

Aliens Act Implementation Guidelines 2000 (A), Chapter A1/9

Obligations of carriers

Duty of care

A carrier must instruct its personnel in such a way that travel documents are inspected when checking in and when leaving for the Netherlands. The carrier's personnel includes the personnel performing certain formalities under its responsibility. The carrier's personnel must, when checking the travel documents, determine the validity of a border-crossing document.

The carrier must at least check if:

- the name, date of birth, nationality, sex, height and photograph, as included in the border-crossing document offered, correspond with the person offering the border-crossing document;
- the border-crossing document offered has the necessary visas (both for the Netherlands and for the country of final destination);
- the period of validity of the border-crossing document offered and the visas affixed thereto has not expired;
- the border-crossing document has been issued by a competent authority.

The carrier must perform a brief and concise check as to whether the border-crossing document offered is false or forged, using simple tools if necessary.

At pick-up points where the carrier uses technical equipment to check tickets, the carrier must use this equipment to check border-crossing document.

The Dutch government is authorised to instruct the carrier to take additional precautionary measures for pre-departure checks in case of transport which is deemed to be high-risk. These instructions may be, for example, to adjust the manner of checking documents (additional check before boarding) or to use technical devices.

The Dutch government may request a carrier, under international regulations to that effect, to give an official who is an expert in the area of travel documents a seat on board the seagoing vessel or plane during a high-risk flight or voyage. The official who is an expert in the area of travel documents may, at the pick-up point, upon boarding, advise carriers as to whether the travel documents offered are genuine and unfalsified, and the travel documents offered have the necessary visas both for the Netherlands and for the country of final destination. The official who is an expert in the area of travel documents may exercise this power if the state in which the pick-up point is located has given permission to do so.

The Dutch government will, in order to enable carriers to perform the best possible travel document checks, regularly update carriers of any changes to the documents and visas required for entry into the Netherlands. The Dutch government will give instructions to a carrier which may result in more effective and efficient checks.

The border control officer will draw up an official report if the carrier brings in a non-documented or wrongly documented foreign national without prior permission from the competent authorities.

Obligation to make a copies of documents

A carrier who is obliged to make a copy of a valid border-crossing document under Article 2.2 of the Aliens Decree must, when requested, provide the images to the border control officer within one hour after the request, if it appears that a foreign national does not have any (correct) travel documents when entering the Netherlands.

The border control officer need not have the exact details of the flight on which the foreign national arrived. An indication, obtained from the foreign national's statements or from other sources will be sufficient for this purpose.

Obligation to provide passenger information

A carrier who sends passenger data on the demand of a border control officer pursuant to Article 2.2a of the Aliens Decree will use the International Air Transport Association (IATA) message format, type B, for this, with the structure that is based on the classification - established by the Economic Commission for Europe of the United Nations - for administration, commerce and transport, published under the title: Electronic Data Interchange For Administration, Commerce and Transport (EDIFACT) Passenger List Message (PAXLST). The IATA address to which the data need to be sent is HDQKMXH.

The border control officer will, on the basis of data collected and risk analyses on illegal immigration, determine the points of departure with respect to which and the carriers from which the passenger data will be demanded under Article 2.2a of the Aliens Decree.

Duty to return

On the instructions of a border control officer, a carrier is obliged to return a foreign national whom it transported to the Netherlands and who was refused entry into the Schengen Area to a location outside the Schengen Area. The carrier will transport the foreign national to at least one of the following countries:

- the third country from where the foreign national was brought in;
- the country that issued the valid border-crossing document that was used by the foreign national for his travels;
- a third country where admission of the foreign national is guaranteed.

This duty to return imposed on the carrier will apply in all of the following situations:

- if entry is refused to foreign nationals who do not have any (correct) border-crossing documents;
- if entry is refused on the basis of one of the other grounds of Article 5 of the Schengen Borders Code;
- if foreign nationals are stopped with a view to removal within six months after entry. The deciding factor for establishing the six-month period will be the time at which the foreign national is stopped.

The border control officer will demand the carrier to take back foreign nationals who have been refused entry.

Removal orders are used for the transport of a foreign national by a carrier to a location outside the Netherlands (see model M30 and the similar model for aviation as referred to in Chapter 5 of Annex 9 to the Chicago Convention). The border control officer will, in order to facilitate the taking back of a foreign national by the carrier to a location outside the Netherlands, use the attestations used for this purpose in an international context, meant for the authorities of the country of destination charged with immigration/border control (see Appendix 9, under 1 and 2, of Annex 9 to the Chicago Convention).

A foreign national who has been refused entry must, until the time when he is taken back, stay in the space designated to him for this purpose by the border control officer, which space can be locked or otherwise secured against unauthorised departure.

The carrier is responsible for the foreign national during the entire period from the moment the carrier is instructed to return the foreign national to a location outside the Netherlands, to the moment when the foreign national has actually been transported by the carrier to a location outside the Netherlands.

If the carrier is unable to take the foreign national back within a reasonable period, the Minister may recover the costs associated with the removal, including the costs of stay, from the carrier (see A1/9 of the Aliens Act Implementation Guidelines, Liability for costs of removal and stay).

The border control officer will reassess whether the foreign national meets the conditions for entry if:

- the removal of a foreign national to whom entry was refused at the time of the removal is unsuccessful; and
- the foreign national returns after he had left the territory of the Netherlands on board a plane or seagoing vessel.

The border control officer will again refuse entry into the Netherlands to the foreign national if the foreign national does not meet the conditions.

The border control officer will give new instructions to the carrier to return the foreign national to a location outside the Netherlands without reimbursement of expenses (see model M30 and the similar model for aviation as referred to in Chapter 5 of Annex 9 to the Chicago Convention) if the foreign national has been removed under Article 65 of the Aliens Act before.

A foreign national who leaves the Netherlands of his own accord, but to whom entry is refused by the authorities of the country of destination or of transit and who is sent back must meet the conditions for entry on his return to the Netherlands. The border control officer will refuse entry into the Netherlands if the foreign national does not meet the conditions for entry. The border control officer may not impose on the carrier through whom the foreign national has been returned to the Netherlands the obligation under Article 65 of the Aliens Act to transport the foreign national to a location outside the Netherlands.

The border control officer will execute the departure of foreign nationals who do not submit an application for a residence permit at at least one of the following moments:

- as soon as the seagoing vessel that brought in the foreign national departs, or at a time earlier if the departure can be executed in another way, in consultation with the responsible shipowner;
- as soon as it is possible to place the foreign national on board a plane of the relevant company, the destination being the place where the foreign national got on board or another location where the entry of the foreign national is guaranteed, see Annex 9 to the Chicago Convention.

Stowaways

The carrier may use the passenger lists referred to in Annex 14c and 14d to the Aliens Regulations in order to state the stowaways discovered.

If a foreign national who was discovered on board a seagoing vessel as a stowaway is insufficiently documented, the diplomatic or consular representation of the suspected country of origin of the foreign national must establish the identity and/or nationality of the foreign national and issue the foreign national with a replacement travel document. The diplomatic or consular representation of the suspected country of origin of the foreign national must establish his nationality and identity and issue the replacement travel documents before the seagoing vessel that brought in the stowaway has left the port. The implementation of the duty to return may, in this way, not result in the loss of a unique removal opportunity.

The captain of a seagoing vessel may not automatically evade the replacement of the foreign national on board the ship by relying on Regulation 8 of the International Convention for the Safety of Life at Sea. The border control officer must, if the captain relies on this regulation, assess the circumstances put forward by the captain and weigh them against the interests of placing the foreign national back on board.

Foreign nationals with an account of the reasons for their flight

If, upon departure, the foreign national argues that his life is in immediate danger in the country he wants to leave, the carrier may not send the foreign national to the Dutch diplomatic or consular representation so that he can submit an application for a regular provisional residence permit for the purpose of 'asylum' there. The carrier must contact the IND if the carrier considers transporting a foreign national who argues that his life is in immediate danger.

The head of the IND will then determine whether the relevant foreign national, even if he does not carry the right travel documents, may be brought to the Netherlands. If a carrier transported a non-documented or wrongly documented foreign national to Dutch territory with the permission of the head of the IND, no duty to return will apply. The border control officer will not draw up an official report of a suspected violation of Article 4 of the Aliens Act by the carrier.

Criminal liability

A border control officer will draw up an official report in all cases in which, as a result of the failure by the carrier to comply with the duty of care or the obligation to make copies of documents, a non-documented or wrongly documented foreign national was brought into the Netherlands (see Article 4(1), (2) and (3) of the Aliens Act, Article 5(1) and (2) of the Aliens Act, Article 65(3) of the Aliens Act and Article 197a of the Dutch Penal Code). The border control officer will send all official reports to the Public Prosecution Service. The Public Prosecution Service will first offer the offender an out-of-court settlement of the duty of care or obligation to make copies of documents.

Liability for costs of removal and stay

After a foreign national has been returned by a carrier, all government bodies will provide the IND with an overview of the costs incurred by them with respect to the relevant foreign national. The government bodies will do so on the basis of the list of rates as included in Annex 22 to the Aliens Regulations. These standardised rates concern the costs of removal and the costs of stay incurred by the government with respect to foreign nationals who have been refused entry into the Netherlands. The rates are based on the actual costs incurred by the various government authorities.

The IND will send the carrier an invoice including the costs incurred by the various government bodies.

The IND will suspend the carrier's liability for the costs for the duration of the handling of the application if a foreign national who has been refused entry submits an application for a temporary asylum residence permit. The IND will recover the costs from the carrier after the foreign national has become lawfully removable and the border control officer has instructed the carrier to return the foreign national to a location outside the Netherlands.

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