



# Nationality, Immigration and Asylum Act 2002

## 2002 CHAPTER 41

### PART 4

#### DETENTION AND REMOVAL

##### *Detention*

#### **62 Detention by Secretary of State**

- (1) A person may be detained under the authority of the Secretary of State pending—
- (a) a decision by the Secretary of State whether to give directions in respect of the person under [<sup>F1</sup>section 10 of the Immigration and Asylum Act 1999 (removal of persons unlawfully in the United Kingdom) or] paragraph 10, 10A or 14 of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry: removal), or
  - (b) removal of the person from the United Kingdom in pursuance of directions given by the Secretary of State under any of those [<sup>F2</sup>provisions].
- (2) Where the Secretary of State is empowered under section 3A of [<sup>F3</sup>the Immigration Act 1971] (powers of Secretary of State) to examine a person or to give or refuse a person leave to enter the United Kingdom, the person may be detained under the authority of the Secretary of State pending—
- (a) the person's examination by the Secretary of State,
  - (b) the Secretary of State's decision to give or refuse the person leave to enter,
  - (c) a decision by the Secretary of State whether to give directions in respect of the person under paragraph 8 or 9 of Schedule 2 to that Act (removal), or
  - (d) removal of the person in pursuance of directions given by the Secretary of State under either of those paragraphs.
- [<sup>F4</sup>(2A) A person may be detained under the authority of the Secretary of State—
- (a) if the Secretary of State suspects that the person meets the four conditions in section 2 of the Illegal Migration Act 2023 (conditions relating to removal

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- from the United Kingdom), pending a decision as to whether the conditions are met;
- (b) if the Secretary of State suspects that the Secretary of State has a duty to make arrangements for the removal of the person from the United Kingdom under that section, pending a decision as to whether the duty applies;
- (c) if the Secretary of State has such a duty, pending the person’s removal from the United Kingdom in accordance with that section;
- (d) if the person meets those four conditions but the Secretary of State does not have such a duty by virtue of [subsection \(1\) of section 4](#) of that Act—
- (i) pending a decision to give limited leave under the immigration rules to the person for the purposes of that subsection,
  - (ii) pending a decision to give leave under section 8AA of the Immigration Act 1971 (discretionary leave for persons generally ineligible for leave etc),
  - (iii) pending a decision to give leave under section 65(2) of the Nationality and Borders Act 2022 (leave to remain for victims of slavery or human trafficking), or
  - (iv) pending a decision to remove the person under [subsection \(2\) of section 4](#) of the Illegal Migration Act 2023 (power to remove unaccompanied children), and pending their removal in accordance with that subsection.
- (2B) But if the Secretary of State is satisfied that a woman being detained under [subsection \(2A\)](#) is pregnant, then the woman may not be detained under that subsection for a period of—
- (a) more than 72 hours from the relevant time, or
  - (b) more than seven days from the relevant time, in a case where the longer period of detention is authorised personally by a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975).
- (2C) A woman who has been released as a result of [subsection \(2B\)](#) may be detained again under [subsection \(2A\)](#) in accordance with [subsection \(2B\)](#).
- (2D) Where a woman being detained under [subsection \(2A\)](#) has previously been detained under paragraph 16(2C) of Schedule 2 to the Immigration Act 1971 and has not been released in between, the definition of “the relevant time” in [subsection \(2E\)](#) is to be read as if paragraph (b) referred to the time when the woman was first detained under [subsection \(2A\)](#) or paragraph 16(2C) of that Schedule to that Act.
- (2E) In [subsections \(2B\)](#) to [\(2D\)](#)—
- “the relevant time” means the later of—
- (a) the time at which the Secretary of State is first satisfied that the woman is pregnant, and
  - (b) the time at which the detention under [subsection \(2A\)](#) begins;
- “woman” means a female of any age.
- (2F) The powers in [subsection \(2A\)](#) may be exercised in respect of an unaccompanied child only in the circumstances specified in regulations made by the Secretary of State.
- (2G) The Secretary of State may, by regulations, specify time limits that apply to the detention of an unaccompanied child under [subsection \(2A\)\(d\)\(iv\)](#) (detention of unaccompanied child in relation to removal).

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- (2H) Regulations under subsection (2F) may confer a discretion on the Secretary of State or an immigration officer.
- (2I) Regulations under subsection (2F) or (2G)—
  - (a) may make different provision for different purposes;
  - (b) may make consequential, supplementary, incidental, transitional or saving provision;
  - (c) must be made by statutory instrument.
- (2J) A person who may be detained under subsection (2A) may no longer be detained under subsection (1) or (2).
- (2K) A person (of any age) detained under subsection (2A) may be detained in any place that the Secretary of State considers appropriate.
- (2L) A statutory instrument containing regulations under subsection (2F) or (2G) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (2M) In subsections (2F) and (2G), “unaccompanied child” has the same meaning as in the Illegal Migration Act 2023 (see section 4 of that Act.)
- [<sup>F5</sup>(2N) A person liable to be detained under this section may be detained for such period as, in the opinion of the Secretary of State, is reasonably necessary to enable the decision to be made, the removal or examination to be carried out, or the directions to be given.
- (2O) Subsections (1) to (2A) apply regardless of whether there is anything that for the time being prevents the decision from being made, the removal or examination from being carried out, or the directions from being given.
- (2P) Subsections (2N) and (2O) are subject to—
  - (a) paragraph 18B of Schedule 2 to the Immigration Act 1971 (limitation on detention of unaccompanied children), as applied by subsection (3);
  - (b) subsections (2B) to (2E) (limitation on detention of pregnant women);
  - (c) subsection (7A) and section 60 of the Immigration Act 2016 (limitation on detention of pregnant women).
- (2Q) Subsection (2R) applies if, while a person is detained under this section, the Secretary of State no longer considers that the decision will be made, the removal or examination will be carried out, or the directions will be given within a reasonable period of time.
- (2R) The person may be detained under this section for such further period as, in the opinion of the Secretary of State, is reasonably necessary to enable such arrangements to be made for the person’s release as the Secretary of State considers to be appropriate.]
- (3) A provision of Schedule 2 to that Act about a person who is detained or liable to detention under that Schedule [<sup>F6</sup>, other than paragraph 17A,] shall apply to a person who is detained or liable to detention under this section: and for that purpose—
  - (a) a reference to paragraph 16 of that Schedule shall be taken to include a reference to this section,
  - [<sup>F7</sup>(aa) a reference in paragraph 18B of that Schedule to an immigration officer shall be read as a reference to the Secretary of State,]
  - <sup>F8</sup>(b) ..... and
  - (c) a reference to detention under that Schedule or under a provision or Part of that Schedule shall be taken to include a reference to detention under this section.

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

<sup>F10</sup>(5) .....

<sup>F10</sup>(6) .....

- (7) A power under this section which is exercisable pending a decision of a particular kind by the Secretary of State is exercisable where the Secretary of State has reasonable grounds to suspect that he may make a decision of that kind.
- [<sup>F11</sup>(7A) The detention under this section of a person to whom section 60 (limitation on detention of pregnant women) of the Immigration Act 2016 applies is subject to that section.]
- (8) At the end of section 11(1) of the Immigration Act 1971 (c. 77) (person not deemed to have entered United Kingdom while detained, &c.) there shall be inserted “or section 62 of the Nationality, Immigration and Asylum Act 2002”.
- (9) In section 24(1)(e) of the Immigration Act 1971 (offence: failure to comply with restriction) for “or to an immigration officer” there shall be substituted “, to an immigration officer or to the Secretary of State”.
- (10) In the Mental Health Act 1983 (c. 20)—
- (a) at the end of section 48(2)(d) (detained persons susceptible to transfer for mental treatment: immigration) there shall be added “or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State)”, and
  - (b) in the heading of section 53 (supplemental provision) the reference to the Immigration Act 1971 becomes a reference to the Immigration Acts.
- (11) In the Mental Health (Scotland) Act 1984 (c. 36)—
- (a) at the end of section 71(2)(c) (detained persons who may be transferred to hospital for mental treatment) there shall be added “or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by the Secretary of State)”, and
  - (b) at the end of section 74(1)(b) (further provision about such persons) there shall be added “or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by the Secretary of State)”.
- (12) In the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4))—
- (a) at the end of Article 54(2)(d) (detained persons susceptible to transfer for mental treatment: immigration) there shall be added “or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State)”, and
  - (b) in the heading of Article 59 (supplemental provision) the reference to the Immigration Act 1971 becomes a reference to the Immigration Acts.
- (13) Section 53 of the Immigration and Asylum Act 1999 (c. 33) (bail) shall be amended as follows—
- (a) at the end of subsection (1) add “or under section 62 of the Nationality, Immigration and Asylum Act 2002”, and
  - (b) at the end of subsection (3)(a) add “or under section 62 of the Nationality, Immigration and Asylum Act 2002”.

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- (14) In section 147 of that Act (detention centres: interpretation) at the end of the definition of “detained persons” there shall be inserted “or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State);”.
- (15) <sup>F12</sup> .....
- (16) <sup>F12</sup> .....

### Textual Amendments

- F1** Words in s. 62(1)(a) inserted (20.10.2014) by [Immigration Act 2014 \(c. 22\)](#), s. 75(3), [Sch. 9 para. 3\(2\)\(a\)\(i\)](#); [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** Word in s. 62(1)(b) substituted (20.10.2014) by [Immigration Act 2014 \(c. 22\)](#), s. 75(3), [Sch. 9 para. 3\(2\)\(a\)\(ii\)](#); [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** Words in s. 62(2) substituted (20.10.2014) by [Immigration Act 2014 \(c. 22\)](#), s. 75(3), [Sch. 9 para. 3\(2\)\(b\)](#); [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))
- F4** [S. 62\(2A\)-\(2M\)](#) inserted (20.7.2023 for specified purposes) by [Illegal Migration Act 2023 \(c. 37\)](#), [ss. 11\(6\)](#), [68\(1\)\(4\)\(e\)](#) (with s. 55(9))
- F5** [S. 62\(2N\)-\(2R\)](#) inserted (28.9.2023) by [Illegal Migration Act 2023 \(c. 37\)](#), [ss. 12\(4\)\(a\)](#), [68\(1\)](#) (with s. 55(9)); [S.I. 2023/989](#), reg. 2(a)
- F6** Words in s. 62(3) inserted (28.9.2023) by [Illegal Migration Act 2023 \(c. 37\)](#), [ss. 12\(4\)\(b\)](#), [68\(1\)](#) (with s. 55(9)); [S.I. 2023/989](#), reg. 2(a)
- F7** [S. 62\(3\)\(aa\)](#) inserted (28.7.2014) by [Immigration Act 2014 \(c. 22\)](#), s. 75(3), [Sch. 9 para. 13](#); [S.I. 2014/1820](#), art. 3(cc)
- F8** [S. 62\(3\)\(b\)](#) omitted (15.1.2018) by virtue of [Immigration Act 2016 \(c. 19\)](#), s. 94(1), [Sch. 10 para. 34\(2\)](#); [S.I. 2017/1241](#), reg. 2(c) (with Sch.) (as amended by [S.I. 2018/31](#), reg. 2)
- F9** [S. 62\(4\)](#) omitted (15.1.2018) by virtue of [Immigration Act 2016 \(c. 19\)](#), s. 94(1), [Sch. 10 para. 34\(3\)](#); [S.I. 2017/1241](#), reg. 2(c) (with Sch.) (as amended by [S.I. 2018/31](#), reg. 2)
- F10** [S. 62\(5\)\(6\)](#) omitted (20.10.2014) by virtue of [Immigration Act 2014 \(c. 22\)](#), s. 75(3), [Sch. 9 para. 3\(2\)\(c\)](#); [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** [S. 62\(7A\)](#) inserted (12.7.2016) by [Immigration Act 2016 \(c. 19\)](#), [ss. 60\(12\)](#), [94\(1\)](#); [S.I. 2016/603](#), reg. 3(m)
- F12** [S. 62\(15\)\(16\)](#) repealed (14.3.2005) by [Prevention of Terrorism Act 2005 \(c. 2\)](#), [s. 16\(2\)\(3\)\(4\)](#)

## 63 Control of entry to United Kingdom, &c.: use of force

In paragraph 17(2) of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry, &c.: person liable to detention: use of force) for “if need be by force” there shall be substituted “if need be by reasonable force”.

## 64 Escorts

The following shall be added after paragraph 17(2) of Schedule 2 to the Immigration Act 1971 (detention for examination or removal: right to enter premises)—

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- “(3) Sub-paragraph (4) applies where an immigration officer or constable—
- (a) enters premises in reliance on a warrant under sub-paragraph (2), and
  - (b) detains a person on the premises.
- (4) A detainee custody officer may enter the premises, if need be by reasonable force, for the purpose of carrying out a search.
- (5) In sub-paragraph (4)—
- “detainee custody officer” means a person in respect of whom a certificate of authorisation is in force under section 154 of the Immigration and Asylum Act 1999 (c. 33) (detained persons: escort and custody), and
- “search” means a search under paragraph 2(1)(a) of Schedule 13 to that Act (escort arrangements: power to search detained person).”

## 65 Detention centres: custodial functions

- (1) The following shall be substituted for section 154(5) of the Immigration and Asylum Act 1999 (power to confer functions of detainee custody officers on prison officers and prisoner custody officers)—

“(5) The Secretary of State may confer functions of detainee custody officers on prison officers or prisoner custody officers.”

- (2) The following shall be added at the end of Schedule 11 to that Act (detainee custody officers)—

### “Prison officers and prisoner custody officers

8 A reference in this Schedule to a detainee custody officer includes a reference to a prison officer or prisoner custody officer exercising custodial functions.”

- (3) The following shall be added at the end of Schedule 12 to that Act (discipline at detention centre)—

### “Prison officers and prisoner custody officers

9 A reference in this Schedule to a detainee custody officer includes a reference to a prison officer or prisoner custody officer exercising custodial functions.”

## 66 Detention centres: change of name

- (1) In section 147 of the Immigration and Asylum Act 1999 (c. 33) (Part VIII: interpretation)—

- (a) the definition of “detention centre” shall cease to have effect, and
- (b) the following shall be inserted after the definition of “prisoner custody officer”—

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““removal centre” means a place which is used solely for the detention of detained persons but which is not a short-term holding facility, a prison or part of a prison;”.

- (2) In the provisions listed in subsection (3) (and any relevant headings)—
- (a) for the words “detention centre” there shall be substituted the words “removal centre”, and
  - (b) for the words “detention centres” there shall be substituted the words “removal centres”.
- (3) The provisions are—
- (a) in section 147 of the Immigration and Asylum Act 1999 (Part VIII: interpretation), the definitions of “contracted out detention centre”, “contractor”, “custodial functions”, “detention centre contract”, “detention centre rules”, and “directly managed detention centre”,
  - (b) section 148 of that Act (management of centre),
  - (c) sections 149 and 150 of that Act (contracting out),
  - (d) section 151 of that Act (intervention by Secretary of State),
  - (e) section 152 of that Act (visiting committee),
  - (f) section 153 of that Act (rules),
  - (g) section 155 of that Act (custodial functions),
  - (h) section 157 of that Act (short-term holding facility),
  - (i) section 158 of that Act (disclosure of information),
  - (j) section 159 of that Act (power of constable),
  - (k) Schedule 11 to that Act (detainee custody officer),
  - (l) Schedule 12 to that Act (procedure at detention centre),
  - (m) Schedule 13 to that Act (escort),
  - (n) section 141(5)(e) and (6) of that Act (fingerprinting),
  - (o) section 5A(5A) of the Prison Act 1952 (c. 52) (Chief Inspector of Prisons), and
  - (p) paragraph 13 of Schedule 4A to the Water Industry Act 1991 (c. 56) (disconnection).
- (4) A reference in an enactment or instrument to a detention centre within the meaning of Part VIII of the Immigration and Asylum Act 1999 (c. 33) shall be construed as a reference to a removal centre within the meaning of that Part.

## **67 Construction of reference to person liable to detention**

- (1) This section applies to the construction of a provision which—
- (a) does not confer power to detain a person, but
  - (b) refers (in any terms) to a person who is liable to detention under a provision of the Immigration Acts.
- (2) The reference shall be taken to include a person if the only reason why he cannot be detained under the provision is that—
- (a) he cannot presently be removed from the United Kingdom, because of a legal impediment connected with the United Kingdom’s obligations under an international agreement,
  - (b) practical difficulties are impeding or delaying the making of arrangements for his removal from the United Kingdom, or

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- (c) practical difficulties, or demands on administrative resources, are impeding or delaying the taking of a decision in respect of him.
- (3) This section shall be treated as always having had effect.



### Changes to legislation:

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### Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Blanket amendment words substituted by [S.I. 2011/1043 art. 34](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 18(1)(1A) substituted for s. 18(1) by [2016 c. 19 Sch. 11 para. 31\(2\)](#)
- s. 22A inserted by [2022 c. 36 s. 13\(7\)](#)
- s. 27(ba) inserted by [2022 c. 36 s. 13\(10\)](#)
- s. 51(2)(d) and word inserted by [2016 c. 19 Sch. 11 para. 26\(6\)](#)
- s. 55(2)(aa) inserted by [2016 c. 19 Sch. 11 para. 26\(7\)](#)
- s. 62(3A) inserted by [2023 c. 37 s. 11\(8\)](#)
- s. 80A(5A) inserted by [2023 c. 37 s. 10\(8\)](#)
- s. 82A inserted by [2022 c. 36 s. 23\(1\)](#)
- s. 94(6B) inserted by [2006 c. 13 s. 13](#)
- s. 106(2)(ua) inserted by [2007 c. 30 s. 19\(3\)](#)
- s. 107(2A) inserted by [2022 c. 36 Sch. 3 para. 5\(a\)](#)
- s. 126(2A) inserted by [S.I. 2019/745 reg. 12\(3\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Reg. 12(2)(3) omitted immediately before IP completion day by virtue of S.I. 2020/1309, regs. 1(2)(a), 48)
- Sch. 3 para. 1(1)(ga) inserted by [2016 c. 19 Sch. 12 para. 2\(2\)](#) (This Act is amended by S.I. 2020/1309, Sch. 1 para. 3(a))
- Sch. 3 para. 1(2A) inserted by [2016 c. 19 Sch. 12 para. 2\(4\)](#) (This Act is amended by S.I. 2020/1309, Sch. 1 para. 3(b))
- Sch. 3 para. 1A inserted by [2016 c. 19 Sch. 12 para. 3](#)
- Sch. 3 para. 2(1)(ca) inserted by [2016 c. 19 Sch. 12 para. 4\(3\)](#)
- Sch. 3 para. 2A inserted by [2016 c. 19 Sch. 12 para. 5](#)
- Sch. 3 para. 3A-3C inserted by [2016 c. 19 Sch. 12 para. 6](#)
- Sch. 3 para. 7B7C and cross-headings inserted by [2016 c. 19 Sch. 12 para. 9](#)
- Sch. 3 para. 10A10B inserted by [2016 c. 19 Sch. 12 para. 10](#) (This Act is amended by S.I. 2020/1309, Sch. 1 para. 3(c))
- Sch. 3 para. 15(aa) inserted by [2016 c. 19 Sch. 12 para. 14\(2\)](#)
- Sch. 3 para. 15(d)-(f) inserted by [2016 c. 19 Sch. 12 para. 14\(4\)](#)
- Sch. 3 para. 7C(1)(c) word substituted by [S.I. 2019/745 reg. 12\(5\)\(d\)](#) (This amendment not applied to legislation.gov.uk. Reg. 12(5)(a)(c)(d) omitted immediately before IP completion day by virtue of S.I. 2020/1309, regs. 1(2)(a), 48)
- Sch. 5 para. 3(1) Sch. 5 para. 3 renumbered as Sch. 5 para. 3(1) by [2005 c. 4 Sch. 4 para. 407\(2\)](#) (This amendment not applied to legislation.gov.uk. The "original amending provision" is already fully in force, see Sch. 4 paras. 361, 407(5))
- Sch. 5 para. 3(2)-(4) inserted by [2005 c. 4 Sch. 4 para. 407\(4\)](#) (This amendment not applied to legislation.gov.uk. The "original amending provision" is already fully in force, see Sch. 4 paras. 361, 407(5))
- Sch. 5 para. 3(1) words inserted by [2005 c. 4 Sch. 4 para. 407\(3\)](#) (This amendment not applied to legislation.gov.uk. The "original amending provision" is already fully in force, see Sch. 4 paras. 361, 407(5))