



# UK Borders Act 2007

## 2007 CHAPTER 30

### *Deportation of criminals*

#### **33 Exceptions**

- (1) Section 32(4) and (5)—
  - (a) do not apply where an exception in this section applies (subject to subsection (7) below), and
  - (b) are subject to sections 7 and 8 of the Immigration Act 1971 (Commonwealth citizens, Irish citizens, crew and other exemptions).
- (2) Exception 1 is where removal of the foreign criminal in pursuance of the deportation order would breach—
  - (a) a person's Convention rights, or
  - (b) the United Kingdom's obligations under the Refugee Convention.
- (3) Exception 2 is where the Secretary of State thinks that the foreign criminal was under the age of 18 on the date of conviction.
- <sup>F1</sup>(4) .....
- (5) Exception 4 is where the foreign criminal—
  - (a) is the subject of a certificate under section 2 or 70 of the Extradition Act 2003 (c. 41),
  - (b) is in custody pursuant to arrest under section 5 of that Act,
  - (c) is the subject of a provisional warrant under section 73 of that Act,
  - <sup>F2</sup>(ca) is the subject of a certificate under section 74B of that Act,]
  - (d) is the subject of an authority to proceed under section 7 of the Extradition Act 1989 (c. 33) or an order under paragraph 4(2) of Schedule 1 to that Act, or
  - (e) is the subject of a provisional warrant under section 8 of that Act or of a warrant under paragraph 5(1)(b) of Schedule 1 to that Act.
- (6) Exception 5 is where any of the following has effect in respect of the foreign criminal—

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- (a) a hospital order or guardianship order under section 37 of the Mental Health Act 1983 (c. 20),
- (b) a hospital direction under section 45A of that Act,
- (c) a transfer direction under section 47 of that Act,
- (d) a compulsion order under section 57A of the Criminal Procedure (Scotland) Act 1995 (c. 46),
- (e) a guardianship order under section 58 of that Act,
- (f) a hospital direction under section 59A of that Act,
- (g) a transfer for treatment direction under section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), or
- (h) an order or direction under a provision which corresponds to a provision specified in paragraphs (a) to (g) and which has effect in relation to Northern Ireland.

[<sup>F3</sup>(6A) Exception 6 is where the Secretary of State thinks that the application of section 32(4) and (5) would contravene the United Kingdom's obligations under the Council of Europe Convention on Action against Trafficking in Human Beings (done at Warsaw on 16th May 2005).]

[<sup>F4</sup>(6B) Exception 7 is where—

- (a) the foreign criminal is a relevant person, and
- (b) the offence for which the foreign criminal was convicted as mentioned in section 32(1)(b) consisted of or included conduct that took place before IP completion day.

(6C) For the purposes of subsection (6B), a foreign criminal is a “relevant person”—

- (a) if the foreign criminal is in the United Kingdom (whether or not they have entered within the meaning of section 11(1) of the Immigration Act 1971) having arrived with entry clearance granted by virtue of relevant entry clearance immigration rules,
- (b) if the foreign criminal has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules,
- [<sup>F5</sup>(ba) if the person is in the United Kingdom (whether or not they have entered within the meaning of section 11(1) of the Immigration Act 1971) having arrived with entry clearance granted by virtue of Article 23 of the Swiss citizens' rights agreement,]
- (c) if the foreign criminal may be granted leave to enter or remain in the United Kingdom as a person who has a right to enter the United Kingdom by virtue of—
  - (i) Article 32(1)(b) of the EU withdrawal agreement,
  - (ii) Article 31(1)(b) of the EEA EFTA separation agreement, or
  - (iii) Article 26a(1)(b) of the Swiss citizens' rights agreement,
 whether or not the foreign criminal has been granted such leave, or
- (d) if the foreign criminal may enter the United Kingdom by virtue of regulations made under section 8 of the European Union (Withdrawal Agreement) Act 2020 (frontier workers), whether or not the foreign criminal has entered by virtue of those regulations.

(6D) In this section—

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“EEA EFTA separation agreement” and “Swiss citizens' rights agreement” have the same meanings as in the European Union (Withdrawal Agreement) Act 2020 (see section 39(1) of that Act);

“relevant entry clearance immigration rules” and “residence scheme immigration rules” have the meanings given by section 17 of the European Union (Withdrawal Agreement) Act 2020.]

(7) The application of an exception—

- (a) does not prevent the making of a deportation order;
  - (b) results in it being assumed neither that deportation of the person concerned is conducive to the public good nor that it is not conducive to the public good;
- but section 32(4) applies despite the application of Exception 1 or 4.

#### Textual Amendments

- F1** S. 33(4) omitted (31.12.2020) by virtue of [The Immigration and Social Security Co-ordination \(EU Withdrawal\) Act 2020 \(Consequential, Saving, Transitional and Transitory Provisions\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1309\)](#), regs. 1(2), **17(2)**
- F2** S. 33(5)(ca) inserted (31.12.2020) by [Extradition \(Provisional Arrest\) Act 2020 \(c. 18\)](#), s. 2(4), **Sch. para. 29**; S.I. 2020/1652, reg. 2(1)(b)
- F3** S. 33(6A) inserted (1.4.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), **ss. 146**, 153(7); S.I. 2009/860, art. 2(1)(d)
- F4** S. 33(6B)-(6D) inserted (31.1.2020) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\)](#), **ss. 10(5)**, 42(7) (with **ss. 10(6)**, 38(3), **Sch. 5** para. 63(3)); S.I. 2020/75, reg. 4(e)
- F5** S. 33(6C)(ba) inserted (31.12.2020) by [The Citizens' Rights \(Restrictions of Rights of Entry and Residence\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1210\)](#), regs. 1(1), **4(2)**; S.I. 2020/1279, reg. 4(a)

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

- C1** S. 33 applied (with modifications) (31.12.2020) by [The Citizens' Rights \(Application Deadline and Temporary Protection\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1209\)](#), regs. 1(1), **3(4)**, 4(5), 12(1)(m)

#### Commencement Information

- I1** S. 33 in force at 1.8.2008 for specified purposes by [S.I. 2008/1818](#), art. 2(a), **Sch.**

**Changes to legislation:**

There are currently no known outstanding effects for the UK Borders Act 2007, Section 33.