



**WORKING PAPER**

**FACILITATION PANEL (FALP)**

**SEVENTH MEETING**

**Montréal, 22-26 October 2012**

**Agenda Item 5: Amendments to Annex 9**

**THE REMOVAL OF INADMISSIBLE PERSONS: 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 (SARPs) for Contracting States relating to the removal of inadmissible persons, operational difficulties often related to provision of insufficient information and inadequate time to effectively arrange for those removals continue to be experienced. Penalties may, in some instances, be severe when aircraft operators are unable to immediately remove an inadmissible person on their aircraft. Further, aircraft operators are still frequently obliged to remove inadmissible persons, for whom travel documentation required for entry at destination or for transit of States through which the person is to be transported, is not available. Therefore, Canada, on behalf of IATA's Control Authorities Working Group (IATA/CAWG) seeks to amend certain existing Annex 9 provisions in order to better clarify the processes under which inadmissible removals should be accomplished.

**Action by the FAL Panel:**

The FAL Panel is invited to consider the proposals described in this paper and to adopt the proposed amendments as set out in the Appendix.

**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 analyses conducted, IATA/CAWG determined that, on a global level, there are significant inconsistencies in the approach that individual States take in respect of processes employed to

support the removal of inadmissible persons. Accordingly, the group undertook to develop best practice materials, the intent of which was to provide guidance to both Aircraft Operators and Public Authorities based largely upon existing Annex 9 provisions. The document, “*IATA/CAWG Guidelines for the Removal of Inadmissible Persons*” (“Inadmissible Removal Guidelines”), was first adopted in 2004, and has most recently been reviewed and updated with its third revision released on 12 May 2012.

1.3 Although the IATA/CAWG “Inadmissible Removal Guidelines” are largely aligned with existing SARPs, the document makes references to additional processes/concepts that are not contained in Annex 9 (Chapter 5 or elsewhere). While IATA/CAWG is an “informal” body, and its recommendations not binding on any entities, the group, during its 49<sup>th</sup> plenary session, agreed that its work in this critical area should be referred to the 7<sup>th</sup> ICAO Facilitation Panel, for its consideration. Accordingly, a sub-group was selected to conduct a review of the Annex and the IATA/CAWG document, and to develop recommendations for amendment of the Annex<sup>1</sup>. This working paper, and the proposal contained in its Appendix are the result of that work.

1.4 Specifically, this Working Paper asks that the Panel consider 3 issues, including 1) amending text in an existing Standard, 2) elevating an existing Recommended Practice to a Standard and 3) potentially adopting a Type A Resolution relating to acceptance of ICAO-compliant transportation letters issued in lieu of seized and/or missing travel documents.

## 2. DISCUSSION

2.1 The IATA/CAWG’s “Inadmissible Removal Guidelines” recommend that Contracting States should provide the aircraft operator which transported the Inadmissible Person to its territory with a removal order containing sufficient information so as to permit the aircraft operator to confirm that the inadmissible passenger is, in fact, its responsibility and also to investigate the circumstances relating to that arrival. Existing Annex 9 provisions address only that information concerning the inadmissible person as an individual and the destination to which that person is to be removed. IATA/CAWG recommends that in addition to that already specified in the existing provision, information concerning the passenger’s inbound flight should also be included in any Removal Order. The Appendix to this Working Paper contains proposed language to amend existing Standard 5.5.

2.2 The “Inadmissible Removal Guidelines” includes a statement that the Public Authorities in Contracting States should consult with Aircraft Operators regarding the removal of an inadmissible person, and allow the Aircraft Operator reasonable time to effect the removal of that individual. In its document, IATA/CAWG sought to clarify what “reasonable time” might represent, and in doing so, identified that term to normally represent a period of up to 24 hours following receipt of the Removal Order. Annex 9, Recommended Practice 5.4 contains essentially the same concept – but absent any specific time frame defining the term “reasonable time”. Rather than seeking to define a specific time-frame in the existing RP, IATA/CAWG is instead recommending that the current provision be elevated from a Recommended Practice to a Standard, and would entertain additional language that would make compliance with the new Standard subject to compliance with national and/or international laws. The suggested revised language for RP 5.4 is contained in the Appendix to this document.

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<sup>1</sup> 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

2.3 The IATA/CAWG “Inadmissible Removal Guidelines” supports the concept for the issuance of an ICAO-compliant Covering Letter to facilitate the removal of an inadmissible passenger not holding a valid travel document, or for whom an invalid travel document has been seized. However, when a Covering Letter will not be accepted by the public authorities in the State of final destination (or transit), the aircraft operator should not be required to accept the passenger for removal until suitable alternate arrangements have been agreed between all parties.

2.4 Existing Standards 5.6 and 5.7 speak to the requirement that States ordering the removal of persons found inadmissible and who are not in possession of a required travel document (5.6), or whose travel documents have been seized (5.7) issue the ICAO-compliant Covering Letter. Existing Standard 5.13 mandates that “*Contracting States shall accept the covering letter and other papers delivered pursuant to 5.6 or 5.7 as sufficient documentation to carry out the examination of the person referred to in the letter*”. Even with these clear and concise Standards, a number of States have long refused to accept individuals transported only with the ICAO-compliant covering letters, even when they are believed to be nationals of that State. In these instances, the aircraft operator is often held responsible – facing potential financial penalties and frequently obliged to return the individual to the State that had ordered that person removed – a requirement that is entirely inconsistent with Standard 5.12.

2.5 As there are already a number of existing Standards that address the issue of States issuing and accepting covering letters issued by another, IATA/CAWG does not believe that additional provisions are required or would resolve the issues relating to non-observance of these provisions by Public Authorities in several Contracting States. Instead, the members of IATA/CAWG would welcome an ICAO Resolution calling upon all Contracting States to observe the obligations as described in those existing Standards (5.6, 5.7, 5.12 and 5.13).

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## APPENDIX

*Amend* Annex 9 as follows:

**5.4 ~~Recommended Practice.~~**—Contracting States, through their public authorities, ~~should~~ **shall** consult the aircraft operator on the time frame for removal of the person found inadmissible, in order to allow the aircraft operator a reasonable amount of time during which to effect the person's removal via its own services or to make alternative removal arrangements.

Note.— Nothing in this provision is to be construed so as to allow the return of a person seeking asylum in the territory of a Contracting State, to a country where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group or political opinion.

**5.5** Contracting States shall ensure that a removal order is issued to the aircraft operator in respect of a person found inadmissible. The removal order shall **include information regarding the inbound (arriving) flight carrying such person and**, if known, the name, age, gender and citizenship of the person in question.

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