



# 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](#)

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