

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1235/04-05(04)

Ref : CB2/BC/5/04

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

**Background brief prepared by the Legislative Council Secretariat**

**Proposal to amend the Aviation Security Ordinance (Cap. 494)**

**Purpose**

This paper gives a summary of issues raised by members of the Panel on Security on the Administration's proposal to amend the Aviation Security Ordinance (Cap. 494) (the Ordinance).

**The Administration's proposal**

2. At its meeting on 7 December 2004, the Panel on Security was consulted on the Administration's proposal to amend the Ordinance –

- (a) to enable the Hong Kong Special Administrative Region Government to strengthen the control over unruly or disruptive behaviour committed by passenger on board civil aircraft; and
- (b) to 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.

3. The Administration informed the Panel 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 urged 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.

4. The Administration proposed to incorporate as far as practicable and with necessary adjustment the provisions of the ICAO's Model Legislation into the Ordinance. The policy intent was to enable the Hong Kong authorities to prosecute in appropriate cases criminal acts and offences constituting unruly or disruptive behaviour on board Hong Kong-controlled and non-Hong Kong-controlled aircraft.

### **Issues raised by Panel members**

5. While some members expressed support for the Administration's proposal, a member queried the need to include the offence of disorderly behaviour. The member expressed concern that a person on board an aircraft disseminating handbills against war or calling for participation in a demonstration might be regarded as committing an offence.

6. Another member was concerned that the proposed offences relating to the interfering with the performance of the duties of a crew member, and the failure to comply with the instructions given by the aircraft commander might be too broad. The member requested the Administration to provide overseas precedents on these proposed offences.

7. In its reply dated 25 February 2005, the Administration informed the Panel that similar offences are provided in the Air Navigation Order 2000 of the United Kingdom and the Civil Aviation Act 1990 of New Zealand as amended in June 2004.

### **Relevant papers**

8. The following papers are attached for members' reference -

- (a) the Administration's reply dated 25 February 2005 referred to in paragraph 7 above (LC Paper No. CB(2)968/04-05(01));
- (b) the extract from the minutes of the Panel meeting on 7 December 2004 (**Appendix**).

政府總部  
香港下亞厘畢道



LC Paper No. CB(2)968/04-05(01)  
**GOVERNMENT SECRETARIAT**  
LOWER ALBERT ROAD  
HONG KONG

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25 February 2005

By fax: 2509 0775  
Clerk to Panel on Security  
Legislative Council Secretariat  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

(Attn: Mr Raymond LAM)

Dear Mr LAM,

### **Panel on Security**

#### **Follow-up to the Meeting on 7 December 2004**

In discussing the Administration's paper entitled "Proposal to amend the Aviation Security Ordinance (Cap. 494) (LC Paper No. CB(2)305/04-05(04)) at the meeting held on 7 December 2004, Members requested the Administration to provide overseas precedents relating to the acts referred to in paragraph 10(a) and (b) of the paper, namely –

- (a) acting in a manner that interferes with the performance of the duties of a crew member or lessens the ability of the crew member to perform those duties; and
- (b) intentionally failing to comply with the lawful instructions given by the aircraft commander, or a crew member on behalf of the commander of the aircraft, for the purpose of ensuring the safety of the aircraft or for the purpose of maintaining good order and discipline on board.

Our response is as follows.

### The United Kingdom

- (a) In the UK, there are similar provisions for unruly behaviour offences in the Air Navigation Order 2000 which are set out below -

*Authority of commander and members of the crew of an aircraft*

*Article 67 Every person in an aircraft shall obey all lawful commands which the commander of that aircraft may give for the purpose of securing the safety of the aircraft and of persons or property carried therein, or the safety, efficiency or regularity of air navigation.*

*Acting in a disruptive manner*

*Article 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."*

- (b) The UK Civil Aviation Authority has provided a number of precedent cases which are tabulated at **Annex** for Members' information.

### New Zealand

- (c) In New Zealand, the Civil Aviation Act 1990 as amended in June 2004 contains similar provisions related to unruly passenger offences. Details are as follows -

*Section 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.*

*Section 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.*

- (d) According to the Ministry of Transport of New Zealand, no prosecution has been made under the above provisions since they came into operation in June 2004.

Yours sincerely,

  
( Lau Wai Ming )  
for Secretary for Security

c.c. DGCA (Attn: Mr Simon Li) Fax: 2362 4257  
DoJ (Attn: Miss Rickie Chan) Fax: 2869 0670

**Precedent Cases Related to Unruly Passenger Offences Provided by The UK Civil Aviation Authority**

<b>Case</b>	<b>Description of the Offence</b>
April 2001	A passenger was charged with disobeying a lawful command of the aircraft commander, being drunk on the aircraft, damaging the crockery, interfering with the performance of a crew member's duties, using threatening behaviour and assaulting crew members on a British Airways flight from Seattle to London.
March 2002	A passenger was charged with assaulting a member of the cabin crew on a Britannia Airways flight from Bristol to the Canary Islands. The passenger was fined £200.
May 2003	A passenger was charged with assaulting and being threatening and abusive towards the cabin crew on a Virgin Atlantic flight from London to Tokyo. The passenger was sentenced to community service and fined £1 100.
May 2003	A passenger was charged with interfering with a flight crew (refusing to sit down and fasten seat belt before arguing with flight attendants) on a flight from Manchester to Orlando.
December 2003	A passenger was charged with drunken and disruptive behaviour during a Thai Airlines flight from Thailand to London.
April 2004	A passenger was charged with assaulting a cabin supervisor and being threatening and abusive during a flight from Belfast to the Canary Islands. The passenger was sentenced to two three-month prison terms, both of which were suspended and fined £1 300.

Note: The details of some of the above cases do not include prosecution results or penalties, as these have not been made available to us by the UK Civil Aviation Authority.

**Security Bureau**

**February 2005**

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## 立法會

### *Legislative Council*

Ref : CB2/PL/SE/1

LC Paper No. CB(2) 666/04-05  
(These minutes have been seen  
by the Administration)

#### **Panel on Security**

#### **Minutes of meeting held on Tuesday, 7 December 2004 at 2:30 pm in Conference Room A of the Legislative Council Building**

**Members present** : Hon James TO Kun-sun (Chairman)  
Hon Daniel LAM Wai-keung, BBS, JP (Deputy Chairman)  
Hon Albert HO Chun-yan  
Dr Hon LUI Ming-wah, JP  
Hon Margaret NG  
Hon CHEUNG Man-kwong  
Dr Hon Philip WONG Yu-hong, GBS  
Hon Howard YOUNG, SBS, JP  
Hon LAU Kong-wah, JP  
Hon CHOY So-yuk  
Hon Audrey EU Yuet-mee, SC, JP  
Hon LEUNG Kwok-hung  
Hon CHIM Pui-chung

**Members attending** : Hon CHAN Kam-lam, JP  
Hon LAU Chin-shek, JP  
Hon LI Fung-ying, BBS, JP  
Hon WONG Kwok-hing, MH  
Hon KWONG Chi-kin

**Members absent** : Hon WONG Yung-kan, JP  
Hon Andrew LEUNG Kwan-yuen, SBS, JP

**Public Officers attending** : Item IV

Mr Michael WONG  
Deputy Secretary for Security 3

Mr Alan CHU  
Principal Assistant Secretary for Security D

Mr Raymond WONG, IMSM  
Assistant Director (Information Systems)  
Immigration Department

Mr Albert LAI  
Chief Systems Manager (Technology Services)  
Immigration Department

Item V

Mr Michael WONG  
Deputy Secretary for Security 3

Ms Linda SO  
Principal Assistant Secretary for Security C

Mr Y S WONG  
Assistant Secretary for Security C4

Mr David CHIU  
Assistant Director (Enforcement and Liaison)  
Immigration Department

Mr M K FOK  
Assistant Commissioner of Police (Operations)  
Hong Kong Police Force

Mrs Jenny CHAN  
Assistant Commissioner  
Labour Department

Item VI

Mrs Jennie CHOK  
Deputy Secretary for Security 2

Mr Charles WONG  
Principal Assistant Secretary for Security B

Mr Simon LI  
Chief Safety Officer  
Civil Aviation Department



Mr Michael SCOTT  
Senior Assistant Solicitor General  
Department of Justice

Miss Rickie CHAN  
Government Counsel  
Department of Justice

**Clerk in attendance** : Mrs Sharon TONG  
Chief Council Secretary (2)1

**Staff in attendance** : Mr LEE Yu-sung  
Senior Assistant Legal Adviser 1

Mr Raymond LAM  
Senior Council Secretary (2) 5

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**VI. Aviation Security (Amendment) Bill**  
(LC Paper No. CB(2)305/04-05(04))

66. At the invitation of the Chairman, Deputy Secretary for Security 2 (DS for S2) briefed Members on the Administration's proposal to amend the Aviation Security Ordinance (Cap. 494).

67. Mr Howard YOUNG expressed support for the Administration's legislative proposal. He said that the aviation sector hoped that the legislative proposal had been passed in the previous year.

68. The Deputy Chairman expressed support for the Administration's legislative proposal. He considered that wide publicity should be launched by the Administration before implementation.

69. The Chairman asked whether the acts referred to in paragraph 11 of the Administration's paper would be dealt with through the offences referred to in paragraph 12 of the paper. DS for S2 responded that the Administration would propose listing the offences referred to in paragraph 12 of the paper in the proposed legislation.

70. The Chairman asked whether sexual harassment, which was an offence under

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the Sex Discrimination Ordinance (Cap. 480), could be dealt with under the offences referred to in paragraph 12 of the Administration's paper. Senior Assistant Solicitor General responded that the offence could be dealt with under the new offence provisions referred to in paragraph 10(a) of the Administration's paper.

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71. The Chairman expressed concern that the acts referred to in paragraph 10(a) and (b) of the Administration's paper might be too broad. DS for S2 responded that paragraphs 10(a) and (b) took reference from the provisions of the model legislation developed by the International Civil Aviation Organisation, which considered those provisions most important to ensuring the safety and good order on board the aircraft. She was confident that the proposed offence provisions would not be abused by aviation companies. The Chairman requested the Administration to provide overseas precedents relating to the acts referred to in paragraph 10(a) and (b) of the Administration's paper.

72. Referring to paragraph 12 of the Administration's paper, Mr LEUNG Kwok-hung said that as the Public Order Ordinance (POO) (Cap. 245) could be easily abused by law enforcement agencies, a person on board an aircraft disseminating handbills against war or calling for participation in a demonstration might be caught by the proposed offence provision. He considered that the proposed legislation should not incorporate the offence of disorderly behaviour in public places in section 17B(2) of POO.

73. DS for S2 responded that the Administration's objective was to provide for the offence of disorderly behavior in public place and that, for the purposes of such provision, the areas within an aircraft would be regarded as a public place.

74. The Chairman suggested that the Administration should consider whether the distribution of handbills calling for participation in a demonstration on land should be made an offence. He also suggested that the Administration should consider whether there was a need to incorporate in the proposed legislation the offence referred to in section 17B(2) of POO, given that the relevant acts could be dealt with under paragraph 10(b) of the Administration's paper.

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