2001 No. 3232

IMMIGRATION AND ASYLUM

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

Made - - - - - *25th September 2001*

Laid before Parliament *26th September 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(**a**), 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)(**b**) 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) (Amendment) Regulations 2001, and (subject to paragraph 2) shall come into force on 1st October 2001.

(2) For the purpose of enabling the exercise of the power to bring into operation a code of practice under section 33(1) and (4) of the Immigration and Asylum Act 1999, these Regulations shall come into force on 27th September 2001.

(3) In these Regulations, "the principal Regulations" means the Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001(**c**).

Amendment of the principal Regulations

2.—(1) The principal Regulations shall be amended as follows.

(2) In regulation 1(3), for the definition of "train" substitute—

""train" means any train other than—

(a) a train engaged on a service for the carriage of passengers; or

(b) a shuttle train";

and insert the following definitions—

""freight shuttle wagon" means a wagon which—

(a) forms part of a shuttle train; and

(**a**) 1999 c. 33.
(**b**) *See* definition of "rail freight wagon" in section 43, and of "prescribed" in section 167(1).
(**c**) S.I. 2001/280.

(b) is designed for the purpose of carrying heavy commercial goods vehicles;" and " "shuttle train" has the meaning given by section 1(9) of the Channel Tunnel Act 1987(**a**);".

(3) In regulation 1(4), for "or Schedule of" substitute "of or Schedule to".

(4) For regulation 2 substitute—

"**2.** For the purposes of Part II of the 1999 Act and for the purposes of these Regulations, "rail freight wagon" means—

(a) any rolling stock, other than a locomotive, which forms part of a train; or

(b) a freight shuttle wagon.".

(5) After regulation 4(3) insert—

"(3A) After section 32(5) insert—

"(5A) In the case of a clandestine entrant who arrives in the United Kingdom concealed in a freight shuttle wagon, the responsible person is the operator of the shuttle train which includes that freight shuttle wagon.".".

(6) For regulation 4(6) substitute—

"(6) In section 34(3)—

(a) in paragraph (a), for "transporter" substitute "rail freight wagon, or, knowing, or having reasonable grounds for suspecting, that a clandestine entrant was, or might be, concealed in the rail freight wagon in circumstances where the clandestine entrant had boarded the train or shuttle train after it had commenced its journey to the United Kingdom, he was not able to stop the train or shuttle train without endangering safety"; and

(b) in paragraph (b), for "transporter" substitute "train, or shuttle train, including the rail freight wagon.".".

(7) In regulation 4(9), after sub-paragraph (b) insert—

"(c) to those definitions, add the definitions of "freight shuttle wagon" and "shuttle train" given in regulation 1(3).".

Transitional provision

3. No penalty shall be imposed pursuant to the principal Regulations in respect of a shuttle train which embarked on its journey to the United Kingdom prior to 1st October 2001.

Home Office
25th September 2001

John Denham
Minister of State

(**a**) 1987 c. 53.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Carriers' Liability (Clandestine Entrants) (Application to Rail Freight) Regulations 2001 ("the principal Regulations"). The principal Regulations apply (in some cases with modifications) 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. These Regulations extend the definition of "rail freight wagon" given in the principal Regulations to include certain wagons forming part of the shuttle service operating through the Channel Tunnel, and make certain other amendments.

Regulation 1 provides for the Regulations to come into force on 27th September 2001 for the purposes of enabling the exercise of powers to bring into force the code of practice issued under section 33 of the 1999 Act. Otherwise the Regulations come into force on 1st October 2001.

Regulation 2 makes a number of amendments to the principal Regulations—

Paragraph 2 simplifies the definition of "train", and inserts new definitions of "freight shuttle wagon" and "shuttle train".

Paragraph 3 corrects a minor grammatical error.

Paragraph 4 substitutes an expanded definition of "rail freight wagon", which now includes freight shuttle wagons.

Paragraph 5 defines the persons responsible for a clandestine entrant who arrives in the United Kingdom concealed in a freight shuttle wagon.

Paragraph 6 makes consequential amendments and also has the effect of modifying section 34 (3) (a) of the 1999 Act so that the carrier may be able to establish a defence to a penalty where, knowing, or having reasonable grounds to suspect, that a clandestine entrant was or might be, concealed in the rail freight wagon in circumstances where the clandestine entrant had boarded the train or shuttle train after it had commenced its journey to the United Kingdom, the carrier was unable to stop the train or shuttle train without endangering safety.

Paragraph 7 makes consequential amendments.

Regulation 3 contains a transitional provision.

A regulatory impact Assessment has been prepared, and copies may be obtained from Diane Taylor, Home Office, International Policy Directorate, Apollo House, 36 Wellesley Road, Croydon CR9 3RR. A copy has also been placed in the library of each House of Parliament.

STATUTORY INSTRUMENTS

2001 No. 3232

IMMIGRATION AND ASYLUM

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

ISBN 0-11-029998-1

9 780110 299983

£1.75

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Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.
E1701 10/2001 660495 19585