

Paragraf 32 i UK Borders Act 2007

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,”.

Immigration Rules Paragraf 398

398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and

(a) the deportation of the person from the UK is conducive to the public good because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years;

(b) the deportation of the person from the UK is conducive to the public good because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 4 years but at least 12 months; or

(c) the deportation of the person from the UK is conducive to the public good because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law,

the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, it will only be in exceptional circumstances that the public interest in deportation will be outweighed by other factors.

Immigration Rules Paragraf 399

399. This paragraph applies where paragraph 398 (b) or (c) applies if –

(a) the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and

(i)the child is a British Citizen; or

(ii) the child has lived in the UK continuously for at least the 7 years immediately preceding the date of the immigration decision; and in either case

(a) it would not be reasonable to expect the child to leave the UK; and

(b) there is no other family member who is able to care for the child in the UK; or

(b) the person has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen, settled in the UK, or in the UK with refugee leave or humanitarian protection, and

(i) the person has lived in the UK with valid leave continuously for at least the 15 years immediately preceding the date of the immigration decision (discounting any period of imprisonment); and

(ii) there are insurmountable obstacles to family life with that partner continuing outside the UK.

Immigration Rules Paragraf 399A

399A. This paragraph applies where paragraph 398(b) or (c) applies if –

(a) the person has lived continuously in the UK for at least 20 years immediately preceding the date of the immigration decision (discounting any period of imprisonment) and he has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK; or

(b) the person is aged under 25 years, he has spent at least half of his life living continuously in the UK immediately preceding the date of the immigration decision (discounting any period of imprisonment) and he has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK.

Immigration Rules Paragraf 399B

399B. Where paragraph 399 or 399A applies limited leave may be granted for periods not exceeding 30 months. Such leave shall be given subject to such conditions as the Secretary of State deems appropriate. Where a person who has previously been granted a period of leave under paragraph 399B would not fall for refusal under paragraph 322(1C), indefinite leave to remain may be granted.

Immigration Act 1971, Part I, Section 3

3 General provisions for regulation and control.

(1) Except as otherwise provided by or under this Act, where a person is not a British citizen –

(a) he shall not enter the United Kingdom unless given leave to do so in accordance with the provisions of, or made under, this Act;

(b) he may be given leave to enter the United Kingdom (or, when already there, leave to remain in the United Kingdom) either for a limited or for an indefinite period;

(c) if he is given limited leave to enter or remain in the United Kingdom, it may be given subject to all or any of the following conditions, namely –

(i) a condition restricting his employment or occupation in the United Kingdom;

(ia) a condition restricting his studies in the United Kingdom;

(ii) a condition requiring him to maintain and accommodate himself, and any dependants of his, without recourse to public funds;

(iii) a condition requiring him to register with the police.

(iv) a condition requiring him to report to an immigration officer or the Secretary of State; and

(v) a condition about residence.

(2) The Secretary of State shall from time to time (and as soon as may be) lay before Parliament statements of the rules, or of any changes in the rules, laid down by him as to the practice to be followed in the administration of this Act for regulating the entry into and stay in the United Kingdom of persons required by this Act to have leave to enter, including any rules as to the period for which leave is to be given and the conditions to be attached in different circumstances; and section 1(4) above shall not be taken to require uniform provision to be made by the rules as regards admission of persons for a purpose or in a capacity specified in section 1(4) (and in particular, for this as well as other purposes of this Act, account may be taken of citizenship or nationality).

If a statement laid before either House of Parliament under this subsection is disapproved by a resolution of that House passed within the period of forty days beginning with the date of laying (and exclusive of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days), then the Secretary of State shall as soon as may be make such changes or further changes in the rules as appear to him to be required in the circumstances, so that the statement of those changes be laid before Parliament at latest by the end of the period of forty days beginning with the date of the resolution (but exclusive as aforesaid).

(3) In the case of a limited leave to enter or remain in the United Kingdom

(a) a person's leave may be varied, whether by restricting, enlarging or removing the limit on its duration, or by adding, varying or revoking conditions, but if the limit on its duration is removed, any conditions attached to the leave shall cease to apply; and

(b) the limitation on and any conditions attached to a person's leave (whether imposed originally or on a variation) shall, if not superseded, apply also to any subsequent leave he may obtain after an absence from the United Kingdom within the period limited for the duration of the earlier leave.

(4) A person's leave to enter or remain in the United Kingdom shall lapse on his going to a country or territory outside the common travel area (whether or not he lands there), unless within the period for which he had leave he returns to the United Kingdom in circumstances in which he is not required to obtain leave to enter; but, if he does so return, his previous leave (and any limitation on it or conditions attached to it) shall continue to apply.

(5) A person who is not a British citizen is liable to deportation from the United Kingdom if –

(a) the Secretary of State deems his deportation to be conducive to the public good; or

(b) another person to whose family he belongs is or has been ordered to be deported.

(6) Without prejudice to the operation of subsection (5) above, a person who is not a British citizen shall also be liable to deportation from the United Kingdom if, after he has attained the age of seventeen, he is convicted of an offence for which he is punishable with imprisonment and on his conviction is recommended for deportation by a court empowered by this Act to do so.

(7) Where it appears to Her Majesty proper so to do by reason of restrictions or conditions imposed on British citizens, British Dependent Territories citizens or British Overseas citizens when leaving or seeking to leave any country or the territory subject to the government of any country, Her Majesty may by Order in Council make provision for prohibiting persons who are nationals or citizens of that country and are not British citizens from embarking in the United Kingdom, or from doing so elsewhere than at a port of exit, or for imposing restrictions or conditions on them when embarking or about to embark in the United Kingdom; and Her Majesty may also make provision by Order in Council to enable those who are not British citizens to be, in such cases as may be prescribed by the Order, prohibited in the interests of safety from so embarking on a ship or aircraft specified or indicated in the prohibition.

Any Order in Council under this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(8) When any question arises under this Act whether or not a person is a British citizen, or is entitled to any exemption under this Act, it shall lie on the person asserting it to prove that he is.

(9) A person seeking to enter the United Kingdom and claiming to have the right of abode there shall prove it by means of –

(a) a United Kingdom passport describing him as a British citizen,

(b) a United Kingdom passport describing him as a British subject with the right of abode in the United Kingdom,

(c) an ID card issued under the Identity Cards Act 2006 describing him as a British citizen,

(d) an ID card issued under that Act describing him as a British subject with the right of abode in the United Kingdom, or

(e) a certificate of entitlement.