

**IMMIGRATION DIRECTORATES' INSTRUCTIONS**  
**CHAPTER 13 Section 6**  
**Automatic Deportation UK Borders Act 2007**

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## **1.1. BACKGROUND**

The UK Borders Act 2007 increased the powers of the United Kingdom Border Agency to build stronger borders, tackle organised crime and remove incentives for illegal immigrants wanting to come to Britain. Sections 32- 39 of the UK Borders Act create a direct link between serious criminal behaviour and deportation.

## **1.2 AUTOMATIC DEPORTATION**

Section 32 of the UK Borders Act 2007 places a duty on the Secretary of State to make a deportation order in respect of a person who is not a British citizen who has been convicted in the UK of an offence and sentenced to either:

- a. a period of imprisonment of at least 12 months; or
- b. a period of imprisonment of any duration for a particularly serious offence (see section 3.2 for definition).

This duty applies to all foreign criminals except where they fall within one of the [exceptions](#) in section 33. Where an exception does apply, deportation may still be appropriate under the existing provisions of the Immigration Act 1971 or, in the case of EEA nationals and their family members who are exercising Treaty rights, under the Immigration (European Economic Area) Regulations 2006.

## **2. TIME SCALE FOR INTRODUCTION**

Automatic deportation for a non-British citizen who has been sentenced to a period of imprisonment of at least 12 months came into force on 1st August 2008.

**The provisions which require the automatic deportation of a non-British citizen who has been imprisoned for a particularly serious offence will be commenced at a later date. They are not in force and should not be applied until further notice.**

## **3. INTERPRETATION**

This Act applies to a person who:

- is not a British Citizen (or dual national)
- is convicted in the United Kingdom of an offence, and
  1. is sentenced to imprisonment of at least 12 months *or*

- 2. is sentenced to imprisonment for any length of time for a particularly serious crime (as defined in section 3.2 below)
- and who does not fall within one of the exception categories as defined in section 4 below.

### 3.2.1 Particularly Serious Offence

A particularly serious offence is an offence which is specified by order made under section 72(4)(a) of the Nationality, Immigration and Asylum Act 2002. However, the provisions which require the automatic deportation of a non-British citizen who has been imprisoned for a particularly serious offence will be commenced at a later date. They are not in force and should not be applied until further notice.

### 3.2.2 Suspended sentences

The definition of imprisonment for the purposes of this Act *does not* include suspended sentences unless a court subsequently orders that sentence or any part of that sentence, regardless of length, is to take effect. In these circumstances, if the original suspended sentence was for at least 12 months then automatic deportation must be considered.

### 3.2.3 Places of detention

For the purposes of this act, imprisonment includes where a person is sentenced to detention, or ordered or directed to be detained in an institution other than a prison, including a hospital or an institution for young offenders, for at least 12 months.

### 3.2.4 Consecutive sentences (12 months condition)

Imprisonment for 12 months *does not* include where a person is serving consecutive sentences that individually are less than 12 months in duration but amount in aggregate to 12 months or more.

### 3.2.5 Indeterminate detention (12 months detention)

Imprisonment for 12 months includes where a person is sentenced to imprisonment/detention, or ordered/directed to be detained, for an indeterminate period (provided that it may last for 12 months).

## 4. EXCEPTIONS

Section 33 of the Act details those who are exempt from the provisions of automatic deportation. For the purposes of the act and for this instruction a foreign criminal is considered exempt from automatic deportation if they fall into one of following categories or are subject to Sections 7 and 8 of the Immigration Act 1971 (certain Commonwealth citizens, Irish citizens, crew and other exemptions).

#### 4.1 Exception 1 – Asylum and Human Rights

Where removal of a 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.

#### 4.2 Exception 2 – Age

Where the Secretary of State thinks that the foreign criminal was under the age of 18 on the date of conviction the individual will be exempt from automatic deportation. However this does not prevent deportation being pursued under the 1971 Immigration Act.

For further guidance on age dispute cases, please refer to the [relevant IDI](#).

#### 4.3 Exception 3 – Community Treaty Rights (EEA nationals and their family members)

If the foreign criminal is an EEA citizen or immediate family member of an EEA citizen then they are an exception to automatic deportation if removal would breach the rights of the foreign criminal under the European Community Treaties. They may only be removed on grounds of public policy, public security or public health in accordance with regulation 19(3)(b) of the Immigration (European Economic Area) Regulations 2006. For further guidance in these cases please refer to the [IDI on deportation](#).

#### 4.4 Exception 4 – Extradition

A foreign criminal will also be exempt from automatic deportation where they:

- (a) are the subject of a certificate under section 2 or 70 of the Extradition Act 2003;
- (b) are in custody pursuant to arrest under section 5 of that Act;
- (c) are the subject of a provisional warrant under section 73 of the Extradition Act 2003;
- (d) are the subject of an authority to proceed under section 7 of the Extradition Act 1989 or an order under paragraph 4(2) of Schedule 1 to that Act; or
- (e) are the subject of a provisional warrant under section 8 of that Act or of a warrant under paragraph 5(1)(b) of Schedule 1 of that Act.

#### 4.5 Exception 5 – Mental Health Provisions

The fifth exception to the automatic deportation provisions 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;
- (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;
- (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; 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.

#### 4.6 Exception 6- Recognised victim of trafficking

The sixth exception is where the Secretary of State thinks that deportation under these provisions would contravene the United Kingdom's obligations under the Council of Europe Convention on Action against Trafficking in Human Beings (done at Warsaw on 16 May 2005).

This exception was inserted by the Criminal Justice and Immigration Act 2008. **It has not yet been commenced and is not in force.** It will be brought into force at the same time as the Convention Against Human Trafficking itself is ratified and comes into force. This exception should not be applied until further notice.

When this provision is commenced, it will mean that deportation will not be appropriate where the Secretary of State thinks that deportation would contravene the United Kingdom's obligations under the Council of Europe Convention on Action against Trafficking in Human Beings (done at Warsaw on 16 May 2005).

### **5. THOSE WHO DO NOT MEET AUTOMATIC DEPORTATION CRITERIA**

#### 5.1 Exceptions to be considered under the 1971 Immigration Act

If a case falls within one of the above exception categories, this does not always prevent a deportation order from being made.

Where an individual falls within one of the following exception categories, consideration for deportation can still take place under the provisions of the Immigration Act 1971 or the Immigration (European Economic Area) Regulations 2006:

- Exception 2 (Age at Conviction)
- Exception 3 (Community Treaty Rights (EEA nationals and their families))
- Exception 4 (Extradition)
- Exception 5, (Mental health provisions).

For further information please see the relevant [IDI on deportation](#).

### 5.2 Aggregate Sentences exceeding 12 months

Non EEA nationals and their family members who receive 2 or 3 custodial sentences in a 5 year period that in aggregate exceed 12 months should continue to be considered under the existing deportation provisions in the Immigration Act 1971.

### 5.3 Court Recommended Deportations

Foreign criminals who are recommended for deportation by a court, and sentenced to less than twelve months' imprisonment, should continue to be considered under the existing deportation provisions in the Immigration Act 1971

## **6. TIMING OF A DEPORTATION ORDER**

### 6.1 Outstanding Immigration Appeal

Section 34 of the Act allows a deportation order to be made at a time chosen by the Secretary of State. However, there are certain limitations on this as detailed below in section 6.2.

Where the automatic deportation provisions apply, a deportation order **can** be made even though an appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 against an immigration decision could be brought or is pending. This contrasts with when the person is to be deported under the Immigration Act 1971 and the automatic deportation provisions **do not** apply. In such a case a deportation order **cannot** be made until the person's appeal rights are exhausted.

The UK Borders Act provides that where the automatic deportation provisions apply, a deportation order which is made while an in-country appeal can be brought or is pending does not invalidate any leave to enter or remain.

In practice this means that whilst a deportation order can be made in these circumstances, the subject's leave is not invalidated until that appeal right is exhausted. This applies only to an immigration appeal brought while the appellant is in the United Kingdom.

There is however nothing to prevent any of the following actions being taken while such an appeal is pending —

- (a) the giving of a direction for the appellant's removal from the United Kingdom,
- (b) the taking of any other interim or preparatory action.

## 6.2 Outstanding Criminal Appeal

The UK Borders Act provides that a deportation order may not be made in certain circumstances. A deportation order may not be made while an appeal or further appeal against the criminal conviction or sentence that has triggered the automatic deportation provisions:

- (a) has been instituted and neither withdrawn nor determined, or
- (b) could be brought (ignoring any possibility of an appeal out of time with permission).

If a person has informed the Secretary of State in writing that they do not intend to exercise their right of appeal against conviction or sentence, they should be treated as being no longer able to appeal.

## **7. ASYLUM AND HUMAN RIGHTS CLAIMS**

If an individual claims to be exempt from automatic deportation due to an asylum or human rights claim, the claim must be considered fully before any deportation order is made. If the asylum or human rights claim is refused, and the person appeals the decision that the automatic deportation provisions apply, then the appeal will be in-country under section 92(4) of the Nationality, Immigration and Asylum Act 2002. However, where appropriate, thought should be given to certifying any claim under the powers available in Section 94 of the 2002 Act. Where an individual is not from an NSA designated country, consideration should be given to whether case by case certification under 94(2) is appropriate so that the appeal is out of country.

## **8 WITHDRAWALS AND REVOCATION OF A DEPORTATION ORDER**

The UK Borders Act includes a provision allowing the Secretary of State to withdraw a decision that the automatic deportation provisions apply, and (where applicable) revoke a deportation order made in accordance with the automatic deportation provisions for the following purposes:

- (a) taking action under the Immigration Acts or rules made under section 3 of the Immigration Act 1971 and
- (b) subsequently taking a new decision that these provisions apply and making a deportation order in accordance with the automatic deportation provisions of the UK Borders Act.

The purpose of this section is to ensure that there remains the ability to certify an asylum or human rights claim made after a deportation order has been signed. To do this, the Secretary of State has to withdraw the original decision, and revoke any deportation order, before certifying the claim. The Secretary of State must then take a new decision that the automatic deportation provisions of the Act apply and must make a deportation order.

## **9 DETENTION**

### **9.1 Pre-decision**

A person who has served a period of imprisonment may be detained:

- (a) while the Secretary of State considers whether the automatic deportation provisions of the UK Borders Act apply, and
- (b) where the Secretary of State thinks that the automatic deportation provisions apply, pending the making of the deportation order.

The provisions in Schedule 3 to the Immigration Act 1971 which concern, amongst others things, arrest, search and bail apply equally to the detention provisions above.

Where a court is determining an appeal against a conviction or sentence, it may direct that a subject be released from such detention.

### **9.2 Post-decision (pre signing of a deportation order)**

The power to detain in this circumstance is given in section 36(1)(b) of the UK Borders Act

### **9.3 Detention after a deportation order is signed**

After a deportation order has been made under the UK Borders Act 2007, and where detention pending removal is deemed appropriate, powers under paragraph 2(3) of Schedule 3 of the Immigration Act 1971 should be used.

Where a court is determining an appeal against a conviction or sentence, it may direct that a subject be released from detention.

#### 9.4 Restriction Conditions

Paragraph 2(5) of Schedule 3 of the Immigration Act 1971 relates to restrictions on residence, occupation and reporting. This also applies to a person who is liable to be detained under part 9.1 (or 9.2) above.

### **10 FAMILY**

Where a deportation order is made against a foreign criminal in accordance with the UK Borders Act 2007, a deportation order (under the Immigration Act 1971 provisions) can not be made against a family member of the individual after a period of eight weeks has expired.

In a case where a foreign criminal has not appealed in respect of the automatic deportation order, the eight week period begins when an appeal can no longer be brought, ignoring any possibility of an appeal out of time with permission.

In the case where a foreign criminal has appealed in respect of the automatic deportation order, the relevant period of eight weeks begins when the appeal is no longer pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002).

The family member should be considered for deportation where appropriate under the existing provisions of the Immigration Act 1971.

A deportation order made against a family member ceases to have effect if the person ceases to belong to the family of the other person, or if the deportation order against the foreign criminal ceases to have effect.

### **11. REMOVAL ARRANGEMENTS**

Once a deportation order has been obtained and provided there are no immediate obstacles to proceeding with a person's deportation, directions for the person's removal will be given by the Secretary of State pursuant to paragraph 1 of Schedule 3 to the 1971 Act. If the person is serving a prison sentence then, wherever possible, arrangements for removal will be made to coincide with his release.

### **12. DEPORTEES WHO RETURN**

A person is prohibited from entering the United Kingdom whilst a deportation order is in force. In the event that a person does so enter, i.e. passes through or circumvents the immigration control, he will be deemed to have entered illegally.

This is in line with the definition of an illegal entrant as set out in section 33(1) of the Immigration Act 1971. He may be removed again by relying on the deportation order (i.e. removal directions can be set again under Schedule 3). Any leave to enter or remain that he has been granted while still the subject of a deportation order is invalid (section 5(1) of the 1971 Act). Such a person may be detained where appropriate.