



Statutory Document No. 177/08

IMMIGRATION AND ASYLUM ACT 1999

CARRIERS' LIABILITY REGULATIONS 2008

Laid before Tynwald

15th April 2008

Coming into operation

1st May 2008

In exercise of the powers conferred on the Governor by sections 32(2A) and (3), 35(5), (7), (9), (12) and (13), 36(2), 37(5B) and (7), 40A(4) and (6), 166(3) and 167(1) of, and paragraphs 2 and 5 of Schedule 1 to, the Immigration and Asylum Act 1999 (an Act of Parliament)¹, as it has effect in the Isle of Man², the following Regulations are hereby made:—

1. Citation and commencement

These Regulations may be cited as the Carriers' Liability Regulations 2008 and shall come into operation on the 1st May 2008.

2. Interpretation

(1) In these Regulations —

"the Act" means the Immigration and Asylum Act 1999;

"charge notice" means the notice mentioned in section 40A(2) of the Act;

"clandestine entrant" has the meaning given by section 32(1) of the Act;

"penalty notice" means the notice mentioned in section 35(2) of the Act;

"notice of objection" means the notice mentioned in sections 35(4) and 40A(3) of the Act;

"responsible person" means a person responsible for a clandestine entrant under section 32 of the Act.

(2) In these Regulations any reference to an Act of Parliament, or a provision of an Act of Parliament, which extends to the Isle of Man is a reference to that Act or provision as it has effect in the Isle of Man.

3. Clandestine entrants: penalty payable in respect of each clandestine entrant

(1) The amount prescribed for the purposes of section 32(2A)(a) of the Act (maximum penalty payable by responsible person in respect of clandestine entrant or person concealed with him) is £2,000.

¹ 1999 c.33

² SI 2008/680

Price £1.20

(2) The amount prescribed for the purposes of section 32(2A)(c) of the Act (maximum aggregate penalty payable in respect of clandestine entrant or person concealed with him) is £4,000.

4. Clandestine entrants: period within which a penalty must be paid

(1) The period prescribed for the purposes of section 32(3) and 36(2) of the Act (period within which penalty imposed under section 32 must be paid) is 60 days from the date the responsible person was issued with the penalty notice in respect of the penalty concerned.

(2) In calculating this period of 60 days, no account shall be taken of any period during which the Governor is in receipt of a notice of objection in connection with the penalty concerned but has not informed the objector under section 35(7)(a) of the Act of his decision.

5. Clandestine entrants and passengers without proper documents: period within which notice of objection must be given

The period prescribed for the purposes of section 35(5) of the Act (period for giving notice of objection to penalty) and section 40A(4) of the Act (period for giving notice of objection to charge), is 28 days from the date the person was issued with the penalty notice in respect of the penalty concerned or served with the charge notice in respect of the charge concerned, as the case may be.

6. Clandestine entrants and passengers without proper documents: period within which Governor must inform objector of decision

The period prescribed for the purposes of sections 35(7) and 40A(6) of the Act (period within which Governor must inform objector of his decision) is 70 days from the date the objector was issued with the penalty notice in respect of the penalty concerned or served with the charge notice in respect of the charge concerned, as the case may be.

7. Clandestine entrants: issue of a penalty notice in relation to detached trailers

In relation to a detached trailer, and for the purposes of section 35(9) of the Act, a penalty notice issued by affixing it to a conspicuous part of the trailer shall have effect as a penalty notice properly issued to on the responsible person or persons concerned.

8. Sale of transporters: notice of proposed sale

(1) Before applying to the court under Schedule 1 to the Act for leave to sell a transporter, the Governor shall take the steps specified in paragraphs (2) and (3) for bringing the proposed application to the notice of persons whose interests may be affected by a decision of the court to give leave and for affording to any such person an opportunity of becoming a party to the proceedings if the Governor applies for leave.

(2) At least 21 days before applying to the court, the Governor shall publish a notice complying with paragraph (6) in one or more newspapers circulating in the Isle of Man

(3) At least 21 days before applying to the court the Governor shall, unless it is impracticable to do so, serve a notice which complies with the requirements of paragraph (6) in any person to whom any relevant penalty notice was addressed.

(4) In paragraph (3), "relevant penalty notice" means a penalty notice in respect of which the transporter concerned is, under section 36(1) or section 36A of the Act, detained, together with any other penalty notice actually issued in respect of the same carriage of clandestine entrants.

(5) If any person who has been served with a notice in accordance with paragraph (3) informs the Governor within 21 days of the service of the notice of his desire to become a party to the proceedings, the Governor shall make that person a defendant to the application.

(6) A notice for the purposes of paragraph (3) shall —

- (a) where reasonably possible, state the country of registration and registration number of the transporter;
- (b) state the type of transporter and give any distinguishing features or markings that may serve to identify it;
- (c) state that, on the date specified in the notice, the transporter was detained under (as the case may be):
 - (i) section 36(1) of the Act as security for the payment of one or more penalties due under section 32 of the Act; or
 - (ii) section 36A of the Act in default of payment of one or more penalties due under section 32 of the Act,

and, that, unless payment of the sum due and any connected expenses is made within 21 days of the date of publication or (as the case may be) service of the notice, the Governor shall, without further notice, apply to the court for leave, under Schedule 1 to the Act, to sell the transporter; and

(d) invite —

- (i) where the notice is published under paragraph (2), any person who considers his interests may be affected by any sale of the transporter; or
- (ii) where the notice is served on a person, that person,

to inform the Governor in writing within 21 days of the date of publication or (as the case may be) service of the notice if he wishes to become a party to the proceedings on the application.

9. Service of documents

(1) A notice may be served on a person under regulation 8(3) by —

- (a) delivering it to that person;
- (b) leaving it at his proper address;
- (c) sending it to his proper address by first class post in a prepaid registered envelope or by the recorded delivery service;
- (d) facsimile, sent to his usual or last known business facsimile number;
- (e) electronic mail, sent to his usual or last known business electronic mail address.

(2) Any notice required to be served on any body corporate or unincorporated association under regulation 8(3), other than a partnership, may be served on the secretary or clerk or other similar officer of that body.

(3) Any notice required to be served on any partnership under regulation 8(3) may be served on a partner or a person having control or management of the partnership business.

(4) For the purpose of this regulation, the proper address of any person on whom or to whom any such notice is to be served, shall be his last known place of business or abode, except that such address shall be —

- (a) in the case of a body corporate or its secretary or clerk, the address of the registered office or principal office of the body corporate;
- (b) in the case of an unincorporated association (other than a partnership) or its secretary or clerk, the address of the principal office of the association; and
- (c) in the case of a partnership or a partner or person having control or management of the partnership business, the address of the principal office of the partnership,

and for the purposes of this regulation the principal office of a company registered outside the Isle of Man, or of an unincorporated association or partnership carrying on business outside the Isle of Man, shall be, if it has an office within the Isle of Man, its sole or principal office in the Isle of Man.

(5) Any notice which is sent by post in accordance with this regulation to a place outside the Isle of Man and the United Kingdom shall be sent by airmail or by some other equally expeditious means.

10. Sale of transporters: period within which the power of sale must be exercised

(1) The period prescribed for the purposes of section 37(5B) of the Act (period within which the power of sale must be exercised in order that it shall not lapse) is 60 days after the date upon which the power of sale could have first been exercised under section 37(4) of the Act.

(2) In calculating the period mentioned in paragraph (1), no account shall be taken of any period during which the Governor has applied to the court for leave to sell a transporter under Schedule 1 to the Act but the court has not determined that the transporter may be sold.

11. Sale of transporters: period after which the power of sale may be exercised

The period prescribed for the purposes of section 37(7)(b) of the Act (period after which Governor may sell transporter detained under section 36A if penalty and connected expenses have not been paid) is 14 days from the date the detention began.

12. Sale of transporters: application of proceeds of sale

The proceeds of any sale under section 37 of the Act shall be applied as follows, and in the following order —

- (a) in payment of any expenses reasonably incurred by the Governor in connection with the detention and sale of the transporter, including the Governor's expenses in connection with the application to the court;

- (b) in payment of the penalties or (as the case may be) charges which the court has found to be due;
- (c) in payment of any duty (whether of customs or excise) chargeable on imported goods or value added tax which is due in consequence of the transporter having been brought into the Isle of Man;
- (d) where the transporter is an aircraft, in payment of any charge in respect of the aircraft which is due to the Department of Transport for the use of, or for services provided at, an aerodrome;

and the surplus, if any, shall be paid to or among the person or persons whose interests in the transporter have, to the knowledge of the Governor, been divested by reason of the sale.

13. Presumptions about service of documents

- (1) For the purposes of these Regulations —
 - (a) where a notice is sent by first class post in a prepaid registered envelope or by the recorded delivery service, addressed to the person to whom the notice is required to be served, it is to be taken to have been received by (and served on) that person on the second day after the day on which it was sent;
 - (b) where a notice is sent by facsimile, to the last known business facsimile number of the person to whom notice is required to be served, it is to be taken to have been received by (and served on) that person on the day on which it was sent;
 - (c) where a notice is sent by electronic mail, to the last known business electronic mail address of the person to whom notice is required to be served, it is taken to have been received by (and served on) that person on the day on which it was sent; and
 - (d) where a notice is sent in accordance with regulation 9(5), addressed to the person to whom notice is required to be served, it is to be taken to have been received by (and served on) that person on the fourth day after the day on which it was sent.
- (2) A document issued or served on a person outside the Isle of Man for the purposes of section 35(1) or (7) of the Act, or in the course of proceedings under section 35(10) of the Act, is to be taken to have been received by that person —
 - (a) where it is issued or served by post, on the fourth day after the day on which it was sent;
 - (b) where it is issued or served by facsimile to the last known business facsimile number of the person concerned, on the day on which it was sent.


Lieutenant Governor

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations make provision in respect of the procedure governing the carrier's liability provisions of Part II of the Immigration and Asylum Act 1999. In particular, they make provision for the penalty for carrying clandestine entrants and the charge imposed in respect of passengers without proper documents, and for the sale of vehicles and other "transporters".

In the case of the penalty for clandestine entrants, the Regulations set the maximum amount of the penalty payable by a responsible person at £2,000 (regulation 3) and the maximum aggregate amount of the penalty at £4,000 (regulation 3), set the period within which a penalty must be paid as 60 days from the date of issue of the penalty notice (regulation 4), and provide for the manner in which issue of a penalty notice may be effected in relation to detached trailers (regulation 7).

In the case of the penalty for clandestine entrants and the charge in respect of passengers without proper documents, the Regulations set the period within which a notice of objection to a penalty or charge must be given as 28 days from the date of issue of the penalty notice or service of the charge notice (regulation 5), and set the period within which the Governor must inform the objector of his decision in relation to the notice of objection (regulation 6).

In the case of sales of transporters, the Regulations set out the steps which the Governor must take prior to applying to the Court for leave to sell a detained transporter (regulations 8 and 9), prescribe the period within which the power of sale must be exercised (regulation 10) and the period after which the power of sale may be exercised following detention of a transporter under section 36A of the Act (regulation 11), and prescribe how the proceeds of any such sale are to be applied (regulation 12).

Regulation 13 provides for presumptions in respect of the service of documents.