



Aviation: disruptive passengers

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There are a number of offences that can be committed by aircraft passengers under the *Air Navigation Order 2009*, such as: entering an aircraft while drunk; being drunk on an aircraft; using threatening language or engaging in threatening behaviour; interfering with an aircraft or its crew; endangering an aircraft; and refusing to obey an order from the aircraft commander. Various penalties are available for these offences, as set out in the following note.

Information on other aviation issues can be found on the [Aviation Topical Page](#) of the Parliament website.

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1 Overview

The *Air Navigation Order 2009* ([SI 2009/3015](#)), made under section 60 of the *Civil Aviation Act 1982*, as amended, is the main secondary legislation dealing with aviation safety. Part 19, Article 139 makes it an offence to enter an aircraft while drunk, or to be drunk on an aircraft and Article 142 proscribes standards of behaviour on an aircraft as follows:

A person must not while in an aircraft—

- (a) use any threatening, abusive or insulting words towards a member of the crew of the aircraft;
- (b) behave in a threatening, abusive, insulting or disorderly manner towards a member of the crew of the aircraft; or
- (c) intentionally interfere with the performance by a member of the crew of the aircraft of the crew member's duties.

Most seriously, it is an offence under Article 137 to endanger the safety of an aircraft.¹ Article 141 gives the 'commander of the aircraft' complete authority and states that every person on an aircraft "must obey all lawful commands which the commander of that aircraft may give for the purpose of securing the safety of the aircraft and of persons or property carried in the aircraft, or the safety, efficiency or regularity of air navigation". This would include the power to require a passenger not to consume alcohol if it appears that he is likely to become drunk.

Article 241 and Schedule 13 set out the penalties related to the offences listed above. Under Part B of Schedule 13, acting in a disruptive manner (using threatening language or behaving in a threatening manner) and refusing to obey the aircraft commander is subject to a maximum £2,500 fine. Under Part C of Schedule 13, drunkenness and intentionally interfering with the aircraft or crew is subject to a maximum £5,000 fine and two years imprisonment. Under Part D of Schedule 13, endangering the safety of an aircraft is subject to a maximum £5,000 fine and five years imprisonment.

These behavioural offences were introduced in 1999.² Following a series of incidents in the mid-to-late 1990s the then Labour Government called together representatives of the airline industry and other interested organisations in November 1998 to discuss ways in which the problem of disruptive behaviour by airline passengers could be addressed. As a result, a working group was established to consider ways of gaining reliable data about the number of incidents of disruptive behaviour and to consider the need for research into the causes. Its first meeting was on 1 February 1999. The Committee developed the unified reporting system for air rage incidents (see below) and considered other voluntary and legislative measures.³

The Transport sub-Committee of the Environment, Transport and Regional Affairs Select Committee looked at the subject of aviation safety, including the issue of so-called 'air rage', at about the same time. The Committee concluded that the media was partially to blame for reporting isolated incidents out of context but stated that the real problem was a lack of real research into what constituted 'air rage' and how best to deal with it.⁴

¹ this offence can apply to both those on an aircraft and also anyone outside the aircraft (either in the air or on the ground) who might endanger it

² [HL Deb 12 January 1999, cc153-54](#)

³ [HC Deb 9 February 1999, c151W](#)

⁴ ETRA Committee, *Aviations Safety* (fourteenth report of session 1998-99), HC 275, 21 July 1999, paras 87-90

2 Aviation (Offences) Act 2003

The *Aviation (Offences) Act 2003* made certain behaviours onboard an aircraft arrestable offences and set down the penalties available (the current regime is explained in section 1, above).

In a debate in the House of Lords on 12 January 1999 the then Transport Minister, Lord Whitty, addressed some of the suggested options for change in terms of how disruptive behaviour on aircraft is reported and dealt with. For example, with regards to taking alcohol onboard, he said:

Most UK airliners ban passengers from consuming their own alcohol on board and there is no substantial evidence to suggest that breaches of that rule are a substantial problem. It would be difficult to turn such a ban into law. Nevertheless, it is something that the airlines themselves will be considering.⁵

On arrestable offences, Lord Whitty said:

The other problem that arises relates to arrestable offences. The airlines and the police would like offences under the Air Navigation Order to be arrestable. There are clearly problems involved because they are not arrestable on the ground. I have some sympathy with that view and accept that enforcement of the articles would be easier if the police had the power of arrest. There are two legislative ways that could be achieved. Either the maximum penalty for the offences must be increased to five years' imprisonment, which would require an amendment to the Civil Aviation Act 1982, or the Police and Criminal Evidence Act 1984 would require amendment to bring the relevant offences within the definition of "arrestable" offences.

One would have to make a distinction between the various offences covered by the Air Navigation Order. A maximum penalty of five years' imprisonment would be regarded by most noble Lords--whatever their opinions of smoking in this place or elsewhere--as an excessive penalty for smoking where prohibited or failing to obey the lawful commands of the commander of the aircraft, although that is possibly more marginal. Either case would require primary legislation and we will be considering that in due course.⁶

The UK Airport Police Commander's Group issued a report on *Powers and Penalties for Offences on Aircraft and Aerodromes* in January 2000. It recommended that drunkenness on aircraft should be an arrestable offence. On 15 March 2001 Lord Whitty's successor as Transport Minister, Lord MacDonald, said that the Government was considering legislation to strengthen existing police powers to deal with drunkenness on aircraft.⁷ The Government also indicated that it was pressing for international action to ensure that crimes on board aircraft would be prosecuted appropriately in all States. Lord Whitty said:

The other problem relates to offences committed abroad which are pursued abroad and prosecuted in foreign courts. Not all states have taken jurisdiction for crimes committed on foreign aircraft en route to their airports. Consequently, the police in those states have been powerless to act against people who have committed acts of violence on board UK and other aircraft. The Government have raised the matter

⁵ [HL Deb 12 January 1999, c154](#); the Government asked for the industry's view whether and how to make this type of offence 'arrestable' in its 2000 consultation paper *The Future of Aviation: The Government's Consultation Document on Air Transport Policy*, but there was no mention of it in the following White Paper, *The Future of Air Transport*, published in December 2003

⁶ *ibid.*, c154

⁷ [HL Deb 15 March 2001, c988](#)

recently with the International Civil Aviation Organisation. We have offered to provide an aviation law specialist to serve on the working group that it has established to examine that problem.

Where jurisdictions do have rights, I know that some airlines, like some noble Lords in this debate, have been concerned that the jurisdictions have not regarded the offences seriously. One must have some sympathy with the Spanish authorities in that respect. They have to deal with a number of English drunks in all kinds of circumstances. It is also true that people jump bail within the UK jurisdiction, as well as in Spain. I appreciate that the airlines' concern is that lenient treatment will send the wrong signals to offenders. Airlines are particularly concerned where the offence has occurred on a British aircraft and could theoretically have been capable of prosecution either in the UK or in the country of destination. However, there is a problem that, where action has been taken, even if it has ended in relatively lenient treatment, it is difficult for us to argue that we should try the same offence twice--in other words, charge the offender again on that person's return to the UK. We are attempting to engage in ICAO and elsewhere with other governments to try to agree a more common approach to these problems.⁸

Frank Roy, the Labour MP for Motherwell and Wishaw, came ninth in the ballot of [Private Members Bills](#) for the 2002-03 session of Parliament. He introduced the *Aviation (Offences) Bill* to give police powers of arrest to deal with drunk or disruptive passengers on aircraft and to allow for a future increase in the penalty for endangering the safety of an aircraft or person in an aircraft.

It used to be the case that an arrest by a police constable without a warrant could only be made if the alleged offence was classified as an 'arrestable offence'. The *Police and Criminal Evidence Act 1984* (PACE) defined an arrestable offence as one for which the sentence was fixed in law (i.e. murder or treason); or for which someone over 21 years could be sentenced to imprisonment for a term of five years; or if it was listed in Schedule IA to PACE.⁹ The maximum penalty for the offence of drunkenness and disruptive behaviour was two years imprisonment so under the legislation the police did not have the power of arrest.

Clause 1 of the Bill inserted the offences of being drunk on an aircraft and of disruptive behaviour towards a member of the crew into Schedule IA of PACE so that they would be included in the list of arrestable offences. The Bill made separate provision for Scotland and Northern Ireland where different legislation applies.

At Second Reading on 7 February 2003 the Bill was agreed without a division. Mr Roy explained the need for the Bill in the following terms:

The Bill has its origins in the report published in 2000 by the UK airports police commanders group. In recognising the potential of disruptive behaviour to endanger the safety and security of the travelling public, the Association of Chief Police Officers commissioned a group of senior officers from airports throughout the country to investigate the adequacy of police powers to deal with aircraft and airport offences.

The report concluded that the powers of the police and the courts to crack down on air rage offences were inadequate. It highlighted the fact that the police were prevented from taking effective action, because they did not have the necessary powers to search

⁸ [HL Deb 12 January 1999, c155](#)

⁹ under Part 3 of the [Serious Organised Crime and Police Act 2005](#) all offences were made arrestable so PACE no longer applies; for more information on this change see [section IIIA of HC Library Research Paper RP 04/89](#)

and arrest many of those suspected of committing criminal offences on aircraft and at airports. In addition, the report found that a number of potentially serious offences carried relatively outdated minor penalties.

A number of offences in UK law relate to disruptive passenger behaviour on aircraft. However, quite unbelievably, none of those offences carries a statutory power of arrest. When an offence does not carry such a power, the police may arrest suspects only if they are likely to injure themselves or others, or if their identities cannot be established. In this day and age, the latter is unlikely because passengers carry passports or, on domestic flights, different forms of identification. (...)

The Bill would put into law recommendations made by airport police commanders in respect of in-flight offences. Clause 1 would introduce police powers of arrest to deal with drunk or disruptive passengers on aircraft. In England and Wales, an arrest by a police constable without a warrant can be made only if the alleged offence is classed as arrestable under the Police and Criminal Evidence Act 1984. To be arrestable, an offence must carry a maximum penalty of five years imprisonment or more. However, the offences cited carry only a maximum two-year penalty. Therefore, to make them arrestable, it is necessary to include them in a list of specific arrestable offences. (...)

Clause 2 would amend the *Civil Aviation Act 1982* to allow the possibility of introducing a maximum penalty of five years for an offence relating to endangering the safety of an aircraft or a person in an aircraft. That is clearly serious compared with drunkenness or disruptive behaviour, and the current two-year penalty is insufficient for such a serious matter. Increasing the maximum penalty to five years would automatically make this offence arrestable. Although the Bill is short and modest in its scope, the changes that it proposes would undoubtedly make enforcement of the law more effective. (...)

The Bill would implement recommendations made by the police and supported by airline trade unions. From the many meetings that I have had, the Bill also has the complete support of those in the airline industry including the Civil Aviation Authority, the UK Flight Safety Committee, the British Air Transport Association, British Airports Authority, the Board of Airline Representatives in the UK, and such airlines as British Airways, Britannia Airways, British European Airways and Virgin.¹⁰

Both the Government and the Opposition supported the Bill, though some Mps expressed concerns that it did not go far enough. For example, Anne McIntosh thought that the Bill was flawed in that it did not deal with the 42 per cent of passengers involved in such offences who had been drinking alcohol before boarding, or with the 40 per cent who drank their own alcohol on board the plane. Nor did the Bill explain who would be the authority with the power of arrest.¹¹ The Bill was considered in [Standing Committee C on 1 April 2003](#). It had all-party support and was agreed without amendment. It proceeded smoothly through all of its remaining stages and was given Royal Assent on 10 July 2003.

3 Number of incidents

Until 1999 the commander of an aircraft was only obliged to report incidents "endangering or, if not corrected, would endanger the aircraft, its occupants or any other person" under the Mandatory Occurrence Report Scheme (MORS) established under Article 106 of the *Air Navigation (No 2) Order 1995 (SI 1995/1970)*.¹² The number of incidents related to disruptive behaviour and drunkenness and considered relevant to flight safety that were reported to the

¹⁰ [HC Deb 7 February 2003, cc583-612](#)

¹¹ [ibid.](#), cc601-611

¹² now contained in Article 226 of the 2009 Order

CAA under this scheme was very low (rising from 13 to 62 between 1993 and 1997).¹³ In March 1999 the then Transport Minister, Glenda Jackson, announced that the Government had reviewed the 1997 MORs reports relating to passenger safety. Because these reports only related to those incidents with safety implications, the Government established a new system for airlines to report all incidents of disruptive behaviour on board UK aircraft.¹⁴

This led to a considerable increase in the number of reported incidents. Between 2004-05 and 2008-09, the number of 'serious' incidents fell from 53 to 44 per annum while the number of 'significant' incidents rose from 1,433 to 3,485. The proportion of incidents in which violence was involved fell from 12 to seven per cent over the same period and the proportion of incidents in which alcohol was a factor remain roughly the same (though in actual numbers it more than doubled – rising from 530 to 1,315).¹⁵ The Department for Transport's report on disruptive behaviour on board UK aircraft for 2008-09 give a breakdown on the nature of the incidents reported:

In 2008/09, a total of 3,529 reports of disruptive behaviour on board aircraft were received by the CAA. Of these, 44 were classified as serious and 3,485 as significant. In 2007/08 there were 31 serious and 2,671 significant reports, however comparisons must be treated with caution as reporting methods have changed over time.

Cabin crew are more likely to experience disruptive behaviour on board aircraft, by virtue of flying more frequently and the nature of their responsibilities. In 2008/09 there were: 796 reports of passengers arguing with crew, 983 reports of passengers disobeying crew, and 106 reports of violence directed towards cabin crew.

[...]

The offences described below are not mutually exclusive; some reports involved a number of different categories of event while others fell into only one category.

28% of incidents involved general disruptiveness, which might, for example, include noisy or rowdy passengers. 5% of incidents involved the use of a mobile phone or laptop and 3% involved disputes over the stowage of hand luggage. 18% of incidents involved passenger seating, use of seatbelts or passengers refusing to be seated.

28% of reported incidents involved passengers disobeying cabin crew instructions. 37% of reported incidents involved verbal abuse, of which 76% was directed towards cabin crew, 21% towards passengers and the remainder towards other staff, such as flight crew or security.

13% of reported incidents involved arguments between passengers. Typical causes were seating related (such as seats being reclined) and domestic disputes, with alcohol a common contributing factor in both categories.

Alcohol was involved in 37% of incidents. Of these incidents, 30% involved passengers drinking their own alcohol, 9% involved airline alcohol and 24% involved alcohol consumed prior to boarding. The remainder (38%) of alcohol reports did not state the source of the alcohol. Smoking was involved in 21% of incidents, of which 95% involved smoking in the toilet.

7% of incidents involved violence, of which 44% was directed towards cabin crew and 51% towards passengers. The remainder was directed towards other staff. 17% of

¹³ [HC Deb 14 July 1998, c117W](#)

¹⁴ [HC Deb 18 March 1999, c728W](#)

¹⁵ DfT, *Disruptive Behaviour On Board UK Aircraft 2008/09*, October 2009, Annex A

incidents involved threatening behaviour, of which 63% was directed towards cabin crew. The two most common contributing factors in violent incidents were alcohol and conflict with other passengers.¹⁶

¹⁶ *ibid.*, paras 2.1-2.2 & 4.1-4.6