

# CIVIL PENALTY PROCEDURES

## About this guide

This guide is intended to provide step-by-step instructions for ports in raising civil penalty cases. It should be used in conjunction with any local instructions. Any further enquiries regarding civil penalty procedures should be directed to CPCAUI on 020 8745 6006.

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# Introduction

The Immigration and Asylum Act 1999 introduced a regime under which penalties may be imposed upon those responsible for the carriage of clandestine entrants to the United Kingdom. Following a challenge through the courts the provisions were amended by Schedule 8 of the Nationality, Immigration and Asylum Act 2002. The amended provisions, which were brought into operation on 8 December 2002, currently apply to road vehicles and rail-freight wagons. They have not been enacted in respect of ships and aircraft, although the legislation allows for this if required. These instructions cover only road vehicles. Separate instructions apply to rail-freight wagons.

The purpose of the penalty provisions is to encourage road hauliers and others to take measures to prevent their vehicles being utilised by unauthorised persons seeking to enter the United Kingdom. Where no reasonable measures are taken to secure and check vehicles before embarkation for the UK, a penalty of up to £2000 may be imposed on each person responsible for each clandestine entrant carried in the vehicle.

The provisions are intended to deal only with those who carry clandestine entrants to the United Kingdom as a result of negligence or carelessness. They are not intended to be used in place of, or in addition to, the criminal sanctions that exist to deal with those who deliberately facilitate the illegal entry of persons to the United Kingdom.

## The legislation

The penalty provisions are contained in [Part II of the 1999 Act](#), as amended by Schedule 8 of the 2002 Nationality, Immigration and Asylum Act. Specifically the provisions are contained in sections 32-37 inclusive, section 43, and Schedule 1 of the 1999 Act.

In addition, regulations concerning the administration of the legislation are contained in the [Carriers' Liability Regulations 2002 \(SI 2002 No. 2817\)](#).

Two Codes of Practice have been issued in accordance with the legislation, these being the ['Prevention of Clandestine Entrants: Code of Practice'](#) and the ['Level of Penalty Code of Practice'](#).

## Procedures to follow when clandestine entrants are detected.

- Photograph the vehicle with security devices in place and clandestine entrants in situ. (See below)
- Retain any seal if one was present.
- Record time and number of clandestine entrants found, their nationality, the time the vehicle is declared clear and all other relevant details in the IOs notebook. This information should then be transferred into the port file as the initial minute.

- Record the time at which the first search of the vehicle by immigration officers was concluded. This time is the start of the 24-hour period for which the vehicle may be held in order to enable administrative processes to be carried out. (In this context holding the vehicle does not require the service of a detention notice on the driver or company.)
- Remove the vehicle's keys from the driver and secure in a safe place. Request from the driver any relevant documents relating to the load and vehicle, such as tachographs, CMR, TIR Carnet, insurance documents, HGV permit etc. and take copies.

## What to photograph for the CP Files

Photographic evidence should include:

**The front and rear of the vehicle, clearly showing the vehicle registration**  
**The seal, prior to entry**  
**The side view of the vehicle, including any identifying marks, logos, names and contact details**  
**Method of entry, if appropriate**  
**The clandestine [s] in situ, before removal from the vehicle and after removal**  
**The presence, or absence, of any physical security measures, location of security devices, if not in use**  
**Any damage to the vehicle, such as on the canvas or in the roof**  
**Evidence of habitation by clandestine entrants, if appropriate.**

## What to include in the Initial Notebook Minute

An initial minute must include:

**Vehicle registration – tractor and trailer**  
**A brief description of the vehicle**  
**Details of the driver who was driving at the time the clandestine entrants were discovered**  
**Reason for selection - this is nearly always described as RANDOM**  
**Carrying company, the name of the vessel and time of sailing**  
**Condition of the vehicle on initial inspection**  
**Method [s] of search**  
**Security methods in place; security measures available but not in use.**  
**Whether seal or padlock was in use or available**  
**Means of entry of clandestine entrants if apparent**  
**How many clandestine entrants were found and their nationality**  
**Details of the load and where the clandestine entrants were found within it**  
**Time vehicle declared clear**  
**CIO referral and the decision of the service of papers**  
**The name of the officer [s] responsible for a] talking to the driver b] breaking the seal, if necessary, and c] taking the photographs**

The original photographs should be signed and dated with the photographer's name clearly printed and the time taken on each photo. These should be kept in the orange file. Only one photographer should be used.

If facilitation is suspected, all evidence should be preserved and local police contacts called immediately.

## Prior to interviewing drivers and companies

- *The civil penalty procedures are administrative. They are not conducted in accordance with PACE.*
- The driver should be allowed to contact his employer about the incident without delay
- Obtain the driver's full details. This includes the full address, country and telephone/fax number. Also obtain all other responsible persons details such as owner or hirer of the vehicle and employer of the driver.
- Invite the driver into an interview room, with access to a telephone.
- Serve the driver with a [Pre-Interview Notice](#) that has been signed by the IO and includes the vehicle registration details.
- If the other responsible persons can be identified at this point, such as the vehicle owner / operator / hirer, then a [Pre-Decision Notice](#) is to be served on them by fax.
- All notices should be given in the interviewee's own language. How and when they were served should be recorded on the port file. An interpreter should be used to explain the contents of the notice where necessary.
- On occasions, companies provide two drivers for a vehicle, but the pre-interview notice should be served only on the driver who actually drove the vehicle on the final leg of the journey. The co-driver cannot be considered a responsible person.
- On occasion you may wish to speak to a co-driver in order to verify a driver's story. But a pre-interview notice should not be issued to him and he may not be served with a penalty.
- The driver is free to decide whether or not he wishes to be interviewed. A decision to impose a penalty should then be made based on the facts as they are known at the time. See procedures to follow when [driver declines to be interviewed](#).

## Establishing who is a 'responsible person'

A responsible person is always :

the person who drove the vehicle into the UK control zone or into the United Kingdom. If that driver is employed by the owner or hirer of any part of the vehicle, the employer is jointly and severally liable to pay the driver's penalty and should be interviewed to confirm the account given by the driver.

and can be any 2 of the following:

the owner of the tractor  
the owner of the trailer  
the hirer of the tractor  
the hirer of the trailer

To determine responsibility, the extent to which any of the above had operational control of the vehicle should be considered. For example, a leasing house or bank may own a tractor it has leased to a transportation company. The company responsible for securing the vehicle will have operational control of it during the journey and is therefore a responsible person. The bank will not be a responsible person and should not be interviewed.

## Owner/drivers

Occasionally the driver of a vehicle may also be its owner or hirer. In such circumstances, when considering liability to a penalty, the driver should be interviewed in his capacity as driver and owner of the vehicle and a penalty may be imposed on him in each capacity.

## Driver interview

- Confirm that the driver has read and understood the **Pre-Interview Notice** in his own language and is happy to be interviewed. Ensure that he understands the interpreter.
- An **Interview Advice Notice** must be given to the driver to read and sign. This is a separate form which needs to be served in the driver's own language. This advises the driver that he is free to leave the interview at any stage. If the advice notice is not available in their own language the interpreter should read this to the driver. This must all be recorded in the IO's notebook minutes. A copy of the pre-interview advice notice should be retained on the CP port file.
- The interview minute should include the following:

CP Port Ref. Number

Persons present

Date and start time, and location of the interview

Language used, interpreter's name or number

# Civil Penalty interview questions for drivers.

## Preamble

- Have you read the pre-interview notice and understood it fully?
- Are you fit and well and happy to be interviewed?
- Are you content to be interviewed in.....?
- Do you understand the interpreter?
- I must advise you that this is an administrative procedure. You are not being detained and are free to leave at any time during the interview. Do you understand this?
- The purpose of this interview is to give you an opportunity to respond to any questions about the loading of the vehicle, the route taken in travelling to the UK and in to assist us to determine whether or not any Civil Penalty is to be imposed. Do you understand?
- What is your full name?
- What is your full address and contact details, including telephone and mobile numbers?

Interview the driver using the [CP driver Q & A proforma](#), concentrating on any points that the driver has given indicating that a defence may exist. If an interview proforma is not available the following questions should be asked.

## Details about the company

- What is your company's full name?
- What is your company's full address, telephone number, fax number, email address?
- Who owns the tractor and trailer? (This is of particular importance. You need to try and establish if the company owns any part of the vehicle or if it is leased or hired. The vehicle registration documents will assist in this as well. Always confirm this with the driver. Make certain you have established ALL responsible persons. To avoid confusion ensure that ALL responsible person's contact details are obtained.
- If the vehicle is hired does the hire agreement place any restrictions on the number/type of security devices applied?
- Whose responsibility is it to look after the fabric of the vehicle? Is it checked regularly? Are repairs effected immediately?
- How big is the company?
- How many drivers and vehicles does the company have?
- Does your company regularly send vehicles to the UK? How many vehicles? How often do they travel?
- How long have you been an HGV driver/? Are you employed directly by the company? Does it pay your wages or do you invoice the company for every journey carried out?
- How long have you worked for the company/?
- Have you driven to the UK before? If so, how often?
- Have you ever had any problems with clandestine entrants prior to this event? Has the company?
- If so have you or your company changed your practices at all? In what way?
- Are you aware of the civil penalty legislation? Is your company aware?

- Does your company operate a code of practice to inform the drivers of the existence of the problem of clandestine entrants?
- Do you have a copy of the company's operating instructions in your cab?
- Do you or your company have a civil penalty checklist? What does it tell you to do? Can you give me a copy of the checklist?
- Does your company provide you with any security equipment; torch, seals, tilt cord, padlock, ladder for example? What has been used on the vehicle and when?
- If no security has been provided, why not?
- Do you have any extra/replacement equipment in case your vehicle is damaged?
- Have you been given any training by your company to prevent the entry of clandestine entrants into your vehicle? If so, is it verbal or in writing?

## Vehicle loading

- When and where was the vehicle loaded? What was the exact location?
- Was it loaded in more than one place? If so where?
- Were you present when the vehicle was loaded?
- Was the vehicle sealed? Was type of seal was it? Company seal? Customs seal?
- Did you observe each stage of the proceedings?

## The journey

- What time did you start your journey? Where were you?
- Once you set off where was your first stop? At what time?
- For how long and why did you stop?
- Did you leave your vehicle unattended at any time? How long for? [Ask about "comfort stops" too]
- Did you make any checks to the vehicle before you set off? What did you do?
- Did you enter the vehicle, check the load thoroughly, check the roof [and panniers if there are any], the axle, the windbreak, the seal and tilt cord [if applied]. If not, ask why not
- At what time did you leave?
- If you did check your vehicle is there any record of any checks made?
- Detail any further stops en route in the same manner paying particular attention to the final stop, e.g petrol station or cash and carry.
- For each stop ask the driver what checks he made after each stage before resuming his journey
- Did you stop for fuel? If so where and when (obtain a receipt and copy to file)
- Did you stop for food? If so where and when (obtain receipts) and copy to file)

## Port arrival and checks

- (if found at UK port) Did you check your vehicle immediately prior to boarding?
- (If found at juxtaposed control ) Did you check your vehicle prior to entering the UK control zone?
- Describe the arrival at the port, stating the date and time.

- Did any other port authorities check the vehicle? What did the check entail? Visual? Did they enter the vehicle? Did the vehicle go under a visual, CO2, Heartbeat or scanner check? Were the roof and windbreak checked?
- Do you have any evidence that the port authorities checked the vehicle?
- Did you conduct a physical check yourself?
- If so how? Was roof checked? Outside compartments? Underneath? Inside? Is there any evidence that these were carried out? Do you have a checklist?
- Where were these checks conducted?
- How long did you wait before boarding commenced?
- Did you leave the vehicle unattended at any point?
- When, exactly, was the last time you actually checked the vehicle?
- When did you realise that there were persons present in your vehicle?

## Concluding the interview

- Are you aware that the current maximum level of penalty for each clandestine found aboard a vehicle is £2000?
- Have you understood all my questions?
- Have you understood the interpreter?
- Do you wish to add or change anything?
- Are you satisfied with the conduct of the interview?
- Are you willing to sign the notebook entry? A set of notes made during this interview will be available to you.
- Are you happy for a set of interview notes to be made available to your company?

IO and driver to date and sign the interview notes; note the time. Also note if the driver refuses to sign and advise him that a company representative will be contacted for their version of events. Inform the driver that you will now need to refer to a senior officer before a penalty can be set.

Complete the **Civil Penalty Record Sheet** from the driver's interview and place this on the left hand side of the port file.

Copy the notebook entry - place a copy on the right hand side of the file, give one copy to the driver, and another copy for his company (provided he agrees his company may be given a copy).

## Where a driver elects not to be interviewed

- A driver may elect not to be interviewed for a number of reasons. If he has exceeded his driver hours and requires a rest period he may be invited to return for interview after the rest break. If he does not wish to be interviewed at all, a decision to impose a penalty should be made on the basis of the evidence held, and a penalty may be imposed on him.
- The driver must be in possession of a pre-interview notice in his own language.
- Obtain full details from the driver to include, name, address, and telephone number, fax number and mobile number.

- Try and obtain the details of all the other responsible persons i.e. owner, hirer. Details may be found on the driver's documents.
- The driver's documents should be obtained so that they can be copied to the port file as well as items such as checklist/vehicle documents/CMR/evidence of checks.
- The interviewing officer should write a comprehensive minute. It should contain any evidence of security that the vehicle had present and if was used.
- A decision should then be taken whether or not to impose a penalty on the basis of the evidence obtained.
- Form IS11R and IS11 Annex(s) should be faxed to CPCAUI

## Civil Penalty interview questions for companies

Once the driver has been interviewed, the identified responsible persons i.e. the company that owns or hires the vehicle and the employer of the driver should be contacted and given an opportunity to put forward any responses that they have to the pre-decision notice. It can be that the tractor and trailer are owned by different companies. If this is the case both parties may be interviewed to establish to what extent they have operational control of the vehicle.

Following consultation with the Duty CIO, the other responsible persons should be contacted. The interview should be conducted using the [company interview record](#).

A Pre-Decision Notice is served by fax to the company once the decision has been made to interview the company and before the interview actually takes place.

*CPCAUI will be able to say whether the company has had previous penalties and whether the company has any debts.*

If a company is closed or not available for interview, a decision whether to impose a penalty should be taken on the basis of all the evidence obtained from the driver interview and security devices used.

As with the guidance for interviewing drivers, the list of questions below is by no means exhaustive. Other questions may need to be asked

## Preamble

- Have you received and understood the Pre-Decision Notice?
- Are you fit/well and able to be interviewed?
- Are you happy to be interviewed in.....?
- Do you understand the interpreter?
- The purpose of the interview is to put forward any further representations regarding your company's procedures when applying Civil Penalty

guidelines. It is also to determine whether or not any Civil Penalty is to be imposed. Do you understand?

- What is your full name/
- What is your position within the company?
- What is your direct dial telephone number?
- How long have you employed the driver? Does the company directly employ the driver/pay his wages?

## Details of the system operated by the company

- Do you own or hire the tractor?
- Do you own or hire the trailer?
- Are you aware of the Civil Penalty?
- Does the company have a code of practice or a document describing the company's operating procedures? Can we have a copy faxed through?
- Do you have a copy of the Home Office Code of Practice?
- Do you have a written checklist issued to drivers to use when they check their vehicles?
- Have you given or offered any training in regards to clandestine entrants to the driver in question? What do you tell them to do, when and how often?
- What security equipment does the vehicle have; tilt cord, seal, torch, and ladder, padlock for example?
- Have you asked the driver to use any security devices or perform vehicle security checks? Which ones?
- Do you monitor the driver in any way to make sure these security precautions are carried out?
- Do you provide drivers with a checklist?
- Do you provide drivers with a copy of the company's operating instructions to leave in their cabs?
- Do you ask/tell the driver to volunteer for security checks at different ports?
- Has your company had any previous problems with clandestine entrants?
- If so, have you any outstanding debts? How much debt?
- If there is an outstanding history, what precautions have you taken to avoid a repeat of this situation?
- Has the Immigration Service ever detained any of your vehicles? Where and why?
- Do you own both the tractor and trailer?
- Do you lease any part of the vehicle? If so do you have the leasing company details?
- Does the leasing company give instructions on security devices, clandestine entry etc?
- How often does your company come to UK?
- How many vehicles does your company own?
- How many employees does the company have?
- How much approximately is the vehicle worth?

## Concluding the Interview

- Is there anything further that you have could have done to prevent this happening?
- Your vehicle has been found with ..... of clandestine entrants inside. This may result in a fine of £..... Is you company willing and able to pay this penalty?
- The driver may also be liable to a fine of £.....As his direct employer are you willing and able to pay his penalty?

- Have you understood all the questions?
- Have you fully understood the interpreter?
- Do wish to add or change anything about the interview/
- Are you satisfied with the conduct of the interview?

Note the time the interview was concluded.

Remember that it may be necessary to contact other companies responsible for the vehicle to ask their representative similar questions.

If a company states that it will not pay the penalty within the 60 days or following the dismissal of an appeal, [detention under 36\(1\)](#) may be appropriate.

The case should then be referred to the Duty CIO who decides the level of penalty after reference to the [Level of Penalty Code of Practice](#).

## Financial means and the setting of penalties

We are obliged to consider the financial means of those receiving civil penalties when setting and reviewing the levels of penalties, but not when deciding liability.

Ports may take into account the financial means of a driver or company before setting a penalty, but *only* if evidence such as bank statements and wage slips is provided. Ports should not simply assess the amount on the basis of a driver's statement that he cannot afford to pay.

The total amount of penalty that may be imposed is £4000 per clandestine entrant, i.e. £2000 on the driver and, £2000 on the owner/hirer of the vehicle. Care should be taken when 3 responsible persons are identified that the sum of the 3 penalties does not exceed £4000 per clandestine entrant.

## Drivers who Self declare at the UK Control

In the event that a driver presents himself to the UKIS because he suspects clandestine entrants are in his vehicle, it is necessary to establish the extent to which he checked and secured his vehicle before he presented himself. Although a penalty may be appropriate, mitigating factors to take into account will be, the method used by the driver to bring himself to the attention of the UK Immigration Service, and the extent to which he checked his vehicle himself. The wording to be used on the IS 11 in such cases is different. See [wording formula](#)

## Penalty Notices: IS 11s

There are three different IS 11s; these being the:

Driver/Operator  
Owner/Hirer

## Owner/Hirer - Employer

The wording on the IS11 should include the location and date of the find, and the number of clandestine entrants discovered. See [wording formula](#)

In all cases the method of service should be clearly noted on the port file. Ensure that the method of service is also recorded on the IS11 in the space provided on the last page of the form. A copy of the IS11 issued should be attached to the port file, including the exact time it was issued and to whom. Please ensure that this form is signed before issuing to the responsible person.

- Remember to add a payment extension for service by post in the UK and abroad. If the address is in the UK, add two days to make the payment due 62 days from the date of service. If the form is to go abroad add four days to make the payment period 64 days.
- The level of penalty set for the driver and company may be different, depending on the measures each took to operate an effective system.

The IS11 Annex should reflect how the level of penalty was reached and it must therefore include all factors considered e.g. use or presence of security devices, extent of training and monitoring.

- The [Objection/Appeals Notice](#) should be served on all responsible parties after a penalty has been served. The notice is available in English and French only.
- The [Methods of Payment Annex](#) must also be given to the driver.

## IS 11 Driver/Operator

The IS11 Driver/Operator and IS11 Annex should be served on the responsible driver only and not the co driver. In juxtaposed controls the responsible driver is the one who drove the vehicle into the UK control zone, in non juxtaposed controls the responsible driver is the person who has driven the vehicle onto the ferry.

## IS 11 Owner/Hirer and IS11 Owner/Hirer-Employer

An IS11 Owner/Hirer and IS11 Annex is to be served on the company if it owns or hires the vehicle and it has been decided that a penalty is to be imposed.

An IS11 Owner/Hirer-Employer is served on the company when it is the employer of the driver *and* owner or hirer of the vehicle involved in the incident and a penalty has been imposed on the driver. As the driver's employer, the company is liable for the driver's penalty in the event that he fails to pay. This is known as joint and several liability. This form should be addressed in the name of the company and not a named employer. The amount on the form is the amount of penalty levied on the driver. When this form is served on

the company, a copy of the IS11 Driver/Operator Annex should also be served on the company as employer of the driver.

*Employment agencies cannot be held jointly liable for a driver's penalty because they do not own or hire the vehicle involved in the incident.*

If the driver is served his form IS11 on one day and the employer is served with the joint and several liability form the next day, the 60 day limit in which to pay the penalty runs from the day the driver was served with his own IS11 and NOT the day the employer was served with form IS11 owner/hirer/employer.

### 3] IS 11 Annex

This form should be completed when serving an IS11. It should set out the reasons in each paragraph for imposing a penalty.

The provision of ladders and torches should not be factor to take into account when assessing the level of penalty as they are not a requirement of the Code of Practice

It is appropriate to impose penalties in cases where clandestine entrants are found on axles or in panniers if it apparent that the driver did not operate an effective system for the prevention of clandestine entry

### IS11R – To be completed and forwarded to CPCAUC

- As soon as the level of penalty has been set and decision taken as to whether detention of the vehicle is appropriate, form IS11R should be completed and faxed to CPCAUC.

### If no penalty notice is to be served following interview:

- If a NIL penalty is appropriate, i.e. because the CIO considers that the responsible person has operated an effective system for the prevention of clandestine entry, an IS11 is not served on that person.
- Advise CPCAUC of the incident via completion and fax of form IS11R. Reasons for not serving a penalty notice should be fully recorded on the IS11R and the authorising CIO noted.
- Place the completed IS11R on the file and forward to CPCAUC.

### Preparing the Civil Penalty File

- Complete the front of the port file with the incident details and attach a [CP checklist pro-forma](#) to the inside of the file cover.
- Enter the details of all responsible persons on the front of the port file. This includes names, addresses, fax, land line and mobile telephone numbers

of the driver and all companies involved in the ownership/hire of the vehicle.

- Add the port references for the clandestine entrants as soon as they are known but do not include their names.
- Make photocopies of the following:

All documents obtained from the driver, including the Vehicle Registration Document as it contains the name and keeper of the vehicle.

The passport /ID card of the driver

The IO/AIO's initial notes from his notebook

All notices served, along with how they were served, i.e. by fax, post etc

Fax transmission notices, including any "not completed"

- Place the original photographs in either the pocket at the back of the port file or in an envelope attached to the port file.

**In all cases dummy files should be produced and the original port files must be sent to CPCAUI within 7 days of the incident**

## IS11D Procedures

### [Procedure to follow when an interview cannot be conducted at port]

There may be times when a responsible person wishes to be interviewed but staff are not available to conduct an interview within a reasonable period following the incident. It should be noted that this procedure is to be followed only in exceptional circumstances. As such, the decision to abandon the CP rests with the Duty CIO.

Where the decision to abandon the CP has been taken the following action is required:

- 1] An appropriate CP reference should be given.
- 2] Where possible, copies of any relevant documentation (e.g. the CMR, tachograph, vehicle registration, and driver's passport) should be taken.
- 3] Form **IS11D** should be completed and issued to the vehicle driver and, where possible, sent by fax to the vehicle owner/hirer [and employer, if different from the other two parties]. Full details of all responsible parties must be obtained from the driver. The form bears the **CPCAUI** letterhead so that any enquiries it generates are made to CPCAUI and not to the port. The use of an interpreter may be necessary to explain the form to the driver. Responsible persons should be given no indication that civil penalty action will NOT be taken.
- 5] The **IS11R** should be completed in full, detailing the reason for not pursuing the case and noting that no penalty has been levied. Information about the physical security measures used on the vehicle should be noted at the end of the form. Reasons why a CP interview cannot be conducted must also be recorded on the form.

6] The completed form IS11R, together with copies of the IS11D and other documents, should be sent by fax to the CPCAUC (020 8745 5922) within 24 hours of the incident.

7] Upon receipt, CPCAUC will contact the driver/operator and owner/hirer/employer of the vehicle, giving them the opportunity to explain the measures that were taken to prevent the clandestine entrants being carried. A penalty will subsequently be imposed if appropriate. If the owner/hirer/employer declines to explain the measures taken, a decision on whether or not to impose a penalty will be taken based upon the information available. It is therefore important that as many details as possible are recorded at the time of the incident.

## 'Fence Jumpers'

'Fence jumpers' are those people who have bypassed the UK juxtaposed control point to conceal themselves in a vehicle in the ferry lanes. For the purposes of the legislation such persons are not clandestine entrants because they have not passed the control hidden in a vehicle and a civil penalty cannot be imposed in such circumstances. No IS11R is required.

Penalty notices may be served in respect of clandestine entrants found in vehicles at the berth side only when the IO is satisfied that the clandestine entrants were concealed in the vehicle as it passed through the UK search control.

No liability will be found in respect of clandestine entrants found in the UK where it can be established that the vehicle was searched by the UKIS in the UK juxtaposed control.

## The Civil Penalty Accreditation Scheme.

This scheme is operated by CPCAUC. It gives recognition to companies who make all reasonable efforts to prevent the carriage of clandestine entrants. To gain accreditation companies must show that they have in place a system that meets the requirements of the Code of Practice, and that they do everything they reasonably can to ensure its proper operation.

Vehicles should not be targeted for examination solely because an accredited company operates them.

If clandestine entrants are discovered in a vehicle belonging to an accredited company, staff should not interview a company representative, as information will already be held by CPCAUC on the system operated. No penalty should be imposed on the company in its capacity as vehicle owner or hirer. If there are concerns about the system in place these should be noted on the port file so that they can be taken up with the company by CPCAUC. In some circumstances this may result in CPCAUC imposing a penalty on the company.

Drivers cannot be accredited to the scheme. When clandestine entrants are discovered the driver should be interviewed and, if appropriate, a penalty imposed. The accredited company (if it employs the driver) remain jointly and

severally liable for the driver's penalty and should be issued with form IS11 owner-hirer/employer if a penalty is imposed on the driver. If it is not possible to interview the driver form IS11D procedures should be followed.

On accreditation, a letter and certificate will be issued to the company by CPCAUC and it is possible that some drivers may produce these if they are stopped at port. If there is any doubt whether a company is accredited CPCAUC should be contacted. Details of the scheme are available on the IND website. Enquiries about the scheme should be referred to CPCAUC

## Facilitation cases

Where a person has been arrested for suspected facilitation no civil penalty action should be taken unless the facilitation aspect is abandoned.

- The power to detain a vehicle lasts for 24 hours from the conclusion of the first search whilst CP action is still being considered. The power lapses as soon as a decision is taken not to pursue CP action. If the police decide to detain the vehicle in this time and question the driver for the full 24 hours or less, the length of time permitted to hold the vehicle is the remainder of that 24 hour period.
- Once the 24-hour period has elapsed the vehicle cannot be held any longer, but the driver can still be interviewed at a later date, subject to the outcome of the police enquiries or by the issue of an IS11D.
- Civil penalty action may still be taken If no charges are brought against the arrested person, or he is charged and subsequently acquitted at a later date, civil penalty action could be considered at this point, but referral should be made to CPCAUC in these instances.
- If refused charge by the Police (and the vehicle is still being held) the CP case should recommence, ensuring that a decision to impose is made within 24 hours of the conclusion of the IO's search.
- If the person is convicted of the offence or given a police caution on the day, civil penalty action will not be appropriate for any of the responsible persons.

## Action to be taken in the event of a facilitation

- The finding officer should make a detailed minute. This must include details of security that the vehicle possessed and used, photographic evidence and, if possible, full details of the driver and company.
- The start of the 24-hour period should be clearly noted on the file as the case remains open to resuming the civil penalty at any time during that period should the facilitation be abandoned. The sole basis for any future decision will be the information on file.

CPCAUC ARE NOT TO BE INFORMED OF ANY FACILITATION CASE UNTIL CIVIL PENALTY ACTION IS INITIATED. NO IS11R SHOULD BE SENT TO CPCAUC IN THESE CASES.

# Unaccompanied Trailers

- When clandestine entrants have been found in an unaccompanied trailer, an Immigration Officer should attempt to attend at all times. All details should be recorded in notebooks and copied to file.
- The Immigration Officer/Duty CIO must be sure that the clandestine entrants have actually arrived in the said trailer. This can only be achieved by finding them in situ, witnessing them exiting the trailer, or by a third party witnessing the act and being prepared to provide a statement or other evidence. This establishes a positive link between the trailer in question and the particular individual(s) believed to have been concealed within it. Where possible ensure that a photograph is taken of all the clandestine entrants to confirm the link with the trailer, ideally “in situ” before removing them.
- Photographic evidence should be taken for any signs of damage. Full details of the unaccompanied trailer should be recorded including trailer number.
- A note should be made of the number of clandestine entrants which have been found.
- The paperwork pertaining to the trailer should be copied so that the operator can be identified. The paperwork can usually be found inside the unaccompanied trailer. (Normally in the rear of the trailer or in the panniers).
- Once the operator has been established from the paperwork a pre-decision notice should be issued. A reasonable amount of time should be given before any action is taken. This allows the operator to respond with any defences that they may have.
- Where clandestines have been detected in a detached trailer the responsible persons will be the owner/hirer and driver/operator of the detached trailer.
- The operator should be interviewed to establish routing to the United Kingdom, security measures in place, length of time the trailer was unaccompanied and whether it was kept in a secure compound before boarding the ferry.
- The company managing the compound should be noted.
- Once a decision has been made as to whether a penalty notice is to be issued and at what level, the IS11 (Driver/Operator) and IS11 (Owner/Hirer) should be served by the most expeditious means possible (hand, post, fax). It can also be placed with the paperwork inside the trailer. If this is the case it is deemed to have been served on the day that it was placed in the trailer and no payment date extension should be given.
- In addition it is worth highlighting that the person who collects the trailer from the unaccompanied trailer park will never be a responsible person.

# Coaches and private vehicles

The civil penalty provisions apply equally to coach companies and drivers and to private vehicles.

In the event that clandestine entrants are found in a coach, IS11D procedures should be instigated so that the coach passengers are not unduly delayed.

Civil penalties can be imposed on private road vehicles but it should be established the driver did not know he was carrying the clandestine entrants and that he made adequate checks of the vehicle prior to entering United Kingdom or juxtaposed control.

## Detention under 36[1]

*There is no power to detain a vehicle under 36(1) or 36A in the UK juxtaposed control zone. All detentions must be effected in the UK.*

After the CIO has assessed the level of penalty he/she should then consider whether there is significant risk that the penalty will not be paid within the 60-day limit. If there is a risk, detention under 36(1) should be considered. (N.B. This is entirely separate to the initial 24-hr detention period.) Information on the company's ability to pay previous penalties may be obtained from CPCAUI. A written undertaking from the company to pay the penalty does not in itself preclude detention of the vehicle.

1. Prepare the **IS12 - Notice of Detention** to be signed by a CIO and issued to all responsible parties using an interpreter/language line as necessary. Note the method of service i.e. by hand, fax etc

CPCAUI will advise the name of the company tasked with the detention of the vehicle.

2. Any detaining company will require the following details:

- CP Port Reference Number
- Type of vehicle, Location of vehicle, Nature of load
- Port contact telephone number

ORIGINAL vehicle registration documents (both unit and cab) must be retained along with the documents relating to the load.

3. Invite the driver to remove all personal property (particularly cash) from the vehicle. Lock the vehicle and retain the keys. Ensure that the driver does not remove the tax disc, as it is illegal to drive an HGV in the UK without this. Hand the driver the advice notice regarding his property, [removal of personal effects form](#).
4. When the detention contractor arrives give them a copy of the IS12. CIO should minute the file stating the reasons for detention. Any further communications regarding the vehicle should now be directed to CPCAUI. Under no circumstances should the port accept money from a driver or enter into any negotiations to pay a security.

## Detention under 36A

36A detention is authorised by CPCAUC. Companies are placed on the 36A list when they have failed to pay a penalty imposed on them within the required time limit. This list is updated by CPCAUC on a weekly basis. If a 36A case is identified, CPCAUC should be contacted to confirm that no payment has been received from the company. The same procedures for detention under 36[1] should be followed, but with three exceptions:

- If the vehicle is spotted travelling through a UK juxtaposed control zone there is no obligation to inform the driver or company that if they proceed to the UK the vehicle may be subject to detention.
- Form IS12D is produced by CPCAUC for these cases, and copies are held locally at Dover.
- Form IS12D should be served on the company by fax only once authorisation to do so has been received from CPCAUC

## Inland clandestine incidents

If called to deal with a clandestine incident at a police station or location where the driver is present, LEOs should conduct civil penalty procedures as described above.

If the driver has been allowed to proceed with his journey and is not at the Police station or location, or resources do not permit the completion of Civil Penalty procedures, full details should be obtained from police officers and an Operation Shorts proforma completed. The detailed completion of the Operation Shorts proforma enables CPCAUC to consider the implementation of civil penalty procedures against the driver and haulage company.

The information required by CPCAUC is:

- name, address and telephone number of the haulage company and driver,
- registration number(s) of the vehicle(s),
- number of clandestine entrants detected,
- date and location of the incident,
- details of any security devices applied to the vehicle.

The provision of this information enables CPCAUC to make written enquiries of the driver and haulage company, which can lead to the imposition of penalties of up to £2,000 per clandestine encountered.

The completed proforma should be faxed to INDIS on 0208 745 1655 or emailed via Poise within 72 hours of the event. INDIS then forwards the proforma to CPCAUC who raise the civil penalty file.

## Civil Penalty Central Administration Unit (CPCAU)

Ground Floor, Status 4, Status Park, 3 Nobel Drive, Harlington, UB3 5EY  
civilpenaltyunit@homeoffice.gsi.gov.uk

Switchboard: 020 8745 6006

Fax No: 020 8745 5922

### **VEHICLE CLEARED @ BST CIVIL PENALTY CHECKLIST**

TASK	COMPLETED BY	DATE	TIME
Time vehicle <b>declared clear</b> recorded on file #			
<b>Comprehensive</b> Initial minute on both files			
<b>Correct</b> Tractor and Trailer registration details			
Pre-Interview notice issued with <b>correct time</b> (see #)			
Interview advice notice issued			
Pre-Decision notice issued with <b>correct time</b> (see #)			
Transmission report(s) copied to file			
Orange and Dummy file raised			
<b>Comprehensive</b> photographs taken(timed and signed)			
Photos and documents copied to both files			
CP log opened and reference generated			
<b>Signed</b> interview advice notice copied to file			
Driver interview completed			
<b>CLEAR</b> -Copy of drivers Q & A to both files			
Minute written and on both files			
Details of CLDs <b>reference numbers</b> to both files			
Copy of drivers Q & A to driver			
Company interview(s) completed			
Minute written and on both files			
CIO minute written and on both files			
IS11 Driver/Operator prepared			
IS11 Owner/hirer prepared			
IS11 Owner/hirer/employer prepared			
All annexes completed			
<b>EACH</b> IS11 issued with Objections & Appeal notice			
<b>EACH IS11</b> Issued with <b>METHODS OF PAYMENT FORM</b>			
Copy of drivers annex attached to IS11 Own/H/Employer			
<b>All forms checked by Duty CIO/CP Team member</b>			
IS11s served			
Transmission report(s) copied to file			
Any undertaking to pay copied to both files			
<b>Detention decision taken by CIO and minuted</b>			
CPCAU informed of detention			

CPCAU provide details of detaining company				
IS12 issued to all responsible parties				
IS12E (for detaining company) prepared and on file.				
Transmission report(s) copied to file				
Detaining company telephoned				
CIO to consider police presence for detention				
CP log updated				
<b>CIO authority given not to proceed with CP</b>				
IS11D issued to all responsible parties/persons				
Transmission report(s) copied to file				
IS11R completed and faxed to CPCAU				
Transmission report(s) copied to file				
Files to CP team for checking				



**DRIVER PRE INTERVIEW NOTICE**

**To the driver of vehicle.....**

Clandestine entrants have been found in your vehicle and under the Immigration and Asylum Act 1999 (as amended) ("the Act") you may be liable to a penalty of up to £2,000 in respect of each clandestine entrant found.

A senior officer has authorised the detention of your vehicle for a period which shall not be longer than is necessary in the circumstances of the case and which shall not exceed 24 hours, pending a decision on whether to issue a penalty notice, the issue of any such penalty notice or a decision whether to detain the vehicle as a security against payment of the penalty. The 24- hour period commenced at the time noted on the bottom of this notice.

In addition to any other defences, you will have a defence against a penalty if you can show that:

1. You were acting under duress;  
OR
2. You did not know or had no reasonable grounds for suspecting that persons were in your vehicle, AND you had in operation an effective system for preventing the carriage of clandestine entrants, AND the system you had was properly operated.

In order to consider these defences and to decide whether a penalty notice should be issued, and, if one is issued, the level of the penalty to be imposed, an immigration officer would like to interview you in your chosen language. You are not obliged to be interviewed and can leave at any stage, but the more information you can give to support the defences, the greater the chance of a penalty notice not being issued or, if a penalty notice is issued, that all the relevant factors are considered before its level is set. If you elect not to be interviewed the decision whether to issue a penalty notice and if so the level of the penalty imposed will be made on the basis of whatever evidence is available to the Immigration Service. If a penalty notice is issued, a decision on whether or not to detain the vehicle will also be made.

Following the issue of a penalty notice a vehicle may be detained if, in the opinion of the senior officer, there is a significant risk that the penalty will not be paid before the end of the prescribed period and you do not give satisfactory alternative security.

During the interview the immigration officer will ask you about your vehicle's security (including any system there may be for preventing carriage of clandestine entrants) and about any checks made of the vehicle during your journey. If you have any documents concerning these matters it may help you to produce these at the interview or to explain when they will be produced. It may also help you to explain any factors that you feel are relevant and should be taken into account by the immigration officer when deciding whether to issue a penalty notice and if so, the level of that penalty.

If it is considered that you are liable to a penalty, the level of penalty will then be determined and a penalty notice will be issued which will explain how and when you can make written objections against liability to the penalty and to the level of penalty imposed. In addition to

making written objections, or as an alternative to doing so, you may also appeal to the court. In the light of any written objections you make, the liability will either be withdrawn or confirmed. The level of penalty will be re assessed in the light of any written objections to the amount and could be raised, lowered, or maintained. If the liability to a penalty decision is confirmed and the level of penalty is maintained or reduced (or if you have chosen not to make written objections) you will still be free to raise any defences or other relevant matters in an appeal to the court. If the level of penalty is raised at the objection stage you will have the opportunity to submit additional objections against the new level of penalty as well as having the option to appeal to the courts.

**Under the Act, if you are the employee of the owner or hirer of the vehicle in which the clandestines have been found, your employer will be jointly liable with you to pay any penalty imposed on you, irrespective of whether a penalty is also imposed on your employer in his own right. Your employer will be able to make written objections or appeal to the court in respect of any penalty imposed on you for which he is jointly liable for payment. If the vehicle is detained, the detention will be reviewed in the light of any objections lodged and will similarly be reviewed if a decision is taken to reduce the level of the penalty. The notice of detention will explain the options for securing the release of the vehicle.**

Time..... Date.....  
Signed.....  
Immigration Officer



**OWNER/ HIRER/ OPERATOR PRE-DECISION NOTICE**

To the owner/ hirer/ operator of vehicle.....

Clandestine entrants have been found in your vehicle and under the Immigration and Asylum Act 1999 (as amended) ("the Act") you may be liable to a penalty of up to £2,000 in respect of each clandestine entrant found.

**A senior officer has authorised the detention of your vehicle for a period which shall not be longer than is necessary in the circumstances of the case and which shall not exceed 24 hours, pending a decision on whether to issue a penalty notice, the issue of any such penalty notice or a decision whether to detain the vehicle as a security against payment of the penalty. The 24-hour period commenced at the time noted on the bottom of this notice.**

In addition to any other defences, you will have a defence against a penalty if you can show that:

1. You were acting under duress;  
OR
2. You did not know or had no reasonable grounds for suspecting that persons were in your vehicle, AND you had in operation an effective system for preventing the carriage of clandestine entrants, AND the system you had was properly operated.

In part to consider these defences, and to decide whether a penalty notice should be issued, an immigration officer will offer your driver the chance to be interviewed. He is not obliged to be interviewed and can leave at any stage. You also have the opportunity to make the immigration officer aware of any information that you feel is relevant. The more information the driver or you can give to support the defences, the greater the chance of a penalty notice not being issued or, if a penalty notice is issued, that all the relevant factors are considered before its level is set. The decision whether to issue a penalty notice and if so the level of the penalty imposed will be made on the basis of whatever evidence is available to the Immigration Service. If a penalty notice is issued, a decision on whether or not to detain the vehicle will also be made. Following the issue of a penalty notice a vehicle may be detained if, in the opinion of the senior officer, there is a significant risk that the penalty will not be paid before the end of the prescribed period and you do not give satisfactory alternative security.

In assessing liability and the level of any penalty the immigration officer will consider matters such as the vehicle's security (including any system there may be for preventing the carriage of clandestine entrants), any checks made of the vehicle during the journey and the degree of operational control that you had over the vehicle. If you have any documents concerning these matters it may help you to make this known to the immigration officer. It may also help you to explain any factors that you feel are relevant and should be taken into account by the immigration officer when deciding whether to issue a penalty notice and if so, the level of that penalty.

If it is considered that you are liable to a penalty the level of penalty will then be determined and a penalty notice will be issued which will explain how and when you can make written objections against liability to the penalty and to the level of penalty imposed. In addition to making written objections, or as an alternative to doing so, you may also appeal to the court. In the light of any written objections you make, the liability will either be confirmed or withdrawn. The level of penalty will be re assessed in the light of any written objections to the amount, and could be raised, lowered or maintained. If the liability to a penalty decision is confirmed and the level of penalty is maintained or reduced (or if you have chosen not to make written objections) you will still be free to raise any defences or other relevant matters in an appeal to the court. If the level of penalty is raised at the objection stage you will have the opportunity to submit additional objections against the new level of penalty, as well as having the option to appeal to the courts.

Under the Act, if you are the employer of the driver you will be jointly and severally liable with the driver to pay any penalty imposed upon him, irrespective of whether a separate penalty has been imposed on you. . You are entitled to make written objections or appeal to the court concerning the driver's penalty. If a penalty is imposed on the driver and you are his employer, a separate notice will be issued to you explaining the reasons why the penalty has been imposed on the driver and how you may object or appeal.

If the vehicle is detained, the detention will be reviewed in the light of any written objections lodged and will similarly be reviewed if a decision is taken to reduce the level of the penalty. The notice of detention will explain the options for securing the release of the vehicle.

Time..... Date.....

Signed.....

Immigration Officer



## Civil penalty company interview

Company name	
Case reference	
Interview location	
Interviewing IO (including CIU reference number)	
Interpreter	
Interview language	

PERSONAL	
Interview start time	
Are you fit and well?	
Do you understand the interpreter?	
Have you read and understood the pre- decision notice?	
Full name? Position in company?	
Full company name / address / telephone / fax?	
Are you aware of the civil penalty? How?	

Do you hold a copy of the Home Office official code of practice?	

VEHICLE OWNERSHIP	
<p><b>Are you the owner of vehicle ... .. .....? (enter index(es))</b></p> <p><i>Verify answer by confirming against vehicle documents. If vehicle is leased, obtain full details of lease hire company</i></p> <p><b>What is the full name and contact number of the company owner / director / representative?</b></p> <p><b>How many vehicles does the company own?</b></p> <p><b>How often do company vehicles travel to the UK?</b></p>	

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EMPLOYMENT OF DRIVER	
<i>Care must be taken to correctly ascertain the driver's employment status, ie: is he directly employed by the company, or self-employed and sub-contracting to the company?</i>	
<p><b>Do you employ ... ..</b> <i>... ..? (enter driver's name)</i></p> <p><b>How do you pay him?</b> <i>(Establish whether driver receives a weekly / monthly salary or invoices for work done)</i></p> <p><b>Is he a permanent employee?</b></p> <p><b>How long have you employed the driver?</b></p> <p><b>How many staff do the company employ?</b></p>	

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<b>TRAINING TO COMBAT THE CARRIAGE OF CLANDESTINE ENTRANTS</b>
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<i>Establish what training company provide with regard to preventing the carriage of clandestine entrants. Points to cover should include:</i>
--

- |   |
|---|
| <ul style="list-style-type: none"><li>• <i>Training courses given</i></li><li>• <i>Written instructions issued</i></li><li>• <i>Verbal instructions issued</i></li><li>• <i>Mentoring provided</i></li><li>• <i>Refreshers provided</i></li></ul> |
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<b>TRAINING TO COMBAT THE CARRIAGE OF CLANDESTINE ENTRANTS (continued)</b>	

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**VEHICLE SECURITY**

*Establish position with regard to the provision / use of security devices to secure vehicle.  
Points to address should include:*

- *Security devices deployed upon vehicle*
- *Security devices provided but not used, and reason(s) for non use*
- *Who is responsible for the provision / use of security devices*
- *Training given in the use of security devices*
- *Monitoring system re the use of security devices*
- *Lack of security devices*
- *Checklist issued*
- *Monitoring of checklist*

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<b>CONCLUSION</b>	
<p><b>What else could you have done to prevent the clandestine s entering your vehicle?</b></p>	
<p><b>Have you previously had clandestine s in your vehicle?</b></p> <p><i>(date / place / number)</i></p> <p><b>What did you do / change to protect against a repeat?</b></p>	

<p>Have you understood all my questions?</p>	
<p>Do you wish to add anything further?</p>	

Your driver  
maybe  
given  
penalty of  
up to £2000  
per  
clandestine  
and your  
company  
may be  
given a  
penalty of  
up to £2000  
per  
clandestine,  
are you  
willing and  
able to  
pay?

Interview  
cessation  
time

Interviewin  
g officer  
signature /  
date / time



## Civil penalty driver interview

Driver name	
Case reference	
Interview location	
Interviewing IO	
Interpreter (including CIU reference number)	
Interview language	

PERSONAL	
Interview start time	
Are you fit and well?	

Do you understand the interpreter?	
Have you read and understood the pre-interview notice?	
This is a civil matter and not a criminal one. As such, you have not been arrested. You are free to leave at any time. However, this is your opportunity to explain to me the circumstances leading to the discovery of clandestine(s) in your vehicle, and therefore enable my senior officer to consider whether or not the issue of a penalty is appropriate. Do you understand, and are you content to proceed?	
<i>Read interview advice notice to driver and ask him to sign consenting to interview</i>	
Full name? DOB? Nationality?	
Full home address and telephone number?	
Passport / identity card details?	
Are you aware of the civil penalty? How?	

VEHICLE OWNERSHIP	
<p>What is the full name / address / telephone / fax of the owner of the vehicle in which you are travelling?</p> <p><i>Verify answer by confirming against vehicle documents. If vehicle is leased, obtain full details of lease hire company</i></p> <p>What is the full name and contact number of the company owner / director / representative?</p> <p>How many vehicles does the company own?</p> <p>How often do company vehicles travel to the UK?</p>	

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### EMPLOYMENT

*Care must be taken to correctly ascertain the driver's employment status, ie: is he directly employed by the company, or self-employed and sub-contracting to the company?*

**What is the full name / address / telephone / fax of your employer?**

**How are you paid?**  
*(Establish whether driver receives a weekly / monthly salary or invoices for work done)*

**Are you a permanent employee?**

**How long have you been employed by the company?**

How long have you worked as a lorry driver?

How often do you travel to the UK?

How many staff do the company employ?

#### TRAINING TO COMBAT THE CARRIAGE OF CLANDESTINE ENTRANTS

*Establish what training driver has received from his employer with regard to preventing the carriage of clandestine entrants. Points to cover should include:*

- *Training courses undertaken*
- *Written instructions received*
- *Verbal instructions received*
- *Mentoring provided*
- *Refreshers provided*

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**JOURNEY TO THE UK AND CHECKS MADE**

*Ascertain full details of driver's journey to the UK. Points to address should include:*

- Date / time / place of loading*
- Whether driver was present at loading*
- Route from place of loading to the UK*
- Stops made en route (dates / times / places / durations / reasons)*
- Whether vehicle was left unattended at any time*

*Compare driver's statements to tacograph(s) and challenge where necessary*

*Establish all checks made by driver of vehicle during journey to UK. Points to address should include:*

- Nature / extent of checks made (be specific)*
- Written checklist of checks made (obtain copy)*
- Lack of checks / reason(s) for such*

*Final check prior to arrival at port of embarkation*

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#### **VEHICLE SECURITY**

*Establish how vehicle has been secured (or not). Points to address should include:*

- Security devices deployed upon vehicle*
- Security devices held but not used, and reason(s) for non use*
- Who is responsible for the provision / use of security devices*
- Training received in the use of security devices*
- Monitoring system re the use of security devices*
- Lack of security devices*

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**VEHICLE SECURITY (continued)**

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<b>CONCLUSION</b>	
<b>When were you aware there were clandestines in your vehicle? What did you do?</b>	
<b>What else could you have done to prevent the clandestines entering your vehicle?</b>	
<b>Have you previously had clandestines in your vehicle?</b> <i>(date / place / number)</i> <b>What did you do to protect against a repeat?</b>	
<b>Have you understood all my questions?</b>	
<b>Do you wish to add anything further?</b>	

<b>Interview cessation time</b>	
<b>Driver signature</b>	
<b>Interviewing officer signature / date / time</b>	



**DETENTION OF VEHICLE - DRIVER ADVICE NOTICE**

**To the driver of vehicle.....**

A senior officer has authorised the detention of the above vehicle under:

Section 36(A)

On -----, under the Immigration and Asylum Act 1999 (as amended) ("the Act") you and/or the owner/hirer of the vehicle were served with a Notice of Liability to a penalty (Form IS11) in respect of the persons referred to in that notice. Payment of the penalty is now overdue.

Form IS12D has been served on you and/or the owner/hirer of the vehicle and the vehicle will be detained until all penalties to which the notice relates have been paid.

A senior officer has authorised the detention of the above vehicle under:

*Clandestine entrants have been found in your vehicle. Under the Immigration and Asylum Act 1999 (as amended) ("the Act") you and/or the owner/hirer of the vehicle have been served with a Notice of Liability to a penalty (Form IS11) in respect of the persons referred to in that notice.*

Form IS12 has been served on you and/or the owner/hirer of the vehicle and the vehicle will be detained until all penalties to which the notice relates have been paid.

**Removal of personal effects**

You should remove all your personal effects from the vehicle immediately. Any articles remaining will be left in the cab at your own risk. You may collect remaining articles by arrangement with the United Kingdom Immigration Service at the address below.

*You are reminded that you leave personal effects in the cab at your own risk.*

Driver signature.....

Time..... Date.....

Civil Penalty Central Administration Unit, Status 4, 3 Noble Drive, Harlington. UB3 5EY  
Telephone 020 8745 6006. Fax 0200 8745 5922



**CIVIL PENALTY RECORD SHEET**

INCIDENT DETAILS	
Port reference	
Incident date	
Incident time	
Incident location	
Number / nationalities of clandestines	

# VEHICLE

Type	
Index(es)	
Nationality	
Condition	
Security used	
Type and location of security held but unused	

## DRIVER

Name	
DOB	
Nationality / Passport / Identity card	
Address	
Telephone / Fax	
<b><u>Details of any previous penalties / encounters</u></b> <i>Please list all ,to include; where , when and any penalty imposed</i>	

## COMPANY

Name	
Address	
Telephone / Fax	
Representative's name	
Relationship to vehicle	
Employer of driver?	
<b><u>Details of any previous penalties /</u></b>	

<p><b>encounters</b>  <i>Please list all ,to include; where , when and any penalty imposed</i></p>	
<p><b>DRIVER INTERVIEW</b></p>	
<p><b>Interviewing officer</b></p>	
<p><b>Pre-interview notice understood?</b></p>	
<p><b>Interview advice notice signed?</b>  <b>Time and date</b></p>	
<p><b>Security of vehicle</b>  <i>List all devices available and extent of use. Ascertain why any devices were not used</i></p>	
<p><b>Checks at loading</b>  <i>What checks took place and who conducted them</i></p>	
<p><b><u>Checks en route to UK</u></b>  <i>What checks took place and who conducted them  Can a check list substantiate this?</i></p>	
<p><b><u>Last 3 stops prior to arrival in UK control zone</u></b>  <i>Where, when and how long at each stop</i></p>	
<p><b><u>Final check prior to arrival in UK control zone</u></b>  <i>Where was this carried out</i></p>	
<p><b>Other relevant factors</b></p>	

**COMPANY INTERVIEW**

<b>Interviewing officer</b>	
<b>Person interviewed and position in company</b>	
<b>Pre-decision notice understood?</b>	
<b>Awareness of Home Office Code of Practice</b>	
<b><u>Provision of security devices</u></b> <i>What is issued and what instructions are in place to ensure drivers use security devices</i>	
<b>Provision of training</b> <i>If training is provided what training has been given to the driver of the vehicle</i>	
<b>Monitoring of drivers</b>	
<b>Other relevant factors</b>	
<b>LIABILITY TO PENALTY</b> <i>To be completed by Duty CIO</i>	
Name of CIO:- _____ Signature: _____	
<b>Was an effective system in place / properly operated?</b>	
If "yes" to both there is no liability	
<b>ASSESSMENT OF LEVEL OF PENALTY</b>	
Driver – factors taken into account	
<b>Vehicle security</b>	.

<b>Checks conducted</b>	
<b>Other relevant factors</b>	
<b>Penalty per clandestine</b>	
<b>Total penalty</b>	

**Owner / Hirer – factors taken into account**

<b>System for preventing the carriage of clandestines</b>	
<b>Training and monitoring of drivers</b>	
<b>Provision of security devices</b>	
<b>Condition of vehicle</b>	
<b>Other relevant factors</b>	
<b>Penalty per clandestine</b>	
<b>Total penalty</b>	

<b>TYPE OF IS 11</b>	<b>ISSUED YES / NO &amp; Date of Issue</b>	<b>AMOUNT PER CLD</b>	<b>TOTAL AMOUNT</b>
<b>Driver / Operator</b>			
<b>Owner / Hirer</b>			
<b>Owner / Hirer</b>			
<b>Owner / hirer / employer</b>		<b>N/A</b>	<b>N/A</b>
<b>Total penalties imposed</b>			

*Please remember that the level of penalty for each responsible party must not exceed £2000.00 per clandestine and the total penalty must not exceed £4000.00 per clandestine*

## **IMMIGRATION AND ASYLUM ACT 1999**

### **LEVEL OF PENALTY: CODE OF PRACTICE**

Under section 32(2) of the Immigration and Asylum Act 1999 (as amended) ("the Act"), the Secretary of State may require a person who is responsible for a clandestine entrant to pay: -

- (a) a penalty in respect of the clandestine entrant;
- (b) a penalty in respect of any person who was concealed with the clandestine entrant in the same transporter.

The measures to be taken by persons wishing to operate an effective system for preventing the carriage of clandestine entrants to the United Kingdom are set out in the code of practice for vehicles, the code of practice for rail freight wagons, and the code of practice for freight shuttle wagons, all issued under section 33 of the Act.

Defences against the imposition of a penalty are set out in full in section 34 of the Act. One of the defences available to a carrier is where he can show that:

- (a) he did not know, and had no reasonable grounds for suspecting, that a clandestine entrant was, or might be, concealed in the transporter;
- (b) an effective system for preventing the carriage of clandestine entrants was in operation in relation to the transporter; and
- (c) on the occasion in question the person or persons responsible for operating that system did so properly.

If a carrier is able to show that he complies with (a), (b) and (c) above then he will not be subject to a penalty even if clandestine entrants are carried in his transporter. However, where a person who is responsible for a clandestine entrant is unable to show a defence against the imposition of a penalty, the Secretary of State may require that person to pay a penalty.

In accordance with section 32A(2) of the Act, the Secretary of State must have regard to the Immigration and Asylum Act 1999: Level of Penalty: Code of Practice in addition to any other matters he thinks relevant:

- (a) when imposing a penalty under section 32 of the Act, and
- (b) when considering a notice of objection under section 35(4) of the Act.

The terms used in this Code of Practice have the same meanings as those given in the Act.

In this Code of Practice a 'prescribed control zone' means a control zone prescribed by regulations made by the Secretary of State.

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## **VEHICLES**

The references to the different types of vehicles in this Code of Practice have the same meanings as those contained in the Code of Practice for vehicles issued under section 33 of the Act.

### **Part 1.**

## **ROAD HAULAGE AND OTHER COMMERCIAL VEHICLES**

**The following matters will be considered by the Secretary of State in determining the amount of**

# penalty he may require to be paid by a person who is responsible for a clandestine entrant: -

## 1. Owner/Hirer

- (i) The extent to which steps have been taken to instruct and train drivers, sub-contractors and other persons with operational control over the vehicle, and monitor their compliance in the operation of a system designed to prevent the carriage of clandestine entrants that complies with the code of practice for vehicles issued under section 33 of the Act..
- (ii) The extent to which:
  - (a) the standard and maintenance of the integral security features of the vehicle prevent unauthorised access;
  - (b) the outer shell or fabric of the vehicle is maintained in good order;
  - (c) additional security devices (e.g. locks, seals, tilt cords) that prevent unauthorised access to the vehicle are made available and are maintained in good order.
- (iii) Where the owner or hirer is not also the driver but is present during any or all parts of the vehicle's journey to the United Kingdom, the extent to which he has acted to ensure that any system in place that complies with the code of practice for vehicles issued under section 33 of the Act is properly operated.
- (iv) The owner or hirer's record of liability to penalties.
- (v) The level of the owner or hirer's operational control over the vehicle. Where the owner or hirer is remote from the day to day operation of the vehicle (for example a finance or leasing company or, in the case of a hirer, has hired the vehicle to another person on a long-term basis) the terms under which the vehicle is leased/hired/hired-on particularly where this hinders or otherwise the use of adequate security devices.
- (vi) The level of co-operation in bringing clandestine entrants to the notice of the United Kingdom authorities where the owner or hirer knows or suspects, after the vehicle has passed through the United Kingdom immigration control, that a clandestine entrant is concealed in the vehicle.
- (vii) The extent to which the owner or hirer knew, or had reasonable grounds for suspecting, that a clandestine entrant was, or might have been, concealed in the vehicle prior to boarding the ship or train to the United Kingdom, or before arrival at a UK immigration control operated in a prescribed control zone outside the United Kingdom.

## 2. Driver (or the operator of a detached trailer)

- (i) The extent to which the available security devices have been put to use in order to prevent unauthorised access.
- (ii) The extent to which checks in accordance with the code of practice for vehicles issued under section 33 of the Act have been carried out.
- (iii) The extent of any checks (including, without limitation, those using CO2 or other detection equipment) carried out by third parties immediately prior to embarkation for the UK.
- (iv) Driver's (or operator's) record of liability to penalties.
- (v) Where no effective system for preventing the carriage of clandestine entrants is in place and/or inadequate security devices are available for use,
  - (a) the extent to which efforts have been made to otherwise ensure that unauthorised persons are prevented from gaining access;
  - (b) the extent to which the driver (or operator) has sought to influence the vehicle owner/hirer to introduce an effective system or to provide adequate security devices.
- (vi) The level of co-operation in bringing clandestine entrants to the notice of the United Kingdom authorities where the driver knows or suspects, after passing through the United Kingdom immigration control, that a clandestine entrant is concealed in the vehicle.
- (vii) Where the vehicle is a detached trailer, the extent to which efforts have been made to ensure that checks in accordance with the code of practice for vehicles issued under section 33 of the Act are carried out immediately prior to embarkation.
- (viii) The extent to which the driver or operator knew, or had reasonable grounds for suspecting, that a clandestine entrant was, or might have been, concealed in the vehicle prior to boarding the ship or train to the United Kingdom, or before arrival at a UK immigration control operated in a prescribed control zone outside the United Kingdom.

### *Part 2*

## BUSES AND COACHES

**The following matters will be considered by the Secretary of State in determining the amount of penalty he may require to be paid by a person who is responsible for a clandestine entrant: -**

## 1. Owner/Hirer

- (i) The extent to which steps have been taken to instruct and train drivers, sub-contractors and other persons with operational control over the vehicle, and monitor their compliance in the operation of a system designed to prevent the carriage of clandestine entrants that complies with the code of practice for vehicles issued under section 33 of the Act.
- (ii) The extent to which:
  - a) the standard and maintenance of the integral security features of the vehicle prevent unauthorised access;
  - b) the outer shell or fabric of the vehicle is maintained in good order;
  - c) additional security devices (e.g. locks) that prevent unauthorised access to the vehicle are made available and are maintained in good order.
- (iii) Where the owner or hirer is not also the driver but is present during any or all parts of the vehicle's journey to the United Kingdom, the extent to which he has acted to ensure that any system in place that complies with the code of practice for vehicles issued under section 33 of the Act is properly operated.
- (iv) The owner or hirer's record of liability to penalties.
- (v) The level of the owner or hirer's operational control over the vehicle. Where the owner or hirer is remote from the day to day operation of the vehicle (for example a finance or leasing company or, in the case of a hirer, has hired the vehicle to another person on a long-term basis) the terms under which the vehicle is leased/hired/hired-on particularly where this hinders or otherwise the use of adequate security devices.
- (vi) The level of co-operation in bringing clandestine entrants to the notice of the United Kingdom authorities where the owner or hirer knows or suspects, only after the vehicle has passed through the United Kingdom immigration control, that a clandestine entrant is concealed in the vehicle.
- (vii) The extent to which the owner or hirer knew, or had reasonable grounds for suspecting, that a clandestine entrant was, or might have been, concealed in the vehicle prior to boarding the ship or train to the United Kingdom, or before arrival at a UK immigration control operated in a prescribed control zone outside the United Kingdom.

## 2. Driver

- (i) The extent to which the available security devices have been put to use in order to prevent unauthorised access.
- (ii) The extent to which the checks, supervisory role and maintenance of passenger information required by the code of practice for vehicles issued under section 33 of the Act have been carried out.

- (iii) The extent of any checks (including, without limitation, those using CO2 or other detection equipment) carried out by third parties immediately prior to embarkation for the UK.
- (iv) The river's (or operator's) record of liability to penalties
- (v) Where no effective system for preventing the carriage of clandestine entrants is in place and/or inadequate security devices are available for use,
  - (a) the extent to which efforts have been made to otherwise ensure that unauthorised persons are prevented from gaining access;
  - (b) the extent to which the driver has sought to influence the vehicle owner/hirer to introduce an effective system or to provide adequate security devices.
- (vi) The level of co-operation in bringing clandestine entrants to the notice of the United Kingdom authorities where the driver knows or suspects, after passing through the United Kingdom immigration control, that a clandestine entrant is concealed in the vehicle.
- (vii) The extent to which the driver or operator knew, or had reasonable grounds for suspecting, that a clandestine entrant was, or might have been, concealed in the vehicle prior to boarding the ship or train to the United Kingdom, or before arrival at a UK immigration control operated in a prescribed control zone outside the United Kingdom.

## **Part 3**

### **PRIVATE VEHICLES**

**The following matters will be considered by the Secretary of State in determining the amount of penalty he may require to be paid by a person who is responsible for a clandestine entrant: -**

#### **1. Owner/Hirer**

- (i) Where the owner or hirer is not also the driver, whether they have in place a system for informing the driver of the measures required by the code of practice for vehicles issued under section 33 of the Act and of the need to carry them out and, if so, the extent of the steps taken to ensure those responsible are so informed and carry out those measures.
- (ii) The extent to which:
  - (a) the standard and maintenance of the integral security features (e.g. locks and intruder alarms) of the vehicle prevent unauthorised access;

- (b) appropriate security devices (eg padlocks), where they can be used and are necessary to prevent unauthorised access, are made available and are well maintained.
- (iii) Where the owner or hirer is not also the driver but is present during any or all parts of the vehicle's journey to the United Kingdom, the extent to which he has acted to ensure that the measures required by code of practice for vehicles issued under section 33 of the Act are met.
- (iv) The owner's or hirer's record of liability to penalties.
- (v) The level of the owner or hirer's operational control over the vehicle.
- (vi) The level of co-operation in bringing clandestine entrants to the notice of the United Kingdom authorities where the owner knows or suspects, after the vehicle has passed through the United Kingdom immigration control, that a clandestine entrant is concealed in the vehicle.
- (vii) Where the owner or hirer is remote from the day to day operation of the vehicle (for example a finance or leasing company or, in the case of a hirer, someone who has hired the vehicle to another person on a long term basis) the terms under which the vehicle is leased/hired/hired-on, particularly where this hinders or otherwise the use of adequate security devices.
- (viii) The extent to which the owner or hirer knew, or had reasonable grounds for suspecting, that a clandestine entrant was, or might have been, concealed in the vehicle prior to boarding the ship or train to the United Kingdom, or before arrival at a UK immigration control operated in a prescribed control zone outside the United Kingdom.

## **2. Driver**

- (i) The extent to which the available security devices have been put to use in order to prevent unauthorised access.
- (ii) The extent to which checks in accordance with the code of practice for vehicles issued under section 33 of the Act have been carried out.
- (iii) The extent of any checks (including without limitation those using CO2 or other detection equipment) carried out by third parties immediately prior to embarkation for the UK.
- (iv) The driver's record of liability to penalties.
- (v) Where there is no system for informing the driver of the measures required by the code of practice for vehicles issued under section 33 of the Act and the need to carry them out, and/or inadequate security devices are available for use:
  - (a) the extent to which efforts have been made to otherwise ensure that unauthorised persons are prevented from gaining access;
  - (b) the extent to which the driver has sought to influence the vehicle owner/hirer to address any inadequacies in the vehicle's security.

- (vi) The level of co-operation in bringing clandestine entrants to the notice of the authorities in the United Kingdom where the driver knows or suspects, after passing through the United Kingdom immigration control that a clandestine entrant is concealed in the vehicle.
- (vii) The extent to which the driver knew, or had reasonable grounds for suspecting, that a clandestine entrant was, or might have been concealed in the vehicle prior to boarding the ship or train to the United Kingdom, or before arrival at a UK immigration control operated in a prescribed control zone outside the United Kingdom.

## **RAIL FREIGHT WAGONS**

**The following matters will be considered by the Secretary of State in determining the amount of penalty he may require to be paid by a person who is responsible for a clandestine entrant: -**

### **Operator**

- (i) The extent to which steps have been taken to ensure the proper operation of a system designed to prevent the carriage of clandestine entrants that complies with the code of practice for rail freight wagons issued under section 33 of the Act.
- (ii) The efforts made by the operator to ensure that :
  - (a) the standard and maintenance of any integral security features, and of additional security devices (e.g. locks, seals, tilt cords) in use on the rail freight wagon is effective in preventing unauthorised entry;
  - (b) the outer shell or fabric of the rail freight wagon is properly maintained.
- (iii) The extent to which checks in accordance with the code of practice for rail freight wagons issued under section 33 of the Act have been carried out, taking account of any relevant constraints placed upon the operator by domestic and/or international law.
- (iv) Where the code of practice for rail freight wagons issued under section 33 of the Act has not been complied with and/or rail freight wagons were inadequately secured, the extent to which efforts have been made to otherwise ensure that unauthorised persons are prevented from gaining access and from reaching the United Kingdom.
- (v) The extent to which the operator knew, or had reasonable grounds for suspecting that a clandestine entrant was, or might have been, concealed in the rail freight wagon prior to its departure for the United Kingdom.
- (vi) Where the operator knew, or had reasonable grounds for suspecting that a clandestine entrant was, or might have been, concealed in the rail freight wagon, whether this was in circumstances where the clandestine entrant had boarded the train after it had commenced its journey to the United Kingdom, and the operator was not able to stop the train without endangering safety.

## **RAIL SHUTTLE WAGONS**

***The following matters will be considered by the Secretary of State in determining the amount of penalty he may require to be paid by a person who is responsible for a clandestine entrant: -***

# Operator

- (i) The extent to which steps have been taken to ensure the proper operation of a system designed to prevent to carriage of clandestine entrants that complies with the code of practice for freight shuttle wagons, issued under section 33 of the Act.
- (ii) The extent to which checks in accordance with the code of practice for freight shuttle wagons, issued under section 33 of the Act have been carried out.
- (iii) The extent to which the provision and general maintenance of the security features in place protect freight shuttle wagons from unauthorised entry.
- (iv) Where the code of practice for freight shuttle wagons, issued under section 33 of the Act has not been complied with, the extent to which efforts have been made to otherwise ensure that unauthorised persons are prevented from gaining access and from reaching the United Kingdom.
- (v) The extent to which the operator knew, or had reasonable grounds for suspecting that a clandestine entrant was, or might have been, concealed in the rail freight wagon prior to its departure for the United Kingdom.
- (vi) Where the operator knew, or had reasonable grounds for suspecting that a clandestine entrant was, or might have been, concealed in the rail freight wagon, whether this was in circumstances where the clandestine entrant had boarded the shuttle train after it had commenced its journey to the United Kingdom, and the operator was not able to stop the train without endangering safety.

**Examples to show how the Level of Penalty Code of Practice, to which regard must be had by the Secretary of State in determining the amount of penalty to be imposed on a carrier under Section 32 of the Immigration and Asylum Act 1999 (as amended), may work in practice**

The measures to be taken by persons wishing to operate an effective system for preventing the carriage of clandestine entrants to the United Kingdom are set out in the “Code of Practice for the Prevention of Clandestine Entrants”.

Defences against the imposition of a penalty are set out in full in section 34 of the 1999 Act. One of the defences available to a carrier is where he can show that:

- (d) he did not know, and had no reasonable grounds for suspecting, that a clandestine entrant was, or might be, concealed in the transporter;
- (e) an effective system for preventing the carriage of clandestine entrants was in operation in relation to the transporter; and
- (f) on the occasion in question the person or persons responsible for operating the system did so properly.

*If a carrier is able to show that he complies with (a), (b) and (c) above then he will not be subject to a penalty even if clandestine entrants are carried in his transporter. However, where a person who is responsible for a clandestine entrant is unable to show a defence against the imposition of a penalty, the Secretary of State may require that person to pay a penalty.*

Where a person is unable to show a defence against the imposition of a penalty, the Secretary of State will have regard to the “Level of Penalty Code of Practice” in determining the amount of penalty he may require a person who is responsible for a clandestine entrant to pay.

The following examples are designed to demonstrate how the Level of Penalty Code of Practice may work in practice in determining the amount of penalty to be imposed on a carrier under Section 32 of the Immigration and Asylum Act 1999.

These examples are not exhaustive and are not intended to be prescriptive. Notwithstanding the examples below, each case will be looked at individually taking into account all the relevant factors including, without limitation, any that may be contained in the guidelines.

Any reference made to the probability that the level of penalty imposed will fall within a particular range has the following meaning:

- **“lower range”**: the penalty per clandestine entrant or person concealed with a clandestine entrant will be no more than £499;
- **“middle range”**: the penalty per clandestine entrant or person concealed with a clandestine entrant will be between £500 and £999;
- **“upper range”**: the penalty per clandestine entrant or person concealed with a clandestine entrant will be between £1000 and £2000;
- **“maximum penalty”**: the penalty per clandestine entrant or person concealed with a clandestine entrant will be £2000.

# EXAMPLE PENALTIES

## Owner/Hirer of Vehicle

### Example A

- The owner/hirer makes adequate security devices available for use and the vehicle's fabric is well maintained.
- The owner/hirer has a system in place that if operated properly would comply with the code of practice.
- Although he gives instructions to his drivers about the existence of the system he does not take sufficient steps to train his drivers in its operation or monitor their compliance with operating it.
- He is unable to demonstrate that the system is generally operated properly.
- He has a previously good record of liability to penalties.
- In this case it is probable that a penalty towards the lower end of the scale will be imposed in respect of each clandestine entrant, and person concealed with the clandestine entrant.

### Example B

- The owner/hirer makes adequate security devices available for use and the vehicle's fabric is well maintained.
- He does not however have a system designed to prevent the carriage of clandestines in place and gives no instructions to his drivers about the use of the security devices or any other steps that they should take to prevent unauthorised access.
- He has operational control over the vehicle.
- He has a previously good record of liability to penalties.
- In this case it is probable that a penalty towards the middle of the range will be imposed in respect of each clandestine entrant, and person concealed with the clandestine entrant.

### Example C

- The owner provides a vehicle with no security devices. He has no system in place, and gives no instructions to his driver on the measures to be taken to prevent the carriage of clandestine entrants.
- The owner of the vehicle has a previously poor record of liability to penalties.
- In this case it is probable that a maximum penalty will be imposed in respect of each clandestine entrant, and person concealed with the clandestine entrant.

## Example D

- The owner of the vehicle in which clandestine entrants are carried is a finance company with no involvement in the vehicle's operation.
- When provided, the integral security features of the vehicle were fully serviceable.
- The terms of the lease do not place any restriction on the use of adequate security devices.
- In this case it is probable that no penalty will be imposed upon the vehicle owner.

## Driver of vehicle

### Example A

- The driver has been provided with a vehicle that has inadequate security devices and has not been given any instructions by the vehicle owner about the steps he should take to prevent unauthorised access.
- He does not leave the vehicle unattended at any point during the journey, except where necessary.
- He carries out checks of the vehicle exterior 15 minutes before arriving at Calais and does not stop again before reaching the port.
- On arrival at Calais he submits the vehicle to a check by the port authorities.
- He has a previously good record of liability to penalties.
- After passing through the UK immigration control at Calais he becomes suspicious that there may be persons concealed in the vehicle. He turns back to the control and reports to the authorities there.
- The driver has previously asked the vehicle owner to provide adequate security devices and pointed out the vulnerability of the vehicle to unauthorised entry.
- In this case it is probable that no penalty will be imposed upon the driver.

### Example B

- The driver has been provided with a vehicle that has adequate security devices and has been given instructions about the steps that he should take to prevent unauthorised access.
- He uses some of the available security devices but does not secure the curtained sides of his vehicle with the tilt cord provided. He also neglects to carry out any checks himself during the journey.
- He submits the vehicle to a check by the port authorities at Calais.
- He has a previously good record of liability to penalties.
- In this case it is probable that a penalty towards the middle of the range will be imposed in respect of each clandestine entrant, and person concealed with the clandestine entrant.

## Example C

- A driver has been provided with a vehicle that has adequate security devices and instructions by the owner about the steps that he must take to prevent unauthorised access.
- He does not use any of the security devices provided.
- He neglects to carry out any checks himself and does not submit the vehicle to any third part checks prior to embarkation.
- He has a previously poor record of liability to penalties.
- In this case it is probable that a maximum penalty will be imposed in respect of each clandestine entrant, and person concealed with the clandestine entrant.

## Operator of rail freight wagon

### Example A

- The operator has a system in place that complies with the code of practice.
- The rail freight wagon was well maintained and had adequate security devices.
- No checks of the individual wagon were carried out prior to embarkation though the operator is able to demonstrate that other wagons forming part of the same train were checked.
- The operator can demonstrate a generally good record of operating an effective system and has adequate measures in place to train its staff and monitor compliance.
- In this case it is probable that a penalty towards the lower end of the scale will be imposed in respect of each clandestine entrant, and person concealed with the clandestine entrant.

### Example B

- The operator has a system in place that if operated properly would comply with the code of practice.
- No checks were carried out of the wagon or any other wagon that formed part of the same train.
- The operator has an inconsistent record when it comes to operating the system that it has in place though makes some efforts to train its staff and monitor their compliance.
- In this case it is probable that a penalty towards the middle of the range will be imposed in respect of each clandestine entrant, and person concealed with the clandestine entrant.

### Example C

- The operator has a system in place that if operated properly would comply with the code of practice.
- No checks were carried out of the wagon or any other wagon that formed part of the same train.

- The operator has a poor record as far as the proper operation of the system and does little to train its staff in what is required of them. It does not monitor their compliance.
- The operator has a previously poor record of liability to penalties.
- In this case it is probable that a maximum penalty will be imposed in respect of each clandestine entrant, and person concealed with the clandestine entrant.

## Operator of Rail Shuttle Wagon

### Example A

- The operator has a system in place that if operated properly complies with the code of practice.
- The site that surrounds the wagons is generally well secured.
- No checks of the vehicles that were carried on the wagon were carried out prior to embarkation though the operator is able to demonstrate that other vehicles carried in different wagons forming part of the same train were checked.
- The operator has a generally good record of operating an effective system and adequate measures in place to train its staff and monitor compliance.
- In this case it is probable that a penalty towards the lower end of the scale will be imposed in respect of each clandestine entrant, and person concealed with the clandestine entrant.

### Example B

- The operator has a system in place that if operated properly would comply with the code of practice.
- There is fencing surrounding the wagons but it is inadequately secure in some parts.
- Checks were carried out in respect of only some of the vehicles carried on the wagon.
- The operator has a generally good record when it comes to operating the system that it has in place but does little to monitor the compliance of its staff once they are trained.
- In this case it is probable that a penalty towards the middle of the range will be imposed in respect of each clandestine entrant, and person concealed with the clandestine entrant.

### Example C

- The operator has a system in place that if operated properly would comply with the code of practice.
- No checks were carried out of the wagon or any other that formed part of the same train.
- The fencing surrounding the wagons is in a poor state of repair.
- The operator has a poor record when it comes to operating the system and does little to train its staff. It does not monitor compliance.
- The operator has a previously poor record of liability to penalties.

- In this case it is probable that a maximum penalty will be imposed in respect of each clandestine entrant, and person concealed with the clandestine entrant.

## COMPENDIUM OF FORMULAE FOR PENALTY NOTICES

This list is intended as a general guide only, and the wording will need to be adjusted to fit the particular circumstances of an incident.

Remember, all formulae used should include the following:-

- The term "clandestine entrants or person concealed with a clandestine entrant"
- Date and location of the incident
- The exact number of clandestines to which the notice relates
- The foreign country from which the transporter has arrived.

### Example 1. Vehicle in a port area

On .....(date) at ..... (location) the transporter described above was found by an Immigration Officer/port authority to contain a total of 9 (nine) persons concealed within it, each person being either a clandestine entrant or person concealed with a clandestine entrant. The transporter had arrived in the United Kingdom from ..... (country) on the mv .....

### Example 2. Control Zone at Coquelles

On ..... (date) the transporter described above passed through (or attempted to pass through) the United Kingdom Immigration Control at Coquelles. A total of 6 (six) persons were found to be concealed inside the transporter when it was examined by Immigration Officers, each person being either a clandestine entrant or person concealed with a clandestine entrant.

### Example 3. Drop trailer found at depot

On ..... (date) at ..... (location) a total of 11 (eleven) persons were discovered concealed inside the transporter described above, each one being either a clandestine entrant or person concealed with a clandestine entrant. The transporter had recently arrived in the United Kingdom from ..... (country).

### Example 4. Highway incident

On ..... (date) at ..... (location) on the ..... (road number) officers from (Essex/Kent etc) police observed a total of 14 (fourteen) persons seeking to emerge from concealment inside the transporter described above, each one being either a clandestine entrant or person concealed with a clandestine entrant. The transporter had recently arrived in the United Kingdom from ..... (country).

Example 5. Emergence from a vehicle on board a ship. (To be used only in cases where the vehicle concerned has been identified)

On ..... (date) a total of 6 (six) persons, each one being either a clandestine entrant or person concealed with a clandestine entrant, boarded the vessel m.v. .... at ..... (port) in ..... (foreign country) concealed in the vehicle specified above.

Example 6. Arrival in a boat/small ship

On ..... (date) at ..... (location, name of marina etc) a total of 7 (seven) persons, each one being a clandestine entrant or person concealed with a clandestine entrant, were discovered by immigration/customs officers on board/d disembarking from the yacht named above. The yacht had just arrived from ..... (country).

Example 7. Light aircraft

On ..... (date) at ..... (name and location of airfield) 2 (two) persons, each one being either a clandestine entrant or person concealed with a clandestine entrant, were apprehended who had just arrived in the aircraft specified above. The aircraft had recently arrived in the United Kingdom from ..... (country).



You have been issued with a penalty notice (form IS11).

### ***Objections***

If you wish to object to the imposition of the penalty or to its amount, you must submit your objections in writing, giving full reasons for the objections, within 28 days of the issue of the penalty notice to:

The Civil Penalty Central Administration Unit,  
Status Park 4,  
3 Nobel Drive,  
Harlington,  
Middlesex, UB3 5EY.  
Tel: (020) 8745-6006 Fax: (020) 8745-5922.  
E-mail: [civilpenaltyunit@homeoffice.gsi.gov.uk](mailto:civilpenaltyunit@homeoffice.gsi.gov.uk)

The Home Office is prepared to consider any proposals you may wish to put forward for payment of the penalty. For example, you may wish to suggest payment by regular instalments explaining why this is necessary.

If you think that because of your financial resources (means) paying the penalty in full would cause you undue financial hardship, you should provide relevant and comprehensible written information concerning your means as part of your objections. This should reveal details of your current income, expenditure, debts and assets. For drivers this should typically include your most recent wage slips, bank statements and tax returns. For companies, documents should typically include the most recent bank statements and company accounts.

### **Appeal**

**Regardless of whether you object to the penalty (in the way described above), you are entitled to appeal to a County Court against the imposition of the penalty or its amount. Any appeal must be made to the County Court within 28 days of the issue of the penalty notice or, where you have objected, within 28 days of the determination of your objections. An appeal must be filed upon Form N161, obtainable from any County Court Office and available on line at [www.hmcourts-service.gov.uk](http://www.hmcourts-service.gov.uk), and the completed appeal form must be accompanied by payment of a fee of £100.**

### **Appeal Costs**

You should be aware that if your appeal to the County Court does not succeed, the Court may order that you pay the reasonable costs of the Home Office in resisting your appeal. If however, your appeal is successful, the Court may order that the Home Office pay your reasonable costs of the appeal.

Most appeals are dealt with by Canterbury County Court, The Law Courts, Chaucer Road, Canterbury, Kent, CT1 1ZA where, because of its familiarity with such cases, costs tend to be lower. But appeals do not need to be lodged in Canterbury as there is a County Court in most large towns and cities. The addresses of County Courts may be obtained by contacting:

The Customer Service Unit,  
The Court Service,  
Southside,

105 Victoria Street,  
Westminster,  
London, SW1E 6QT.

Tel: (020) 7210 2266

Internet: [www.hmcourts-service.gov.uk](http://www.hmcourts-service.gov.uk)

# METHODS OF PAYMENT

**Payment  
from  
Overseas  
by:**

**1/ Bank Transfer for Euros Only :**

Bank: National Westminster Bank, 6 Coldharbour Lane, Hayes, Middx. UB3 3EL, UK

Sort Code: 60-10-43

Account number: 5500108304793

Remittance info: **Home Office -12511000**

**Swift Code: NWBKGB2L**

**IBAN No: GB43 NWBK 607206 08304793.**

**OR**

**2/ Bank Transfer for Sterling (£) or Foreign Currency NOT Euros to:**

Bank: Bank of England, Threadneedle Street, London, EC2R 8AH, UK

Sort Code: 10-00-00

Account number: **12511000**

Remittance info: **Home Office General Cash Account**

**Swift Code: BKENGB33**

**IBAN No: GB57 BKEN 100000 25021001.**

**For either of these methods the port reference should be quoted and any charges incurred in making the transfer should be paid in addition to the sum owing.**

**Payment  
in the UK  
by:**

**1/ CHAPS payments to:**

Bank: National Westminster Bank PLC, 6 Coldharbour Lane, Hayes, Middx UB3 3EL

Sort Code: 16-53-60

Account number: 12511000

Remittance info: **Home Office General Cash Account**

**OR**

**2/ BACS payment to:**

Bank: Bank of England, Threadneedle Street, London, EC2R 8AH

Sort Code: 10-14-99

Account number: 12511000

Remittance info: **Home Office General Cash Account**

**For either of these methods the port reference should be quoted and any charges incurred in making the transfer should be paid in addition to the sum owing.**

**OR**

**3/Payment by Cheque:**

Cheque payable to: "the Home Office Accounting Officer"

Sent to: Home Office Accounts Branch, Cashiers Office, 4<sup>th</sup> Floor, India Buildings, Liverpool, L2 0UR England.



# UK IMMIGRATION SERVICE

## CIVIL PENALTY CENTRAL ADMINISTRATION UNIT

Status 4, 3 Nobel Drive, Harlington, Middlesex UB3 5EY

Tel: (020) 8745 6006 Fax: (020) 8745 5922

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## Immigration and Asylum Act 1999 Carriage of Clandestine Entrants

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Port ref:

To:

On \_\_\_\_\_ (*date*) vehicle index number \_\_\_\_\_ of which you  
were the driver/owner/hirer (*delete as applicable*) was found to contain  
(*number*) clandestine entrants on arrival from \_\_\_\_\_ (*port*) at  
(*time*).

You may be liable to a penalty of up to £2000 for each clandestine entrant carried.

As we are unable to conduct further enquiries at this time no decision has been made regarding the imposition of a penalty. We will shortly contact you to obtain the information necessary to decide whether you are liable to a penalty and, if so, how much that penalty should be. You do not have to take any action until we contact you at which time you will be advised of what you should do.

Immigration Officer

Section 125

CARRIERS' LIABILITY

1

The Immigration and Asylum Act 1999 (c. 33) shall be amended as follows.

2

(1) Section 32 (penalty for carrying clandestine entrant) shall be amended as follows.

(2) After subsection (1)(a) insert-

"(aa) he arrives in the United Kingdom concealed in a rail freight wagon,".

(3) For subsection (2) substitute-

"(2) The Secretary of State may require a person who is responsible for a clandestine entrant to pay-

(a) a penalty in respect of the clandestine entrant;

(b) a penalty in respect of any person who was concealed with the clandestine entrant in the same transporter.

(2A) In imposing a penalty under subsection (2) the Secretary of State-

(a) must specify an amount which does not exceed the maximum prescribed for the purpose of this paragraph,

(b) may, in respect of a clandestine entrant or a concealed person, impose separate penalties on more than one of the persons responsible for the clandestine entrant, and

(c) may not impose penalties in respect of a clandestine entrant or a concealed person which amount in aggregate to more than the maximum prescribed for the purpose of this paragraph."

(4) For subsection (4) substitute-

"(4) Where a penalty is imposed under subsection (2) on the driver of a vehicle who is an employee of the vehicle's owner or hirer-

(a) the employee and the employer shall be jointly and severally liable for the penalty imposed on the driver (irrespective of whether a penalty is also imposed on the employer), and

(b) a provision of this Part about notification, objection or appeal shall have effect as if the penalty imposed on the driver were also imposed on the employer (irrespective of whether a penalty is also imposed on the employer in his capacity as the owner or hirer of the vehicle).

(4A) In the case of a detached trailer, subsection (4) shall have effect as if a reference to the driver were a reference to the operator."

(5) In subsection (5)-

(a) in paragraph (a) for the second "or" substitute "and", and

(b) in paragraphs (b) and (c) for "or" substitute "and".

(6) After subsection (5) insert-

"(5A) In the case of a clandestine entrant to whom subsection (1)(aa) applies, the responsible person is-

(a) where the entrant arrived concealed in a freight train, the train operator who, at the train's last scheduled stop before arrival in the United Kingdom, was responsible for certifying it as fit to travel to the United Kingdom, or

(c) where the entrant arrived concealed in a freight shuttle wagon, the operator of the shuttle-train of which the wagon formed part."

(7) In subsection (6)(a) and (b) for "or" substitute "and".

(8) After subsection (6) insert-

"(6A) Where a person falls within the definition of responsible person in more than one capacity, a separate penalty may be imposed on him under subsection (2) in respect of each capacity."

3

After section 32 insert-

**"32A Level of penalty: code of practice**

(1) The Secretary of State shall issue a code of practice specifying matters to be considered in determining the amount of a penalty under section 32.

(2) The Secretary of State shall have regard to the code (in addition to any other matters he thinks relevant)-

(a) when imposing a penalty under section 32, and

(b) when considering a notice of objection under section 35(4).

(3) Before issuing the code the Secretary of State shall lay a draft before Parliament.

(4) After laying the draft code before Parliament the Secretary of State may bring the code into operation by order.

(5) The Secretary of State may from time to time revise the whole or any part of the code and issue the code as revised.

(6) Subsections (3) and (4) also apply to a revision or proposed revision of the code."

The heading of section 33 (code of practice) becomes "Prevention of clandestine entrants: code of practice".

In section 33(2)(b) omit "both Houses of".

(1) Section 34 (defence) shall be amended as follows.

(2) For subsection (1) substitute-

"(1) A person ("the carrier") shall not be liable to the imposition of a penalty under section 32(2) if he has a defence under this section."

(3) In subsection (3)(c) omit the first "that".

(4) After subsection (3) insert-

"(3A) It is also a defence for the carrier to show that-

(a) he knew or suspected that a clandestine entrant was or might be concealed in a rail freight wagon, having boarded after the wagon began its journey to the United Kingdom;

(b) he could not stop the train or shuttle-train of which the wagon formed part without endangering safety;

(c) an effective system for preventing the carriage of clandestine entrants was in operation in relation to the train or shuttle-train; and

(d) on the occasion in question the person or persons responsible for operating the system did so properly."

(5) Omit subsection (5).

(6) For subsection (6) substitute-

"(6) Where a person has a defence under subsection (2) in respect of a clandestine entrant, every other responsible person in respect of the clandestine entrant is also entitled to the benefit of the defence."

(1) Section 35 (notification and objection) shall be amended as follows.

(2) In subsection (2)(d)(i) for "must" substitute "may".

(3) For subsections (3) to (8) substitute-

"(3) Subsection (4) applies where a person to whom a penalty notice is issued objects on the ground that-

- (a) he is not liable to the imposition of a penalty, or
- (b) the amount of the penalty is too high.

(4) The person may give a notice of objection to the Secretary of State.

(5) 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.

(6) Where the Secretary of State receives a notice of objection to a penalty in accordance with this section he shall consider it and-

- (a) cancel the penalty,
- (b) reduce the penalty,
- (c) increase the penalty, or
- (d) determine to take no action under paragraphs (a) to (c).

(7) Where the Secretary of State considers a notice of objection under subsection (6) he shall-

- (a) inform the objector of his decision before the end of such period as may be prescribed or such longer period as he may agree with the objector,
- (b) if he increases the penalty, issue a new penalty notice under subsection (1), and
- (c) if he reduces the penalty, notify the objector of the reduced amount."

(4) In subsection (9)-

(a) for the first "served" substitute "issued", and

(b) for "served on" substitute "issued to".

(5) At the end add-

"(11) In proceedings for enforcement of a penalty under subsection (10) no question may be raised as to-

(a) liability to the imposition of the penalty, or

(b) its amount.

(12) A document which is to be issued to or served on a person outside the United Kingdom for the purpose of subsection (1) or (7) or in the course of proceedings under subsection (10) may be issued or served-

(a) in person,

(b) by post,

(c) by facsimile transmission, or

(d) in another prescribed manner.

(13) The Secretary of State may by regulations provide that a document issued or served in a manner listed in subsection (12) in accordance with the regulations is to be taken to have been received at a time specified by or determined in accordance with the regulations."

After section 35 insert-

**"35A Appeal**

(1) A person may appeal to the court against a penalty imposed on him under section 32 on the ground that-

- (a) he is not liable to the imposition of a penalty, or
- (b) the amount of the penalty is too high.

(2) On an appeal under this section the court may-

- (a) allow the appeal and cancel the penalty,
- (b) allow the appeal and reduce the penalty, or
- (c) dismiss the appeal.

(3) An appeal under this section shall be a re-hearing of the Secretary of State's decision to impose a penalty and shall be determined having regard to-

- (a) any code of practice under section 32A which has effect at the time of the appeal,
- (b) the code of practice under section 33 which had effect at the time of the events to which the penalty relates, and
- (c) any other matters which the court thinks relevant (which may include matters of which the Secretary of State was unaware).

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

(5) An appeal may be brought by a person under this section against a penalty whether or not-

- (a) he has given notice of objection under section 35(4);
- (b) the penalty has been increased or reduced under section 35(6)."

(1) Section 36 (detention of vehicle) shall be amended as follows.

(2) In subsection (1)-

- (a) for "given" substitute "issued",
- (b) after paragraph (b) omit "or", and
- (c) after paragraph (c) insert "or
- (d) rail freight wagon,".

(3) After subsection (2) insert-

"(2A) A vehicle may be detained under subsection (1) only if-

- (a) the driver of the vehicle is an employee of its owner or hirer,
- (b) the driver of the vehicle is its owner or hirer, or
- (c) a penalty notice is issued to the owner or hirer of the vehicle.

(2B) A senior officer may detain a relevant vehicle, small ship, small aircraft or rail freight wagon pending-

- (a) a decision whether to issue a penalty notice,
- (b) the issue of a penalty notice, or
- (c) a decision whether to detain under subsection (1).

(2C) That power may not be exercised in any case-

- (a) for longer than is necessary in the circumstances of the case, or
- (b) after the expiry of the period of 24 hours beginning with the conclusion of the first search of the vehicle, ship, aircraft or wagon by an immigration officer after it arrived in the United Kingdom."

After section 36 insert-

**"36A Detention in default of payment**

(1) This section applies where a person to whom a penalty notice has been issued under section 35 fails to pay the penalty before the date specified in accordance with section 35(2)(c).

(2) The Secretary of State may make arrangements for the detention of any vehicle, small ship, small aircraft or rail freight wagon which the person to whom the penalty notice was issued uses in the course of a business.

(3) A vehicle, ship, aircraft or wagon may be detained under subsection (2) whether or not the person to whom the penalty notice was issued owns it.

(4) But a vehicle may be detained under subsection (2) only if the person to whom the penalty notice was issued-

(a) is the owner or hirer of the vehicle, or

(b) was an employee of the owner or hirer of the vehicle when the penalty notice was issued.

(5) The power under subsection (2) may not be exercised while an appeal against the penalty under section 35A is pending or could be brought (ignoring the possibility of an appeal out of time with permission).

(6) The Secretary of State shall arrange for the release of a vehicle, ship, aircraft or wagon detained under this section if the person to whom the penalty notice was issued pays-

(a) the penalty, and

(b) expenses reasonably incurred in connection with the detention."

11 (1) Section 37 (effect of detention of transporter) shall be amended as follows.

(2) In subsection (1) for "section 36" substitute "section 36(1)".

(3) In subsection (2) for "claiming an interest in the transporter," substitute "whose interests may be affected by detention of the transporter,".

(4) In subsection (3)(c) omit "and the applicant has a compelling need to have the transporter released".

(5) After subsection (3) insert-

"(3A) The court may also release the transporter on the application of the owner of the transporter under subsection (2) if-

(a) a penalty notice was not issued to the owner or an employee of his, and

(b) the court considers it right to release the transporter.

(3B) In determining whether to release a transporter under subsection (3A) the court shall consider-

(a) the extent of any hardship caused by detention,

(b) the extent (if any) to which the owner is responsible for the matters in respect of which the penalty notice was issued, and

(c) any other matter which appears to the court to be relevant (whether specific to the circumstances of the case or of a general nature)."

(6) After subsection (5) insert-

"(5A) The power of sale under subsection (4) may be exercised only when no appeal against the imposition of the penalty is pending or can be brought (ignoring the possibility of an appeal out of time with permission).

(5B) The power of sale under subsection (4) shall lapse if not exercised within a prescribed period."

(7) After subsection (6) add-

"(7) This section applies to a transporter detained under section 36A as it applies to a transporter detained under section 36(1); but for that purpose-

(a) the court may release the transporter only if the court considers that the detention was unlawful or under subsection (3A) (and subsection (3) shall not apply), and

(b) the reference in subsection (4) to the period of 84 days shall be taken as a reference to a period prescribed for the purpose of this paragraph."

12

Section 39 (rail freight) shall cease to have effect.

13

For section 40 (charge in respect of passenger without proper documents) substitute-

## **"40 Charge in respect of passenger without proper documents**

(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)."

14

Section 42 (power to detain vehicle, &c. carrying person without proper travel documents) shall cease to have effect.

15

In section 43 (interpretation) (which becomes subsection (1))-

(a) in the definition of "concealed" for "or aircraft" substitute ", aircraft or rail freight wagon",

(b) omit the definition of "court",

(c) after the definition of "equipment" insert-

""freight shuttle wagon" means a wagon which-

- (a) forms part of a shuttle-train, and
- (b) is designed to carry commercial goods vehicles;

"freight train" means any train other than-

- (a) a train engaged on a service for the carriage of passengers, or
- (b) a shuttle-train;"

(d) in the definition of "owner" omit paragraph (b) and the word "and" immediately preceding it,

(e) for the definition of "rail freight wagon" substitute-

""rail freight wagon" means-

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

(b) a freight shuttle wagon,

and for the purpose of this definition, "rolling stock" and "locomotive" have the meanings given by section 83 of the Railways Act 1993 (c.43);",

(f) after the definition of "ship" insert-

""shuttle-train" has the meaning given by section 1(9) of the Channel Tunnel Act 1987 (c. 53);",

(g) in the definition of "transporter" for "or aircraft" substitute ", aircraft or rail freight wagon", and

(h) at the end insert-

"(2) A reference in this Part to "the court" is a reference-

(a) in England and Wales, to a county court,

(b) in Scotland, to the sheriff, and

(c) in Northern Ireland, to a county court.

(3) But-

(a) a county court may transfer proceedings under this Part to the High Court, and

(b) the sheriff may transfer proceedings under this Part to the Court of Session."

(1) Schedule 1 (sale of transporter) shall be amended as follows.

(2) In paragraph 1(2)(a) omit "or charge".

(3) After paragraph 2 insert-

"2A Where the owner of a transporter is a party to an application for leave to sell it, in determining whether to give leave the court shall consider-

- (a) the extent of any hardship likely to be caused by sale,
- (b) the extent (if any) to which the owner is responsible for the matters in respect of which the penalty notice was issued, and
- (c) any other matter which appears to the court to be relevant (whether specific to the circumstances of the case or of a general nature)."

(4) In paragraph 5(1) omit "or 42".

(5) In paragraph 5(2)(d) omit "or charge".

(1) This paragraph applies to a code of practice which-

- (a) has effect, before the coming into force of paragraph 12 of this Schedule, by virtue of sections 33 and 39 of the Immigration and Asylum Act 1999 (c. 33) (power to apply provisions about carriers' liability to rail freight), and
- (b) could be issued under section 33 of that Act after the coming into force of paragraph 2 of this Schedule.

(2) A code of practice to which this paragraph applies-

- (a) shall continue to have effect after the coming into force of paragraph 12 of this Schedule, and
- (b) shall be treated after that time as if made and brought into operation under section 33 alone.

# Immigration and Asylum Act 1999

1999 Chapter c.33 - *continued*

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## PART II

### CARRIERS' LIABILITY

#### *Clandestine entrants*

Penalty for carrying clandestine entrants.

**32.** - (1) A person is a clandestine entrant if-

(a) he arrives in the United Kingdom concealed in a vehicle, ship or aircraft,

(b) he passes, or attempts to pass, through immigration control concealed in a vehicle, or

(c) he arrives in the United Kingdom on a ship or aircraft, having embarked-

(i) concealed in a vehicle; and

(ii) at a time when the ship or aircraft was outside the United Kingdom,

and claims, or indicates that he intends to seek, asylum in the United Kingdom or evades, or attempts to evade, immigration control.

(2) The person (or persons) responsible for a clandestine entrant is (or are together) liable to-

(a) a penalty of the prescribed amount in respect of the clandestine entrant; and

(b) an additional penalty of that amount in respect of each person who was concealed with the clandestine entrant in the same transporter.

(3) A penalty imposed under this section must be paid to the Secretary of State before the end of the prescribed period.

(4) Payment of the full amount of a penalty by one or more of the persons responsible for the clandestine entrant discharges the liability of each of the persons responsible for that entrant.

(5) In the case of a clandestine entrant to whom subsection (1)(a) applies, each of the following is a responsible person-

(a) if the transporter is a ship or aircraft, the owner or captain;

(b) if it is a vehicle (but not a detached trailer), the owner, hirer or driver of the vehicle;

(c) if it is a detached trailer, the owner, hirer or operator of the trailer.

(6) In the case of a clandestine entrant to whom subsection (1)(b) or (c) applies, each of the following is a responsible person-

(a) if the transporter is a detached trailer, the owner, hirer or operator of the trailer;

(b) if it is not, the owner, hirer or driver of the vehicle.

(7) Subject to any defence provided by section 34, it is immaterial whether a responsible person knew or suspected-

(a) that the clandestine entrant was concealed in the transporter; or

(b) that there were one or more other persons concealed with the clandestine entrant in the same transporter.

(8) Subsection (9) applies if a transporter ("the carried transporter") is itself being carried in or on another transporter.

(9) If a person is concealed in the carried transporter, the question whether any other person is concealed with that person in the same transporter is to be determined by reference to the carried transporter and not by reference to the transporter in or on which it is carried.

(10) "Immigration control" means United Kingdom immigration control and includes any United Kingdom immigration control operated in a prescribed control zone outside the United Kingdom.

Code of practice.

**33.** - (1) The Secretary of State must issue a code of practice to be followed by any person operating a system for preventing the carriage of clandestine entrants.

(2) Before issuing the code, the Secretary of State must-

(a) consult such persons as he considers appropriate; and

(b) lay a draft before both Houses of Parliament.

(3) The requirement of subsection (2)(a) may be satisfied by consultation before the passing of this Act.

(4) After laying the draft code before Parliament, the Secretary of State may bring the code into operation by an order.

(5) The Secretary of State may from time to time revise the whole or any part of the code and issue the code as revised.

(6) Subsections (2) and (4) also apply to any revision, or proposed revision, of the code.

Defences to claim that penalty is due under section 32.

**34.** - (1) This section applies if it is alleged that a person ("the carrier") is liable to a penalty under section 32.

(2) It is a defence for the carrier to show that he, or an employee of his who was directly responsible for allowing the clandestine entrant to be concealed, was acting under duress.

(3) It is also a defence for the carrier to show that-

(a) he did not know, and had no reasonable grounds for suspecting, that a clandestine entrant was, or might be, concealed in the transporter;

(b) an effective system for preventing the carriage of clandestine entrants was in operation in relation to the transporter; and

(c) that on the occasion in question the person or persons responsible for operating that system did so properly.

(4) In determining, for the purposes of this section, whether a particular system is effective, regard is to be had to the code of practice issued by the Secretary of State under section 33.

(5) If there are two or more persons responsible for a clandestine entrant, the fact that one or more of them has a defence under subsection (3) does not affect the liability of the others.

(6) But if a person responsible for a clandestine entrant has a defence under subsection (2), the liability of any other person responsible for that entrant is discharged.

Procedure.

**35.** - (1) If the Secretary of State decides that a person ("P") is liable to one or more penalties under section 32, he must notify P of his decision.

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

(a) state the Secretary of State's reasons for deciding that P is liable to the penalty (or penalties);

(b) state the amount of the penalty (or penalties) to which P is liable;

(c) specify the date before which, and the manner in which, the penalty (or penalties) must be paid; and

(d) include an explanation of the steps-

(i) that P must take if he objects to the penalty;

(ii) that the Secretary of State may take under this Part to recover any unpaid penalty.

(3) Subsection (4) applies if more than one person is responsible for a clandestine entrant.

(4) If a penalty notice is served on one of the responsible persons, the Secretary of State is to be taken to have served the required penalty notice on each of them.

(5) The Secretary of State must nevertheless take reasonable steps, while the penalty remains unpaid, to secure that the penalty notice is actually served on each of those responsible persons.

(6) If a person on whom a penalty notice is served, or who is treated as having had a penalty notice served on him, alleges that he is not liable for one or more, or all, of the penalties specified in the penalty notice, he may

give written notice of his allegation to the Secretary of State.

(7) Notice under subsection (6) ("a notice of objection") must-

- (a) give reasons for the allegation; and
- (b) be given before the end of such period as may be prescribed.

(8) If a notice of objection is given before the end of the prescribed period, the Secretary of State must consider it and determine whether or not any penalty to which it relates is payable.

(9) The Secretary of State may by regulations provide, in relation to detached trailers, for a penalty notice which is served in such manner as may be prescribed to have effect as a penalty notice properly served on the responsible person or persons concerned under this section.

(10) Any sum payable to the Secretary of State as a penalty under section 32 may be recovered by the Secretary of State as a debt due to him.

Power to detain vehicles etc. in connection with penalties under section 32.

**36.** - (1) If a penalty notice has been given under section 35, a senior officer may detain any relevant-

- (a) vehicle,
- (b) small ship, or
- (c) small aircraft,

until all penalties to which the notice relates, and any expenses reasonably incurred by the Secretary of State in connection with the detention, have been paid.

(2) That power-

(a) may be exercised only if, in the opinion of the senior officer concerned, there is a significant risk that the penalty (or one or more of the penalties) will not be paid before the end of the prescribed period if the transporter is not detained; and

(b) may not be exercised if alternative security which the Secretary of State considers is satisfactory, has been given.

(3) If a transporter is detained under this section, the owner, consignor or any other person who has an interest in any freight or other thing carried in or on the transporter may remove it, or arrange for it to be removed, at such time and in such way as is reasonable.

(4) The detention of a transporter under this section is lawful even though it is subsequently established that the penalty notice on which the detention was based was ill-founded in respect of all or any of the penalties to which it related.

(5) But subsection (4) does not apply if the Secretary of State was acting unreasonably in issuing the penalty notice.

Effect of detention.

**37.** - (1) This section applies if a transporter is detained under section 36.

(2) The person to whom the penalty notice was addressed, or the owner or any other person claiming an interest in the transporter, may apply to the court for the transporter to be released.

(3) The court may release the transporter if it considers that-

(a) satisfactory security has been tendered in place of the transporter for the payment of the penalty alleged to be due and connected expenses;

(b) there is no significant risk that the penalty (or one or more of the penalties) and any connected expenses will not be paid; or

(c) there is a significant doubt as to whether the penalty is payable and the applicant has a compelling need to have the transporter released.

(4) If the court has not ordered the release of the transporter, the Secretary of State may sell it if the penalty in question and connected expenses are not paid before the end of the period of 84 days beginning with the date on which the detention began.

(5) "Connected expenses" means expenses reasonably incurred by the Secretary of State in connection with the detention.

(6) Schedule 1 applies to the sale of transporters under this section.

Assisting illegal entry and harbouring.

**38.** - (1) In section 25 of the 1971 Act (assisting illegal entry and harbouring), at the end of paragraph (c) of subsection (6), insert-

{d3}" or

(d) the driver of any such vehicle;".

(2) After section 25, insert-

"Detention of ships, aircraft and vehicles in connection with offences under section 25(1).

25A. - (1) If a person has been arrested for an offence under section 25(1)(a) or (b), a senior officer or a constable may detain a relevant ship, aircraft or vehicle-

(a) until a decision is taken as to whether or not to charge the arrested person with that offence; or

(b) if the arrested person has been charged-

(i) until he is acquitted, the charge against him is dismissed or the proceedings are discontinued; or

(ii) if he has been convicted, until the court decides whether or not to order forfeiture of the ship, aircraft or vehicle.

(2) A ship, aircraft or vehicle is a relevant ship, aircraft or vehicle, in relation to an arrested person, if it is one which the officer or constable concerned has reasonable grounds for believing could, on conviction of the arrested person for the offence for which he was arrested, be the subject of an order for forfeiture made under section 25(6).

(3) A person (other than the arrested person) who claims to be the owner of a ship, aircraft or vehicle which has been detained under this section may apply to the court for its release.

(4) The court to which an application is made under subsection (3) may, on such security or surety being tendered as it considers satisfactory, release the ship, aircraft or vehicle on condition that it is made available to the court if-

(a) the arrested person is convicted; and

(b) an order for its forfeiture is made under section 25(6).

(5) In the application to Scotland of subsection (1), for paragraphs (a) and (b) substitute-

"(a) until a decision is taken as to whether or not to institute criminal proceedings against the arrested person for that offence; or

(b) if criminal proceedings have been instituted against the arrested person-

(i) until he is acquitted or, under section 65 or 147 of the Criminal Procedure (Scotland) Act 1995, discharged or liberated or the trial diet is deserted *simpliciter*;

(ii) if he has been convicted, until the court decides whether or not to order forfeiture of the ship, aircraft or vehicle,

and for the purposes of this subsection, criminal proceedings are instituted against a person at whichever is the earliest of his first appearance before the sheriff on petition, or the service on him of an indictment or complaint."

(6) "Court" means-

(a) in England and Wales-

(i) if the arrested person has not been charged, the magistrates' court for the petty sessions area in which he was arrested;

(ii) if he has been charged but proceedings for the offence have not begun to be heard, the magistrates' court for the petty sessions area in which he was charged;

(iii) if he has been charged and proceedings for the offence are being heard, the court hearing the proceedings;

(b) in Scotland, the sheriff; and

(c) in Northern Ireland-

(i) if the arrested person has not been charged, the magistrates' court for the county court division in which he was arrested;

(ii) if he has been charged but proceedings for the offence have not begun to be heard, the magistrates' court for the county court division in which he was charged;

(iii) if he has been charged and proceedings for the offence are being heard, the court hearing the proceedings.

(7) "Owner" has the same meaning as it has in section 25(6).

(8) "Senior officer" means an immigration officer not below the rank of chief immigration officer."

(3) Subsection (1) has effect in relation to offences committed after the coming into force of that subsection.

(4) Subsection (2) has effect in relation to persons arrested for offences alleged to have been committed after the coming into force of that subsection.

Rail freight.

**39.** - (1) The Secretary of State may make regulations applying (with or without modification) any provision of this Part for the purpose of enabling penalties to be imposed in respect of a person ("a clandestine entrant") who-

(a) arrives in the United Kingdom concealed in a rail freight wagon; and

(b) claims, or indicates that he intends to seek, asylum in the United

Kingdom or evades, or attempts to evade, immigration control.

(2) The regulations may, in particular, make provision-

(a) enabling additional penalties to be imposed in respect of persons concealed with the clandestine entrant;

(b) as to which person is (or which persons are together) liable to penalties in respect of the clandestine entrant;

(c) for conferring on a senior officer a power to detain any relevant rail freight wagon in prescribed circumstances;

(c) for conferring on the Secretary of State a power to sell in prescribed circumstances a rail freight wagon which has been detained.

(3) Before making any regulations under this section, the Secretary of State must consult, in the way he considers appropriate, persons appearing to him to be likely to be affected by the imposition of penalties under the regulations.