



Home Office

# Enabling air transport through Facilitation

**Simon Watkin**

CALAF/3, 27 November 2024

- **International Carriage by Air and Data Protection Legislation** – resolving international transfers of personal data in the context of conflicting laws
- **Annex 9 to the Chicago Convention** – the task of the ICAO Working Group on Annex 9



# International Carriage by Air and Data Protection Legislation

## Article 13 *Entry and clearance regulations*

The laws and regulations of a contracting State as to the admission to or departure from its territory of passengers, crew or cargo of aircraft, such as regulations relating to entry, clearance, immigration, passports, customs, and quarantine shall be complied with by or on behalf of such passengers, crew or cargo upon entrance into or departure from, or while within the territory of that State.



# International Carriage by Air and Data Protection Legislation:

- the issue of conflicting national laws requiring disclosure and protection of personal data
- the impact of those conflicts on international transfers of passenger data, and
- the potential implications for aircraft operators, national authorities and facilitation

**Governments require aircraft operators *to disclose personal data*** – Advance Passenger Information, Passenger Name Record Data and, in a public health emergency, health-related data

**Governments may require aircraft operators *to protect* the same data**

**Aircraft operators need to transfer personal data** – to other operators (interline/codeshares), to travel agents and to ground handlers

## **Straightforward?**

Individual books in country A and flies from country A to country B. The laws of A and B are engaged.

Country A requires the operator to disclose passenger data to its authorities and requires the operator not to transfer personal data from A without a lawful basis.

Country B requires the operator to disclose passenger data to its authorities...

## Less Straightforward?

Individual books in country A with an operator processing data in country B, for a flight from A via C, overflying D, arriving in E to a connecting flight to F.

Countries A, C, D, E and F may require the operators to disclose passenger data to their authorities. The data protection laws of A, B are engaged, potentially others too...

The laws of A and B requires the operator not transfer personal data internationally without a lawful basis...

## **Why does this matter?**

Aircraft operators are exposed to penalties or to having their permissions to operate withdrawn.

Countries have legitimate needs to protect and secure their borders, counter terrorism and detect crimes.

International civil aviation is based upon global interconnectivity.

Digitalisation of industry and governments processes.



## UN Security Council Resolution 2396 (2017)

The Security Council *decides*....

that its Member States establish **advance passenger information (API)** systems [and] require airlines operating in their territories to provide API to the appropriate national authorities, ... , and to ensure API is analysed by all relevant authorities, **with full respect for human rights and fundamental freedoms** ...



## UN Security Council Resolution 2396 (2017)

The Security Council *decides*....

that Member States shall develop the capability to collect, process and analyse, in furtherance of ICAO standards and recommended practices, **passenger name record (PNR) data** and to ensure PNR data is used by and shared with all their competent national authorities, **with full respect for human rights and fundamental freedoms ...**



## UN Security Council Resolution 2396 (2017)

The Security Council *urges*....

ICAO to work with its Member States **to establish a standard for the collection, use, processing and protection of PNR data...**



## UN Security Council Resolution 2610 (2021)

The Security Council *reaffirms* ...

**its urging of ICAO to work with its Member States to implement ICAO Standards and Recommended Practices for the collection, use, processing and protection of PNR data;**



# ICAO PNR SARPs

Contracting States shall:

develop a capability to collect, use, process and protect Passenger Name Record (PNR) data for flights to and from its territory supported by appropriate legal and administrative framework ..., and be consistent with all Standards contained in ...Annex 9;

clearly **set the purposes** for which PNR data may be used ...;

**prevent unauthorised access, disclosure and use of PNR data** and ...

provide penalties for misuse, unauthorised access, and unauthorised disclosure;

take measures to **ensure individuals are informed about the collection, use, processing and protection of PNR data and related privacy standards employed** [and] that aircraft operators inform their customers about the transfer of PNR data;



# ICAO PNR SARPs

Contracting States shall:

provide for **administrative and judicial redress mechanisms** to enable individuals to seek a remedy for the unlawful processing of their PNR data by public authorities;

designate one (or more) competent domestic authority(ies) ... with the power to conduct **independent oversight of the protection of PNR data** ...

**retain PNR data for a set period** as defined in their legal and administrative framework ... [and] **delete or anonymise PNR data at the end of the retention period** except when used in connection with an identifiable ongoing case...

**not inhibit or prevent the transfer of PNR data by an aircraft operator** ... to another Contracting State provided that Contracting State's PNR data system is compliant with the Standards contained in ... Annex 9; and

**shall demonstrate, to any requesting Contracting State, their compliance** with the Standards contained in ... Annex 9.





[Border Force](#)



[Home Office](#)

Transparency data

# Compliance with international PNR data standards

Updated 12 September 2024

[www.gov.uk/government/publications/passenger-name-record-data-compliance-with-international-pnr-data-standards](https://www.gov.uk/government/publications/passenger-name-record-data-compliance-with-international-pnr-data-standards)

Passenger Name Record (PNR) data is information collected by airlines and other passenger service operators as part of their normal course of business and includes information required to complete and process a booking.

The International Civil Aviation Organization (ICAO) has developed Standards and Recommended Practices (SARPs) for the collection, use, processing and protection of PNR data. These SARPs are published in Chapter 9 of Annex 9 to the Convention on International Civil Aviation.

The numbered paragraphs below are taken from Chapter 9 of Annex 9. Each Standard and Recommended Practice is accompanied by a statement of how the UK meets it by reference to legislation, guidance, and practices:

9.1 Contracting States requiring the exchange of Advance Passenger Information (API)/interactive API (iAPI) and/or Passenger Name Record (PNR) data from aircraft operators shall create a Passenger Data Single Window facility for each data category, or both data categories combined, that allows parties involved to lodge standardized information with a common data transmission entry point to fulfil all related passenger and crew data requirements for that jurisdiction.

# ICAO: International Carriage by Air and Data Protection

## **ICAO Assembly (A41) (September 2022):**

*“Many delegates agreed that complex conflict of laws and legal compliance issues are broader than the provisions of Annex 9 — Facilitation and would need to be addressed. Following discussions, the Committee agreed that the actions presented in the Executive Summary of the paper should be considered and assessed by the relevant ICAO Panels and working groups.”*

## **ICAO Legal Committee (LC/39) (June 2024):**

*“interactions between international carriage by air and data protection laws raise legal inconsistencies that merit further study and cooperation. ... The majority of the delegations who spoke expressed support for ... the establishment of a multidisciplinary working group...”*

## **ICAO Council (C/233) (October 2024):**

*“the Council decided that on data protection laws, it invites the Legal Committee to establish a group, that includes members of the FAL Panel, to undertake a study with the understanding that the matter is not limited to aviation competences and is also the competence of States.”*





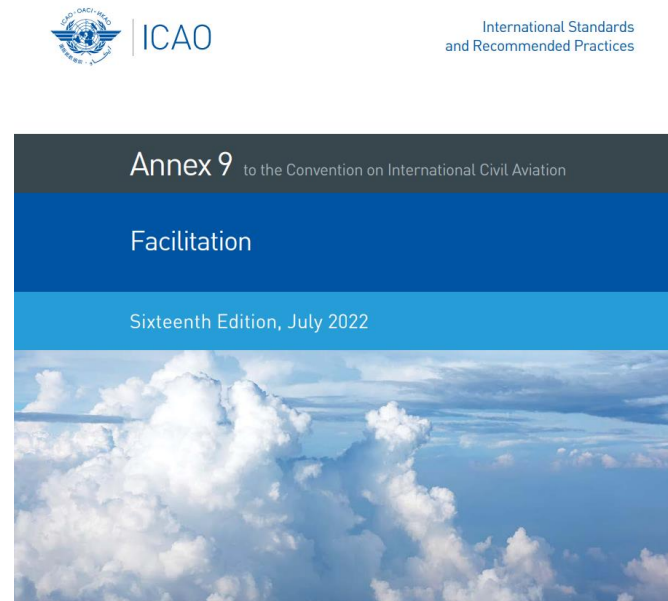
# Annex 9 to the Convention on International Civil Aviation



# Annex 9 to the International Convention on Civil Aviation



First Edition: 1949



This edition supersedes, on 18 November 2022, all previous editions of Annex 9.

For information regarding the applicability of the Standards and Recommended Practices, see the Foreword.

INTERNATIONAL CIVIL AVIATION ORGANIZATION

Sixteenth Edition : 2022



## Annex 9 to the International Convention on Civil Aviation

- Ten Chapters and over 400 SARPs – from signage and travelators, to inadmissible passengers, machine readable travel documents and health-related matters
- Some SARPs are over 50 years old
- ICAO Working Group on Annex 9 (WGA9) established by the FAL Panel (FALP/12) in July 2021 to review existing SARPs, and to consider and propose new SARPs
- WGA9 intended to enable the Panel to focus on policies, with WGA9 reviewing and drafting SARPs, and ensuring coherence of Annex 9
- challenge of maintaining the Annex 9 SARPs which cover a wide range of facilitation issues from passengers to cargo and post
- Very diverse interest groups from aircraft and airport operators to police, customs, immigration and health authorities involved
- Need to ensure same SARPs have meaning to States with very different operational capabilities and legal frameworks.
- Need to refocus on the principles of facilitation – the future for facilitation will be discussed by the ICAO Facilitation Conference (Doha, April 2025)



**[simon.watkin@homeoffice.gov.uk](mailto:simon.watkin@homeoffice.gov.uk)**



