



РАБОЧИЙ ДОКУМЕНТ

ГРУППА ЭКСПЕРТОВ ПО УПРОЩЕНИЮ ФОРМАЛЬНОСТЕЙ (FALP)

СЕДЬМОЕ СОВЕЩАНИЕ

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ПОВЕСТКА ДНЯ

Пункт 5 повестки дня. Поправки к Приложению 9

**ВЫДВОРЕНИЕ ЛИЦ, НЕ ИМЕЮЩИХ ПРАВА НА ВЪЕЗД.
ПРЕДЛОЖЕНИЕ ПО ВНЕСЕНИЮ ПОПРАВОК В ПРИЛОЖЕНИЕ 9
"УПРОЩЕНИЕ ФОРМАЛЬНОСТЕЙ"**

(Представлено Канадой от имени Рабочей группы уполномоченных органов контроля ИАТА)

(В связи с нехваткой ресурсов переведены только тексты аннотации и добавления.)

АННОТАЦИЯ

Несмотря на то, что глава 5 Приложения 9 предлагает Договаривающимся государствам Стандарты и Рекомендуемую практику (SARPS), касающиеся процедур выдворения лиц, не имеющих права на въезд, по-прежнему существуют оперативные трудности, часто вызванные предоставлением недостаточной информации и отсутствием времени для эффективного осуществления процедуры выдворения. В некоторых случаях, когда эксплуатанты воздушных судов не могут на своем воздушном судне в кратчайшие сроки выдворить пассажира, не имеющего права на въезд, штрафные санкции могут быть очень суровыми. Более того, эксплуатанты воздушных судов по-прежнему часто вынуждены выдворять лиц без права на въезд, проездные документы которых для въезда в пункт назначения или для транзита через государство, через которое такое лицо транспортируется, отсутствуют. Поэтому Канада от имени Рабочей группы уполномоченных органов контроля (ИАТА) предлагает изменить определенные существующие положения Приложения 9 с тем, чтобы более четко описать процедуры выдворения лиц без права на въезд.

Действия Группы экспертов FAL:

Группе экспертов FAL предлагается рассмотреть предложения, предложенные в данном документе, и принять предлагаемые поправки, представленные в добавлении.

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 49th plenary session, agreed that its work in this critical area should be referred to the 7th 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 Annex¹. 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

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

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.

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).

ДОБАВЛЕНИЕ

Внести в Приложение 9 следующие поправки:

5.4 **Рекомендуемая практика.** Договаривающиеся государства посредством своих государственных полномочных органов ~~следует проводить~~ **проводят** консультации с эксплуатантом воздушного судна относительно сроков выдворения лица, которому отказано в праве на въезд, чтобы дать эксплуатанту достаточно времени, в течение которого он мог бы осуществить отправку лица собственными силами или подготовить альтернативный вариант отправки.

Примечание. Ничто в настоящем положении не должно истолковываться как разрешающее возврат лица, обращающегося с просьбой предоставить убежище на территории Договаривающегося государства, в страну, в которой его жизнь или свобода будут подвергаться угрозе по причине его расы, вероисповедания, национальности, принадлежности к определенной социальной группе или политических убеждений.

5.5 Договаривающиеся государства обеспечивают, чтобы эксплуатанту воздушного судна выдавалось постановление о выдворении лица, которому отказано в праве на въезд. ~~Если это известно, в~~ В постановлении о выдворении указываются **информация о вылете (прилете) рейса, перевозящего такого лица, и, если это известно, фамилия, возраст, пол и гражданство данного лица.**

— КОНЕЦ —