



# Immigration and Asylum Act 1999

## 1999 CHAPTER 33

### PART II

#### CARRIERS' LIABILITY

*[<sup>F1</sup>Penalties for failure to secure goods vehicle and for carrying clandestine entrants]*

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

<sup>F1</sup>(1) This section applies if it is alleged that a person (“the carrier”) is liable to a penalty under section 32.

- (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.

<sup>F2</sup>(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>F3</sup>that] on the occasion in question the person or persons responsible for operating that system did so properly.]

<sup>F4</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; [<sup>F5</sup>and]

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- [ the carrier had taken the actions specified in regulations under subsection (3B)  
<sup>F6</sup>(c) in relation to the securing of the wagon against unauthorised access.]
- [<sup>F7</sup>(d) on the occasion in question the person or persons responsible for operating the system did so properly.]]
- [<sup>F8</sup>(3B) The Secretary of State must specify in regulations the actions to be taken for the purposes of subsection (3A)(c) in relation to the securing of a rail freight wagon against unauthorised access.
- (3C) The actions that may be specified in regulations under subsection (3B) include, in particular—
- (a) actions in relation to checking a person has not gained unauthorised access to the wagon,
  - (b) actions in relation to the reporting of any unauthorised access to the wagon, and
  - (c) actions in relation to the keeping of records to establish that other actions specified in the regulations have been taken.
- (3D) Before making regulations under subsection (3B), the Secretary of State must consult such persons as the Secretary of State considers appropriate.]
- [<sup>F9</sup>(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.]
- [<sup>F10</sup>(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.]
- [<sup>F11</sup>(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.]
- [<sup>F11</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

- F1** S. 34(1) substituted (8.12.2002 for certain 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. 6\(2\)](#) (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\(1\)\(b\)\(2\)](#)
- F2** S. 34(3) omitted (28.4.2022 for specified purposes, 13.2.2023 for specified purposes) by virtue of [Nationality and Borders Act 2022 \(c. 36\)](#), s. 87(1)(4)(c), [Sch. 5 para. 7\(2\)](#); S.I. 2023/33, [reg. 2\(1\)\(c\)\(ii\)\(2\)](#) (with [reg. 4](#))
- F3** Word in s. 34(3)(c) repealed (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. 6\(3\)](#), [Sch. 9](#) (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\(1\)\(b\)\(2\)](#)
- F4** S. 34(3A) inserted (8.12.2002 for certain 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. 6\(4\)](#) (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\(1\)\(b\)\(2\)](#)

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- F5** Word in s. 34(3A)(b) inserted (28.4.2022 for specified purposes) by Nationality and Borders Act 2022 (c. 36), s. 87(1)(4)(c), **Sch. 5 para. 7(3)(a)**
- F6** S. 34(3A)(c) substituted (28.4.2022 for specified purposes) by Nationality and Borders Act 2022 (c. 36), s. 87(1)(4)(c), **Sch. 5 para. 7(3)(b)**
- F7** S. 34(3A)(d) omitted (28.4.2022 for specified purposes) by virtue of Nationality and Borders Act 2022 (c. 36), s. 87(1)(4)(c), **Sch. 5 para. 7(3)(c)**
- F8** S. 34(3B)-(3D) inserted (28.4.2022 for specified purposes) by Nationality and Borders Act 2022 (c. 36), s. 87(1)(4)(c), **Sch. 5 para. 7(4)**
- F9** S. 34(4) omitted (28.4.2022 for specified purposes, 13.2.2023 for specified purposes) by virtue of Nationality and Borders Act 2022 (c. 36), s. 87(1)(4)(c), **Sch. 5 para. 7(5)**; S.I. 2023/33, reg. 2(1)(c)(ii)(2) (with reg. 4)
- F10** S. 34(5) repealed (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. 6(5), **Sch. 9** (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)
- F11** S. 34(6) 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. 6(6)** (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)

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

- C1** 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)

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#### **Commencement Information**

- I1** 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.
- I2** S. 34 in force at 13.2.2023 for specified purposes by S.I. 2023/34, **art. 2**

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 10(12) inserted by [2023 c. 37 s. 10\(6\)](#)
- s. 40(1)-(1C) substituted for s. 40(1) by [2022 c. 36 s. 76\(2\)](#)
- s. 40(4A)(4B) inserted by [2022 c. 36 s. 76\(5\)](#)
- s. 72(10) repealed by [2004 c. 19 Sch. 4](#)
- s. 94(2A)-(2C) inserted by [2016 c. 19 Sch. 11 para. 3\(3\)](#)
- s. 94(2D) inserted by [2016 c. 19 Sch. 11 para. 7\(4\)](#)
- s. 94(3)(3A) substituted for s. 94(3) by [2002 c. 41 s. 44\(4\)](#) (This amendment is repealed (prosp.) by [2016 c. 19, Sch. 11 para. 41](#))
- s. 94(3A)-(3D) inserted by [2016 c. 19 Sch. 11 para. 3\(5\)](#)
- s. 95A inserted by [2016 c. 19 Sch. 11 para. 9](#)
- s. 96(1A) inserted by [2016 c. 19 Sch. 11 para. 10\(3\)](#)
- s. 97(3A)(b)(iv) inserted by [2022 c. 36 s. 13\(2\)\(c\)\(ii\)](#)
- s. 97(8)(9) inserted by [2016 c. 19 Sch. 11 para. 11\(4\)](#)
- s. 98A inserted by [2016 c. 19 Sch. 11 para. 13](#)
- s. 98A(5) inserted by [2022 c. 36 s. 13\(4\)](#)
- s. 103(4)(a) words substituted by [2004 c. 19 s. 10\(4\)\(b\)](#)
- s. 103(5)(b) word substituted by [S.I. 2008/2833 Sch. 3 para. 183\(ii\)](#)
- s. 103A(1) words substituted by [2004 c. 19 s. 10\(5\)](#)
- s. 103A(1) heading words substituted by [2004 c. 19 s. 10\(5\)](#)
- s. 103A(1) words substituted by [S.I. 2008/2833 Sch. 3 para. 184](#)
- s. 125(2)(ba) inserted by [2016 c. 19 Sch. 11 para. 22\(3\)\(b\)](#)
- s. 146(2)(za) inserted by [2016 c. 19 s. 44\(9\)](#)
- s. 166(5)(ca) substituted for word in s. 166(5)(c) by [2016 c. 19 Sch. 11 para. 24\(2\)](#)
- s. 166(5A)(5B) inserted by [2016 c. 19 Sch. 11 para. 24\(3\)](#)
- s. 166(6)(aa) substituted for word in s. 166(6)(a) by [2016 c. 19 Sch. 11 para. 24\(4\)](#)
- Sch. 2 para. 21 modified by [2002 c. 41 s. 23\(2\)\(a\)](#)
- Sch. 3 para. 2(5) modified by [2002 c. 41 s. 23\(2\)\(b\)](#)