoriality

- (1) Any person who commits an act or omission on an aircraft in flight outside New Zealand that would, if it occurred in New Zealand, be an offence against sections 3 (disorderly behaviour), 7 (fighting in public place), 9 (common assault), 11 (wilful damage), or 27 (indecent exposure) of the Summary Offences Act 1981, is liable under that Act as if the act or omission had occurred in New Zealand.
- (2) To avoid doubt, any person who commits an act or omission on an aircraft that would be an offence against sections 3 (disorderly behaviour), 7 (fighting in public place), or 27 (indecent exposure) of the Summary Offences Act 1981 is liable under that Act as if the reference to public place in any of those provisions includes an aircraft.

65D Foreign aircraft outside New Zealand

- (1) An infringement notice may be issued, or proceedings commenced, for an unruly passenger offence committed on a foreign aircraft outside New Zealand if—
 - (a) the pilot-in-command—
 - (i) makes a request in the prescribed form to the Director or a person authorised by the director to issue an infringement notice or to commence proceedings; and
 - (ii) provides an undertaking in the prescribed form that he or she (or the operator of the aircraft) has not made or will not make a similar request to the authorities of any other state; and
 - (b) in the case of proceedings, the Attorney-General consents.
- (2) To avoid doubt, a person may, in respect of an unruly passenger offence, be arrested, charged, remanded in custody, or released on bail before the Attorney-General decides whether or not to consent to proceedings.
- (3) Despite subsection (1)(b), proceedings for an unruly passenger offence committed on a foreign aircraft outside of New Zealand may be commenced without the Attorney General's consent if—
 - (a) a copy of the infringement notice is filed under section 65S(1); or
 - (b) the defendant requests a hearing in respect of the infringement offence to which the infringement notice relates.
- (4) In any proceedings for an offence under this Part, the pilot-in-command's request and undertaking, if made in the prescribed form or forms, are—
 - (a) admissible in evidence; and
 - (b) in the absence of proof to the contrary, sufficient evidence of the matters stated in the form or forms.

65E Proceedings for offences

- (1) Subject to section 65Q(2), the offences specified in this Part (except sections 65F and 65G(1)(d)) are triable summarily.
- (2) The offences specified in sections 65F and 65G(1)(d) are triable on indictment.
- (3) Despite anything to the contrary in the Summary Proceedings Act 1957, any information for an offence referred to in sub-section (1) may be laid at any time within 12 months after the date of the offence.
- (4) Subject to section 65C, nothing in this Part affects the liability of any person under any other enactment.

Unruly passenger offences

65F Strict liability for acts endangering safety

- (1) A person commits an offence who acts in a manner that endangers an aircraft or any person in an aircraft.
- (2) Every person who commits an offence against subsection (1) is liable to imprisonment for a term not exceeding 2 years or a fine not exceeding \$10,000.

65G Disruptive conduct towards crew member

- (1) Every person commits an offence who, while in an aircraft,—
 - (a) uses any threatening, offensive, or insulting words towards a crew member; or
 - (b) behaves in a threatening, offensive, insulting, or disorderly manner towards a crew member; or
 - (c) behaves in a manner that interferes with the performance by a crew member of his or her duties; or
 - (d) intentionally interferes with the performance by a crew member of his or her duties.
- (2) Every person who commits an offence against subsection (1)(a) or (b) or (c) is liable to a fine not exceeding \$5,000.
- (3) Every person who commits an offence against subsection (1)(d) is liable to imprisonment for a term not exceeding 2 years or a fine not exceeding \$10,000.
- (4) It is a defence in a prosecution under subsection (1)(a) for using offensive or insulting words if the defendant proves that he or she had reasonable grounds to believe that his or her words would not be overheard by a crew member.

65H Interference with aircraft

- (1) Every person commits an offence who tampers or interferes with any aircraft, any component of an aircraft, or its equipment, including, but not limited to, smoke detectors.
- (2) Every person who commits an offence against subsection (1) is liable to a fine not exceeding \$10,000.

65I Intoxicated persons on aircraft

- (1) Every person (except a person under medical care) commits an offence who—
 - (a) is intoxicated and boards an aircraft; or
 - (b) becomes intoxicated on an aircraft.
- (2) Every person who commits an offence against—
 - (a) subsection (1)(a) is liable to a fine not exceeding \$5,000.
 - (b) subsection (1)(b) is liable to a fine not exceeding \$3,000.
- (3) For the purposes of this section, a person is intoxicated if the pilot-in-command (or senior flight attendant authorised by the pilot-in-command for this purpose) has reasonable grounds to believe that the person is under the influence of an intoxicating liquor, or substance to such an extent as to—
 - (a) be incapable of properly looking after himself or herself; or
 - (b) actively present a hazard to the aircraft or to persons on the aircraft; or
 - (c) offend against the good order and discipline required on an aircraft.
- (4) For purposes of this section, **person under medical care** means a person who—
 - (a) is under the supervision of an attendant; and
 - (b) has become intoxicated as a result of taking prescription medication in accordance with a medical authorisation.

65J Non-compliance with commands given by pilot-in-command

- (1) Every person commits an offence who fails to comply with any commands given to the person directly by the pilot-in-command, or indirectly by the pilot-in-command through a crew member, in accordance with his or her duties under section 13 or the rules.
- (2) Despite section 28(6), every person who commits an offence against subsection (1) is liable to a fine not exceeding \$5,000.

65K Offensive behaviour or words

- (1) Every person commits an offence who, on any aircraft,—
 - (a) behaves in a threatening, offensive, insulting, or disorderly manner; or
 - (b) uses threatening, offensive, or insulting words.
- (2) Every person who commits an offence against subsection (1) is liable to a fine not exceeding \$2,500. It is a defence in a prosecution under subsection (1)(b) for using offensive or
- (3) insulting words if the defendant proves that he or she had reasonable grounds to believe his or her words would not be overheard.

65L Portable electronic devices not to be operated

- (1) Every person commits an offence who operates a portable electronic device on board an aircraft in breach of the rules.

- (2) Despite section 28(6), every person who commits an offence against subsection (1) is liable to a fine not exceeding \$2,500.

65M Non-compliance with seating and seatbelt instructions

- (1) Every person commits an offence who fails to comply with an instruction given by a crew member, passenger information signs, or placards to—
- (a) occupy a seat or berth; and
 - (b) fasten and keep fastened about the person any installed safety belt or safety harness.
- (2) Every person who commits an offence against subsection (1) is liable to a fine not exceeding \$2,500.

65N No Smoking

- (1) Every person commits an offence who smokes—
- (a) when instructed not to smoke by a crew member, passenger information signs, or placards; or
 - (b) while on any aircraft that is carrying passengers for hire or reward on any internal flight; or
 - (c) in contravention of section 96A(6).
- (2) Every person who commits an offence against subsection (1) is liable to a fine not exceeding \$2,500.
- (3) In subsection (1), to smoke has the meaning set out in section 96A(1).

65O Dangerous goods

- (1) Every person commits an offence who, in breach of the rules, carries or causes to be carried on an aircraft any dangerous goods.
- (2) Despite section 28(6), every person who commits an offence against subsection (1) is liable to a fine not exceeding \$2,500.

65P Procedure for certain unruly passenger offences

- (1) If any offence specified in section 65Q(2) is alleged to have been committed by any person (in this section, the defendant), the pilot-in-command of the aircraft at the time of the alleged offence may, by any available means, notify, or cause to be notified, —
- (a) the Director; or
 - (b) a person authorised by the Director.
- (2) If the Director or a person authorised by the Director has reason to believe that a defendant has committed any offence specified in section 65Q(2),—
- (a) the defendant may be proceeded against for the alleged offence under the Summary Proceedings Act 1957; or
 - (b) the Director or the person authorised by the Director may issue an infringement notice in respect of the alleged offence.

- (3) If the Director or a person authorised by the Director has reasonable cause to suspect that a person has committed any offence specified in section 65G(1)(a) to (c) or section 65H or section 65J or section 65K or section 65Q(2), he or she may require the person to give his or her full name, address, and date of birth.
- (4) If the Director or the person authorised by the Director has reasonable grounds to suppose that any details provided under subsection (3) are false or misleading, he or she may require the person to give such verification of those details as it is reasonable in the circumstances to require that person to provide.
- (5) If the person, without reasonable excuse, refuses or fails to comply with a request under subsection (3) or subsection (4), and persists in that refusal or failure after being warned by the Director or a person authorised by the Director that he or she may be arrested for committing an offence by that refusal or failure, a member of the police may arrest that person without warrant.
- (6) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who, without reasonable excuse,—
 - (a) refuses or fails to comply with a request under sub-section (3) or subsection (4); or
 - (b) gives details that are false or misleading in a material respect to the Director or a person authorised by the Director in response to such a request.
- (7) Evidence produced by the defendant to the Director or the person authorised by the Director under subsection (4) must be inspected without delay and returned to the defendant as soon as practicable after the inspection has concluded.
- (8) The Director or a person authorised by the Director—
 - (a) may deliver an infringement notice (or a copy of it) to the defendant personally; or
 - (b) may send it (or a copy of it) to the defendant by post addressed to the defendant's last known place of residence or business.

65Q Form of infringement notice

- (1) An infringement notice under section 65P must be in the prescribed form, and must specify—
 - (a) enough details to inform the defendant fairly of the time, place, and nature of the offence alleged; and
 - (b) the amount of the infringement fee specified in respect of that offence in subsection (2); and
 - (c) where the fee may be paid; and
 - (d) the time within which the fee may be paid; and
 - (e) how and where payment may be made under section 65R; and
 - (f) a summary of how the provisions of section 21(10) of the Summary Proceedings Act 1957 apply to the offence alleged; and
 - (g) that the defendant has a right to request a hearing; and

- (h) a statement of the consequences if the defendant neither pays the fee nor requests a hearing; and
 - (i) any other particulars as are prescribed by regulations made under this Act.
- (2) The infringement fee is,—
- (a) in the case of an offence against section 65I(1)(a), \$1,000;
 - (b) in the case of an offence against section 65I(1)(b), \$600;
 - (c) in the case of an offence against section 65L, \$500;
 - (d) in the case of an offence against section 65M, \$500;
 - (e) in the case of an offence against section 65N, \$500;
 - (f) in the case of an offence against section 65O, \$500.

65R Payment of fees

- (1) If an infringement notice under section 65P (or a copy of it) is served by delivering it to the defendant on arrival at an international airport for an offence on an international flight, the defendant may choose to pay immediately the infringement fee in the manner specified in the notice.
- (2) All infringement fees received in respect of an infringement notice under section 65P, whether immediately after service or later, must be paid into the Crown Bank Account.

65S Filing of notices

- (1) The Director or a person authorised by the Director may file in a District Court a copy of the infringement notice under section 65P after a period of 14 days from the date of service of the infringement notice, or a copy of the infringement notice, if—
 - (a) the infringement fee for the offence has not by then been paid to the Director as specified in the notice; and
 - (b) the Director has not by then received at the address specified in the notice a notice requesting a hearing in respect of that offence.
- (2) The copy of the infringement notice filed under subsection (1) must have recorded on it the date and method of service on the defendant.
- (3) If an infringement notice under section 65P has been issued and served, the Summary Proceedings Act 1957 applies as if that notice were a reminder notice served under section 21(2) of that Act, and the provisions of that Act apply, with all necessary modifications, to the alleged offence as if—
 - (a) the reference in section 21(1)(b) to filing a copy of a reminder notice under the section were a reference to filing a copy of the infringement notice under subsection (1) of this section; and
 - (b) subsection (1) of this section were in the place of section 21(3); and
 - (c) the reference in section 21(3A) to a copy of a reminder notice not having been filed under section 21(3) were a reference to a copy of the infringement notice not having been filed under subsection (1) of this section; and

- (d) the reference in section 21(5) to a copy of a reminder notice filed under section 21(3) were a reference to a copy of the infringement notice filed under subsection (1) of this section; and
 - (e) the reference in section 21(6)(b) and (10)(a) to a period of 28 days after the service of a reminder notice were a reference to the period of 14 days after the service of the infringement notice; and
 - (f) the references to reminder notices in the definition of defendant in section 2 and 78B, and in any other relevant provisions of that Act, were references to the infringement notice.
- (4) Despite section 203(1) of the Summary Proceedings Act 1957, and infringement notice under section 65P may be issued and served on a Sunday.
- (5) For the purpose of subsection (1), an infringement notice sent by post is deemed to have been served on the defendant when it was posted.

65T Savings

- (1) Nothing in this Part applies to any—
- (a) proceedings commenced before the commencement of this Act; or
 - (b) cause of action that arose before the commencement of this Act; or
 - (c) act or omission that occurred before the commencement of this Act.
- (2) All proceedings commenced under any other enactment for an offence committed before the commencement of this Part may be continued and completed under that other enactment as if this Part had not come into force.

CANADA

Aeronautics Act
(R.S. 1985, c. A-2)

Prohibition -- unruly or dangerous behaviour

7.41 (1) No person shall engage in any behaviour that endangers the safety or security of an aircraft in flight or of persons on board an aircraft in flight by intentionally

- (a) interfering with the performance of the duties of any crew member;
- (b) lessening the ability of any crew member to perform that crew member's duties; or
- (c) interfering with any person who is following the instructions of a crew member.

Punishment

- (2) Every person who commits an offence under subsection (1) is liable
 - (a) on conviction on indictment, to a fine of not more than \$100,000 or to imprisonment for a term of not more than five years, or to both; and
 - (b) on summary conviction, to a fine of not more than \$25,000 or to imprisonment for a term of not more than eighteen months, or to both.
- (3)-(4) [Omitted].

Notes:

1. Section 7.41 of the Aeronautics Act was enacted by s. 17 of the Public Safety Act 2002 (chapter 15, Statutes of Canada 2004) and came into operation on 6 May 2004.
2. Section 7.41 falls within Part 1 of the Aeronautics Act. Sections 4 and 4.1 provides for the application of the Act as follows:

"Application of Part

4. (1) Subject to any regulations made pursuant to paragraph 4.9(w), this Part applies in respect of aeronautics to all persons and to all aeronautical products and other things in Canada, to all persons outside Canada who hold Canadian aviation documents and to all Canadian aircraft and passengers and crew members thereon outside Canada.

Application of foreign law

(2) Every person exercising the privileges accorded by a Canadian aviation document in a foreign state and every Canadian aircraft operated in a foreign state shall comply with or be operated in accordance with the applicable aeronautics laws of that state.

Conflicts

(3) Nothing in this Part shall be construed as requiring a person or aircraft to contravene or be operated in contravention of a law of a foreign state that applies to or in respect of the person or aircraft.

Contraventions outside Canada

4.1 Every person who commits an act or omission outside Canada that if committed in Canada would be a contravention of a provision under this Part shall be deemed to have committed a contravention of the provision under this Part and may be proceeded against and punished in the place in Canada where the person is found as if the contravention had been committed in that place."

(A) Extension of jurisdiction to foreign aircraft over certain existing criminal acts and offences constituting unruly behaviour

Aviation Security (Amendment) Bill 2005	New Zealand Civil Aviation Act as amended in June 2004
<p>Proposed new section 12A lists the following offences in –</p> <p><u>(a) Offences against the Person Ordinance (Cap. 212)</u></p> <ol style="list-style-type: none"> 1. s. 17(a) (wounding or striking with intent to do grievous bodily harm) [Penalty: liable to imprisonment for life]; 2. s. 19 (wounding or inflicting grievous bodily harm [Penalty: liable to imprisonment for 3 years]; 3. s. 39 (assault occasioning actual bodily harm)[Penalty: liable to imprisonment for 3 years]; and 4. s. 40 (common assault) [Penalty: liable to imprisonment for 1 year]. <p><u>(b) Crimes Ordinance (Cap. 200)</u></p> <ol style="list-style-type: none"> 5. s. 24 (threat) [Penalty: liable on summary conviction to a fine of \$2,000 and imprisonment for 2 years; on conviction upon indictment to imprisonment for 5 years]; 6. s. 60 (destroying or damaging property) [Penalty: liable to imprisonment for 10 years or life]; 7. s. 118 (rape) [Penalty: liable to imprisonment for life]; 8. s. 118A (non-consensual buggery) [Penalty: liable to imprisonment for life]; 9. s. 122 (indecent assault) [Penalty: liable to imprisonment for 10 years]; 10. s. 146 (indecent conduct towards child under 16) [Penalty: liable to imprisonment for 10 years]; and 11. s. 148 (indecency in public) [Penalty: liable to a fine of \$1000 and imprisonment for 6 months]. 	<p>s. 65C lists the following offences in the Summary Offences Act 1981</p> <ol style="list-style-type: none"> 1. s.3 (disorderly behavior) [Penalty: liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$1,000]; 2. s. 7 (fighting in public) [Penalty: liable to a fine not exceeding \$500]; 3. s. 9 (common assault) [Penalty: liable to imprisonment for a term not exceeding 6 months or a fine not exceeding \$2,000; 4. s. 11 (willful damage) [Penalty: liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$1,000];and 5. s. 27 (indecent exposure) [Penalty: liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$1,000]

(B) Creation of specific unruly behavior offences

Provisions in the Aviation Security (Amendment) Bill 2005		Corresponding/Similar provisions in the New Zealand Civil Aviation Act as amended in June 2004	
Proposed new section 12B(1)	Wilfully obstructs a member of the crew of the aircraft in the performance of his duties. [Penalty: liable on summary conviction, to a fine at level 4 (\$25,000) and to imprisonment for 1 year; or on conviction on indictment, to a fine at level 6 (\$100,000) and to imprisonment for 5 years]	s. 65G	Disruptive conduct towards crew member (a) uses any threatening, offensive, or insulting words; (b) behaves in a threatening, offensive, insulting or disorderly manner; (c) behaves in a manner that interferes with the performance by a crew member of his duties; or (d) intentionally interferes with the performance by a crew member of his duties [Penalty: For (a), (b) or (c), liable to a fine not exceeding \$5,000. For (d), liable to imprisonment for a term not exceeding 2 years or a fine not exceeding \$10,000]
Proposed new section 12B(2)	Fails to comply with instructions given by the commander of the aircraft, or on behalf of the commander by a member of the crew, for the purpose of (a) protecting the safety of the aircraft or of persons or property on board the aircraft; or (b) maintaining good order and discipline on board the aircraft. [Penalty: liable on summary conviction, to a fine at level 4 (\$25,000) and to imprisonment for 1 year; or on conviction on indictment, to a fine at level 6 (\$100,000) and to imprisonment for 5 years]	s. 65J s. 65M	Non-compliance with commands given by the pilot-in-command directly or indirectly by the pilot-in-command through a crew member. [Penalty: liable to a fine not exceeding \$5,000] Non-compliance with seating and seatbelt instructions [Penalty: liable to a fine not exceeding \$2,500]
Proposed new section 12B(3)	Behaves in a disorderly manner whereby the good order or discipline on board the aircraft is or is likely to be jeopardized. [Penalty: liable on summary conviction, to a fine at level 3 (\$10,000) and to imprisonment for 6 months; or on conviction on indictment, to a fine at level 5 (\$50,000) and to imprisonment for 2 years]	s. 65C s. 65K	An offence if it occurred to be an offence against s. 3 (disorderly behaviour) ... of the Summary Offences Act 1981. [Penalty: liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$1,000 for an offence under s. 3. Offensive behaviour or words [Penalty: liable to a fine not exceeding \$2,500]

Proposed new section 12B(4)	Willfully tampers or interferes with (a) any component of the aircraft; (b) any apparatus or equipment of the aircraft (including, but not limited to, smoke detectors); or (c) any system installed in the aircraft. [Penalty: liable on summary conviction, to a fine at level 3 (\$10,000) and to imprisonment for 6 months; or on conviction on indictment, to a fine at level 5 (\$50,000) and to imprisonment for 2 years]	s. 65H	Tampers or interferes with any aircraft, any component of an aircraft, or its equipment, including, but not limited to, smoke detectors. [Penalty: liable to a fine not exceeding \$10,000]
Proposed new section 12B(5)	Embarks on an aircraft in such a state of intoxication, or becomes intoxicated on board an aircraft to such an extent, as to jeopardize or be likely to jeopardize (a) the safety of the aircraft or of persons or property on board the aircraft; or (b) good order and discipline on board the aircraft. [Penalty: liable on summary conviction, to a fine at level 3 (\$10,000) and to imprisonment for 6 months; or on conviction on indictment, to a fine at level 5 (\$50,000) and to imprisonment for 2 years]	s. 65I	Intoxicated and boards an aircraft, or becomes intoxicated. [Penalty: liable to a fine not exceeding \$5000]
Proposed new section 12B(6)	Smokes in the aircraft or in any compartment of the aircraft when prohibited or instructed not to smoke by a member of the crew. [Penalty: liable on summary conviction, to a fine at level 3 (\$10,000) and to imprisonment for 6 months; or on conviction on indictment, to a fine at level 5 (\$50,000) and to imprisonment for 2 years]	s.65N	Smokes when instructed not to smoke by a crew member, passenger information signs, or placards. [Penalty: liable to a fine not exceeding \$2,500]
Proposed new section 12B(7)	Operates an electronic device in the aircraft or in any compartment of the aircraft when prohibited or instructed not to operate the device by a member of the crew. [Penalty: liable on summary conviction, to a fine at level 3 (\$10,000) and to imprisonment for 6 months; or on conviction on indictment, to a fine at level 5 (\$50,000) and to imprisonment for 2 years]	s. 65L	Operates a portable electronic device on board an aircraft in breach of the rules. [Penalty: liable to a fine not exceeding \$2,500]

Note: Apart from the specific offences listed in the above table, the New Zealand Civil Aviation Act provides for two other offences: strict liability for acts endangering safety (s. 65F refers) and (b) carrying dangerous goods in breach of the rules on an aircraft (s. 65O refers).

(C) Extraterritoriality

Aviation Security (Amendment) Bill 2005		New Zealand Civil Aviation Act	
Proposed new section 12C	<p>S. 12A and 12B applies to non-Hong Kong-controlled aircraft while in flight elsewhere than in or over Hong Kong if</p> <p>(a) the next place of landing of the aircraft is in Hong Kong; and</p> <p>(b) the commander of the aircraft, in the form set out in Schedule 3 –</p> <p>(i) makes a request to the Hong Kong Police Force to commence proceedings against the person; and</p> <p>(ii) gives an undertaking that he, and the operator of the aircraft, has not made and will not make a similar request to the authorities of any place outside Hong Kong.</p>	<p>s. 65A</p> <p>s. 65D</p>	<p>The provisions for unruly passenger offences apply to an aircraft in flight outside New Zealand, regardless of the nationality of the aircraft, if the next landing of the aircraft is New Zealand.</p> <p>An infringement notice may be issued, or proceedings commenced, for an unruly passenger offence committed on a foreign aircraft outside New Zealand if</p> <p>(a) the pilot-in-command –</p> <p>(i) makes a request in the prescribed form to the Director of Civil Aviation or a person authorized by the director to issue an infringement notice or to commence proceedings;</p> <p>(ii) provides an undertaking in the prescribed form that he or she (or the operator of the aircraft) has not made or will not make a similar request to the authorities of any other state.</p>

Security Bureau

27 April 2005

AUSTRALIA

Section 256AA of the Civil Aviation Regulations 1988
(Commonwealth of Australia)
Commonwealth Consolidated Regulations

256AA Offensive and disorderly behaviour

(1) A person in an aircraft must not behave in an offensive and disorderly manner.

Penalty: 50 penalty units.

(2) An offence against subregulation (1) is an offence of strict liability.

Notes:

1. The Civil Aviation Regulations 1988 (Statutory Rules No. 158 of 1988 as amended) were enacted under the Civil Aviation Act 1988 (Act No. 63 of 1988 as amended) of the Commonwealth of Australia. Section 3 of the Regulations 1988 provides for the application of the Regulations as follows:

“3 Application of regulations

- (1) Subject to these regulations, these regulations apply to and in relation to:
- (a) international air navigation within Australian territory;
 - (b) air navigation in relation to trade and commerce with other countries and among the States;
 - (c) air navigation within the Territories;
 - (d) air navigation to or from the Territories;
 - (e) air navigation in which a Commonwealth aircraft is engaged;
 - (f) air navigation in controlled air space that is of a kind not specified in paragraph (a), (b), (c), (d) or (e) but directly affects, or may endanger, the safety of persons or aircraft engaged in:
 - (i) air navigation of a kind specified in paragraph (a), (b), (d) or (e); or
 - (ii) air navigation in which a military aircraft is engaged; and
 - (g) all air navigation within Australian territory of a kind not specified in paragraph (a), (b), (c), (d) or (e).
- (2) Except where otherwise prescribed, the provisions of these regulations shall apply to and in relation to Australian aircraft engaged in air navigation outside Australian territory.
- (3) (6) [omitted]”.

2. “Penalty units” are defined in section 4AA of the Crimes Act 1914 of the Commonwealth of Australia (Act No. 12 of 1914 as amended). One penalty unit equals AUS\$110.

Crimes Act 1900
(Australian Capital Territory)

392. Offensive behaviour

A person shall not in, near, or within the view or hearing of a person in, a public place behave in a riotous, indecent, offensive or insulting manner.
Maximum penalty: \$1 000.

Notes:

1. Section 392 of the Crimes Act 1900 of the Australian Capital Territory applies to aircraft by virtue of section 15 of the Crimes (Aviation) Act 1991 of the Commonwealth of Australia (Act No. 139 of 1991 as amended). The relevant provisions of section 15 read as follows:

“15 Certain offences committed on aircraft

(1) Where:

- (a) a person on board a Division 2 aircraft does or omits to do anything; and
- (b) the act or omission, if it had taken place in, or in a public place in, the Jervis Bay Territory, would be an offence against:
 - (i) a law of the Commonwealth in force in that Territory; or
 - (ii) the Crimes Act 1900 of the Australian Capital Territory in its application to the Jervis Bay Territory; or
 - (iii) [omitted];

the person is guilty of an offence.

(1A)-(1B) [omitted].

(2) The punishment for an offence against subsection (1) is the same as that for the offence mentioned in paragraph (1)(b).

(3) This section extends to an act or omission that took place, or may have taken place, in the Jervis Bay Territory.”

2. A Division 2 aircraft is defined by section 2 of the Crimes (Aviation) Act 1991 to mean:

- (a) an aircraft (including a foreign aircraft) that is:
 - (i) engaged in a flight in the course of trade and commerce with other countries or among the States; or
 - (ia) engaged in a flight within a Territory, between 2 Territories or between a State and a Territory; or
 - (ii) outside Australia while engaged in a flight that started in Australia; or
 - (iii) engaged in a flight between a part of Australia and a place outside Australia; or
- (b) an Australian aircraft (other than a Commonwealth aircraft or a defence aircraft) that is engaged in a flight wholly outside Australia; or
- (c) a Commonwealth aircraft or a defence aircraft that is engaged in any flight, including a flight wholly outside Australia.

3. The Jervis Bay Territory refers to the Territory of the Commonwealth of Australia which was surrendered to the Commonwealth by the Government of New South Wales. See the Jervis Bay Territory Acceptance Act 1915 (Cwlth). Under section 4A of that Act but subject to that Act and so far as they are applicable to the Territory and are not inconsistent with an Ordinance, the laws in force from time to time in the Australian Capital Territory are in force in the Territory as if the Territory formed part of the Australian Capital Territory.

IRELAND

Section 2A of the Air Navigation and Transport Act, 1973

Disruptive behaviour on board aircraft in flight.

2A.—(1) A person on board an aircraft in flight who is intoxicated to such extent as to give rise to a reasonable apprehension that he or she is likely to endanger the safety of himself or herself or the safety of others on board the aircraft shall be guilty of an offence.

(2) A person on board an aircraft in flight who, without justification, engages in behaviour that is likely to cause serious offence or annoyance to any person on board the aircraft, at any time after having been requested by a member of the crew of the aircraft to cease such behaviour, shall be guilty of an offence.

(3) A person on board an aircraft in flight who engages in behaviour of a threatening, abusive or insulting nature whether by word or gesture with intent to cause a breach of the peace or being reckless as to whether a breach of the peace might be occasioned shall be guilty of an offence.

(4) A person guilty of an offence under this section shall—

- (a) in the case of an offence under subsection (1) or (2), be liable on summary conviction to a fine not exceeding £500, or
- (b) in the case of an offence under subsection (3), be liable on summary conviction to a fine not exceeding £700 or to imprisonment for a term not exceeding 4 months, or to both.

Notes:

1. Section 2A of the Air Navigation and Transport Act, 1973 was enacted by s. 65 of the Air Navigation and Transport (Amendment) Act 1998.

2. Section 1 of the Air Navigation and Transport Act, 1973 defines "aircraft" as including any aircraft other than a "state aircraft". The latter is defined to mean "state aircraft" means aircraft of any state used in the military, customs or police services of that state;

3. Section 2 of the Air Navigation and Transport Act, 1973 provides for the application of the criminal law to aircraft as follows:

"Application of criminal law to aircraft.

2.—(1) Any act or omission which, if taking place in the State, would constitute an offence under the law of the State, shall, if it takes place on board an Irish controlled aircraft while in flight elsewhere than in or over the State, constitute that offence.

(2) Proceedings for an offence under this Act or an offence referred to in subsection (1) of this section may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the State."

SINGAPORE

Air Navigation Order

Imperilling safety of aircraft

45. A person shall not wilfully or negligently imperil the safety of an aircraft or any person on board, whether by interference with any member of the flight crew of the aircraft, or by tampering with the aircraft or its equipment or by disorderly conduct or by any other means.

Notes:

1. The Air Navigation Order was made under the Air Navigation Act, Chapter 6, Revised Edition 1985, as amended. Section 81 of the Order provides for the application of the Order as follows:

“Extraterritorial effect of this Order

81. Except where the context otherwise requires, the provisions of this Order —
- (a) in so far as they apply (whether by express reference or otherwise) to Singapore aircraft, shall apply to such aircraft wherever they may be;
 - (b) in so far as they apply as aforesaid to other aircraft shall apply to such aircraft when they are within Singapore;
 - (c) in so far as they prohibit, require or regulate (whether by express reference or otherwise) the doing of anything by persons in, or by any of the crew of, any Singapore aircraft, shall apply to such persons and crew, wherever they may be; and
 - (d) in so far as they prohibit, require or regulate as aforesaid the doing of anything in relation to any Singapore aircraft by other persons shall apply to them wherever they may be.”

2. The penalty for an offence under paragraph 45 of the Order is a fine not exceeding \$5,000 or imprisonment for a term of one year or to both. (cf. para. 80(6) of the Order).

UNITED KINGDOM

Air Navigation Order 2000

Acting in a disruptive manner

68 No person shall while in an aircraft:

- (a) use any threatening, abusive or insulting words towards a member of the crew of the aircraft;
- (b) behave in a threatening, abusive, insulting or disorderly manner towards a member of the crew of the aircraft; or
- (c) intentionally interfere with the performance by a member of the crew of the aircraft of his duties.

1. The Air Navigation Order 2000 (Statutory Instrument 2000 No. 1562) was made under section 2(2) of the European Communities Act 1972, sections 60 (other than sub-section (3)(r)), 61, 77, 101 and 102 of and Schedule 13 to the Civil Aviation Act 1982 and section 35 of the Airports Act 1986. Section 123 of the Order provides for the application of the Order as follows:

“Extra-territorial effect of the Order

123 -(1) Except where the context otherwise requires, the provisions of this Order:

- (a) insofar as they apply (whether by express reference or otherwise) to aircraft registered in the United Kingdom, shall apply to such aircraft wherever they may be;
- (b) insofar as they apply as aforesaid to other aircraft shall apply to such other aircraft when they are within the United Kingdom or on or in the neighbourhood of an offshore installation;
- (c) insofar as they prohibit, require or regulate (whether by express reference or otherwise) the doing of anything by persons in, or by any of the crew of, any aircraft registered in the United Kingdom, shall apply to such persons and crew, wherever they may be;
- (d) insofar as they prohibit, require or regulate as aforesaid the doing of anything in relation to any aircraft registered in the United Kingdom by other persons shall, where such persons are Commonwealth citizens, British protected persons or citizens of the Republic of Ireland, apply to them wherever they may be; and
- (e) insofar as they prohibit, require or regulate as aforesaid the doing of anything in relation to any aircraft on or in the neighbourhood of an offshore installation, shall apply to every person irrespective of his nationality or, in the case of a body corporate, of the law under which it was incorporated and wherever that person or body may be.

(2) Nothing in this article shall be construed as extending to make any person guilty of an offence in any case in which it is provided by section 3(1) of the British Nationality Act 1948 (which limits the criminal liability of certain persons who are not citizens of the United Kingdom and colonies) that that person shall not be guilty of an offence.”

2. If a person contravenes paragraph 68(a) or (b) of the Order, he is liable on summary conviction to a fine not exceeding Level 4* on the standard scale. If a person contravenes paragraph 68(c) of the Order, he is liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine or imprisonment for a term not exceeding two years or both. (cf. para. 122(5) and (6) of the Order). *£2,500 in 1991. (cf. Criminal Justice Act 1982, 1982 c.48 as amended by the Criminal Justice Act 1991)

3. Section 92 of the Civil Aviation Act 1982 (Chapter 16 of 1982) provides UK courts with the jurisdiction to deal with offences committed on board UK registered aircraft wherever in the world an offence takes place. The courts can also deal with offences committed on non-UK aircraft if the next landing of the aircraft is in the UK and if the crime would be a crime in the state of registration of that aircraft. Section 92 reads as follows:

"92 Application of criminal law to aircraft

(1) Any act or omission taking place on board a British-controlled aircraft [or (subject to subsection (1A) below) a foreign aircraft] while in flight elsewhere than in or over the United Kingdom which, if taking place in, or in a part of, the United Kingdom, would constitute an offence under the law in force in, or in that part of, the United Kingdom shall constitute that offence; but this subsection shall not apply to any act or omission which is expressly or impliedly authorised by or under that law when taking place outside the United Kingdom.

[(1A) Subsection (1) above shall only apply to an act or omission which takes place on board a foreign aircraft where--

- (a) the next landing of the aircraft is in the United Kingdom, and
- (b) in the case of an aircraft registered in a country other than the United Kingdom, the act or omission would, if taking place there, also constitute an offence under the law in force in that country.

(1B) Any act or omission punishable under the law in force in any country is an offence under that law for the purposes of subsection (1A) above, however it is described in that law.]

(2) Subject to any provision to the contrary in any Act passed after 14th July 1967, no proceedings for any offence under the law in force in, or in a part of, the United Kingdom committed on board an aircraft while in flight elsewhere than in or over the United Kingdom (other than an offence under, or under any instrument made under, any of the air navigation enactments) shall be instituted--

- (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions; or
- (b) in Northern Ireland, except by or with the consent of the Attorney General for Northern Ireland;

but, unless the Attorney General for Northern Ireland otherwise directs, paragraph (b) above shall be deemed to be complied with as respects the institution of any proceedings if the Director of Public Prosecutions for Northern Ireland gives his consent to the institution or carrying on of the proceedings.

[(2A) The requirement in subsection (1A)(b) above shall be taken to be met unless, not later than the rules of court may provide, the defence serve on the prosecution a notice--

- (a) stating that, on the facts as alleged with respect to the act or omission, the requirement is not in their opinion met;
- (b) showing the grounds for their opinion; and
- (c) requiring the prosecution to prove that it is met.

(2B) The court, if it thinks fit, may permit the defence to require the prosecution to prove that the requirement is met without the prior service of a notice under subsection (2A) above.

(2C) In the Crown Court the question whether the requirement is met is to be decided by the judge alone.]

(3) For the purpose of conferring jurisdiction, any offence under the law in force in, or in a part of, the United Kingdom committed on board an aircraft in flight shall be deemed to have been committed in any place in the United Kingdom (or, as the case may be, in that part thereof) where the offender may for the time being be.

(4) For the purposes of this section the period during which an aircraft is in flight shall be deemed to include any period from the moment when power is applied for the purpose of the aircraft taking off on a flight until the moment when the landing run (if any) at the termination of that flight ends; and any reference in this section to an aircraft in flight shall include a reference to an aircraft during any period when it is on the surface of the sea or land but not within the territorial limits of any country.

(5) In this section, except where the context otherwise requires--

"aircraft" means any aircraft, whether or not a British controlled aircraft, other than--

- (a) a military aircraft; or
- (b) subject to section 101(1)(b) below, an aircraft which, not being a military aircraft, belongs to or is exclusively employed in the service of Her Majesty in right of the United Kingdom;

"the air navigation enactments" mean the enactments contained in sections 60 to 62, 72 to 77, 81 to 83, 87 and 97 of this Act;

"British-controlled aircraft" means an aircraft--

- (a) which is for the time being registered in the United Kingdom; or

- (b) which is not for the time being registered in any country but in the case of which either the operator of the aircraft or each person entitled as owner to any legal or beneficial interest in it satisfies the following requirements, namely--
 - (i) that he is a person qualified to be the owner of a legal or beneficial interest in an aircraft registered in the United Kingdom; and
 - (ii) that he resides or has his principal place of business in the United Kingdom; or
- (c) which, being for the time being registered in some other country, is for the time being chartered by demise to a person who, or to persons each of whom, satisfies the requirements aforesaid;

["foreign aircraft" means any aircraft other than a British-controlled aircraft;]

"military aircraft" means--

- (a) an aircraft of the naval, military or air forces of any country; or
- (b) any other aircraft in respect of which there is in force a certificate issued in accordance with any Order in Council in force under section 60, 87, 89, 91, 101(1)(a) or 107(2) of this Act that the aircraft is to be treated for the purposes of that Order in Council as a military aircraft;

and a certificate of the Secretary of State that any aircraft is or is not a military aircraft for the purposes of this section shall be conclusive evidence of the fact certified.

(6) In subsection (2) above, the words from "but" onwards shall (notwithstanding their enactment in this Act) have effect subject to any question arising as to the validity, in relation to any such provision as is re-enacted in the preceding provisions of that subsection, of the provisions from which the words derive, that is to say, Article 7 of the Prosecution of Offences (Northern Ireland) Order 1972 and paragraphs 67 and 68 of Part II of Schedule 1 to the Criminal Justice (Northern Ireland) Order 1980."

Annex H

Cases of Prosecution Against Smoking and Drunkenness in aircraft Under Air Navigation (Hong Kong) Order 1995

Prosecution Against Smoking (under Article 50(2))

Hong Kong Registered Aircraft			
	No. of Cases	Cases Charged	Cases Convicted
2000	1	0	0
2001	3	0	0
2002	11	6	5
2003	11	7	7
2004	20	3	3
2005 1st quarter	4	1	1
<i>Total</i>	<i>50</i>	<i>17</i>	<i>16</i>
Non - Hong Kong Registered Aircraft			
	No. of Cases	Cases Charged	Cases Convicted
2000	0	0	0
2001	9	0	0
2002	3	0	0
2003	2	0	0
2004	9	0	0
2005 1st quarter	0	0	0
<i>Total</i>	<i>23</i>	<i>0</i>	<i>0</i>

Remark

Penalty for offence on smoking in aircraft under Article 50 (2) is stipulated in Article 91(5) as "liable on summary conviction to a fine not exceeding \$5,000".

Prosecution Against Drunkenness (under Article 49(1))

Hong Kong Registered Aircraft			
	No. of Cases	Cases Charged	Cases Convicted
2000	2	1	1
2001	2	1	1
2002	3	2	2
2003	4	3	3
2004	0	0	0
2005 1st quarter	0	0	0
<i>Total</i>	<i>11</i>	<i>7</i>	<i>7</i>
Non - Hong Kong Registered Aircraft			
	No. of Cases	Cases Charged	Cases Convicted
2000	2	0	0
2001	7	2	2
2002	1	0	0
2003	1	0	0
2004	2	0	0
2005 1st quarter	0	0	0
<i>Total</i>	<i>13</i>	<i>2</i>	<i>2</i>

Remark

Penalty for offence on drunkenness in aircraft under Article 49 (1) is stipulated in Article 91(6) as "liable on summary conviction to a fine not exceeding \$5,000 and on conviction on indictment to a fine or **imprisonment** for a term not exceeding two years or both."

Annex I

Membership of Aviation Security Committee

- Deputy Secretary for Security 2 (Chairman)
- Deputy Director-General of Civil Aviation
- Assistant Director-General of Civil Aviation (Airport Standards)
- Assistant Commissioner of Police (Operations)
- Principal Assistant Secretary for Economic Development and Labour (Economic Development)
- Airport Management Director, Airport Authority Hong Kong
- Representatives of Board of Airline Representatives
- Assistant Secretary for Security (Secretary)

Membership of Aviation Advisory Board

(as at April 2005)

- Director-General of Civil Aviation (Chairman)
- Permanent Secretary for Economic Development and Labour (Economic Development), or his/her representative
- Chief Executive Officer, Airport Authority Hong Kong
- Executive Director, Hong Kong Tourism Board
- Mr Willy Lin Sun-mo, JP, Managing Director, Milo's Manufacturing Co Ltd
- Mrs Daisy Tong Yeung Wai-lan, Partner, Messrs Deacons Graham & James
- Professor Fung Kee-ying, Department of Mechanical Engineering, The Hong Kong Polytechnic University
- Mr David Turnbull, Chairman, Cathay Pacific Airways Limited
- Mr Stanley Hui Hon-chung, Chief Executive Officer, Hong Kong Dragon Airlines Limited
- Mr Anthony Lau Siu-wing, Chairman and Chief Executive, Baltrans Ltd
- Mr John Li Kwok-heem
- Mr Joseph Tung Yao-chung, Executive Director, Travel Industry Council of Hong Kong
- Mr Ma Ching-yuk, JP, Director and Manager, Tai Sang Bank Limited
- Mr Alex Yan Tak-chung, President, Hong Kong Aviation Club Ltd
- Deputy Director-General of Civil Aviation (Secretary)