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CHAPTER 33 SECTION 1

CARRIERS' LIABILITY:

SECTION 40 OF THE IMMIGRATION AND ASYLUM ACT 1999

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1. LEGISLATION

1.1 IMMIGRATION AND ASYLUM ACT 1999

Section 40 of the Immigration and Asylum Act 1999 (I&AA) (as amended) came into effect on 8 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 It replaced the Immigration (Carriers' Liability) Act 1987 (ICLA) which has now been repealed.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 8th December 2002.

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 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.

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 (as amended) he requires a visa to pass through the United Kingdom without entering.

However, a carrier is not liable to charge if it can show that what purported to be the required documents were produced to it when the passenger embarked for the United Kingdom.

If a false document was produced or the passenger impersonated the rightful holder of a document, the carrier is only liable if the falsity of the document or the impersonation is "reasonably apparent".

1.2 EEA FAMILY MEMBERS

Guidance on how to deal with non-EEA nationals seeking admission as family members of EEA nationals is given in Chapter 7 Section 3. The carrier would, in theory, be liable to a charge if such a person fails to produce a valid passport, family permit, visa or residence card as required. However, where it is decided that the person should be admitted in accordance with paragraph 5.3.2 of Chapter 7 Section 3, it would be disproportionate to impose a charge. In such cases, form IS80A should be served on the carrier advising it that the person has arrived without the required documents but that no charge is being imposed. If form IS80B has already been served in such a case, the charge should be waived by service of form IS80C. Where such a person is refused admission, it would be appropriate to impose a charge on the carrier.

However, a carrier may deny boarding to a family member who is not an EEA national if he fails to produce the required documents. Therefore, carriers should be advised that such a person is inadequately documented if they seek advice before the person travels.

1.3 ARRIVALS FROM THE COMMON TRAVEL AREA

Charges are not normally imposed where a passenger has arrived from a port or airport within the Common Travel Area (CTA) unless the person's journey began outside the CTA and the CTA stop was in transit only and the person has continued to the UK on the same service.

2. INADEQUATE DOCUMENTATION

An Inadequately Documented Arrival (IDA) is any person who arrives in the United Kingdom, who requires leave to enter and who fails to produce the required documents. Details of all IDAs must be entered on CID and a Carriers Liability (CL) file raised regardless of whether the carrier is known and regardless of whether the carrier may be liable to charge. All CL files will be reviewed by a senior officer who will decide whether a carrier is liable to charge.

Categories of IDA are as follows:

2.1 NO DOCUMENT

This category includes persons who fail to produce any document which purports to be a passport or other "immigration document" satisfactorily establishing the holder's identity or nationality.

Where a person on arrival fails to produce such a document, 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 when the person embarked for the UK. In those circumstances the carrier is not liable to a charge unless the Border and Immigration Agency can prove that the relevant documentation was false or related to another person and that, in either case, this was reasonably apparent.

Details of all such cases should be entered on the CID CL screen and a CL file raised regardless of whether the carrier produces evidence that the required documents were produced to it. Similarly, details should be entered on CID and a CL file raised even if the carrier has Approved Gate Check (AGC) status (see sub-section 10 below) at the port of embarkation.

2.2 UNACCEPTABLE DOCUMENT

This includes persons who produce a passport or other immigration document issued by the government of a country other than the UK or by an officially recognised international organisation, which is not acceptable for travel. This would, for example, include the holders of documents such as the South African temporary passport.

2.3 SPURIOUS DOCUMENT

A document which purports to be a passport or immigration document but which was "issued" by a state or international organisation which does not exist or is not

generally recognised. This would, for example, include so-called World Service Authority documents.

2.4 FRAUDULENTLY OBTAINED DOCUMENT

An otherwise genuine document issued by a competent authority but which has been obtained by fraud and has been issued to a person in a false identity or to a person who is not entitled to the national status shown in the document. The carrier would only be liable to charge in such a case in the most exceptional circumstances.

2.5 EXPIRED DOCUMENT

A genuine document properly issued to the person presenting it which has expired.

2.6 NO VISA

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 2003¹ (as amended²) he requires a visa to pass through the United Kingdom without entering.

The carrier is liable to charge if a person requires a visa but fails to produce a visa of the required kind. Therefore before a carrier is liable to charge it is necessary to show that the person required a visa and that he failed to produce one.

The visa must be valid for the holder of a travel document and for any accompanying persons named in the document if they are visa nationals.

UK visa requirements are also summarised in Visa Information Cards and in Visa Information Posters.

2.6.1 PASSENGERS SEEKING ENTRY OTHER THAN IN TRANSIT

Appendix 1 to the Immigration Rules sets out the visa requirements for entry to the United Kingdom. The carrier is liable to charge if a person arrives in the UK other than in transit and requires a visa in accordance with Appendix 1 and fails to produce a valid visa for entry to the UK. (See 2.6.2 and 2.6.3 for persons in transit and 2.10 for child visitors.) A visa endorsed "Direct Airside Transit" is not valid for entry to the United Kingdom. A visa with any other endorsement is an entry visa.

Before a carrier can be liable to charge it is necessary to show that the person required a visa in accordance with the Appendix and that he failed to produce the

¹ The Immigration (Passenger Transit Visa) Order 2003 (S.I. 2003/1185) was made under S.41 of the I&AA 1999.

² 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) and the Immigration (Passenger Transit Visa) (Amendment) Order 2006 (SI 2006/493).

required kind of visa. If the person is not a visa national or does not require a visa as a result of paragraph 2 to Appendix 1, then the carrier cannot be liable to charge. Therefore, if, for example, a person qualifies for admission as a returning resident under paragraph 18 of the Rules because he had indefinite leave when he left the UK and returns within two years of his last departure, he does not require visa under the Rules. If he fails to produce a visa the carrier is not liable to charge even if his document has no evidence that he does qualify under paragraph 18. (If he fails to produce a valid passport or other immigration document, the carrier may then be liable to charge – but not for failure to produce a visa.)

2.6.2 DIRECT AIRSIDE TRANSIT VISA REQUIREMENTS

The Immigration Passenger Transit Visa Order 2003 (as amended) sets out the UK's Direct Airside Transit visa (DATV) requirements. It also describes the circumstances in which a DATV is not required. The carrier is liable to a charge if a person who arrives in the UK intending to pass through without entering fails to produce a DATV when he requires one as a result of the Order. The carrier is not liable if the person holds an exemption document described in the Order.

NB The Immigration Passenger Transit Visa Order only applies to persons who seek to pass through the UK without entering. It does not apply to persons who seek to enter the UK in order to proceed onto to another country. Visa nationals who seek entry to proceed onto another country require a visa under the Immigration Rules (not under the Transit Visa Order.)

2.6.3 THE TRANSIT WITHOUT VISA (TWOV) CONCESSION

By administrative concession outside the Immigration Rules visa nationals who have a confirmed booking on an onward flight within 24 hours of arrival by air will normally be admitted as transit passengers without visas. (See Chapter 1 Section 4.9.)

The carrier will not be liable to charge if a person who fulfils all the published requirements of the concession does not hold a UK entry visa. The following sets out the conditions the carrier must meet:

- 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 Organization, 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.

However, those visa nationals who would require a DATV if they were passing through the UK, are also excluded from the TWOV concession, unless they hold an exemption document. Such persons require an entry visa under the Rules and the carrier is liable to charge if they fail to produce such a visa.

2.6.4 PASSENGERS PROCEEDING TO THE REPUBLIC OF IRELAND

Passengers who wish to travel to the Republic of Ireland must first pass through the UK Border and Immigration Agency 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".)

2.6.5 VISA NATIONALS WHO ARRIVE BY CRUISE SHIPS

Visa nationals, other than those who are excluded from the Transit Without Visa (TWOV) concession, who arrive in a ship and intend to leave the United Kingdom in the same vessel on the day following arrival may benefit from the visa waiver concession (see **Chapter 2, Section 2, Annex D**). However, they require visas where the ship will call at more than one United Kingdom port without, in the meantime, calling at a port outside the common travel area.

However, as a concession, the requirement for a visa in these circumstances may be waived in the case of wives and children of crewmembers who arrive as supernumeraries and intend sailing in the same ship. Again, this does not include those who are excluded from the TWOV concession.

A carrier is not liable to charge if a person who benefits from this concession does not hold a visa.

2.7 EXPIRED VISA

A visa which has ceased to be valid because the date until which it is valid has passed.

2.8 DEFERRED VISA

A visa which is not yet valid because the date from which it is valid has not yet been reached.

2.9 USED VISA

A visa which is valid only for a limited number of journeys and which has already been used for the specified number of entries.

2.10 CHILD VISA

Visas endorsed "Visit Child" will also be endorsed either "Accompanied" or "Unaccompanied." The visas of holders of accompanied child visitors, will be endorsed "**only valid if accompanied by**" ..with the initial letter of the first name, the surname and the passport number of the accompanying adult e.g. **M. Smith EF123456**. Where the child intends to travel with two adults sequentially within the validity of the visa, e.g. he/she may arrive with one parent and later travel for a day trip to France with the other, the passport numbers of both parents will be entered on the vignette. (There is insufficient space on the vignette to allow for the names of two

people as well as the passport numbers.) In such a case the visa will be endorsed **“only valid if acc. by EF123456 or EF654321.”**

If a child arrives with a “Visit Child” Visa endorsed “Accompanied” but is not accompanied by the adult or adults specified in the visa, the carrier is liable to charge. (However, no charge should be raised if the child is passing through the UK in transit and does not require a DATV or is seeking to enter in transit and qualifies under the TWOV concession.) If the holder of a Child Visa has reached the age of 18 years since the visa was issued, the visa should be treated as an ordinary visit visa. The carrier is not liable to charge if such a person is not accompanied by the specified adult.

2.11 FALSE DOCUMENT

A passport or other immigration document which is forged or counterfeit. Where a person presents a false document, the carrier is liable to a charge only if the falsity is ‘reasonably apparent’.

The falsity of a document is reasonably apparent,

“If it is 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.”

Whenever a person presents a false document or is known to have boarded using a false document details should be entered on the CID CL screen and a CL file should be raised even if it is considered that the falsity of the document is not reasonably apparent. It is for the senior officer who reviews the CL file to decide if a charge should be pursued.

2.12 FALSE VISA

A document which purports to be a UK entry or transit visa issued by a British mission overseas which is forged or counterfeit. The carrier is liable to charge if the falsity is reasonably apparent. (The same considerations as 2.11 above apply.)

However, the carrier can only be liable to charge if the person is a visa national. If the person presenting it does not require a visa, then the carrier cannot be liable for the person’s failure to produce a valid visa.

2.13 FALSE VISA EXEMPTION DOCUMENT

A document which purports to render the holder exempt from the UK visa requirement and which is forged or counterfeit. The “reasonably apparent” test and the other considerations in 2.11 also apply here.

Such documents would include forged stamps or vignettes purporting to show that the holder did not require a visa under the Rules or documents purporting to show that the holder was exempt from the transit visa requirement (such as a common format Category D visa issued by an EEA state.)

Again the carrier can only be liable to charge if the person presenting such a forged document requires a UK visa. If, for example, a non-visa national presents a passport containing a forged ILR vignette, the carrier cannot be liable because the person has failed to produce a valid visa.

2.14 MUTILATED DOCUMENT

A document which has been damaged either deliberately or accidentally so that it is no longer capable of providing satisfactory evidence of identity or nationality. This would include documents from which bio-data or other pages have been removed.

2.15 IMPERSONATION

This includes circumstances 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.

In all such cases, details should be entered on the CID CL screen and a CL file should be raised even if it is considered that the impersonation is not reasonably apparent. It is for the senior officer who reviews the CL file to decide if a charge should be pursued.

3. PROCEDURES WHEN A PERSON ARRIVES WITHOUT THE REQUIRED DOCUMENTS

As soon as possible after the arrival of an inadequately documented passenger (IDA), the person who first encountered the IDA should produce a statement in the appropriate format explaining the circumstances of the person's arrival. The statement should include any available evidence that the person arrived on the particular ship or aircraft and an explanation of the person's failure to produce the required documents. If the person has presented a forged document or has impersonated the rightful holder of a document, the officer should state if he considers that the falsity of the document or the impersonation is reasonably apparent. If he does, he should give a full description of the faults that he identified, not involving the use of technical aids, which led him to identify the forgery.

Details of all IDAs should be entered on the Carriers Liability screen on CID whether or not it is possible to pursue a charge and whether or not the inbound carrier has been identified.

A port Carriers Liability (CL) file should also be raised in all cases. The file should contain the encountering officer's statement and a copy of the ticket, boarding pass or other evidence that the IDA arrived on the flight or ship claimed. A copy of the travel document, if any, presented by the person should also be included. In cases where the person has failed to produce the required visa or has produced an unacceptable document, a copy of all the pages of the document should normally be attached to the file. If circumstances such as the passenger's imminent removal, preclude copying all the pages of the document, the bio-data and all pages containing UK visas or other UK endorsements should be copied. In that case, the copy should be certified that the remaining pages were blank and/or did not contain any UK endorsements.

In no document, mutilated document, forged document and impersonation cases, a copy of the person's photograph should be attached to the file. In cases involving forgery or impersonation, the original document should be attached to the CL file. If the document has to be removed from the file, the reasons for its removal should be explained. In that case, the best possible copy, photograph or scan of the document should be attached to the file.

As soon as practicable after an IDA has arrived, the inbound carrier, if known, should be notified of the circumstances of the person's arrival.

Unless the carrier concerned has reached a different local arrangement, form CLA1 adapted for local use, should be completed and either faxed or handed personally to the carrier. If faxed, a copy of the transmission report should be attached to the port Carriers' Liability (CL) file. If handed to the carrier the file copy of the form should be noted with the time and date and the name of the recipient

The carrier should also be given an opportunity to examine the document (if any was presented), and to speak to the passenger wherever possible, provided the passenger agrees.

On request the contents of the local CL file should be disclosed to the carrier concerned. However, any confidential personal information about a passenger **must** first be deleted

The file should be passed to a Senior Officer who will decide whether a charge should be pursued.

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), the carrier should be advised by service of "Notification of Arrival" (Form IS 80A).

If he decides that there is potential liability to a charge, the carrier should be advised by service of a "Notification of Potential Liability to a Charge" (Form IS 80B.) The **Notification of Potential Liability to a Charge** 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 issues such as the standard of falsity, if a false document was presented, or any exceptional circumstances.

Notices should be served as soon as is reasonably practicable. If they are faxed to the carrier a copy of the transmission report should be attached to the file. If posted, proof of posting should be attached. If the notice is delivered by hand, the name of the person to whom the notice was given must be noted on the file copy.

4. REPRESENTATIONS

4.1. REPRESENTATIONS TO PORT INSPECTORS

On receipt of the **Notification of Charge**, the carrier has **30 days** in which to make representations to the port inspector explaining why it believes that it is not liable to charge. If the carrier is unable to obtain the evidence needed within this period and informs the inspector of this as soon as possible, demonstrating reasonable cause for the delay, inspectors may approve a short extension beyond 30 days for the submission of representations.

Sub-section 12 (below) lists some of the instances where an inspector may waive charges. The list is not exhaustive; there will always be unusual or exceptional circumstances and each case should be considered on its merits.

Representations are usually made in writing. However, some carriers, particularly larger UK based carriers who may deal with large numbers of cases, hold regular meetings with port staff to make representations verbally. Officers dealing with carriers at such meetings should note the CL file with details of the points raised by the carrier and with the outcome of the representations and the reasons for the decision as explained to the carrier. If written representations are received, the inspector should send a written reply. Where the charge is maintained a full explanation should be given.

4.2. NOTIFYING CARRIERS OF THE RESULT OF REPRESENTATIONS

If the inspector, having considered the carrier's representations, decides that the charge should be waived, he should send the carrier official notification of this **on form IS 80C**. 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 the carrier that it has **30 days** in which to pay. Forms IS80D should be copied to the Carriers' Liaison Section.

It should be noted that inspectors are not obliged to consider representations received outside the 30 day periods referred to above, unless an extension is sought, and given, at an early stage.

4.3 IF NO REPRESENTATIONS ARE RECEIVED

If no representations are received within the 30 period from service of Form IS80B, the Port Inspector should consider whether a charge should be imposed. If he decides that a charge should not be imposed, Form IS80C should be served on the carrier. If he decides that a charge should be imposed, a Charge Notice, Form IS80D, should be served on the carrier and a copy sent to the Carriers Liaison Section.

If a carrier considers that a charge should not have been imposed, it may either make a written objection to the Secretary of State or it may appeal to the Court. Objections and appeals are dealt with by the Carriers Liaison Section.

Representations received after a “charge notice” (Form IS80D) has been served will be considered as if they were written objections. They must be forwarded to the Carriers Liaison Section together with the port CL file as soon as possible.

5. OBJECTIONS

A carrier on whom a charge notice is served may give a notice of objection to the imposition of the charge.

A notice of objection must:

- (a) be in writing,
- (b) give the objector's reasons, and
- (c) be given within **28 days** of service of the charge notice (Form IS80D).

Carriers should send notices of objection by post, fax or e-mail directly to the Inspector at the Carriers Liaison Section at:

**Carriers Liaison Section
Amadeus, The Quartet
Mondial Way
Hayes
Middlesex
UB3 5AR**

Fax: 020 3014 8221

E-mail: BIABCObjections.CLS@homeoffice.gsi.gov.uk

A senior officer at the Carriers Liaison Section will consider the objection and decide whether or not to cancel the charge. Carriers will be notified of a decision within 70 days of service of the charge notice (Form IS80D) unless a longer period is agreed in an individual case.

Any notice of objection received at the port should be sent to the Carriers Liaison Section together with the port CL file as soon as possible.

6. APPEALS

6.1 WHEN CAN AN APPEAL BE MADE TO THE COURT?

Whether or not it gives a written notice of objection a carrier may appeal to the Court against the decision to impose a charge. An appeal must be lodged with the Court within **28 days** of the service of the charge notice (form IS80D) or, if the carrier makes a written objection, within **28 days** of service of the decision in response to objections.

6.2 WHAT IS THE PROCEDURE FOR MAKING AN APPEAL?

Part 52 of The Civil Procedure Rules governs the appeal process. An Appellant's Notice must be lodged at a County Court (or, in Scotland, the Sheriffs Court,) within the time limits set out above.

Once an Appellant's Notice has been lodged, it must be served upon the Home Office's legal representative within 7 days. The Treasury Solicitor is the Home Office's legal representative.

The Carriers Liaison Section will be responsible for all dealings with the Treasury Solicitor on behalf of the Home Office in respect of appeals brought against Section 40 charges.

7. PAYMENT OF CHARGES

Carriers are required to make prompt payment of outstanding charges when form IS 80D is received, unless written objections are made or the carrier appeals.

Collection of outstanding charges is the responsibility of the Carriers Liaison Section. The Home Office is committed to a programme designed to deal vigorously with any carrier demonstrating a persistent reluctance to pay its outstanding carriers' liability charges. Legal proceedings may, if necessary, be instituted to secure recovery of outstanding charges.

Full details of how a charge may be paid are contained on Forms IS80D.

Where a carrier enquires at a port about how to settle an outstanding charge, it should be advised to contact the Carriers Liaison Section.

8 ADVISING CARRIERS ABOUT THE ACCEPTABILITY OF DOCUMENTS

Carriers have been advised that, where they have doubts about the documentation presented by a passenger, they should resolve those doubts before deciding whether or not to carry the passenger. They should not rely solely on advice received from the Control Authority at the port of embarkation but, where necessary, should seek advice from the Border and Immigration Agency at the UK port of arrival, from a UK Airline Liaison Officer (ALO) if there is one in their region or from the nearest British Embassy/High Commission which has a responsibility for issuing visas.

Ports should try to give the best and most definite advice possible in response to individual enquiries from carriers. It is understood this advice cannot always be definitive when the document and the passenger are not to hand. Where a port receives such an enquiry from a carrier, it should keep a log of enquiries and note:

- * the time and date of the enquiry;
- * the nature of the enquiry and of the advice given; and
- * the name of the person to whom the advice is given.

A reference number should normally be allocated to the enquiry.

Carriers should be advised that where there remain doubts, a contemporaneous record of the document details (i.e. number, date and place of issue, visa(s) held) and of the steps taken to verify them may be of assistance. However, photocopies, photographs or digital images of the document may not in themselves automatically justify waiving a charge.

Requests from carriers for guidance on United Kingdom document requirements and on the detection of false documents and for training to assist them in meeting their obligations under Section 40 should be referred either to the inspector at the normal port of arrival or to Airline Liaison Network UK (for details see sub-section 11 below).

9. ASYLUM

9.1 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. A person who arrives without the required 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.

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 MUST not, therefore, be informed whether a person has claimed asylum, nor told of the outcome of any such application. All officers should ensure that no carrier is given any information that could lead it to conclude that a person has applied for asylum. In particular, port CL files should make no mention of any asylum claim and care should be taken when disclosing CL files to ensure that no information about an asylum claim is disclosed.

9.2 WAIVER OR REFUND OF CHARGES WHERE REFUGEE STATUS IS GRANTED

Where a charge has been incurred by a carrier in respect of a passenger (and any dependants) who is recognised as a refugee under the 1951 United Nations Convention and the 1967 Protocol relating to the status of refugees, 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.

A charge will only be refunded or waived in respect of an inadequately documented passenger who is granted full refugee status under the Convention and Protocol; this procedure does not apply to any person who is granted humanitarian protection or discretionary leave or who is admitted for any other reason.

Where a person who has made an asylum claim at a port of arrival is granted refugee status, including dependants, the case file should be forwarded to the Carriers Liaison Section (CLS). CLS will check to establish whether a CL charge has been incurred and, if so, will arrange for it to be waived or refunded.

10. APPROVED GATE CHECK (AGC) STATUS

10.1 WHAT IS APPROVED GATE CHECK STATUS?

Approved Gate Check Status is an arrangement whereby the Border and Immigration Agency 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 the 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 Section 40. AGC is administered by the ALO Network (ALON) UK.

10.2 CRITERIA FOR ATTAINING AND RETAINING AGC STATUS

The 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 Section 40 of the I&AA, the Border and Immigration Agency 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 Border and Immigration Agency, at the carrier's expense.

10.3 SEA CARRIERS

As far as sea carriers are concerned, it should be recognised that the provision of sterile areas as described in paragraph 10. 2 above, may be difficult to achieve. The Border and Immigration Agency 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 Border and Immigration Agency 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 Border and Immigration Agency. However, the Border and Immigration Agency 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 Border and Immigration Agency, at the carrier's expense.

10.4 HOW ARE AGC APPLICATIONS PROCESSED?

When an application is received from a carrier ALON UK will contact the CL team at the relevant ports of arrival and request details of the carrier's performance together with a recommendation as to whether the application should be proceeded with. If the service originates from an area that is covered by the ALO Network then the appropriate ALO overseas is asked for similar information. AGC inspections are conducted by ALOs or staff at CIO grade or above working at ALON UK and Carriers Liaison Section. Any applications for AGC status received by Ports should be sent to the AGC team at ALON UK.

10.5 DOES AGC STATUS ONLY APPLY TO DIRECT FLIGHTS?

In considering an application for AGC status at an airport, ALON UK will take account of whether the flight operates solely and directly between the application airport and the UK 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 to which the AGC application applies, approval can only be considered if the intermediate or originating airport also benefits from AGC status.

10.6 WHAT HAPPENS IF AGC STATUS IS GRANTED?

AGC status is granted for an initial period of six months. Port CL Teams will be advised every time AGC status is granted to a carrier at a new port of embarkation. Performance is monitored by ALON UK. If this is satisfactory then AGC status will be normally be extended for a further period of six months and thereafter on a yearly basis. The grant of Indefinite AGC status ceased in March 2005. Before extending AGC status ALON UK will contact the appropriate Port CL Teams for statistical information on performance and general comments. If there are some concerns about performance it is open to ALON to curtail (i.e. shorten) the AGC agreement and grant short extensions.

10.7 WHEN SHOULD CHARGES NORMALLY BE WAIVED?

Where a carrier has AGC Status at the port of embarkation charges should only be waived in cases where the person arrives with no document and appears to have disposed of his document after embarkation, or in certain mutilated document cases. A charge should, for example, be imposed for any person arriving without a visa or with a document whose falsity is reasonably apparent. Such cases may be indicative of a failure by the carrier to maintain the requisite high standard of document checks.

If a person arrives with no document or a mutilated document from an AGC station form IS80B should be served in the same circumstances as an arrival from a non-AGC station. Carriers should then make representations to Port Inspectors including any evidence of the documents used by the person to board its service. Charges should then normally be waived if there is no evidence to show that the person was inadequately documented at the time he boarded the ship or aircraft for the journey to the UK.

10.8 WHAT HAPPENS IF AGC STATUS IS NOT GRANTED?

If it is apparent that the carrier does not meet the criteria for AGC status at the time of application or during the course of an inspection ALON UK will write and explain what needs to be rectified before any re-application for AGC status can be submitted.

10.9 CAN AGC STATUS BE TAKEN AWAY?

An AGC agreement is not open-ended and will be terminated by ALON if patterns in the arrival of improperly documented passengers suggest that the standard of checks is no longer satisfactory. If a carrier changes document checking procedures, handling agents or moves to a new terminal/airport then AGC status will be reviewed. Each application is dealt with on its own merits. If a carrier loses AGC status at one port of embarkation this does not mean that they will lose it at every station where it has been granted.

10.10 FURTHER INFORMATION ON AGC

Further information can be obtained from the AGC team at:

**Airline Liaison Officer Network
Amadeus
The Quartet
Mondial Way
Hayes
Middlesex
UB3 5AR**

**Tel: 020 3014 8230
Fax: 020 3014 8221**

11. FURTHER ADVICE TO CARRIERS

The Border and Immigration Agency provides written advice and guidance to carriers on matters relating to Section 40 of the Immigration and Asylum Act 1999 in the brochure "Charging Procedures: A Guide for Carriers". A copy can also be found on the HO website.

Carriers requiring further information or advice on the administration of the carriers' liability regime should be advised to contact the inspector at the United Kingdom port of entry to which it operates. Alternatively carriers may contact the Carriers Liaison Section for guidance on these matters as well as with regard to payment of charges, at the following address:

**Border and Immigration Agency
Carriers Liaison Section
Amadeus, The Quartet
Mondial Way
Hayes
Middlesex
UB3 5AR**

**Tel: 020 3014 8282
Fax: 020 3014 8221**

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

**Border and Immigration Agency
Airline Liaison Officer Network
Amadeus
The Quartet
Mondial Way
Hayes
Middlesex
UB3 5AR**

**Tel: 020 3014 8230
Fax: 020 3014 8221
E-mail : INDUKISALONetwork@homeoffice.gsi.gov.uk
Sita: LONIXCR**

12. GUIDE TO THE WAIVING OF CHARGES

12.1 EXAMPLES OF WHEN CHARGES MAY BE WAIVED

The following list describes some of the situations in which senior officers should normally 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 Border and Immigration Agency in seeking to prevent the carriage of such persons, in particular whether the carrier has acted on any advice offered by the Border and Immigration Agency 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 Border and Immigration Agency. Where equipment has been offered by the Border and Immigration Agency, 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 Border and Immigration Agency, charges will normally not be waived³.

- 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.

- 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 Border and Immigration Agency 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 Border and Immigration Agency 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.

³ 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, 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.