



# Nationality, Immigration and Asylum Act 2002

## 2002 CHAPTER 41

### PART 4 **U.K.**

#### DETENTION AND REMOVAL

##### *Removal*

#### 72 **Serious criminal** **U.K.**

- (1) This section applies for the purpose of the construction and application of Article 33(2) of the Refugee Convention (exclusion from protection).
- (2) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if he is—
  - (a) convicted in the United Kingdom of an offence, and
  - (b) sentenced to a period of imprisonment of at least two years.
- (3) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if—
  - (a) he is convicted outside the United Kingdom of an offence,
  - (b) he is sentenced to a period of imprisonment of at least two years, and
  - (c) he could have been sentenced to a period of imprisonment of at least two years had his conviction been a conviction in the United Kingdom of a similar offence.
- (4) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if—
  - (a) he is convicted of an offence specified by order of the Secretary of State, or

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- (b) he is convicted outside the United Kingdom of an offence and the Secretary of State certifies that in his opinion the offence is similar to an offence specified by order under paragraph (a).
- (5) An order under subsection (4)—
- (a) must be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) A presumption under subsection (2), (3) or (4) that a person constitutes a danger to the community is rebuttable by that person.
- (7) A presumption under subsection (2), (3) or (4) does not apply while an appeal against conviction or sentence—
- (a) is pending, or
  - (b) could be brought (disregarding the possibility of appeal out of time with leave).
- (8) Section 34(1) of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (no need to consider gravity of fear or threat of persecution) applies for the purpose of considering whether a presumption mentioned in subsection (6) has been rebutted as it applies for the purpose of considering whether Article 33(2) of the Refugee Convention applies.
- (9) Subsection (10) applies where—
- (a) a person appeals under section 82, 83 or 101 of this Act or under section 2 of the Special Immigration Appeals Commission Act 1997 (c. 68) wholly or partly on the ground that to remove him from or to require him to leave the United Kingdom would breach the United Kingdom’s obligations under the Refugee Convention, and
  - (b) the Secretary of State issues a certificate that presumptions under subsection (2), (3) or (4) apply to the person (subject to rebuttal).
- (10) The adjudicator, Tribunal or Commission hearing the appeal—
- (a) must begin substantive deliberation on the appeal by considering the certificate, and
  - (b) if in agreement that presumptions under subsection (2), (3) or (4) apply (having given the appellant an opportunity for rebuttal) must dismiss the appeal in so far as it relies on the ground specified in subsection (9)(a).
- (11) For the purposes of this section—
- (a) “the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol, and
  - (b) a reference to a person who is sentenced to a period of imprisonment of at least two years—
    - (i) does not include a reference to a person who receives a suspended sentence (unless at least two years of the sentence are not suspended),
    - (ii) 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), and
    - (iii) 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 two years).

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#### Commencement Information

- II** S. 72 wholly in force at 1.4.2003; s. 72 not in force at Royal Assent see s. 162(2); s. 72(1)-(8)(11) in force at 10.2.2003 by [S.I. 2003/1](#), [art. 2](#), [Sch.](#); s. 72(9)(10) in force at 1.4.2003 by [S.I. 2003/754](#), [art. 2](#), [Sch. 1](#)

### 73 Family **U.K.**

- (1) The following shall be inserted after paragraph 10 of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry: removal)—

“10A Where directions are given in respect of a person under any of paragraphs 8 to 10 above, directions to the same effect may be given under that paragraph in respect of a member of the person’s family.”

- (2) Section 10 of the Immigration and Asylum Act 1999 (c. 33) (removal of person unlawfully in United Kingdom) shall be amended as follows.

- (3) In subsection (1)(c) omit—

- (a) “(“the first directions”)", and  
(b) “(“the other person”)”.

- (4) The following shall be substituted for subsections (3) to (5) (removal of family)—

“(3) Directions for the removal of a person may not be given under subsection (1) (c) unless the Secretary of State has given the person written notice of the intention to remove him.

- (4) A notice under subsection (3) may not be given if—

- (a) the person whose removal under subsection (1)(a) or (b) is the cause of the proposed directions under subsection (1)(c) has left the United Kingdom, and  
(b) more than eight weeks have elapsed since that person’s departure.

(5) If a notice under subsection (3) is sent by first class post to a person’s last known address, that subsection shall be taken to be satisfied at the end of the second day after the day of posting.

(5A) Directions for the removal of a person under subsection (1)(c) cease to have effect if he ceases to belong to the family of the person whose removal under subsection (1)(a) or (b) is the cause of the directions under subsection (1)(c).”

- (5) In paragraph 16(2) of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry, &c.: detention) for the words “8 to 10” there shall be substituted “8 to 10A”.

### 74 Deception **U.K.**

In section 10(1) of the Immigration and Asylum Act 1999 (c. 33) (removal) the following shall be substituted for paragraph (b)—

“(b) he uses deception in seeking (whether successfully or not) leave to remain;”.

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## 75 Exemption from deportation **U.K.**

- (1) Section 7 of the Immigration Act 1971 (existing residents exempt from deportation) shall be amended as follows.
- (2) Subsection (1)(a) (which is redundant) shall cease to have effect.
- (3) The following shall be substituted for subsection (1)(b)—
  - “(b) shall not be liable to deportation under section 3(5) if at the time of the Secretary of State’s decision he had for the last five years been ordinarily resident in the United Kingdom and Islands;”.
- (4) The following shall be added at the end of section 10 of the Immigration and Asylum Act 1999 (removal)—
  - “(10) A person shall not be liable to removal from the United Kingdom under this section at a time when section 7(1)(b) of the Immigration Act 1971 (Commonwealth and Irish citizens ordinarily resident in United Kingdom) would prevent a decision to deport him.”

## 76 Revocation of leave to enter or remain **U.K.**

- (1) The Secretary of State may revoke a person’s indefinite leave to enter or remain in the United Kingdom if the person—
  - (a) is liable to deportation, but
  - (b) cannot be deported for legal reasons.
- (2) The Secretary of State may revoke a person’s indefinite leave to enter or remain in the United Kingdom if—
  - (a) the leave was obtained by deception,
  - (b) the person would be liable to removal because of the deception, but
  - (c) the person cannot be removed for legal or practical reasons.
- (3) The Secretary of State may revoke a person’s indefinite leave to enter or remain in the United Kingdom if the person, or someone of whom he is a dependant, ceases to be a refugee as a result of—
  - (a) voluntarily availing himself of the protection of his country of nationality,
  - (b) voluntarily re-acquiring a lost nationality,
  - (c) acquiring the nationality of a country other than the United Kingdom and availing himself of its protection, or
  - (d) voluntarily establishing himself in a country in respect of which he was a refugee.
- (4) In this section—
  - “indefinite leave” has the meaning given by section 33(1) of the Immigration Act 1971 (c. 77) (interpretation),
  - “liable to deportation” has the meaning given by section 3(5) and (6) of that Act (deportation),
  - “refugee” has the meaning given by the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol, and
  - “removed” means removed from the United Kingdom under—
    - (a) paragraph 9 or 10 of Schedule 2 to the Immigration Act 1971 (control of entry: directions for removal), or

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- (b) section 10(1)(b) of the Immigration and Asylum Act 1999 (c. 33) (removal of persons unlawfully in United Kingdom: deception).
- (5) A power under subsection (1) or (2) to revoke leave may be exercised—
- (a) in respect of leave granted before this section comes into force;
  - (b) in reliance on anything done before this section comes into force.
- (6) A power under subsection (3) to revoke leave may be exercised—
- (a) in respect of leave granted before this section comes into force, but
  - (b) only in reliance on action taken after this section comes into force.
- (7) In section 10(1) of the Immigration and Asylum Act 1999 (removal of persons unlawfully in United Kingdom) after paragraph (b) (and before the word “or”) there shall be inserted—
- “(ba) his indefinite leave to enter or remain has been revoked under section 76(3) of the Nationality, Immigration and Asylum Act 2002 (person ceasing to be refugee);”.

VALID FROM 01/04/2003

**77 No removal while claim for asylum pending U.K.**

- (1) While a person’s claim for asylum is pending he may not be—
- (a) removed from the United Kingdom in accordance with a provision of the Immigration Acts, or
  - (b) required to leave the United Kingdom in accordance with a provision of the Immigration Acts.
- (2) In this section—
- (a) “claim for asylum” means a claim by a person that it would be contrary to the United Kingdom’s obligations under the Refugee Convention to remove him from or require him to leave the United Kingdom, and
  - (b) a person’s claim is pending until he is given notice of the Secretary of State’s decision on it.
- (3) In subsection (2) “the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol.
- (4) Nothing in this section shall prevent any of the following while a claim for asylum is pending—
- (a) the giving of a direction for the claimant’s removal from the United Kingdom,
  - (b) the making of a deportation order in respect of the claimant, or
  - (c) the taking of any other interim or preparatory action.
- (5) Section 15 of the Immigration and Asylum Act 1999 (c. 33) (protection from removal or deportation) shall cease to have effect.

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**Modifications etc. (not altering text)**

- C1** S. 77 excluded by 1999 c. 33, s. 11(2) (as substituted (1.4.2003) by 2002 c. 41, ss. 80, 162(2) (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1 (with Sch. 2 paras. 5, 6(3))  
 S. 77 extended (14.3.2003) by The Nationality Immigration and Asylum Act 2002 (Commencement No. 4) Order 2003 (S.I. 2003/754), art. 3, Sch. 2 para. 1(2) (with arts. 3, 4, Sch. 2 (as amended by: S.I. 2003/1040; S.I. 2003/1339; and S.I. 2003/2993))  
 S. 77 restricted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 33, 48(1)-(3), Sch. 3 paras. 4, 9, 14, 18; S.I. 2004/2523, art. 2, Sch. (with art. 3)

VALID FROM 01/04/2003

**78 No removal while appeal pending U.K.**

- (1) While a person's appeal under section 82(1) is pending he may not be—  
 (a) removed from the United Kingdom in accordance with a provision of the Immigration Acts, or  
 (b) required to leave the United Kingdom in accordance with a provision of the Immigration Acts.
- (2) In this section “pending” has the meaning given by section 104.
- (3) Nothing in this section shall prevent any of the following while an appeal is pending—  
 (a) the giving of a direction for the appellant's removal from the United Kingdom,  
 (b) the making of a deportation order in respect of the appellant (subject to section 79), or  
 (c) the taking of any other interim or preparatory action.
- (4) This section applies only to an appeal brought while the appellant is in the United Kingdom in accordance with section 92.

**Modifications etc. (not altering text)**

- C2** S. 78 applied (with modifications) by 1997 c. 68, s. 2(2)(b) (as substituted (1.4.2003) by 2002 c. 41, ss. 114, 162(2), Sch. 7 para. 20 (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1))  
 S. 78 extended (14.3.2003) by The Nationality Immigration and Asylum Act 2002 (Commencement No. 4) Order 2003 (S.I. 2003/754), art. 3, Sch. 2 para. 1(3) (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by S.I. 2003/1040, S.I. 2003/1339 and S.I. 2003/2993))

VALID FROM 01/04/2003

**79 Deportation order: appeal U.K.**

- (1) A deportation order may not be made in respect of a person while an appeal under section 82(1) against the decision to make the order—

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- (a) could be brought (ignoring any possibility of an appeal out of time with permission), or
- (b) is pending.

(2) In this section “pending” has the meaning given by section 104.

**Modifications etc. (not altering text)**

- C3** S. 79 applied (with modifications) by 1997 c. 68, s. 2(2)(c) (as substituted (1.4.2003) by 2002 c. 41, ss. 114, 162(2), Sch. 7 para. 20 (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1))
- S. 79 extended (14.3.2003) by The Nationality Immigration and Asylum Act 2002 (Commencement No. 4) Order 2003 (S.I. 2003/754), art. 3, Sch. 2 para. 1(4) (with transitional provisions in arts. 3, 4, Sch. 2 (as amended by S.I. 2003/1040, S.I. 2003/1339 and S.I. 2003/2993))

**80 Removal of asylum-seeker to third country U.K.**

The following shall be substituted for section 11 of the Immigration and Asylum Act 1999 (c. 33) (removal of asylum claimant under standing arrangements with member States)—

**“11 Removal of asylum claimant under standing arrangement with member States**

- (1) In determining whether a person in relation to whom a certificate has been issued under subsection (2) may be removed from the United Kingdom, a member State is to be regarded as—
  - (a) a place where a person’s life and liberty is not threatened by reason of his race, religion, nationality, membership of a particular social group, or political opinion; and
  - (b) a place from which a person will not be sent to another country otherwise than in accordance with the Refugee Convention.
- (2) Nothing in section 77 of the Nationality, Immigration and Asylum Act 2002 prevents a person who has made a claim for asylum (“the claimant”) from being removed from the United Kingdom to a member State if the Secretary of State has certified that—
  - (a) the member State has accepted that, under standing arrangements, it is the responsible State in relation to the claimant’s claim for asylum; and
  - (b) in his opinion, the claimant is not a national or citizen of the member State to which he is to be sent.
- (3) Subsection (4) applies where a person who is the subject of a certificate under subsection (2)—
  - (a) has instituted or could institute an appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 (immigration appeal), and
  - (b) has made a human rights claim (within the meaning of section 113 of that Act).
- (4) The person may not be removed from the United Kingdom in reliance upon this section unless—

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- (a) the appeal is finally determined, withdrawn or abandoned (within the meaning of section 104 of that Act) or can no longer be brought (ignoring any possibility of an appeal out of time with permission), or
- (b) the Secretary of State has issued a certificate in relation to the human rights claim under section 93(2)(b) of that Act (clearly unfounded claim).

(5) In this section “standing arrangements” means arrangements in force between two or more member States for determining which State is responsible for considering applications for asylum.”

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**Commencement Information**

**I2** S. 80 wholly in force at 1.4.2003; s. 80 not in force at Royal Assent see s. 162; s. 80 partly in force at 8.12.2002 by S.I. 2002/2811, art. 2, Sch.; s. 80 in force at 1.4.2003 in so far as not already in force by S.I. 2003/754, art. 2, Sch. 1



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