

Draft Regulations laid before Parliament under section 124(9)(b) of the Nationality, Immigration and Asylum Act 2002, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2012 No.

IMMIGRATION

**The Nationality, Immigration and Asylum Act
2002 (Authority to Carry) Regulations 2012**

Made - - - - *******
Coming into force - - *******

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 124 of the Nationality, Immigration and Asylum Act 2002⁽¹⁾.

In accordance with section 124(9)(b) of that Act, a draft of these Regulations was laid before and approved by a resolution of each House of Parliament.

Citation, commencement and expiry

1.—(1) These Regulations may be cited as the Nationality, Immigration and Asylum Act 2002 (Authority to Carry) Regulations 2012.

(2) These Regulations come into force on the seventh day after the day on which they are made.

(3) These Regulations cease to have effect at the end of the period of seven years beginning with the day on which these Regulations come into force.

Interpretation

2.—(1) In these Regulations “the authority-to-carry scheme” means the Security and Travel Bans Authority to Carry Scheme 2012 made by the Secretary of State on the day on which these Regulations are made.

(2) A reference in these Regulations 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—

(1) 2002 c.41.

- (a) a county court may transfer proceedings under these Regulations to the High Court; and
- (b) the sheriff may transfer proceedings under these Regulations to the Court of Session.

Requirement to pay a penalty

3.—(1) These Regulations apply if a person (“a carrier”) brings a passenger to the United Kingdom and—

- (a) the carrier was required by the authority-to-carry scheme to seek authority under the scheme to carry the passenger; and
- (b) the carrier did not seek authority before the journey to the United Kingdom commenced, as required under the scheme or was refused authority under the scheme.

(2) The Secretary of State may require the carrier to pay a penalty of an amount not exceeding £10,000.

(3) The penalty shall be payable to the Secretary of State on demand.

(4) No penalty shall be payable where the carrier shows that the carrier has a reasonable excuse for any liability for a penalty under these Regulations.

Notification

4.—(1) If the Secretary of State decides to require a carrier to pay a penalty under these Regulations, the Secretary of State must notify the carrier of the decision.

(2) Such a notice (a “penalty notice”) must—

- (a) state the Secretary of State’s reasons for deciding to require the carrier to pay a penalty;
- (b) state the amount of the penalty;
- (c) specify the date before which, and the manner in which, the penalty must be paid;
- (d) include an explanation of the steps that the carrier may take if the carrier objects to the penalty; and
- (e) include an explanation of the steps that the Secretary of State may take to recover any unpaid penalty.

Objection

5.—(1) Where a carrier on whom a penalty notice is served objects to the imposition of the penalty, the carrier may give a notice to the Secretary of State (a “notice of objection”).

(2) A notice of objection must—

- (a) be in writing;
- (b) give the objector’s reasons; and
- (c) be given before the end of the period of 28 days beginning with the day on which the person was served with the penalty notice in respect of the penalty.

(3) Where the Secretary of State receives a notice of objection, the Secretary of State shall consider it and—

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

(4) Where the Secretary of State considers a notice of objection, the Secretary of State shall—

- (a) inform the objector of the decision before the end of the period of 70 days beginning with the day on which the objector was served with the penalty notice in respect of the penalty, or such longer period as the Secretary of State may agree with the objector;
- (b) if the Secretary of State increases the penalty, issue a new penalty notice under regulation 7; and
- (c) if the Secretary of State reduces the penalty, notify the objector of the reduced amount.

Enforcement

6.—(1) Any sum payable to the Secretary of State as a penalty under these Regulations may be recovered by the Secretary of State as a debt due to the Secretary of State.

(2) In proceedings for enforcement of a penalty under paragraph (1), no question may be raised as to—

- (a) the validity of the penalty;
- (b) the application of the defence in regulation 3(4); or
- (c) the amount of the penalty.

(3) Money paid to the Secretary of State by way of penalty shall be paid into the Consolidated Fund.

Appeal

7.—(1) A carrier may appeal to the court against a decision to require the carrier to pay a penalty under these Regulations.

(2) On an appeal, 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—

- (a) shall be a re-hearing of the Secretary of State's decision to impose a penalty; 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 rules of court.

(5) An appeal must be brought within the period of 28 days beginning with—

- (a) the date specified in the penalty notice as the date upon which it is given; or
- (b) if the carrier gives a notice of objection and the Secretary of State reduces the penalty, the date specified in the notice of reduction as the date upon which it is given; or
- (c) if the carrier gives a notice of objection and the Secretary of State determines to take no action, the date specified in the notice of that determination as the date upon which it is given.

(6) An appeal may be brought by a carrier under this regulation against a decision to require the carrier to pay a penalty whether or not the carrier has given notice of objection under regulation 5.

Service of documents

8.—(1) This regulation applies where a document is to be issued to or served on a person for the purpose of these Regulations or in the course of proceedings under regulation 6(1).

(2) A document may be issued or served—

- (a) in person;
- (b) by post; or
- (c) by facsimile transmission or other means of electronic communication.

(3) Where a document is issued or served by facsimile to the last known business facsimile number of a person, it shall be taken to have been received by that person on the day on which it was sent.

(4) Where a document is issued or served on a person outside the United Kingdom by post, it shall be taken to have been received by that person on the fourth day after the day on which it was sent.

Home Office
Date

Name
Secretary of State

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the civil penalty regime that applies for the purposes of an authority-to-carry scheme under section 124 of the Nationality, Immigration and Asylum Act 2002. The authority-to-carry scheme to which these Regulations refer is the Security and Travel Bans Authority-to-Carry Scheme 2012 made by the Secretary of State on the day on which these Regulations are made.

In accordance with regulation 3, where a carrier is required by the authority-to-carry scheme to seek authority to carry a passenger to the United Kingdom and the carrier did not seek such authority or was refused authority under the scheme, the Secretary of State may require the carrier to pay a penalty. Such a penalty may not exceed £10,000.

Regulation 4 contains provision about the contents of a penalty notice. Regulations 5 to 8 deal with matters relating to objection, enforcement, appeal and service of documents.

The Regulations will be kept under review and it will fall to the Secretary of State to consider whether the Regulations should be allowed to expire as regulation 1(3) provides, be revoked early, or continue in force with or without amendment. A further instrument would be needed to continue the Regulations in force with or without amendments or to revoke them early.