



# 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]*

#### **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,
  - [<sup>F1</sup>(aa) he arrives in the United Kingdom concealed in a rail freight wagon,]
  - (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.
- [<sup>F2</sup>(2) The Secretary of State may require a person who is responsible for a clandestine entrant to pay—
- (a) a penalty in respect of the clandestine entrant;
  - (b) a penalty in respect of any person who was concealed with the clandestine entrant in the same transporter.
- (2A) In imposing a penalty under subsection (2) the Secretary of State—
- (a) must specify an amount which does not exceed the maximum prescribed for the purpose of this paragraph,
  - (b) may, in respect of a clandestine entrant or a concealed person, impose separate penalties on more than one of the persons responsible for the clandestine entrant, and

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- (c) may not impose penalties in respect of a clandestine entrant or a concealed person which amount in aggregate to more than the maximum prescribed for the purpose of this paragraph.]
- [<sup>F3</sup>(2B) The Secretary of State may reduce the amount of a penalty under this section if the responsible person can show that they took the actions specified in regulations under subsection (2C) in relation to the securing of the transporter against unauthorised access.
- (2C) The Secretary of State must specify in regulations the actions that a responsible person must have taken in order to be eligible for a reduction in the amount of a penalty.
- (2D) The actions that may be specified in regulations under subsection (2C) include, in particular—
- (a) actions in relation to checking a person has not gained unauthorised access to the transporter,
  - (b) actions in relation to the reporting of any unauthorised access to the transporter, and
  - (c) actions in relation to the keeping of records to establish that other actions specified in the regulations have been taken.
- (2E) Before making regulations under subsection (2C), the Secretary of State must consult such persons as the Secretary of State considers appropriate.]
- (3) A penalty imposed under this section must be paid to the Secretary of State before the end of the prescribed period.
- [<sup>F4</sup>(4)
- [<sup>F5</sup>(4) Where a penalty is imposed under subsection (2) on a person who is the driver of a vehicle pursuant to a contract (whether or not a contract of employment) with a person (“P”) who is the vehicle’s owner or hirer—
- (a) the driver and P are jointly and severally liable for the penalty imposed on the driver (whether or not a penalty is also imposed on P), and
  - (b) a provision of this Part about notification, objection or appeal has effect as if the penalty imposed on the driver were also imposed on P (whether or not a penalty is also imposed on P in P’s capacity as the owner or hirer of the vehicle).]
- (4A) In the case of a detached trailer, subsection (4) shall have effect as if a reference to the driver were a reference to the operator.]
- (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 [<sup>F6</sup>and] captain;
  - (b) if it is a vehicle (but not a detached trailer), the owner, hirer [<sup>F7</sup>and] driver of the vehicle;
  - (c) if it is a detached trailer, the owner, hirer [<sup>F7</sup>and] operator of the trailer.
- [<sup>F8</sup>(5A) In the case of a clandestine entrant to whom subsection (1)(aa) applies, the responsible person is—
- (a) where the entrant arrived concealed in a freight train, the train operator who, at the train’s last scheduled stop before arrival in the United Kingdom, was responsible for certifying it as fit to travel to the United Kingdom, or

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- (b) where the entrant arrived concealed in a freight shuttle wagon, the operator of the shuttle-train of which the wagon formed part.]
- (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 [<sup>F9</sup>and] operator of the trailer;
  - (b) if it is not, the owner, hirer [<sup>F9</sup>and] driver of the vehicle.

[<sup>F10</sup>(6A) Where a person falls within the definition of responsible person in more than one capacity, a separate penalty may be imposed on him under subsection (2) in respect of each capacity.]

[<sup>F11</sup>(6B) A penalty may not be imposed on a person under subsection (2) if a penalty is imposed on that person under section 31A(1) in respect of the same circumstances.]

- (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.

#### Textual Amendments

- F1** S. 32(1)(aa) 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 \(c. 41\)](#), ss. 125, 162(1), [Sch. 8 para. 2\(2\)](#) (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. 32(2)(2A) substituted for s. 32(2) (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. 2\(3\)](#) (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** S. 32(2B)-(2E) 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. 4\(2\)](#); S.I. 2023/33, reg. 2(1)(c)(i)(2) (with reg. 4)
- F4** S. 32(4)(4A) substituted for s. 32(4) (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. 2\(4\)](#) (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\(1\)\(b\)\(2\)](#)
- F5** S. 32(4) 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. 4\(3\)](#); S.I. 2023/33, reg. 2(1)(c)(i)(2) (with reg. 4)

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- F6** Word in s. 32(5)(a) 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. 2\(5\)\(a\)](#) (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\(1\)\(b\)\(2\)](#)
- F7** Word in s. 32(5)(b)(c) 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. 2\(5\)\(b\)](#) (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\(1\)\(b\)\(2\)](#)
- F8** S. 32(5A) 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. 2\(6\)](#) (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\(1\)\(b\)\(2\)](#)
- F9** Word in s. 32(6)(a)(b) 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. 2\(7\)](#) (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\(1\)\(b\)\(2\)](#)
- F10** S. 32(6A) 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. 2\(8\)](#) (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. 32(6B) 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. 4\(4\)](#); S.I. 2023/33, [reg. 2\(1\)\(c\)\(i\)\(2\)](#) (with [reg. 4](#))

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

- C1** S. 32(2)-(5)(7)(10) 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. 32 partly in force; s. 32 not in force at Royal Assent, see s. 170(4); s. 32(2)(a)(3)(10) in force for certain purposes at 6.12.1999 by S.I. 1999/3190, [art. 2](#), [Sch.](#); s. 32 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. 32 in force at 13.2.2023 for specified purposes by S.I. 2023/34, [art. 2](#)

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