

2002 No. 2817

IMMIGRATION AND ASYLUM

The Carriers' Liability Regulations 2002

Made - - - - - *15th November 2002*

Laid before Parliament *15th November 2002*

Coming into force - - *8th December 2002*

The Secretary of State, in exercise of his powers under sections 32(2A), (3) and (10), 35(5), (7), (9), (12) and (13), 36(2), 37(5B) and (7), 40A(4) and (6) and 166(3) of, and paragraphs 2 and 5 of Schedule 1 to, the Immigration and Asylum Act 1999(a), (having regard to the definition of “prescribed” in section 167 (1)), hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Carriers' Liability Regulations 2002 and shall come into force on 8th December 2002.

Interpretation

2. In these Regulations—

“the Act” means the Immigration and Asylum Act 1999;

“charge notice” means the notice mentioned in section 40A(2);

“clandestine entrant” has the meaning given by section 32(1) of the Act;

“penalty notice” means the notice mentioned in section 35(2) of the Act;

“notice of objection” means the notice mentioned in sections 35(4) and 40A(3) of the Act; and

“responsible person” means a person responsible for a clandestine entrant under section 32 of the Act.

Clandestine entrants: penalty payable in respect of each clandestine entrant

3.—(1) The amount prescribed for the purposes of section 32(2A)(a) of the Act (the maximum penalty payable by a responsible person in respect of a clandestine entrant or person concealed with him) is £2,000.

(2) The amount prescribed for the purposes of section 32(2A)(c) of the Act (the maximum aggregate penalty payable in respect of a clandestine entrant or person concealed with him) is £4,000.

(a) 1999 c. 33. Part II of the Act was amended by section 125 of, and Schedule 8 to, the Nationality, Immigration and Asylum Act 2002 (c. 41). Schedule 8 makes amendments to sections 32 to 37, 43 of, and Schedule 1 to, the Act; it inserts new sections 32A, 35A, 36A into the Act; for section 40, it substitutes new sections 40, 40A and 40B; and it causes sections 39 and 42 to cease to have effect.

Clandestine entrants: period within which a penalty must be paid

4.—(1) The period prescribed for the purposes of section 32(3) and 36(2) of the Act (the period within which a penalty imposed under section 32 must be paid) is 60 days from the date the responsible person was issued with the penalty notice in respect of the penalty concerned.

(2) In calculating this period of 60 days, no account shall be taken of any period during which the Secretary of State is in receipt of a notice of objection in connection with the penalty concerned but has not informed the objector under section 35(7)(a) of the Act of his decision.

Clandestine entrants: prescribed control zone

5.—(1) For the purposes of section 32(10) of the Act, that part of the territory of France situated at Coquelles which is a control zone for the purposes of the International Articles or the Tripartite Articles is a prescribed control zone.

(2) In paragraph (1), “the International Articles” has the same meaning as in the Channel Tunnel (International Arrangements) Order 1993(a) and “the Tripartite Articles” has the same meaning as in the Channel Tunnel (Miscellaneous Provisions) Order 1994(b).

Clandestine entrants and passengers without proper documents: period within which a notice of objection must be given

6. The period prescribed for the purposes of section 35(5) of the Act (period for giving notice of objection to a penalty) and section 40A(4) of the Act (period for giving notice of objection to a charge), is 28 days from the date the person was issued with the penalty notice in respect of the penalty, or (as the case may be) served with the charge notice in respect of the charge, concerned.

Clandestine entrants and passengers without proper documents: period within which the Secretary of State must inform the objector of his decision

7. The period prescribed for the purposes of sections 35(7) and 40A(6) of the Act (the period within which the Secretary of State must inform the objector of his decision) is 70 days from the date the objector was issued with the penalty notice in respect of the penalty, or (as the case may be) served with the charge notice in respect of the charge, concerned.

Clandestine entrants: issue of a penalty notice in relation to detached trailers

8. In relation to a detached trailer, and for the purposes of section 35(9) of the Act, a penalty notice issued by affixing it to a conspicuous part of the trailer shall have effect as a penalty notice properly issued, on the responsible person or persons concerned.

Sale of transporters: notice of proposed sale

9.—(1) Before applying to the court under Schedule 1 to the Act for leave to sell a transporter, the Secretary of State shall take the steps specified in paragraphs (2) and (3) for bringing the proposed application to the notice of persons whose interests may be affected by a decision of the court to give leave and for affording to any such person an opportunity of becoming a party to the proceedings if the Secretary of State applies for leave.

(2) At least 21 days before applying to the court, the Secretary of State shall publish a notice complying with paragraph (6):

- (a) in the London Gazette;
- (b) in one or more newspapers circulating in the locality in which the transporter is detained, and
- (c) where it is detained—
 - (i) in Scotland, in the Edinburgh Gazette, or
 - (ii) in Northern Ireland, in the Belfast Gazette.

(a) S.I. 1993/1813, *see* article 2(3).
(b) S.I. 1994/1405, *see* article 2(3).

(3) At least 21 days before applying to the court the Secretary of State shall, unless it is impracticable to do so, serve a notice which complies with the requirements of paragraph (6) on any person to whom any relevant penalty notice was addressed.

(4) In paragraph (3), “relevant penalty notice” means a penalty notice in respect of which the transporter concerned is, under section 36(1) or section 36A of the Act, detained, together with any other penalty notice actually issued in respect of the same carriage of clandestine entrants.

(5) If any person who has been served with a notice in accordance with paragraph (3) informs the Secretary of State within 21 days of the service of the notice of his desire to become a party to the proceedings, the Secretary of State shall make that person a defendant to the application.

(6) A notice for the purposes of paragraph (3) shall:

- (a) (where reasonably possible) state the country of registration and registration number of the transporter;
- (b) state the type of transporter and give any distinguishing features or markings that may serve to identify it;
- (c) state that, on the date specified in the notice, the transporter was detained under (as the case may be):
 - (i) section 36(1) of the Act as security for the payment of one or more penalties due under section 32 of the Act; or
 - (ii) section 36A of the Act in default of payment of one or more penalties due under section 32 of the Act,

and, that, unless payment of the sum due and any connected expenses is made within 21 days of the date of publication or (as the case may be) service of the notice, the Secretary of State shall, without further notice, apply to the court for leave, under Schedule 1 to the Act, to sell the transporter; and

(d) invite:

- (i) where the notice is published under paragraph (2), any person who considers his interests may be affected by any sale of the transporter; or
- (ii) where the notice is served on a person, that person,

to inform the Secretary of State in writing within 21 days of the date of publication or (as the case may be) service of the notice if he wishes to become a party to the proceedings on the application.

Service of documents

10.—(1) A notice may be served on a person under regulation 9(3) by:

- (a) delivering it to that person;
- (b) leaving it at his proper address;
- (c) sending it to his proper address by first class post in a prepaid registered envelope or by the recorded delivery service;
- (d) facsimile, sent to his usual or last known business facsimile number;
- (e) electronic mail, sent to his usual or last known business electronic mail address.

(2) Any notice required to be served on any body corporate or unincorporated association under regulation 9(3), other than a partnership, may be served on the secretary or clerk or other similar officer of that body.

(3) Any notice required to be served on any partnership under regulation 9(3) may be served on a partner or a person having control or management of the partnership business.

(4) For the purpose of this regulation, the proper address of any person on whom or to whom any such notice is to be served, shall be his last known place of business or abode, except that such address shall be:

- (i) in the case of a body corporate or its secretary or clerk, the address of the registered office or principal office of the body corporate;
- (ii) in the case of an unincorporated association (other than a partnership) or its secretary or clerk, the address of the principal office of the association; and
- (iii) in the case of a partnership or a partner or person having control or management of the partnership business, the address of the principal office of the partnership,

and for the purposes of this regulation the principal office of a company registered outside the United Kingdom, or of an unincorporated association or partnership carrying on business outside the United Kingdom, shall be, if it has an office within the United Kingdom, its sole or principal office here.

(5) Any notice which is sent by post in accordance with this regulation to a place outside the United Kingdom shall be sent by airmail or by some other equally expeditious means.

Sale of transporters: period within which the power of sale must be exercised

11.—(1) The period prescribed for the purposes of section 37(5B) of the Act (the period within which the power of sale must be exercised in order that it shall not lapse) is 60 days after the date upon which the power of sale could have first been exercised under section 37(4) of the Act.

(2) In calculating the period mentioned in paragraph (1), no account shall be taken of any period during which the Secretary of State has applied to the court for leave to sell a transporter under Schedule 1 to the Act but the court has not determined that the transporter may be sold.

Sale of transporters: period after which the power of sale may be exercised

12. The period prescribed for the purposes of section 37(7)(b) of the Act (the period after which the Secretary of State may sell a transporter detained under section 36A of the Act if the penalty and connected expenses have not been paid) is 14 days from the date the detention began.

Sale of transporters: application of proceeds of sale

13. The proceeds of any sale under section 37 of the Act shall be applied as follows, and in the following order:

- (a) in payment of any expenses reasonably incurred by the Secretary of State in connection with the detention and sale of the transporter, including the Secretary of State's expenses in connection with the application to the court;
 - (b) in payment of the penalties or (as the case may be) charges which the court has found to be due;
 - (c) in payment of any duty (whether of customs or excise) chargeable on imported goods or value added tax which is due in consequence of the transporter having been brought into the United Kingdom;
 - (d) where the transporter is an aircraft, in payment of any charge in respect of the aircraft which is due by virtue of regulations under section 73 of the Civil Aviation Act 1982;
- and the surplus, if any, shall be paid to or among the person or persons whose interests in the transporter have, to the knowledge of the Secretary of State, been divested by reason of the sale.

Presumptions about service of documents

14.—(1) For the purposes of these Regulations:

- (a) where a notice is sent by first class post in a prepaid registered envelope or by the recorded delivery service, addressed to the person to whom the notice is required to be served, it is to be taken to have been received by (and served on) that person on the second day after the day on which it was sent;
- (b) where a notice is sent by facsimile, to the last known business facsimile number of the person to whom notice is required to be served, it is to be taken to have been received by (and served on) that person on the day on which it was sent;
- (c) where a notice is sent by electronic mail, to the last known business electronic mail address of the person to whom notice is required to be served, it is taken to have been received by (and served on) that person on the day on which it was sent; and
- (d) where a notice is sent in accordance with regulation 10(5), addressed to the person to whom notice is required to be served, it is to be taken to have been received by (and served on) that person on the fourth day after the day on which it was sent.

(2) A document issued or served on a person outside the United Kingdom for the purposes of section 35(1) or (7) of the Act, or in the course of proceedings under section 35(10) of the Act, is to be taken to have been received by that person:

- (a) where it is issued or served by post, on the fourth day after the day on which it was sent;
- (b) where it is issued or served by facsimile to the last known business facsimile number of the person concerned, on the day on which it was sent.

Revocation

15. The Carriers' Liability (Clandestine Entrants and Sale of Transporters) Regulations 2000**(a)** and the Carriers' Liability (Clandestine Entrants and Sale of Transporters) (Amendment) Regulations 2001**(b)** are hereby revoked.

Home Office
15th November 2002

Filkin
Parliamentary Under-Secretary of State

(a) S.I. 2000/685.
(b) S.I. 2001/311.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace the regulations revoked by regulation 15 by making provision in respect of the procedure governing the carrier's liability provisions of Part II of the Immigration and Asylum Act 1999 ("the Act") as amended by section 125 of, and Schedule 8 to, the Nationality, Immigration and Asylum Act 2002 (c. 41). In particular, the Regulations concern the penalty for carrying clandestine entrants established by, and the sale of transporters under, Part II of the Act. They also concern the charge imposed in respect of passengers without proper documents.

In the case of the penalty for clandestine entrants, these Regulations:

- (a) set the maximum amount of the penalty payable by a responsible person at £2,000 (regulation 3);
- (b) set the maximum aggregate amount of the penalty at £4,000 (regulation 3);
- (c) set the period within which a penalty must be paid as 60 days from the date of issue of the penalty notice (regulation 4);
- (d) prescribe the control zone at Coquelles, France, as a place where carrying, or attempting to carry, a concealed person through UK immigration control gives rise to a penalty (regulation 5); and
- (e) provide for the manner in which issue of a penalty notice may be effected in relation to detached trailers (regulation 8).

In the case of the penalty for clandestine entrants and the charge in respect of passengers without proper documents, these Regulations:

- (a) set the period within which a notice of objection to a penalty, or (as the case may be) a charge, must be given as 28 days from the date of issue of the penalty notice, or (as the case may be) the date of service of the charge notice (regulation 6); and
- (b) set the period within which the Secretary of State must inform the objector of his decision in relation to the notice of objection (regulation 7).

In the case of sales of transporters, these Regulations:

- (a) set out the steps which the Secretary of State must take prior to applying to the Court for leave to sell a detained transporter (regulations 9 and 10);
- (b) prescribe the period within which the power of sale must be exercised (regulation 11); and the period after which the power of sale may be exercised following detention of a transporter under section 36A of the Act (regulation 12); and
- (c) prescribe how the proceeds of any such sale are to be applied (regulation 13).

Regulation 14 provides for presumptions in respect of the service of documents.

Regulation 15 revokes the Carriers' Liability (Clandestine Entrants and Sale of Transporters) Regulations 2000 (S.I. 2000/685) and the Carriers' Liability (Clandestine Entrants and Sale of Transporters) (Amendment) Regulations 2001 (S.I. 2001/311).

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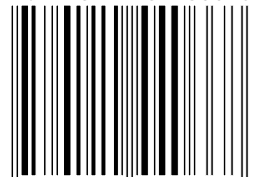
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