



WORKING PAPER

FACILITATION PANEL (FALP)

SEVENTH MEETING

Montréal, 22-26 October 2012

Agenda Item 5: Amendments to Annex 9

**THE REMOVAL OF DEPORTEES: PROPOSALS TO
AMEND ANNEX 9 – FACILITATION**

(Presented by Canada on behalf of IATA CAWG)

SUMMARY

Although Annex 9, Chapter 5, provides Standards and Recommended Practices for Contracting States to make arrangements for the removal of a deportee, aircraft operators continue to experience complications with the removal of deportees, resulting in the denial of their entrance at in-transit and/or final destination State(s). Therefore, IATA's Control Authorities Working Group (IATA/CAWG) seeks to amend Annex 9 in order to improve communications between public authorities and aircraft operators, emphasize the responsibility of Contracting States to provide prior notification of a deportee's movement to an in-transit and/or destination State(s), and to recognize the aircraft operator's right to refuse to transport a deportee on a particular flight for safety and security reasons.

Recognizing the importance of timely communication between public authorities and aircraft operators relating to issues beyond deportee handling, IATA/CAWG also invites the FAL Panel to consider inserting additional language to Chapter 1, General Principles, intended to encourage aircraft operators and public authorities to share contact information in order to deal with all facilitation-related matters.

Action by the FAL Panel:

The FAL Panel is invited to consider the proposals described in this paper and agree that Annex 9 be amended as set out in the Appendix to this Working Paper.

1. INTRODUCTION

1.1 The IATA Control Authorities Working Group (IATA/CAWG) was established in 1987, primarily as a forum for on-going dialogue between Airlines and Immigration officials in respect of the control of illegal migration. Whilst the original focus was on inadmissible passengers, IATA/CAWG now deals with many key areas of passenger facilitation. Twenty-one (21) Contracting States, along with a representative from a national airline from each State are presently represented on the IATA/CAWG.

1.2 Based on analysis of existing national policies relating to deportation and removal processes adopted by the various Contracting States that began in 1998, IATA/CAWG identified significant inconsistencies in the processes employed to support deportee removals. In an effort to respond to these inconsistencies, and to provide best practice guidance to both aircraft operators and public authorities, IATA/CAWG developed and adopted its Guidelines for the Removal of Deportees (“Removal Guidelines”) in October, 1999. This document has been periodically reviewed to ensure continued relevance, with the third revision agreed in May, 2010.

1.3 IATA/CAWG believes that existing provisions within Annex 9 that pertain to deportees and their removal are no longer entirely sufficient, and that additions to and modifications of those provisions is warranted as to address process inconsistencies identified at the national level. Accordingly, IATA/CAWG approved the creation of a working group, comprised of both government agency and aircraft operator representatives¹.

1.4 The working group initially evaluated the Removal Guidelines to determine which of its principles were not adequately represented in Annex 9, Chapter 5, and which might therefore be recommended for incorporation into the Annex as standards or recommended practices.

1.5 The working group subsequently has agreed that the following provisions contained in IATA/CAWG’s Removal Guidelines should form the basis for changes to Annex 9 that are being recommended in Annex 1.

- a) Definition: Escort means a person authorised by the departing State to accompany a deportee (DEPA) during the removal. [APPENDIX Chapter 1 - Definitions and General Principles – Escorts]
- b) Aircraft operators should establish and provide contact numbers for arrangements and policy questions relating to the removal of deportees, both at headquarters and local or regional offices. Departing States agree to direct any matters regarding deportation arrangements to these contact numbers wherever possible.[APPENDIX 5.XX.1 -New Recommended Practice] & [APPENDIX Chapter 1 General Principles - 1.xx.x]
- c) The departing State should provide a 24-hour contact concerning deportee situations. Departing States should also provide contact information for an official or office to which questions of policy interpretation can be addressed. [APPENDIX 5.XX.1 -New Recommended Practice]
- d) The departing State should inform the aircraft operator, to the extent legally allowed, of the results of its risk assessment to facilitate the aircraft operator’s own evaluation and notification process. [APPENDIX 5.19.XX – New Standard]

¹ The working group was comprised of representatives from Austrian Federal Minister of the Interior, Australia Department of Immigration and Citizenship, Canada Border Service Agency, Netherlands Immigration and Naturalization Service, Swedish National Police Board and the UK Border Agency, Air Canada, Austrian Airlines, QANTAS, KLM, Scandinavian Airlines and the National Airlines Council of Canada.

2. DISCUSSION

2.1 The “Removal Guidelines” contain a recommendation that, when official en-route supervision of a deportee is warranted based on the results of risk assessment, the departing State should ensure that the escort(s) travelling with the deportee possess all travel documents required by destination and transit States, unless alternative arrangements have been approved by those States. The group determined that Annex 9 sufficiently reflects this obligation. However, the term “Escort” is not defined in Chapter 1 of the Annex. The group recognized that an escort may be used for the removal of both inadmissible passengers and deportees, and that aircraft operators may employ, or require the use of an escort depending on the situation, and therefore decided to expand the definition found in the “Removal Guidelines” to more accurately reflect the circumstances where use of an escort might be warranted.

2.2 The group discussed the two provisions contained in the “Removal Guidelines” relating to the need for exchange of contact information between aircraft operators and Deportee States, particularly as relates to deportees and their transportation. Based on those discussions, the Working Group is proposing a new recommended practice to be added to Chapter 5, C. Deportees.

2.3 The group also discussed the relevance of a provision in Chapter 1, General addressing the need for Aircraft Operators and Public Authorities to exchange appropriate contact information in order to facilitate more effective communication and coordination in all matters relating to Facilitation. This suggested provision is broader than that addressed in 2.2 above. The proposed text for this new provision is reflected in the Appendix to this Working Paper.

2.4 The group then addressed the issue of Contracting States providing aircraft operators with risk assessments for the acceptance of a deportee, comparing provisions contained in the “Removal Guidelines and those found in Annex 9. While Annex 9 does contain have specific provisions speaking to this issue, the Working Group determined that more specific language, particularly addressing the aircraft operator’s right to refuse transport based on perceived threats to the safe operation of the flight or when such transport is contrary to the aircraft operator’s policies, was warranted. A new standard is being proposed in the Appendix to this paper (5.19) that specifically addresses this point, and additionally, speaks to the need for cooperation in determining appropriate alternative flights and/or acceptable methods for transportation of the person in question.

APPENDIX

Amend Annex 9 as follows:

Chapter 1 - Definitions and General Principles

A. Definitions

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.*

B. General Principles

1.6 **Recommended Practice.**—Contracting States and Aircraft Operators should exchange information as to the appropriate point(s) of contact(s) to whom border control and customs queries should be directed.

Chapter 5. Inadmissible Persons and Deportees

C. Deportees

5.XX.1 Recommended Practice - Contracting States and aircraft operators should, where practicable, exchange information as to the appropriate 24-hour point(s) of contact(s) to whom deportee inquiries should be directed.

5.19.XX The aircraft operator and/or the pilot in command shall have the right to refuse to transport a deportee on a specific flight when reasonable concerns relating to the safety and security of the flight in question exist, or when the aircraft operator's policy relating to the number of deportees on that flight are exceeded.

Note 1:— The Contracting State shall consult with the Aircraft Operator regarding the most practicable flight or alternate method of transportation.

Note 2:—Reference is made to Doc 8973, the ICAO AVSEC Manual, paragraphs 12.2.1.3 and 12.1.2.6.

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