



Home Office

# Charging Procedures: A Guide for Carriers

S40 The Immigration and Asylum Act 1999 (as amended)

December 2020



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# 1 Introduction

## 1.1 Who is the Guide for?

The aim of this guide is to help you as carriers understand:

- when you may become liable for charges under Section 40 of the Immigration and Asylum Act 1999 (I&AA) (as amended<sup>1</sup>).
- how Section 40 charges are raised by UK Border Force (UKBF) at ports.
- how you can make representations to the UKBF Port Inspector/Senior Officer after a Section 40 charge has been raised.
- how you can submit objections to the Carriers' Liaison Section (CLS) when a Section 40 charge has been maintained by the port.
- your right of appeal to the courts.

## 1.2 The Legislation

You can become liable for Section 40 charges under [Section 40 of the Immigration and Asylum Act 1999](#) which came into effect on 8 December 2002. This Act replaced The Immigration (Carriers' Liability) Act 1987 (ICLA).

## 1.3 What is a Section 40 charge and when is a charge incurred?

Under UK legislation as the owners, agents or operators of a ship or aircraft<sup>2</sup> you may become liable for a charge of £2,000 for every passenger arriving in the UK without:

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

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

- a valid “immigration document” which satisfactorily establishes identity and nationality or citizenship.
- and, if the person requires a visa, a visa of the required kind.

Section 40 charges do not apply to persons who are British or Irish Citizens. However, following the United Kingdom’s exit from the European Union on 31 January 2020 and the end of the transition period at 23:00 hours on 31 December 2020, charges will apply to nationals of the European Economic Area and Switzerland<sup>3</sup>, unless they are protected under terms of the Withdrawal Agreement.<sup>4</sup>

## 1.4 CCTV Linkage

At some ports Section 40 charges are now being raised in ‘no document’ cases as a result of CCTV linkage to a particular flight. There are two types of linkage - confirmed and unconfirmed. Whether a link is confirmed or unconfirmed is decided by a camera audit and not by an individual person. A Section 40 charge will be raised in all cases of CCTV linkage.

A **Confirmed** link is one which is definitive and not in any reasonable doubt (i.e. where there is a dedicated camera covering just one gate). In these circumstances (Notification of a Potential Liability to a Charge Form IS80B) will be issued.

An **Unconfirmed** link is one which is not definitive (i.e. where the camera is not necessarily on a gate but viewing a pier/walkway or where there is a possibility of traffic from two or more flights merging on a camera). In these circumstances it will usually be decided that no action will be taken, and (Notification of Arrival of an Improperly Documented Passenger Form IS80A) will be issued.

## 1.5 What is expected of a carrier?

You do not need to satisfy yourself that the person will be acceptable to the United Kingdom authorities on arrival. That judgement can only be exercised by a UK Border Force officer. However, you are expected to make sure that:

- every passenger has a valid passport or travel document which is acceptable in the UK;

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<sup>3</sup> Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020

<sup>4</sup> The Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020

- the person is the rightful holder;
- the document is valid; and,
- if the person needs a visa, it is of the required kind and is valid for the holder and any other accompanying persons named in the passport.

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



# 2 Visas

## 2.1 Visas

A person requires a visa if:

- under the Immigration Rules they require a visa for entry to the United Kingdom; or
- they are transiting the UK and require a visa to transit through the United Kingdom without entering.

You can obtain information about which nationalities require visas and transit visas from the GOV.UK website [Visa and Direct Airside Transit Visa \(DATV\) nationals](#) or from the Visa Information Card (VIC) which can be obtained free of charge from the Carriers' Liaison Section at the following address:

Carriers' Liaison Section

2<sup>nd</sup> Floor, Amadeus

The Quartet, Mondial Way

Hayes

Middlesex

UB3 5AR

Telephone: 020 3014 8282

Or by email to: [carriersliaisonsection@homeoffice.gov.uk](mailto:carriersliaisonsection@homeoffice.gov.uk)

## 2.2 When a Section 40 charge will be raised

As a carrier you will be liable to a charge if a person requires a visa but does not have a valid visa of the required kind. This means that you will need to identify those passengers who are travelling only to the UK and those passengers who are simply transiting through the UK as part of a journey to another country.

If the passenger intends to stay in the UK, the visa must be valid for the passenger to enter the United Kingdom. In most cases, if the passenger has a valid entry visa, you need

not be concerned about the purpose for which the visa was issued, such as “Visit” or “Student”.

**Please see Section 2.4 if the visa is endorsed “Child visitor”.**

A visa endorsed “Direct Airside Transit” is not valid for entry to the United Kingdom.

## 2.3 What we expect Carriers to Check on a Visa

You should check the:

- visa is valid for the holder
- visa is valid for any other accompanying persons named in the passport.
- date from which the visa is valid, and the date of expiry of the visa.

## 2.4 Child Visas

If a passenger has a visa endorsed “Child visitor”, you should check whether the visa is endorsed “accompanied” or “unaccompanied”.

Where the visa is endorsed “accompanied,” the visa will give details of the adult or adults who must accompany the child. If a child who has a child visit visa endorsed “accompanied” arrives either alone or with a person other than the person specified in the visa, then you will be liable to a charge.

Once a child holding an “accompanied child visitor” visa reaches the age of 18 the visa reverts to an ordinary “unaccompanied” visa.

Children holding “unaccompanied” visas may travel alone or with any adult.

## 2.5 The Transit without Visa Scheme (TWOV)

Landside Transit without Visa Scheme (TWOV):

Landside transit passengers are those who need or wish to pass through the UK border and enter the UK (e.g. to change airports, or to collect baggage or where a passenger has arrived at an airport where no airside transit is possible)

At the time of check-in the passenger must:

- be arriving in, and departing from, the UK by air
- have a **confirmed** onward booking, to a destination outside the United Kingdom before **23.59** hours the following day, **and**
- have the necessary documents, such as a genuine valid visa for their **final** destination and also, if required, for any intermediate points en route to the final destination.

Where UK Border Force has doubts about the genuineness of the passenger, the passenger may be refused entry to the UK and you may be directed to remove the passenger back to their original departure point.

**ALL visa nationals** may TWOV if they satisfy the three conditions set out above **and** also have one of the exemption documents listed below:

**1. When the passenger has a valid visa to Australia, Canada, New Zealand or the United States of America and a ticket to the country for which the visa is issued.**

The passenger must be intending to travel to one of the four countries listed above. However this need not be immediately after departure from the UK (for example the following routings are acceptable for TWOV):

- (i) Hong Kong – London Heathrow – Paris – Los Angeles or
- (ii) Belgrade – London Heathrow – London Gatwick – Paris – London Gatwick– San Francisco

The entire journey must be part of a reasonable single journey from the passenger's initial point of departure. Breaks are allowed provided all the travel is part of the same journey.

**When the passenger is travelling from Australia, Canada, New Zealand or the United States of America and has a valid visa and a valid ticket.**

The passengers are usually returning to their place of residence from a visit to one of the four countries listed above. They do not need to be travelling in direct transit to their final destination and side visits may be made (for example: Los Angeles – London Heathrow – Madrid – London Heathrow –Mumbai provided the passenger is assured of entry to the country being visited on the side trip - in this example Spain). Entry must be assured - a Category "C" Schengen visit visa would be sufficient. The entire journey must be part of a reasonable single journey to the passenger's final destination. Breaks are allowed provided all the travel is part of the same journey.

**2. When the passenger is travelling from Australia, Canada, New Zealand or the United States of America and has a valid ticket to travel through the UK not more than six months after he entered one of these countries with a valid visa.**

This section applies to passengers who have entered one of the four listed countries with a valid visa and are now travelling via the UK not more than six months after entering with a valid visa. If a DATV national, for example an Indian, travelled to the USA with a visit visa, he then stayed for 5 months and then returned to India via the UK he would be able to TWOV. If however the same passenger remained in the USA for 10 months and then wanted to travel via the UK, unless he had been issued with a “Green Card” I-551, he would not be acceptable to TWOV. Whether the passenger legally extends their stay or not, if their intended return via the UK is more than six months since their entry with a visa, then a transit visa (DATV or Category “B” visa is required).

Passengers having transit visas for Australia, Canada, New Zealand or the United States of America are treated in the same way in (1) and (2) above.

**3. Passengers who have a valid I-551 (Green Card) Permanent Residence card for the United States of America issued on or after 21 April 1998.**

Expired I-551 Green Cards issued after 21 April 1998 can be accepted if the passenger also has a valid I-797 letter authorising the extension of the card. Valid I-551 Temporary Immigrant visas may be accepted. Passengers immigrating to the USA and having USA Immigration Form 155A/155B (attached to a sealed brown envelope) may also be accepted.

Please note that passengers with a USA visa foil marked “YY” or “ZZ” or “Not a visa Foil prepared at DHS request” cannot TWOV. This is not an acceptable document for TWOV. Passengers with a USA Adit stamp or any other stamp showing that processing is underway in the USA for residence, a transportation letter, any kind of parole letter in the USA or a sticker extension to an expired I-551 Permanent Residence card (without a valid accompanying I-797 letter) - these are not acceptable for passengers seeking to TWOV.

**4. Passengers having a Canadian permanent residence card issued after 28 June 2002 or a new format PRC card issued in August 2009 are able to transit without visa.** However, Canadian Citizenship cards are not acceptable as travel documents and should not be accepted in place of a permanent residence card.

**5. Passengers who have a valid Residence Permit for Australia or New Zealand are able to transit without a visa**

Please note that passengers having acceptable documents listed in (3), (4) and (5) above do not have to be travelling to, or have a valid ticket to or from, the country who issued them with the residence card.

For example a Nigerian who has a permanent residence card for Canada may travel TWOV on this route; Amsterdam – London Gatwick – London Heathrow – Los Angeles.

**6. Passengers having a valid common format residence permit issued by an EEA state or Switzerland.**

Passengers who have a valid common format residence permit issued by an EEA state or Switzerland do not have to be travelling to or from the country which issued the permit. Please note that there are several forms of residence permits issued by EEA states but the only acceptable permits are those which are issued following the directions given in the Council Regulation (EC) No. 1030/2002.

These permits may take the form of a vignette (sticker) in a passport or a plastic card. There are several common features of these cards all set out in the directive – the permits are coloured mainly pink and blue, each has an EU Kinegram, also printed on the permits is the image of a bull and five stars. All other permits such as the large A4 sized Italian Permesso di Soggiorno, or an Irish Work Permit sticker are not common format residence permits and are not acceptable as an exemption document for DATV nationals seeking to TWOV.

**7. Passengers who have a uniform format Category “D” visa for entry to an EEA state or Switzerland.**

Category “D” uniform format visas are issued to those who have an authorised stay in an EEA state or Switzerland usually for more than 90 days – you may see some marked “D1” or “D2”. Passengers having Category “D” uniform format visas do not have to be travelling to or from the country which issued the visa.

Please note some uniform format visas may be endorsed “D”, “CD” or “C+D” – all these forms are acceptable. Those uniform format visas marked Category “A”, “B” or “C” are not acceptable to TWOV.

**8. When the passenger has a valid uniform format Irish biometric visa endorsed “BC” or BC BIVS” and a ticket to the country for which the visa is issued. The passenger must be intending to travel directly to the Republic of Ireland by air.**

When the passenger has a valid uniform format Irish biometric visa endorsed “BC” or BC BIVS” and a ticket from the country for which the visa is issued provided it is less than 3 months since the holder last entered there.

The passenger must be arriving direct from the Republic of Ireland by air and will normally be returning to their country of residence.

E-Visas or E-Residence Permits are not acceptable for landside transit

Where you genuinely believe that the passenger’s sole purpose in travelling to the United Kingdom was to travel on to another country, and he qualifies for a visa waiver under the terms notified by the International Civil Aviation Organisation, then the passenger may be

accepted for carriage to the third country via the United Kingdom without a United Kingdom visa (i.e. Transit Without Visa).

However, if, under landside TWOV, a visa national passenger travels without a UK visa to a third country via the United Kingdom but is subsequently denied onward carriage by the airline whilst in the United Kingdom because of the detection of an inadequacy in documentation (for example a falsified passport), then this administrative concession will no longer apply. Therefore as the inward carrier you may be liable to a charge.

## 2.6 AIRSIDE Transit without Visa Scheme (TWOV):

**Airside** transit passengers are those who do not need to change airports and do not need to pass through the UK border. Passengers cannot transit airside to the Republic of Ireland or anywhere within the Common Travel Area.

At the time of check-in the passenger must:

- be arriving in, and departing from, the UK by air
- have a **confirmed** onward booking, to a destination outside the United Kingdom before **23.59** hours the same day from the same airport – i.e. Heathrow, Gatwick or Manchester, **and**
- have the necessary documents, such as a genuine valid visa for his **final** destination and also, if required, for any intermediate points en route to the final destination.

### Non-Direct Airside Transit Visa Nationals (Non DATVs)

A non-DATV national may TWOV airside without a UK visa if they satisfy the three conditions set out above at 2.6.

### Direct Airside Transit Visa Nationals (DATVs)

DATV nationals may TWOV airside if they satisfy the three conditions set out above at 2.6 and have one of the exemption documents listed in section 2.5 OR one of the additional exemption documents listed below:

1. When the passenger has a valid uniform format Irish biometric visa endorsed “BC” or BC BIVS”.

The passenger must be on a reasonable journey to or from a destination other than the Republic of Ireland in order to transit airside via the UK

2. When the passenger has a valid visa for USA, Australia, Canada, New Zealand. The passenger does not need to be travelling to or from one of the four countries listed above but must meet the airside TWOV requirements and be travelling as part of a reasonable single journey from the passenger's initial point of departure via the United Kingdom. (For example an Indian national holding a valid USA visa and routed Mumbai – London Heathrow - Buenos Aires may TWOV airside; or a Russian holding a New Zealand visa and travelling Moscow – London Gatwick – Frankfurt - Windhoek).
3. When the passenger has a valid Schengen Approved (ADS) group tourism visa
4. The passenger must hold a valid airline ticket and be travelling to the Schengen country which issued the visa. NB: ADS visas are currently only issued to Chinese tour groups
5. When the passenger has a valid Schengen Approved (ADS) group tourism visa  
  
The passenger must hold a valid airline ticket and be travelling directly from the Schengen area and can demonstrate they entered there no more than 30 days previously on the basis of a valid Schengen ADS visa

E-Visas or E-Residence permits are not acceptable for airside transit unless the airline is able to verify it with the issuing country.

## 2.7 Passengers proceeding to the Republic of Ireland

Visa nationals seeking to travel via the UK to the Republic of Ireland are able to do so without a visa provided that all the **general conditions in section 2.5 above** are met. A DAT visa, category "A" allowing only airside transit is **not** valid for visa nationals seeking to TWOV as all flights to Ireland from UK airports are local flights and passengers must first enter the UK to join these flights. All DATV nationals require a UK visit visa (category "C" not category "A" or "B") to travel on to Ireland unless they have one of the exemption documents listed in section **2.5** above.

## 3 False Documents

As a carrier, you may be liable to a charge if a passenger presents a false passport or other document.

However, you will not be liable where the falsity is not 'reasonably apparent'. UK Border Force would consider a falsity as reasonably apparent "If it were of a standard which a trained representative of the carrying company, examining it carefully but briefly and without the use of technological aids, could reasonably be expected to detect". This means that you must be able to see the forgery with the naked eye without the use of any aids such as magnifying glasses, lights or other technical equipment.

A 'trained representative' means a check-in agent, or other staff member working for you or your handling agents, who is expected to have a basic knowledge of how to identify false documents, but not to be expert nor to have the resources for a highly detailed examination.

### 3.1 Impersonation

You may be liable to a charge where a person presents a document which may be genuine but which does not belong to him. Liability will be based on whether the dissimilarity between the person and the photograph in the document is such that it is "reasonably apparent"

The trained representative should therefore carefully examine the photograph and personal details in the document and compare these with the person presenting it in order to detect any impersonation.

### 3.2 Persons arriving in the UK without documents

You may be liable to a charge where a person arrives with no documents, unless you are able to provide evidence that the person held the correct document at departure. In such circumstances you may not be liable unless it can be shown that the document held at departure was forged or related to another person and that, in either case, this was reasonably apparent.



### 3.3 Advice and Training

Where you have doubts about the documents presented by the passenger, it is advisable to resolve those doubts before deciding whether to carry the passenger.

You can seek advice from a UK Border Force officer at the UK port of arrival, from a UK Immigration Liaison Manager (ILM) if you have one in your region, or from the nearest British Embassy/High Commission which has responsibility for issuing visas.

You should not rely solely on the advice received from the Control Authority at the port of embarkation.

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

Please note:

The Home Office offers guidance on United Kingdom document requirements and on the detection of false documents and will consider requests for training to assist carriers in meeting their obligations under S.40 I&AA. Such requests should be made either to the Port Inspector/Senior Officer at the normal port of arrival or to the Carriers Liaison Section (for details see paragraph 2.1)

The UK Border Force will also try to give advice in response to individual enquiries from carriers, although this advice cannot always be definitive when the document and the passenger cannot be examined. Where the carrier receives such advice, it should note the time and date of the enquiry, the nature of the advice given, the officer's name or warrant number and/or the reference number which the officer will normally allocate to the enquiry.

# 4 Charging Procedures

## 4.1 Initial Notification of Potential Liability to a Charge

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

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

## 4.2 Form CLA1

The UK Border Force will normally notify you of the arrival of a potential Section 40 charge by serving **Form CLA1** on you or your handling agents within 24 hours of the passenger's arrival. On occasions your first notification of a potential charge may be receipt of a **(Notification of a Potential Liability to a Charge Form IS80B)**.

## 4.3 Formal Notification of Section 40 Charge

The UK Border Force will prepare a local port file giving details of why there appears to be liability to a charge. The contents of the local port carriers' liability file may be disclosed to you on request, (although any confidential personal information about a passenger will first be deleted).

The file will then be examined by a Port Inspector or Senior Officer. If the Officer decides that there is no action to be taken (perhaps, for example, because the falsity of a document was not reasonably apparent), you will be advised by a (Notification of Arrival of an Improperly Documented Passenger Form IS80A).

If it is decided that there is potential liability to a charge, you will be advised by service of a (Notification of a Potential Liability to a Charge Form IS80B), which will give details of the person's arrival. This will be your first formal notification that a charge is likely to be levied.

## 4.4 What will the Port Inspector/Senior Officer have considered?

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

## 4.5 Viewing the Document

As a carrier you, or your representative, have the right to view any document(s) used by a passenger where there is the possibility of a Section 40 charge being raised. If you wish to view a document you should make arrangements with UKBF officials at the port at which the passenger arrived. It is advisable to contact the port as soon as possible after the arrival of the passenger as in some cases it is necessary to return the document with the passenger where the passenger is refused entry to the United Kingdom and removed back to the place of embarkation.

# 5 Representations to the Port Inspector/Senior Officer

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

On receipt of (Notification of a Potential Liability to a Charge Form IS80B), you have 30 days in which to make representations to the Port Inspector or Senior Officer. If you are unable to obtain the evidence you need within this period, please inform the Port Inspector/Senior Officer without delay. They may be prepared to approve a short extension for submission of your representations, provided that you contact them promptly and you can show reasonable cause for the delay.

Representations are usually made in writing but at larger ports it may be more beneficial for you to meet with the Port Inspector/Senior Officer on a regular basis to discuss all the charges you have incurred recently. If you would prefer to discuss charges in person then you should contact the Port Inspector/Senior Officer for the port at which your flight/sailing arrives to discuss this option.

Please note that the Port Inspector/Senior Officer is not obliged to consider representations received outside the 30-day period referred to above, unless an extension is sought, and given, at an early stage.

## 5.2 What should the representations include?

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

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

## 5.3 Approved Gate Check (AGC) Ports and 'No Document' Cases

If you receive notification of a Section 40 charge for a passenger who has arrived without a document from a port where you have AGC Status (see Section 9) then you should make representations to the Port Inspector/Senior Officer in the normal way. You will not automatically receive a (Notification of a Decision not to Proceed with Charge Form IS80C) unless you make representations in this way.

## 5.4 When might a charge not be pursued?

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

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

If the Port Inspector/Senior Officer, having considered any representations, decides that a charge should not be imposed, they will send you official notification of this by issuing **(Notification of a Decision not to Proceed with Charge Form IS80C)**. The case will then be closed.

If they decide to impose the charge, they will issue a **(Notification of Demand for Payment Form IS80D)** advising you that you have **30 days** in which to pay.

Ports should respond to any representations made by you against a Section 40 charge within **30 days** of receipt of that representation.

If you feel that the Port Inspector/Senior Officer should not have imposed the charge, you may object directly to the Inspector at the Carriers Liaison Section within **28 days** of service of **(Notification of Demand for Payment Form IS80D)**. (See Section 6)

You may also appeal to the Court against the decision to charge you. (See Section 7)

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

Representations received after a “charge notice” (**Notification of Demand for Payment Form IS80D**) has been served will be considered as if they were written objections and will be dealt with by the Carriers’ Liaison Section.

You should note that objections must be submitted within **28 days** of service of (**Notification of Demand for Payment Form IS80D**). Any representations or objections received once this 28-day period has passed cannot be considered.

# 6 Making Objections to the Carriers' Liaison Section (CLS)

## 6.1 How to object if a charge is imposed

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

### **Carriers Liaison Section**

**2<sup>nd</sup> Floor**

**Amadeus**

**The Quartet, Mondial Way**

**Hayes, Middlesex**

**UB3 5AR**

E-mail: [carriersliaisonsection@homeoffice.gov.uk](mailto:carriersliaisonsection@homeoffice.gov.uk)

Objections must be submitted within 28 days of service of (Notification of Demand for Payment Form IS80D). They must be in writing, including any fresh information not previously available, and should explain clearly why you believe the decision made by the Port Inspector/Senior Officer was incorrect.

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

The Inspector at the Carriers Liaison Section will consider your objection and decide whether or not to cancel the charge. You will be notified of a decision within 70 days of service of (**Notification of Demand for Payment Form IS80D**) unless a longer period is

agreed with you. Once again, if you require more than **28 days** to obtain the necessary information to support your objections, **you should still make your objections in writing** as described above, explaining why you need extra time to provide further evidence. It may then be possible to agree a longer period with you for an objection to be lodged.

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

### **6.3 Further Requests to Review a Charge after we have responded to a Notice of Objection.**

Once the Carriers Liaison Section has responded to a Notice of Objection and the prescribed time limit for any Appeal to be lodged with the court (28 days after receipt of our response) has passed, no further review of the cases will take place.



# 7 Appeals to Court

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

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

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

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

- Part 52 of The Civil Procedure Rules governs the appeal process. The Rules can be found at: [http://www.dca.gov.uk/civil/procrules\\_fin/menus/rules.htm](http://www.dca.gov.uk/civil/procrules_fin/menus/rules.htm)
- An Appellant's Notice, **which is a specific court form**, must be lodged at a county court (or, in Scotland, the Sheriffs Court,) within the time limits set out above.
- A list of county courts and information on making an application can be found at:  
<http://www.courtservice.gov.uk>
- There may be a court fee required at the time of lodging an Appellant's Notice. You may also be liable to pay the Home Office's legal costs if your appeal is unsuccessful.
- Once you have lodged your Appellant's Notice it must be served upon the Home Office's legal representative within 7 days.

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

The Treasury Solicitor

Government Legal Department

102 Petty France

Westminster

London

SW1H 9GL

Service can also be made by email to [thetreasurysolicitor@governmentlegal.gov.uk](mailto:thetreasurysolicitor@governmentlegal.gov.uk)

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

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

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

2. The individual port reference number:

This will be found at the top of **(Notification of Demand for Payment Form IS80D)** and most other official documents you receive.

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

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

# 8 Payment of Section 40 Charges

## 8.1 How to make a payment

**Please make all payments to the following Home Office Bank Account;**

Electronic Payments from outside the UK must quote:

Remittance detail (field 70): 12511 plus details of invoice or other information.

Note: Remitter is liable for all bank charges

### **Electronic Payments from a UK bank**

Account Name:	Home Office
Bank Name:	Nat West
Sort Code:	60-70-80
Account Number:	10012672
IBAN (International only):	GB28NWBK60708010012672
SWIFT/BIC (International only):	NWBKGB2L
Cheque Payee Name:	The Accounting Officer

### **Cheque Payments**

Cheques should be made payable to: The Home Office Accounting Officer.

Cheques should be sent to:

Shared Service Centre, Cash Management Team,  
HO Box 5005,  
Newport,  
NP20 9BB

**Remittance advices should be sent to either the address or email below.**

Home Office Shared Service Centre  
HO Box 5005  
Newport  
Gwent  
NP20 9BB

Transaction requests via email should be sent to:

[Banking-cash-management@homeoffice.gov.uk](mailto:Banking-cash-management@homeoffice.gov.uk)

All general enquiries relating to the above should be directed to the Shared Service Centre on 0845 0100125

## 8.2 When the Home Office might take court action

Prompt payment of outstanding charges is required when **(Notification of Demand for Payment Form IS80D)** is received, unless a written notice of objection is submitted and/or an appeal is lodged. If on objection it is decided not to cancel a charge and no appeal is lodged, or if an appeal to the Court is dismissed, payment must then be made within 28 days. The Home Office is responsible for recovering unpaid carriers' liability debts, which are then remitted to the Consolidated Fund at HM Treasury. However, payment will not be pursued until rights of objection and appeal have been exhausted. The Home Office is committed to a programme designed to deal vigorously with any carrier demonstrating a persistent reluctance to pay its outstanding carriers' liability charges.

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

## 8.3 If a credit arises on your account

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

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

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

If you do not nominate the charge(s) you wish to pay within a period of 14 days or explain why the credit should not be used in that way, the Home Office will write to you again to

remind you of the credit and to advise you that the credit will be used to pay the oldest charge(s) outstanding unless:

- you nominate which charge(s) you wish to pay within a further 14 days or;
- within that time you explain why the credit should not be used in that way.

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

# 9 Approved Gate Check (AGC) Status

## 9.1 What is Approved Gate Check Status?

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

## 9.2 Criteria for attaining (and retaining) AGC Status (Air)

The main requirements for an air carrier to first achieve, and then retain, Approved Gate Check Status are as follows:

- where you have an outstanding debt in respect of charges incurred under the Carriers' Liability legislation or Section 40 of the I&AA, the Home Office will expect prompt payment of those liabilities;
- a good level of co-operation from you as the carrier with the Home Office, including but not exclusively with CLS, the UKBF Port of arrival and any Immigration Liaison Manager (ILM) covering the port of embarkation abroad.
- a document check must be conducted immediately prior to boarding; this should take place at the departure gate or within an adjacent sterile area;
- a full check of the document must be undertaken to make sure that the document is valid, that the person presenting it is the rightful holder and that a visa is held if one is required;
- reconciliation with the details on the passenger's boarding card is also necessary;
- there must be an adequate level of security to make sure that these checks cannot be circumvented;
- the checks must be conducted by trained staff at both check-in and at the gate;

- these arrangements must be inspected in advance by the Home Office, at the carrier's expense.

You should note that there will be close monitoring by the Home Office of all improperly documented persons arriving on these routes, not simply those arriving without documents. It is therefore recommended that you also keep comprehensive details of passengers denied boarding on these routes because of inadequate documents.

### 9.3 Criteria for attaining (and retaining) AGC Status (Sea)

As far as sea carriers are concerned, the Home Office recognises that the provision of sterile areas referred to in paragraph 9.2 above, may be difficult to achieve. The Home Office will, therefore, consider all applications in light of the individual circumstances in the port of embarkation. However, a sea carrier will normally be expected to show:

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

The requirements to be met are:

- where the carrier has an outstanding debt in respect of charges incurred under
- Carriers' Liability legislation or Section 40 of the I&AA, the Home Office will expect prompt payment of those liabilities;
- a good level of co-operation from you as the carrier with the Home Office, including but not exclusively with CLS, the UKBF Port of arrival and any Immigration Liaison Manager (ILM) covering the port of embarkation abroad.
- a full check of every passenger's document must be undertaken to make sure that the document is valid, that the passenger is the rightful holder and that a visa is held if one is required;
- the checks must be conducted by trained staff;
- adequate systems must be in place to make sure that only those persons whose documents have been checked as above are allowed to board and that unauthorised persons are not carried. This would normally include the proper use by the carrier, or

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

- these arrangements must be inspected in advance by the Home Office, at the carrier's expense.

You should note that there will be close monitoring by the Home Office of all improperly documented persons arriving on these routes, not simply those arriving without documents. It is therefore recommended that you also keep comprehensive details of passengers denied boarding on these routes because of inadequate documents.

## 9.4 When will charges normally be waived?

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

## 9.5 Enhancements to AGC Regime

As of 1 October 2010, any carrier having AGC status on routes into the UK will be entitled to have two (2) Section 40 charges per quarter, per individual route, waived for certain types of Inadequately Documented passenger arriving in the United Kingdom. The intent behind this initiative is to encourage increased interest in AGC status and the increased level of checks and consequent reduction in inadequately documented arrivals and mutual benefits that AGC status brings. We also try to recognise the current good levels of cooperation between UKBF and the carrier community in general as well as the continued efforts that are being taken to identify and reduce overall numbers of inadequately documented arrivals.

Charges waived under this administration will fall under the following criteria;

- The concession applies only to no visa, deferred visa and expired visa/document (i.e. technical) cases where there are no obvious harm issues arising.



- Charges will only be waived for infringements incurred on routes to the UK having current AGC status at the time of arrival.
- Charges waived will be those that would otherwise have been maintained by the receiving port.
- Carriers Liaison Section will identify applicable cases in consultation with the port and inform the airline/sea carrier representative as soon as practicable.
- You will not have to object/appeal against a potential charge in the normal way. There will be no discretion for you to select an individual case for consideration.
- You will receive written notice from Carriers Liaison Section of any charges waived under this concession. **(Notification of a Decision not to Proceed with Charge Form IS80C)** formally waiving the charge will then follow from the port. A quarterly statement will also be issued to any carrier benefiting from this concession.
- Carriers Liaison Section will continue to review and monitor the performance of AGC stations in consultation with parent carriers. AGC will be suspended if performance levels are not met.
- Current AGC criteria will remain effective, fresh AGC applications should be submitted to Carriers Liaison Section and will be dealt with in sequential order and only when arrangements are in place for payment of any outstanding debt.
- Potential charges arising from no document arrivals on AGC routes will continue to be waived in the normal way.
- The arrangement will not be retrospective where charges have already been raised nor
- will it allow a 'roll over' of waivers from quarter to quarter or transfer between routes.

AGC remains a recognition of high standards of document security conducted by an airline or sea carrier on a particular route in to the UK. Carriers and handling agent staff can continue to expect support from UKBF in terms of training, passenger referrals to both UK helplines and local Immigration Liaison Managers, and alerts and guidance issued centrally from Carriers Liaison Section.

It is proposed that the AGC regime will be reviewed on an annual basis. Overall carrier performance in terms of inadequately documented arrival numbers, the impact on the carriers' liability regime in general and the levels of AGC take up will be considered, as will the possible future introduction of a two-tier carriers' liability regime.

## 9.6 Does AGC Status only apply to direct flights?

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

## 9.7 Can AGC Status be lost?

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

**Details about AGC Status can be obtained from the Carriers' Liaison Section, Amadeus, The Quartet, Mondial Way, Hayes, Middlesex UB3 5AR.**

# 10 AGC Compliance for Ground Handling Agents (GHAs) and Document Checking Teams.

## 10.1 Aim

Approved Gate Check (AGC) Compliance is a separate recognition of AGC standard document checking/security procedures but awarded to the handling firm (GHA) or document checking unit contracted by or working on behalf of an airline or sea carrier. Hitherto such teams have received no formal recognition from UKBA; airlines are awarded AGC status and any attendant benefits. The aim of this new award is to recognise, and reward good work and cooperation carried out by handling agents who are increasingly relied on by modern airlines to carry out this difficult work.

## 10.2 Process

1. A nomination can be received either from an Immigration Liaison Manager (ILM) with responsibility for a given GHA, or from the parent airline on behalf of the GHA or from the GHA themselves. The nomination can take the form of correspondence or an email to the Carriers Liaison Section Inspector asking for consideration. No application form is required.
2. On receipt of a nomination by a member of the AGC team/CLS, the following procedure will be observed; acknowledgement of receipt will be sent to the sender.
3. Primary criteria for qualification include a strong performance (minimal IDAs) over a reasonable period of time, a good and cooperative relationship with the regional ILM/ILO, and the parent airline needs to be securely in possession of AGC. It will be assumed that other AGC criteria (Trained staff, full doc checks etc) will be in place.
4. Once confirmation in support of the nomination is received from the ILM/ILO, the application will be referred to the Carriers Liaison Section Inspector for consideration. If successful, a presentation of the award to the recipient GHA in station will take place.
5. If a carrier should subsequently lose AGC for any given reason, then AGC compliance will also fall to be withdrawn from the ground handling agent.
6. No financial benefits are attached to this award, but it is a tangible recognition of difficult work done well.

# 11 Telephone Helpline for Carriers

Visa Information Cards (VICs) carry CL helpline contact details for all UKBF ports where you can expect to obtain definitive information as to whether a Section 40 charge is likely to be raised for the carriage of individual passengers. Carriers Liaison Section would like to stress that this helpline facility provides an important partnership between UKBF and our many stakeholders in the carrier community which was created to prevent the carriage of inadequately documented arrivals and to reduce their liability for charges. Ports will therefore make every effort to respond to all requests for assistance regardless of the nationality of the passenger (this includes calls concerning British citizens who have lost their documents). Ports will also take in to account that you or your representative may be calling from an airline departure gate and that the time available for a response may be limited.

In the majority of cases it is expected that you will act on the advice given out by ports. However, you are not bound to act on the advice given and may, after taking into account commercial considerations, decide to carry the passenger anyway. In these circumstances ports will raise a Section 40 charge if appropriate.

Officers answering CL Helpline calls should provide the caller with their name, warrant number or a CL Log reference number.

You, or your representative, may wish to obtain the following information before using the CL Helpline:

1. Does the passenger have an acceptable document?
2. Does the passenger require a UK entry visa?
3. Does the passenger qualify for TWOV?
4. Is the itinerary suspicious or unrealistic?
5. Is the passenger legally in the country of departure, do they have other endorsements in their document?
6. Are they carrying any luggage?
7. Do they have a return ticket to their country of origin?

# 12 More Information

## 12.1 Where to get more information about charges

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

Carriers' Liaison Section

2nd Floor

Amadeus

The Quartet

Mondial Way

Hayes

Middlesex

UB3 5AR

Tel: 020 3014 8282

E-Mail: [carriersliaisonsection@homeoffice.gov.uk](mailto:carriersliaisonsection@homeoffice.gov.uk)

## 12.2 Where to get more information on training

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

Carriers' Liaison Section

2nd Floor

Amadeus

The Quartet

Mondial Way

Hayes

Middlesex

UB3 5AR

Tel: 020 3014 8282

E-Mail: [carriersliaisonsection@homeoffice.gov.uk](mailto:carriersliaisonsection@homeoffice.gov.uk)

# Appendix A: Examples of when charges may be waived

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

- Where the passenger is a child travelling as part of an organised school group, in the care of a responsible adult.
- Where the passenger has arrived on a flight or ship which, following departure, had been diverted to the United Kingdom due to medical emergency, urgent mechanical problems, severe weather conditions or other severe and unforeseen emergencies requiring diversion to a UK port.
- This concession will not apply where it was known before departure that the destination would be the United Kingdom or where a decision is subsequently taken to divert to the UK for commercial reasons only.
- Where the person was a “stowaway” charges will usually be waived where the carrier can show that it had taken all reasonable security and searching measures to make sure that no unauthorised person was allowed to board its service.

The Port Inspector/Senior Officer will take account of your previous record in carrying unauthorised persons. Account will also be taken of your record of cooperation with the UK Border Force in seeking to prevent the carriage of such persons, in particular whether you have acted on any advice offered by the UK Border Force and, in the case of sea carriers, whether you, or another person acting on your behalf, has made proper use of effective equipment used to search vehicles and containers. Such equipment may be provided by you, or the person acting on your behalf, or by the UK Border Force. Where equipment has been offered by the UK Border Force, you, or the person acting on your behalf, would be expected to accept it and make proper use of it. If you have not made use of equipment offered by the UK Border Force, charges will normally not be waived<sup>5</sup>.

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

- Where you had no realistic alternative but to transport the passenger to or via the United Kingdom. An example would be where the law or the Government of another country required a passenger's removal to or through the United Kingdom.
- A charge might not be waived, however, where you had previously carried the passenger through the United Kingdom without the documents required for that purpose – for example if the passenger had passed through the UK in direct transit without a necessary visa for his final destination or for any intermediate destination.
- Where there is evidence that you had acted on the advice of a representative of the United Kingdom Government, and it was reasonable, in the circumstances, for you to rely on that advice.
- Where, for example, a passenger has been carried on the advice of a UK mission abroad or a UK Border Force officer, the charge will normally be waived.
- Advice given on the authenticity of an individual document cannot always be regarded as definitive, particularly if advice is sought by telephone, and the UK Border Force has been unable to examine the document concerned. In addition, it is incumbent on you when seeking advice, to provide full and accurate information as to why you have doubts over the particular passenger's documentation.
- Where the charge is raised in respect of the arrival of an inadequately documented passenger which is the first to arise from a particular route from that port to the United Kingdom.
- A charge might not be waived if you have failed to act on advice previously given by the UK Border Force to avoid inadequately documented passengers being carried in similar circumstances.
- You should make sure that check-in staff, whether company employees or local handling agents, are aware that a waiver under this paragraph is unlikely to be granted more than once. In particular, where the same agent is responsible for handling more than one company, a charge may be maintained on any subsequent incident.
- Where, at the time of check-in, the person seeking to embark was:
  - in imminent and self-evident danger of his or her life; and
  - he or she had no reasonable means of obtaining the necessary documents; and
  - the United Kingdom was, in the circumstances, the only or clearly the most appropriate destination; and



- you had no opportunity to verify his or her acceptability with the United Kingdom authorities.

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

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

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

- Where, in the case of a used visa, the Border Force Officer's endorsement is not placed on the same page, or on an adjacent page. (Adjacent in this context means that no more than one page of the document need be turned either way in order to see the endorsement). A charge may be waived if the date of the endorsement is unclear.

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