



# Nationality, Immigration and Asylum Act 2002

## 2002 CHAPTER 41

### PART 4

#### DETENTION AND REMOVAL

##### *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
  - (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

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- (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 <sup>F1</sup>... of this Act or under section 2 of the Special Immigration Appeals Commission Act 1997 (c. 68) wholly or partly on the ground [<sup>F2</sup>mentioned in section 84(1)(a) or (3)(a) of this Act (breach of 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 <sup>F3</sup>... 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).
- [<sup>F4</sup>(10A) Subsection (10) also applies in relation to the Upper Tribunal when it acts under section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007.]
- (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—
    - (i) does not include a reference to a person who receives a suspended sentence [<sup>F5</sup>(unless a court subsequently orders that the sentence or any part of it is to take effect)] ,
    - [<sup>F6</sup>(ia) does not include a reference to a person who is sentenced to a period of imprisonment of at least two years only by virtue of being sentenced to consecutive sentences which amount in aggregate to more than two years,]

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- (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).

#### Textual Amendments

- F1** Words in s. 72(9)(a) omitted (20.10.2014) by virtue of [Immigration Act 2014 \(c. 22\)](#), s. 75(3), [Sch. 9 para. 31\(a\)](#); [S.I. 2014/2771](#), art. 2(e) (with arts. 9-11) (as amended (2.3.2015 and 6.4.2015) by [S.I. 2015/371](#), arts. 1(2)(3), 7, 8; and with transitional provisions and savings in [S.I. 2014/2928](#), art. 2 (which S.I. is revoked (6.4.2015) by [S.I. 2015/371](#), arts. 1(3), 9))
- F2** Words in s. 72(9)(a) substituted (20.10.2014) by [Immigration Act 2014 \(c. 22\)](#), s. 75(3), [Sch. 9 para. 31\(b\)](#); [S.I. 2014/2771](#), art. 2(e) (with arts. 9-11) (as amended (2.3.2015 and 6.4.2015) by [S.I. 2015/371](#), arts. 1(2)(3), 7, 8; and with transitional provisions and savings in [S.I. 2014/2928](#), art. 2 (which S.I. is revoked (6.4.2015) by [S.I. 2015/371](#), arts. 1(3), 9))
- F3** Word in s. 72(10) omitted (4.4.2005) by virtue of [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), ss. 26, 48(1)-(3), [Sch. 2 para. 17](#); [S.I. 2005/565](#), art. 2 (with savings in arts. 3-9)
- F4** S. 72(10A) inserted (15.2.2010) by [The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 \(S.I. 2010/21\)](#), art. 1, [Sch. 1 para. 21](#) (with Sch. 4)
- F5** Words in s. 72(11)(b)(i) substituted (1.8.2008) by [UK Borders Act 2007 \(c. 30\)](#), ss. 39(2), 59(2); [S.I. 2008/1818](#), art. 2(b)
- F6** S. 72(11)(b)(ia) inserted (1.8.2008) by [UK Borders Act 2007 \(c. 30\)](#), ss. 39(3), 59(2); [S.I. 2008/1818](#), art. 2(b)

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

- C1** S. 72 applied (with modifications) (31.1.2020) by [The Immigration \(Citizens Rights Appeals\) \(EU Exit\) Regulations 2020 \(S.I. 2020/61\)](#), reg. 1(2), [Sch. 2 paras. 1-3](#)
- C2** S. 72(10)(a) restricted (31.8.2006) by [Immigration, Asylum and Nationality Act 2006 \(c. 13\)](#), ss. 55(3) (5), 62; [S.I. 2006/2226](#), art. 3, Sch. 1 (subject to transitional provisions in art. 4)

#### Commencement Information

- I1** S. 72 wholly in force at 1.4.2003; s. 72 not in force at Royal Assent see s. 162(2); s. 72(1)-(8)(11) in force at 10.2.2003 by [S.I. 2003/1](#), art. 2, Sch.; s. 72(9)(10) in force at 1.4.2003 by [S.I. 2003/754](#), art. 2, Sch. 1

## 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.”

<sup>F7</sup>(2) .....

<sup>F7</sup>(3) .....

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<sup>F7</sup>(4) .....

(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 ”.

**Textual Amendments**

**F7** S. 73(2)-(4) repealed (20.10.2014) by [Immigration Act 2014 \(c. 22\)](#), s. 75(3), [Sch. 9 para. 7](#) table; [S.I. 2014/2771](#), art. 2(e) (with arts. 9-11) (as amended (2.3.2015 and 6.4.2015) by [S.I. 2015/371](#), arts. 1(2) (3), 7, 8; and with transitional provisions and savings in [S.I. 2014/2928](#), art. 2 (which S.I. is revoked (6.4.2015) by [S.I. 2015/371](#), arts. 1(3), 9))

**<sup>F8</sup>74 Deception**

.....

**Textual Amendments**

**F8** S. 74 repealed (20.10.2014) by [Immigration Act 2014 \(c. 22\)](#), s. 75(3), [Sch. 9 para. 7](#) table; [S.I. 2014/2771](#), art. 2(e) (with arts. 9-11) (as amended (2.3.2015 and 6.4.2015) by [S.I. 2015/371](#), arts. 1(2) (3), 7, 8; and with transitional provisions and savings in [S.I. 2014/2928](#), art. 2 (which S.I. is revoked (6.4.2015) by [S.I. 2015/371](#), arts. 1(3), 9))

**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;”.

<sup>F9</sup>(4) .....

**Textual Amendments**

**F9** S. 75(4) repealed (20.10.2014) by [Immigration Act 2014 \(c. 22\)](#), s. 75(3), [Sch. 9 para. 7](#) table; [S.I. 2014/2771](#), art. 2(e) (with arts. 9-11) (as amended (2.3.2015 and 6.4.2015) by [S.I. 2015/371](#), arts. 1(2) (3), 7, 8; and with transitional provisions and savings in [S.I. 2014/2928](#), art. 2 (which S.I. is revoked (6.4.2015) by [S.I. 2015/371](#), arts. 1(3), 9))

**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.

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- (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,
  - <sup>F10</sup>(b) .....
  - <sup>F10</sup>(c) .....
- (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),
  - “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
- <sup>F11</sup> ...
- (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.
- <sup>F12</sup>(7) .....

**Textual Amendments**

- F10** S. 76(2)(b)(c) omitted (20.10.2014) by virtue of [Immigration Act 2014 \(c. 22\)](#), s. 75(3), [Sch. 9 para. 3\(3\)\(a\)](#); [S.I. 2014/2771](#), art. 2(e) (with arts. 9-11) (as amended (2.3.2015 and 6.4.2015) by [S.I. 2015/371](#), arts. 1(2)(3), 7, 8; and with transitional provisions and savings in [S.I. 2014/2928](#), art. 2 (which S.I. is revoked (6.4.2015) by [S.I. 2015/371](#), arts. 1(3), 9))
- F11** Words in s. 76(4) omitted (20.10.2014) by virtue of [Immigration Act 2014 \(c. 22\)](#), s. 75(3), [Sch. 9 para. 3\(3\)\(b\)](#); [S.I. 2014/2771](#), art. 2(e) (with arts. 9-11) (as amended (2.3.2015 and 6.4.2015) by [S.I. 2015/371](#), arts. 1(2)(3), 7, 8; and with transitional provisions and savings in [S.I. 2014/2928](#), art. 2 (which S.I. is revoked (6.4.2015) by [S.I. 2015/371](#), arts. 1(3), 9))
- F12** S. 76(7) repealed (20.10.2014) by [Immigration Act 2014 \(c. 22\)](#), s. 75(3), [Sch. 9 para. 7](#) table; [S.I. 2014/2771](#), art. 2(e) (with arts. 9-11) (as amended (2.3.2015 and 6.4.2015) by [S.I. 2015/371](#), arts. 1(2)(3), 7, 8; and with transitional provisions and savings in [S.I. 2014/2928](#), art. 2 (which S.I. is revoked (6.4.2015) by [S.I. 2015/371](#), arts. 1(3), 9))

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## 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.

### Modifications etc. (not altering text)

- C3** S. 77 excluded by 1999 c. 33, s. 11(2) (as substituted (1.4.2003) by 2002 c. 41, ss. 80, 162(2) (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1 (with Sch. 2 paras. 5, 6(3))
- S. 77 extended (14.3.2003) by The Nationality Immigration and Asylum Act 2002 (Commencement No. 4) Order 2003 (S.I. 2003/754), art. 3, Sch. 2 para. 1(2) (with arts. 3, 4, Sch. 2 (as amended by: S.I. 2003/1040; S.I. 2003/1339; and S.I. 2003/2993))
- S. 77 restricted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 33, 48(1)-(3), Sch. 3 paras. 4, 9, 14, 18; S.I. 2004/2523, art. 2, Sch. (with art. 3)

## 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.

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- (4) This section applies only to an appeal brought while the appellant is in the United Kingdom in accordance with section 92.

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

- C4** S. 78 applied (with modifications) by 1997 c. 68, s. 2(2)(b) (as substituted (1.4.2003) by 2002 c. 41, ss. 114, 162(2), Sch. 7 para. 20 (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1))  
S. 78 extended (14.3.2003) by The Nationality Immigration and Asylum Act 2002 (Commencement No. 4) Order 2003 (S.I. 2003/754), art. 3, Sch. 2 para. 1(3) (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by S.I. 2003/1040, S.I. 2003/1339 and S.I. 2003/2993))
- C5** Ss. 78-79 applied (with modifications) (31.1.2020) by The Immigration (Citizens Rights Appeals) (EU Exit) Regulations 2020 (S.I. 2020/61), reg. 1(2), Sch. 2 paras. 1-3 (as amended (8.5.2023) by The Immigration (Citizens' Rights Appeals) (EU Exit) (Amendment) Regulations 2023 (S.I. 2023/441), reg. 7(2))

**[<sup>F13</sup>78A Restriction on removal of children and their parents etc**

- (1) This section applies in a case where—
- (a) a child is to be removed from or required to leave the United Kingdom, and
  - (b) an individual who—
    - (i) is a parent of the child or has care of the child, and
    - (ii) is living in a household in the United Kingdom with the child,is also to be removed from or required to leave the United Kingdom (a “relevant parent or carer”).
- (2) During the period of 28 days beginning with the day on which the relevant appeal rights are exhausted—
- (a) the child may not be removed from or required to leave the United Kingdom; and
  - (b) a relevant parent or carer may not be removed from or required to leave the United Kingdom if, as a result, no relevant parent or carer would remain in the United Kingdom.
- (3) The relevant appeal rights are exhausted at the time when—
- (a) neither the child, nor any relevant parent or carer, could bring an appeal under section 82 (ignoring any possibility of an appeal out of time with permission), and
  - (b) no appeal brought by the child, or by any relevant parent or carer, is pending within the meaning of section 104.
- (4) Nothing in this section prevents any of the following during the period of 28 days mentioned in subsection (2)—
- (a) the giving of a direction for the removal of a person from the United Kingdom,
  - (b) the making of a deportation order in respect of a person, or
  - (c) the taking of any other interim or preparatory action.
- (5) In this section—
- “child” means a person who is aged under 18;

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references to a person being removed from or required to leave the United Kingdom are to the person being removed or required to leave in accordance with a provision of the Immigration Acts.]

#### Textual Amendments

**F13** S. 78A inserted (28.7.2014) by [Immigration Act 2014 \(c. 22\)](#), **ss. 2, 75(3)**; S.I. 2014/1820, art. 3(a)

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

**C5** Ss. 78-79 applied (with modifications) (31.1.2020) by [The Immigration \(Citizens Rights Appeals\) \(EU Exit\) Regulations 2020 \(S.I. 2020/61\)](#), reg. 1(2), **Sch. 2 paras. 1-3** (as amended (8.5.2023) by [The Immigration \(Citizens' Rights Appeals\) \(EU Exit\) \(Amendment\) Regulations 2023 \(S.I. 2023/441\)](#), **reg. 7(2)**)

### 79 Deportation order: appeal

- (1) A deportation order may not be made in respect of a person while an appeal under section 82(1) [<sup>F14</sup>that may be brought or continued from within the United Kingdom relating to] the decision to make the order—
- could be brought (ignoring any possibility of an appeal out of time with permission), or
  - is pending.
- (2) In this section “pending” has the meaning given by section 104.
- [<sup>F15</sup>(3) This section does not apply to a deportation order which states that it is made in accordance with section 32(5) of the UK Borders Act 2007.
- (4) But a deportation order made in reliance on subsection (3) does not invalidate leave to enter or remain, in accordance with section 5(1) of the Immigration Act 1971, if and for so long as section 78 above applies.]

#### Textual Amendments

**F14** Words in s. 79(1) substituted (28.7.2014) by [Immigration Act 2014 \(c. 22\)](#), s. 75(3), **Sch. 9 para. 32**; S.I. 2014/1820, art. 3(cc)

**F15** S. 79(3)(4) added (1.8.2008 for specified purposes) by [UK Borders Act 2007 \(c. 30\)](#), **ss. 35(2), 59(2)**; S.I. 2008/1818, art. 2(a), Sch.

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

**C5** Ss. 78-79 applied (with modifications) (31.1.2020) by [The Immigration \(Citizens Rights Appeals\) \(EU Exit\) Regulations 2020 \(S.I. 2020/61\)](#), reg. 1(2), **Sch. 2 paras. 1-3** (as amended (8.5.2023) by [The Immigration \(Citizens' Rights Appeals\) \(EU Exit\) \(Amendment\) Regulations 2023 \(S.I. 2023/441\)](#), **reg. 7(2)**)

**C6** S. 79 applied (with modifications) by 1997 c. 68, **s. 2(2)(c)** (as substituted (1.4.2003) by 2002 c. 41, **ss. 114, 162(2), Sch. 7 para. 20** (with s. 159); S.I. 2003/754, art. 2(1), **Sch. 1**)  
 S. 79 extended (14.3.2003) by [The Nationality Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), art. 3, **Sch. 2 para. 1(4)** (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by S.I. 2003/1040, S.I. 2003/1339 and S.I. 2003/2993))



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## 80 Removal of asylum-seeker to third country

F16  
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### Textual Amendments

**F16** S. 80 repealed (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 33(3)(a), 47, 48(1)-(3), Sch. 4; S.I. 2004/2523, art. 2, Sch. (with art. 3)

**Status:**

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**Changes to legislation:**

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