



Border Force

CIVIL PENALTY

The Immigration and Asylum Act 1999

Level of Penalty: Code of Practice

**Code of Practice issued in accordance with section 32A of the
Immigration and Asylum Act 1999**

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 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 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 (e.g. 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.