



Immigration and Asylum Act 1999

1999 CHAPTER 33

PART II

CARRIERS' LIABILITY

[^{F1}Penalties for failure to secure goods vehicle and for carrying clandestine entrants]

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

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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—
- (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 ^{MI}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.”

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- (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.

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Changes and effects yet to be applied to :

- s. 38(1) repealed by 2002 c. 41 Sch. 9
- s. 38(3) repealed by 2002 c. 41 Sch. 9

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)