



# UK Borders Act 2007

## 2007 CHAPTER 30

### *Deportation of criminals*

#### **32 Automatic deportation**

- (1) In this section “foreign criminal” means a person—
  - (a) who is not a British citizen,
  - (b) who is convicted in the United Kingdom of an offence, and
  - (c) to whom Condition 1 or 2 applies.
- (2) Condition 1 is that the person is sentenced to a period of imprisonment of at least 12 months.
- (3) Condition 2 is that—
  - (a) the offence is specified by order of the Secretary of State under section 72(4) (a) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (serious criminal), and
  - (b) the person is sentenced to a period of imprisonment.
- (4) For the purpose of section 3(5)(a) of the Immigration Act 1971 (c. 77), the deportation of a foreign criminal is conducive to the public good.
- (5) The Secretary of State must make a deportation order in respect of a foreign criminal (subject to section 33).
- (6) The Secretary of State may not revoke a deportation order made in accordance with subsection (5) unless—
  - (a) he thinks that an exception under section 33 applies,
  - (b) the application for revocation is made while the foreign criminal is outside the United Kingdom, or
  - (c) section 34(4) applies.
- (7) Subsection (5) does not create a private right of action in respect of consequences of non-compliance by the Secretary of State.

### 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.
- (4) Exception 3 is where the removal of the foreign criminal from the United Kingdom in pursuance of a deportation order would breach rights of the foreign criminal under the Community treaties.
- (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,
  - (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—
  - (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.
- (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.

### **34 Timing**

- (1) Section 32(5) requires a deportation order to be made at a time chosen by the Secretary of State.
- (2) A deportation order may not be made under section 32(5) while an appeal or further appeal against the conviction or sentence by reference to which the order is to be made—
  - (a) has been instituted and neither withdrawn nor determined, or
  - (b) could be brought.
- (3) For the purpose of subsection (2)(b)—
  - (a) the possibility of an appeal out of time with permission shall be disregarded, and
  - (b) a person who has informed the Secretary of State in writing that the person does not intend to appeal shall be treated as being no longer able to appeal.
- (4) The Secretary of State may withdraw a decision that section 32(5) applies, or revoke a deportation order made in accordance with section 32(5), for the purpose of—
  - (a) taking action under the Immigration Acts or rules made under section 3 of the Immigration Act 1971 (c. 77) (immigration rules), and
  - (b) subsequently taking a new decision that section 32(5) applies and making a deportation order in accordance with section 32(5).

### **35 Appeal**

- (1) The Nationality, Immigration and Asylum Act 2002 (c. 41) is amended as follows.
- (2) At the end of section 79 (no deportation order pending appeal) add—
  - “(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.”
- (3) Before section 82(4) (general right of appeal) insert—
  - “(3A) Subsection (2)(j) does not apply to a decision to make a deportation order which states that it is made in accordance with section 32(5) of the UK Borders Act 2007; but—
    - (a) a decision that section 32(5) applies is an immigration decision for the purposes of this Part, and
    - (b) a reference in this Part to an appeal against an automatic deportation order is a reference to an appeal against a decision of the Secretary of State that section 32(5) applies.”

### **36 Detention**

- (1) A person who has served a period of imprisonment may be detained under the authority of the Secretary of State—
  - (a) while the Secretary of State considers whether section 32(5) applies, and

- (b) where the Secretary of State thinks that section 32(5) applies, pending the making of the deportation order.
- (2) Where a deportation order is made in accordance with section 32(5) the Secretary of State shall exercise the power of detention under paragraph 2(3) of Schedule 3 to the Immigration Act 1971 (c. 77) (detention pending removal) unless in the circumstances the Secretary of State thinks it inappropriate.
- (3) A court determining an appeal against conviction or sentence may direct release from detention under subsection (1) or (2).
- (4) Provisions of the Immigration Act 1971 which apply to detention under paragraph 2(3) of Schedule 3 to that Act shall apply to detention under subsection (1) (including provisions about bail).
- (5) Paragraph 2(5) of Schedule 3 to that Act (residence, occupation and reporting restrictions) applies to a person who is liable to be detained under subsection (1).

### **37 Family**

- (1) Where a deportation order against a foreign criminal states that it is made in accordance with section 32(5) (“the automatic deportation order”) this section shall have effect in place of the words from “A deportation order” to “after the making of the deportation order against him” in section 5(3) of the Immigration Act 1971 (period during which family members may also be deported).
- (2) A deportation order may not be made against a person as belonging to the family of the foreign criminal after the end of the relevant period of 8 weeks.
- (3) In the case of a foreign criminal who has not appealed in respect of the automatic deportation order, the relevant period begins when an appeal can no longer be brought (ignoring any possibility of an appeal out of time with permission).
- (4) In the case of a foreign criminal who has appealed in respect of the automatic deportation order, the relevant period begins when the appeal is no longer pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002 (c. 41)).

### **38 Interpretation**

- (1) In section 32(2) the reference to a person who is sentenced to a period of imprisonment of at least 12 months—
  - (a) does not include a reference to a person who receives a suspended sentence (unless a court subsequently orders that the sentence or any part of it (of whatever length) is to take effect),
  - (b) does not include a reference to a person who is sentenced to a period of imprisonment of at least 12 months only by virtue of being sentenced to consecutive sentences amounting in aggregate to more than 12 months,
  - (c) 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) for at least 12 months, and

- (d) 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 12 months).
- (2) In section 32(3)(b) the reference to a person who is sentenced to a period of imprisonment—
- (a) does not include a reference to a person who receives a suspended sentence (unless a court subsequently orders that the sentence or any part of it is to take effect), and
  - (b) 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).
- (3) For the purposes of section 32 a person subject to an order under section 5 of the Criminal Procedure (Insanity) Act 1964 (c. 84) (insanity, &c.) has not been convicted of an offence.
- (4) In sections 32 and 33—
- (a) “British citizen” has the same meaning as in section 3(5) of the Immigration Act 1971 (c. 77) (and section 3(8) (burden of proof) shall apply),
  - (b) “Convention rights” has the same meaning as in the Human Rights Act 1998 (c. 42),
  - (c) “deportation order” means an order under section 5, and by virtue of section 3(5), of the Immigration Act 1971, and
  - (d) “the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol.

### **39 Consequential amendments**

- (1) This section amends section 72(11)(b) of the Nationality, Immigration and Asylum Act 2002 (removal: serious criminal: interpretation).
- (2) In sub-paragraph (i) for “(unless at least two years of the sentence are not suspended)” substitute “(unless a court subsequently orders that the sentence or any part of it is to take effect)”.
- (3) After sub-paragraph (i) insert—
- “(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,”.