



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,
 - (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.
- (2) The person (or persons) responsible for a clandestine entrant is (or are together) liable to—
 - (a) a penalty of the prescribed amount in respect of the clandestine entrant; and
 - (b) an additional penalty of that amount in respect of each person who was concealed with the clandestine entrant in the same transporter.
- (3) A penalty imposed under this section must be paid to the Secretary of State before the end of the prescribed period.
- (4) Payment of the full amount of a penalty by one or more of the persons responsible for the clandestine entrant discharges the liability of each of the persons responsible for that entrant.

- (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 or captain;
 - (b) if it is a vehicle (but not a detached trailer), the owner, hirer or driver of the vehicle;
 - (c) if it is a detached trailer, the owner, hirer or operator of the trailer.
- (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 or operator of the trailer;
 - (b) if it is not, the owner, hirer or driver of the vehicle.
- (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.
- (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.

33 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 both Houses of 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.

34 Defences to claim that penalty is due under section 32

- (1) This section applies if it is alleged that a person (“the carrier”) is liable to a penalty under section 32.

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- (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) that on the occasion in question the person or persons responsible for operating that 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) If there are two or more persons responsible for a clandestine entrant, the fact that one or more of them has a defence under subsection (3) does not affect the liability of the others.
- (6) But if a person responsible for a clandestine entrant has a defence under subsection (2), the liability of any other person responsible for that entrant is discharged.

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 must take if he objects to the penalty;
 - (ii) that the Secretary of State may take under this Part to recover any unpaid penalty.
- (3) Subsection (4) applies if more than one person is responsible for a clandestine entrant.
- (4) If a penalty notice is served on one of the responsible persons, the Secretary of State is to be taken to have served the required penalty notice on each of them.
- (5) The Secretary of State must nevertheless take reasonable steps, while the penalty remains unpaid, to secure that the penalty notice is actually served on each of those responsible persons.
- (6) If a person on whom a penalty notice is served, or who is treated as having had a penalty notice served on him, alleges that he is not liable for one or more, or all, of the penalties specified in the penalty notice, he may give written notice of his allegation to the Secretary of State.
- (7) Notice under subsection (6) (“a notice of objection”) must—

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- (a) give reasons for the allegation; and
 - (b) be given before the end of such period as may be prescribed.
- (8) If a notice of objection is given before the end of the prescribed period, the Secretary of State must consider it and determine whether or not any penalty to which it relates is payable.
- (9) The Secretary of State may by regulations provide, in relation to detached trailers, for a penalty notice which is served in such manner as may be prescribed to have effect as a penalty notice properly served on 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.

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

- (1) If a penalty notice has been given under section 35, a senior officer may detain any relevant—
- (a) vehicle,
 - (b) small ship, or
 - (c) small aircraft,
- 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.
- (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.

37 Effect of detention

- (1) This section applies if a transporter is detained under section 36.
- (2) The person to whom the penalty notice was addressed, or the owner or any other person claiming an interest in 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 and the applicant has a compelling need to have the transporter released.
- (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.
- (6) Schedule 1 applies to the sale of transporters under this section.

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—
- (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

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- (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—
- “(a) 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 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—
- (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.

39 Rail freight

- (1) The Secretary of State may make regulations applying (with or without modification) any provision of this Part for the purpose of enabling penalties to be imposed in respect of a person (“a clandestine entrant”) who—
 - (a) arrives in the United Kingdom concealed in a rail freight wagon; and
 - (b) claims, or indicates that he intends to seek, asylum in the United Kingdom or evades, or attempts to evade, immigration control.
- (2) The regulations may, in particular, make provision—
 - (a) enabling additional penalties to be imposed in respect of persons concealed with the clandestine entrant;
 - (b) as to which person is (or which persons are together) liable to penalties in respect of the clandestine entrant;
 - (c) for conferring on a senior officer a power to detain any relevant rail freight wagon in prescribed circumstances;
 - (d) for conferring on the Secretary of State a power to sell in prescribed circumstances a rail freight wagon which has been detained.
- (3) Before making any regulations under this section, the Secretary of State must consult, in the way he considers appropriate, persons appearing to him to be likely to be affected by the imposition of penalties under the regulations.