

Aviation Security Legislation Bill

Government Bill

As reported from the Transport and Industrial Relations
Committee

Commentary

Recommendation

The Transport and Industrial Relations Committee has examined the Aviation Security Legislation Bill and recommends that it be passed with the amendments shown.

Introduction

The purpose of this bill is to provide enhanced security measures for New Zealand civil aviation. It will allow New Zealand to support its obligations under the Convention on International Civil Aviation (1944), and to strengthen its legal framework for aviation security.

Amendments

Seizure of prohibited items

Clauses 14, 15 and 19 of the bill are concerned with seizure powers related to prohibited items. In particular, clause 19 inserts new section 80B of the Civil Aviation Act 1990, which sets the power of aviation security officers to search for and seize certain items intended to be carried on aircraft or into sterile areas. As the bill is drafted, if an Avsec officer determines there is no lawful authority or reasonable excuse to carry an item on board an aircraft or into a sterile area, it may be seized and retained until delivered to the airline or the New Zealand Police with its details recorded. If the

item is referred to an airline it must be held for thirty days until claimed by the passenger or disposed of.

Submitters raised concerns about the administrative and passenger facilitation implications for the recording and storage of seized items. Restrictions on what may be taken aboard planes have been tightened since 31 March 2007 when the new liquids, aerosols and gels security measures came into effect. These new restrictions have meant that the volume of seized items, such as water bottles, has increased greatly. The cost to airlines and the consumer of instituting a system of recording, storing, and disposing of seized items is considered to substantially outweigh the public good of such a system.

Resources are, and should continue to be, spent on informing the public as to what they can and cannot take on board a plane to avoid the seizure of items. Any back-stop system by which airlines held goods could undermine the effectiveness of this information, as passengers would take risks carrying items they were unsure about with the knowledge they could collect them on their return.

We therefore recommend an amendment to new section 80B(4) removing the requirement to record the details of the seizure and providing an ability to dispose of the seized item or substance. Further we recommend the deletion of section 80B(5) and (6), which set out the requirement for the carrier to hold the item for 30 days and then dispose of it, and insert a new section 80B(5). New section 80B(5) sets out the requirement for Avsec officers, if they deliver the item or substance to a member of police, to record the delivery and the relevant details of the seizure.

As liability should be limited where officers have acted in good faith and in accordance with their powers or performance of their duties, we recommend the insertion of new section 80I to ensure this.

We also recommend a consequential amendment to revoke Civil Aviation Rule 140 Appendix A.8, which requires an officer to record the details of relinquished items.

Regulation-making power

As drafted the bill provides a legislative mechanism to allow legislation to be made swiftly to respond to changing aviation security needs. The proposed regulation-making power is broad. On balance we consider it to be suitably flexible and appropriate for the circumstances and that the current regulation review process will provide adequate scrutiny of any regulations made under this new provision.

With a view to fleshing out the regulation power, we recommend the following amendments to clause 22 to clarify the kind of regulation envisaged.

Recommended amendments to clause 22 would—

- provide a non-exclusive, indicative list of the matters covered by the regulation, such as screening and search and seizure powers
- clarify the relationship between delegated legislation made under the Civil Aviation Act 1990 and the direction-making powers such as screening and search and seizure powers under this bill
- make consequential amendments to other provisions of the Civil Aviation Act 1990 to reflect the new regulation-making power
- simplify the drafting and remove unnecessary words in clause 22.

Clarification of the linkages between aviation security legislation

We consider that the search, screening, and seizure provisions contained in the Civil Aviation Act 1990 and Aviation Crimes Act 1972 could be improved by providing clear connections between the Acts. We therefore recommend the following amendments to clauses 18 and 19 of the bill, which set out the functions and duties of the Aviation Security Service and the search and seizure powers of aviation security officers, to ensure that—

- section 80 of the Civil Aviation Act 1990 clearly states that the section confers powers on Avsec officers, not just functions and duties
- the restrictions and protections in new section 12 would be applied to searches under sections 80B and 80C of the Civil Aviation Act 1990 (such as the outer garment and pat-down restrictions)
- the seizure powers in new section 80B and 80C, as proposed in the bill, would be adequately available for section 80 searches
- the rules on evidence of offences found under an aviation security search, in current section 14 of the Aviation Crimes

Act 1972, would apply to searches undertaken through sections 80, 80B, and 80C.

Consultation on in-flight security officer training

We recommend an amendment to clause 8 inserting new section 15A(3) into the Aviation Crimes Act 1972, to require the Director of Civil Aviation to have regard to the views of representative groups in the aviation industry.

This responds to concern expressed by the New Zealand Air Line Pilots' Association about the possible deployment of in-flight security officers. In general, the Air Line Pilots' Association is supportive of the current Government policy that in-flight security officers will not be deployed on New Zealand aircraft and that reliance should instead be placed on increased ground-based security measures. The Association accepted, however, that it may become necessary at some point in the future to deploy in-flight security officers on New Zealand aircraft, so that New Zealand can continue to participate in international civil aviation. If such officers were to be deployed, pilots would have to be confident that they had received appropriate training to fulfil their duties, as ultimately it is the pilot's responsibility to decide whether the plane is safe to fly.

A practical way to deal with this issue is for the Air Line Pilots' Association to be consulted on in-flight security officer training. The bill currently requires the Commissioner of Police to have regard to the views of the Director of Civil Aviation when authorising a member of the New Zealand Police to be an in-flight security officer. We believe the most appropriate way to address the concern of the Association is for the Director of Civil Aviation to be responsible for considering the views of such industry organisations as the Air Line Pilots' Association. We favour this method as the director has the requisite aviation knowledge to assess the input from the industry.

The Green Party member was not in favour of making legislative provisions for armed in-flight security officers.

Amendments to the commencement clause

We recommend inserting references to clauses 4(2) and 10(2) into clause 2(1), so the definition of "security enhanced area" will come into force the day after Royal assent is received.

It was envisaged that this definition would come into force after the Director of Civil Aviation had declared which areas of the airport and its environs are to be security enhanced areas. However it would

assist readers and users of the amended Aviation Crimes Act 1972 if the definition came into force on the day after Royal assent is received.

We recommend inserting a reference to clause 24(2) into clause 2(1) so that this clause comes into force the day after the bill receives Royal assent. This is to correct an error. Clause 24(2) is the empowering clause for Part 1 of the Schedule, and was to come into force by Order in Council. As Part 1 of the Schedule comes into force the day after the bill receives Royal assent it is necessary for the empowering clause to come into force on the same day.

Offence created

We recommend that clause 5(3) be amended to ensure that carrying an item or substance that can be used to activate another item or substance that is capable of causing bodily injury or of endangering the safety of an aircraft or an airport, is an offence.

Civil liability

Clause 6 of the bill inserts new section 12(2) into the Aviation Crimes Act 1972. This section would require airlines to refuse to carry passengers and their baggage who refuse to allow themselves or their baggage to be searched. The scope of the limitation of liability currently provided in new section 12(3), however, does not explicitly encompass liability arising from a refusal to carry a passenger's baggage.

We therefore recommend that section 12(3) be amended so that it clearly limits any liability arising from a refusal to carry a passenger's baggage.

Imitation weapons

We recommend the insertion of new clause 6A to amend section 13(1) of the Aviation Crimes Act 1972 to allow police to take possession of imitation weapons.

Section 13(1) of the Aviation Crimes Act 1972 confers the power to take possession of any article referred to in paragraphs (a) to (d) of section 11(1) found in the course of a search. It was observed that the power to take possession does not extend to imitations covered by the proposed new section 11(1)(e). The insertion of new clause 6A would correct this oversight.

Use of devices or aids for searches

We recommend an amendment to clause 6, inserting new subsection 12(5A); clause 6A(1) inserting a new section 13(4); and an amendment to clause 8, inserting new section 15F(4), into the Aviation Crimes Act 1972 to make it clear that any device or aid can be used by the New Zealand Police, Customs or Avsec officers in carrying out a search under new section 12(1), sections 13, and 15F and to examine cargo under new section 12(5) of that Act, in order to cater for advances in technology in this area.

The committee considered the use of new imaging technology, which produces an unclothed image, being trialled overseas. We believe that the bill as drafted may be unclear as to whether this technology could be used. We recommend to the Minister that he consider clarifying this, in light of the section 12 provisions, if he deems it necessary.

Officials advised us that in their view the bill as drafted would not allow the use of imaging technology that produced an unclothed image.

Searching of vehicles

We recommend an amendment to clause 14, which inserts new section 77A(1)(b)(iv) into the Civil Aviation Act 1990. The amendment would allow the Minister of Transport to issue a direction for vehicles, as well as people or items, to be searched before they enter or when they are present in a sterile area. This would make the Minister's powers consistent with those given to the Director of Civil Aviation under new section 77B(1)(b)(iv), as was intended.

Background checking

Clause 17 of the bill inserts new section 77G into the Civil Aviation Act 1990, which sets out the natural justice process to be followed if a security check reveals information that could lead to clearance being declined. As the Director of Civil Aviation can seek unclassified information from various sources (such as the courts and the police) and a classified recommendation from the New Zealand Security Intelligence Service, different natural justice processes are required.

We recommend an amendment to new section 77G(1), to provide clear linkages between the security checking process set out in the Act and the complaints process set out in the Inspector General of Intelligence and Security Act 1996. In addition, we recommend that

new section 77G(3)(a) be inserted specifying that, where an application for a security check is declined on the basis of both classified and unclassified information, the Director of Civil Aviation would be required to advise an applicant of the fact that two sources of information had been relied on in declining the check.

Consistency of terminology

The bill currently uses the term “aviation security provider” which is inconsistent with other provisions in the Civil Aviation Act 1990 which refer to “aviation security service provider.” We therefore recommend that clauses 14 and 15 be amended to refer to “aviation security service provider” to make the terminology consistent.

We recommend that clause 4(4) of the bill, defining “in flight”, be deleted to avoid confusion, as the Aviation Crimes Act 1972 has a suitable existing definition of “in flight” in section 2(2).

There is an inconsistency in the use of the terms “item” and “item or substance”. We recommend the bill be amended to replace “item” in every instance with the term “item or substance”. This would leave no doubt that both items and substances are captured in the amendments.

Consequential and miscellaneous

A number of consequential and miscellaneous drafting changes have been made to improve the bill for clarity or consistency. These amendments are not covered in this commentary.

Significant issues considered for which amendments were considered undesirable or unnecessary

Onboard cameras

Submitters have made us aware of an onboard security camera system linked to the flight deck of an aircraft. Using this system pilots can monitor the aircraft’s cabin and assess potential threats without leaving the flight deck. We considered whether it was appropriate or necessary to legislate to make the fitting and use of such systems compulsory in planes of more than 90 seats in New Zealand.

Air New Zealand submitted to us that all the planes it has on order will be fitted with such security systems, and it that it was considering the business case for retrofitting cameras on 747-200 and 767-

300 aircraft. Cameras are not mandated by any civil aviation jurisdiction and are not considered necessary at our present level of security threat, but Air New Zealand is considering them for the sake of consistency across the fleet.

We understand that the current Civil Aviation Act 1990 rule-making provisions enable rules to be made on this matter. We believe that it is therefore unnecessary to legislate on this matter through the bill.

The carrying of kirpans by Sikhs

We requested an assurance from officials around the treatment of Sikhs as members of the travelling public. In particular, we were concerned that training and operational procedures would ensure that practising Sikhs would be treated with respect by airport staff when it came to such issues as the kirpan and the need for the search and removal of the turban to be conducted in private. We note that these concerns are not limited to the Sikh community but that many similar religious and cultural issues arise in the wider community.

Officials assured us that the Aviation Security Service has comprehensive operational procedures in place that require officers to maintain a person's privacy and to treat all people with respect to ensure sensitivity to the person's needs and that the concerns of communities such as the Sikhs would continue to be taken into account. The Aviation Security Service deals with people of many cultures and religions on a daily basis and is experienced in meeting their diverse needs, while still maintaining aviation security standards. The Aviation Security Service provides its staff with training on cultural and religious diversity and has undertaken to provide enhanced training in cultural diversity in 2007/ 2008.

Further, members of the Sikh community submitted that they were concerned that members of the Sikh community might not be able to obtain employment or continue in their employment at airports because of their practice of carrying a kirpan, a ceremonial dagger, as a religious observance.

We are satisfied that the Human Rights Act 1993 and the Employment Relations Act 2000 provide adequate protection so that this should not occur. However, the religious practices of the Sikh community must also take into account the environment within which the employer operates. An employer may be entitled to request that an employee who is a practising Sikh not carry a kirpan in certain areas of the airport. Employers may need to accommodate the needs

of their employees by arranging for such items to be secured appropriately.

Appendix

Committee process

The Aviation Security Legislation bill was referred to the committee on 20 March 2007. The closing date for submissions was 27 April 2007. We received and considered 10 submissions from interested groups and individuals. We heard 7 submissions.

We received advice from the Ministry of Transport, the Ministry of Justice, the New Zealand Police, the Civil Aviation Authority and the Aviation Security Service. The Regulations Review Committee reported to the committee on the powers contained in clause 22 of the bill and the commencement of certain provisions by Order in Council.

Committee membership

Hon Mark Gosche (Chair)

Hon Maurice Williamson (Deputy Chair)

David Bennett

Peter Brown

Darien Fenton

Sue Moroney

Lesley Soper

Hon Judith Tizard

Kate Wilkinson

Pansy Wong

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)

Subject to this Act,

Text struck out unanimously

New (unanimous)

Subject to this Act,

Text inserted unanimously

(Subject to this Act.)

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

Hon Harry Duynhoven

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Aviation Security Legislation Act **2007**.

2 Commencement

- (1) **Sections 1 to 3, 4(2) and (3), 5, 6, 9, 10(2) and (3), 13, 17(2), 18, 19(1), 21, 22, and 24(1) and (2)** come into force on the day after the date on which this Act receives the Royal assent. 5
- (2) The rest of this Act comes into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more Orders in Council may be made bringing different provisions into force on different dates. 10

Part 1

Amendments to Aviation Crimes Act 1972

3 Principal Act amended

Sections 4 to 8 amend the Aviation Crimes Act 1972.

4 Interpretation 15

- (1) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:
 “**foreign in-flight security officer** has the same meaning as in section 2 of the Civil Aviation Act 1990
 “**in-flight security officer** has the same meaning as in section 2 of the Civil Aviation Act 1990”. 20
- (2) Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order:
 “**security enhanced area** has the same meaning as in section 2 of the Civil Aviation Act 1990”. 25
- (3) Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order:

“sterile area has the same meaning as in section 2 of the Civil Aviation Act 1990”.

Struck out (unanimous)

- (4) Section 2 is amended by adding the following subsection:
 “(4) For the purposes of this Act, 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.”

5 Taking firearms, explosives, etc, on to aircraft

- (1) The heading to section 11 is amended by adding “or into sterile area or security enhanced area”. 10
- (2) Section 11(1) is amended by adding “; or” and the following paragraph:
 “(e) an imitation of an item or substance specified in paragraphs (a) to (d).”
- (3) Section 11 is amended by inserting the following subsections after subsection (1): 15
- “(1A) Every person commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 5 years, who, without lawful authority or reasonable excuse, takes, or attempts to take, into a sterile area or a security enhanced area an item or substance specified in subsection (1). 20
- “(1B) Every person commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 5 years, who— 25
- “(a) has the intention of causing bodily injury or of doing any act that would constitute a crime under section 3, 4, 5, or 5A; and

Struck out (unanimous)

- “(b) takes on board an aircraft or into a sterile area or a security enhanced area an item or substance that is 30

Struck out (unanimous)

capable of causing bodily injury or of endangering the safety of an aircraft or an airport when combined with another item or substance.

New (unanimous)

- “(b) takes on board an aircraft or into a sterile area or a security enhanced area an item or substance that is capable of— 5
 - “(i) causing bodily injury or of endangering the safety of an aircraft or an airport when combined with another item or substance; or
 - “(ii) activating another item or substance that is capable of causing bodily injury or of endangering the safety of an aircraft or an airport.” 10

- (4) Section 11 is amended by adding the following subsections:
- “(3) For the purposes of this section, **dangerous or offensive weapon** means any item or substance capable of being used to endanger the safety of an aircraft or cause bodily injury.” 15

6 New section 12 substituted

Section 12 is repealed and the following section substituted:

- “**12 Search of passengers, baggage, and cargo** 20
 - “(1) Any member of the police, any aviation security officer, any Customs officer, or any employee or agent of the carrier authorised by the carrier for the purpose may, with the consent of the passenger, search a passenger and the passenger’s baggage for the purpose of detecting any item or substance that could pose a threat to aviation safety and security (including, but not limited to, any item or substance specified in section 11(1)), before the passenger boards any aircraft in New Zealand pursuant to a contract providing for the carriage of the passenger by air from a place in New Zealand to any other place (whether in New Zealand or elsewhere). 25 30
 - “(2) If the passenger declines to allow himself or herself or his or her baggage to be searched, the carrier must refuse to carry—
 - “(a) the passenger;
 - “(b) his or her baggage.

Struck out (unanimous)

“(3) A carrier is not liable to any civil proceeding, other than a proceeding in respect of any right that the passenger may have for the recovery of the fare or any part of the fare, by reason of the fact that the carrier has refused to carry a passenger who has declined to allow himself or herself or his or her baggage to be searched.

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New (unanimous)

“(3) A carrier is not liable to any civil proceeding, other than a proceeding in respect of any right that the passenger may have for the recovery of the fare or any part of the fare, by reason of the fact that the carrier has refused to carry—

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“(a) a passenger who has declined to allow himself or herself or his or her baggage to be searched:

“(b) the baggage of a passenger who has declined to allow himself or herself or his or her baggage to be searched.

“(4) With respect to a search made under **subsection (1)**,—

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“(a) by an employee or agent of the carrier authorised by the carrier for the purpose, the passenger must not be required to remove any article of clothing (other than a coat or similar article) for the purpose of being searched:

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“(b) by a member of the police, an aviation security officer, or a Customs officer, the passenger must, if directed to do so,—

“(i) remove, raise, lower, or open any outer clothing, including (but not limited to) any coat, jacket, jumper, cardigan, or similar article that the passenger is wearing to enable the search to be carried out, except where the passenger has no other clothing, or only underclothing, under the outer clothing:

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“(ii) remove any gloves, footwear (including socks or stockings), head coverings, belts, jewellery, or other accessories:

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- “(iii) allow a member of the police, an aviation security officer, or a Customs officer to carry out a (*rub-down*) pat down search:
- “(c) by a member of the police, an aviation security officer, a Customs officer, or an employee or agent of the carrier authorised by the carrier for the purpose, a female may only be searched by a female unless the search is made by means of a mechanical or electrical or electronic or other similar device. 5
- “(5) Any aviation security officer, or any employee or agent of the carrier authorised by the carrier for the purpose, may examine any cargo before the cargo is loaded onto any aircraft in New Zealand pursuant to a contract providing for the carriage of the cargo by air from a place in New Zealand to any other place (whether in New Zealand or elsewhere). 10 15

New (unanimous)

“(5A) With respect to a search made under **subsection (1) or (5)**, a member of the police, an aviation security officer, or a Customs officer may use any aid or device that is reasonably necessary to facilitate the search, including (but not limited to) a dog, chemical substance, or x-ray or imaging equipment, or some other mechanical, electrical, or electronic device. 20

- “(6) For the purposes of this section, (*rubdown*) pat down search—
- “(a) means a search of a clothed person in which the person conducting the search may do all or any of the following: 25
- “(i) run or pat his or her hand over the body of the person being searched, whether outside or inside the clothing (other than any underclothing) of that person: 30
- “(ii) insert his or her hand inside any pocket or pouch in the clothing (other than any underclothing) of the person being searched:
- “(iii) for the purpose of permitting a visual inspection, require the person being searched to do all or any of the following, namely: 35

- “(A) open his or her mouth:
 “(B) display the palms of his or her hands:
 “(C) display the soles of his or her feet:
 “(D) lift or rub his or her hair; and
 “(b) includes the authority to search— 5
 “(i) any item or substance carried by, or in the possession of, the person; and
 “(ii) any outer clothing removed, raised, lowered, or opened for the purposes of the search; and
 “(iii) any head covering, gloves, or footwear (including socks or stockings) removed for the purposes of the search.” 10

New (unanimous)

6A Search of persons declining to allow search

- (1) Section 13(1) is amended by omitting “paragraph (a), paragraph (b), paragraph (c), or paragraph (d) of section 11 of this Act” and substituting “paragraph (a), (b), (c), (d), or **(e)** of section 11(1)”. 15
 (2) Section 13 is amended by adding the following subsection after subsection (3):
 “(4) With respect to a search made under subsection (1), a member of the police may use any aid or device that is reasonably necessary to facilitate the search, including (but not limited to) a dog, chemical substance, or x-ray or imaging equipment, or some other mechanical, electrical, or electronic device.” 20

6B Evidence of offences 25

Section 14(1) is amended by inserting “or sections 80, **80B**, and **80C** of the Civil Aviation Act 1990” after “section 13 of this Act”.

7 Powers of aircraft commander

- (1) Section 15(6) is amended by omitting “of this section” and substituting “or to enable an in-flight security officer to deliver a person under **section 15D(4)**”. 30
 (2) Section 15(7) is amended by omitting “of this section” and substituting “or intends to enable an in-flight security officer to deliver a person under **section 15D(4)**”. 35

8 New sections 15A to 15G inserted

The following sections are inserted after section 15:

“15A Commissioner of Police may authorise members of police to be in-flight security officers

- “(1) The Commissioner of Police may authorise any member of the police to be an in-flight security officer. 5
- “(2) When providing authorisation under **subsection (1)**, the Commissioner of Police must have regard to the views of the Director of Civil Aviation.

New (unanimous)

- “(3) When forming his or her views, the Director of Civil Aviation must, as he or she considers appropriate, have regard to the views of representative groups in the aviation industry. 10

“15B In-flight security officers may possess, carry, and use firearms, weapons, ammunition, and other equipment on board certain aircraft in certain circumstances

Despite section 11, an in-flight security officer may, on board an aircraft operated by an operator certified under Part 119 of the Civil Aviation Rules, possess, carry, and use a firearm, weapon, ammunition, or other equipment that the Director of Civil Aviation has approved under **section 77D of the Civil Aviation Act 1990** if— 15

- “(a) the officer is on duty; and
- “(b) the aircraft is in flight. 20

“15C In-flight security officers may take action or measures reasonably necessary to restore or preserve control of aircraft

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Struck out (unanimous)

Without limiting the powers of the commander of an aircraft (or a person authorised by the commander) under section 15, an in-flight security officer may take all measures reasonably necessary to restore control of an aircraft to the commander or 30

Struck out (unanimous)

to preserve the commander's control of the aircraft (including, but not limited to, the use of force or assistance that is necessary and reasonable in the circumstances).

New (unanimous)

Without limiting the powers of the commander of an aircraft (or a person authorised by the commander) under section 15, an in-flight security officer may take all measures reasonably necessary to restore control of an aircraft to the commander or to preserve the commander's control of the aircraft, including, but not limited to, the use of—

- “(a) reasonable force; or
- “(b) assistance that is reasonably necessary in the circumstances.

“15D In-flight security officers may arrest persons in certain circumstances

“(1) If an in-flight security officer reasonably suspects that a person on board an aircraft has committed or is committing an offence under this Act, the in-flight security officer may arrest the person—

- “(a) without a warrant:

Struck out (unanimous)

“(b) with the use of force or assistance that is necessary and reasonable in the circumstances.

New (unanimous)

- “(b) with the use of—
 - “(i) reasonable force; or
 - “(ii) assistance that is reasonably necessary in the circumstances.

- “(2) Despite **subsection (1)**, an in-flight security officer may not arrest a person without the prior approval of the commander of an aircraft unless seeking prior approval is not practicable.
- “(3) If an in-flight security officer arrests a person without the prior approval of the commander of an aircraft, the in-flight security officer must— 5
- “(a) inform the commander of the arrest as soon as practicable; and
- “(b) seek the commander’s approval to keep the person under arrest. 10
- “(4) An in-flight security officer who arrests a person under this section must, as soon as practicable, deliver the person to a—
- “(a) member of the police, if the arrested person is in New Zealand; or
- “(b) person exercising the functions corresponding to those of a member of the police, if the arrested person is in a country, other than New Zealand, that is a party to the Tokyo Convention. 15
- “(5) To avoid doubt, nothing in this section limits the justifications for the use of force under sections 39, 40, 41, and 48 of the Crimes Act 1961. 20

“15E In-flight security officers may restrain persons under arrest in certain circumstances

- “(1) An in-flight security officer may, with the use of reasonable force, or assistance that is *(necessary and reasonable)* reasonably necessary in the circumstances, restrain a person arrested under **section 15D** until the person is delivered as required under **section 15D(4)**. 25
- “(2) Despite **subsection (1)**, an in-flight security officer may not restrain a person without the prior approval of the commander of an aircraft unless— 30
- “(a) seeking prior approval is not practicable; or
- “(b) the in-flight security officer has reasonable grounds to believe that the person must be restrained immediately to protect the safety of the aircraft or persons or property on the aircraft. 35
- “(3) If an in-flight security officer restrains a person without the prior approval of the commander of an aircraft, the in-flight security officer must—

- “(a) inform the commander of the restraint as soon as practicable; and
- “(b) seek the commander’s approval to keep the person under restraint.

“15F In-flight security officers may search certain persons and seize items or substances in certain circumstances 5

- “(1) If an in-flight security officer reasonably suspects that a person on board an aircraft has committed, is committing, or is likely to commit an offence under this Act, the in-flight security officer may, with the use of reasonable force, or assistance that is reasonably necessary in the circumstances,— 10

Struck out (unanimous)

- “(a) search—
 - “(i) the person:
 - “(ii) any property on board the aircraft; and
- “(b) take possession of any item that has been or may be used to commit an offence under this Act. 15

New (unanimous)

- “(a) search—
 - “(i) the person for any item or substance that has been, is being, or may be used to commit an offence under this Act: 20
 - “(ii) any property on board the aircraft for any item or substance that has been, is being, or may be used to commit an offence under this Act; and
 - “(b) seize that item or substance.
- “(2) Despite **subsection (1)**, an in-flight security officer may not search a person without the prior approval of the commander of an aircraft unless seeking prior approval is not practicable. 25
- “(3) If an in-flight security officer searches a person without the prior approval of the commander of an aircraft, the in-flight security officer must inform the commander of the search as soon as practicable. 30

New (unanimous)

“(4) With respect to a search made under **subsection (1)**, an in-flight security officer, may use any aid or device that is reasonably necessary to facilitate the search, including (but not limited to) a dog, chemical substance, or x-ray or imaging equipment, or some other mechanical, electrical, or electronic device.

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“15G Circumstances in which person assisting in-flight security officer may use reasonable force

A person assisting an in-flight security officer under **section 15D, 15E, or 15F** is justified in using force if—

“(a) the person acts in good faith; and

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“(b) the force (*used*) is (*necessary and*) reasonable (*in the circumstances*).”

Part 2**Amendments to Civil Aviation Act 1990****9 Principal Act amended**

15

Sections 10 to 22 amend the Civil Aviation Act 1990.

10 Interpretation

(1) Section 2 is amended by inserting the following definitions in their appropriate alphabetical order:

“**foreign in-flight security officer** means an enforcement officer or authorised person from a country other than New Zealand who is—

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“(a) authorised to act on an aircraft that is in flight by the State that has issued the air operating certificate (or its equivalent) under which the air operation is conducted; and

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“(b) subject to an in-flight security officer arrangement or agreement between New Zealand and the State that has issued the air operating certificate (or its equivalent) under which the air operation is conducted

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“**in-flight security officer** means a member of the police authorised under **section 15A of the Aviation Crimes Act 1972**”.

(2) Section 2 is amended by inserting the following definition in its appropriate alphabetical order:

“**security enhanced area** means an area that the Director has declared to be a security enhanced area under **section 84(1A)**”.

- (3) Section 2 is amended by inserting the following definition in its appropriate alphabetical order:

“**sterile area** means the area at an aerodrome, between the passenger inspection and screening station and the aircraft, into which access is strictly controlled”.

5

New (unanimous)

- (4) Section 2 is amended by adding the following subsection as subsection (2):

“(2) For the purposes of this Act, an aviation identity card issued or approved by the Director under any regulations or rules made under this Act is not an aviation document.”

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10A General requirements for participants in civil aviation system

Section 12(2) is amended by inserting “or regulations” after “rules”.

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11 Rules relating to safety and security

Section 29 is amended by adding the following paragraph:

“(e) rules providing for in-flight safety and security, including, but not limited to, the following:

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“(i) the possession, carriage, and use of an item, being a firearm, weapon, ammunition, or any other equipment, by an in-flight security officer on board an aircraft operated by an operator certified under Part 119 of the Civil Aviation Rules:

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“(ii) the carriage of an item, being a firearm, weapon, ammunition, or any other equipment, by a foreign in-flight security officer while entering, transiting, or departing from New Zealand.”

12 Security area offences

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- (1) The heading to section 54 is amended by inserting “**and security enhanced area**” after “**area**”.

- (2) Section 54(1) is amended by inserting “or security enhanced area” after “security area” in each place where it appears.

- (3) Section 54 is amended by repealing subsection (2) and substituting the following subsection:
- “(2) Every person who commits an offence under subsection (1) in relation to a—
- “(a) security area is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000: 5
- “(b) security enhanced area is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$5,000.”
- 13 New section 56A inserted 10**
- The following section is inserted after section 56:
- “56A Security check offences**
- “(1) Every person commits an offence who, in relation to a security check of that person,—
- “(a) provides information that the person knows is false or misleading in a material particular; or 15
- “(b) fails to disclose, without reasonable excuse, information that the person knows to be materially relevant.
- “(2) Every person who commits an offence under **subsection (1)** is liable to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000.” 20
- 14 Powers and duties of Minister to require screening**
- (1) The heading to section 77A is amended by adding “, **searching, and seizing**”.
- (2) Section 77A is amended by repealing subsection (1) and substituting the following subsections: 25
- “(1) The Minister may, if the Minister considers it necessary to improve or enhance aviation security to enable New Zealand to be part of a concerted international response to a threat to aviation security, or if the Minister considers it is in the public interest or national interest to do so, direct an aviation security service provider, by notice in the *Gazette*,— 30
- “(a) to screen—
- “(i) any person boarding an aircraft:
- “(ii) any thing to be carried on an aircraft: 35
- “(iii) any *(person or item)* person, item, or substance—

- “(A) before the (*person or item*) person, item, or substance enters a sterile area:
- “(B) present in a sterile area:
- “(iv) any person, item, substance, or vehicle—
- “(A) before the person, item, substance, or vehicle enters a security enhanced area: 5
- “(B) present in a security enhanced area:
- “(v) any unattended item, substance, or vehicle in a security enhanced area:
- “(b) if necessary, to undertake reasonable searches of— 10
- “(i) any person boarding an aircraft:
- “(ii) any thing to be carried on an aircraft:
- “(iii) any (as specified in the *Gazette* notice)—
- “(A) aircraft or class of aircraft:
- “(B) aerodrome or class of aerodrome: 15
- “(C) navigation installation or class of navigation installation:
- “(iv) any (*person or item*) person, item, substance, or vehicle—
- “(A) before the (*person or item*) person, item, substance, or vehicle enters a sterile area: 20
- “(B) present in a sterile area:
- “(v) any person, item, substance, or vehicle—
- “(A) before the person, item, substance, or vehicle enters a security enhanced area: 25
- “(B) present in a security enhanced area:
- “(vi) any unattended item, substance, or vehicle in a security enhanced area:
- “(c) to seize any item or substance specified in the *Gazette* notice if the aviation security (*provider*) officer has reasonable grounds to believe that there is no lawful authority or reasonable excuse for the item or substance to be carried on an aircraft. 30
- “(1A) An aviation security service provider directed under **sub-section (1)** must screen and search for any item or substance specified in the *Gazette* notice.” 35
- (3) Section 77A(2) is amended by omitting “, to determine whether or not the direction is necessary to improve or enhance aviation security to enable New Zealand to be part of a concerted international response to a threat to aviation security,”. 40

- (4) Section 77A(2)(b) is amended by omitting “appropriate,” and substituting “appropriate and practical, other ministers,”.

15 Powers and duties of Director to require screening

- (1) The heading to section 77B is amended by adding “, **searching, and seizing**”.
- (2) Section 77B is amended by repealing subsection (1) and substituting the following subsections:
- “(1) The Director may, if he or she believes on reasonable grounds that a security risk exists, direct an aviation security service provider, by notice in the *Gazette*,—
- “(a) to screen—
- “(i) any person boarding an aircraft:
- “(ii) any thing to be carried on an aircraft:
- “(iii) any ~~(person or item)~~ person, item, or substance—
- “(A) before the ~~(person or item)~~ person, item, or substance enters a sterile area:
- “(B) present in a sterile area:
- “(iv) any person, item, substance, or vehicle—
- “(A) before the person, item, substance, or vehicle enters a security enhanced area:
- “(B) present in a security enhanced area:
- “(v) any unattended item, substance or vehicle in a security enhanced area:
- “(b) if necessary, to undertake reasonable searches of—
- “(i) any person boarding an aircraft:
- “(ii) any thing to be carried on an aircraft:
- “(iii) any (as specified in the *Gazette* notice)—
- “(A) aircraft or class of aircraft:
- “(B) aerodrome or class of aerodrome:
- “(C) navigation installation or class of navigation installation:
- “(iv) any person, item, substance, or vehicle—
- “(A) before the person, item, substance, or vehicle enters a sterile area:
- “(B) present in a sterile area:
- “(v) any person, item, substance, or vehicle—
- “(A) before the person, item, substance, or vehicle enters a security enhanced area:

- “(B) present in a security enhanced area:
 “(vi) any unattended item, substance, or vehicle in a security enhanced area:
 “(c) seize any item or substance specified in the *Gazette* notice if the aviation security (*provider*) officer has reasonable grounds to believe that there is no lawful authority or reasonable excuse for the item or substance to be carried on an aircraft. 5
- “(1A) An aviation security service provider directed under **sub-section (1)** must screen and search for any item or substance specified in the *Gazette* notice.” 10
- (3) Section 77B(2) is amended by inserting “and practical” after “appropriate”.
- 16 New section 77BA inserted**
 The following section is inserted after section 77B: 15
- “77BA Certain *Gazette* notices may not include security sensitive information**
- “(1) A notice to be published in the *Gazette* under **section 77A(1) or 77B(1)** in relation to security enhanced areas may not include security sensitive information. 20
- “(2) For the purposes of this section, **security sensitive information** means information that would prejudice the national security interests of New Zealand if disclosed.”
- 17 New sections 77D to 77I inserted**
- (1) The following sections are inserted in their appropriate alphanumeric order: 25
- “77D Director may approve firearms, weapons, ammunition, and other equipment for carriage and use by in-flight security officers**
- The Director may approve firearms, weapons, ammunition, and other equipment for carriage and use on board an aircraft by an in-flight security officer. 30
- “77E Foreign in-flight security officers**
- “(1) Despite section 11 of the Aviation Crimes Act 1972, the Director may, in consultation with the Commissioner of Police and other affected parties that the Director considers appropriate, and in accordance with any rules made under this 35

- Act, authorise a foreign in-flight security officer who is, or a class of foreign in-flight security officers who are, accompanied by a member of the police and is or are carrying an item, being a firearm, weapon, ammunition, or any other equipment, to— 5
- “(a) disembark from an aircraft:
- “(b) board an aircraft:
- “(c) pass through a—
- “(i) security area:
- “(ii) security enhanced area: 10
- “(iii) sterile area.
- “(2) To avoid doubt, the authorisation of a foreign in-flight security officer by the—
- “(a) Director is not an aviation document:
- “(b) State that has issued the air operating certificate (or its equivalent) for the aircraft operator only applies while the aircraft is in flight.” 15
- (2) The following sections are inserted in their appropriate alphanumeric order:
- “**77F Powers and duties of Director relating to security checks** 20
- “(1) The Director may carry out a security check of a person who falls within a category of persons specified in the rules as requiring a security check if—
- “(a) the security check is for the purpose of determining whether the person poses a threat to aviation security; and 25
- “(b) the person consents.
- “(2) If a person refuses consent to a security check under **subsection (1)**, the person may not be granted any authorisation under the rules if the rules require a favourable security check determination. 30
- “(3) The Director may grant a favourable security check determination if the Director decides that the person has undergone an alternative security check that is acceptable to the Director. 35
- “(4) For the purpose of determining whether a person poses a threat to aviation security, the Director may—

- “(a) seek and receive any information that the Director considers relevant, including (but not limited to) a recommendation made by the New Zealand Security Intelligence Service under section 4(1)(bb) of the New Zealand Security Intelligence Service Act 1969; and 5
- “(b) give weight to any component of the information as the Director considers appropriate in the circumstances.
- “(5) If the Director determines that a person does not pose a threat to aviation security, the Director must advise the person of the favourable security check determination. 10
- “(6) The Director may reconsider any previous security check determination that the Director has made if—
- “(a) new information is made available; or
- “(b) the Director has reason to believe that the person may pose a threat to aviation security. 15
- “(7) If the Director proposes to reconsider any previous security check determination, the Director must—
- “(a) advise the person to whom the security check determination relates that the Director is reconsidering that determination; and 20
- “(b) complete the reconsideration of that determination within 20 working days of advising the person under **paragraph (a)**; and
- “(c) if the reconsideration results in an adverse security check determination or a proposed adverse security check determination, initiate the review process set out in **section 77G**; and 25
- “(d) if a favourable security check determination is required for any previous authorisation granted to the person under the rules, withdraw that authorisation for— 30
- “(i) the period of the reconsideration; and
- “(ii) any subsequent review period under **section 77G**; and
- “(e) if a favourable security check determination is required for any previous authorisation granted to the person by any other entity, require that entity to withdraw the authorisation for— 35
- “(i) the period of the reconsideration; and
- “(ii) any subsequent review period under **section 77G**.
- “(8) Nothing in this section limits the power of the Director to grant an exemption under section 37. 40

“77G Review procedures for security check determinations

- “(1) If the Director makes an adverse security check determination with respect to a New Zealand person based on a recommendation made by the New Zealand Security Intelligence Service under section 4(1)(bb) of the New Zealand Security Intelligence Service Act 1969, the Director must advise the New Zealand person that the person may lodge a complaint regarding the recommendation with the Inspector-General of Intelligence and Security in accordance with sections 11 and 16 of the Inspector-General of Intelligence and Security Act 1996. 5 10
- “(2) If the Director proposes to make an adverse security check determination with respect to a person based on information other than a recommendation made by the New Zealand Security Intelligence Service, the Director must—
- “(a) advise the person of the proposed determination and the reasons for the proposed determination; and 15
- “(b) give the person written notice that, within 20 working days of the date of the notice, the person may—
- “(i) seek legal advice or assistance with respect to the proposed determination: 20
- “(ii) respond to, comment on, or make submissions on the proposed determination:
- “(iii) provide new information relevant to the proposed determination; and
- “(c) give the person notice of the date on which the proposed determination will, unless the Director decides otherwise, be made (which must be a date that is as soon as practicable after the expiry of the 20-working-day period referred to in **paragraph (b)**); and 25
- “(d) consider any response, comment, submission, or new information that the person provides along with the information on which the proposed determination was made; and 30
- “(e) make a final determination and inform the person and any other affected party of,— 35
- “(i) in the case of the person, the final determination and the reasons for the final determination; and
- “(ii) in the case of any other affected party, the final determination but not the reasons for the final determination. 40

“(3) If the Director proposes to make an adverse security check determination based on a recommendation made by the New Zealand Security Intelligence Service and on information other than that recommendation, the Director must—

Struck out (unanimous)

“(a) first follow the procedure set out in **subsection (2)** with respect to the information other than the recommendation; and

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New (unanimous)

“(a) follow the procedure set out in **subsection (2)** with respect to the information other than the recommendation and advise the person that the proposed determination is based on—

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“(i) a recommendation made by the New Zealand Security Intelligence Service; and

“(ii) information other than the recommendation; and

“(b) then follow the procedure set out in **subsection (1)** with respect to the recommendation if—

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“(i) the Director is satisfied that the information other than the recommendation is no longer sufficient to support an adverse security check determination; and

20

“(ii) the person is a New Zealand person.

“(4) If the Director makes a final adverse security check determination, the Director must—

“(a) revoke any authorisation granted to the person by the Director under the rules, if a favourable security check determination is required under the rules for the authorisation; and

25

“(b) require any other entity to revoke any authorisation granted to the person, if a favourable security check determination is required under the rules for the authorisation.

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- “(5) For the purposes of this section,—
- “**Inspector-General of Intelligence and Security** means the person holding office under section 5 of the Inspector-General of Intelligence and Security Act 1996
- “**New Zealand person** has the same meaning as in section 2(1) of the Inspector-General of Intelligence and Security Act 1996. 5
- “**77H Offence to carry out activity while authorisation withdrawn or after authorisation revoked**
- “(1) Every person commits an offence who carries out an activity that requires an authorisation— 10
- “(a) during a period when that authorisation has been withdrawn under **section 77F(7)(d) or (e)**; or
- “(b) if that authorisation has been revoked under **section 77G(4)**. 15
- “(2) Every person who commits an offence against **subsection (1)** is liable on summary conviction to a fine not exceeding \$5,000.
- “**77I Offence to fail to comply with Director’s requirement to withdraw or revoke authorisation**
- “(1) Every person commits an offence who fails, without reasonable excuse, to comply with the Director’s requirement to— 20
- “(a) withdraw an authorisation under **section 77F(7)(e)**; or
- “(b) revoke an authorisation under **section 77G(4)(b)**.
- “(2) Every person who commits an offence against **subsection (1)** is liable on summary conviction to a fine not exceeding \$10,000.” 25

18 Functions and duties of Aviation Security Service

Struck out (unanimous)

Section 80(a)(ii) is amended by inserting “or reasonable searches” after “screening”.

New (unanimous)

- | | |
|--|---|
| <p>(1) The heading to section 80 is amended by omitting “Functions” and substituting “Powers, functions,”.</p> <p>(2) Section 80 is amended by omitting “functions” in the second place where it appears and substituting “powers, functions,”.</p> <p>(3) Section 80(a)(ii) is amended by inserting “, reasonable searches, or seizures” after “screening”.</p> | 5 |
|--|---|

19 New sections 80B to (80H) 80I inserted

- (1) The following section is inserted in its appropriate alphanumeric order:

“80B Power of aviation security officers to search for and seize certain items or substances to be carried on aircraft or into sterile areas 10

- “(1) Without limiting section (80(a) and (ab)) 80 of this Act or **section 12(1)** of the Aviation Crimes Act 1972, an aviation security officer may, for the purpose of detecting any item or substance specified in a direction given under **section 77A(1) or 77B(1)**, screen or search any person, item, substance, or vehicle— 15
- “(a) before the person, item, substance, or vehicle enters a sterile area: 20
- “(b) present in a sterile area. 20

New (unanimous)

- | | |
|---|--|
| <p>“(1A) A search undertaken under subsection (1) must be carried out in accordance with the requirements for searches specified in section 12(2) to (6) of the Aviation Crimes Act 1972.</p> | |
|---|--|

- “(2) If an item or substance specified in **section 11(1)** of the Aviation Crimes Act 1972 or a direction under **section 77A(1) or 77B(1)** is detected in a search undertaken under **subsection (1)** or section 80 of this Act or **section 12** of the Aviation Crimes Act 1972, and an aviation security officer has reasonable grounds to believe that there is no lawful authority or reasonable excuse for the item or substance to be carried on an aircraft or into a sterile area, the aviation security officer may seize and detain the item or substance for the purpose of determining whether 25 30

there is lawful authority or reasonable excuse for the item or substance to be carried on an aircraft or into a sterile area.

- “(3) If the aviation security officer determines that the item or substance may be lawfully carried into, or remain in, an aircraft or a sterile area, the aviation security officer must,— 5
- “(a) if practicable, return the item or substance to the person from whom it was seized; or
- “(b) if impracticable to return the item or substance to the person from whom it was seized, deliver the item or substance to the carrier of the aircraft that the person boarded or intended to board when the item or substance was seized. 10
- “(4) If the aviation security officer determines that there is no lawful authority or reasonable excuse for the item or substance to be carried on an aircraft or into a sterile area, the aviation security officer may— 15

Struck out (unanimous)

- “(a) must make a record of the relevant details of the seizure; and
- “(b) may detain the item until it is delivered to a member of the police or the carrier. 20

New (unanimous)

- “(a) detain the item or substance until it is dealt with in accordance with **paragraph (b) or (c)**; or
- “(b) dispose of or destroy the item or substance; or
- “(c) deliver the item or substance to a member of the police.

Struck out (unanimous)

- “(5) If an item is delivered to a carrier, the carrier must hold the item for 30 days for the purpose of providing the person from whom the item was seized an opportunity to claim the item. 25
- “(6) If the person from whom the item was seized does not claim the item or substance before the expiry of the 30-day holding period, the carrier may dispose of the item or substance. 30

New (unanimous)

“(5) If an aviation security officer delivers an item or substance to a member of the police under **subsection (4)(c)**, the aviation security officer must record the delivery and the relevant details of the seizure.

“(7) Despite anything in this section, if the aviation security officer has reasonable grounds to believe that *(the) an item or substance* poses an imminent risk to safety, the aviation security officer may destroy or otherwise dispose of the item or substance.” 5

(2) The following sections are inserted in their appropriate alphanumeric order: 10

“80C Powers and duties of aviation security officers relating to security enhanced areas

“(1) Without limiting section *(80(a) and (ab))* 80, an aviation security officer may, for the purpose of detecting any item or substance specified in **section 11(1)** of the Aviation Crimes Act 1972 or a direction given under **section 77A(1) or 77B(1)**, screen or search any person, item, substance, or vehicle— 15

“(a) before the person, item, substance, or vehicle enters a security enhanced area: 20

“(b) present in a security enhanced area.

New (unanimous)

“(1A) A search undertaken under **subsection (1)** must be carried out in accordance with the requirements for searches specified in **section 12(2) to (6)** of the Aviation Crimes Act 1972.

“(2) If an item or substance specified in **section 11(1)** of the Aviation Crimes Act 1972 or a direction under **section 77A(1) or 77B(1)** is detected in a search undertaken under subsection (1) or section 80 of this Act or section 12 of the Aviation Crimes Act 1972, and the aviation security officer has reasonable grounds to believe that there is no lawful authority or reasonable excuse for the item or substance to be carried into or remain in the security enhanced area, the aviation security officer may seize and detain the item or substance for the purpose of determining whether there is lawful authority or reasonable excuse for 25 30

the item or substance to be carried into or remain in the security enhanced area.

- “(3) If the aviation security officer determines that there is no lawful authority or reasonable excuse for the item or substance to be carried into or remain in the security enhanced area, the aviation security officer— 5
- “(a) must—
- “(i) detain the item or substance until it is delivered to a member of the police or, if the Director agrees, destroyed or otherwise disposed of; or 10
- “(ii) deny entry into the security enhanced area to any person in possession of the item or substance; or
- “(iii) direct the person in possession of the item to leave the security enhanced area, with or without— 15
- “(A) the item or substance;
- “(B) any vehicle used to transport the item or substance; and
- “(b) must make a record of the item or substance and the person from whom the item or substance was seized (if any). 20
- “(4) If the aviation security officer determines that the item or substance may be lawfully carried into or remain in the security enhanced area, the aviation security officer must, if practicable, return the item or substance to the person from whom the item or substance was seized. 25
- “(5) Despite anything in this section, if the aviation security officer has reasonable grounds to believe that the item or substance poses an imminent risk to safety, the aviation security officer may destroy or otherwise dispose of the item or substance. 30

“80D Consent to be screened or searched

- “(1) The powers specified in **section 80C(1)** may only be exercised with respect to—
- “(i) a person to be screened or searched with the consent of the person: 35
- “(ii) an item, substance, or vehicle to be screened or searched with the consent of the person in (*control*) possession of the item, substance, or vehicle.
- “(2) To avoid doubt, an item, substance, or vehicle may be screened or searched without consent if it is unattended. 40

“80E Persons who refuse to consent to be screened or searched

- “(1) If a person refuses to consent to the screening or searching under **section 80C(1)**, an aviation security officer may—
- “(a) deny that person entry into the security enhanced area: 5
 - “(b) require that person to—
 - “(i) leave the security enhanced area:
 - “(ii) remove any (*items or vehicles*) item, substance, or vehicle in (their control) that person’s possession from the security enhanced area. 10
- “(2) An aviation security officer may—
- “(a) prevent a person from entering a security enhanced area if the person is denied entry:
 - “(b) remove a person from a security enhanced area if the person is required to leave. 15
- “(3) An aviation security officer may detain a person who—
- “(a) refuses to leave when required to leave (or attempts to enter when denied entry) and persists in his or her refusal (or attempt) after being warned that he or she commits an offence by not complying: 20
 - “(b) refuses to be screened or searched if the aviation security officer has reasonable grounds to suspect that—
 - “(i) an offence against the Aviation Crimes Act 1972 has been, is being, or is likely to be committed, whether by that person or by any other person; or 25
 - “(ii) a search of the person refusing to consent is likely to disclose evidence that an offence against the Aviation Crimes Act 1972 has been, is being, or is likely to be, committed, whether by that person or any other person. 30
- “(4) A person detained under **subsection (3)** must be delivered to a member of the police as soon as practicable.
- “(5) An aviation security officer, or any person assisting an aviation security officer, may use (*the*) reasonable force, or any assistance that is (necessary and reasonable) reasonably necessary in the circumstances, to— 35
- “(a) prevent a person from entering a security enhanced area under **subsection (2)(a)**:
 - “(b) remove a person from a security enhanced area under **subsection (2)(b)**: 40

“(c) detain a person under **subsection (3)**.

Compare: 2004 No 16 s 54

“80F Searches of persons refusing consent to be searched

- “(1) If a person refuses to consent to the screening or searching under **section 80C(1)**, a member of the police may, without a warrant, search the person and *(the person’s items or vehicle)* any item, substance, or vehicle in the person’s possession, and may detain the person for the purposes of the search, and may take possession of any item or substance found in the course of the search that is specified in **section 11(1)** of the Aviation Crimes Act 1972, if the member of the police has reasonable grounds to suspect that—
- “(a) an offence against the Aviation Crimes Act 1972 has been, is being, or is likely to be committed, whether by that person or by any other person; *(or)* and
- “(b) a search of the person refusing to consent, or any item, substance, or vehicle in the person’s possession, is likely to disclose evidence that an offence against the Aviation Crimes Act 1972 has been, is being, or is likely to be, committed, whether by that person or any other person.
- “(2) The refusal of a person to consent to the searching of his or her person, *(or items, or a)* or any item, substance, or vehicle in the person’s (control) possession, does not of itself constitute reasonable grounds for suspecting that an offence against the Aviation Crimes Act 1972 has been, is being, or is likely to be, committed.
- “(3) A member of the police exercising the power of search under **subsection (1)** must, before the search is conducted, and on any subsequent request,—
- “(a) provide evidence of his or her identity to the person to be searched; and
- “(b) inform the person to be searched that the search is authorised under this section; and
- “(c) if not in uniform, provide evidence, if asked, that he or she is a member of the police to the person to be searched.
- “(4) If a member of the police exercises the power of search under **subsection (1)**, he or she must, within 3 days after the day on

which he or she exercises the power, furnish to the Commissioner of Police a written report on the exercise of the power and the circumstances in which it came to be exercised.

Compare: 2004 No 16 s 55

- “80G Searches of persons** 5
- “(1) With respect to a search made under **section 80C(1)**,—
- “(a) a person must, if directed to do so by an aviation security officer,—
- “(i) remove, raise, lower, or open any outer clothing, including (but not limited to) any coat, jacket, jumper, cardigan, or similar article that the person is wearing to enable the search to be carried out, except where the person has no other clothing, or only underclothing, under the outer clothing: 10
- “(ii) remove any gloves, footwear (including socks or stockings), head coverings, belts, jewellery, or other accessories: 15
- “(iii) allow an aviation security officer to carry out a **(rubdown) pat down** search: 20
- “(b) a female may only be searched by a female unless the search is made by means of a mechanical or electrical or electronic or other similar device.
- “(2) For the purposes of this section, **(rubdown) pat down** search—
- “(a) means a search of a clothed person in which the person conducting the search may do all or any of the following: 25
- “(i) run or pat his or her hand over the body of the person being searched, whether outside or inside the clothing (other than any underclothing) of that person: 30
- “(ii) insert his or her hand inside any pocket or pouch in the clothing (other than any underclothing) of the person being searched:
- “(iii) for the purpose of permitting a visual inspection, require the person being searched to do all or any of the following, namely: 35

- “(A) open his or her mouth:
“(B) display the palms of his or her hands:
“(C) display the soles of his or her feet:
“(D) lift or rub his or her hair; and
- “(b) includes the authority to search— 5
- “(i) any item or substance carried by, or in the possession of, the person; and
- “(ii) any outer clothing removed, raised, lowered, or opened for the purposes of the search; and
- “(iii) any head covering, gloves, or footwear (including socks or stockings) removed for the purposes of the search. 10
- “80H Power to require drivers to stop vehicles in security enhanced areas for screening or searching**
- “(1) An aviation security officer who is in uniform, or wearing a distinctive cap, hat, or helmet, with a badge of authority affixed to it, may signal or request the driver of a vehicle in a security enhanced area to stop the vehicle as soon as is practicable for the purpose of screening or searching the vehicle, and *(items and persons)* any item, substance, or person in the vehicle. 15 20
- “(2) The driver of a vehicle that is stopped by an aviation security officer must remain stopped for as long as is reasonably necessary for the aviation security officer to screen or search the vehicle, and *(items and persons)* any item, substance, or person in the vehicle. 25
- “(3) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000, who, without lawful authority or reasonable excuse, fails to—
- “(a) stop a vehicle in a security enhanced area as soon as is practicable when required to do by an aviation security officer; or 30
- “(b) remain stopped for as long as is reasonably necessary for the aviation security officer to screen or search the vehicle, and any *(items and persons)* item, substance, or person in the vehicle. 35

Compare: 1998 No 110 s 114

New (unanimous)

“80I Protection of aviation security officers

Nothing done by an aviation security officer under **sections 80B(2) to (7) and 80C(2) to (5)** may subject the aviation security officer to personal liability if done in—

“(a) good faith; and

“(b) the exercise of powers or the performance of duties under this Act.

Compare: 1949 No 19 s 13”

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20 Security areas

(1) The heading to section 84 is amended by adding “**and security enhanced areas**”.

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(2) Section 84(1) is amended by omitting “thereof” and substituting “of the area”.

(3) Section 84 is amended by inserting the following subsection after subsection (1):

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“(1A) The Director may declare, by appropriate notification, that an area within a security area is a security enhanced area.”

(4) Section 84 is amended by repealing subsection (2) and substituting the following subsection:

“(2) No person other than a member of the police on official duties or an aviation security officer on official duties may enter or remain in any security area or security enhanced area unless the person is—

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“(a) wearing an airport identity card issued under the rules (or other identity document approved by the Director under the rules) and worn in accordance with the rules; and

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“(b) authorised by the Director or the airport manager or other person having control of the area.”

(5) Section 84(3) is amended by inserting “or security enhanced area” after “security area” in each place where it appears.

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(6) Section 84(4) is amended by omitting “aviation security area” and substituting “security area or security enhanced area”.

(7) Section 84(5) is amended by inserting “or security enhanced area” after “security area” in each place where it appears.

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- (8) Section 84 is amended by repealing subsection (7) and substituting the following subsections:
- “(7) Despite **subsection (2)**, a passenger embarking or disembarking directly through a gateway or thoroughfare in an airport approved for that purpose by the airport manager may pass through a security area or security enhanced area forming part of the gateway or thoroughfare without an airport identity card. 5
- “(8) Despite **subsection (2)**, a person allowed under the rules may pass through a security area or security enhanced area without an airport identity card.” 10

21 Powers of arrest

- (1) The heading to section 85 is amended by adding “**and seizure of items or substances**”.
- (2) Section 85(1)(a) is amended by inserting “5A,” after “5,”. 15
- (3) Section 85 is amended by inserting the following subsections after subsection (1):
- “(1A) An aviation security officer may—
- “(a) search a person arrested under subsection (1):
- “(b) seize any item or substance that may be evidence of an offence against an enactment specified in subsection (1), if the officer has reasonable grounds to believe that— 20
- “(i) the person has an item or substance hidden or in clear view on or about his or her person that is evidence of an offence against an enactment specified in subsection (1); and 25
- “(ii) the item or substance poses a threat to the safety of the officer or any other person; and
- “(iii) immediate action is necessary to address the threat. 30
- “(1B) An aviation security officer may use *(the)* reasonable force, or any assistance that is (necessary and reasonable) reasonably necessary in the circumstances, to— 35
- “(a) arrest a person under subsection (1):
- “(b) search a person under **subsection (1A)**:
- “(c) seize an item or substance under **subsection (1A)**.
- “(1C) To avoid doubt, an aviation security officer may search a person under this section whether or not an aviation security

officer has previously searched the person under another section of this Act or under the Aviation Crimes Act 1972.

- “(1D) An aviation security officer who undertakes a search under this section must, within 3 working days of the search, give the Director a written report of the search, the circumstances in which it was conducted, and the matters that gave rise to the reasonable grounds to believe required by **subsection (1A)(b)**.” 5
- (4) Section 85(3) is amended by inserting “, and any item or substance he or she seizes,” after “arrests”.
- (5) Section 85 is amended by adding the following subsection: 10
- “(4) An aviation security officer may seize an item or substance in the possession of a person that the aviation security officer arrests if the aviation security officer has reasonable grounds to believe that the item or substance is evidence of an offence against an enactment specified in subsection (1).” 15

22 Regulations

New (unanimous)

- (1AA) Section 100(1) is amended by inserting the following paragraph after paragraph (b):
- “(ba) prescribing those breaches of regulations made under **paragraph (ee)** that constitute offences under this Act:” 20
- (1AB) Section 100(1) is amended by inserting the following paragraph after paragraph (c):
- “(ca) prescribing those breaches of regulations made under **paragraph (ee)** that constitute infringement offences against this Act:” 25
- (1) Section 100(1) is amended by inserting the following paragraph after paragraph (ed):

Struck out (unanimous)

- “(ee) assisting or enhancing aviation security, including (but not limited to)—
- “(i) any security-related matter for which rules may be made under section 28 or 29:” 30

Struck out (unanimous)

“(ii) the revocation, substitution, or amendment of any security-related rules made under section 28 or 29:

New (unanimous)

“(ee) assisting aviation security, including (but not limited to)— 5
 “(i) the specification and application of security controls for—
 “(A) screening:
 “(B) searching:
 “(C) seizing items and substances: 10
 “(ii) any matter for which—
 “(A) rules may be made under section 28, 29, 29A, or 30:
 “(B) directions may be made under **section 77A**:
 “(iii) the revocation, substitution, or amendment of 15
 any—
 “(A) rule made under section 28, 29, 29A, or 30;
 or
 “(B) direction made under **section 77A**:”.

(2) Section 100 is amended by adding the following subsections: 20
 “(3) To the extent that a rule made under section 28, 29, 29A, or 30 or a direction made under **section 77A** is inconsistent with a regulation made under **subsection (1)(ee)**, the rule or direction is subject to the regulation.

New (unanimous)

“(4) No regulation made under **subsection (1)(ee)** may be considered 25
 invalid because it confers any discretion upon or allows any matter to be determined or approved by the Authority or the Director or any other person, or allows the Authority or the Director or any other person to impose requirements as to the performance of any activities. 30

New (unanimous)

“(5) So far as the bylaws of any local authority are inconsistent with or repugnant to any regulation made under **subsection (1)(ee)** in force in the same locality, the bylaws must be construed subject to the regulations made under **subsection (1)(ee)**.”

- 23 Consequential amendments to Arms Act 1983** 5
- (1) This section consequentially amends the Arms Act 1983.
- (2) Section 2 is amended by inserting the following definitions in their appropriate alphabetical order:
- “**foreign in-flight security officer** has the same meaning as in section 2 of the Civil Aviation Act 1990 10
- “**in-flight security officer** has the same meaning as in section 2 of the Civil Aviation Act 1990”.
- (3) Section 3(2)(a) is amended by adding “; or” and the following subparagraph:
- “(viii) an in-flight security officer or a foreign in-flight security officer:” 15
- 24 Consequential amendments to Civil Aviation Rules**
- (1) This section consequentially amends the Civil Aviation Rules.
- (2) The Civil Aviation Rules specified in **Part 1 of the Schedule** are amended in the manner indicated in that Part of the Schedule. 20
- (3) The Civil Aviation Rules specified in **Part 2 of the Schedule** are amended in the manner indicated in that Part of the Schedule.
- (4) The Civil Aviation Rules specified in **Part 3 of the Schedule** are amended in the manner indicated in that Part of the Schedule.
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Schedule

s 24

Consequential amendments to Civil Aviation Rules**Part 1**

Rules amended on day after date on which Act receives
Royal assent

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Rule 1.1

Definition of **sterile area**: repeal.

Rule 19.357(a)

Revoke and substitute:

“(a) The Director may issue or approve an airport identity card or other identity document in accordance with this rule if— 10

“(1) the Director has, in accordance with the Act, made a favourable security check determination of the person who has applied for the card or document; or

“(2) the Director has decided that the person has undergone an alternative security check that is acceptable to the Director.” 15

Rule 19.357

Add:

“(h) The security checks referred to in **19.357(a)(1) and (2)** are not required if the person making an application for an identity card is issued with a temporary identity card approved by the Director that entitles the person to enter and remain in a security area when escorted by a person issued with an airport identity card in accordance with the security check process referred to in **19.357(a)(1) and (2)**. 20 25

Rule 140

Appendix A.5(a)(3): omit “may” and substitute “must”.

Appendix A.8: revoke.

Part 2

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Rules amended when specified by Order in Council

Rule 1.1

Insert in its appropriate alphabetical order:

“**security enhanced area** means an area that the Director has declared to be a security enhanced area under section 84 of the Act.” 35

Part 2—*continued***Rule 19.355(1)**

Insert “, security enhanced area,” after “security area”.

Rule 19.355(2)

Insert “, security enhanced area,” after “security area”.

Rule 19.357(b)

Insert “or security enhanced area” after “security area”.

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Rule 19.357(d)

Insert “or security enhanced area” after “security area”.

Rule 19.357(e)

Insert “or security enhanced area” after “security area”.

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Rule 19.357(g)(3)

Insert “or security enhanced area” after “security area”.

Rule 19.357(g)(4)

Insert “or security enhanced area” after “security area”.

Rule 19.357(h)

Insert “or security enhanced area” after “security area”.

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Rule 108.53(b)(4)

Insert “or security enhanced area” after “security area”.

Rule 108.55(b)(4)

Insert “or security enhanced area” after “security area”.

20

Rule 139.203(a)

Insert “or security enhanced area” after “security area”.

Rule 139.203(b)(1)

Insert “or security enhanced areas” after “security areas”.

Rule 139.203(b)(2)

Omit “the security area or security areas” and substitute “any security area or security enhanced area”.

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Rule 139.203(c)

Omit “the security area or security areas” and substitute “any security area or security enhanced area”.

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Rule 139.203(d)

Insert after subparagraph (4):

Part 2—continued

Rule 139.203(d)—continued

“(4A) when considered necessary by the Minister or the Director, provide areas at their aerodrome for the screening and searching of persons, items, substances, and vehicles entering and within security enhanced areas; and”

Rule 139.203(d)(11)

Insert “or security enhanced areas” after “security areas”.

Rule 139.205(1)

Insert “and under **139.203(d)(4A)**” after “baggage”.

Rule 140.3

Insert in its appropriate alphabetical order:

“**security enhanced area screening point** means an area provided by an aerodrome operator under **139.203(d)(4A)** for carrying out screening and searching in relation to a security enhanced area or a point in a security enhanced area where screening and searching is undertaken:”

Rule 140.11(a)(1)

Add:

“(iv) screening and searching of any person, item, substance, or vehicle that is present in, or about to enter, a security enhanced area as required by the Minister or Director, subject to the requirement that the specific manner or methodology in which screening will be applied must be approved by the Director; and”

Rule 140

Appendix A.11(a): insert “and, as appropriate, each security enhanced area screening point” after “point”.

Appendix A.11(b): omit “The” and substitute “In relation to each screening point, the”.

Appendix A.11: add:

“(c) In relation to each security enhanced area screening point that has a procedure under paragraph (a), the certificate holder must, if appropriate, include in that procedure any of the items listed in paragraph (b).”

Appendix A.12(b)(4): insert “or security enhanced area” after “security area”.

Part 2—*continued***Rule 140**—*continued*

Appendix A.12(b)(5): insert “and security enhanced areas” after “security areas”.

Appendix A.12(b)(6): insert “and security enhanced areas” after “security areas”.

Appendix A.12(b)(7): insert “or security enhanced area” after “security area”. 5

Appendix A.12(b)(8)(iii): insert “and security enhanced area signs” after “signs”.

Appendix A.14(1): insert “or security enhanced areas” after “security areas”.

Appendix A.14(2): insert “or security enhanced area” after “security area”. 10

Appendix A.16(c): insert “or security enhanced area” after “security area”.

Appendix A.19: insert “or security enhanced areas” after “security areas”. 15

Appendix A.24: add:

“(k) The certificate holder must, when vehicle search testing is being carried out, ensure that the examiner—

“(1) conceals the standard test piece in any part of the vehicle; and 20

“(2) determines whether the aviation security officer being tested locates the standard test piece.”

Appendix A: add:

“A.25 Security enhanced areas

“Security enhanced area screening point and equipment” 25

“(a) The certificate holder must ensure—

“(1) that persons, items, substances, and vehicles entering, or within, a security enhanced area may be screened or searched according to the specific manner or methodology approved by the Director; and 30

“(2) that, when conducting screening or searching with respect to persons entering, or within, a security enhanced area, persons, including items, substances, and vehicles associated with them, are screened and searched as required by the Minister or the Director; and 35

Part 2—continued

Rule 140—continued

- “(3) sufficient personnel and equipment are available to carry out screening and searching in accordance with the specific manner or methodology approved by the Director; and
- “(4) its aviation security officers are instructed in the use of standard test pieces to ensure that they can competently check the screening equipment; and 5
- “(5) any screening apparatus used at a security enhanced area screening point is tested in a manner acceptable to the Director.
- “*Screening of persons, items, substances, and vehicles* 10
- “(b) When undertaking screening, the certificate holder must—
- “(1) at each point where screening and searching is undertaken and prior to their entering the security enhanced area, inform all persons about to undergo screening, by notice posted at each screening point, that— 15
- “(i) screening of any person or any item, substance, or vehicle in the person’s (control) possession is only undertaken with the consent of that person; and 20
- “(ii) any person refusing to be screened will be denied entry beyond that point; and
- “(2) if undertaking screening within the security enhanced area,—
- “(i) inform all persons about to undergo screening that screening of the person or any item, substance, or vehicle in the person’s (control) possession is only undertaken with the consent of that person; and 25
- “(ii) any person refusing to be screened will be required to leave the security enhanced area; and 30
- “(3) according to the specific manner or methodology approved by the Director, ensure that a record is made of— 35
- “(i) the method of screening;
- “(ii) the time taken for screening as required by the Minister or the Director:

Part 2—*continued***Rule 140**—*continued*

- “(iii) the number of people, items, substances, and vehicles screened; and
- “(4) if an unauthorised article is found, ensure that a record is made of—
- “(i) the names of the officers carrying out the search; and 5
- “(ii) any unauthorised articles found; and
- “(iii) any disposal action taken.
- “(c) While screening is in progress, the certificate holder must—
- “(1) ensure that its aviation security officers, when screening any person, item, substance, or vehicle, ensure that the person is not carrying or in (*control*) possession of any unauthorised article; and 10
- “(2) ensure that its aviation security officers refuse entry to a security enhanced area if a person is found to be in (*control*) possession of an unauthorised article; and 15
- “(3) ensure that its aviation security officers require a person to leave a security enhanced area if that person is found to be in (*control*) possession of an unauthorised article; and 20
- “(4) carry out tests or checks, and record the results of those tests or checks, to confirm—
- “(i) the thoroughness of any screening, within each 28-day cycle; and 25
- “(ii) the proficiency of each aviation security officer carrying out the screenings, within each 150-day cycle, in accordance with the recurrent testing provisions under A.24.
- “*Hand search of items or substances* 30
- “(d) The certificate holder must ensure that, if there is any cause to suspect any item or substance contains an explosive device or a suspected explosive device has been discovered, its aviation security officers comply with the procedure required by A.11(b)(5). 35
- “(e) The certificate holder must carry out tests or checks, and record the results of those tests or checks, to confirm—

Part 2—*continued***Rule 140**—*continued*

- “(1) the thoroughness of any hand search, within each 28-day cycle; and
- “(2) the proficiency of each aviation security officer carrying out hand searches, within each 150-day cycle, in accordance with the recurrent testing provisions under A.24.” 5

Part 3

Rules amended when specified by Order in Council

Rule 91.9(a)

Insert “provided by statute for in-flight security officers and foreign in-flight security officers and” after “Except as”. 10

Rule 91.9(b)

Insert “by statute for in-flight security officers and foreign in-flight security officers and” after “provided”.

Rule 91.9(d)(2)(ii)

Omit “persons.” and substitute “persons; or”. 15

Rule 91.9(d)

Add:

- “(3) in an aircraft by an in-flight security officer—
- “(i) in the course of that officer’s duty; and
- “(ii) as approved by the Director under **section 77D of the Act.**” 20
- “(4) in an aircraft by a foreign in-flight security officer in the course of that officer’s duty.

Rule 92.1

Add: 25

- “(d) This Part does not apply to the carriage or use of ammunition by an in-flight security officer or a foreign in-flight security officer.”

Rule 108.53(b)(8)

Insert “(other than in-flight security officers authorised by the Commissioner of Police and foreign in-flight security officers authorised by the Director)” after “all passengers”. 30

Part 3—*continued***Rule 108.55(b)(12)**

Insert “(other than in-flight security officers authorised by the Commissioner of Police and foreign in-flight security officers authorised by the Director)” after “all passengers”.

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Rule 108.55(b)

Add “; and” and also the following subparagraph:

“(19) the deployment of in-flight security officers and foreign in-flight security officers as appropriate will be facilitated.”

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Rule 108.55

Add:

“(f) The procedures required by **paragraph (b)(19)** must include evidence of consultation with the Commissioner of Police which is acceptable to the Director.”

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Rule 140

Appendix A.4(1): insert “(other than in-flight security officers authorised by the Commissioner of Police and foreign in-flight security officers authorised by the Director)” after “person”.

Legislative history

13 March 2007

Introduction (Bill 110–1)

20 March 2007

First reading and referral to Transport and Industrial Relations Committee

