

These notes refer to the Nationality, Immigration and Asylum Act 2002 (c.41) which received Royal Assent on 7 November 2002

NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Detention and Removal

Removal

Section 72: Serious criminal

198. Article 33(1) of the Refugee Convention. prevents a refugee being returned to a place where their life or freedom is threatened. Article 33(1) does not apply where the refugee has been convicted of a particularly serious crime and is a danger to the community, by virtue of Article 33(2). The section provides that where a person is convicted in the United Kingdom of an offence and sentenced to a period of imprisonment of at least two years, or of an offence specified by order made by the Secretary of State, he will be presumed to have been convicted of a particularly serious crime and to be a danger to the community. Provision is made for convictions for offences outside the United Kingdom. A person may rebut the presumption that they have committed a particularly serious crime and are a danger to the community.
199. Subsection (8) provides that the dangers a person may face if removed are not relevant to a consideration of whether the Article 33(2) presumption established by this section applies. Subsection (10) provides that where the Secretary of State has issued a certificate that the presumption applies an adjudicator, the Tribunal or the Special Immigration Appeals Commission must begin its substantive consideration of an appeal by looking at the certificate. If the appellate body agrees that the presumptions apply, having given opportunity for rebuttal, it must dismiss that part of the appeal which relates to removal being contrary to the Refugee Convention.