Nationality and Borders Act 2022

2022 CHAPTER 36

PART 3

IMMIGRATION CONTROL

Removals

46 Removals: notice requirements

(1) Section 10 of the Immigration and Asylum Act 1999 (removal of persons unlawfully in the United Kingdom) is amended as set out in subsections (2) to (6).

(2) In subsection (1)—

(a) for "may be removed" substitute "is liable to removal";

(b) omit "under the authority of the Secretary of State or an immigration officer".

(3) For subsection (2) substitute—

"(2) Where a person ("P") is liable to removal, or has been removed, from the United Kingdom under this section, a member of P's family who meets the following three conditions is also liable to removal from the United Kingdom, provided that the Secretary of State or an immigration officer has given the family member written notice of the fact that they are liable to removal."

(4) After subsection (6) insert—

"(6A) A person who is liable to removal from the United Kingdom under this section may be removed only under the authority of the Secretary of State or an immigration officer and in accordance with sections 10A to 10E."

(5) In subsection (7), for "subsection (1) or (2)" substitute "this section".

(6) In subsection (10)—

(a) in paragraph (a), for "subsection (2)" substitute "this section";

(b) in paragraph (b), at the end insert "or sections 10A to 10E".

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(7) After that section insert—

"**10A Removal: general notice requirements**

(1) This section applies to a person who is liable to removal under section 10; but see sections 10C to 10E for the circumstances in which such a person may be removed otherwise than in accordance with this section.

(2) The person may be removed if—
- (a) the Secretary of State or an immigration officer has given the person—
  - (i) a notice of intention to remove (see subsection (3)), and
  - (ii) a notice of departure details (see subsection (4)), and
- (b) any notice period has expired.

(3) A notice of intention to remove is a written notice which—
- (a) states that the person is to be removed,
- (b) sets out the notice period, (see subsection (7)), and
- (c) states the destination to which the person is to be removed.

(4) A notice of departure details under this section is a written notice which—
- (a) states the date on which the person is to be removed,
- (b) states the destination to which the person is to be removed and any stops that are expected to be made on the way to that destination, and
- (c) if subsection (6) applies, sets out the notice period (see subsection (7)).

(5) The notice of intention to remove and the notice of departure details may be combined.

(6) This subsection applies if the notice of departure details states, under subsection (4)(b)—
- (a) a destination which is different to the destination stated under subsection (3)(c) in the notice of intention to remove, or
- (b) any stops that were not stated in the notice of intention to remove, other than a stop in—
  - (i) the United Kingdom, or
  - (ii) a country that is for the time being specified in Part 2 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004.

(7) The notice period must be no shorter than the period of five working days beginning with the day after the day on which the person is given the notice.

(8) At any time before the person is removed, the Secretary of State or an immigration officer may replace a notice of departure details under this section.

(9) This section is subject to section 10B (failed removals).

(10) In this section "working day" means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and

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Financial Dealings Act 1971 in the part of the United Kingdom where the person is when they are given the notice.

10B Failed removals

(1) This section applies where as a result of matters reasonably beyond the control of the Secretary of State, such as—
  (a) adverse weather conditions,
  (b) technical faults or other issues causing delays to transport, or
  (c) disruption by the person to be removed or others,

a person is not removed from the United Kingdom on the date stated in a notice of departure details under section 10A ("the original notice").

(2) The person may be removed from the United Kingdom if—
  (a) the Secretary of State or an immigration officer has given the person a notice of departure details (see subsection (3)), and
  (b) they are removed before the end of the period of 21 days beginning with the date stated in the original notice.

(3) A notice of departure details under this section is a written notice which—
  (a) states the date on which the person is to be removed, and
  (b) states the destination to which the person is to be removed and any stops that are expected to be made on the way to that destination.

(4) But this section does not apply if the notice under subsection (3) states, under subsection (3)(b)—
  (a) a destination which is different to the destination stated in the original notice, or
  (b) any stops that were not stated in the original notice, other than a stop in—
    (i) the United Kingdom, or
    (ii) a country that is for the time being specified in Part 2 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004.

(5) At any time before the person is removed, the Secretary of State or an immigration officer may replace a notice of departure details under this section.

10C Removal: notice requirements in port cases

(1) This section applies to a person who is liable to removal under section 10 if the person was refused leave to enter upon their arrival in the United Kingdom.

(2) The person may be removed if—
  (a) the Secretary of State or an immigration officer has given the person a notice of departure details under this section which—
    (i) states the date on which the person is to be removed, and
    (ii) states the destination to which the person is to be removed and any stops that are expected to be made on the way to that destination, and

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(b) the date stated under paragraph (a)(i) is a date before the end of the period of seven days beginning with the day after the day on which the person was refused leave to enter.

(3) At any time before the person is removed, the Secretary of State or an immigration officer may replace a notice of departure details under this section.

10D Removal: PRN recipients

(1) This section applies to a person who is liable to removal under section 10 and is a PRN recipient.

(2) If the person does not make a protection claim or a human rights claim before the PRN cut-off date, the person may be removed from the United Kingdom if—

(a) the Secretary of State or an immigration officer has given the person a notice of departure details (see subsection (4)), and

(b) they are removed before the end of the period of 21 days beginning with the day after the PRN cut-off date.

(3) If the PRN recipient makes a protection claim or a human rights claim, the person may be removed from the United Kingdom if—

(a) the Secretary of State or an immigration officer has given the person a notice of departure details (see subsection (4)),

(b) their appeal rights are exhausted, and

(c) they are removed before the end of the period of 21 days beginning with the day after the date on which their appeal rights are exhausted;

and for the purposes of this subsection, whether a PRN recipient's appeal rights are exhausted is to be determined in accordance with section 20(3) of the Nationality and Borders Act 2022 (and see, in particular, section 82A of the Nationality, Immigration and Asylum Act 2002).

(4) A notice of departure details under this section is a written notice which—

(a) states the date on which the person is to be removed,

(b) states the destination to which the person is to be removed and any stops that are expected to be made on the way to that destination.

(5) But this section does not apply unless the priority removal notice stated—

(a) a destination to which the person is to be removed which is the same as the destination stated in the notice of departure details under subsection (4)(b), and

(b) stops, other than stops falling within subsection (6), that are expected to be made on the way to that destination which are the same as those stated in the notice of departure details under subsection (4)(b).

(6) A stop falls within this subsection if it is a stop in—

(a) the United Kingdom, or

(b) a country that is for the time being specified in Part 2 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004.

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(7) At any time before the person is removed, the Secretary of State or an immigration officer may replace a notice of departure details under this section.

(8) For the purposes of this section and section 10E—

"priority removal notice", "PRN cut-off date" and "PRN recipient" have the same meaning as in section 20 of the Nationality and Borders Act 2022;

"protection claim" and "human rights claim" have the same meaning as in Part 5 of the Nationality, Immigration and Asylum Act 2002.

10E Removal: judicial review

(1) This section applies to a person (whether or not they are a PRN recipient) who is liable to removal under section 10 where—

(a) the person has made an application for judicial review or (in Scotland) an application to the supervisory jurisdiction of the Court of Session, relating to their removal, and

(b) a court or tribunal has made a decision the effect of which is that the person may be removed from the United Kingdom.

(2) The person may be removed from the United Kingdom if—

(a) the Secretary of State or an immigration officer has given the person a notice of departure details (see subsection (3)), and

(b) they are removed before the end of the period of 21 days beginning with the day after the day on which the court or tribunal made the decision mentioned in subsection (1)(b).

(3) A notice of departure details under this section is a written notice which—

(a) states the date on which the person is to be removed,

(b) states the destination to which the person is to be removed and any stops that are expected to be made on the way to that destination.

(4) But this section does not apply unless the person has received a priority removal notice or a notice of intention to remove under section 10A(3) which stated—

(a) a destination to which the person is to be removed which is the same as the destination stated in the notice of departure details under subsection (3)(b), and

(b) stops, other than stops falling within subsection (5), that are expected to be made on the way to that destination which are the same as those stated in the notice of departure details under subsection (3)(b).

(5) A stop falls within this subsection if it is a stop in—

(a) the United Kingdom, or

(b) a country that is for the time being specified in Part 2 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004.

(6) At any time before the person is removed, the Secretary of State or an immigration officer may replace a notice of departure details under this section."

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(8) In Schedule 10 to the Immigration Act 2016 (immigration bail), in paragraph 3(4) (bail not to be granted to person subject to removal directions without consent of Secretary of State), in paragraph (b) for "14" substitute "21".

Commencement Information

I1 S. 46 not in force at Royal Assent, see **s. 87(1)**

I2 S. 46(1)-(5) in force at 20.11.2023 by S.I. 2023/1130, **reg. 2(a)** (with reg. 3)

I3 S. 46(6) in force at 28.6.2022 by S.I. 2022/590, regs. 1(2), 2, **Sch. 1 para. 23**

I4 S. 46(7) in force at 20.11.2023 for specified purposes by S.I. 2023/1130, **reg. 2(b)** (with reg. 3)

I5 S. 46(8) in force at 20.11.2023 by S.I. 2023/1222, **reg. 2**

47 Prisoners liable to removal from the United Kingdom

(1) The Criminal Justice Act 2003 is amended as follows.

(2) Section 260 (early removal of prisoners liable to removal from the United Kingdom) is amended as set out in subsections (3) to (8).

(3) For subsections (1) to (2B) substitute—

"(1) Where a fixed-term prisoner is liable to removal from the United Kingdom, the Secretary of State may remove the prisoner from prison under this section at any time after the prisoner has served the minimum pre-removal custodial period (whether or not the Board has directed the prisoner's release under this Chapter).

(2) The minimum pre-removal custodial period is the longer of—

(a) one half of the requisite custodial period, and

(b) the requisite custodial period less one year."

(4) In subsection (2C), for "Subsections (1) and (2A) do" substitute "Subsection (1) does".

(5) In subsection (4), for paragraph (b) substitute—

"(b) so long as remaining in the United Kingdom, and in the event of a return to the United Kingdom after removal, is liable to be detained in pursuance of his sentence."

(6) After subsection (4) insert—

"(4A) Where a person has been removed from prison under this section, a day on which the person has not spent any part of the day in prison or otherwise detained in pursuance of their sentence is not, unless the Secretary of State otherwise directs, to be included—

(a) when determining for the purposes of any provision of this Chapter how much of their sentence they have (or would have) served, or

(b) when determining for the purposes of section 244ZC(2), 244A(2)(b) or 246A(4)(b) the date of an anniversary of a disposal of a reference of the person's case to the Board (so that the anniversary is treated as falling *x* days after the actual anniversary, where *x* is the number of days on which the person has not spent any part of the day in prison or otherwise detained in pursuance of their sentence).

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(4B) Where—

(a) before a prisoner's removal from prison under this section their case had been referred to the Board under section 244ZB(3), 244ZC(2), 244A(2) or 246A(4), and

(b) the person is removed from the United Kingdom before the Board has disposed of the reference,

the reference lapses upon the person's removal from the United Kingdom (and paragraph 8 of Schedule 19B applies in the event of their return)."

(7) Omit subsection (5).

(8) In subsection (6), for paragraphs (a) to (c) substitute—

"(a) amend the fraction for the time being specified in subsection (2)(a);

(b) amend the time period for the time being specified in subsection (2)(b)."

(9) For section 261 substitute—

"**261 Removal under section 260 and subsequent return to UK: effect on sentence**

Where a person—

(a) has been removed from prison under section 260 on or after the day on which section 47 of the Nationality and Borders Act 2022 came into force,

(b) has been removed from the United Kingdom following that removal from prison, and

(c) returns to the United Kingdom,

this Chapter applies to the person with the modifications set out in Schedule 19B."

(10) In section 263 (concurrent terms), after subsection (2), insert—

"(2A) Where this section applies, nothing in section 260 authorises the Secretary of State to remove the offender from prison in respect of any of the terms unless and until that section authorises the Secretary of State to do so in respect of each of the others."

(11) After Schedule 19A, insert the Schedule 19B set out in Schedule 8.

Commencement Information

I6 S. 47 not in force at Royal Assent, see **s. 87(1)**

I7 S. 47 in force at 28.6.2022 for E.W. by S.I. 2022/590, regs. 1(2), 2, **Sch. 1 para. 24** (with Sch. 2 para. 9)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 54(6)(c) and word inserted by 2023 c. 37 s. 57(11)(b)
- s. 63(2A) inserted by 2023 c. 37 s. 29(3)
- s. 63(3)(fa)(fb) inserted by 2023 c. 37 s. 29(4)(b)
- s. 63(5A)(5B) inserted by 2023 c. 37 s. 29(5)
- s. 63(8) inserted by 2023 c. 37 s. 28(9)
- s. 65(8A) inserted by 2023 c. 37 s. 28(12)