

## SCHEDULES

### SCHEDULE 5

Section 42

#### PENALTY FOR FAILURE TO SECURE GOODS VEHICLE ETC

- 1 Part 2 of the Immigration and Asylum Act 1999 (carriers' liability) is amended as follows.
- 2 For the italic heading before section 32 substitute "Penalties for failure to secure goods vehicle and for carrying clandestine entrants".
- 3 Before section 32 (but after the italic heading before that section) insert—

#### **"31A Penalty for failure to secure goods vehicle etc**

- (1) The Secretary of State may impose a penalty on a person responsible for a goods vehicle which has arrived at a place mentioned in subsection (2) if—
  - (a) on its arrival at that place, the vehicle is not adequately secured against unauthorised access (see subsection (4)(a)), and
  - (b) the person has not taken the actions specified in regulations under subsection (4)(b) as actions to be taken by that person in relation to the securing of the vehicle against unauthorised access before or during its journey to that place.
- (2) Those places are—
  - (a) a place where immigration control is operated, and
  - (b) in a case where the vehicle previously arrived at a place outside the United Kingdom where immigration control is operated and then journeyed to a place in the United Kingdom, that place in the United Kingdom.
- (3) A penalty may be imposed under subsection (1) regardless of whether any person has obtained unauthorised access to the vehicle during its journey to the place mentioned in subsection (2).
- (4) The Secretary of State must specify in regulations for the purposes of subsection (1)—
  - (a) what is meant by a goods vehicle being adequately secured against unauthorised access, and
  - (b) the actions to be taken by each person responsible for a goods vehicle in relation to the securing of the vehicle against unauthorised access.
- (5) The actions that may be specified in regulations under subsection (4)(b) include, in particular—
  - (a) actions in relation to checking a person has not gained unauthorised access to the vehicle,

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- (b) actions in relation to the reporting of any unauthorised access to the vehicle, and
  - (c) actions in relation to the keeping of records to establish that other actions specified in the regulations have been taken.
- (6) Before making regulations under subsection (4), the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (7) In imposing a penalty under subsection (1), the Secretary of State—
  - (a) must specify an amount which does not exceed the maximum prescribed for the purpose of this paragraph,
  - (b) may impose separate penalties on more than one of the persons responsible for a goods vehicle, and
  - (c) may not impose penalties which amount in aggregate to more than the maximum prescribed for the purpose of this paragraph.
- (8) A penalty imposed under subsection (1) must be paid to the Secretary of State before the end of the prescribed period.
- (9) A person is not liable to the imposition of a penalty under subsection (1) if that person's failure to take the actions specified in regulations under subsection (4)(b) was as a result of duress.
- (10) If a penalty is imposed under subsection (1) in relation to the arrival of a goods vehicle in a place outside the United Kingdom where immigration control is operated, a penalty may not be imposed in relation to the vehicle's arrival in the United Kingdom as part of the same journey.
- (11) A penalty may not be imposed on a person under subsection (1) if a penalty is imposed on that person under section 32(2) in respect of the same circumstances.
- (12) Where a penalty is imposed under subsection (1) on a person who is the driver of a goods 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).
- (13) In the case of a detached trailer, subsection (12) has effect as if a reference to the driver were a reference to the operator.
- (14) For the purposes of this section the persons responsible for a goods vehicle are—
  - (a) if the goods vehicle is a detached trailer, the owner, hirer and operator of the trailer, and
  - (b) if it is not, the owner, hirer and driver of the vehicle.
- (15) Where by virtue of subsection (14) a person is responsible for a goods vehicle in more than one capacity, a separate penalty may be imposed on the person under subsection (1) in respect of each capacity.

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- (16) In this section “immigration control” means United Kingdom immigration control and includes any United Kingdom immigration control operated in a prescribed control zone outside the United Kingdom.”
- 4 (1) Section 32 (penalty for carrying clandestine entrants) is amended as follows.
- (2) After subsection (2A) insert—
- “(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) For subsection (4) substitute—
- “(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).”
- (4) After subsection (6A) insert—
- “(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.”
- 5 (1) Section 32A (level of penalty: code of practice) is amended as follows.
- (2) Before subsection (1) insert—
- “(A1) The Secretary of State must issue a code of practice specifying matters to be considered in determining the amount of a penalty under section 31A.

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- (B1) The Secretary of State must have regard to the code (in addition to any other matters the Secretary of State thinks relevant)—
- (a) when imposing a penalty under section 31A, and
  - (b) when considering a notice of objection under section 35(4) in relation to a penalty under section 31A.”
- (3) In subsection (2)(b), after “35(4)” insert “in relation to a penalty under section 32”.
- (4) In subsection (3) for “the code” substitute “a code under this section”.
- (5) In subsection (4) for “the draft code” substitute “a draft code”.
- (6) In subsection (5) for “the code” in the first place it occurs substitute “a code under this section”.
- (7) In subsection (6) for “the code” substitute “a code”.
- 6 Omit section 33 (prevention of clandestine entrants: code of practice).
- 7 (1) Section 34 (defences to claim that penalty is due under section 32) is amended as follows.
- (2) Omit subsection (3).
  - (3) In subsection (3A)—
    - (a) at the end of paragraph (b) insert “and”,
    - (b) for paragraph (c) substitute—
      - “(c) the carrier had taken the actions specified in regulations under subsection (3B) in relation to the securing of the wagon against unauthorised access.”, and
    - (c) omit paragraph (d).
  - (4) After subsection (3A) insert—
 

“(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.”
  - (5) Omit subsection (4).
- 8 (1) Section 35 (procedure for penalties and objections against penalties) is amended as follows.
- (2) Omit subsection (3).

- (3) In subsection (1) after “section” insert “31A or”.
  - (4) In subsection (2)—
    - (a) omit the “and” at the end of paragraph (c), and
    - (b) at the end of paragraph (d) insert “and
    - (e) be issued before the end of such period as may be prescribed.”
  - (5) In subsection (10) after “section” insert “31A or”.
  - (6) In subsection (12)—
    - (a) omit the “or” at the end of paragraph (c), and
    - (b) after paragraph (c) insert—
      - “(ca) by electronic mail, or”.
- 9 (1) Section 35A (appeals) is amended as follows.
- (2) In subsection (1) after “section” insert “31A or”.
  - (3) In subsection (3)—
    - (a) at the end of paragraph (a) insert “and”, and
    - (b) omit paragraph (b) and the “and” at the end of that paragraph.
- 10 (1) Section 36 (power to detain vehicles etc in connection with penalties under section 32) is amended as follows.
- (2) In the heading, after “section” insert “31A or”.
  - (3) In subsection (2A)(a), for “is an employee of its owner or hirer” substitute “drives the vehicle pursuant to a contract (whether or not a contract of employment) with the owner or hirer of the vehicle”.
  - (4) After subsection (2A) insert—
    - “(2AA) In the case of a detached trailer, subsection (2A) has effect as if—
      - (a) a reference to the driver were a reference to the operator, and
      - (b) the reference to driving the vehicle were a reference to operating it.”
  - (5) After subsection (5) insert—
    - “(6) 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.
    - (7) The Secretary of State may by regulations provide that a document issued or served in a manner listed in subsection (6) 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.”
- 11 (1) Section 36A (detention in default of payment) is amended as follows.

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- (2) In subsection (4)(b), for “was an employee of” substitute “drove the vehicle pursuant to a contract (whether or not a contract of employment) with”.
- (3) After subsection (4) insert—
- “(4A) In the case of a detached trailer, subsection (4)(b) has effect as if the reference to driving the vehicle were a reference to operating it.”
- (4) After subsection (6) insert—
- “(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.”
- 12 (1) Section 43 (interpretation of Part 2) is amended as follows.
- (2) In subsection (1)—
- (a) at the appropriate place insert—
- ““goods vehicle” means—
- (a) a mechanically propelled vehicle which—
- (i) is designed or adapted solely or principally to be used for the carriage or haulage of goods, and
- (ii) at the time in question, is being used for a commercial purpose, or
- (b) any trailer, semi-trailer or other thing which—
- (i) is designed or adapted to be towed by a vehicle within paragraph (a)(i), and
- (ii) at the time in question, is being used for a commercial purpose;”, and
- (b) in the definition of “transporter” after “vehicle” insert “(including a goods vehicle)”.

(3) After subsection (1) insert—

“(1A) References in this Part to the securing of a goods vehicle against unauthorised access include references to the securing of any container which is being carried by a goods vehicle against unauthorised access.

(1B) In subsection (1A) “container” means any container or other thing which is designed or adapted to be carried by a goods vehicle.”