

ANTI-TERRORISM, CRIME AND SECURITY ACT 2001

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9: Aviation Security

Section 86 Detention of aircraft

184. Under the Aviation Security Act 1982 there has been no specific power for a Department for Transport, Local Governments & the Regions (DTLR) Aviation Security Inspector, who is an example of “an authorised person” for the purposes of the 1982 Act, to detain an aircraft other than for the purposes of inspecting it (see section 20(3) of the 1982 Act). However, once that inspection is finished, an inspector has had no further powers to detain the aircraft even if he was concerned about the standard of security applied. Similarly there has been no direct power for an authorised person to prevent aircraft from flying because there was good reason to believe it could be a target for attack.
185. The section inserts into the 1982 Act a new section 20B, which gives an authorised person the power to detain aircraft by direction if there is reason to believe that its security has been compromised because of a failure to comply with the Department's statutory Directions or an Enforcement Notice. Directions are issued by the Secretary of State to aerodrome managers and airline operators using the powers contained in sections 12-14 of the 1982 Act. An Enforcement Notice is defined in section 24A of the 1982 Act. Consequently if a threat has been made against the aircraft; or an act of violence is likely to be committed against the aircraft, then a detention direction can be issued.
186. **Section 86** enables a detention direction to be issued in respect of any aircraft in, operating in, or registered in, the United Kingdom. Such a direction can apply to all aircraft in a specified class, for example all flights leaving for the USA from UK airports. In effect this means the power ranges from the detention of a single aircraft, to detaining all flights going to specific destinations.
187. The new section also provides for what the authorised person may do. This may include entering the aircraft, removing things and using reasonable force to ensure that the aircraft does not fly. The new provision also allows for objections to the direction, and provides for offences for failing to comply or obstruction. On summary conviction fines up to £5,000 (level 5) can be imposed. Alternatively, on indictment the penalty could be a maximum of 2 years and or a fine of any level set by the court.
188. An analogous provision for detention of ships and Channel Tunnel trains exists (section 21 of the Aviation & Maritime Security Act 1990 and article 27 of the Channel Tunnel (Security) Order 1994 respectively) when there has been failure to comply with a direction or Enforcement Notice.