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1 illegal entrant?

Section 33(1) of the 1971 Act, as amended by the 1996 Act, defines an illegal entrant as a person

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(a) unlawfully entering or seeking to enter in breach of a deportation order or of the immigration laws, or

(b) entering or seeking to enter by means which include deception by another person,

And includes a person who has so entered.

When interviewing a person about illegal entry, their last entry into the UK is the relevant entry. Previous entries (lawful or unlawful) are not relevant to the proof of illegal entry. Care must be exercised when interviewing a person about illegal entry. The last entry signalled in a person's passport might not be the last entry, either because the person has subsequently entered without leave, or because they last entered on or after 30 July 2000 under one of the provisions of the Immigration (Leave to Enter and Remain) Order 2000 (see 2, 3.9 and 3.12).

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1.1 Categories of illegal entry

- ◆ entry without leave (e.g. clandestine entry, absconders, unwitting evasion of the control)
- ◆ verbal deception

- ◆ documentary deception

- ◆ no evidence of lawful entry (NELE)

- ◆ entry in breach of a deportation order
- ◆ illegal entry from the Republic of Ireland

- ◆ illegal entry from the Channel Islands and the Isle of Man

- ◆ Seaman deserters (although not strictly speaking "illegal entrants", the procedures are so similar as to place them within this section).

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1.2 Passengers discovered attempting to enter the United Kingdom unlawfully

Section 33 (1) of the 1971 Act as amended by the 1996 Act states that a person seeking to enter the United Kingdom unlawfully or in breach of an extant Deportation Order or other immigration laws is deemed to be an illegal entrant.

The UK Border Agency will deal with such individuals as arriving passengers seeking entry to the United Kingdom under the Immigration Rules.

Passengers who are discovered attempting to seek entry to the UK unlawfully either by deception (both verbal and documentary) or by misrepresentation at the immigration control will be refused entry under the appropriate paragraph of the Immigration Rules. Passengers seeking to evade the immigration control entirely will also, where they are detected, be refused entry as arriving passengers in the same manner.

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1.2.1 Passengers stopped by HMRC

If an arriving passenger is stopped by HMRC after they have been granted leave to enter or granted entry in line with their visa or entry clearance then they will be brought back to the immigration control and issued with an IS84 to revoke this decision. The Immigration Officer at port will then issue the passenger with the appropriate IS82 to refuse entry.

Such passengers will usually be remanded in custody and following conviction they will be referred to the Criminal Casework Directorate. Any travel documents will be held on the port file and in the absence of any deportation action the passenger will be administratively removed in line with their refusal.

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1.2.2 Changes to the General Grounds for Refusal (Deception etc)

In addition, any passenger who is found to have practiced deception to gain entry to the United Kingdom or attempted to seek entry unlawfully or in breach of a deportation order is subject to paragraph 320 (7A) or 320 (7B) of the Immigration Rules. Both of these paragraphs provide the UK Border Agency with the power to ban such passengers from returning to the United Kingdom for 1 year, 5 years or 10 years depending upon the particulars of each case. Any passenger subject to such a ban is prohibited from lawfully seeking entry to the United Kingdom while the ban in question is still in force.

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1.2.3 Non Compliant Passengers (Absconders)

Passengers seeking entry to the United Kingdom may be granted Temporary Admission while their application is considered or arrangements for removal or re-documentation are made. Should such passengers fail to comply with the conditions of their Temporary Admission then they will be refused entry on non-compliance grounds by Immigration Officers at port.

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1.2.4 Mobile Response Teams

The UK Border Force also deploys Mobile Response Teams on an intelligence led basis at smaller ports. Upon arriving at the port location the MRT will establish an immigration control to examine disembarking passengers and any passenger who is not deemed to meet the criteria for entry will be refused as an arriving passenger under the Immigration Rules.

Any passenger found separately to have disembarked and entered the United Kingdom unlawfully will be deemed an illegal entrant and served with illegal entry papers.

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1.3. Assessment of the strength of the illegal entry contention

The responsibility for assessing that the illegal entry contention is sound lies with the CIO who authorises service of notice of illegal entry and subsequently, the Inspector who authorises removal.

The strength of the illegal entry contention must be able to withstand a judicial review challenge.

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