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]

[[F1]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) **[**[F2]was an employee of**]**[[F2]drove the vehicle pursuant to a contract (whether or not a contract of employment) with**]** the owner or hirer of the vehicle when the penalty notice was issued.

[In the case of a detached trailer, subsection (4)(b) has effect as if the reference to [F3](4A) driving the vehicle were a reference to operating it.**]**

(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).

Changes to legislation: *Immigration and Asylum Act 1999, Section 36A is up to date with all changes known to be in force on or before 22 July 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) View outstanding changes*

(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.

[F4 (7) 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.

(8) 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.

(9) But subsection (8) does not apply if the Secretary of State was acting unreasonably in issuing the penalty notice.

(10) A document which is to be issued to or served on a person outside the United Kingdom for the purposes of this section may be issued or served—

(a) in person,

(b) by post,

(c) by facsimile transmission,

(d) by electronic mail, or

(e) in another prescribed manner.

(11) The Secretary of State may by regulations provide that a document issued or served in a manner listed in subsection (10) 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

F1 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. 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)**

F2 Words in s. 36A(4)(b) substituted (28.4.2022 for specified purposes, 13.2.2023 for specified purposes) by Nationality and Borders Act 2022 (c. 36), s. 87(1)(4)(c), **Sch. 5 para. 11(2)**; S.I. 2023/33, reg. 2(1)(c)(iv)(2) (with reg. 4)

F3 S. 36A(4A) inserted (28.4.2022 for specified purposes, 13.2.2023 for specified purposes) by Nationality and Borders Act 2022 (c. 36), s. 87(1)(4)(c), **Sch. 5 para. 11(3)**; S.I. 2023/33, reg. 2(1)(c)(iv)(2) (with reg. 4)

F4 S. 36A(7)-(11) inserted (28.4.2022 for specified purposes, 13.2.2023 for specified purposes) by Nationality and Borders Act 2022 (c. 36), s. 87(1)(4)(c), **Sch. 5 para. 11(4)**; S.I. 2023/33, reg. 2(1)(c)(iv)(2) (with reg. 4)

Commencement Information

I1 S. 36A in force at 13.2.2023 for specified purposes by S.I. 2023/34, **art. 2**

Changes to legislation:
Immigration and Asylum Act 1999, Section 36A is up to date with all changes known to be in force on or before 22 July 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.
View outstanding changes

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)