

# **Charging Procedures**

## **A Guide for Carriers**

**Section 40 The Immigration and Asylum Act 1999 (as amended)**

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### 1. Introduction

#### 1.1 Who is the Guide for?

This guide has been prepared to help carriers understand how charges incurred under Section 40 of the Immigration and Asylum Act 1999 (I&AA) (as amended<sup>1</sup>) are administered. It informs carriers of the circumstances under which liability to a charge may arise. It also includes guidance on how to make representations against the imposition of charges, the objections procedure should a charge be imposed, and the right of appeal to the courts.

#### 1.2 When did the current provisions take effect?

Section 40 of the I&AA came into effect on 8<sup>th</sup> December 2002. It replaced the Immigration (Carriers' Liability) Act 1987 (ICLA) which has now been repealed. However, carriers will continue to be liable under the ICLA for charges incurred in respect of persons who arrived without the required documents prior to 8<sup>th</sup> December 2002.

#### 1.3 When is a charge incurred?

Section 40 of the I&AA provides for a charge (currently £2,000) to be imposed on the owners, agents or operators of a ship or aircraft<sup>2</sup> where a person requiring leave to enter (i.e. **not** a British Citizen, or other national of the European Economic Area, or Switzerland) arrives in the U.K. and fails to produce:

- a valid "immigration document" which satisfactorily establishes his identity and nationality or citizenship. (An immigration document is defined as a passport or other document which relates to a national of a country other than the United Kingdom and which is designed to serve the same purpose as a passport.)
- and, if the individual requires a visa, a visa of the required kind.

#### 1.4 What is expected of a carrier?

**There is no requirement that a carrier should satisfy itself that the person will be acceptable to the United Kingdom authorities on arrival. That judgement can only be exercised by the immigration officer. However, carriers are expected to ensure that:**

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<sup>1</sup> S40 of the I&AA 1999 has been amended by Section 125 of and Schedule 8 to the Nationality, Immigration and Asylum Act 2002.

<sup>2</sup> Under S.40(7) of the I&AA 1999 the Secretary of State may by order apply these provisions to passengers arriving by train.

- a passport or other immigration document presented by the person is acceptable for entry into the United Kingdom;
- the person is the rightful holder ;
- the document is valid; and,
- if the person needs a visa, it is of the required kind and is valid for the holder and any other accompanying persons named in the passport. (See Section 2.1)

A visa endorsed “Direct Airside Transit” does not permit the holder to go through the Immigration control at the port of arrival and enter the UK.

**The responsibility for deciding whether to carry the person rests with the carrying company in every case.**

### 2.1 Visas

A person requires a visa if:

- under the Immigration Rules he requires a visa for entry to the United Kingdom; or
- under the Immigration Passenger Transit Visa Order 2003<sup>3</sup> (as amended<sup>4</sup>) he requires a visa to pass through the United Kingdom without entering.

The carrier is liable to a charge if a person requires a visa but does not hold a valid visa of the required kind. As a rule, there are two kinds of visas with which carriers need be concerned: those valid for entry to the UK and those valid for passing through the UK.

If a passenger intends to pass through the United Kingdom without entering, i.e. he is in direct transit airside and does not need to pass through the UK immigration control to proceed to his next destination, then he should hold a visa endorsed "Direct Airside Transit".

If the passenger intends or needs to seek entry to the UK, the visa must be valid for the passenger to enter the United Kingdom. A visa endorsed "Direct Airside Transit" is not valid for entry to the United Kingdom. A visa with any other endorsement is valid for entry to the UK. In most cases, if the passenger holds a valid entry visa, the carrier need not be concerned about the purpose for which the visa was issued, such as "Visit" or "Student," unless the holder holds a visa endorsed "Child visitor" – see below.

Carriers are expected to ensure that the visa is valid for the holder as well as for any other accompanying persons named in the passport. They should examine both the date from which the visa is valid, and the date of expiry of the visa. If it is valid for a limited number of journeys, they should check whether it has been used previously.

If a passenger holds a visa endorsed "Child visitor", the carrier should check whether the visa is endorsed "accompanied or "unaccompanied". Where the visa is endorsed "accompanied," the visa will give details of the adult or adults who must accompany the child. If a child who holds a child visit visa endorsed "accompanied" arrives either unaccompanied or with a person other than the person specified in the visa, then the carrier will be liable to charge.

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<sup>3</sup> The Immigration (Passenger Transit Visa) Order 2003 (S.I. 2003/1185) was made under S.41 of the I&AA 1999.

<sup>4</sup> At the time of going to press, The Immigration (Passenger Transit Visa) Order had been amended by The Immigration (Passenger Transit Visa) (Amendment) Order 2003 (SI2003/1598) (now revoked), The Immigration (Passenger Transit Visa) (Amendment No 2) Order 2003 (SI 2003/2628), The Immigration (Passenger Transit Visa) (Amendment) Order 2004 (SI 2004/1304) and The Immigration (Passenger Transit Visa) (Amendment) Order 2005 (SI 2005/492) .

## 2.2 The Transit Without Visa Concession (TWOV)

### For Visa Nationals Who Arrive By Air Only:

**[NOTE The TWOV concession does not apply to nationals of certain countries or territories unless they hold a specified exemption document. Our Visa Information Card has an up-to-date list of the countries and territories concerned and describes the exemption documents.**

Unless holding one of the exemption documents, nationals of these countries or territories must have visas valid for **entry** to the UK if **they need to seek entry to the UK** for any purpose, even when in transit. If nationals of these countries **stay airside** when passing through the UK they need **Direct Airside Transit** visas.

The Direct Airside Transit (DAT) visa is only valid provided that the passenger remains airside and does not approach the immigration control. It should be noted that a passenger holding a DAT visa will not be permitted to change airports or may not be able to remain airside overnight. Any departure from these conditions may render the carrier liable to charge.]

- Transit Without Visa (TWOV) is an administrative concession.
- Where the carrier **genuinely believes** that the passenger's sole purpose in travelling to the United Kingdom was to travel on to another country, and he qualifies for a visa waiver under the terms notified by the International Civil Aviation Organisation, then the passenger may be accepted for carriage to the third country via the United Kingdom without a United Kingdom visa (i.e. Transit Without Visa), subject to the following conditions being met:

At the time of check-in the passenger must hold:

- i) a **confirmed** onward booking, by air, to a destination outside the United Kingdom within **24 hours** of scheduled arrival, **and**
  - ii) the necessary documentation, such as a genuine valid visa for his **ultimate** destination and also, if required, for any intermediate points en route to the ultimate destination.
- If, under TWOV, a visa national passenger is accepted for transit without a UK visa to a third country via the United Kingdom, but is subsequently denied onward carriage by the airline whilst in the United Kingdom owing to the detection of an inadequacy in documentation (e.g. a falsified passport), then this administrative concession will no longer apply. **Consequently the inward carrier may be liable to a charge.**

### Passengers proceeding to the Republic of Ireland

Passengers who wish to travel to the Republic of Ireland must first pass through the UK immigration control. The TWOV concession may also apply to them. To qualify under the concession they must arrive and depart by air; they must have a confirmed onward booking within 24 hours and they must have all the necessary documents required for entry to the Republic of Ireland, including Irish visas, if required. Nationals of countries to whom the TWOV concession does not apply and who do not hold one of the documents exempting them from the visa requirement, **must** have valid visas for **entry** to the UK (i.e. their visas should **not** be endorsed "Direct Airside Transit".)

## 2.3 False Documents

Where a person presents a false passport or other document, the carrier is liable to a charge only if the falsity is 'reasonably apparent'. The Immigration Service would consider a falsity as reasonably apparent,

**If it were of a standard which a trained representative of the carrying company, examining it carefully but briefly and without the use of technological aids, could reasonably be expected to detect.**

A 'trained representative' would be expected to have a level of basic knowledge of how to identify false documents, but not to be expert nor to have the resources for a highly detailed examination.

## 2.4 Impersonation

Where a person presents a document which may be genuine but of which he is not the rightful holder, the carrier is liable to a charge if the dissimilarity between the person and the photograph in the document is such that it is reasonably apparent that the document does not relate to the person presenting it. The trained representative should therefore examine the photograph and personal details in the document, and compare these with the person presenting it in order to detect any impersonation.

## 2.5 Persons arriving in the UK without documents

Where a person on arrival has no documents, it is a defence for the carrier to establish in the first instance that what purported to be the required documentation for that person was produced to it on departure. In those circumstances the carrier is not liable under Section 40 I&AA unless the Immigration Service can prove that the relevant documentation was false or related to another person and that, in either case, this was reasonably apparent.

## 2.6 Advice and Training

Where the carrier has doubts about the documentation presented by the passenger, it is advisable to resolve those doubts before deciding whether to carry the passenger.

Advice may be sought from the Immigration Service at the UK port of arrival, from a UK Airline Liaison Officer (ALO) if you have one in your region, or from the nearest British Embassy/High Commission which has responsibility for issuing visas. **Carriers should not rely solely on the advice received from the Control Authority at the port of embarkation.**

Where doubts exist, a contemporaneous record of the document details (i.e. number, date and place of issue, visas(s) held) and of the steps taken to verify them may prove to be of assistance later. Photocopies, photographs or digital images of the documents may not in themselves justify waiving a charge.

**Please note:**

**The Immigration Service offers guidance on United Kingdom document requirements and on the detection of false documents and will consider requests for training to assist carriers in meeting their obligations under S.40 I&AA. Such requests should be made either to the Inspector at the normal port of arrival or to the Carriers Liaison Unit (for details see paragraph 9.2)**

**The Immigration Service will also try to give advice in response to individual enquiries from carriers, although this advice cannot always be definitive when the document and the passenger are not to hand. Where the carrier receives such advice from an immigration office, it should note the time and date of the enquiry, the nature of the advice given, the officer's name and the reference number which the officer will normally allocate to the enquiry.**

### 3.1 Initial Notification of Potential Liability to a Charge

When the Immigration Service establishes that a person has arrived in the UK and has failed to produce the required documents, you or your handling agent will be notified of the person's arrival as soon as practicable. You will also be given the opportunity to examine the document (if any was presented), and to speak to the person, provided the person agrees.

**At this stage you may wish to make urgent enquiries to establish how the person may have evaded your own document examination and/or security operations at the originating port of embarkation.**

### 3.2 What forms will be provided?

The Immigration Service will prepare a local port file giving details of why there appears to be liability to a charge. (On request the contents of the local port carriers' liability file may be disclosed to you, although any confidential personal information about a passenger will first be deleted.) It will be examined by a Senior Officer. If the Officer decides that there is no action to be taken (perhaps, for example, because the falsity of a document was not reasonably apparent), you will be advised by a **"Notification of Arrival" (Form IS 80A)**. If it is decided that there is potential liability to a charge, you will be advised by service of a **"Notification of Potential Liability to a Charge" (Form IS 80B)**, which will give details of the person's arrival. This will be your first formal notification that a charge is likely to be levied.

### 3.3 What will the Senior Officer have considered?

Service of Form IS80B will indicate that the Officer has decided that a charge under the Act might be pursued. He will already have examined the case in detail, and will have taken account of all the apparent issues, such as the standard of falsity, if a false document was presented or any exceptional circumstances.

## 4 Representations to Port Inspectors

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### 4.1 What is the time limit for making representations?

On receipt of Form IS80B, you have **30 days** in which to make representations to the Port Inspector. If you are unable to obtain the evidence you need within this period, please inform the Inspector without delay. He may be prepared to approve a short extension for submission of your representations, provided that you contact him promptly and you can show reasonable cause for the delay.

**Please note that Inspectors are not obliged to consider representations received outside the 30 day period referred to above, unless an extension is sought, and given, at an early stage.**

### 4.2 What should the representations include?

Your representations should give clear reasons why you consider that there is no liability to a charge. You may, for example, disagree that the falsity of a document is reasonably apparent, or produce evidence which you consider shows that the person was properly documented when he boarded, or it may be that you believe that the endorsements in the passport were unclear. Whatever your reasons, the Inspector will be prepared to look at the case again in the light of what you have to say.

A letter of representation which does not address the particular issues of a case is unhelpful and should be avoided as it will not assist the Inspector in his deliberations.

### 4.3 When might a charge not be pursued?

Listed at Appendix A are some of the instances where Inspectors are likely to consider that a charge should not be pursued. This list is not exhaustive. There will always be unusual or exceptional circumstances which could persuade him that a charge is inappropriate, but it is for you to make that case on an individual basis.

### 4.4 What forms will be provided if a charge is waived or imposed?

If the Inspector, having considered any representations, decides that a charge should not be imposed, he will send you official notification of this by issuing **form IS 80C – Notification of a Decision not to Proceed with Charge**. The case will then be closed.

If he decides to impose the charge, he will issue a **“Charge Notice - Notification of Demand for Payment” (Form IS 80D)** advising you that you have **30 days** in which to pay.

If you feel that the Inspector should not have imposed the charge, you may object to its imposition, directly to the Inspector at the Carriers Liaison Section at Immigration Service Headquarters. (See Section 5).

You may also appeal to the Court against the decision to charge you. (See Section 6.)

#### **4.5 What if representations are received after a charge notice has been served?**

Representations received after a “charge notice” (Form IS80D) has been served will be considered as if they were written objections.

You should note that objections must be submitted within **28 days** of service of the charge notice. Any representations or objections received once this 28 day period has passed cannot be considered.

## 5. Making Objections to Immigration Service Headquarters

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### 5.1 How to object if a charge is imposed

When you receive a “charge notice” (Notification of Demand for payment, form IS80D,) you may submit a written notice of objection by post, fax or e-mail directly to the Inspector at the Carriers Liaison Section at:

**Carriers Liaison Section  
Green Park House  
29 Wellesley Road  
Croydon  
CR0 2AJ**

**Fax: 0208 760 2962**

**E-mail: [INDUKISObjections.cls@homeoffice.gsi.gov.uk](mailto:INDUKISObjections.cls@homeoffice.gsi.gov.uk)**

**(Please note that this e-mail address is to be used solely for written notices of objections and appeals and not for general correspondence)**

Objections must be submitted within **28 days** of service of the charge notice. They must be in writing, including any fresh information not previously available, and should explain clearly why you believe the Port Inspector’s decision was wrong.

### 5.2 When will there be a response to the objection?

A senior officer at the Carriers Liaison Section will consider your objection and decide whether or not to cancel the charge. You will be notified of a decision within 70 days of service of the charge notice (Form IS80D) unless a longer period is agreed with you. Once again, if you require more than **28 days** to obtain the necessary information to support your objections, **you should still make your objections in writing** as described above, explaining why you need extra time to provide further evidence. It may then be possible to agree a longer period with you for a reply to be sent.

**Please note that objections received outside the 28 day period referred to above cannot be considered.**

### 6.1 When can an appeal be made to the courts?

Whether or not you give a written notice of objection you may appeal to the Court against the decision to charge you. You must appeal to the Court within **28 days** of the service of the charge notice (form IS80D) or, if you make a written objection, within **28 days** of service of our decision in response to your objections.

### 6.2 What is the procedure for making an appeal?

PLEASE NOTE: It is your responsibility to follow the correct legal procedures, and therefore you are advised to seek early independent advice if you are in any doubt as to how to proceed or as to the current appeal process. This guidance is not a substitute for independent legal advice.

- Part 52 of The Civil Procedure Rules governs the appeal process. The Rules can be found at:  
[http://www.dca.gov.uk/civil/procrules\\_fin/menus/rules.htm](http://www.dca.gov.uk/civil/procrules_fin/menus/rules.htm)

An Appellant's Notice, **which is a specific court form**, must be lodged at a county court (**or, in Scotland, the Sheriffs Court,**) within the time limits set out above.

- A list of county courts can be found at: <http://www.courtservice.gov.uk>
- Alternatively the Court Service can be contacted at:

Customer Service Unit  
The Court Service  
Southside  
105 Victoria Street  
London, SW1E 6QT

- There may be a court fee required at the time of lodging an Appellant's Notice. You may also be liable to pay the Home Office's legal costs if your appeal is unsuccessful.
- Once you have lodged your Appellant's Notice it must be served upon the Home Office's legal representative within 7 days.

- The address for service of papers on the Home Office is:

Christopher Ashford  
Litigation Team D1  
The Treasury Solicitor  
One Kemble Street  
London  
WC2B 4TS

- The Treasury Solicitor or his agent will endeavour to contact you within 7 working days with proposals for the progression of the appeal. It is therefore important that on all your correspondence you ensure you provide:

1. Your full contact address to which legal papers can be sent:

This will usually be your business contact details, or those of your legal representative

2. The individual port reference number:

This will be found at the top of Form IS 80D and most other official documentation you receive.

3. Your appeal Claim Number provided by the court, and the court's address:

Your individual appeal Claim Number will be particular to the court being used, and found at the top of any correspondence from the court.

## 7. Payment of Charges

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### 7.1 How to make a payment

Payment of an outstanding charge can be made by cheque, payable to "The Accounting Officer, Home Office". Payments should be forwarded to:

**Home Office  
Adelphi Service Centre  
Cashiers Office  
4<sup>th</sup> Floor  
India Buildings  
Liverpool  
L2 0UR**

Payment can also be made by Bank Transfer (BACS) to:

**Home Office Cash Account 12511  
Sort Code 10-14-99  
Account Number 25021001**

or by the Clearing House Automated Payment System (CHAPS) to:

(If payment is made from a UK bank):

**PGO Account 12511000  
Sort Code 16-53-60  
Destination Bank: Natwest Bank, 6 Coldharbour Lane,  
Hayes, Middx, UB3 3EL**

(If payment is made from an Overseas Bank):

**PGO Account 12511000  
Sort Code 10-00-00  
Swift Code BKENGB33  
Destination Bank: Bank of England, Threadneedle Street,  
London, EC2R 8AH**

In all cases it would be helpful if remittance advices were to quote "CLS" and list the charges to be paid. In addition it would be helpful if remittance advices were also copied to the Carriers Liaison Section.

### 7.2 When the Immigration Service might take court action

Carriers are reminded that prompt payment of outstanding charges is required when Form IS 80D is received, unless a written notice of objection is submitted and/or an appeal is lodged. If on objection it is decided not to cancel a charge and no appeal is lodged, or if an appeal to the Court is dismissed, payment must then be made within 28 days. The Immigration Service is responsible for recovering unpaid carriers' liability debts, which are

then remitted to the Consolidated Fund at HM Treasury. However, payment will not be pursued until rights of objection and appeal have been exhausted. The Immigration Service is committed to a programme designed to deal vigorously with any carrier demonstrating a persistent reluctance to pay its outstanding carriers' liability charges.

**Carriers should be aware that any sum payable to the Secretary of State as a charge under Section 40 I&AA may be recovered by the Secretary of State through the courts as a debt due to him. In any such proceedings for enforcement of a charge, no question may be raised as to the validity of the charge.**

### **7.3 If a credit arises on your account**

A credit may arise if the same charge is paid twice or if a charge that has been paid is later waived, perhaps because the person concerned has been granted refugee status. (In that event you will not be given details of the charge concerned to protect the confidentiality of the asylum system.)

If there are no outstanding charges on your account the amount involved will be refunded unless you advise us that you wish this to be used to pay future charges.

In other cases you will be advised of the credit and invited to nominate a charge or charges you wish to pay with the credit.

If you do not nominate the charge(s) you wish to pay within a period of two months or explain why the credit should not be used in that way, the Immigration Service will write to you again to remind you of the credit and to advise you that the credit will be used to pay the oldest charge(s) outstanding unless:

- i) you nominate which charge(s) you wish to pay within a further month or;
- ii) within that time you explain why the credit should not be used in that way.

However, such credits will not be used to pay charges where objections or appeals are outstanding or where the time limit for objection or appeal has not passed.

## 8. Approved Gate Check (AGC) Status

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### 8.1 What is Approved Gate Check Status?

Approved Gate Check Status is an arrangement whereby the Immigration Service agrees that it will normally waive charges relating to persons arriving without documents or in certain mutilated document cases where the carrier has AGC Status at that port of embarkation. AGC Status is granted in return for an audited high standard of document checking and security procedures at a port of embarkation, a good level of co-operation from the carrier, and a satisfactory record in respect of its responsibilities under the ICLA and under Section 40 of the I&AA.

### 8.2 Criteria for attaining (and retaining) AGC Status

The carrier's main requirements for first achieving, and then retaining, Approved Gate Check Status are as follows:

- **where the carrier has an outstanding debt in respect of charges incurred under the ICLA or Section 40 of the I&AA, the Immigration Service will expect prompt payment of those liabilities;**
- **a document check must be conducted immediately prior to boarding; this should take place at the departure gate or within an adjacent sterile area;**
- **a full check of the document must be undertaken to ensure that the document is valid, that the person presenting it is the rightful holder and that a visa is held if one is required;**
- **reconciliation with the details on the passenger's boarding card is also necessary;**
- **there must be an adequate level of security to ensure that these checks cannot be circumvented;**
- **the checks must be conducted by trained staff at both check-in and at the gate;**
- **these arrangements must be inspected in advance by the Immigration Service, at the carrier's expense.**

**Carriers should note that there will be close monitoring by the Immigration Service of all improperly documented persons arriving on these routes, not simply those arriving without documents. It is therefore recommended that carriers also keep comprehensive details of passengers denied boarding on these routes as a result of inadequate documentation.**

### **8.3 When will charges normally be waived?**

There is no implication that charges will be waived in cases where AGC Status has been granted other than those where the person appears to have disposed of his document after embarkation, or in certain mutilated document cases. A charge will, for example, be imposed for any person arriving without a visa or with a document where any falsity is reasonably apparent. Such cases may be indicative of a failure by the carrier to maintain the requisite high standard of document checks.

### **8.4 Does AGC Status only apply to direct flights?**

In considering an application for AGC Status for airports, the Immigration Service will take account of whether the flight operates solely and directly between the applicant airport and the United Kingdom or whether passengers are able to join at other airports beforehand or en route. If passengers are able to join the flight other than at the airport for which the AGC application applies, approval can only be considered if the intermediate or originating airport also benefits from AGC Status.

### **8.5 Can sea carriers apply for AGC status?**

Yes. As far as sea carriers are concerned, the Immigration Service recognises that the provision of sterile areas referred to in paragraph 8. 2 above, may be difficult to achieve. The Immigration Service will, therefore, consider all applications in light of the individual circumstances in the port of embarkation. However, a sea carrier will normally be expected to show:

- **that its check-in and examination procedures are of a sufficiently high standard to identify passengers presenting improper documentation, and;**
- **that it has in place adequate and effective checking and security procedures to seek to ensure that passengers and other unauthorised persons are unable to circumvent these checks and board its services.**

The requirements to be met are:

- **where the carrier has an outstanding debt in respect of charges incurred under the ICLA or Section 40 of the I&AA, the Immigration Service will expect prompt payment of those liabilities;**
- **a full check of every passenger's document must be undertaken to ensure that the document is valid, that the passenger is the rightful holder and that a visa is held if one is required;**
- **the checks must be conducted by trained staff;**
- **adequate systems must be in place to ensure that only those persons whose documents have been checked as above are allowed to board and that unauthorised persons are not carried. This would normally**

**include the proper use by the carrier, or another person acting on the carrier's behalf by arrangement with the carrier, of effective equipment used to search vehicles and containers, especially where such equipment is provided by the Immigration Service. However, the Immigration Service will consider proposals for AGC status by any ferry operator which can show that it can operate an effective and secure system without the use of such technology;**

- **these arrangements must be inspected in advance by the Immigration Service, at the carrier's expense.**

**The proviso set out at paragraph 8.6 below will still apply.**

### **8.6 Can AGC Status be lost?**

An AGC agreement is not open-ended and will be terminated by the Immigration Service if patterns in the arrival of improperly documented passengers suggest that the standard of checks is no longer satisfactory.

**Details about AGC Status can be obtained from Port Inspectors or from the AGC Inspector in the Airline Liaison Officer Network UK, Status 4, 3 Nobel Drive, Harlington, Hayes, UB3 5EY.**

## 9. Further Information

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### 9.1 Where to get more information regarding charges

If you require further information or advice on the administration of carriers' liability charges under S.40 of the I&AA, please contact the Inspector at the United Kingdom port of entry served by your company. Alternatively you may contact the Carriers Liaison Section for guidance on these matters as well as with regard to payment of charges, at the following address:

**Carriers Liaison Section  
Green Park House  
29 Wellesley Road  
Croydon  
CR0 2AJ**

**Tel: 020 8760 2515  
Fax: 020 8760 2962**

### 9.2 Where to get more information on training

More detailed information on carrier training and training aids is available from:

**UK Immigration Service  
Airline Liaison Officer Network UK  
Status 4  
3 Nobel Drive  
Harlington  
Hayes  
UB3 5EY**

**Tel: 020 8745 2385  
Fax: 020 8745 2377**

**APPENDIX A**

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## Examples of when charges may be waived

The following list describes some of the situations in which Senior Officers will normally be prepared to waive a charge in relation to a person who arrives without the required documents. **This list is not exhaustive.**

- Where the passenger is a child travelling as part of an organised school group, in the care of a responsible adult.
- Where the passenger has arrived on a flight or ship which, following departure, had been diverted to the United Kingdom.

**This concession will not apply where it was known prior to departure that the destination would be the United Kingdom.**

- Where the person was a “stowaway” charges will usually be waived where the carrier can show that it had taken all reasonable security and searching measures to ensure that no unauthorised person was allowed to board its service.

**Senior Officers will take account the carrier’s previous record in carrying unauthorised persons. Account will also be taken of the carrier’s record of co-operation with the Immigration Service in seeking to prevent the carriage of such persons, in particular whether the carrier has acted on any advice offered by the Immigration Service and, in the case of sea carriers, whether the carrier, or another person acting on the carrier’s behalf by arrangement with the carrier, has made proper use of effective equipment used to search vehicles and containers. Such equipment may be provided by the carrier, or the person acting on the carrier’s behalf, or by the Immigration Service. Where equipment has been offered by the Immigration Service, the carrier, or the person acting on the carrier’s behalf, would be expected to accept it and make proper use of it. If the carrier has not made use of equipment offered by the Immigration Service, charges will normally not be waived<sup>5</sup>.**

- Where the carrier had no realistic alternative but to transport the passenger to or via the United Kingdom. An example would be where the law or the Government of another country required a passenger’s removal to or through the United Kingdom.

**A charge might not be waived, however, where the carrier had previously carried the passenger through the United Kingdom without the documents required for that purpose – e.g. if the passenger had passed through the UK in direct transit without a necessary visa for his final destination or for any intermediate destination.**

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<sup>5</sup> At this time the Home Office does not intend to impose charges under Section 40 of the Immigration and Asylum 1999 where the persons concerned can be shown to have boarded vessels concealed in vehicles. Discussions will be held with carriers about how searching and security regimes can be improved.

- Where there is evidence that the carrier had acted on the advice of a representative of the United Kingdom Government, and it was reasonable, in the circumstances, for the carrier to rely on that advice.

**Where, for example, a passenger has been carried on the advice of a UK mission abroad or a UK immigration officer, the charge will normally be waived.**

**Advice given on the authenticity of an individual document cannot always be regarded as definitive, particularly if advice is sought by telephone, and the Immigration Service has been unable to examine the document concerned. Furthermore, it is incumbent on the carrier when seeking advice, to provide full and accurate information as to why it has doubts over the particular passenger's documentation.**

- Where the charge is raised in respect of the arrival of an inadequately documented passenger which is the first to arise in respect of a particular carrier from that port to the United Kingdom.

**A charge might not be waived if the carrier had failed to act on advice previously given by the Immigration Service to avoid inadequately documented passengers being carried in similar circumstances.**

**Carriers should ensure that check-in staff, whether company employees or local handling agents, are aware that a waiver under this paragraph is unlikely to be granted more than once. In particular, where the same agent is responsible for handling more than one company, a charge may be maintained on any subsequent incident.**

- Where, at the time of check-in, the person seeking to embark was:
  - i) in imminent and self evident danger of his or her life; and
  - ii) he or she had no reasonable means of obtaining the necessary documents; and
  - iii) the United Kingdom was, in the circumstances, the only or clearly the most appropriate destination; and
  - iv) the carrier had no opportunity to verify his or her acceptability with the United Kingdom authorities.

**In such circumstances the advised course of action, where possible, is to contact the nearest UNHCR or United Kingdom representative or the United Kingdom port of arrival, for advice and guidance on how best to proceed.**

- Where there are compelling compassionate reasons or other compelling circumstances of an exceptional nature which would justify waiving of the charge.

**Carriers are advised wherever possible, to ascertain whether a waiver is likely to be given in an individual case before embarkation.**

- Where, in the case of a used visa, the immigration officer's endorsement is not placed on the same page, or on an adjacent page. (Adjacent in this context means that no more than one page of the document need be

turned either way in order to see the endorsement.) A charge may be waived if the date of the endorsement is unclear.

**A charge will be maintained if the visa itself has expired.**

## Asylum

### Governing principles

When a person applies for asylum, the Home Office will consider the case in accordance with the 1951 United Nations Convention and the 1967 Protocol relating to the status of refugees. Under the terms of the Convention, a person will qualify for refugee status if:

“...owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such a fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence..., is unable, or owing to such a fear, is unwilling to return to it.”

### Persons who arrive without the required documents and seek asylum

A person who arrives without the required documents or with false documents is nonetheless entitled to have his application for asylum dealt with and he may not be removed from the United Kingdom until a decision has been reached.

### Will carriers be told if a passenger seeks asylum?

Applications for asylum are treated in confidence by the Home Office, and in particular no information is disclosed to the authorities of the applicant's own country.

Disclosure of information otherwise occurs only in limited circumstances and carriers will not, therefore, be informed whether a person has claimed asylum, nor told of the outcome of any such application.

### Waived or refunded charges where Refugee Status is granted

However, where a charge has been incurred by a carrier in respect of a person (and any dependants) who is recognised as a refugee under the Convention and Protocol, it is the Government's policy to refund the charge, if it has been paid, or to waive it, if it has not yet been paid. Applications for asylum may take several months or even longer to decide. The Immigration Service and the Asylum Groups within the Home Office therefore work together to ensure that in every case where refugee status is recognised, it is also determined whether liability to a charge was notified to a carrier in relation to that person's arrival in the United Kingdom.

**Note: A charge will only be refunded or waived in respect of a person who is granted full refugee status under the Convention and Protocol; this procedure does not apply to any person who is admitted for any other reason.**

**IMMIGRATION AND ASYLUM ACT 1999 (as amended)**

Passengers without proper documents

- Charges in respect of passengers without proper documents.
- 40 (1) This section applies if an individual requiring leave to enter the United Kingdom arrives in the United Kingdom by ship or aircraft and, on being required to do so by an immigration officer, fails to produce-
- (a) an immigration document which is in force and which satisfactorily establishes his identity and his nationality or citizenship, and
  - (b) if the individual requires a visa, a visa of the required kind.
- (2) The Secretary of State may charge the owner of the ship or aircraft, in respect of the individual, the sum of £2,000.
- (3) The charge shall be payable to the Secretary of State on demand.
- (4) No charge shall be payable in respect of any individual who is shown by the owner to have produced the required document or documents to the owner or his employee or agent when embarking on the ship or aircraft for the voyage or flight to the United Kingdom.
- (5) For the purpose of subsection (4) an owner shall be entitled to regard a document as-
- (a) being what it purports to be unless its falsity is reasonably apparent, and
  - (b) relating to the individual producing it unless it is reasonably apparent that it does not relate to him.
- (6) For the purposes of this section an individual requires a visa if-
- (a) under the immigration rules he requires a visa for entry into the United Kingdom, or
  - (b) as a result of section 41 he requires a visa for passing through the United Kingdom.
- (7) The Secretary of State may by order amend this section for the purpose of applying it in relation to an individual who-
- (a) requires leave to enter the United Kingdom, and
  - (b) arrives in the United Kingdom by train.
- (8) An order under subsection (7) may provide for the application of this section-
- (a) except in cases of a specified kind;

(b) subject to a specified defence.

(9) In this section "immigration document" means-

(a) a passport, and

(b) a document which relates to a national of a country other than the United Kingdom and which is designed to serve the same purpose as a passport.

(10) The Secretary of State may by order substitute a sum for the sum in subsection (2).

#### **40A Notification and objection**

(1) If the Secretary of State decides to charge a person under section 40, the Secretary of State must notify the person of his decision.

(2) A notice under subsection (1) (a "charge notice") must-

(a) state the Secretary of State's reasons for deciding to charge the person,

(b) state the amount of the charge,

(c) specify the date before which, and the manner in which, the charge must be paid,

(d) include an explanation of the steps that the person may take if he objects to the charge, and

(e) include an explanation of the steps that the Secretary of State may take under this Part to recover any unpaid charge.

(3) Where a person on whom a charge notice is served objects to the imposition of the charge on him, he may give a notice of objection to the Secretary of State.

(4) A notice of objection must-

(a) be in writing,

(b) give the objector's reasons, and

(c) be given before the end of such period as may be prescribed.

(5) Where the Secretary of State receives a notice of objection to a charge in accordance with this section, he shall-

(a) consider it, and

(b) determine whether or not to cancel the charge.

(6) Where the Secretary of State considers a notice of objection, he shall inform the objector of his decision before the end of-

(a) such period as may be prescribed, or

(b) such longer period as he may agree with the objector.

(7) Any sum payable to the Secretary of State as a charge under section 40 may be recovered by the Secretary of State as a debt due to him.

(8) In proceedings for enforcement of a charge under subsection (7) no question may be raised as to the validity of the charge.

(9) Subsections (12) and (13) of section 35 shall have effect for the purpose of this section as they have effect for the purpose of section 35(1), (7) and (10).

#### **40B Appeal**

(1) A person may appeal to the court against a decision to charge him under section 40.

(2) On an appeal under this section the court may-  
(a) allow the appeal and cancel the charge, or  
(b) dismiss the appeal.

(3) An appeal under this section-  
(a) shall be a re-hearing of the Secretary of State's decision to impose a charge, and  
(b) may be determined having regard to matters of which the Secretary of State was unaware.

(4) Subsection (3)(a) has effect despite any provision of Civil Procedure Rules.

(5) An appeal may be brought by a person under this section against a decision to charge him whether or not he has given notice of objection under section 40A(3)."

Visas for transit passengers. **41.** - (1) The Secretary of State may by order require transit passengers to hold a transit visa.

(2) "Transit passengers" means persons of any description specified in the order who on arrival in the United Kingdom pass through to another country without entering the United Kingdom; and  
"transit visa" means a visa for that purpose.

(3) The order-  
(a) may specify a description of persons by reference to nationality, citizenship, origin or other connection with any particular country but not by reference to race, colour or religion;  
(b) may not provide for the requirement imposed by the order to apply to any person who under the 1971 Act has the right of abode in the United Kingdom;  
(c) may provide for any category of persons of a description specified in the order to be exempt from the requirement imposed by the order;  
(d) may make provision about the method of application for visas required by the order.

## STATUTORY INSTRUMENTS

**2003 No. 1185  
IMMIGRATION**

## The Immigration (Passenger Transit Visa) Order 2003

|                               |                        |
|-------------------------------|------------------------|
| <i>Made</i>                   | <i>30th April 2003</i> |
| <i>Laid before Parliament</i> | <i>1st May 2003</i>    |
| <i>Coming into force</i>      | <i>2nd May 2003</i>    |

In exercise of the powers conferred upon him by section 41 of the Immigration and Asylum Act 1999<sup>[1]</sup> the Secretary of State hereby makes the following Order:

**Citation, commencement and interpretation**

1. This order may be cited as the Immigration (Passenger Transit Visa) Order 2003 and shall come into force on 2nd May 2003.

2. - (1) Subject to paragraph (4), in this Order a "transit passenger" means a person to whom paragraph (2) or (3) applies and who on arrival in the United Kingdom passes through to another country or territory without entering the United Kingdom.

(2) This paragraph applies to a person who is a citizen or national of a country or territory listed in Schedule 1 to this Order.

(3) This paragraph applies to a person holding a travel document issued by:

- (a) the purported "Turkish Republic of Northern Cyprus";
- (b) the former Socialist Republic of Yugoslavia;
- (c) the former Federal Republic of Yugoslavia; or
- (d) the former Zaire.

(4) A person to whom paragraph (2) or (3) applies will not be a transit passenger if he:

- (a) has the right of abode in the United Kingdom under the Immigration Act 1971<sup>[2]</sup>;
- (b) is a national of an EEA State; or
- (c) in the case of a national or citizen of the People's Republic of China, holds a passport issued by either the Hong Kong Special Administrative Region or the Macao Special Administrative Region.

(5) In paragraph (4) "EEA State" means a country which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992<sup>[3]</sup> as adjusted by the Protocol signed at Brussels on 17th March 1993<sup>[4]</sup>.

**Requirement for a transit passenger to hold a transit visa**

3. A transit passenger is required to hold a transit visa.

**Method of application for a transit visa**

4. An application for a transit visa may be made to any British High Commission, Embassy or Consulate which accepts such applications.

**Revocations**

5. The Orders<sup>[5]</sup> specified in Schedule 2 to this Order are hereby revoked.

*Beverley Hughes*  
Minister of State

Home Office  
30th April 2003

SCHEDULE 1  
Article 2

COUNTRIES OR TERRITORIES WHOSE NATIONALS OR  
CITIZENS NEED TRANSIT VISAS

Afghanistan

Colombia

Democratic Republic of the Congo

Ecuador

Eritrea

Ethiopia

Ghana

Iran

Iraq

Libya

Nigeria

People's Democratic Republic of Algeria

People's Republic of China

Republic of Croatia

Serbia and Montenegro

Slovak Republic

Somalia

Sri Lanka

Turkey

Uganda

Zimbabwe

SCHEDULE 2  
Article 5

REVOCATIONS

(1)

*Orders revoked*

The Immigration (Transit Visa) Order 1993

The Immigration (Transit Visa) (Amendment) Order 1998

The Immigration (Transit Visa) (Amendment No. 2) Order 1998

The Immigration (Transit Visa) (Amendment) Order 2000

The Immigration (Transit Visa) (Amendment) Order 2002

The Immigration (Transit Visa) (Amendment No. 2) Order 2002

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order is made under section 41 of the Immigration and Asylum Act 1999 and requires transit passengers to hold a transit visa (article 3). A transit passenger is a person who on arrival in the United Kingdom passes through to another country or territory without entering the United Kingdom (article 2(1)) and is either a citizen or national of one of the countries listed in Schedule 1 (article 2(2)) or holds a travel document issued by the purported "Turkish Republic of Northern Cyprus", the former Federal Republic of Yugoslavia, the former Socialist Republic of Yugoslavia or the former Zaire (article 2(3)). However, a person will not be a transit passenger in accordance with article 2(2) or (3) if that person has a right of abode under the Immigration Act 1971, is an EEA national or, in the case of a national or citizen of the People's Republic of China, holds a passport issued by either the Hong Kong Special Administrative Region or the Macao Special Administrative Region (article 2(4)). The Order also makes provision regarding the making of an application (article 4).

In addition, the Order revokes the Orders listed in Schedule 2 (article 5). The contents of those Orders are reflected in this Order which makes equivalent provision, with the following modifications. The Schedule of countries whose citizens or nationals require a transit visa if they travel through the United Kingdom in transit to another country is expanded to include the People's Democratic Republic of Algeria. Additionally, the categories of person who hold travel documents issued by specified countries and territories and who require a transit visa as a result is expanded to include the former Federal Republic of Yugoslavia and the former Zaire.

*Notes:*

[1] 1999 c. 33.

[2] 1971 c. 77.

[3] OJ L1, 3.1.94, p. 3.

[4] OJ L1, 3.1.94, p. 571.

[5] The Orders in question were made under section 1A of the Immigration (Carriers Liability) Act 1987 (c. 24); section 1A was inserted by section 12(1) and (3) of the Asylum and Immigration Act 1993 (c. 23) and was repealed by Schedule 16 to the Immigration and Asylum Act 1999 ("the 1999 Act").

Notwithstanding this repeal the Orders continued to have effect as if made under section 41 of the 1999 Act by virtue of section 17(2)(b) of the Interpretation Act 1978 (c. 30).

## STATUTORY INSTRUMENTS

**2003 No. 2628  
IMMIGRATION****The Immigration (Passenger Transit Visa) (Amendment No. 2)  
Order 2003**

|                               |                          |
|-------------------------------|--------------------------|
| <i>Made</i>                   | <i>14th October 2003</i> |
| <i>Laid before Parliament</i> | <i>15th October 2003</i> |
| <i>Coming into force</i>      | <i>16th October 2003</i> |

In exercise of the powers conferred upon him by section 41 of the Immigration and Asylum Act 1999[1], the Secretary of State hereby makes the following Order:

**1.** This Order may be cited as the Immigration (Passenger Transit Visa) (Amendment No. 2) Order 2003 and shall come into force on 16th October 2003.

**2.** - (1) The Immigration (Passenger Transit Visa) Order 2003[2] shall be amended as follows.

(2) In article 2(5), for "paragraph 4", there shall be substituted "this Order".

(3) In article 3, for "A", there shall be substituted "Subject to article 3A, a".

(4) After article 3, there shall be inserted:

**" Exemption from the requirement for a transit passenger to hold a transit visa**

**3A.** - (1) A transit passenger is not required to hold a transit visa if he holds or a person with whom he arrives in the United Kingdom holds on his behalf:

(a) a valid visa for entry to Canada or the United States of America and a valid airline ticket for travel via the United Kingdom from another country or territory to the country in respect of which the visa is held;

(b) a valid visa for entry to Canada or the United States of America and a valid airline ticket for travel via the United Kingdom from the country in respect of which the visa was held to another country or territory;

(c) a valid USA I-551 Permanent Resident Card issued on or after 21st April 1998;

(d) a valid Canadian Permanent Resident Card issued on or after

28th June 2002;

(e) a valid common format Category D visa for entry to an EEA State;

(f) a valid common format residence permit issued by an EEA State pursuant to Council Regulation (EC) No. 1030/2002;

(g) a diplomatic or service passport issued by the People's Republic of China; or

(h) a diplomatic or official passport issued by India.

(2) In paragraph 1(b), "valid visa" shall include an expired visa provided that the visa in question did not expire more than two clear calendar days before the date of the arrival in the United Kingdom of the transit passenger with that visa."

(5) For Schedule 1 there shall be substituted the Schedule to this Order.

**3.** The Immigration (Passenger Transit Visa) (Amendment) Order 2003<sup>[3]</sup> is hereby revoked.

*Beverley Hughes*  
Minister of State, Home Office

14th October 2003

## SCHEDULE

Article 2(5)

### NEW SCHEDULE TO BE SUBSTITUTED

"SCHEDULE 1  
Article 2

### COUNTRIES OR TERRITORIES WHOSE NATIONALS OR CITIZENS NEED TRANSIT VISAS

Afghanistan

Albania

Algeria

Angola

Bangladesh

Belarus  
Burma  
Burundi  
Cameroon  
Colombia  
Democratic Republic of the Congo  
Ecuador  
Eritrea  
Ethiopia  
Former Yugoslav Republic of Macedonia  
Gambia  
Ghana  
India  
Iran  
Iraq  
Ivory Coast  
Lebanon  
Liberia  
Moldova  
Nepal  
Nigeria  
Pakistan  
Palestinian Territories  
People's Republic of China  
Rwanda  
Senegal

Serbia and Montenegro

Sierra Leone

Somalia

Sri Lanka

Sudan

Turkey

Uganda

Vietnam

Zimbabwe".

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### EXPLANATORY NOTE

*(This note is not part of the Order)*

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This Order is made under section 41 of the Immigration and Asylum Act 1999 and amends the Immigration (Passenger Transit Visa) Order 2003 ("the 2003 Order"). The 2003 Order requires, subject to certain exemptions, citizens and nationals of countries and territories specified within it, along with holders of specified travel documents, to obtain a transit visa when passing through the United Kingdom on their way to another country or territory.

This Order amends the 2003 Order in two ways. Firstly, it exempts certain categories of transit passenger from the requirement to hold a transit visa. A transit passenger will be exempt in this way if he holds, or a person of whom he is a dependant and with whom he arrives in the United Kingdom holds on his behalf, one of the documents or sets of documents set out in paragraphs (1)(a) to (h) of new article 3A.

Secondly, the Order substitutes for Schedule 1 in the 2003 Order that lists the countries and territories whose citizens or nationals need transit visas a new Schedule (article 2(5)). This new Schedule adds Angola, Bangladesh, Cameroon, India, Lebanon and Pakistan to the list of countries and territories whose citizens or nationals need transit visas and deletes Libya, the Republic of Croatia and the Slovak Republic from that list. Because of this substitution the Order also revokes the Immigration (Passenger Transit Visa) (Amendment) Order 2003 (article 3).

#### *Notes:*

[1] 1999 c. 33.

[2] S.I. 2003/1185, amended by S.I. 2003/1598.

[3] S.I. 2003/1598.

## STATUTORY INSTRUMENTS

**2004 No. 1304  
IMMIGRATION**

The Immigration (Passenger Transit Visa) (Amendment) Order  
2004

|                               |                      |
|-------------------------------|----------------------|
| <i>Made</i>                   | <i>11th May 2004</i> |
| <i>Laid before Parliament</i> | <i>12th May 2004</i> |
| <i>Coming into force</i>      | <i>13th May 2004</i> |

In exercise of the powers conferred upon him by section 41 of the Immigration and Asylum Act 1999[1] the Secretary of State[a] hereby makes the following Order:

1. This Order may be cited as the Immigration (Passenger Transit Visa) (Amendment) Order 2004 and shall come into force on 13th May 2004.

2. - (1) The Immigration (Passenger Transit Visa) Order 2003[2] shall be amended as follows.

(2) In article 3A (Exemption from the requirement for a transit passenger to hold a transit visa):

(a) in paragraph (1) (a), after "via the United Kingdom", there shall be inserted "as part of a journey";

(b) for paragraph (1) (b), there shall be substituted:

" (b) a valid airline ticket for travel via the United Kingdom as part of a journey from Canada or the United States of America to another country or territory, provided that the transit passenger does not seek to travel via the United Kingdom on a date more than six months from the date on which he last entered Canada or the United States of America with a valid visa for entry to that country or territory;"

(c) after paragraph (1)(h), there shall be inserted:

" (i) a diplomatic or official passport issued by Vietnam."; and

(d) paragraph (2) is hereby revoked.

(3) In Schedule 1:

(a) after "Ivory Coast", there shall be inserted "Kenya"; and

(b) after "Sudan", there shall be inserted "Tanzania".

*Des Browne*  
Minister of State

Home Office  
11th May 2004

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## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends the Immigration (Passenger Transit Visa) Order 2003 ("the 2003 Order"). The 2003 Order requires, subject to certain exemptions, a transit passenger (as defined) to obtain a transit visa when passing through the United Kingdom from one country or territory on his way to another country or territory.

The amendment made by article 2(2)(a) amends article 3A(1)(a) to clarify that a passenger who intends to travel from another country or territory via the United Kingdom as part of a journey to Canada or the United States and who holds the documents set out in that article is exempted from the need for a transit visa.

Article 2(2)(b) substitutes a new paragraph (b) in article 3A of the 2003 Order. This new paragraph provides that a transit passenger who holds, or has held on his behalf, a valid airline ticket for travel via the United Kingdom as part of a journey from Canada or the United States of America to another country will not require a transit visa, provided that he does not seek to travel via the United Kingdom on a date more than six months from the date on which

he last entered Canada or the United States of America with a valid visa for entry to that country. As a result, the definition of "valid visa" which appeared in article 3A(2) of the 2003 Order is revoked by article 2(2)(d).

Article 2(2)(c) inserts a new exemption from the need to hold a transit visa which applies to those holders of a diplomatic or official passport issued by Vietnam.

Article 2(3) adds Kenya and Tanzania to the countries listed in Schedule 1 to the 2003 Order as being countries or territories whose nationals or citizens do**[b]** need a transit visa.

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*Notes:*

[1] 1999, c. 33.

[2] S.I. 2003/1185; as amended by S.I. 2003/2628.

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[a] Amended by Correction Slip. Page 1, in the preamble paragraph, "the Secretary of State" should be inserted immediately before "hereby makes the following Order:"

[b] Amended by Correction Slip. Page 2, in the Explanatory Note, last paragraph, the word "not" should be deleted.

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STATUTORY INSTRUMENTS

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2005 No. 492

IMMIGRATION

**The Immigration (Passenger Transit Visa) (Amendment) Order  
2005**

|                               |                       |
|-------------------------------|-----------------------|
| <i>Made</i>                   | <i>4th March 2005</i> |
| <i>Laid before Parliament</i> | <i>8th March 2005</i> |
| <i>Coming into force</i>      | <i>9th March 2005</i> |

The Secretary of State, in exercise of the powers conferred upon him by section 41 of the **Immigration and Asylum Act 1999**<sup>[1]</sup>, hereby makes the following **Order**:

1. This **Order** may be cited as the **Immigration (Passenger Transit Visa) (Amendment) Order 2005** and shall come into force on 9th March 2005.

2. - (1) The **Immigration (Passenger Transit Visa) Order 2003**<sup>[2]</sup> shall be amended as follows.

(2) In article 3A<sup>[3]</sup>:

(a) in paragraph (1)(a)<sup>[4]</sup> for "Canada or the United States of America" there shall be substituted "Australia, Canada, New Zealand or the United States of America";

(b) after paragraph (1)(a) there shall be inserted:

" (ab) a valid **visa** for entry to Australia, Canada, New Zealand or the United States of America and a valid airline ticket for travel via the United Kingdom as part of a journey from the country in respect of which the **visa** is held to another country or territory;" and

(c) for paragraph (1)(b)[5] there shall be substituted:

(b) a valid airline ticket for travel via the United Kingdom as part of a journey from Australia, Canada, New Zealand or the United States of America to another country or territory, provided that the **transit** passenger does not seek to travel via the United Kingdom on a date more than six months from the date on which he last entered Australia, Canada, New Zealand or the United States of America with a valid **visa** for entry to that country;

(3) In Schedule 1:

(a) after "Colombia" there shall be inserted "Congo";

(b) after "Ghana" there shall be inserted "Guinea" and "Guinea-Bissau"; and

(c) after "Moldova" there shall be inserted "Mongolia".

*Des Browne*  
Minister of State

Home Office  
4th March 2005

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## EXPLANATORY

## NOTE

*(This note is not part of the **Order**)*

This **Order** amends the **Immigration (Passenger Transit Visa) Order 2003** ("the 2003 **Order**"). The 2003 **Order** requires, subject to certain exemptions, a **transit** passenger (as defined) to obtain a **transit visa** when passing through the United Kingdom from one

country or territory on his way to another country or territory.

Article 3A of the 2003 **Order** lists the exemptions from the requirement for a **transit** passenger to hold a **transit visa**.

Article 2(2)(a) of this **Order** adds Australia and New Zealand to the exemption in article 3A(1)(a) of the 2003 **Order**. Accordingly, if an individual holds, or a person with whom he arrives in the United Kingdom holds on his behalf, a valid **visa** for entry to Australia or New Zealand and a valid airline ticket for travel via the United Kingdom as part of a journey from another country or territory to the country in respect of which the **visa** is held, he will not require a **transit visa** to pass through the United Kingdom.

Article 2(2)(b) of this **Order** inserts into article 3A of the 2003 **Order** a new exemption from the requirement for a **transit** passenger to hold a **transit visa**. This provides that if an individual holds, or a person with whom he arrives in the United Kingdom holds on his behalf, a valid **visa** for entry to Australia, Canada, New Zealand or the United States of America and a valid airline ticket for travel via the United Kingdom as part of a journey from the country in respect of which the **visa** is held to another country or territory, he will not require a **transit visa** to pass through the United Kingdom.

Article 2(2)(c) of this **Order** adds Australia and New Zealand to the exemption in article 3A(1)(b) of the 2003 **Order**. Accordingly, if an individual holds, or a person with whom he arrives in the United Kingdom holds on his behalf, a valid airline ticket for travel via the United Kingdom as part of a journey from Australia or New Zealand to another country or territory, provided he does not seek to travel via the United Kingdom on a date more than six months from the date he last entered Australia or New Zealand with a valid **visa** for entry to that country, he will not require a **transit visa** to pass through the United Kingdom.

Finally, article 2(3) of this **Order** adds Congo, Guinea,

Guinea-Bissau and Mongolia to the countries listed in Schedule 1 to the 2003 **Order**, the nationals or citizens of which must have a **transit visa in order** to pass through the United Kingdom.

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*Notes:*

[1] 1999 c.33.[back](#)

[2] S.I. 2003/1185. Relevant amendments made by S.I. 2003/2628 and S.I. 2004/1304.[back](#)

[3] Article 3A was inserted by S.I. 2003/2628.[back](#)

[4] Paragraph (1)(a) was amended by S.I. 2004/1304.)  
[back](#)

[5] Paragraph (1)(b) was substituted by S.I. 2004/1304.[back](#)

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## STATUTORY INSTRUMENTS

**2002 No. 2817****IMMIGRATION AND ASYLUM****The Carriers' Liability Regulations 2002**

|                               |                           |
|-------------------------------|---------------------------|
| <i>Made</i>                   | <i>15th November 2002</i> |
| <i>Laid before Parliament</i> | <i>15th November 2002</i> |
| <i>Coming into force</i>      | <i>8th December 2002</i>  |

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, (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.

**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 and "the Tripartite Articles" has the same meaning as in the Channel Tunnel (Miscellaneous Provisions) Order 1994

**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.

(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 and the Carriers' Liability (Clandestine Entrants and Sale of Transporters) (Amendment) Regulations 2001 are hereby revoked.

*Filkin*

Parliamentary Under-Secretary of State

Home Office

15th November 2002

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## 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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*Notes:*

[1] 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.

[2] S.I. 1993/1813, see article 2(3).

[3] S.I. 1994/1405, see article 2(3).

[4] S.I. 2000/685.

[5] S.I. 2001/311.

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