CHAPTER 4

The United Kingdom: Developments in Carriers’ Liability Legislation in UK Law

4.1 Introduction

The UK differs from other Member States of the European Union with regard to immigration control. The geographical position of the UK, an island without long land borders like the ones on mainland Europe, provides advantages for its border control. It means that traffic is ‘naturally channelled’ through air and seaports.1 Frontiers are, therefore, relatively easy to control. This has affected the UK’s border control strategy: it has practised – compared to other EU Member States – a policy of strict border controls and relaxed internal controls (Layton-Henry, 2004). Because the UK is not party to the Schengen Acquis, all travellers, including those arriving from other EU Member States are subject to border control checks.

Although the government maintained an emphasis on control at the external borders, it practised a rather liberal immigration regime in the decades after 1945. Due to labour shortages, immigration was actively encouraged after World War II. Immigration control was present at that time but did not include persons from the Commonwealth, the colonies or Ireland (Layton-Henry, 2004). In the 1960s, this regime became less liberal with more restrictions on immigration – especially ‘non-white immigration’ – to the UK (Layton-Henry, 2004). Due to legislation introduced between 1962 and 1988, immigration was increasingly controlled and more and more limited to family reunion and refugees and asylum seekers (Bloch, 2000). One of the legislative instruments introduced in this period was the Immigration Act of 1971. With this Act the UK government wanted to gain more control over immigration by making all immigrants subject to immigration control except for ‘patrials’, persons with close connections to the UK through birth or descent (Layton-Henry, 2004).2

One of the ways this Act gave more control to the state was by introducing

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1 Hansard HL vol 635 col 97WA (22.05.2002).
2 The United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland collectively form a Common Travel Area. This means that a person who has been examined for the purpose of immigration control at the point at which he or she entered the area, does not normally require leave to enter any other part of it.
several duties and sanctions for carriers with regard to immigration control. This chapter will discuss the developing regime concerning the involvement of carriers in immigration control in the UK. The 1971 Immigration Act will be the starting point for this discussion.

4.2 Immigration Act 1971

The 1971 Immigration Act contained in its introduction various duties for carriers in immigration control, requiring them to operate closely with the UK immigration authorities (Clayton, 2012: 224). Carriers who transported passengers who required leave to enter were allowed, under the Immigration Act 1971, to call only at designated ports, and were obliged to ensure that passengers only disembarked at designated control areas.\(^3\) The Act further contained a power for immigration officers to demand of the captain of a ship or aircraft that had arrived in the UK a list showing the names and nationality or citizenship of the passengers on board the ship or aircraft.\(^4\) A re-transportation duty was also included. If a passenger was refused entry, the immigration officers could give directions to the owners, agents or captains of the ship or aircraft for the removal of that person, that is, if those directions were given within two months of refusal.\(^5\) In addition to removing a passenger, the carrier could also be required to detain passengers who had been refused leave to enter the UK, on board the ship or aircraft.\(^6\) Carriers were also liable to pay for the detention, accommodation and maintenance costs of certain passengers who had been refused entry, as well as their removal costs.\(^7\) The Act further made it illegal for someone to knowingly facilitate the entry into the UK of an illegal entrant or (if done for profit) an asylum seeker,\(^8\) or to knowingly assist a person to obtain leave to remain in the UK by deception. The transportation of inadmissible passengers was not an offence under the Act. The 1971 Immigration Act still applies, as do these provisions for carriers.

In the 1970s, more and more travellers came to the UK, among whom were tourists, business people, immigrants and asylum seekers. Immigration and immigration control became a major political issue in Britain and from 1975 a

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3 Immigration Act 1971, Schedule 2, paragraph 26(1) and (2).
4 Immigration Act 1971, Schedule 2, paragraph 27(2).
5 Immigration Act 1971, Schedule 2, paragraph 8.
6 Immigration Act 1971, Schedule 2, paragraph 16(3) and 16(4).
7 Immigration Act 1971, Schedule 2, paragraph 19(1).
8 Immigration Act 1971, Section 25.