

IMMIGRATION DIRECTORATES' INSTRUCTIONS (Dec 07)

CHAPTER 13 SECTION 1 - DEPORTATION

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1. INTRODUCTION

A person who is not a British citizen or who is not otherwise exempt from deportation may be liable to deportation under section 3(5) or 3(6) of the Immigration Act 1971 (as amended by the Immigration and Asylum Act 1999) if:

- the Secretary of State deems the person's deportation to be conducive to the public good (section 3(5)(a)); or
- the person is the spouse, civil partner or child under 18 of a person ordered to be deported (section 3(5)(b)); or
- the person after reaching the age of 17, is convicted of an offence which is punishable with imprisonment and on his conviction is recommended for deportation by the court (section 3(6)).

Prior to 2 October 2000, when section 10 of the Immigration, and Asylum Act 1999 came into force, deportation was also the process by which overstayers, those who failed to observe a condition attached to their limited leave and those who obtained leave to remain by deception would have been removed from the United Kingdom. After this date but subject to certain transitional provisions (see paragraph 2.4 below) deportation was reserved for more serious cases.

Further information on liability to and exemption from deportation can be found in Chapter 12 of the Operational Enforcement Manual, available on the Horizon and Knowledge Base.

2. DEPORTATION POWERS

2.1. Section 3(5)(a) of the 1971 Act - deportation on conducive grounds

The Secretary of State may deem a person's deportation to be conducive to the public good for reasons including the following:

- **Following a conviction**

Even though a person may have been convicted of a serious offence or have a series of lesser convictions the court will not necessarily recommend deportation. This may be for various reasons including that its attention was not drawn to its powers in this respect or the Judge decided to leave the matter to the Secretary of State. Although the court may not have made a recommendation this does not prevent the Secretary of State from deciding that it would be appropriate to pursue deportation action.

- **Indefinite leave to remain has been obtained by deception.**

In such cases there must be clear evidence that a person obtained settlement by deception (e.g. on the basis of a sham marriage) prior to 1 October 1996. The standard of proof must demonstrate a high degree of probability.

Where deception was practised after 1 October 1996, see **Chapter 13 Section 2 "Administrative Removal under Section 10 of the 1999 Act"**.

2.2. Section 3(5)(b) of the 1971 Act - deportation of family members

The spouse or civil partner or children under the age of 18 of a person who has either been deported or been ordered to be deported are themselves liable to deportation. A deportation order cannot be made against a person belonging to the family of another person if more than 8 weeks have elapsed since the other person left the UK after the making of the deportation order against him.

A deportation order made against a person under section 3(5)(b) will cease to have effect if he or she ceases to belong to the family of the other person or if the deportation order made against the other person ceases to have effect. Where the spouse or civil partner is liable to deportation in his/her own right action should be taken on that basis.

Where a child is liable to deportation under this section the case must be considered in accordance with the requirements of paragraphs 365-368 of the Immigration Rules. Where the child is aged 16 or over and liable to deportation in his/her own right, action should be taken on that basis.

2.3. Section 3(6) of the 1971 Act - deportation following a court recommendation

Any person who is not a British citizen and who, after he has reached the age of 17, is convicted of an offence for which he is punishable with imprisonment and on his conviction is recommended for deportation by the court, is liable to deportation from the United Kingdom. At least 7 days prior to sentence, he must be served with a notice of liability to deportation (sometimes known as form IM3) by the police or prosecuting authority. This gives notice of the categories of persons who are not liable to deportation so that the opportunity is given to substantiate any claim he may have to be exempt from deportation (Section 6(2) of the Immigration Act 1971).

2.4 Transitional provisions - Immigration and Asylum Act 1999

2.4.1 Section 9 of the 1999 Act - deportation under the regularisation scheme for overstayers

Prior to 2 October 2000 a person who "overstayed" the period of his limited leave in the United Kingdom would have been liable to deportation. On 2 October 2000 section 10 of the

Immigration and Asylum Act 1999 came into force. This made provision for those overstayers, not previously served with a notice of a decision to make a deportation order, to be administratively removed from the United Kingdom by way of directions given under section 10.

Where a decision is made to remove a person by way of directions under section 10, the person may not appeal while he is in the United Kingdom unless he has made an asylum or human rights claim whilst in the United Kingdom, or in the case of an EEA national or family member of an EEA national, he claims that the decision would breach his Treaty rights in respect of entry to or residence in the United Kingdom.

Section 9 of the 1999 Act allowed arrangements to be made under which overstayers could apply to regularise their stay i.e. to apply for leave to remain. Applications had to be made within a specified period (8 February to 1 October 2000 inclusive). The main consequence of the Regularisation Scheme for Overstayers is that where any application made under the scheme is refused, the applicant remains subject to deportation action and will continue to have a separate right of appeal from within the United Kingdom against the decision to make a deportation order.

2.4.2 Deportation of those who were notified of a decision to make a deportation order before 2 October 2000

Under the transitional provisions, any person on whom the Secretary of State has, before 2 October 2000, served a notice of intention to deport, will continue to be deported under Section 5 of the 1971 Act.

2.5. Deportation of EEA nationals and their family members

Those EEA nationals and their family members (who may not be EEA nationals themselves), who would otherwise be entitled to reside in the United Kingdom under the Immigration (European Economic Area) Regulations 2006 (2006 Regulations) may only be removed on grounds of public policy, public security or public health in accordance with regulation 19(3)(b) of the 2006 Regulations. Regulation 24(3) further provides that such persons are to be treated as if they are persons to whom section 3(5)(a) of the 1971 Act applies. Further information on the removal of EEA nationals and their family members is contained in Chapter 8 of the European Casework Instructions available on Horizon and Knowledge Base.

2.6 Deportation of Irish nationals

Following a ministerial statement on 19 February 2007, concerning the deportation of Irish nationals, the only criteria under which an Irish national may be considered for deportation are:-

- A court has recommended deportation in sentencing, or
- The Secretary of State concludes that due to the exceptional circumstances of the case, the public interest requires deportation.

3. PARAGRAPH 364 OF THE IMMIGRATION RULES

Paragraph 364 of the Immigration Rules states that where a person is liable to deportation and provided his deportation would not be contrary to the United Kingdom's obligations under the Human Rights Convention and the Convention and Protocol relating to the Status of Refugees, the presumption shall be that the public interest requires deportation. Each case will be considered on its own merits and account given to other relevant factors, which though not contrary to the Human Rights or Refugee Convention, might exceptionally outweigh the presumption to deport.

4. EXTRADITION AND REPATRIATION

Occasionally a deportation case will also be subject to extradition or repatriation proceedings. These proceedings will make no difference to the consideration of whether deportation should go ahead. Deportation consideration and extradition / repatriation proceedings should continue simultaneously.

When a decision is taken to repatriate a prisoner to serve his sentence in his home country, the Border and Immigration Agency will be informed of this decision and asked to serve a deportation order prohibiting that person's return to the United Kingdom. Such cases should be referred to a Senior Caseworker for action.

5. SERVICE OF NOTICE OF A DECISION TO MAKE A DEPORTATION ORDER

If, after consideration of all the relevant facts, deportation is considered the correct course of action, a notice of a decision to make a deportation order will be served. This notice will also inform the person of his right to appeal against the decision to make a deportation order.

In the light of changes made by the 1999 Act, it is likely that many of those against whom it is decided to make a deportation order will be in detention. Where this is not the case, the notice should be sent by first class recorded delivery post to an address provided for correspondence by the person or his representative or, if no such address has been provided, to the person's ***last known or usual*** place of abode or the place of business of the person or his representative. Whilst a covering letter is sent to the person's representative (if any), it is not normal practice to serve the notice on the representative or to send him a copy.

6. SIGNATURE OF A DEPORTATION ORDER

Once appeal rights have been exhausted (see ***Chapter 13 Section 3 "Appeals"***), and providing the decision to deport has not been overturned, caseworkers will prepare a submission to seek a deportation order. An order will usually be signed by the Chief Executive or Deputy Chief Executive; although Ministers may sign deportation orders in particular cases. Once a deportation order has been signed a copy should be served on the person and the implications of the order fully explained. A deportation order remains in force from the date it is signed until such time as the subject of the order is successful in applying to have the order revoked (see ***Chapter 13 Section 5 "Revocation of deportation orders"***). Therefore even where a person has not yet been served with a copy of the deportation order, e.g. the person absconds before being served, the order continues to have effect.

7. 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 an immigration officer 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.

8. 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. 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 in custody where appropriate.

8.1. Removal

A deportee who enters the United Kingdom in breach of an extant deportation order will generally be removed by the Border and Immigration Agency as an illegal entrant. In the first instance such cases should be referred to the relevant Enforcement and Removal office.

9. BRITISH CITIZENS AND THOSE WITH THE RIGHT OF ABODE

A person who has the right of abode (see *Chapter 1 Section 1, "Right of abode"*) is not liable to deportation. A deportation order ceases to have effect if the person against whom it is made subsequently becomes a British citizen (Section 5(2) of the 1971 Act).

10. ALTERNATIVES TO DEPORTATION

10.1 Voluntary departure

As explained at paragraph 1 above, prior to 2 October 2000 when section 10 of the 1999 Act came into force, certain categories of people, e.g. overstayers or those who failed to observe a condition attached to their limited leave would have been liable to deportation action. Once deportation action has been initiated against such people (usually with service of the notice of decision to make a deportation order) any pursuance of enforced removal must continue to be by way of deportation, i.e. they cannot be switched into section 10 administrative removal.

However as an alternative to deportation in certain circumstances it may be open to the person to leave the United Kingdom voluntarily **before** a deportation order is actually signed. Applications should be referred to a Senior Caseworker. In the event that a criminal case is involved referral should be to a Senior Caseworker within Criminal Casework Directorate.

A deportation order cannot be made against a person who is not in the United Kingdom and therefore enforcement action will cease if it is known a person has embarked. A person who is already the subject of a deportation order but who subsequently leaves the United Kingdom of his own volition is regarded as having "deported himself" irrespective of whether he was aware of the signing of a deportation order against him.

10.2 Supervised departures

In certain circumstances, a person subject to deportation may be allowed to leave by supervised departure without a deportation order being made against him. This will generally be where a person signs a waiver regarding appeal rights. Supervised departure can either be at the person's own expense or paid from public funds (Section 5(6) of the 1971 Act as amended by paragraph 2 of the Schedule to the Immigration Act 1988). In all cases a supervised departure must be authorised by a Senior Caseworker or a designated Inspector (see chapters 37.3 and 37.3.1 of the OEM). Where a criminal case is involved that authorisation must be sought from the equivalent grades within Criminal Casework Directorate.

10.3 Return to the United Kingdom following a voluntary or supervised departure

A person who is subject to enforcement action and who makes a voluntary or supervised departure is not debarred from re-entering the United Kingdom but must satisfy the requirements of the Immigration Rules for which he is seeking entry in the normal way.