

立法會
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Paper for the House Committee meeting on 10 June 2005

**Report of the Bills Committee on
Aviation Security (Amendment) Bill 2005**

Purpose

This paper reports on the deliberations of the Bills Committee on Aviation Security (Amendment) Bill 2005.

The Bill

2. The main purposes of the Aviation Security Ordinance (Cap. 494) (the Ordinance) are to prohibit acts which pose threat to civil aviation, and to give effect to international conventions on aviation security. The existing provisions of the Ordinance deal with very serious offences such as hijacking and sabotage, but do not specifically deal with offences involving passengers' unruly behaviour.
3. The main purposes of the Bill are to amend the Ordinance to –
 - (a) impose criminal sanctions against unruly or disruptive behaviour committed by passengers on board civil aircraft; and
 - (b) extend Hong Kong's jurisdiction over offences regarded as unruly or disruptive passenger behaviour committed outside Hong Kong in connection with non-Hong Kong-controlled civil aircraft which next land in Hong Kong.

The Bills Committee

4. At the House Committee meeting on 11 March 2005, Members formed a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix**.

5. Under the chairmanship of Hon Margaret NG, the Bills Committee has held three meetings with the Administration.

Deliberations of the Bills Committee

Reasons for introducing legislative amendments

6. The Administration has explained that in view of the increase in the number and gravity of reported incidents involving unruly or disruptive passengers in recent years, the International Civil Aviation Organization (ICAO) adopted a resolution at its Assembly in Montreal in October 2001. The resolution urges Contracting States to enact law and regulation to deal effectively with the problem of unruly passenger offences, incorporating as far as possible, the provisions of the Model Legislation on Certain Offences Committed on Board Civil Aircraft (Model Legislation). The resolution also encourages the adoption of legal rules enabling States to exercise jurisdiction in appropriate cases to prosecute criminal acts and offences constituting unruly or disruptive behaviour on board aircraft registered in other States.

7. The Administration has pointed out that the Ordinance addresses mainly very serious offences such as hijacking and sabotage, but does not specifically deal with offences involving passengers' unruly behaviour. Legislative amendments are therefore necessary to fill the gap in the existing legislation to strengthen the control over unruly passenger offences committed on board Hong Kong-controlled aircraft, and also to extend Hong Kong's jurisdiction over such acts committed on board non-Hong Kong-controlled aircraft outside Hong Kong while they are coming to land in Hong Kong.

Approach adopted by other jurisdictions in implementing the Model Legislation

8. In response to the Bills Committee's question on the approach adopted by other jurisdiction in implementing the Model Legislation, the Administration has advised that according to ICAO, some countries, including Australia, Canada and the United Kingdom, had extended their jurisdiction to certain offences committed on board foreign aircraft prior to the promulgation of the 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.

9. The Administration has further advised that following the promulgation of the Model Legislation by ICAO, New Zealand is one of the countries which have enacted specific legislation to deal with unruly behaviour offences. In drawing up the proposals in the Bill, the Administration has made reference to the two-pronged approach adopted by New Zealand legislation, i.e. the 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.

Offence of disorderly behaviour

10. Under the proposed new section 12B(3) of the Ordinance, any person on board an aircraft who behaves in a disorderly manner whereby the good order or discipline on board the aircraft is or is likely to be jeopardised commits an offence. A person who commits the offence is liable on summary conviction to a fine at level 3 (currently \$10,000) and imprisonment for six months, and on conviction on indictment to a fine at level 5 (currently \$50,000) and imprisonment for two years.

11. As the Model Legislation does not provide for the offence of disorderly behaviour on board an aircraft, members have queried why such an offence is included in the Bill. Members have also questioned the meaning of "disorderly behaviour", and how the offence of disorderly behaviour is dealt with in other jurisdictions.

12. The Administration has explained that the offence of disorderly behaviour in the Bill is modelled in part on the offence in section 17B(2) of the Public Order Ordinance (Cap. 245) (POO). *Halsbury's Laws of Hong Kong* states that "disorderly behaviour" refers to "any substantial breach of decorum which tends to disturb the peace or to interfere with the comfort of other people who may be in the vicinity."¹ In *HKSAR v. Cheng Siu Wing*², the Court of First Instance held that the word "disorderly" in section 17B(2) of POO should be given its ordinary dictionary meaning and it referred to unruly or offensive behaviour or behaviour which violates public order or morality. The Court also held that disorderly conduct covered behaviour in the hearing or sight of a person which was likely to cause harassment, alarm or distress thereby. There needed not be any element of violence, whether present or threatened, on the part of the accused. It covered conduct which was not necessarily threatening, abusive or insulting in itself.

13. The Administration has advised that in line with the spirit of the Model Legislation, there is a need to provide a general provision for maintaining good order on an aircraft; hence the provision for the offence of disorderly behaviour in the Bill. Reference has also been made to the Civil Aviation Act of New Zealand when drawing up the proposal.

¹ *Halsbury's Laws of Hong Kong*, 2002 reissue, Vol. 9, paragraph 130.251.

² [2003] HKCFI 1152, [2003] 4 HKC 471.

14. The Administration has further advised that under the Civil Aviation Act as amended in June 2004, 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 section 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 of NZ\$1,000.

Offence relating to intoxication

15. Under the proposed new section 12B(5) of the Ordinance, any person who, without reasonable excuse, embarks on an aircraft in such a state of intoxication, or becomes intoxicated on board an aircraft to such an extent, as to jeopardise or be likely to jeopardise the safety of the aircraft or of persons or property on board the aircraft, or good order and discipline on board the aircraft, commits an offence.

16. Members have pointed out that the prohibition of drunkenness in aircraft is also provided in Article 49 of the Air Navigation (Hong Kong) Order 1995 (the Order), and any person who contravenes the provision is an offence. Members have queried the difference between Article 49 of the Order and the provision relating to the offence of intoxication in the Bill.

17. The Administration has explained that Article 49 of the Order is applicable to Hong Kong-registered aircraft wherever they may be and to foreign aircraft only when they are in or over Hong Kong. The proposed new section 12B(5) of the Ordinance has a wider scope and is applicable to Hong Kong-controlled aircraft wherever they may be and to non-Hong Kong-controlled aircraft when they next land in Hong Kong. Article 49 of the Order prohibits a person to enter any aircraft when drunk, or be drunk in any aircraft, and 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) has a wider coverage, namely drunkenness, intoxication resulting from the consumption of drugs and intoxication resulting from other intoxicating substances. Under the proposed section, being intoxicated in itself will not be an offence unless it is to such an extent as to jeopardise or be likely to jeopardise the safety of the aircraft or of persons or property on board the aircraft, or good order and discipline on board the aircraft.

18. Hon Albert CHENG is of the view that crew members should have the responsibility of not providing alcoholic beverages to passengers on board an aircraft who appear to be intoxicated by alcohol. He has suggested that if a passenger appears to be getting intoxicated and if duty free alcohol is purchased, it should be given to the passenger when disembarking. Hon Albert CHENG has also queried whether the provision of alcoholic beverages on board an aircraft by airline operators to the extent that it caused a passenger to fall into a state of intoxication should be made an offence.

19. The Administration has responded that the Model Legislation does not include such an offence provision and it is not the Administration's 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. Such a proposal would have implications on other establishments, e.g. bars and restaurants, which serve alcoholic beverages at their premises.

20. The Administration has informed members that the majority of airline operators have drawn up internal guidelines for crew members to follow when serving alcoholic beverages to passengers. At members' request, the Administration has provided to the Bills Committee the internal guidelines on the provision of alcoholic beverages to passengers on board aircraft of two local airline operators.

21. Members note that under the internal guidelines of the two local airline operators, if a passenger appears to be getting intoxicated during a flight, the Flight Attendants should, if necessary, politely refuse to serve any more alcohol. For one of the airline operators, the internal guidelines also state that if duty free alcohol is purchased, it should be given to the passenger when disembarking, and not in-flight.

Offence relating to smoking

22. Under the proposed new section 12B(6), any person on board an aircraft who smokes in the aircraft or in any compartment of the aircraft when smoking in the aircraft or any compartment of it is prohibited, or when instructed not to smoke by a member of the crew of the aircraft commits an offence.

23. Members have pointed out that the prohibition of smoking in aircraft is also provided in Article 50 of the Order and any person who contravenes the provision is an offence. Members have queried the need for the proposed offence relating to smoking in the Bill.

24. The Administration has advised that Article 50 of the Order 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 non-Hong Kong-controlled aircraft when they next land in Hong Kong.

Overlap of offence provisions in the Bill and the Air Navigation (Hong Kong) Order

25. Members note that apart from the offences relating to drunkenness and smoking, both Article 51 of the Order and the proposed new section 12B(2) of the Ordinance have provided for offences relating to disobeying the commands given by the aircraft

commander. Members have pointed out that the maximum penalty for the offence of drunkenness in the Order is a fine not exceeding \$5,000 on summary conviction and a fine and/or imprisonment for two years on conviction on indictment, and the maximum penalty for the offence relating to smoking and for non-compliance with lawful commands given by the aircraft commander in the Order is a fine not exceeding \$5,000 on summary conviction. Under the Bill, however, the maximum penalty for the offences relating to intoxication and smoking on summary conviction is a fine at level 3 (currently \$10,000) and imprisonment for six months, and a fine at level 5 (currently \$50,000) and imprisonment for two years on conviction on indictment. Non-compliance with instructions given by the aircraft commander or on behalf of the commander by a crew member under the proposed new section 12B(2) is liable on summary conviction to a fine at level 4 (currently \$25,000) and to imprisonment for one year and on conviction on indictment to a fine at level 6 (currently \$100,000) and to imprisonment for five years.

26. Members have asked how prosecution is to be instituted for the same criminal conduct which constitutes an offence under both the Bill and the Order in view of the different levels of penalty for the same offence under the Bill and the Order. Members are of the view that the Administration should put in place criteria for invoking the provisions in the Bill or the Order for the same criminal conduct.

27. The Administration has responded that it is not unusual for there to be more than one offence available in respect of the same course of criminal conduct. As the penalties for the offences in the Bill are heavier than those for the offences in Articles 49, 50 and 51 of the Order, it is likely that a suspected person will be prosecuted for an offence under the Bill if the act is caught by both the proposed new provisions in the Bill and the Order. However, the decision to prosecute a suspect is the discretion of the prosecution authority. Prosecution for a particular offence will be instituted if it is in the public interest.

28. The Administration has further explained that in determining where the public interest lies, the prosecution will examine all the factors and circumstances. If the conduct is particularly serious, a prosecution for the more serious offence may be instituted. In the circumstances where it is easier to prove one offence, a prosecution may be instituted in respect of that offence. It is also possible to initiate a prosecution for alternative offences, but the prosecution authority will have to specify that the less serious offence is being prosecuted on the basis that it is alternative to the more serious offence. If, thereafter, there is conviction for the more serious offence, there is no need for the court to consider the less serious offence. However, if the court finds the defendant not guilty of the more serious offence, the court will have to consider the evidence in respect of the alternative, i.e. the less serious offence, to determine whether there is sufficient evidence to convict the defendant of that offence.

29. Some members have questioned why it is necessary to retain the offences of drunkenness and smoking in the Order, while similar offences are provided in the Bill.

30. The Administration has responded that the Order is an important piece of legislation implementing the overall international aviation standards and practices provided under the Convention on International Civil Aviation (Chicago, 1944), and regulating air navigation. Even though similar offences are provided in the Bill, it is necessary to retain the said offences in the Order for completeness. The Administration has informed members that the Economic Development and Labour Bureau is reviewing the Order, including the penalty levels which were made some 20 years ago. The Administration aims to complete the review and formulate necessary amendments, in consultation with the industry, as soon as practicable.

Double jeopardy in respect of prosecution and conviction of offences

31. Members have expressed concern that since different jurisdictions have their own means of dealing with offences in an aircraft, the issue of double jeopardy may arise in respect of prosecution and conviction of the same offence in Hong Kong and in the other jurisdiction. Members have pointed out that for instance if a person committed an offence in a non-Hong Kong-controlled aircraft outside Hong Kong which next land in Hong Kong and has been convicted of that offence under the law of Hong Kong pursuant to a request made by the aircraft commander under the proposed new section 12C(1)(b)(i) of the Ordinance, there is no provision precluding the same offence from being prosecuted and convicted in the jurisdiction which the aircraft is registered.

32. The Administration has responded that the proposed new section 12C(1)(b)(ii) requires the commander to give 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. The provision will, to some extent, reduce the giving rise of the issue of double jeopardy.

Consultation on the proposals in the Bill

33. The Administration has advised the Bills Committee that according to ICAO, the International Air Transportation Association (IATA) was involved in the drafting of the Model Legislation. The majority of participants in the aviation industry in Hong Kong, including Hong Kong and foreign aircraft operators, are members of IATA. In drawing up the proposals in the Bill, the Administration has consulted the Aviation Security Committee and the Aviation Advisory Board. The two committees expressed support for the legislative proposals.

Resumption of Second Reading debate

34. The Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting on 29 June 2005.

Advice Sought

35. Members are invited to note the deliberations of the Bills Committee and the date of the resumption of the Second Reading debate on the Bill.

Council Business Division 2
Legislative Council Secretariat
9 June 2005

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

Membership list

Chairman	Hon Margaret NG
Members	Hon James TO Kun-sun Hon SIN Chung-kai, JP Hon Howard YOUNG, SBS, JP Hon LAU Kong-wah, JP Hon Tommy CHEUNG Yu-yan, JP Hon Audrey EU Yuet-mee, SC, JP Hon Albert Jinghan CHENG

Total: 8 Members

Clerk	Mrs Sharon TONG LEE Yin-ping
Legal Adviser	Ms Connie FUNG
Date	12 April 2005