



# Immigration and Asylum Act 1999

## 1999 CHAPTER 33

### PART II

#### CARRIERS' LIABILITY

##### *Clandestine entrants*

### 32 Penalty for carrying clandestine entrants.

- (1) A person is a clandestine entrant if—
- (a) he arrives in the United Kingdom concealed in a vehicle, ship or aircraft,
  - [<sup>F1</sup>(aa) he arrives in the United Kingdom concealed in a rail freight wagon,]
  - (b) he passes, or attempts to pass, through immigration control concealed in a vehicle, or
  - (c) he arrives in the United Kingdom on a ship or aircraft, having embarked—
    - (i) concealed in a vehicle; and
    - (ii) at a time when the ship or aircraft was outside the United Kingdom, and claims, or indicates that he intends to seek, asylum in the United Kingdom or evades, or attempts to evade, immigration control.
- [<sup>F2</sup>(2) The Secretary of State may require a person who is responsible for a clandestine entrant to pay—
- (a) a penalty in respect of the clandestine entrant;
  - (b) a penalty in respect of any person who was concealed with the clandestine entrant in the same transporter.
- (2A) In imposing a penalty under subsection (2) the Secretary of State—
- (a) must specify an amount which does not exceed the maximum prescribed for the purpose of this paragraph,
  - (b) may, in respect of a clandestine entrant or a concealed person, impose separate penalties on more than one of the persons responsible for the clandestine entrant, and

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- (c) may not impose penalties in respect of a clandestine entrant or a concealed person which amount in aggregate to more than the maximum prescribed for the purpose of this paragraph.]
- (3) A penalty imposed under this section must be paid to the Secretary of State before the end of the prescribed period.
- [<sup>F3</sup>(4) Where a penalty is imposed under subsection (2) on the driver of a vehicle who is an employee of the vehicle’s owner or hirer—
  - (a) the employee and the employer shall be jointly and severally liable for the penalty imposed on the driver (irrespective of whether a penalty is also imposed on the employer), and
  - (b) a provision of this Part about notification, objection or appeal shall have effect as if the penalty imposed on the driver were also imposed on the employer (irrespective of whether a penalty is also imposed on the employer in his capacity as the owner or hirer of the vehicle).
- (4A) In the case of a detached trailer, subsection (4) shall have effect as if a reference to the driver were a reference to the operator.]
- (5) In the case of a clandestine entrant to whom subsection (1)(a) applies, each of the following is a responsible person—
  - (a) if the transporter is a ship or aircraft, the owner [<sup>F4</sup>and] captain;
  - (b) if it is a vehicle (but not a detached trailer), the owner, hirer [<sup>F5</sup>and] driver of the vehicle;
  - (c) if it is a detached trailer, the owner, hirer [<sup>F5</sup>and] operator of the trailer.
- [<sup>F6</sup>(5A) In the case of a clandestine entrant to whom subsection (1)(aa) applies, the responsible person is—
  - (a) where the entrant arrived concealed in a freight train, the train operator who, at the train’s last scheduled stop before arrival in the United Kingdom, was responsible for certifying it as fit to travel to the United Kingdom, or
  - (b) where the entrant arrived concealed in a freight shuttle wagon, the operator of the shuttle-train of which the wagon formed part.]
- (6) In the case of a clandestine entrant to whom subsection (1)(b) or (c) applies, each of the following is a responsible person—
  - (a) if the transporter is a detached trailer, the owner, hirer [<sup>F7</sup>and] operator of the trailer;
  - (b) if it is not, the owner, hirer [<sup>F7</sup>and] driver of the vehicle.
- [<sup>F8</sup>(6A) Where a person falls within the definition of responsible person in more than one capacity, a separate penalty may be imposed on him under subsection (2) in respect of each capacity.]
- (7) Subject to any defence provided by section 34, it is immaterial whether a responsible person knew or suspected—
  - (a) that the clandestine entrant was concealed in the transporter; or
  - (b) that there were one or more other persons concealed with the clandestine entrant in the same transporter.
- (8) Subsection (9) applies if a transporter (“the carried transporter”) is itself being carried in or on another transporter.

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- (9) If a person is concealed in the carried transporter, the question whether any other person is concealed with that person in the same transporter is to be determined by reference to the carried transporter and not by reference to the transporter in or on which it is carried.
- (10) “Immigration control” means United Kingdom immigration control and includes any United Kingdom immigration control operated in a prescribed control zone outside the United Kingdom.

#### Textual Amendments

- F1** S. 32(1)(aa) inserted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 2\(2\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch. (with art. 4), S.I. 2012/1263, art. 2
- F2** S. 32(2)(2A) substituted for s. 32(2) (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 2\(3\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch. (with art. 4), S.I. 2012/1263, art. 2
- F3** S. 32(4)(4A) substituted for s. 32(4) (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 2\(4\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch. (with art. 4), S.I. 2012/1263, art. 2
- F4** Word in s. 32(5)(a) substituted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 2\(5\)\(a\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch. (with art. 4), S.I. 2012/1263, art. 2
- F5** Words in s. 32(5)(b)(c) substituted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 2\(5\)\(b\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch. (with art. 4), S.I. 2012/1263, art. 2
- F6** S. 32(5A) inserted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 2\(6\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch. (with art. 4), S.I. 2012/1263, art. 2
- F7** Words in s. 32(6)(a)(b) substituted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 2\(7\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch. (with art. 4), S.I. 2012/1263, art. 2
- F8** S. 32(6A) inserted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 2\(8\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch. (with art. 4), S.I. 2012/1263, art. 2

#### Modifications etc. (not altering text)

- C1** S. 32(2)-(5)(7)(10) applied (with modifications) (7.2.2001 for certain purposes and otherwise 1.3.2001) by [S.I. 2001/280](#), [arts. 1-4](#) (with art. 5)

#### Commencement Information

- I1** S. 32 partly in force; s. 32 not in force at Royal Assent, see s. 170(4); s. 32(2)(a)(3)(10) in force for certain purposes at 6.12.1999 by [S.I. 1999/3190](#), [art. 2](#), Sch.; s. 32 in force for certain purposes at: 3.4.2000 by [S.I. 2000/464](#), [art. 2](#), Sch.; 18.9.2000 by [S.I. 2000/2444](#), [art. 2](#), Sch. 1 (subject to [arts. 3, 4](#), [Sch. 2](#)); 8.12.2002 by [S.I. 2002/2815](#), [art. 2](#), Sch.

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**[<sup>F9</sup>32A Level of penalty: code of practice**

- (1) The Secretary of State shall issue a code of practice specifying matters to be considered in determining the amount of a penalty under section 32.
- (2) The Secretary of State shall have regard to the code (in addition to any other matters he thinks relevant)—
  - (a) when imposing a penalty under section 32, and
  - (b) when considering a notice of objection under section 35(4).
- (3) Before issuing the code the Secretary of State shall lay a draft before Parliament.
- (4) After laying the draft code before Parliament the Secretary of State may bring the code into operation by order.
- (5) The Secretary of State may from time to time revise the whole or any part of the code and issue the code as revised.
- (6) Subsections (3) and (4) also apply to a revision or proposed revision of the code.]

**Textual Amendments**

**F9** S. 32A inserted (14.11.2002 for specified purposes, 8.12.2002 for specified purposes, 11.5.2012 for specified purposes, 13.2.2023 for specified purposes) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 3](#) (with s. 159); S.I. 2002/2811, art. 2, [Sch.](#) (with art. 4), S.I. 2012/1263, art. 2; S.I. 2023/32, art. 2(1)(b)(2)

**33 [<sup>F10</sup>Prevention of clandestine entrants: code of practice]**

- (1) The Secretary of State must issue a code of practice to be followed by any person operating a system for preventing the carriage of clandestine entrants.
- (2) Before issuing the code, the Secretary of State must—
  - (a) consult such persons as he considers appropriate; and
  - (b) lay a draft before <sup>F11</sup>. . . Parliament.
- (3) The requirement of subsection (2)(a) may be satisfied by consultation before the passing of this Act.
- (4) After laying the draft code before Parliament, the Secretary of State may bring the code into operation by an order.
- (5) The Secretary of State may from time to time revise the whole or any part of the code and issue the code as revised.
- (6) Subsections (2) and (4) also apply to any revision, or proposed revision, of the code.

**Textual Amendments**

**F10** S. 33 heading substituted (8.12.2002 for specified purposes, 11.5.2012 for specified purposes, 13.2.2023 for specified purposes) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), s. 162(1), [Sch. 8 para. 4](#) (with s. 159); S.I. 2002/2811, art. 2, [Sch.](#); S.I. 2012/1263, art. 2; S.I. 2023/32, art. 2(1)(b)(2)

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**F11** Words in s. 33(2)(b) repealed (8.12.2002 for certain purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 161, 162(1), [Sch. 8 para. 5](#), [Sch. 9](#) (with s. 159, [Sch. 8 para. 17](#)); S.I. 2002/2811, [art. 2](#), [Sch.](#) (with [art. 4](#)), S.I. 2012/1263, [art. 2](#)

**Modifications etc. (not altering text)**

**C2** S. 33 applied (with modifications) (7.2.2001 for certain purposes and otherwise 1.3.2001) by S.I. 2001/208, [arts. 1\(2\)](#), 3, 4 (with [art. 5](#))

**34 Defences to claim that penalty is due under section 32.**

[<sup>F12</sup>(1) A person (“the carrier”) shall not be liable to the imposition of a penalty under section 32(2) if he has a defence under this section.]

(2) It is a defence for the carrier to show that he, or an employee of his who was directly responsible for allowing the clandestine entrant to be concealed, was acting under duress.

(3) It is also a defence for the carrier to show that—

- (a) he did not know, and had no reasonable grounds for suspecting, that a clandestine entrant was, or might be, concealed in the transporter;
- (b) an effective system for preventing the carriage of clandestine entrants was in operation in relation to the transporter; and
- (c) <sup>F13</sup> . . . on the occasion in question the person or persons responsible for operating that system did so properly.

[<sup>F14</sup>(3A) It is also a defence for the carrier to show that—

- (a) he knew or suspected that a clandestine entrant was or might be concealed in a rail freight wagon, having boarded after the wagon began its journey to the United Kingdom;
- (b) he could not stop the train or shuttle-train of which the wagon formed part without endangering safety;
- (c) an effective system for preventing the carriage of clandestine entrants was in operation in relation to the train or shuttle-train; and
- (d) on the occasion in question the person or persons responsible for operating the system did so properly.]

(4) In determining, for the purposes of this section, whether a particular system is effective, regard is to be had to the code of practice issued by the Secretary of State under section 33.

(5) <sup>F15</sup> . . . . .

[<sup>F16</sup>(6) Where a person has a defence under subsection (2) in respect of a clandestine entrant, every other responsible person in respect of the clandestine entrant is also entitled to the benefit of the defence.]

**Textual Amendments**

**F12** S. 34(1) substituted (8.12.2002 for certain purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 6\(2\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), [Sch.](#) (with [art. 4](#)), S.I. 2012/1263, [art. 2](#)

**F13** Word in s. 34(3)(c) repealed (8.12.2002) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 161, 162(1), [Sch. 8 para. 6\(3\)](#), [Sch. 9](#) (with s. 159); S.I. 2002/2811, [art. 2](#), [Sch.](#) (with [art. 4](#))

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- F14** S. 34(3A) inserted (8.12.2002 for certain purposes, 11.5.2012 in so far as not already in force) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 6(4)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4), S.I. 2012/1263, art. 2
- F15** S. 34(5) repealed (8.12.2002 for certain purposes, 11.5.2012 in so far as not already in force) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 161, 162(1), **Sch. 8 para. 6(5)**, **Sch. 9** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4), S.I. 2012/1263, art. 2
- F16** S. 34(6) substituted (8.12.2002 for certain purposes, 11.5.2012 in so far as not already in force) by Nationality, Immigration and Asylum Act 2002 (c. 41), ss. 125, 162(1), **Sch. 8 para. 6(6)** (with s. 159); S.I. 2002/2811, **art. 2**, Sch. (with art. 4), S.I. 2012/1263, art. 2

**Modifications etc. (not altering text)**

- C3** S. 34 applied (with modifications) (7.2.2001 for certain purposes and otherwise 1.3.2001) by S.I. 2001/280, **arts. 1-4** (with art. 5)

**Commencement Information**

- I2** S. 34 partly in force; s. 34 not in force at Royal Assent, see s. 170(4); s. 34 in force for certain purposes at: 3.4.2000 by S.I. 2000/464, **art. 2**, Sch.; 18.9.2000 by S.I. 2000/2444, **art. 2**, **Sch. 1** (subject to **arts. 3, 4**, **Sch. 2**); 8.12.2002 by S.I. 2002/2815, **art. 2**, **Sch.**

**35 Procedure.**

- (1) If the Secretary of State decides that a person (“P”) is liable to one or more penalties under section 32, he must notify P of his decision.
- (2) A notice under subsection (1) (a “penalty notice”) must—
- (a) state the Secretary of State’s reasons for deciding that P is liable to the penalty (or penalties);
  - (b) state the amount of the penalty (or penalties) to which P is liable;
  - (c) specify the date before which, and the manner in which, the penalty (or penalties) must be paid; and
  - (d) include an explanation of the steps—
    - (i) that P [<sup>F17</sup>may] take if he objects to the penalty;
    - (ii) that the Secretary of State may take under this Part to recover any unpaid penalty.
- [<sup>F18</sup>(3) Subsection (4) applies where a person to whom a penalty notice is issued objects on the ground that—
- (a) he is not liable to the imposition of a penalty, or
  - (b) the amount of the penalty is too high.
- (4) The person may give a notice of objection to the Secretary of State.
- (5) A notice of objection must—
- (a) be in writing,
  - (b) give the objector’s reasons, and
  - (c) be given before the end of such period as may be prescribed.
- (6) Where the Secretary of State receives a notice of objection to a penalty in accordance with this section he shall consider it and—
- (a) cancel the penalty,
  - (b) reduce the penalty,

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- (c) increase the penalty, or
  - (d) determine to take no action under paragraphs (a) to (c).
- (7) Where the Secretary of State considers a notice of objection under subsection (6) he shall—
- (a) inform the objector of his decision before the end of such period as may be prescribed or such longer period as he may agree with the objector,
  - (b) if he increases the penalty, issue a new penalty notice under subsection (1), and
  - (c) if he reduces the penalty, notify the objector of the reduced amount.]
- (9) The Secretary of State may by regulations provide, in relation to detached trailers, for a penalty notice which is [<sup>F19</sup>issued] in such manner as may be prescribed to have effect as a penalty notice properly [<sup>F20</sup>issued to] the responsible person or persons concerned under this section.
- (10) Any sum payable to the Secretary of State as a penalty under section 32 may be recovered by the Secretary of State as a debt due to him.
- [<sup>F21</sup>(11) In proceedings for enforcement of a penalty under subsection (10) no question may be raised as to—
- (a) liability to the imposition of the penalty, or
  - (b) its amount.
- (12) A document which is to be issued to or served on a person outside the United Kingdom for the purpose of subsection (1) or (7) or in the course of proceedings under subsection (10) may be issued or served—
- (a) in person,
  - (b) by post,
  - (c) by facsimile transmission, or
  - (d) in another prescribed manner.
- (13) The Secretary of State may by regulations provide that a document issued or served in a manner listed in subsection (12) in accordance with the regulations is to be taken to have been received at a time specified by or determined in accordance with the regulations.]

#### Textual Amendments

- F17** Word in s. 35(2)(d)(i) substituted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 7\(2\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch. (with art. 4), S.I. 2012/1263, art. 2
- F18** S. 35(3)-(7) substituted for s. 35(3)-(8) (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 7\(3\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch. (with art. 4), S.I. 2012/1263, art. 2
- F19** Word in s. 35(9) substituted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 7\(4\)\(a\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch. (with art. 4), S.I. 2012/1263, art. 2
- F20** Words in s. 35(9) substituted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#),



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ss. 125, 162(1), **Sch. 8 para. 7(4)(b)** (with s. 159); S.I. 2002/2811, **art. 2, Sch.** (with art. 4), S.I. 2012/1263, art. 2

**F21** S. 35(11)-(13) added (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by **Nationality, Immigration and Asylum Act 2002 (c. 41)**, ss. 125, 162(1), **Sch. 8 para. 7(5)** (with s. 159); S.I. 2002/2811, **art. 2, Sch.** (with art. 4), S.I. 2012/1263, art. 2

#### **Modifications etc. (not altering text)**

**C4** S. 35(1)(2)(6)-(8)(10) applied (with modifications) (7.2.2001 for certain purposes and otherwise 1.3.2001) by S.I. 2001/280, **arts. 1-4** (with art. 5)

#### **Commencement Information**

**I3** S. 35 partly in force; s. 35 not in force at Royal Assent, see s. 170(4); s. 35(7)-(9) in force for certain purposes at 6.12.1999 by S.I. 1999/3190, **art. 2, Sch.**; s. 35 in force for certain purposes at: 3.4.2000 by S.I. 2000/464, **art. 2, Sch.**; 18.9.2000 by S.I. 2000/2444, **art. 2, Sch. 1** (subject to **arts. 3, 4, Sch. 2**); 8.12.2002 by S.I. 2002/2815, **art. 2, Sch.**

### **[<sup>F22</sup>35A Appeal**

- (1) A person may appeal to the court against a penalty imposed on him under section 32 on the ground that—
  - (a) he is not liable to the imposition of a penalty, or
  - (b) the amount of the penalty is too high.
- (2) On an appeal under this section 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 under this section shall be a re-hearing of the Secretary of State’s decision to impose a penalty and shall be determined having regard to—
  - (a) any code of practice under section 32A which has effect at the time of the appeal,
  - (b) the code of practice under section 33 which had effect at the time of the events to which the penalty relates, and
  - (c) any other matters which the court thinks relevant (which may include matters of which the Secretary of State was unaware).
- (4) Subsection (3) has effect despite any provision of Civil Procedure Rules.
- (5) An appeal may be brought by a person under this section against a penalty whether or not—
  - (a) he has given notice of objection under section 35(4);
  - (b) the penalty has been increased or reduced under section 35(6).]

#### **Textual Amendments**

**F22** S. 35A inserted (8.12.2002 for certain purposes, 11.5.2012 in so far as not already in force) by **Nationality, Immigration and Asylum Act 2002 (c. 41)**, s. 162(1), **Sch. 8 para. 8** (with s. 159); S.I. 2002/2811, **art. 2, Sch.** (with art. 4), S.I. 2012/1263, art. 2



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### 36 Power to detain vehicles etc. in connection with penalties under section 32.

(1) If a penalty notice has been [<sup>F23</sup>issued] under section 35, a senior officer may detain any relevant—

- (a) vehicle,
- (b) small ship, <sup>F24</sup> . . .
- (c) small aircraft, [<sup>F25</sup> or
- (d) rail freight wagon,]

until all penalties to which the notice relates, and any expenses reasonably incurred by the Secretary of State in connection with the detention, have been paid.

(2) That power—

- (a) may be exercised only if, in the opinion of the senior officer concerned, there is a significant risk that the penalty (or one or more of the penalties) will not be paid before the end of the prescribed period if the transporter is not detained; and
- (b) may not be exercised if alternative security which the Secretary of State considers is satisfactory, has been given.

[<sup>F26</sup>(2A) A vehicle may be detained under subsection (1) only if—

- (a) the driver of the vehicle is an employee of its owner or hirer,
- (b) the driver of the vehicle is its owner or hirer, or
- (c) a penalty notice is issued to the owner or hirer of the vehicle.

(2B) A senior officer may detain a relevant vehicle, small ship, small aircraft or rail freight wagon pending—

- (a) a decision whether to issue a penalty notice,
- (b) the issue of a penalty notice, or
- (c) a decision whether to detain under subsection (1).

(2C) That power may not be exercised in any case—

- (a) for longer than is necessary in the circumstances of the case, or
- (b) after the expiry of the period of 24 hours beginning with the conclusion of the first search of the vehicle, ship, aircraft or wagon by an immigration officer after it arrived in the United Kingdom.]

(3) If a transporter is detained under this section, the owner, consignor or any other person who has an interest in any freight or other thing carried in or on the transporter may remove it, or arrange for it to be removed, at such time and in such way as is reasonable.

(4) The detention of a transporter under this section is lawful even though it is subsequently established that the penalty notice on which the detention was based was ill-founded in respect of all or any of the penalties to which it related.

(5) But subsection (4) does not apply if the Secretary of State was acting unreasonably in issuing the penalty notice.

#### Textual Amendments

**F23** Word in s. 36(1) substituted (8.12.2002 for certain purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 9\(2\)\(a\)](#) (with s. 159); [S.I. 2002/2811](#), [art. 2](#), [Sch.](#) (with [art. 4](#)), [S.I. 2012/1263](#), art. 2

*Status: Point in time view as at 11/05/2012.*

*Changes to legislation: Immigration and Asylum Act 1999, Cross Heading: Clandestine entrants is up to date with all changes known to be in force on or before 26 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- F24** Word after s. 36(1)(b) repealed (8.12.2002 for certain purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 161, 162(1), [Sch. 8 para. 9\(2\)\(b\)](#), [Sch. 9](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch. (with art. 4), S.I. 2012/1263, art. 2
- F25** S. 36(1)(d) and preceding word inserted (8.12.2002 for certain purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 9\(2\)\(c\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch. (with art. 4), S.I. 2012/1263, art. 2
- F26** S. 36(2A)-(2C) inserted (8.12.2002 for certain purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 9\(3\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch. (with art. 4), S.I. 2012/1263, art. 2

#### Modifications etc. (not altering text)

- C5** S. 36 applied (with modifications) (7.2.2001 for certain purposes and otherwise 1.3.2001) by S.I. 2001/280, [arts. 1-4](#) (with art. 5))

#### Commencement Information

- I4** S. 36 partly in force; s. 36 not in force at Royal Assent, see s. 170(4); s. 36(2)(a) in force for certain purposes at 6.12.1999 by S.I. 1999/3190, [art. 2](#), Sch.; s. 36 in force for certain purposes at: 3.4.2000 by S.I. 2000/464, [art. 2](#), Sch.; 18.9.2000 by S.I. 2000/2444, [art. 2](#), Sch. 1 (subject to [arts. 3, 4](#), Sch. 2); 8.12.2002 by S.I. 2002/2815, [art. 2](#), Sch.

### [<sup>F27</sup> 36A Detention in default of payment

- (1) This section applies where a person to whom a penalty notice has been issued under section 35 fails to pay the penalty before the date specified in accordance with section 35(2)(c).
- (2) The Secretary of State may make arrangements for the detention of any vehicle, small ship, small aircraft or rail freight wagon which the person to whom the penalty notice was issued uses in the course of a business.
- (3) A vehicle, ship, aircraft or wagon may be detained under subsection (2) whether or not the person to whom the penalty notice was issued owns it.
- (4) But a vehicle may be detained under subsection (2) only if the person to whom the penalty notice was issued—
  - (a) is the owner or hirer of the vehicle, or
  - (b) was an employee of the owner or hirer of the vehicle when the penalty notice was issued.
- (5) The power under subsection (2) may not be exercised while an appeal against the penalty under section 35A is pending or could be brought (ignoring the possibility of an appeal out of time with permission).
- (6) The Secretary of State shall arrange for the release of a vehicle, ship, aircraft or wagon detained under this section if the person to whom the penalty notice was issued pays—
  - (a) the penalty, and
  - (b) expenses reasonably incurred in connection with the detention.]

#### Textual Amendments

- F27** S. 36A inserted (8.12.2002 for specified purposes, 11.5.2012 for specified purposes, 13.2.2023 for specified purposes) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), s. 162(1), [Sch. 8 para.](#)

*Status: Point in time view as at 11/05/2012.*

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**10** (with s. 159); S.I. 2002/2811, art. 2, **Sch.** (with art. 4); S.I. 2012/1263, art. 2; S.I. 2023/32, art. 2(1)(b)(2)

### **37 Effect of detention.**

- (1) This section applies if a transporter is detained under [<sup>F28</sup>section 36(1)].
- (2) The person to whom the penalty notice was addressed, or the owner or any other person [<sup>F29</sup>whose interests may be affected by detention of the transporter,] may apply to the court for the transporter to be released.
- (3) The court may release the transporter if it considers that—
  - (a) satisfactory security has been tendered in place of the transporter for the payment of the penalty alleged to be due and connected expenses;
  - (b) there is no significant risk that the penalty (or one or more of the penalties) and any connected expenses will not be paid; or
  - (c) there is a significant doubt as to whether the penalty is payable <sup>F30</sup>. . .
- [<sup>F31</sup>(3A) The court may also release the transporter on the application of the owner of the transporter under subsection (2) if—
  - (a) a penalty notice was not issued to the owner or an employee of his, and
  - (b) the court considers it right to release the transporter.
- (3B) In determining whether to release a transporter under subsection (3A) the court shall consider—
  - (a) the extent of any hardship caused by detention,
  - (b) the extent (if any) to which the owner is responsible for the matters in respect of which the penalty notice was issued, and
  - (c) any other matter which appears to the court to be relevant (whether specific to the circumstances of the case or of a general nature).]
  - (4) If the court has not ordered the release of the transporter, the Secretary of State may sell it if the penalty in question and connected expenses are not paid before the end of the period of 84 days beginning with the date on which the detention began.
  - (5) “Connected expenses” means expenses reasonably incurred by the Secretary of State in connection with the detention.
  - [<sup>F32</sup>(5A) The power of sale under subsection (4) may be exercised only when no appeal against the imposition of the penalty is pending or can be brought (ignoring the possibility of an appeal out of time with permission).
  - (5B) The power of sale under subsection (4) shall lapse if not exercised within a prescribed period.]
  - (6) Schedule 1 applies to the sale of transporters under this section.
  - [<sup>F33</sup>(7) This section applies to a transporter detained under section 36A as it applies to a transporter detained under section 36(1); but for that purpose—
    - (a) the court may release the transporter only if the court considers that the detention was unlawful or under subsection (3A)(and subsection (3) shall not apply), and
    - (b) the reference in subsection (4) to the period of 84 days shall be taken as a reference to a period prescribed for the purpose of this paragraph.]

*Status: Point in time view as at 11/05/2012.*

*Changes to legislation: Immigration and Asylum Act 1999, Cross Heading: Clandestine entrants is up to date with all changes known to be in force on or before 26 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

- F28** Words in s. 37(1) substituted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 11\(2\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch. (with art. 4), S.I. 2012/1263, art. 2
- F29** Words in s. 37(2) substituted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 11\(3\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch. (with art. 4), S.I. 2012/1263, art. 2
- F30** Words in s. 37(3)(c) repealed (14.11.2002 for certain purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 161, 162(2), [Sch. 8 para. 11\(4\)](#), [Sch. 9](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch. (with art. 4), S.I. 2012/1263, art. 2
- F31** S. 37(3A)(3B) inserted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 11\(5\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch. (with art. 4), S.I. 2012/1263, art. 2
- F32** S. 37(5A)(5B) inserted (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 11\(6\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch. (with art. 4), S.I. 2012/1263, art. 2
- F33** S. 37(7) added (14.11.2002 for certain purposes, 8.12.2002 for certain further purposes, 11.5.2012 in so far as not already in force) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 11\(7\)](#) (with s. 159); S.I. 2002/2811, [art. 2](#), Sch. (with art. 4), S.I. 2012/1263, art. 2

### Modifications etc. (not altering text)

- C6** S. 37 (and Sch. 1) applied (with modifications) (7.2.2001 for certain purposes and otherwise 1.3.2001) by S.I. 2001/280, [arts. 1-4](#) (with art. 5)

### Commencement Information

- I5** S. 37 partly in force; s. 37 not in force at Royal Assent, see s. 170(4); s. 37(6) in force for certain purposes at 6.12.1999 by S.I. 1999/3190, [art. 2](#), Sch.; s. 37 in force for certain purposes at: 3.4.2000 by S.I. 2000/464, [art. 2](#), Sch.; 18.9.2000 by S.I. 2000/2444, [art. 2](#), Sch. 1 (subject to [arts. 3, 4](#), [Sch. 2](#)); 8.12.2002 by S.I. 2002/2815, [art. 2](#), Sch.

## 38 Assisting illegal entry and harbouring.

- (1) In section 25 of the 1971 Act (assisting illegal entry and harbouring), at the end of paragraph (c) of subsection (6), insert—

“or  
(d) the driver of any such vehicle;”.

- (2) After section 25, insert—

### “25A Detention of ships, aircraft and vehicles in connection with offences under section 25(1).

- (1) If a person has been arrested for an offence under section 25(1)(a) or (b), a senior officer or a constable may detain a relevant ship, aircraft or vehicle—

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- (a) until a decision is taken as to whether or not to charge the arrested person with that offence; or
  - (b) if the arrested person has been charged—
    - (i) until he is acquitted, the charge against him is dismissed or the proceedings are discontinued; or
    - (ii) if he has been convicted, until the court decides whether or not to order forfeiture of the ship, aircraft or vehicle.
- (2) A ship, aircraft or vehicle is a relevant ship, aircraft or vehicle, in relation to an arrested person, if it is one which the officer or constable concerned has reasonable grounds for believing could, on conviction of the arrested person for the offence for which he was arrested, be the subject of an order for forfeiture made under section 25(6).
- (3) A person (other than the arrested person) who claims to be the owner of a ship, aircraft or vehicle which has been detained under this section may apply to the court for its release.
- (4) The court to which an application is made under subsection (3) may, on such security or surety being tendered as it considers satisfactory, release the ship, aircraft or vehicle on condition that it is made available to the court if—
- (a) the arrested person is convicted; and
  - (b) an order for its forfeiture is made under section 25(6).
- (5) In the application to Scotland of subsection (1), for paragraphs (a) and (b) substitute—
- (“ until a decision is taken as to whether or not to institute criminal proceedings against the arrested person for that offence; or
  - (b) if criminal proceedings have been instituted against the arrested person—
    - (i) until he is acquitted or, under section 65 or 147 of the <sup>M1</sup>Criminal Procedure (Scotland) Act 1995, discharged or liberated or the trial diet is deserted*simpliciter*;
    - (ii) if he has been convicted, until the court decides whether or not to order forfeiture of the ship, aircraft or vehicle,and for the purposes of this subsection, criminal proceedings are instituted against a person at whichever is the earliest of his first appearance before the sheriff on petition, or the service on him of an indictment or complaint. ”
- (6) “Court” means—
- (a) in England and Wales—
    - (i) if the arrested person has not been charged, the magistrates’ court for the petty sessions area in which he was arrested;
    - (ii) if he has been charged but proceedings for the offence have not begun to be heard, the magistrates’ court for the petty sessions area in which he was charged;
    - (iii) if he has been charged and proceedings for the offence are being heard, the court hearing the proceedings;
  - (b) in Scotland, the sheriff; and
  - (c) in Northern Ireland—

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- (i) if the arrested person has not been charged, the magistrates’ court for the county court division in which he was arrested;
  - (ii) if he has been charged but proceedings for the offence have not begun to be heard, the magistrates’ court for the county court division in which he was charged;
  - (iii) if he has been charged and proceedings for the offence are being heard, the court hearing the proceedings.
- (7) “Owner” has the same meaning as it has in section 25(6).
- (8) “Senior officer” means an immigration officer not below the rank of chief immigration officer.”
- (3) Subsection (1) has effect in relation to offences committed after the coming into force of that subsection.
- (4) Subsection (2) has effect in relation to persons arrested for offences alleged to have been committed after the coming into force of that subsection.

#### Marginal Citations

M1 1995 c. 46.

### 39 Rail freight.

F34 .....

#### Textual Amendments

F34 S. 39 repealed (8.12.2002) by [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), ss. 125, 161, 162(1), Sch. 8 para. 12, [Sch. 9](#) (with s. 159); S.I. 2002/2811, art. 2, [Sch.](#) (with art. 4)

**Status:**

Point in time view as at 11/05/2012.

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