
STATUTORY INSTRUMENTS

2001 No. 280

IMMIGRATION AND ASYLUM

**The Carriers' Liability (Clandestine Entrants)
(Application to Rail Freight) Regulations 2001**

Made - - - - - *5th February 2001*
Laid before Parliament *6th February 2001*
Coming into force in accordance with regulation 1(1)
and (2)

Whereas the Secretary of State, in satisfaction of the requirements of section 39(3) of the Immigration and Asylum Act 1999⁽¹⁾, has consulted, in the way he considers appropriate, persons appearing to him to be likely to be affected by the imposition of penalties under regulations made under section 39(1) of that Act;

Now, therefore, the Secretary of State, in exercise of his powers under sections 39(1), 43 and 167(1)⁽²⁾ of the Immigration and Asylum Act 1999, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001, and (subject to paragraph 2) shall come into force on 1st March 2001.

(2) For the purposes of enabling the exercise of the power to bring into operation a code of practice under section 33, and the powers to prescribe⁽³⁾ given by—

section 32(2) (amount of penalty payable);

section 32(3) and 36(2) (period within which the penalty must be paid);

section 35(7) and (8) (period for giving notice of objection);

paragraph 2 of Schedule 1 (steps to be taken before applying for leave to sell a transporter); and

paragraph 5 of Schedule 1 (application of the proceeds of sale),

these Regulations shall come into force on 7th February 2001.

(3) In these Regulations—

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

⁽¹⁾ 1999 c. 33.

⁽²⁾ See definition of “rail freight wagon” in section 43, and of “prescribed” in section 167(1).

⁽³⁾ See definition of “prescribed” in section 167(1).

“locomotive” and “rolling stock” have the meanings given in section 83 of the Railways Act 1993(4);

“train” means any train other than—

- (a) a train engaged on a service for the carriage of passengers; or
- (b) a train which is a shuttle train as defined by section 1(9) of the Channel Tunnel Act 1987(5).

(4) A reference to a section or a Schedule is to a section or Schedule of the 1999 Act.

(5) A reference to a regulation is to a regulation of these Regulations, and within a regulation a reference to a paragraph is to a paragraph of that regulation.

Meaning of “rail freight wagon”

2. For the purposes of Part II of the 1999 Act and for the purposes of these Regulations, “rail freight wagon” means any rolling stock, other than a locomotive, which forms part of a train.

Application of Part II of the 1999 Act

3. The provisions set out in regulation 4 apply for the purpose of enabling penalties to be imposed in respect of a person (“a clandestine entrant”) who—

- (a) arrives in the United Kingdom concealed in a rail freight wagon; and
- (b) claims, or indicates that he intends to seek, asylum in the United Kingdom or evades, or attempts to evade, immigration control.

4.—(1) Subject to the modifications set out in paragraphs (2) to (9), the following provisions apply for that purpose—

section 32(2) to (5), (7) and (10);

section 33;

section 34;

section 35(1), (2), (6), (7), (8) and (10);

section 36;

section 37;

section 43, to the extent that it defines—

“concealed”;

“court”;

“penalty notice”;

“senior officer”; and

“train”.

(2) In section 32(2)(b), for “transporter” substitute “rail freight wagon”.

(3) For section 32(5) substitute—

“(5) Each of the following persons is responsible for a clandestine entrant who arrives in the United Kingdom concealed in a train—

(4) 1993 c. 43.

(5) 1987 c. 53.

- (a) the railway operator who, at its last scheduled stop before arrival in the United Kingdom, had the duty of certifying the train as fit to travel to the United Kingdom;
 - (b) any other railway operator who has entered into an arrangement with that operator under which they share profits or liabilities arising from that train's journey from the last scheduled stop into the United Kingdom.”
- (4) In section 32(7)(a) and (b), for “transporter” substitute “rail freight wagon”.
- (5) In section 33(3), for “passing of this Act” substitute “making of regulations under section 39”.
- (6) In section 34(3)(a), for “transporter” substitute “rail freight wagon”, and in section 34(3)(b) for “transporter” substitute “train including that rail freight wagon”.
- (7) In section 35(6), omit the words “or who is treated as having had a penalty notice served on him”.
- (8) In section 36(1) for “(a) vehicle, (b) small ship, or (c) small aircraft” substitute “transporter”, and after section 36(1) insert—
- “(1A) For those purposes, “transporter” means the rail freight wagon in which the clandestine entrant arrived in the United Kingdom.”.
- (9) Section 43 is modified as follows—
- (a) in the definition of “concealed”, for “vehicle, ship or aircraft” substitute “rail freight wagon”;
 - (b) for the definition of “train”, substitute that given in regulation 1(3).

Transitional provision

5. No penalty shall be imposed pursuant to these Regulations in respect of a train which made its last scheduled stop, before arriving in the United Kingdom, prior to 1st March 2001.

5th February 2001

Barbara Roche
Minister of State Home Office

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations apply certain provisions of Part II of the Immigration and Asylum Act 1999 (“the 1999 Act”), for the purpose of enabling penalties to be imposed in respect of certain persons (“clandestine entrants”) who arrive in the United Kingdom concealed in a rail freight wagon. Some of those provisions are modified for that purpose.

Regulation 1 contains definitions of terms used in the Regulations. It also provides for certain provisions to come into force on 7th February 2001, for the purposes of enabling the exercise of powers to bring into operation a code of conduct, and to prescribe such matters as the amount of the penalty, the length of the periods for payment and for serving notice of objection, etc. Otherwise, the Regulations come into force on 1st March 2001.

Regulation 2 defines “rail freight wagon”, for the purposes of Part II of the 1999 Act and the Regulations. A rail freight wagon includes any rolling stock (other than a locomotive) which forms part of a train, other than a passenger train or a shuttle train operating through the Channel Tunnel.

Regulation 3 provides for the application of Part II of the 1999 Act for the purpose of enabling the penalties to be imposed.

Regulation 4 sets out the provisions of Part II of the 1999 Act which apply, namely—

Section 32 (as applied in part and modified), which defines the persons who are liable to the penalty, and gives the Secretary of State a power to prescribe the amount of the penalty and the period during which the penalty must be paid.

Section 33 (as modified), which requires the Secretary of State to issue a code of practice to be followed in operating a system for preventing the carriage of clandestine entrants.

Section 34 (as modified), which provides defences to a liability arising under section 32, namely those of duress (subsection (2)), and the proper operation of an effective system for preventing clandestine entrants (subsection (3)). For the purposes of the latter defence, regard is to be had to the code of practice issued under section 33.

Section 35 (as applied in part and modified), which provides for a procedure of notifying a decision to impose a penalty, and for a person receiving such a notice to service a notice of objection contesting liability. The Secretary of State has a power to prescribe the period during which any notices of objection must be served, and a duty to consider such notices if they are served within the period prescribed. If he determines that the penalty is payable, he may enforce it by means of civil proceedings for debt.

Section 36 (as modified), which gives a senior immigration officer the power to detain the rail freight wagon containing the clandestine entrant, if no alternative satisfactory security for payment of the penalty has been given and there is in his opinion a significant risk that the penalty will not be paid.

Section 37, which allows someone claiming an interest in the rail freight wagon to apply to the court for its release. Under certain conditions the wagon may be sold, in accordance with the procedure laid down in Schedule 1 to the Act.

Section 43 (as applied in part and modified), which contains definitions of terms used.

Regulation 5 contains a transitional provision.

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A regulatory impact assessment has been prepared in respect of these Regulations, and copies may be obtained from: Diane Taylor, European Directorate, Immigration and Nationality Directorate, Home Office, 2nd Floor Podium, Apollo House, 36 Wellesley Road, Croyden CR9 3RR. A copy has also been placed in the library of each House of Parliament.