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INADMISSIBLE PERSONS & DEPORTEES

25 March 2015



INADMISSIBLE PERSONS/DEPORTEES: OVERVIEW

1. BACKGROUND

2. CHAPTER 5 of ANNEX 9

- **Section A: General**
- **Section B: Inadmissible Persons**
- **Section C: Deportees**
- **Section D: Procurement of a Replacement TD**

3. GUIDANCE MATERIAL



1. BACKGROUND

1ST Edition (1949)

“Recommendation” 3.17: “. . . public authorities . . . responsible for . . . custody . . . passengers . . . in possession of all necessary papers, until they are finally admitted or refused admission and transferred back to the custody of the operator for transport away from . . . the State.”

Standard 3.18: “Upon refusal of admission and transfer back of any person, the operator shall be responsible for promptly returning him to the point where he commenced the use of the operator’s aircraft.”



Late **1970s**/early 1980s: increase in illegal migration by air

FAL/10 (1988), FAL/11 (1995), FALP/1 (1997):
new/revised SARPs

FAL/12 (2004): Ch. 3 amended, new Ch. 5

FALP/7 (2012): additional SARPs



2. CHAPTER 5 of ANNEX 9

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- 34 SARPs: 31 Standards; 3 RPs; 8 Notes
 - 3 Standards: aircraft operators



INADMISSIBLE PERSON

“A person who is or will be refused admission to a State by its authorities.”

DEPORTEE

“A person who had legally been admitted to a State by its authorities or who had entered a State illegally, **and** who at some later time is formally ordered by the competent authorities to leave that State.”

CHARACTERISTICS

1. Improperly documented (e.g. expired pp)

2. Fraudulently documented (e.g. false pp)

3. Undocumented (arrive at border without travel documents)

4. Other admission refusals (beyond control of aircraft operator) (e.g. lack of funds)

1. Person who seeks entry & is admitted

2. Person who enters illegally

3. Person who enters legally, but later found to have entered illegally

Once person admitted, airline's responsibility for custody & care ends [3.45].



Section A: General

- 5.1 C.S. shall cooperate to promptly resolve differences in implementing provisions
- 5.2 C.S. shall facilitate the transit of persons
- 5.3 Preservation of dignity of persons



Section B: Inadmissible Persons

Relevant definitions

Step 1: Notification of inadmissibility

Step 2: Consultation on removal

Step 3: Provision of documents

Step 4: Flight security; Costs of custody & care

Step 5: Physical removal of inadmissible person

Step 6: Obligation to accept for examination

Miscellaneous provisions



Relevant Definitions

Admission. The permission granted to a person to enter a State by the public authorities of that State **in accordance with its national laws.**
[→ 1949 “finally” admitted]

Commencement of journey. The point at which the person began his journey, without taking into account any airport at which he stopped in direct transit, either on a through-flight or a connecting flight, if he did not leave the direct transit area of the airport in question. [→ 1949 “commenced the use of the operator’s aircraft”]



Improperly documented person. A person who travels, or attempts to travel: (a) with an expired travel document or an invalid visa; (b) with a counterfeit, forged or altered travel document or visa; (c) with someone else's travel document or visa; (d) without a travel document; or (e) without a visa, if required. [► 5.9.1]

Travel document. A passport or other official document of identity issued by a State or organization, which may be used by the rightful holder for international travel.

Escort. An escort is an individual, **authorized by a Contracting State or an aircraft operator** to accompany inadmissible persons or deportees being removed from that Contracting State.

Imposter. A person who impersonates the rightful holder of a genuine travel document.



- Authorities: Expeditiously accept persons for examination as to their admissibility into the State [Std. 3.42]
- Airline: Responsible from Aircraft → Border Control Desk [Std. 3.43]
- Authorities: [RP 3.44] Responsible for persons after “acceptance for examination” until: a) admitted; or b) **found inadmissible**

RP 3.44 -----→ Standard 5.3

Step 1. Notification of inadmissibility [3.44 ↔ 5.3]: State to notify airline [paper/electronically] when a person is found inadmissible.

- The responsibility of an aircraft operator . . . shall terminate from the moment such persons have been admitted [Std. 3.45]



Step 2. Consultation on [time-frame] for removal: (5.4)

→ allow operator sufficient time to remove via own services or make other arrangements

Step 3. Provision of documents

→ Removal order (definition; 5.5)

→ Covering letters (5.6 & 5.7 ↔ 5.13: Acceptance by States)

– App. 9-1: Attesting document relating to lost or destroyed travel document

– App. 9-2: Letter relating to fraudulent, etc. TD or genuine TD presented by imposter



Step 4. Flight security; Costs of custody & care until removed

5.8 → Advance warning to airline: precautions for security

5.9 → Airline to bear costs of an improperly document person

5.9.1 → State to bear costs of all other categories of inad. Persons
(document problems beyond airline's expertise;
reasons other than **improper documents**)

5.10 → Recovery of transportation costs by airline



Step 5. Physical removal of inadmissible person

- 5.11 The aircraft operator shall remove the inadmissible person to:
 - a) the point where he **commenced his journey**; or
 - b) to **any place where he is admissible** [citizen or resident]
- RP 5.11.1 States to consult with aircraft operators: most practicable place to which inad person to be removed



Step 6. Obligation to accept for examination

- 5.12 A Contracting State shall accept for examination a person removed from a State where he was found inadmissible, if this person **commenced his journey** from its territory. A Contracting State shall not return such a person to the country where he was earlier found inadmissible.
- 5.13 Obligation to accept letter issued under 5.6 or 5.7



Miscellaneous provisions

- 5.14: No fines if airline has taken adequate precautions to ensure compliance with documentary requirements
- RP 5.15: Cooperation (e.g. MOU): reduction of fines & penalties
- 5.16: States not to prevent departure of aircraft pending admissibility of arriving passengers



INADMISSIBLE PERSONS

Step 1: Notification of inadmissibility [RP3.44→5.3]

Step 2: Consultation on removal [5.4]

Step 3: Provision of documents [5.5, 5.6, 5.7]

Step 4: Flight security; Costs of custody & care [5.8, 5.9, 5.9.1, 5.10]

Step 5: Physical removal of inadmissible person [5.11, RP 5.11.1]

Step 6: Obligation to accept for examination [5.12, 5.13]



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Section C: Deportees

Relevant Definitions

Deportation order. A written order, issued by the competent authorities of a State and served upon a deportee, directing him to leave that State.

Deportee. A person who had legally been admitted to a State by its authorities or who had entered a State illegally, and who at some later time is formally ordered by the competent authorities to leave that State.



Risk assessment. An assessment by a departing State of a deportee's suitability for escorted or unescorted removal via commercial air services. The assessment should take into account all pertinent factors, including medical, mental and physical fitness for carriage on a commercial flight, willingness or unwillingness to travel, behavioural patterns and any history of violence.

▶ **Important from AVSEC point-of-view**



- 5.17 Obligation to serve deportation order & name destination
- 5.18 Removing State: all obligations, responsibilities, costs
 - Legal status of deportee ↔ inadmissible person
- 5.18.1 24-hour point of contact to be established

- 5.19 Obligation to provide advance information to airline
 - Copy of deportation order, risk assessment, escorts
- 5.19.1 Airline/pilot-in-command: shall have **option to refuse** to transport deportee on a specific flight: safety & security of flight
- 5.19.2 State shall consider **airline's policy**: number of deportees that may be transported on a given flight



- 5.20 Use of direct, non-stop flights
- 5.21 State to provide to airline all TDs required by transit, destination State
- 5.22 Obligation of State to admit a national who has been deported from another State
- 5.23 Special consideration to residents deported
- 5.24 Escorts: to remain with deportee until final destination unless otherwise agreed with airline



Section D: Procurement of a Replacement TD

5.25: Assistance to be provided in obtaining replacement travel document: **inad. person**

5.26: Requested State to respond within 30 days: issue TD or prove person not national

5.27: Signature not to be required to issue TD

5.28: Issuance of emergency TD

5.29: Refusal to issue TD or otherwise hinder return prohibited



3. GUIDANCE MATERIAL

1. Doc 9957: FAL Manual

2. IATA/CAWG:

→ Guidelines for the Removal of Deportees



INADMISSIBLE PERSONS/DEPORTEES

QUESTIONS?