



# Nationality, Immigration and Asylum Act 2002

## 2002 CHAPTER 41

### PART 4

#### DETENTION AND REMOVAL

##### *Detention*

#### **62 Detention by Secretary of State**

- (1) A person may be detained under the authority of the Secretary of State pending—
  - (a) a decision by the Secretary of State whether to give directions in respect of the person under paragraph 10, 10A or 14 of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry: removal), or
  - (b) removal of the person from the United Kingdom in pursuance of directions given by the Secretary of State under any of those paragraphs.
- (2) Where the Secretary of State is empowered under section 3A of that Act (powers of Secretary of State) to examine a person or to give or refuse a person leave to enter the United Kingdom, the person may be detained under the authority of the Secretary of State pending—
  - (a) the person's examination by the Secretary of State,
  - (b) the Secretary of State's decision to give or refuse the person leave to enter,
  - (c) a decision by the Secretary of State whether to give directions in respect of the person under paragraph 8 or 9 of Schedule 2 to that Act (removal), or
  - (d) removal of the person in pursuance of directions given by the Secretary of State under either of those paragraphs.
- (3) A provision of Schedule 2 to that Act about a person who is detained or liable to detention under that Schedule shall apply to a person who is detained or liable to detention under this section: and for that purpose—

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- (a) a reference to paragraph 16 of that Schedule shall be taken to include a reference to this section,
  - (b) a reference in paragraph 21 of that Schedule to an immigration officer shall be taken to include a reference to the Secretary of State, and
  - (c) a reference to detention under that Schedule or under a provision or Part of that Schedule shall be taken to include a reference to detention under this section.
- (4) In the case of a restriction imposed under paragraph 21 of that Schedule by virtue of this section—
- (a) a restriction imposed by an immigration officer may be varied by the Secretary of State, and
  - (b) a restriction imposed by the Secretary of State may be varied by an immigration officer.
- (5) In subsection (1) the reference to paragraph 10 of that Schedule includes a reference to that paragraph as applied by virtue of section 10 of the Immigration and Asylum Act 1999 (c. 33) (persons unlawfully in United Kingdom: removal).
- (6) Subsection (5) is without prejudice to the generality of section 159.
- (7) A power under this section which is exercisable pending a decision of a particular kind by the Secretary of State is exercisable where the Secretary of State has reasonable grounds to suspect that he may make a decision of that kind.
- (8) At the end of section 11(1) of the Immigration Act 1971 (c. 77) (person not deemed to have entered United Kingdom while detained, &c.) there shall be inserted “or section 62 of the Nationality, Immigration and Asylum Act 2002”.
- (9) In section 24(1)(e) of the Immigration Act 1971 (offence: failure to comply with restriction) for “or to an immigration officer” there shall be substituted “, to an immigration officer or to the Secretary of State”.
- (10) In the Mental Health Act 1983 (c. 20)—
- (a) at the end of section 48(2)(d) (detained persons susceptible to transfer for mental treatment: immigration) there shall be added “or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State)”, and
  - (b) in the heading of section 53 (supplemental provision) the reference to the Immigration Act 1971 becomes a reference to the Immigration Acts.
- (11) In the Mental Health (Scotland) Act 1984 (c. 36)—
- (a) at the end of section 71(2)(c) (detained persons who may be transferred to hospital for mental treatment) there shall be added “or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by the Secretary of State)”, and
  - (b) at the end of section 74(1)(b) (further provision about such persons) there shall be added “or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by the Secretary of State)”.
- (12) In the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4))—
- (a) at the end of Article 54(2)(d) (detained persons susceptible to transfer for mental treatment: immigration) there shall be added “or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State)”, and

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- (b) in the heading of Article 59 (supplemental provision) the reference to the Immigration Act 1971 becomes a reference to the Immigration Acts.
- (13) Section 53 of the Immigration and Asylum Act 1999 (c. 33) (bail) shall be amended as follows—
- (a) at the end of subsection (1) add “or under section 62 of the Nationality, Immigration and Asylum Act 2002”, and
- (b) at the end of subsection (3)(a) add “or under section 62 of the Nationality, Immigration and Asylum Act 2002”.
- (14) In section 147 of that Act (detention centres: interpretation) at the end of the definition of “detained persons” there shall be inserted “or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State);”.
- (15) Section 23(2) of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (detention of suspected international terrorist) shall be amended as follows—
- (a) omit “and” after paragraph (a), and
- (b) after paragraph (b) add—
- “, and
- (c) section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State).”
- (16) In section 24(1) of that Act (bail) after “the Immigration Act 1971” insert “, or under section 62 of the Nationality, Immigration and Asylum Act 2002,”.

### **63 Control of entry to United Kingdom, &c.: use of force**

In paragraph 17(2) of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry, &c.: person liable to detention: use of force) for “if need be by force” there shall be substituted “if need be by reasonable force”.

### **64 Escorts**

The following shall be added after paragraph 17(2) of Schedule 2 to the Immigration Act 1971 (detention for examination or removal: right to enter premises)—

- “(3) Sub-paragraph (4) applies where an immigration officer or constable—
- (a) enters premises in reliance on a warrant under sub-paragraph (2), and
- (b) detains a person on the premises.
- (4) A detainee custody officer may enter the premises, if need be by reasonable force, for the purpose of carrying out a search.
- (5) In sub-paragraph (4)—
- “detainee custody officer” means a person in respect of whom a certificate of authorisation is in force under section 154 of the Immigration and Asylum Act 1999 (c. 33) (detained persons: escort and custody), and
- “search” means a search under paragraph 2(1)(a) of Schedule 13 to that Act (escort arrangements: power to search detained person).”

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## 65 Detention centres: custodial functions

- (1) The following shall be substituted for section 154(5) of the Immigration and Asylum Act 1999 (power to confer functions of detainee custody officers on prison officers and prisoner custody officers)—

“(5) The Secretary of State may confer functions of detainee custody officers on prison officers or prisoner custody officers.”

- (2) The following shall be added at the end of Schedule 11 to that Act (detainee custody officers)—

*“Prison officers and prisoner custody officers*

8 A reference in this Schedule to a detainee custody officer includes a reference to a prison officer or prisoner custody officer exercising custodial functions.”

- (3) The following shall be added at the end of Schedule 12 to that Act (discipline at detention centre)—

*“Prison officers and prisoner custody officers*

9 A reference in this Schedule to a detainee custody officer includes a reference to a prison officer or prisoner custody officer exercising custodial functions.”

## 66 Detention centres: change of name

- (1) In section 147 of the Immigration and Asylum Act 1999 (c. 33) (Part VIII: interpretation)—

- (a) the definition of “detention centre” shall cease to have effect, and  
 (b) the following shall be inserted after the definition of “prisoner custody officer”—

““removal centre” means a place which is used solely for the detention of detained persons but which is not a short-term holding facility, a prison or part of a prison;”.

- (2) In the provisions listed in subsection (3) (and any relevant headings)—

- (a) for the words “detention centre” there shall be substituted the words “removal centre”, and  
 (b) for the words “detention centres” there shall be substituted the words “removal centres”.

- (3) The provisions are—

- (a) in section 147 of the Immigration and Asylum Act 1999 (Part VIII: interpretation), the definitions of “contracted out detention centre”, “contractor”, “custodial functions”, “detention centre contract”, “detention centre rules”, and “directly managed detention centre”,  
 (b) section 148 of that Act (management of centre),  
 (c) sections 149 and 150 of that Act (contracting out),  
 (d) section 151 of that Act (intervention by Secretary of State),

- (e) section 152 of that Act (visiting committee),
  - (f) section 153 of that Act (rules),
  - (g) section 155 of that Act (custodial functions),
  - (h) section 157 of that Act (short-term holding facility),
  - (i) section 158 of that Act (disclosure of information),
  - (j) section 159 of that Act (power of constable),
  - (k) Schedule 11 to that Act (detainee custody officer),
  - (l) Schedule 12 to that Act (procedure at detention centre),
  - (m) Schedule 13 to that Act (escort),
  - (n) section 141(5)(e) and (6) of that Act (fingerprinting),
  - (o) section 5A(5A) of the Prison Act 1952 (c. 52) (Chief Inspector of Prisons), and
  - (p) paragraph 13 of Schedule 4A to the Water Industry Act 1991 (c. 56) (disconnection).
- (4) A reference in an enactment or instrument to a detention centre within the meaning of Part VIII of the Immigration and Asylum Act 1999 (c. 33) shall be construed as a reference to a removal centre within the meaning of that Part.

## **67 Construction of reference to person liable to detention**

- (1) This section applies to the construction of a provision which—
- (a) does not confer power to detain a person, but
  - (b) refers (in any terms) to a person who is liable to detention under a provision of the Immigration Acts.
- (2) The reference shall be taken to include a person if the only reason why he cannot be detained under the provision is that—
- (a) he cannot presently be removed from the United Kingdom, because of a legal impediment connected with the United Kingdom's obligations under an international agreement,
  - (b) practical difficulties are impeding or delaying the making of arrangements for his removal from the United Kingdom, or
  - (c) practical difficulties, or demands on administrative resources, are impeding or delaying the taking of a decision in respect of him.
- (3) This section shall be treated as always having had effect.

### *Temporary release*

## **68 Bail**

- (1) This section applies in a case where an immigration officer not below the rank of chief immigration officer has sole or shared power to release a person on bail in accordance with—
- (a) a provision of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry) (including a provision of that Schedule applied by a provision of that Act or by another enactment), or
  - (b) section 9A of the Asylum and Immigration Appeals Act 1993 (c. 23) (pending appeal from Immigration Appeal Tribunal).

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- (2) In respect of an application for release on bail which is instituted after the expiry of the period of eight days beginning with the day on which detention commences, the power to release on bail—
- (a) shall be exercisable by the Secretary of State (as well as by any person with whom the immigration officer’s power is shared under the provision referred to in subsection (1)), and
  - (b) shall not be exercisable by an immigration officer (except where he acts on behalf of the Secretary of State).
- (3) In relation to the exercise by the Secretary of State of a power to release a person on bail by virtue of subsection (2), a reference to an immigration officer shall be construed as a reference to the Secretary of State.
- (4) The Secretary of State may by order amend or replace subsection (2) so as to make different provision for the circumstances in which the power to release on bail may be exercised by the Secretary of State and not by an immigration officer.
- (5) An order under subsection (4)—
- (a) may include consequential or transitional provision,
  - (b) must be made by statutory instrument, and
  - (c) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (6) The following provisions of Part III of the Immigration and Asylum Act 1999 (c. 33) (Bail) shall cease to have effect—
- (a) sections 44 to 52 (routine bail hearings),
  - (b) section 53(5) (bail under regulations to match bail under Part III), and
  - (c) section 55 (grants to advisory organisations).

## **69 Reporting restriction: travel expenses**

- (1) The Secretary of State may make a payment to a person in respect of travelling expenses which the person has incurred or will incur for the purpose of complying with a reporting restriction.
- (2) In subsection (1) “reporting restriction” means a restriction which—
- (a) requires a person to report to the police, an immigration officer or the Secretary of State, and
  - (b) is imposed under a provision listed in subsection (3).
- (3) Those provisions are—
- (a) paragraph 21 of Schedule 2 to the Immigration Act 1971 (c. 77) (temporary admission or release from detention),
  - (b) paragraph 29 of that Schedule (bail), and
  - (c) paragraph 2 or 5 of Schedule 3 to that Act (pending deportation).

## **70 Induction**

- (1) A residence restriction may be imposed on an asylum-seeker or a dependant of an asylum-seeker without regard to his personal circumstances if—

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- (a) it requires him to reside at a specified location for a period not exceeding 14 days, and
  - (b) the person imposing the residence restriction believes that a programme of induction will be made available to the asylum-seeker at or near the specified location.
- (2) In subsection (1) “residence restriction” means a restriction imposed under—
- (a) paragraph 21 of Schedule 2 to the Immigration Act 1971 (temporary admission or release from detention), or
  - (b) paragraph 2(5) of Schedule 3 to that Act (control pending deportation).
- (3) In this section—
- “asylum-seeker” has the meaning given by section 18 of this Act but disregarding section 18(1)(a),
- “dependant of an asylum-seeker” means a person who appears to the Secretary of State to be making a claim or application in respect of residence in the United Kingdom by virtue of being a dependant of an asylum-seeker, and
- “programme of induction” means education about the nature of the asylum process.
- (4) Regulations under subsection (3)—
- (a) may make different provision for different circumstances,
  - (b) must be made by statutory instrument, and
  - (c) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Subsection (6) applies where the Secretary of State arranges for the provision of a programme of induction (whether or not he also provides other facilities to persons attending the programme and whether or not all the persons attending the programme are subject to residence restrictions).
- (6) A local authority may arrange for or participate in the provision of the programme or other facilities.
- (7) In particular, a local authority may—
- (a) incur reasonable expenditure;
  - (b) provide services outside its area;
  - (c) provide services jointly with another body;
  - (d) form a company;
  - (e) tender for or enter into a contract;
  - (f) do anything (including anything listed in paragraphs (a) to (e)) for a preparatory purpose.
- (8) In this section “local authority” means—
- (a) a local authority within the meaning of section 94 of the Immigration and Asylum Act 1999 (c. 33), and
  - (b) a Northern Ireland authority within the meaning of section 110 of that Act.

## **71 Asylum-seeker: residence, &c. restriction**

- (1) This section applies to—



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- (a) a person who makes a claim for asylum at a time when he has leave to enter or remain in the United Kingdom, and
  - (b) a dependant of a person within paragraph (a).
- (2) The Secretary of State or an immigration officer may impose on a person to whom this section applies any restriction which may be imposed under paragraph 21 of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry: residence, reporting and occupation restrictions) on a person liable to detention under paragraph 16 of that Schedule.
- (3) Where a restriction is imposed on a person under subsection (2)—
- (a) the restriction shall be treated for all purposes as a restriction imposed under paragraph 21 of that Schedule, and
  - (b) if the person fails to comply with the restriction he shall be liable to detention under paragraph 16 of that Schedule.
- (4) A restriction imposed on a person under this section shall cease to have effect if he ceases to be an asylum-seeker or the dependant of an asylum-seeker.
- (5) In this section—
- “asylum-seeker” has the same meaning as in section 70,
  - “claim for asylum” has the same meaning as in section 18, and
  - “dependant” means a person who appears to the Secretary of State to be making a claim or application in respect of residence in the United Kingdom by virtue of being a dependant of another person.
- (6) Regulations under subsection (5)—
- (a) may make different provision for different circumstances,
  - (b) must be made by statutory instrument, and
  - (c) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### *Removal*

## 72 **Serious criminal**

- (1) This section applies for the purpose of the construction and application of Article 33(2) of the Refugee Convention (exclusion from protection).
- (2) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if he is—
- (a) convicted in the United Kingdom of an offence, and
  - (b) sentenced to a period of imprisonment of at least two years.
- (3) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if—
- (a) he is convicted outside the United Kingdom of an offence,
  - (b) he is sentenced to a period of imprisonment of at least two years, and



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- (c) he could have been sentenced to a period of imprisonment of at least two years had his conviction been a conviction in the United Kingdom of a similar offence.
- (4) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if—
- (a) he is convicted of an offence specified by order of the Secretary of State, or
  - (b) he is convicted outside the United Kingdom of an offence and the Secretary of State certifies that in his opinion the offence is similar to an offence specified by order under paragraph (a).
- (5) An order under subsection (4)—
- (a) must be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) A presumption under subsection (2), (3) or (4) that a person constitutes a danger to the community is rebuttable by that person.
- (7) A presumption under subsection (2), (3) or (4) does not apply while an appeal against conviction or sentence—
- (a) is pending, or
  - (b) could be brought (disregarding the possibility of appeal out of time with leave).
- (8) Section 34(1) of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (no need to consider gravity of fear or threat of persecution) applies for the purpose of considering whether a presumption mentioned in subsection (6) has been rebutted as it applies for the purpose of considering whether Article 33(2) of the Refugee Convention applies.
- (9) Subsection (10) applies where—
- (a) a person appeals under section 82, 83 or 101 of this Act or under section 2 of the Special Immigration Appeals Commission Act 1997 (c. 68) wholly or partly on the ground that to remove him from or to require him to leave the United Kingdom would breach the United Kingdom’s obligations under the Refugee Convention, and
  - (b) the Secretary of State issues a certificate that presumptions under subsection (2), (3) or (4) apply to the person (subject to rebuttal).
- (10) The adjudicator, Tribunal or Commission hearing the appeal—
- (a) must begin substantive deliberation on the appeal by considering the certificate, and
  - (b) if in agreement that presumptions under subsection (2), (3) or (4) apply (having given the appellant an opportunity for rebuttal) must dismiss the appeal in so far as it relies on the ground specified in subsection (9)(a).
- (11) For the purposes of this section—
- (a) “the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol, and
  - (b) a reference to a person who is sentenced to a period of imprisonment of at least two years—

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- (i) does not include a reference to a person who receives a suspended sentence (unless at least two years of the sentence are not suspended),
- (ii) includes a reference to a person who is sentenced to detention, or ordered or directed to be detained, in an institution other than a prison (including, in particular, a hospital or an institution for young offenders), and
- (iii) includes a reference to a person who is sentenced to imprisonment or detention, or ordered or directed to be detained, for an indeterminate period (provided that it may last for two years).

### 73 Family

- (1) The following shall be inserted after paragraph 10 of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry: removal)—

“10A Where directions are given in respect of a person under any of paragraphs 8 to 10 above, directions to the same effect may be given under that paragraph in respect of a member of the person’s family.”

- (2) Section 10 of the Immigration and Asylum Act 1999 (c. 33) (removal of person unlawfully in United Kingdom) shall be amended as follows.

- (3) In subsection (1)(c) omit—

- (a) “(“the first directions””, and
- (b) “(“the other person””.

- (4) The following shall be substituted for subsections (3) to (5) (removal of family)—

“(3) Directions for the removal of a person may not be given under subsection (1) (c) unless the Secretary of State has given the person written notice of the intention to remove him.

- (4) A notice under subsection (3) may not be given if—

- (a) the person whose removal under subsection (1)(a) or (b) is the cause of the proposed directions under subsection (1)(c) has left the United Kingdom, and
- (b) more than eight weeks have elapsed since that person’s departure.

(5) If a notice under subsection (3) is sent by first class post to a person’s last known address, that subsection shall be taken to be satisfied at the end of the second day after the day of posting.

(5A) Directions for the removal of a person under subsection (1)(c) cease to have effect if he ceases to belong to the family of the person whose removal under subsection (1)(a) or (b) is the cause of the directions under subsection (1)(c).”

- (5) In paragraph 16(2) of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry, &c.: detention) for the words “8 to 10” there shall be substituted “8 to 10A”.

### 74 Deception

In section 10(1) of the Immigration and Asylum Act 1999 (c. 33) (removal) the following shall be substituted for paragraph (b)—

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“(b) he uses deception in seeking (whether successfully or not) leave to remain;”.

## **75 Exemption from deportation**

- (1) Section 7 of the Immigration Act 1971 (existing residents exempt from deportation) shall be amended as follows.
- (2) Subsection (1)(a) (which is redundant) shall cease to have effect.
- (3) The following shall be substituted for subsection (1)(b)—
  - “(b) shall not be liable to deportation under section 3(5) if at the time of the Secretary of State’s decision he had for the last five years been ordinarily resident in the United Kingdom and Islands;”.
- (4) The following shall be added at the end of section 10 of the Immigration and Asylum Act 1999 (removal)—
  - “(10) A person shall not be liable to removal from the United Kingdom under this section at a time when section 7(1)(b) of the Immigration Act 1971 (Commonwealth and Irish citizens ordinarily resident in United Kingdom) would prevent a decision to deport him.”

## **76 Revocation of leave to enter or remain**

- (1) The Secretary of State may revoke a person’s indefinite leave to enter or remain in the United Kingdom if the person—
  - (a) is liable to deportation, but
  - (b) cannot be deported for legal reasons.
- (2) The Secretary of State may revoke a person’s indefinite leave to enter or remain in the United Kingdom if—
  - (a) the leave was obtained by deception,
  - (b) the person would be liable to removal because of the deception, but
  - (c) the person cannot be removed for legal or practical reasons.
- (3) The Secretary of State may revoke a person’s indefinite leave to enter or remain in the United Kingdom if the person, or someone of whom he is a dependant, ceases to be a refugee as a result of—
  - (a) voluntarily availing himself of the protection of his country of nationality,
  - (b) voluntarily re-acquiring a lost nationality,
  - (c) acquiring the nationality of a country other than the United Kingdom and availing himself of its protection, or
  - (d) voluntarily establishing himself in a country in respect of which he was a refugee.
- (4) In this section—
  - “indefinite leave” has the meaning given by section 33(1) of the Immigration Act 1971 (c. 77) (interpretation),
  - “liable to deportation” has the meaning given by section 3(5) and (6) of that Act (deportation),

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“refugee” has the meaning given by the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol, and

“removed” means removed from the United Kingdom under—

- (a) paragraph 9 or 10 of Schedule 2 to the Immigration Act 1971 (control of entry: directions for removal), or
  - (b) section 10(1)(b) of the Immigration and Asylum Act 1999 (c. 33) (removal of persons unlawfully in United Kingdom: deception).
- (5) A power under subsection (1) or (2) to revoke leave may be exercised—
- (a) in respect of leave granted before this section comes into force;
  - (b) in reliance on anything done before this section comes into force.
- (6) A power under subsection (3) to revoke leave may be exercised—
- (a) in respect of leave granted before this section comes into force, but
  - (b) only in reliance on action taken after this section comes into force.
- (7) In section 10(1) of the Immigration and Asylum Act 1999 (removal of persons unlawfully in United Kingdom) after paragraph (b) (and before the word “or”) there shall be inserted—
- “(ba) his indefinite leave to enter or remain has been revoked under section 76(3) of the Nationality, Immigration and Asylum Act 2002 (person ceasing to be refugee);”.

## **77 No removal while claim for asylum pending**

- (1) While a person’s claim for asylum is pending he may not be—
- (a) removed from the United Kingdom in accordance with a provision of the Immigration Acts, or
  - (b) required to leave the United Kingdom in accordance with a provision of the Immigration Acts.
- (2) In this section—
- (a) “claim for asylum” means a claim by a person that it would be contrary to the United Kingdom’s obligations under the Refugee Convention to remove him from or require him to leave the United Kingdom, and
  - (b) a person’s claim is pending until he is given notice of the Secretary of State’s decision on it.
- (3) In subsection (2) “the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol.
- (4) Nothing in this section shall prevent any of the following while a claim for asylum is pending—
- (a) the giving of a direction for the claimant’s removal from the United Kingdom,
  - (b) the making of a deportation order in respect of the claimant, or
  - (c) the taking of any other interim or preparatory action.
- (5) Section 15 of the Immigration and Asylum Act 1999 (c. 33) (protection from removal or deportation) shall cease to have effect.

## **78 No removal while appeal pending**

- (1) While a person's appeal under section 82(1) is pending he may not be—
  - (a) removed from the United Kingdom in accordance with a provision of the Immigration Acts, or
  - (b) required to leave the United Kingdom in accordance with a provision of the Immigration Acts.
- (2) In this section “pending” has the meaning given by section 104.
- (3) Nothing in this section shall prevent any of the following while an appeal is pending—
  - (a) the giving of a direction for the appellant's removal from the United Kingdom,
  - (b) the making of a deportation order in respect of the appellant (subject to section 79), or
  - (c) the taking of any other interim or preparatory action.
- (4) This section applies only to an appeal brought while the appellant is in the United Kingdom in accordance with section 92.

## **79 Deportation order: appeal**

- (1) A deportation order may not be made in respect of a person while an appeal under section 82(1) against the decision to make the order—
  - (a) could be brought (ignoring any possibility of an appeal out of time with permission), or
  - (b) is pending.
- (2) In this section “pending” has the meaning given by section 104.

## **80 Removal of asylum-seeker to third country**

The following shall be substituted for section 11 of the Immigration and Asylum Act 1999 (c. 33) (removal of asylum claimant under standing arrangements with member States)—

### **“11 Removal of asylum claimant under standing arrangement with member States**

- (1) In determining whether a person in relation to whom a certificate has been issued under subsection (2) may be removed from the United Kingdom, a member State is to be regarded as—
  - (a) a place where a person's life and liberty is not threatened by reason of his race, religion, nationality, membership of a particular social group, or political opinion; and
  - (b) a place from which a person will not be sent to another country otherwise than in accordance with the Refugee Convention.
- (2) Nothing in section 77 of the Nationality, Immigration and Asylum Act 2002 prevents a person who has made a claim for asylum (“the claimant”) from being removed from the United Kingdom to a member State if the Secretary of State has certified that—
  - (a) the member State has accepted that, under standing arrangements, it is the responsible State in relation to the claimant's claim for asylum; and

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*Status: This is the original version (as it was originally enacted).*

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- (b) in his opinion, the claimant is not a national or citizen of the member State to which he is to be sent.
- (3) Subsection (4) applies where a person who is the subject of a certificate under subsection (2)—
  - (a) has instituted or could institute an appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 (immigration appeal), and
  - (b) has made a human rights claim (within the meaning of section 113 of that Act).
- (4) The person may not be removed from the United Kingdom in reliance upon this section unless—
  - (a) the appeal is finally determined, withdrawn or abandoned (within the meaning of section 104 of that Act) or can no longer be brought (ignoring any possibility of an appeal out of time with permission), or
  - (b) the Secretary of State has issued a certificate in relation to the human rights claim under section 93(2)(b) of that Act (clearly unfounded claim).
- (5) In this section “standing arrangements” means arrangements in force between two or more member States for determining which State is responsible for considering applications for asylum.”