

**立法會**  
**Legislative Council**

LC Paper No. LS122/04-05

**Paper for the House Committee Meeting  
on 7 October 2005**

**Legal Service Division Second Further Report on  
Carriage by Air (Amendment) Bill 2005**

Our further report on the Bill (LC Paper No. LS93/04-05) was considered by the House Committee at its meeting on 8 July 2005. The further report referred to a number of queries that had been raised with the Administration. As a reply to those queries had only been received on 7 July 2005, it was agreed at the meeting that another further report should be made after we had had time to study the reply.

2. Members may recall that the queries on the technical and drafting aspects of the Bill relate to certain obsolete references to “the Crown”, “the Governor” and “the Secretary of State” which have not been dealt with by the proposed amendments, the implementation of changes to the limits of liability resulting from five-yearly reviews, the definition of “international carriage” in Schedule 4, the non-inclusion of certain provisions of the Montreal Convention and the effect of some technical amendments. The letter to the Administration was attached to our last report.

3. The Administration’s reply has fully dealt with our queries. A particular one points to the fact that references to “the Governor”, “the Crown” and “Secretary of State” in the principal ordinance have been left as they are despite that one of the purposes of the Bill as stated in its long title is “to repeal obsolete references”. Members may wish to note that the Administration’s response is that the primary object of the Bill is to apply the Montreal Convention in Hong Kong as soon as possible and that those colonial references will be suitably adapted through a separate adaptation exercise. The reply is attached for Members’ reference.

Encl.

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7 July 2005

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Dear Mr Cheung,

**Carriage by Air (Amendment) Bill 2005**

Thank you for your letter of 4 July 2005. Our response to the questions you raised is as follows-

- (a) and (c) The primary objective of the Carriage by Air (Amendment) Bill 2005 (“the Bill”) is to apply the Montreal Convention in Hong Kong as soon as possible. The reference to the terms “the Crown”, “the Governor” and “Secretary of State” will be suitably adapted through a separate adaptation exercise.
- (b) As explained below, section 8 is not obsolete and should be retained for the implementation of the amended Warsaw Convention.

Article XXVI of the Hague Protocol provides a mechanism allowing contracting parties to the amended Warsaw Convention to make reservations

to exempt carriage for their military authorities. However, instead of reproducing Article XXVI in the existing Schedule 1, section 8 was enacted to implement this particular Article.

On the other hand, the Montreal Convention contains a provision (Article 57(b)) which is similar to Article XXVI of the Hague Protocol. This provision will be given effect by its inclusion in the proposed Schedule 1A, thereby obviating the need to have a separate implementing provision, similar to section 8, in the proposed Part IA.

- (d) Revisions to the limits of liability prescribed in the Montreal Convention will be implemented by the new section 21 (introduced by clause 20 of the Bill). This new section enables the Director-General of Civil Aviation (DGCA) to make a Gazette notice to announce the revision of liability limits as and when they are revised by ICAO.
  
- (e) The proposed amendment to section 12(1) will have the effect of confining Part III to carriage which is not governed by either the Montreal Convention or the amended Warsaw Convention. This would mean that the remaining types of air carriage that are regulated by Part III are either (i) non-international carriage, or (ii) international carriage to which the unamended Warsaw Convention applies. The combined effect of section 13(a) and section 14(1) is such that international carriage under the unamended Warsaw Convention is governed by Schedule 4, whereas non-international carriage, being the only remaining type of carriage by elimination, is governed by Schedule 3.

Against the above background, it can be seen that Schedule 4 is intended to apply the unamended Warsaw Convention. The definition of “international carriage” should therefore adhere to the wording of that Convention, not the wording of the Montreal Convention. To apply the requirements under the Montreal Convention to non-international carriage, we are proposing to replace the adapted Warsaw provisions in the existing Schedule 3 with adapted Montreal provisions.

- (f) We propose that when DGCA makes an announcement on the revision of liability limits under the Montreal Convention, the limits for non-international carriage as prescribed in the new Schedule 3 will also be revised in tandem. This policy intent is reflected in the proposed new section 21(2).
- (g) The new Schedule 3 governs non-international carriage. It is enforceable only in local courts. Article 33 which provides the choice of forum with respect to international carriage is not applicable in this context and should not be included in Schedule 3. This is consistent with the existing Schedule 3, which excludes the corresponding Article 28 of the amended Warsaw Convention.
- (h) Schedule 4 deals with the application of the unamended Warsaw Convention, not the amended Warsaw Convention. The proposed amendments are intended to rectify errors in the existing Schedule 4.
- (i) The Chinese text of the new Schedule 1A is the reproduction of the authentic Chinese text of the Montreal Convention.

Please feel free to contact the undersigned if further information is required.

Yours sincerely,

( Darryl Chan )  
for Secretary for Economic Development and Labour

c.c. Clerk to the House Committee