

# **ANTI-TERRORISM, CRIME AND SECURITY ACT 2001**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 9: Aviation Security**

##### ***Section 82 Arrest without warrant***

175. This section provides for certain offences to be inserted at the end of section 24(2) of the Police and Criminal Evidence Act 1984 (PACE). This has the effect of giving the police the power to arrest suspects, even though the maximum penalties for the offences in themselves are not sufficient to give an automatic power of arrest.
176. The offences to be covered are those relating to unauthorised presence in the restricted zone of an airport or on an aircraft (sections 21(C)(1) and 21D(1) of the Aviation Security Act 1982) and trespassing on a licensed aerodrome (section 39(1) of the Civil Aviation Act 1982).
177. Section 24 of PACE extends only to England and Wales. Section 82 of this Act therefore also makes similar change to the equivalent policing legislation in Northern Ireland to ensure consistency. In Scotland, powers of arrest for these offences would be subject to the general rule that arrest without warrant is not justified unless a constable has reasonable grounds for suspecting that a person has committed certain offences. In order to ensure that the police in Scotland have the desired power of arrest a statutory power of arrest without warrant has been introduced.

##### ***Section 83 Trespass on aerodrome: penalty***

178. The penalty for the above offence has been increased from a level 1 fine (currently £200) to a level 3 fine (currently £1,000). This reflects the view that the offence is not as serious as unauthorised access in a Restricted Zone or on an aircraft (level 5 fine, currently £5,000), but is proportionate to penalties existing under Article 122 of the current [Air Navigation Order 2000 \(S.I 2000/No.1562\)](#). Currently these involve fines in the level 3 and level 4 scale. At the present time a fine under level 4 involves a maximum sum of £2,500.

##### ***Section 84 Removal of intruder***

179. Sections 21C and 21D of the Aviation Security Act 1982 make it an offence for an unauthorised person to go into an airport's restricted zone, or onto an aircraft, or to remain in either place after being asked to leave. However there has been no specific power to remove someone who refuses to leave after being asked to do so. This section provides such a power to enable a constable or duly authorised person to do so. *Subsection (1)* deals with aerodromes and *subsection (2)* deals with aircraft.
180. Similar powers appear in section 31(4) of the Channel Tunnel (Security) Order 1994 and in section 39(2A) of the Aviation and Maritime Security Act 1990, as amended.

### **Section 85 Aviation security services**

181. Under section 21F of the Aviation Security Act 1982, the Secretary of State for Transport, Local Government and the Regions may, by regulations, maintain a list of air cargo agents who are approved by him to offer secure air cargo services. Under the regulations (S.I 1993/No.1073) air cargo agents may only apply to be included on the list if they are involved in applying security controls to air cargo.
182. **Section 85** enables the Government to make similar arrangements for other parts of the industry which provide security services to civil aviation - for example companies contracted by airports and airlines to provide passenger and baggage screening services, and companies and individuals who provide aviation security training services.
183. The section inserts a new section 20A into the 1982 Act, to give the Secretary of State the power to set up, by regulations, lists of other categories of companies or individuals associated with the provision of aviation security services.

### **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.

### **Section 87 Air cargo agent: documents**

189. By regulations under Section 21F of the Aviation Security Act 1982, the Secretary of State operates a listing system for security approved air cargo agents. Such agents are

*These notes refer to the Anti-terrorism, Crime and Security Act  
2001 (c.24) which received Royal Assent on 14th December 2001*

allowed to apply security controls to cargo before it is passed to an airline for carriage. To be added to the list, a cargo agent must be able to demonstrate that he has the capability to meet security criteria set down by the Secretary of State. However, there has been no offence of pretending to have been approved by DTLR to operate as a security approved air cargo agent.

190. The section inserts into the 1982 Act a new section 21FA, to create a new offence of issuing a document which falsely claims to come from a security approved air cargo agent. This is a summary offence, attracting a maximum penalty of six months imprisonment or a fine not exceeding £5,000 (level 5) on the standard scale, or both.

***Section 88 Extent outside the United Kingdom***

191. The enactments amended by this Part of this Act are all capable of extension outside the United Kingdom to the Channel Islands and the Isle of Man.
192. The purpose behind the section is to make it clear that additions or amendments to existing legislation contained in Part 9 of the Act are intended to be capable of being extended to the Channel Islands and the Isle of Man.
193. The effect will be that Jersey, Guernsey and the Isle of Man will be able to make use of the enhanced aviation security powers contained in the Act.