

## **Civil Aviation Amendment Bill (No 2)**

Government Bill

As reported from the committee of the whole House

This bill was formerly part of the Aviation Security Legislation Bill as reported from the Transport and Industrial Relations Committee. The committee of the whole House has further amended the bill and divided it into the following bills:

- The Aviation Crimes Amendment Bill, comprising Part 1
  - This bill, comprising Part 2 and the Schedule.
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## Key to symbols used in reprinted bill

### As reported from a select committee

<b>Struck out (unanimous)</b> [ Subject to this Act, ]	Text struck out unanimously
<b>New (unanimous)</b> [ Subject to this Act, ]	Text inserted unanimously
<i>(Subject to this Act.)</i>	Words struck out unanimously
<u>Subject to this Act,</u>	Words inserted unanimously

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*Hon Harry Duynhoven*

## **Civil Aviation Amendment Bill (No 2)**

### Government Bill

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Civil Aviation Amendment Act (No 2) **2007**.

**2 Commencement**

- (1) **Sections 9, 10(2) and (3), 13, 17(2), 18, 19(1), 21, 22, and 24(1) and (2)** come into force on the day after the date on which this Act receives the Royal assent. 5
- (2) The rest of this Act comes into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more Orders in Council may be made bringing different provisions into force on different dates. 10

. . . . .

**9 Principal Act amended**

**Sections 10 to 22** amend the Civil Aviation Act 1990.

**10 Interpretation**

- (1) Section 2 is amended by inserting the following definitions in their appropriate alphabetical order:

“**foreign in-flight security officer** means an enforcement officer or authorised person from a country other than New Zealand who is— 5

“(a) authorised to act on an aircraft that is in flight by the State that has issued the air operating certificate (or its equivalent) under which the air operation is conducted; and 10

“(b) subject to an in-flight security officer arrangement or agreement between New Zealand and the State that has issued the air operating certificate (or its equivalent) under which the air operation is conducted

“**in-flight security officer** means a member of the police authorised under **section 15A of the Aviation Crimes Act 1972**”. 15

- (2) Section 2 is amended by inserting the following definition in its appropriate alphabetical order:

“**security enhanced area** means an area that the Director has declared to be a security enhanced area under **section 84(1A)**”. 20

- (3) Section 2 is amended by inserting the following definition in its appropriate alphabetical order:

“**sterile area** means the area at an aerodrome, between the passenger inspection and screening station and the aircraft, into which access is strictly controlled”. 25

**New (unanimous)**

- (4) Section 2 is amended by adding the following subsection as subsection (2):

“(2) For the purposes of this Act, an aviation identity card issued or approved by the Director under any regulations or rules made under this Act is not an aviation document.” 30

**10A General requirements for participants in civil aviation system**

Section 12(2) is amended by inserting “or regulations” after “rules”.

**11 Rules relating to safety and security**

Section 29 is amended by adding the following paragraph:

“(e) rules providing for in-flight safety and security, including, but not limited to, the following:

“(i) the possession, carriage, and use of an item, being a firearm, weapon, ammunition, or any other equipment, by an in-flight security officer on board an aircraft operated by an operator certified under Part 119 of the Civil Aviation Rules: 5

“(ii) the carriage of an item, being a firearm, weapon, ammunition, or any other equipment, by a foreign in-flight security officer while entering, transiting, or departing from New Zealand.” 10

**12 Security area offences**

(1) The heading to section 54 is amended by inserting “**and security enhanced area**” after “**area**”. 15

(2) Section 54(1) is amended by inserting “or security enhanced area” after “security area” in each place where it appears.

(3) Section 54 is amended by repealing subsection (2) and substituting the following subsection: 20

“(2) Every person who commits an offence under subsection (1) in relation to a—

“(a) security area is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000:

“(b) security enhanced area is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$5,000.” 25

**13 New section 56A inserted**

The following section is inserted after section 56:

“**56A Security check offences** 30

“(1) Every person commits an offence who, in relation to a security check of that person,—

“(a) provides information that the person knows is false or misleading in a material particular; or

“(b) fails to disclose, without reasonable excuse, information that the person knows to be materially relevant. 35

“(2) Every person who commits an offence under **subsection (1)** is liable to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000.”

#### 14 Powers and duties of Minister to require screening

- (1) The heading to section 77A is amended by adding “, **searching, and seizing**”. 5
- (2) Section 77A is amended by repealing subsection (1) and substituting the following subsections:
- “(1) The Minister may, if the Minister considers it necessary to improve or enhance aviation security to enable New Zealand 10 to be part of a concerted international response to a threat to aviation security, or if the Minister considers it is in the public interest or national interest to do so, direct an aviation security service provider, by notice in the *Gazette*,—
- “(a) to screen— 15
- “(i) any person boarding an aircraft:
- “(ii) any thing to be carried on an aircraft:
- “(iii) any ~~(person or item)~~ person, item, or substance—
- “(A) before the ~~(person or item)~~ person, item, or substance enters a sterile area: 20
- “(B) present in a sterile area:
- “(iv) any person, item, substance, or vehicle—
- “(A) before the person, item, substance, or vehicle enters a security enhanced area: 25
- “(B) present in a security enhanced area:
- “(v) any unattended item, substance, or vehicle in a security enhanced area:
- “(b) if necessary, to undertake reasonable searches of—
- “(i) any person boarding an aircraft: 30
- “(ii) any thing to be carried on an aircraft:
- “(iii) any (as specified in the *Gazette* notice)—
- “(A) aircraft or class of aircraft:
- “(B) aerodrome or class of aerodrome:
- “(C) navigation installation or class of navigation installation: 35
- “(iv) any ~~(person or item)~~ person, item, substance, or vehicle—
- “(A) before the ~~(person or item)~~ person, item, substance, or vehicle enters a sterile area: 40

- “(B) present in a sterile area:  
 “(v) any person, item, substance, or vehicle—  
 “(A) before the person, item, substance, or  
 vehicle enters a security enhanced area:  
 “(B) present in a security enhanced area: 5  
 “(vi) any unattended item, substance, or vehicle in a  
 security enhanced area:  
 “(c) to seize any item or substance specified in the *Gazette*  
 notice if the aviation security (*provider*) officer has  
 reasonable grounds to believe that there is no lawful 10  
 authority or reasonable excuse for the item or substance  
 to be carried on an aircraft.  
 “(1A) An aviation security service provider directed under **sub-**  
**section (1)** must screen and search for any item or substance  
 specified in the *Gazette* notice.” 15  
 (3) Section 77A(2) is amended by omitting “, to determine  
 whether or not the direction is necessary to improve or  
 enhance aviation security to enable New Zealand to be part of  
 a concerted international response to a threat to aviation  
 security,”. 20  
 (4) Section 77A(2)(b) is amended by omitting “appropriate,” and  
 substituting “appropriate and practical, other ministers,”.  
**15 Powers and duties of Director to require screening**  
 (1) The heading to section 77B is amended by adding “, **search-**  
**ing, and seizing**”. 25  
 (2) Section 77B is amended by repealing subsection (1) and sub-  
 stituting the following subsections:  
 “(1) The Director may, if he or she believes on reasonable grounds  
 that a security risk exists, direct an aviation security service  
 provider, by notice in the *Gazette*,— 30  
 “(a) to screen—  
 “(i) any person boarding an aircraft:  
 “(ii) any thing to be carried on an aircraft:  
 “(iii) any (*person or item*) person, item, or  
substance— 35  
 “(A) before the (*person or item*) person, item, or  
substance enters a sterile area:  
 “(B) present in a sterile area:  
 “(iv) any person, item, substance, or vehicle—

- “(A) before the person, item, substance, or vehicle enters a security enhanced area:  
“(B) present in a security enhanced area:  
“(v) any unattended item, substance or vehicle in a security enhanced area: 5
- “(b) if necessary, to undertake reasonable searches of—  
“(i) any person boarding an aircraft:  
“(ii) any thing to be carried on an aircraft:  
“(iii) any (as specified in the *Gazette* notice)—  
“(A) aircraft or class of aircraft: 10  
“(B) aerodrome or class of aerodrome:  
“(C) navigation installation or class of navigation installation:  
“(iv) any person, item, substance, or vehicle—  
“(A) before the person, item, substance, or vehicle enters a sterile area: 15  
“(B) present in a sterile area:  
“(v) any person, item, substance, or vehicle—  
“(A) before the person, item, substance, or vehicle enters a security enhanced area: 20  
“(B) present in a security enhanced area:  
“(vi) any unattended item, substance, or vehicle in a security enhanced area:  
“(c) seize any item or substance specified in the *Gazette* notice if the aviation security (*provider*) officer has reasonable grounds to believe that there is no lawful authority or reasonable excuse for the item or substance to be carried on an aircraft. 25
- “(1A) An aviation security service provider directed under **sub-section (1)** must screen and search for any item or substance specified in the *Gazette* notice.” 30
- (3) Section 77B(2) is amended by inserting “and practical” after “appropriate”.
- 16 New section 77BA inserted**  
The following section is inserted after section 77B: 35
- “77BA Certain *Gazette* notices may not include security sensitive information**
- “(1) A notice to be published in the *Gazette* under **section 77A(1) or 77B(1)** in relation to security enhanced areas may not include security sensitive information. 40

“(2) For the purposes of this section, **security sensitive information** means information that would prejudice the national security interests of New Zealand if disclosed.”

**17 New sections 77D to 77I inserted**

- (1) The following sections are inserted in their appropriate alpha- 5  
 numeric order:
- “77D Director may approve firearms, weapons, ammunition, and other equipment for carriage and use by in-flight security officers**
- The Director may approve firearms, weapons, ammunition, 10  
 and other equipment for carriage and use on board an aircraft by an in-flight security officer.
- “77E Foreign in-flight security officers**
- “(1) Despite section 11 of the Aviation Crimes Act 1972, the 15  
 Director may, in consultation with the Commissioner of Police and other affected parties that the Director considers appropriate, and in accordance with any rules made under this Act, authorise a foreign in-flight security officer who is, or a class of foreign in-flight security officers who are, accompa- 20  
 nied by a member of the police and is or are carrying an item, being a firearm, weapon, ammunition, or any other equip-  
 ment, to—
- “(a) disembark from an aircraft:
- “(b) board an aircraft:
- “(c) pass through a— 25  
     “(i) security area:  
     “(ii) security enhanced area:  
     “(iii) sterile area.
- “(2) To avoid doubt, the authorisation of a foreign in-flight secur- 30  
 ity officer by the—
- “(a) Director is not an aviation document:
- “(b) State that has issued the air operating certificate (or its equivalent) for the aircraft operator only applies while the aircraft is in flight.”
- (2) The following sections are inserted in their appropriate alpha- 35  
 numeric order:

**“77F Powers and duties of Director relating to security checks**

- “(1) The Director may carry out a security check of a person who falls within a category of persons specified in the rules as requiring a security check if— 5
- “(a) the security check is for the purpose of determining whether the person poses a threat to aviation security; and
- “(b) the person consents.
- “(2) If a person refuses consent to a security check under **subsection (1)**, the person may not be granted any authorisation under the rules if the rules require a favourable security check determination. 10
- “(3) The Director may grant a favourable security check determination if the Director decides that the person has undergone an alternative security check that is acceptable to the Director. 15
- “(4) For the purpose of determining whether a person poses a threat to aviation security, the Director may—
- “(a) seek and receive any information that the Director considers relevant, including (but not limited to) a recommendation made by the New Zealand Security Intelligence Service under section 4(1)(bb) of the New Zealand Security Intelligence Service Act 1969; and 20
- “(b) give weight to any component of the information as the Director considers appropriate in the circumstances. 25
- “(5) If the Director determines that a person does not pose a threat to aviation security, the Director must advise the person of the favourable security check determination.
- “(6) The Director may reconsider any previous security check determination that the Director has made if— 30
- “(a) new information is made available; or
- “(b) the Director has reason to believe that the person may pose a threat to aviation security.
- “(7) If the Director proposes to reconsider any previous security check determination, the Director must— 35
- “(a) advise the person to whom the security check determination relates that the Director is reconsidering that determination; and
- “(b) complete the reconsideration of that determination within 20 working days of advising the person under **paragraph (a)**; and 40

- “(c) if the reconsideration results in an adverse security check determination or a proposed adverse security check determination, initiate the review process set out in **section 77G**; and
- “(d) if a favourable security check determination is required for any previous authorisation granted to the person under the rules, withdraw that authorisation for—  
 “(i) the period of the reconsideration; and  
 “(ii) any subsequent review period under **section 77G**; and
- “(e) if a favourable security check determination is required for any previous authorisation granted to the person by any other entity, require that entity to withdraw the authorisation for—  
 “(i) the period of the reconsideration; and  
 “(ii) any subsequent review period under **section 77G**.
- “(8) Nothing in this section limits the power of the Director to grant an exemption under section 37.

**“77G Review procedures for security check determinations**

- “(1) If the Director makes an adverse security check determination with respect to a New Zealand person based on a recommendation made by the New Zealand Security Intelligence Service under section 4(1)(bb) of the New Zealand Security Intelligence Service Act 1969, the Director must advise the New Zealand person that the person may lodge a complaint regarding the recommendation with the Inspector-General of Intelligence and Security in accordance with sections 11 and 16 of the Inspector-General of Intelligence and Security Act 1996.
- “(2) If the Director proposes to make an adverse security check determination with respect to a person based on information other than a recommendation made by the New Zealand Security Intelligence Service, the Director must—  
 “(a) advise the person of the proposed determination and the reasons for the proposed determination; and  
 “(b) give the person written notice that, within 20 working days of the date of the notice, the person may—  
 “(i) seek legal advice or assistance with respect to the proposed determination:  
 “(ii) respond to, comment on, or make submissions on the proposed determination:

- “(iii) provide new information relevant to the proposed determination; and
- “(c) give the person notice of the date on which the proposed determination will, unless the Director decides otherwise, be made (which must be a date that is as soon as practicable after the expiry of the 20-working-day period referred to in **paragraph (b)**); and 5
- “(d) consider any response, comment, submission, or new information that the person provides along with the information on which the proposed determination was made; and 10
- “(e) make a final determination and inform the person and any other affected party of,—
- “(i) in the case of the person, the final determination and the reasons for the final determination; and 15
- “(ii) in the case of any other affected party, the final determination but not the reasons for the final determination.
- “(3) If the Director proposes to make an adverse security check determination based on a recommendation made by the New Zealand Security Intelligence Service and on information other than that recommendation, the Director must— 20

**Struck out (unanimous)**

- “(a) first follow the procedure set out in **subsection (2)** with respect to the information other than the recommendation; and 25

**New (unanimous)**

- “(a) follow the procedure set out in **subsection (2)** with respect to the information other than the recommendation and advise the person that the proposed determination is based on—
- “(i) a recommendation made by the New Zealand Security Intelligence Service; and 30
- “(ii) information other than the recommendation; and
- “(b) then follow the procedure set out in **subsection (1)** with respect to the recommendation if—

- “(i) the Director is satisfied that the information other than the recommendation is no longer sufficient to support an adverse security check determination; and
- “(ii) the person is a New Zealand person. 5
- “(4) If the Director makes a final adverse security check determination, the Director must—
- “(a) revoke any authorisation granted to the person by the Director under the rules, if a favourable security check determination is required under the rules for the authorisation; and 10
- “(b) require any other entity to revoke any authorisation granted to the person, if a favourable security check determination is required under the rules for the authorisation. 15
- “(5) For the purposes of this section,—
- “**Inspector-General of Intelligence and Security** means the person holding office under section 5 of the Inspector-General of Intelligence and Security Act 1996
- “**New Zealand person** has the same meaning as in section 2(1) of the Inspector-General of Intelligence and Security Act 1996. 20
- “**77H Offence to carry out activity while authorisation withdrawn or after authorisation revoked**
- “(1) Every person commits an offence who carries out an activity that requires an authorisation— 25
- “(a) during a period when that authorisation has been withdrawn under **section 77F(7)(d) or (e)**; or
- “(b) if that authorisation has been revoked under **section 77G(4)**. 30
- “(2) Every person who commits an offence against **subsection (1)** is liable on summary conviction to a fine not exceeding \$5,000.
- “**77I Offence to fail to comply with Director’s requirement to withdraw or revoke authorisation**
- “(1) Every person commits an offence who fails, without reasonable excuse, to comply with the Director’s requirement to— 35
- “(a) withdraw an authorisation under **section 77F(7)(e)**; or
- “(b) revoke an authorisation under **section 77G(4)(b)**.

- “(2) Every person who commits an offence against **subsection (1)** is liable on summary conviction to a fine not exceeding \$10,000.”

## 18 Functions and duties of Aviation Security Service

### Struck out (unanimous)

Section 80(a)(ii) is amended by inserting “or reasonable searches” after “screening”. 5

### New (unanimous)

- (1) The heading to section 80 is amended by omitting “**Functions**” and substituting “**Powers, functions,**”.
- (2) Section 80 is amended by omitting “functions” in the second place where it appears and substituting “powers, functions,”. 10
- (3) Section 80(a)(ii) is amended by inserting “, reasonable searches, or seizures” after “screening”.

## 19 New sections 80B to (80H) 80I inserted

- (1) The following section is inserted in its appropriate alphanumeric order: 15

### “80B Power of aviation security officers to search for and seize certain items or substances to be carried on aircraft or into sterile areas

- “(1) Without limiting section (80(a) and (ab)) 80 of this Act or **section 12(1)** of the Aviation Crimes Act 1972, an aviation security officer may, for the purpose of detecting any item or substance specified in a direction given under **section 77A(1) or 77B(1)**, screen or search any person, item, substance, or vehicle— 20

“(a) before the person, item, substance, or vehicle enters a sterile area: 25

“(b) present in a sterile area.

**New (unanimous)**

“(1A) A search undertaken under **subsection (1)** must be carried out in accordance with the requirements for searches specified in **section 12(2) to (6)** of the Aviation Crimes Act 1972.

“(2) If an item or substance specified in **section 11(1)** of the Aviation Crimes Act 1972 or a direction under **section 77A(1) or 77B(1)** is detected in a search undertaken under **subsection (1)** or section 80 of this Act or **section 12** of the Aviation Crimes Act 1972, and an aviation security officer has reasonable grounds to believe that there is no lawful authority or reasonable excuse for the item or substance to be carried on an aircraft or into a sterile area, the aviation security officer may seize and detain the item or substance for the purpose of determining whether there is lawful authority or reasonable excuse for the item or substance to be carried on an aircraft or into a sterile area.

“(3) If the aviation security officer determines that the item or substance may be lawfully carried into, or remain in, an aircraft or a sterile area, the aviation security officer must,—

“(a) if practicable, return the item or substance to the person from whom it was seized; or

“(b) if impracticable to return the item or substance to the person from whom it was seized, deliver the item or substance to the carrier of the aircraft that the person boarded or intended to board when the item or substance was seized.

“(4) If the aviation security officer determines that there is no lawful authority or reasonable excuse for the item or substance to be carried on an aircraft or into a sterile area, the aviation security officer may—

**Struck out (unanimous)**

“(a) must make a record of the relevant details of the seizure; and

“(b) may detain the item until it is delivered to a member of the police or the carrier.

**New (unanimous)**

- “(a) detain the item or substance until it is dealt with in accordance with **paragraph (b) or (c)**; or
- “(b) dispose of or destroy the item or substance; or
- “(c) deliver the item or substance to a member of the police.

**Struck out (unanimous)**

- “(5) If an item is delivered to a carrier, the carrier must hold the item for 30 days for the purpose of providing the person from whom the item was seized an opportunity to claim the item. 5
- “(6) If the person from whom the item was seized does not claim the item or substance before the expiry of the 30-day holding period, the carrier may dispose of the item or substance. 10

**New (unanimous)**

- “(5) If an aviation security officer delivers an item or substance to a member of the police under **subsection (4)(c)**, the aviation security officer must record the delivery and the relevant details of the seizure.
- “(7) Despite anything in this section, if the aviation security officer has reasonable grounds to believe that *(the) an item or substance* poses an imminent risk to safety, the aviation security officer may destroy or otherwise dispose of the item or substance.” 15
- (2) The following sections are inserted in their appropriate alphanumeric order: 20
- “80C Powers and duties of aviation security officers relating to security enhanced areas**
- “(1) Without limiting section *(80(a) and (ab)) 80*, an aviation security officer may, for the purpose of detecting any item or substance specified in **section 11(1)** of the Aviation Crimes Act 1972 or a direction given under **section 77A(1) or 77B(1)**, screen or search any person, item, substance, or vehicle— 25
- “(a) before the person, item, substance, or vehicle enters a security enhanced area: 30
- “(b) present in a security enhanced area.

**New (unanimous)**

“(1A) A search undertaken under **subsection (1)** must be carried out in accordance with the requirements for searches specified in **section 12(2) to (6)** of the Aviation Crimes Act 1972.

- “(2) If an item or substance specified in **section 11(1)** of the Aviation Crimes Act 1972 or a direction under **section 77A(1) or 77B(1)** is detected in a search undertaken under subsection (1) or section 80 of this Act or **section 12** of the Aviation Crimes Act 1972, and the aviation security officer has reasonable grounds to believe that there is no lawful authority or reasonable excuse for the item or substance to be carried into or remain in the security enhanced area, the aviation security officer may seize and detain the item or substance for the purpose of determining whether there is lawful authority or reasonable excuse for the item or substance to be carried into or remain in the security enhanced area. 5 10 15
- “(3) If the aviation security officer determines that there is no lawful authority or reasonable excuse for the item or substance to be carried into or remain in the security enhanced area, the aviation security officer— 20
- “(a) must— 20
- “(i) detain the item or substance until it is delivered to a member of the police or, if the Director agrees, destroyed or otherwise disposed of; or
- “(ii) deny entry into the security enhanced area to any person in possession of the item or substance; or 25
- “(iii) direct the person in possession of the item to leave the security enhanced area, with or without—
- “(A) the item or substance;
- “(B) any vehicle used to transport the item or substance; and 30
- “(b) must make a record of the item or substance and the person from whom the item or substance was seized (if any).

- “(4) If the aviation security officer determines that the item or substance may be lawfully carried into or remain in the security enhanced area, the aviation security officer must, if practicable, return the item or substance to the person from whom the item or substance was seized. 5
- “(5) Despite anything in this section, if the aviation security officer has reasonable grounds to believe that the item or substance poses an imminent risk to safety, the aviation security officer may destroy or otherwise dispose of the item or substance.
- “80D Consent to be screened or searched 10**
- “(1) The powers specified in **section 80C(1)** may only be exercised with respect to—
- “(i) a person to be screened or searched with the consent of the person:
- “(ii) an item, substance, or vehicle to be screened or searched with the consent of the person in *(control)* possession of the item, substance, or vehicle. 15
- “(2) To avoid doubt, an item, substance, or vehicle may be screened or searched without consent if it is unattended.
- “80E Persons who refuse to consent to be screened or searched 20**
- “(1) If a person refuses to consent to the screening or searching under **section 80C(1)**, an aviation security officer may—
- “(a) deny that person entry into the security enhanced area:
- “(b) require that person to— 25
- “(i) leave the security enhanced area:
- “(ii) remove any *(items or vehicles)* item, substance, or vehicle in (their control) that person’s possession from the security enhanced area.
- “(2) An aviation security officer may— 30
- “(a) prevent a person from entering a security enhanced area if the person is denied entry:
- “(b) remove a person from a security enhanced area if the person is required to leave.
- “(3) An aviation security officer may detain a person who— 35
- “(a) refuses to leave when required to leave (or attempts to enter when denied entry) and persists in his or her refusal (or attempt) after being warned that he or she commits an offence by not complying:

- “(b) refuses to be screened or searched if the aviation security officer has reasonable grounds to suspect that—
- “(i) an offence against the Aviation Crimes Act 1972 has been, is being, or is likely to be committed, whether by that person or by any other person; or 5
- “(ii) a search of the person refusing to consent is likely to disclose evidence that an offence against the Aviation Crimes Act 1972 has been, is being, or is likely to be, committed, whether by that person or any other person. 10
- “(4) A person detained under **subsection (3)** must be delivered to a member of the police as soon as practicable.
- “(5) An aviation security officer, or any person assisting an aviation security officer, may use *(the) reasonable force, or any assistance that is (necessary and reasonable) reasonably necessary* in the circumstances, to— 15
- “(a) prevent a person from entering a security enhanced area under **subsection (2)(a)**;
- “(b) remove a person from a security enhanced area under **subsection (2)(b)**; 20
- “(c) detain a person under **subsection (3)**.

Compare: 2004 No 16 s 54

**“80F Searches of persons refusing consent to be searched**

- “(1) If a person refuses to consent to the screening or searching under **section 80C(1)**, a member of the police may, without a warrant, search the person and *(the person’s items or vehicle) any item, substance, or vehicle in the person’s possession*, and may detain the person for the purposes of the search, and may take possession of any item or substance found in the course of the search that is specified in **section 11(1)** of the Aviation Crimes Act 1972, if the member of the police has reasonable grounds to suspect that— 25
- “(a) an offence against the Aviation Crimes Act 1972 has been, is being, or is likely to be committed, whether by that person or by any other person; *(or) and* 35
- “(b) a search of the person refusing to consent, or any item, substance, or vehicle in the person’s possession, is likely to disclose evidence that an offence against the Aviation Crimes Act 1972 has been, is being, or is

likely to be, committed, whether by that person or any other person.

- “(2) The refusal of a person to consent to the searching of his or her person, (*or items, or a*) or any item, substance, or vehicle in the person’s (*control*) possession, does not of itself constitute reasonable grounds for suspecting that an offence against the Aviation Crimes Act 1972 has been, is being, or is likely to be, committed. 5
- “(3) A member of the police exercising the power of search under **subsection (1)** must, before the search is conducted, and on any subsequent request,— 10
- “(a) provide evidence of his or her identity to the person to be searched; and
- “(b) inform the person to be searched that the search is authorised under this section; and 15
- “(c) if not in uniform, provide evidence, if asked, that he or she is a member of the police to the person to be searched.
- “(4) If a member of the police exercises the power of search under **subsection (1)**, he or she must, within 3 days after the day on which he or she exercises the power, furnish to the Commissioner of Police a written report on the exercise of the power and the circumstances in which it came to be exercised. 20

Compare: 2004 No 16 s 55

- “**80G Searches of persons** 25
- “(1) With respect to a search made under **section 80C(1)**,—
- “(a) a person must, if directed to do so by an aviation security officer,—
- “(i) remove, raise, lower, or open any outer clothing, including (but not limited to) any coat, jacket, jumper, cardigan, or similar article that the person is wearing to enable the search to be carried out, except where the person has no other clothing, or only underclothing, under the outer clothing: 30 35
- “(ii) remove any gloves, footwear (including socks or stockings), head coverings, belts, jewellery, or other accessories:
- “(iii) allow an aviation security officer to carry out a (*rubdown*) pat down search: 40

- “(b) a female may only be searched by a female unless the search is made by means of a mechanical or electrical or electronic or other similar device.
  - “(2) For the purposes of this section, (*rubdown*) pat down search—
    - “(a) means a search of a clothed person in which the person conducting the search may do all or any of the following:
      - “(i) run or pat his or her hand over the body of the person being searched, whether outside or inside the clothing (other than any underclothing) of that person: 10
      - “(ii) insert his or her hand inside any pocket or pouch in the clothing (other than any underclothing) of the person being searched:
      - “(iii) for the purpose of permitting a visual inspection, require the person being searched to do all or any of the following, namely: 15
        - “(A) open his or her mouth:
        - “(B) display the palms of his or her hands:
        - “(C) display the soles of his or her feet: 20
        - “(D) lift or rub his or her hair; and
    - “(b) includes the authority to search—
      - “(i) any item or substance carried by, or in the possession of, the person; and
      - “(ii) any outer clothing removed, raised, lowered, or opened for the purposes of the search; and 25
      - “(iii) any head covering, gloves, or footwear (including socks or stockings) removed for the purposes of the search.
- “**80H Power to require drivers to stop vehicles in security enhanced areas for screening or searching** 30
- “(1) An aviation security officer who is in uniform, or wearing a distinctive cap, hat, or helmet, with a badge of authority affixed to it, may signal or request the driver of a vehicle in a security enhanced area to stop the vehicle as soon as is practicable for the purpose of screening or searching the vehicle, and (*items and persons*) any item, substance, or person in the vehicle. 35

- “(2) The driver of a vehicle that is stopped by an aviation security officer must remain stopped for as long as is reasonably necessary for the aviation security officer to screen or search the vehicle, and *(items and persons)* any item, substance, or person in the vehicle. 5
- “(3) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000, who, without lawful authority or reasonable excuse, fails to—
- “(a) stop a vehicle in a security enhanced area as soon as is practicable when required to do by an aviation security officer; or 10
- “(b) remain stopped for as long as is reasonably necessary for the aviation security officer to screen or search the vehicle, and any *(items and persons)* item, substance, or person in the vehicle. 15

Compare: 1998 No 110 s 114

**New (unanimous)**

**“80I Protection of aviation security officers**

Nothing done by an aviation security officer under **sections 80B(2) to (7) and 80C(2) to (5)** may subject the aviation security officer to personal liability if done in— 20

- “(a) good faith; and
- “(b) the exercise of powers or the performance of duties under this Act.

Compare: 1949 No 19 s 13”

- 20 Security areas** 25
- (1) The heading to section 84 is amended by adding “**and security enhanced areas**”.
- (2) Section 84(1) is amended by omitting “thereof” and substituting “of the area”.
- (3) Section 84 is amended by inserting the following subsection after subsection (1): 30
- “(1A) The Director may declare, by appropriate notification, that an area within a security area is a security enhanced area.”
- (4) Section 84 is amended by repealing subsection (2) and substituting the following subsection: 35

- “(2) No person other than a member of the police on official duties or an aviation security officer on official duties may enter or remain in any security area or security enhanced area unless the person is—
- “(a) wearing an airport identity card issued under the rules (or other identity document approved by the Director under the rules) and worn in accordance with the rules; and 5
- “(b) authorised by the Director or the airport manager or other person having control of the area.” 10
- (5) Section 84(3) is amended by inserting “or security enhanced area” after “security area” in each place where it appears.
- (6) Section 84(4) is amended by omitting “aviation security area” and substituting “security area or security enhanced area”.
- (7) Section 84(5) is amended by inserting “or security enhanced area” after “security area” in each place where it appears. 15
- (8) Section 84 is amended by repealing subsection (7) and substituting the following subsections:
- “(7) Despite **subsection (2)**, a passenger embarking or disembarking directly through a gateway or thoroughfare in an airport approved for that purpose by the airport manager may pass through a security area or security enhanced area forming part of the gateway or thoroughfare without an airport identity card. 20
- “(8) Despite **subsection (2)**, a person allowed under the rules may pass through a security area or security enhanced area without an airport identity card.” 25
- 21 Powers of arrest**
- (1) The heading to section 85 is amended by adding “**and seizure of items or substances**”. 30
- (2) Section 85(1)(a) is amended by inserting “5A,” after “5,”.
- (3) Section 85 is amended by inserting the following subsections after subsection (1):
- “(1A) An aviation security officer may—
- “(a) search a person arrested under subsection (1): 35
- “(b) seize any item or substance that may be evidence of an offence against an enactment specified in subsection (1), if the officer has reasonable grounds to believe that—

- “(i) the person has an item or substance hidden or in clear view on or about his or her person that is evidence of an offence against an enactment specified in subsection (1); and
- “(ii) the item or substance poses a threat to the safety of the officer or any other person; and
- “(iii) immediate action is necessary to address the threat.
- “(1B) An aviation security officer may use *(the)* reasonable force, or any assistance that is *(necessary and reasonable)* reasonably necessary in the circumstances, to—
- “(a) arrest a person under subsection (1):
- “(b) search a person under **subsection (1A)**:
- “(c) seize an item or substance under **subsection (1A)**.
- “(1C) To avoid doubt, an aviation security officer may search a person under this section whether or not an aviation security officer has previously searched the person under another section of this Act or under the Aviation Crimes Act 1972.
- “(1D) An aviation security officer who undertakes a search under this section must, within 3 working days of the search, give the Director a written report of the search, the circumstances in which it was conducted, and the matters that gave rise to the reasonable grounds to believe required by **subsection (1A)(b)**.”
- (4) Section 85(3) is amended by inserting “, and any item or substance he or she seizes,” after “arrests”.
- (5) Section 85 is amended by adding the following subsection:
- “(4) An aviation security officer may seize an item or substance in the possession of a person that the aviation security officer arrests if the aviation security officer has reasonable grounds to believe that the item or substance is evidence of an offence against an enactment specified in subsection (1).”

## 22 Regulations

### New (unanimous)

(1AA) Section 100(1) is amended by inserting the following paragraph after paragraph (b):

“(ba) prescribing those breaches of regulations made under **paragraph (ee)** that constitute offences under this Act.”.

**New (unanimous)**

(1AB) Section 100(1) is amended by inserting the following paragraph after paragraph (c):

“(ca) prescribing those breaches of regulations made under **paragraph (ee)** that constitute infringement offences against this Act.”.

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(1) Section 100(1) is amended by inserting the following paragraph after paragraph (ed):

**Struck out (unanimous)**

“(ee) assisting or enhancing aviation security, including (but not limited to)—

“(i) any security-related matter for which rules may be made under section 28 or 29:

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“(ii) the revocation, substitution, or amendment of any security-related rules made under section 28 or 29:

**New (unanimous)**

“(ee) assisting aviation security, including (but not limited to)—

15

“(i) the specification and application of security controls for—

“(A) screening:

“(B) searching:

20

“(C) seizing items and substances:

“(ii) any matter for which—

“(A) rules may be made under section 28, 29, 29A, or 30:

“(B) directions may be made under **section 77A**:

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“(iii) the revocation, substitution, or amendment of any—

“(A) rule made under section 28, 29, 29A, or 30; or

“(B) direction made under **section 77A**.”.

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(2) Section 100 is amended by adding the following subsections:

- “(3) To the extent that a rule made under section 28, 29, 29A, or 30 or a direction made under **section 77A** is inconsistent with a regulation made under **subsection (1)(ee)**, the rule or direction is subject to the regulation.

**New (unanimous)**

- “(4) No regulation made under **subsection (1)(ee)** may be considered invalid because it confers any discretion upon or allows any matter to be determined or approved by the Authority or the Director or any other person, or allows the Authority or the Director or any other person to impose requirements as to the performance of any activities. 5 10
- “(5) So far as the bylaws of any local authority are inconsistent with or repugnant to any regulation made under **subsection (1)(ee)** in force in the same locality, the bylaws must be construed subject to the regulations made under **subsection (1)(ee)**.”

**23 Consequential amendments to Arms Act 1983** 15

- (1) This section consequentially amends the Arms Act 1983.
- (2) Section 2 is amended by inserting the following definitions in their appropriate alphabetical order:
- “**foreign in-flight security officer** has the same meaning as in section 2 of the Civil Aviation Act 1990 20
- “**in-flight security officer** has the same meaning as in section 2 of the Civil Aviation Act 1990”.
- (3) Section 3(2)(a) is amended by adding “; or” and the following subparagraph:
- “(viii) an in-flight security officer or a foreign in-flight security officer:” 25

**24 Consequential amendments to Civil Aviation Rules**

- (1) This section consequentially amends the Civil Aviation Rules.
- (2) The Civil Aviation Rules specified in **Part 1 of the Schedule** are amended in the manner indicated in that Part of the Schedule. 30
- (3) The Civil Aviation Rules specified in **Part 2 of the Schedule** are amended in the manner indicated in that Part of the Schedule.
- (4) The Civil Aviation Rules specified in **Part 3 of the Schedule** are amended in the manner indicated in that Part of the Schedule.

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## Schedule

### Consequential amendments to Civil Aviation Rules

#### Part 1

Rules amended on day after date on which Act receives  
Royal assent

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**Rule 1.1**Definition of **sterile area**: repeal.**Rule 19.357(a)**

Revoke and substitute:

- “(a) The Director may issue or approve an airport identity card or other identity document in accordance with this rule if— 10
- “(1) the Director has, in accordance with the Act, made a favourable security check determination of the person who has applied for the card or document; or
- “(2) the Director has decided that the person has undergone an alternative security check that is acceptable to the Director.” 15

**Rule 19.357**

Add:

- “(h) The security checks referred to in **19.357(a)(1) and (2)** are not required if the person making an application for an identity card is issued with a temporary identity card approved by the Director that entitles the person to enter and remain in a security area when escorted by a person issued with an airport identity card in accordance with the security check process referred to in **19.357(a)(1) and (2)**. 20 25

**Rule 140**

Appendix A.5(a)(3): omit “may” and substitute “must”.

Appendix A.8: revoke.

#### Part 2

Rules amended when specified by Order in Council

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**Rule 1.1**

Insert in its appropriate alphabetical order:

- “**security enhanced area** means an area that the Director has declared to be a security enhanced area under section 84 of the Act.” 35

Part 2—*continued*

<b>Rule 19.355(1)</b>	
Insert “, security enhanced area,” after “security area”.	
<b>Rule 19.355(2)</b>	
Insert “, security enhanced area,” after “security area”.	
<b>Rule 19.357(b)</b>	5
Insert “or security enhanced area” after “security area”.	
<b>Rule 19.357(d)</b>	
Insert “or security enhanced area” after “security area”.	
<b>Rule 19.357(e)</b>	10
Insert “or security enhanced area” after “security area”.	
<b>Rule 19.357(g)(3)</b>	
Insert “or security enhanced area” after “security area”.	
<b>Rule 19.357(g)(4)</b>	
Insert “or security enhanced area” after “security area”.	
<b>Rule 19.357(h)</b>	15
Insert “or security enhanced area” after “security area”.	
<b>Rule 108.53(b)(4)</b>	
Insert “or security enhanced area” after “security area”.	
<b>Rule 108.55(b)(4)</b>	20
Insert “or security enhanced area” after “security area”.	
<b>Rule 139.203(a)</b>	
Insert “or security enhanced area” after “security area”.	
<b>Rule 139.203(b)(1)</b>	
Insert “or security enhanced areas” after “security areas”.	
<b>Rule 139.203(b)(2)</b>	25
Omit “the security area or security areas” and substitute “any security area or security enhanced area”.	
<b>Rule 139.203(c)</b>	
Omit “the security area or security areas” and substitute “any security area or security enhanced area”.	30
<b>Rule 139.203(d)</b>	
Insert after subparagraph (4):	

Part 2—*continued***Rule 139.203(d)**—*continued*

“(4A) when considered necessary by the Minister or the Director, provide areas at their aerodrome for the screening and searching of persons, items, substances, and vehicles entering and within security enhanced areas; and”

**Rule 139.203(d)(11)**

Insert “or security enhanced areas” after “security areas”.

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**Rule 139.205(1)**

Insert “and under **139.203(d)(4A)**” after “baggage”.

**Rule 140.3**

Insert in its appropriate alphabetical order:

10

“**security enhanced area screening point** means an area provided by an aerodrome operator under **139.203(d)(4A)** for carrying out screening and searching in relation to a security enhanced area or a point in a security enhanced area where screening and searching is undertaken.”

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**Rule 140.11(a)(1)**

Add:

“(iv) screening and searching of any person, item, substance, or vehicle that is present in, or about to enter, a security enhanced area as required by the Minister or Director, subject to the requirement that the specific manner or methodology in which screening will be applied must be approved by the Director; and”

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25

**Rule 140**

Appendix A.11(a): insert “and, as appropriate, each security enhanced area screening point” after “point”.

Appendix A.11(b): omit “The” and substitute “In relation to each screening point, the”.

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Appendix A.11: add:

“(c) In relation to each security enhanced area screening point that has a procedure under paragraph (a), the certificate holder must, if appropriate, include in that procedure any of the items listed in paragraph (b).”

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Appendix A.12(b)(4): insert “or security enhanced area” after “security area”.

Part 2—*continued***Rule 140**—*continued*

Appendix A.12(b)(5): insert “and security enhanced areas” after “security areas”.

Appendix A.12(b)(6): insert “and security enhanced areas” after “security areas”.

Appendix A.12(b)(7): insert “or security enhanced area” after “security area”.

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Appendix A.12(b)(8)(iii): insert “and security enhanced area signs” after “signs”.

Appendix A.14(1): insert “or security enhanced areas” after “security areas”.

Appendix A.14(2): insert “or security enhanced area” after “security area”.

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Appendix A.16(c): insert “or security enhanced area” after “security area”.

Appendix A.19: insert “or security enhanced areas” after “security areas”.

15

Appendix A.24: add:

“(k) The certificate holder must, when vehicle search testing is being carried out, ensure that the examiner—

“(1) conceals the standard test piece in any part of the vehicle; and

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“(2) determines whether the aviation security officer being tested locates the standard test piece.”

Appendix A: add:

**“A.25 Security enhanced areas**

“*Security enhanced area screening point and equipment*

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“(a) The certificate holder must ensure—

“(1) that persons, items, substances, and vehicles entering, or within, a security enhanced area may be screened or searched according to the specific manner or methodology approved by the Director; and

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“(2) that, when conducting screening or searching with respect to persons entering, or within, a security enhanced area, persons, including items, substances, and vehicles associated with them, are screened and searched as required by the Minister or the Director; and

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Part 2—*continued***Rule 140**—*continued*

- “(3) sufficient personnel and equipment are available to carry out screening and searching in accordance with the specific manner or methodology approved by the Director; and
- “(4) its aviation security officers are instructed in the use of standard test pieces to ensure that they can competently check the screening equipment; and 5
- “(5) any screening apparatus used at a security enhanced area screening point is tested in a manner acceptable to the Director.

*“Screening of persons, items, substances, and vehicles”* 10

“(b) When undertaking screening, the certificate holder must—

- “(1) at each point where screening and searching is undertaken and prior to their entering the security enhanced area, inform all persons about to undergo screening, by notice posted at each screening point, that— 15

- “(i) screening of any person or any item, substance, or vehicle in the person’s *(control)* possession is only undertaken with the consent of that person; and 20

- “(ii) any person refusing to be screened will be denied entry beyond that point; and

- “(2) if undertaking screening within the security enhanced area,—

- “(i) inform all persons about to undergo screening that screening of the person or any item, substance, or vehicle in the person’s *(control)* possession is only undertaken with the consent of that person; and 25

- “(ii) any person refusing to be screened will be required to leave the security enhanced area; and 30

- “(3) according to the specific manner or methodology approved by the Director, ensure that a record is made of— 35

- “(i) the method of screening:

- “(ii) the time taken for screening as required by the Minister or the Director:

Part 2—*continued***Rule 140**—*continued*

- “(iii) the number of people, items, substances, and vehicles screened; and
- “(4) if an unauthorised article is found, ensure that a record is made of—
- “(i) the names of the officers carrying out the search; and 5
- “(ii) any unauthorised articles found; and
- “(iii) any disposal action taken.
- “(c) While screening is in progress, the certificate holder must—
- “(1) ensure that its aviation security officers, when screening any person, item, substance, or vehicle, ensure that the person is not carrying or in (*control*) possession of any unauthorised article; and 10
- “(2) ensure that its aviation security officers refuse entry to a security enhanced area if a person is found to be in (*control*) possession of an unauthorised article; and 15
- “(3) ensure that its aviation security officers require a person to leave a security enhanced area if that person is found to be in (*control*) possession of an unauthorised article; and 20
- “(4) carry out tests or checks, and record the results of those tests or checks, to confirm—
- “(i) the thoroughness of any screening, within each 28-day cycle; and 25
- “(ii) the proficiency of each aviation security officer carrying out the screenings, within each 150-day cycle, in accordance with the recurrent testing provisions under A.24.
- “*Hand search of items or substances* 30
- “(d) The certificate holder must ensure that, if there is any cause to suspect any item or substance contains an explosive device or a suspected explosive device has been discovered, its aviation security officers comply with the procedure required by A.11(b)(5). 35
- “(e) The certificate holder must carry out tests or checks, and record the results of those tests or checks, to confirm—

Part 2—*continued***Rule 140**—*continued*

- “(1) the thoroughness of any hand search, within each 28-day cycle; and
- “(2) the proficiency of each aviation security officer carrying out hand searches, within each 150-day cycle, in accordance with the recurrent testing provisions under A.24.”

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## Part 3

## Rules amended when specified by Order in Council

**Rule 91.9(a)**

Insert “provided by statute for in-flight security officers and foreign in-flight security officers and” after “Except as”.

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**Rule 91.9(b)**

Insert “by statute for in-flight security officers and foreign in-flight security officers and” after “provided”.

**Rule 91.9(d)(2)(ii)**

Omit “persons.” and substitute “persons; or”.

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**Rule 91.9(d)**

Add:

- “(3) in an aircraft by an in-flight security officer—
  - “(i) in the course of that officer’s duty; and
  - “(ii) as approved by the Director under **section 77D of the Act.**”
- “(4) in an aircraft by a foreign in-flight security officer in the course of that officer’s duty.

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**Rule 92.1**

Add:

- “(d) This Part does not apply to the carriage or use of ammunition by an in-flight security officer or a foreign in-flight security officer.”

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**Rule 108.53(b)(8)**

Insert “(other than in-flight security officers authorised by the Commissioner of Police and foreign in-flight security officers authorised by the Director)” after “all passengers”.

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Part 3—*continued***Rule 108.55(b)(12)**

Insert “(other than in-flight security officers authorised by the Commissioner of Police and foreign in-flight security officers authorised by the Director)” after “all passengers”.

5

**Rule 108.55(b)**

Add “; and” and also the following subparagraph:

“(19) the deployment of in-flight security officers and foreign in-flight security officers as appropriate will be facilitated.”

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**Rule 108.55**

Add:

“(f) The procedures required by **paragraph (b)(19)** must include evidence of consultation with the Commissioner of Police which is acceptable to the Director.”

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**Rule 140**

Appendix A.4(1): insert “(other than in-flight security officers authorised by the Commissioner of Police and foreign in-flight security officers authorised by the Director)” after “person”.

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**Legislative history**

11 September 2007

Divided from Aviation Security Legislation Bill (Bill 110–2) by committee of the whole House as Bill 110–3B

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