



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 [^{F1}or an Irish 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.

*Status: Point in time view as at 31/12/2020.**Changes to legislation: There are currently no known outstanding effects for the UK Borders Act 2007, Cross Heading: Deportation of criminals. (See end of Document for details)***Textual Amendments**

- F1** Words in s. 32(1)(a) inserted (31.12.2020) by [The Immigration, Nationality and Asylum \(EU Exit\) Regulations 2019 \(S.I. 2019/745\)](#), regs. 1(2), **17(2)**; 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

- II** S. 32 in force at 1.8.2008 for specified purposes by [S.I. 2008/1818](#), art. 2(a), **Sch.** (with art. 3)

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.
- ^{F2}(4)
- (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,
 - ^{F3}(ca) is the subject of a certificate under section 74B 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

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- (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.

[^{F4}(6A) Exception 6 is where the Secretary of State thinks that the application of section 32(4) and (5) would contravene the United Kingdom's obligations under the Council of Europe Convention on Action against Trafficking in Human Beings (done at Warsaw on 16th May 2005).]

[^{F5}(6B) Exception 7 is where—

- (a) the foreign criminal is a relevant person, and
- (b) the offence for which the foreign criminal was convicted as mentioned in section 32(1)(b) consisted of or included conduct that took place before IP completion day.

(6C) For the purposes of subsection (6B), a foreign criminal is a “relevant person”—

- (a) if the foreign criminal is in the United Kingdom (whether or not they have entered within the meaning of section 11(1) of the Immigration Act 1971) having arrived with entry clearance granted by virtue of relevant entry clearance immigration rules,
- (b) if the foreign criminal has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules,
- [^{F6}(ba) if the person is in the United Kingdom (whether or not they have entered within the meaning of section 11(1) of the Immigration Act 1971) having arrived with entry clearance granted by virtue of Article 23 of the Swiss citizens' rights agreement,]
- (c) if the foreign criminal may be granted leave to enter or remain in the United Kingdom as a person who has a right to enter the United Kingdom by virtue of—
 - (i) Article 32(1)(b) of the EU withdrawal agreement,
 - (ii) Article 31(1)(b) of the EEA EFTA separation agreement, or
 - (iii) Article 26a(1)(b) of the Swiss citizens' rights agreement,whether or not the foreign criminal has been granted such leave, or
- (d) if the foreign criminal may enter the United Kingdom by virtue of regulations made under section 8 of the European Union (Withdrawal Agreement) Act 2020 (frontier workers), whether or not the foreign criminal has entered by virtue of those regulations.

(6D) In this section—

“EEA EFTA separation agreement” and “Swiss citizens' rights agreement” have the same meanings as in the European Union (Withdrawal Agreement) Act 2020 (see section 39(1) of that Act);

“relevant entry clearance immigration rules” and “residence scheme immigration rules” have the meanings given by section 17 of the European Union (Withdrawal Agreement) Act 2020.]

(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.

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Textual Amendments

- F2** S. 33(4) omitted (31.12.2020) by virtue of [The Immigration and Social Security Co-ordination \(EU Withdrawal\) Act 2020 \(Consequential, Saving, Transitional and Transitory Provisions\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1309\)](#), regs. 1(2), **17(2)**
- F3** S. 33(5)(ca) inserted (31.12.2020) by [Extradition \(Provisional Arrest\) Act 2020 \(c. 18\)](#), s. 2(4), **Sch. para. 29**; S.I. 2020/1652, reg. 2(1)(b)
- F4** S. 33(6A) inserted (1.4.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), **ss. 146**, 153(7); S.I. 2009/860, art. 2(1)(d)
- F5** S. 33(6B)-(6D) inserted (31.1.2020) by [European Union \(Withdrawal Agreement\) Act 2020 \(c. 1\)](#), **ss. 10(5)**, 42(7) (with **ss. 10(6)**, 38(3), **Sch. 5** para. 63(3)); S.I. 2020/75, reg. 4(e)
- F6** S. 33(6C)(ba) inserted (31.12.2020) by [The Citizens' Rights \(Restrictions of Rights of Entry and Residence\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1210\)](#), regs. 1(1), **4(2)**; S.I. 2020/1279, reg. 4(a)

Modifications etc. (not altering text)

- C1** S. 33 applied (with modifications) (31.12.2020) by [The Citizens' Rights \(Application Deadline and Temporary Protection\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1209\)](#), regs. 1(1), **3(4)**, 4(5), 12(1)(m)

Commencement Information

- I2** S. 33 in force at 1.8.2008 for specified purposes by [S.I. 2008/1818](#), art. 2(a), **Sch.**

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—
- has been instituted and neither withdrawn nor determined, or
 - could be brought.
- (3) For the purpose of subsection (2)(b)—
- the possibility of an appeal out of time with permission shall be disregarded, and
 - 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—
- taking action under the Immigration Acts or rules made under section 3 of the Immigration Act 1971 (c. 77) (immigration rules), and
 - subsequently taking a new decision that section 32(5) applies and making a deportation order in accordance with section 32(5).

Commencement Information

- I3** S. 34 in force at 1.8.2008 for specified purposes by [S.I. 2008/1818](#), art. 2(a), **Sch.**

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Changes to legislation: There are currently no known outstanding effects for the UK Borders Act 2007, Cross Heading: Deportation of criminals. (See end of Document for details)

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.”

^{F7}(3)

Textual Amendments

F7 S. 35(3) repealed (20.10.2014) by [Immigration Act 2014 \(c. 22\)](#), s. 75(3), [Sch. 9 para. 60](#) table; [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))

Commencement Information

I4 S. 35 in force at 1.8.2008 for specified purposes by [S.I. 2008/1818](#), art. 2(a), [Sch.](#)

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) [^{F8}unless the person is granted immigration bail under Schedule 10 to the Immigration Act 2016.]

[^{F9}(2A) The detention under subsection (1) of a person to whom section 60 (limitation on detention of pregnant women) of the Immigration Act 2016 applies is subject to that section.]

(3) A court determining an appeal against conviction or sentence may [^{F10}release a person on bail] from detention under subsection (1) or (2).

[^{F11}(3A) The provisions of Schedule 10 to the Immigration Act 2016 that apply in relation to the grant of immigration bail by the First-tier Tribunal apply in relation to the grant of bail by the court under subsection (3).

(3B) If the court grants bail to a person under subsection (3), Schedule 10 to the Immigration Act 2016 applies in relation to that person as if the person had been granted immigration bail by the First-tier Tribunal under that Schedule.

(3C) A reference in any provision of, or made under, an enactment other than this section to immigration bail granted, or a condition imposed, under Schedule 10 to the

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Immigration Act 2016 includes bail granted by the court under subsection (3) or (as the case may be) a condition imposed by the court on the grant of such bail.]

(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) ^{F12}....

^{F13}(5).....

Textual Amendments

- F8** Words in s. 36(2) substituted (15.1.2018) by [Immigration Act 2016 \(c. 19\), s. 94\(1\), Sch. 10 para. 40\(2\)](#); [S.I. 2017/1241, reg. 2\(c\)](#) (with [Sch.](#)) (as amended by [S.I. 2018/31, reg. 2](#))
- F9** S. 36(2A) inserted (12.7.2016) by [Immigration Act 2016 \(c. 19\), ss. 60\(13\), 94\(1\)](#); [S.I. 2016/603, reg. 3\(m\)](#)
- F10** Words in s. 36(3) substituted (15.1.2018) by [Immigration Act 2016 \(c. 19\), s. 94\(1\), Sch. 10 para. 40\(3\)](#); [S.I. 2017/1241, reg. 2\(c\)](#) (with [Sch.](#)) (as amended by [S.I. 2018/31, reg. 2](#))
- F11** S. 36(3A)-(3C) inserted (15.1.2018) by [Immigration Act 2016 \(c. 19\), s. 94\(1\), Sch. 10 para. 40\(4\)](#); [S.I. 2017/1241, reg. 2\(c\)](#) (with [Sch.](#)) (as amended by [S.I. 2018/31, reg. 2](#))
- F12** Words in s. 36(4) omitted (15.1.2018) by virtue of [Immigration Act 2016 \(c. 19\), s. 94\(1\), Sch. 10 para. 40\(5\)](#); [S.I. 2017/1241, reg. 2\(c\)](#) (with [Sch.](#)) (as amended by [S.I. 2018/31, reg. 2](#))
- F13** S. 36(5) omitted (15.1.2018) by virtue of [Immigration Act 2016 \(c. 19\), s. 94\(1\), Sch. 10 para. 40\(6\)](#); [S.I. 2017/1241, reg. 2\(c\)](#) (with [Sch.](#)) (as amended by [S.I. 2018/31, reg. 2](#))

Commencement Information

- I5** S. 36 in force at 1.8.2008 for specified purposes by [S.I. 2008/1818, art. 2\(a\), Sch.](#)

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)).

Commencement Information

- I6** S. 37 in force at 1.8.2008 for specified purposes by [S.I. 2008/1818, art. 2\(a\), Sch.](#)

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Changes to legislation: There are currently no known outstanding effects for the UK Borders Act 2007, Cross Heading: Deportation of criminals. (See end of Document for details)

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.

Commencement Information

17 S. 38 in force at 1.8.2008 for specified purposes by S.I. 2008/1818, art. 2(a), Sch.

39 Consequential amendments

- (1) This section amends section 72(11)(b) of the Nationality, Immigration and Asylum Act 2002 (removal: serious criminal: interpretation).

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- (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,”.

Commencement Information

18 S. 39 in force at 1.8.2008 by S.I. 2008/1818, art. 2(b)

Status:

Point in time view as at 31/12/2020.

Changes to legislation:

There are currently no known outstanding effects for the UK Borders Act 2007, Cross Heading:
Deportation of criminals.