



# 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]*

#### 37 Effect of detention.

- (1) This section applies if a transporter is detained under [<sup>F1</sup>section 36][<sup>F1</sup>section 36(1)].
- (2) The person to whom the penalty notice was addressed, or the owner or any other person [<sup>F2</sup>claiming an interest in the transporter,][<sup>F2</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>F3</sup>and the applicant has a compelling need to have the transporter released].

[<sup>F4</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

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- (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>F5</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>F6</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.]

#### Textual Amendments

- F1** Words in s. 37(1) substituted (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 \(c. 41\), s. 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; S.I. 2023/32, art. 2(1)(b)(2)
- F2** Words in s. 37(2) substituted (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 \(c. 41\), s. 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; S.I. 2023/32, art. 2(1)(b)(2)
- F3** Words in s. 37(3)(c) repealed (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 \(c. 41\), s. 162\(1\), 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; S.I. 2023/32, art. 2(1)(b)(2)
- F4** S. 37(3A)(3B) 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 \(c. 41\), s. 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; S.I. 2023/32, art. 2(1)(b)(2)
- F5** S. 37(5A)(5B) 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 \(c. 41\), s. 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; S.I. 2023/32, art. 2(1)(b)(2)
- F6** S. 37(7) 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 \(c. 41\), s. 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; S.I. 2023/32, art. 2(1)(b)(2)

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

- C1** 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**

- I1** 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.](#)
- I2** S. 37 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\(2\)\(b\)](#)