STATUTORY INSTRUMENTS

2000 No. 685

IMMIGRATION AND ASYLUM

The Carriers' Liability (Clandestine Entrants and Sale of Transporters) Regulations 2000

Made - - - -	*8th March 2000*
Laid before Parliament	*10th March 2000*
Coming into force	*3rd April 2000*

The Secretary of State, in exercise of his powers under sections 32(2), (3) and (10), 35(7) to (9), 36(2), 166(3) and 167**(a)** of, and paragraphs 2 and 5 of Schedule 1 to, the Immigration and Asylum Act 1999**(b)**, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Carriers' Liability (Clandestine Entrants and Sale of Transporters) Regulations 2000 and shall come into force on 3rd April 2000.

Interpretation

2. In these Regulations–

"the Act" means the Immigration and Asylum Act 1999;

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

"penalty notice" has the meaning given by section 35(2) of the Act;

"notice of objection" has the meaning given by section 35(7) 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. The amount prescribed for the purposes of section 32(2) of the Act (the penalty payable in respect of a clandestine entrant or person concealed with him) is £2000.

Clandestine Entrants: Period of time within which a penalty must be paid

4.—(1) The period prescribed for the purposes of sections 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 served with the penalty notice in respect of the penalty concerned or, if there is more than one responsible person, 60 days from the date the first such person was so served.

(a) *See* definition of "prescribed".
(b) 1999 c. 33.

(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 notified the person giving it of his determination under section 35(8) of the Act in respect of the penalty.

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: Period of time within which a notice of objection must be given

6. The period prescribed for the purposes of section 35(7) and (8) of the Act (the period of time within which a notice of objection to a penalty must be given) is 30 days from the date the responsible person was served with the penalty notice in respect of the penalty concerned or, if there is more than one responsible person, 30 days from the date the first such person was so served.

Clandestine Entrants: Service of a penalty notice in relation to detached trailers

7. In relation to a detached trailer, a penalty notice served by affixing it to a conspicuous part of the trailer shall have effect as a penalty notice properly served, on the responsible person or persons concerned, under section 35 of the Act.

Sale of transporters: notice of proposed sale

8.—(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 following steps 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:

(a) at least 21 days before applying to the court, the Secretary of State shall publish:

(i) in the London Gazette and, if the transporter is detained in Scotland, also in the Edinburgh Gazette and if the transporter is detained in Northern Ireland, also in the Belfast Gazette; and

(ii) in one or more local newspapers circulating in the locality in which the transporter is detained,

a notice which complies with the requirements of regulation 9(1); and

(b) 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 regulation 9(1):

(i) where the proposed sale is to be under section 37(4) of the Act, on any person to whom any relevant penalty notice was addressed;

(ii) where the proposed sale is to be under section 42(4) of the Act, on those persons on whom he has made a relevant demand for payment under section 40(3) of the Act;

(2) In paragraph (1):

(a) "relevant penalty notice" means a penalty notice on the authority of which the transporter concerned is, under section 36(1) of the Act, detained, together with any other penalty notice actually served in respect of the same carriage of clandestine entrants; and

(b) "relevant demand for payment" means a demand for payment of any charges or expenses in respect of which the transporter concerned is detained under section 42.

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

9.—(1) A notice for the purposes of regulation 8(1) 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 a date specified in the notice, the transporter was detained under (as the case may be):

(i) section 36 of the Act as security for the payment of one or more penalties due under section 32 of the Act; or

(ii) section 42 of the Act as security for the payment of one or more charges due under section 40 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 may, 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 in a Gazette or newspaper, 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.

(2) A notice may be served on a person under regulation 8(1)(b) 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.

(3) Any notice required to be served on any body corporate or unincorporated association under regulation 8(1)(b), other than a partnership, may be served on the secretary or clerk or other similar officer of that body.

(4) Any notice required to be served on any partnership under regulation 8(1)(b) may be served on a partner or a person having control or management of the partnership business.

(5) 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.

(6) 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: Application of proceeds of sale

10. The proceeds of any sale under section 37 or 42 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 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.

Service of documents

11. 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 9(6), 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 second day after the day on which it was sent.

Home Office
8th March 2000

Barbara Roche
Minister of State

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations concern the penalty for carrying clandestine entrants established by, and the sale of transporters under, Part II of the Immigration and Asylum Act 1999.

In the case of the penalty for clandestines, these Regulations:

(a) set the amount of the penalty at £2,000 (regulation 3);

(b) set the period within which a penalty must be paid as 60 days from the date of service of the penalty notice (regulation 4);

(c) 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);

(d) set the period within which a notice of objection to a penalty must be given as 30 days from the date of service of the penalty notice (regulation 6); and

(e) provide for the manner in which service of a penalty notice may be effected in relation to detached trailers (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 8–9); and

(b) prescribe how the proceeds of any such sale are to be applied (regulation 10).

Regulation 11 makes further provision about service of documents under the Regulations.

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