



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 decision by the Secretary of State whether to give directions in respect of the person under [^{F1}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
 - removal of the person from the United Kingdom in pursuance of directions given by the Secretary of State under any of those [^{F2}provisions].
- (2) Where the Secretary of State is empowered under section 3A of [^{F3}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—
- the person's examination by the Secretary of State,
 - the Secretary of State's decision to give or refuse the person leave to enter,
 - 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
 - removal of the person in pursuance of directions given by the Secretary of State under either of those paragraphs.
- [^{F4}(2A) A person may be detained under the authority of the Secretary of State—
- 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.)
- (3) A provision of Schedule 2 to that Act about a person who is detained or liable to detention under that Schedule 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,
 - ^{F5}(aa) a reference in paragraph 18B of that Schedule to an immigration officer shall be read as a reference to the Secretary of State,
 - ^{F6}(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.
- ^{F7}(4)
- ^{F8}(5)
- ^{F8}(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.
- ^{F9}(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)—

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- (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”.
- (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) ^{F10}
- (16) ^{F10}

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))

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- 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(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\(cc\)](#)
- F6** 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](#))
- F7** 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](#))
- F8** S. 62(5)(6) omitted (20.10.2014) by virtue of [Immigration Act 2014 \(c. 22\)](#), [s. 75\(3\)](#), **Sch. 9 para. 3(2)(e)**; [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](#)))
- F9** S. 62(7A) inserted (12.7.2016) by [Immigration Act 2016 \(c. 19\)](#), **ss. 60(12)**, [94\(1\)](#); [S.I. 2016/603](#), [reg. 3\(m\)](#)
- F10** S. 62(15)(16) repealed (14.3.2005) by [Prevention of Terrorism Act 2005 \(c. 2\)](#), **s. 16(2)(3)(4)**

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