



# 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 [<sup>F1</sup>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 [<sup>F2</sup>provisions].
- (2) Where the Secretary of State is empowered under section 3A of [<sup>F3</sup>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.
- [<sup>F4</sup>(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).]
- [<sup>F5</sup>(2N) A person liable to be detained under this section may be detained for such period as, in the opinion of the Secretary of State, is reasonably necessary to enable the decision to be made, the removal or examination to be carried out, or the directions to be given.
- (2O) Subsections (1) to (2A) apply regardless of whether there is anything that for the time being prevents the decision from being made, the removal or examination from being carried out, or the directions from being given.
- (2P) Subsections (2N) and (2O) are subject to—
- (a) paragraph 18B of Schedule 2 to the Immigration Act 1971 (limitation on detention of unaccompanied children), as applied by subsection (3);
  - (b) subsections (2B) to (2E) (limitation on detention of pregnant women);
  - (c) subsection (7A) and section 60 of the Immigration Act 2016 (limitation on detention of pregnant women).
- (2Q) Subsection (2R) applies if, while a person is detained under this section, the Secretary of State no longer considers that the decision will be made, the removal or examination will be carried out, or the directions will be given within a reasonable period of time.
- (2R) The person may be detained under this section for such further period as, in the opinion of the Secretary of State, is reasonably necessary to enable such arrangements to be made for the person’s release as the Secretary of State considers to be appropriate.]
- (3) A provision of Schedule 2 to that Act about a person who is detained or liable to detention under that Schedule [<sup>F6</sup>, other than paragraph 17A,] 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,
- [<sup>F7</sup>(aa) a reference in paragraph 18B of that Schedule to an immigration officer shall be read as a reference to the Secretary of State,]
- <sup>F8</sup>(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.

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<sup>F9</sup>(4) .....

<sup>F10</sup>(5) .....

<sup>F10</sup>(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.

[<sup>F11</sup>(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)—

(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”.

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- (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) <sup>F12</sup> .....
- (16) <sup>F12</sup> .....

### 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))
- 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\(2N\)-\(2R\)](#) inserted (28.9.2023) by [Illegal Migration Act 2023 \(c. 37\)](#), [ss. 12\(4\)\(a\)](#), [68\(1\)](#) (with s. 55(9)); [S.I. 2023/989](#), [reg. 2\(a\)](#)
- F6** Words in s. 62(3) inserted (28.9.2023) by [Illegal Migration Act 2023 \(c. 37\)](#), [ss. 12\(4\)\(b\)](#), [68\(1\)](#) (with s. 55(9)); [S.I. 2023/989](#), [reg. 2\(a\)](#)
- F7** [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)
- F8** [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](#))
- F9** [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](#))
- F10** [S. 62\(5\)\(6\)](#) omitted (20.10.2014) by virtue of [Immigration Act 2014 \(c. 22\)](#), s. 75(3), [Sch. 9 para. 3\(2\)\(c\)](#); [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))
- F11** [S. 62\(7A\)](#) inserted (12.7.2016) by [Immigration Act 2016 \(c. 19\)](#), [ss. 60\(12\)](#), [94\(1\)](#); [S.I. 2016/603](#), [reg. 3\(m\)](#)
- F12** [S. 62\(15\)\(16\)](#) repealed (14.3.2005) by [Prevention of Terrorism Act 2005 \(c. 2\)](#), [s. 16\(2\)\(3\)\(4\)](#)

## 63 Control of entry to United Kingdom, &c.: use of force

In paragraph 17(2) of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry, &c.: person liable to detention: use of force) for “if need be by force” there shall be substituted “if need be by reasonable force”.

## 64 Escorts

The following shall be added after paragraph 17(2) of Schedule 2 to the Immigration Act 1971 (detention for examination or removal: right to enter premises)—

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- “(3) Sub-paragraph (4) applies where an immigration officer or constable—
- (a) enters premises in reliance on a warrant under sub-paragraph (2), and
  - (b) detains a person on the premises.
- (4) A detainee custody officer may enter the premises, if need be by reasonable force, for the purpose of carrying out a search.
- (5) In sub-paragraph (4)—
- “detainee custody officer” means a person in respect of whom a certificate of authorisation is in force under section 154 of the Immigration and Asylum Act 1999 (c. 33) (detained persons: escort and custody), and
- “search” means a search under paragraph 2(1)(a) of Schedule 13 to that Act (escort arrangements: power to search detained person).”

## 65 Detention centres: custodial functions

- (1) The following shall be substituted for section 154(5) of the Immigration and Asylum Act 1999 (power to confer functions of detainee custody officers on prison officers and prisoner custody officers)—

“(5) The Secretary of State may confer functions of detainee custody officers on prison officers or prisoner custody officers.”

- (2) The following shall be added at the end of Schedule 11 to that Act (detainee custody officers)—

### “Prison officers and prisoner custody officers

- 8 A reference in this Schedule to a detainee custody officer includes a reference to a prison officer or prisoner custody officer exercising custodial functions.”

- (3) The following shall be added at the end of Schedule 12 to that Act (discipline at detention centre)—

### “Prison officers and prisoner custody officers

- 9 A reference in this Schedule to a detainee custody officer includes a reference to a prison officer or prisoner custody officer exercising custodial functions.”

## 66 Detention centres: change of name

- (1) In section 147 of the Immigration and Asylum Act 1999 (c. 33) (Part VIII: interpretation)—

- (a) the definition of “detention centre” shall cease to have effect, and
- (b) the following shall be inserted after the definition of “prisoner custody officer”—

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““removal centre” means a place which is used solely for the detention of detained persons but which is not a short-term holding facility, a prison or part of a prison;”.

- (2) In the provisions listed in subsection (3) (and any relevant headings)—
- (a) for the words “detention centre” there shall be substituted the words “removal centre”, and
  - (b) for the words “detention centres” there shall be substituted the words “removal centres”.
- (3) The provisions are—
- (a) in section 147 of the Immigration and Asylum Act 1999 (Part VIII: interpretation), the definitions of “contracted out detention centre”, “contractor”, “custodial functions”, “detention centre contract”, “detention centre rules”, and “directly managed detention centre”,
  - (b) section 148 of that Act (management of centre),
  - (c) sections 149 and 150 of that Act (contracting out),
  - (d) section 151 of that Act (intervention by Secretary of State),
  - (e) section 152 of that Act (visiting committee),
  - (f) section 153 of that Act (rules),
  - (g) section 155 of that Act (custodial functions),
  - (h) section 157 of that Act (short-term holding facility),
  - (i) section 158 of that Act (disclosure of information),
  - (j) section 159 of that Act (power of constable),
  - (k) Schedule 11 to that Act (detainee custody officer),
  - (l) Schedule 12 to that Act (procedure at detention centre),
  - (m) Schedule 13 to that Act (escort),
  - (n) section 141(5)(e) and (6) of that Act (fingerprinting),
  - (o) section 5A(5A) of the Prison Act 1952 (c. 52) (Chief Inspector of Prisons), and
  - (p) paragraph 13 of Schedule 4A to the Water Industry Act 1991 (c. 56) (disconnection).
- (4) A reference in an enactment or instrument to a detention centre within the meaning of Part VIII of the Immigration and Asylum Act 1999 (c. 33) shall be construed as a reference to a removal centre within the meaning of that Part.

## **67 Construction of reference to person liable to detention**

- (1) This section applies to the construction of a provision which—
- (a) does not confer power to detain a person, but
  - (b) refers (in any terms) to a person who is liable to detention under a provision of the Immigration Acts.
- (2) The reference shall be taken to include a person if the only reason why he cannot be detained under the provision is that—
- (a) he cannot presently be removed from the United Kingdom, because of a legal impediment connected with the United Kingdom’s obligations under an international agreement,
  - (b) practical difficulties are impeding or delaying the making of arrangements for his removal from the United Kingdom, or

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- (c) practical difficulties, or demands on administrative resources, are impeding or delaying the taking of a decision in respect of him.
- (3) This section shall be treated as always having had effect.

### Temporary release

#### <sup>F13</sup> 68 Bail

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##### Textual Amendments

- F13** Ss. 68, 69 omitted (15.1.2018) by virtue of [Immigration Act 2016 \(c. 19\)](#), s. 94(1), [Sch. 10 para. 35](#); [S.I. 2017/1241](#), reg. 2(c) (with [Sch.](#)) (as amended by [S.I. 2018/31](#), reg. 2)

#### <sup>F13</sup> 69 Reporting restriction: travel expenses

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##### Textual Amendments

- F13** Ss. 68, 69 omitted (15.1.2018) by virtue of [Immigration Act 2016 \(c. 19\)](#), s. 94(1), [Sch. 10 para. 35](#); [S.I. 2017/1241](#), reg. 2(c) (with [Sch.](#)) (as amended by [S.I. 2018/31](#), reg. 2)

#### 70 Induction

- (1) A residence [<sup>F14</sup>condition] may be imposed on an asylum-seeker or a dependant of an asylum-seeker without regard to his personal circumstances if—
- it requires him to reside at a specified location for a period not exceeding 14 days, and
  - the person imposing the residence [<sup>F14</sup>condition] believes that a programme of induction will be made available to the asylum-seeker at or near the specified location.
- [<sup>F15</sup>(2) In subsection (1) “residence condition” means a condition imposed under Schedule 10 to the Immigration Act 2016.]
- (3) In this section—
- “asylum-seeker” has the meaning given by section 18 of this Act but disregarding section 18(1)(a),
- “dependant of an asylum-seeker” means a person who appears to the Secretary of State to be making a claim or application in respect of residence in the United Kingdom by virtue of being a dependant of an asylum-seeker, and
- “programme of induction” means education about the nature of the asylum process.
- (4) Regulations under subsection (3)—
- may make different provision for different circumstances,
  - must be made by statutory instrument, and



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- (c) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Subsection (6) applies where the Secretary of State arranges for the provision of a programme of induction (whether or not he also provides other facilities to persons attending the programme and whether or not all the persons attending the programme are subject to residence [<sup>F16</sup>conditions]).
- (6) A local authority may arrange for or participate in the provision of the programme or other facilities.
- (7) In particular, a local authority may—
- incur reasonable expenditure;
  - provide services outside its area;
  - provide services jointly with another body;
  - form a company;
  - tender for or enter into a contract;
  - do anything (including anything listed in paragraphs (a) to (e)) for a preparatory purpose.
- (8) In this section “local authority” means—
- a local authority within the meaning of section 94 of the Immigration and Asylum Act 1999 (c. 33), and
  - a Northern Ireland authority within the meaning of section 110 of that Act.

#### Textual Amendments

- F14** Words in s. 70(1) substituted (15.1.2018) by [Immigration Act 2016 \(c. 19\), s. 94\(1\), Sch. 10 para. 36\(2\)](#); [S.I. 2017/1241, reg. 2\(c\)](#) (with [Sch.](#)) (as amended by [S.I. 2018/31, reg. 2](#))
- F15** S. 70(2) substituted (15.1.2018) by [Immigration Act 2016 \(c. 19\), s. 94\(1\), Sch. 10 para. 36\(3\)](#); [S.I. 2017/1241, reg. 2\(c\)](#) (with [Sch.](#)) (as amended by [S.I. 2018/31, reg. 2](#))
- F16** Word in s. 70(5) substituted (15.1.2018) by [Immigration Act 2016 \(c. 19\), s. 94\(1\), Sch. 10 para. 36\(4\)](#); [S.I. 2017/1241, reg. 2\(c\)](#) (with [Sch.](#)) (as amended by [S.I. 2018/31, reg. 2](#))

## 71 Asylum-seeker: residence, &c. restriction

- (1) This section applies to—
- a person who makes a claim for asylum at a time when he has leave to enter or remain in the United Kingdom, and
  - a dependant of a person within paragraph (a).
- (2) The Secretary of State or an immigration officer may impose on a person to whom this section applies any [<sup>F17</sup>condition which may be imposed under Schedule 10 to the Immigration Act 2016] on a person liable to detention under paragraph 16 of [<sup>F18</sup>Schedule 2 to the Immigration Act 1971].
- (3) Where a [<sup>F19</sup>condition] is imposed on a person under subsection (2)—
- the [<sup>F19</sup>condition] shall be treated for all purposes as a [<sup>F19</sup>condition] imposed under [<sup>F20</sup>Schedule 10 to the Immigration Act 2016], and
  - if the person fails to comply with the [<sup>F19</sup>condition] he shall be liable to detention under paragraph 16 of [<sup>F21</sup>Schedule 2 to the Immigration Act 1971].

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- (4) A [<sup>F22</sup>condition] imposed on a person under this section shall cease to have effect if he ceases to be an asylum-seeker or the dependant of an asylum-seeker.
- (5) In this section—
- “asylum-seeker” has the same meaning as in section 70,
  - “claim for asylum” has the same meaning as in section 18, and
  - “dependant” means a person who appears to the Secretary of State to be making a claim or application in respect of residence in the United Kingdom by virtue of being a dependant of another person.
- (6) Regulations under subsection (5)—
- (a) may make different provision for different circumstances,
  - (b) must be made by statutory instrument, and
  - (c) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

- F17** Words in s. 71(2) substituted (15.1.2018) by [Immigration Act 2016 \(c. 19\), s. 94\(1\), Sch. 10 para. 37\(2\)\(a\)](#); S.I. 2017/1241, reg. 2(c) (with Sch.) (as amended by S.I. 2018/31, reg. 2)
- F18** Words in s. 71(2) substituted (15.1.2018) by [Immigration Act 2016 \(c. 19\), s. 94\(1\), Sch. 10 para. 37\(2\)\(b\)](#); S.I. 2017/1241, reg. 2(c) (with Sch.) (as amended by S.I. 2018/31, reg. 2)
- F19** Word in s. 71(3) substituted (15.1.2018) by [Immigration Act 2016 \(c. 19\), s. 94\(1\), Sch. 10 para. 37\(3\)\(a\)](#); S.I. 2017/1241, reg. 2(c) (with Sch.) (as amended by S.I. 2018/31, reg. 2)
- F20** Words in s. 71(3) substituted (15.1.2018) by [Immigration Act 2016 \(c. 19\), s. 94\(1\), Sch. 10 para. 37\(3\)\(b\)](#); S.I. 2017/1241, reg. 2(c) (with Sch.) (as amended by S.I. 2018/31, reg. 2)
- F21** Words in s. 71(3) substituted (15.1.2018) by [Immigration Act 2016 \(c. 19\), s. 94\(1\), Sch. 10 para. 37\(3\)\(c\)](#); S.I. 2017/1241, reg. 2(c) (with Sch.) (as amended by S.I. 2018/31, reg. 2)
- F22** Word in s. 71(4) substituted (15.1.2018) by [Immigration Act 2016 \(c. 19\), s. 94\(1\), Sch. 10 para. 37\(4\)](#); S.I. 2017/1241, reg. 2(c) (with Sch.) (as amended by S.I. 2018/31, reg. 2)

#### *Removal*

## 72 Serious criminal

- (1) This section applies for the purpose of the construction and application of Article 33(2) of the Refugee Convention (exclusion from [<sup>F23</sup>prohibition of expulsion or return]).
- (2) A person [<sup>F24</sup>is] convicted by a final judgment of a particularly serious crime <sup>F25</sup>... if he is—
- (a) convicted in the United Kingdom of an offence, and
  - (b) sentenced to a period of imprisonment of at least [<sup>F26</sup>12 months].
- (3) A person [<sup>F27</sup>is] convicted by a final judgment of a particularly serious crime <sup>F28</sup>... if—
- (a) he is convicted outside the United Kingdom of an offence,
  - (b) he is sentenced to a period of imprisonment of at least [<sup>F29</sup>12 months], and
  - (c) he could have been sentenced to a period of imprisonment of at least [<sup>F30</sup>12 months] had his conviction been a conviction in the United Kingdom of a similar offence.

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- (4) A person [<sup>F31</sup>is] convicted by a final judgment of a particularly serious crime <sup>F32</sup>... if—
- (a) he is convicted of an offence specified by order of the Secretary of State, or
  - (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.
- [<sup>F33</sup>(5A) A person convicted by a final judgment of a particularly serious crime (whether within or outside the United Kingdom) is to be presumed to constitute a danger to the community of the United Kingdom.]
- (6) A presumption under subsection [<sup>F34</sup>(5A)] that a person constitutes a danger to the community is rebuttable by that person.
- (7) A presumption under subsection [<sup>F35</sup>(5A)] 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 [<sup>F36</sup>under subsection (5A)] 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 <sup>F37</sup>... of this Act or under section 2 of the Special Immigration Appeals Commission Act 1997 (c. 68) wholly or partly on the ground [<sup>F38</sup>mentioned in section 84(1)(a) or (3)(a) of this Act (breach of the United Kingdom's obligations under the Refugee Convention), and]
  - (b) the Secretary of State issues a certificate that [<sup>F39</sup>a presumption under subsection (5A) applies] to the person (subject to rebuttal).
- (10) The <sup>F40</sup>... Tribunal or Commission hearing the appeal—
- (a) must begin substantive deliberation on the appeal by considering the certificate, and
  - (b) if in agreement that [<sup>F41</sup>a presumption under subsection (5A) applies] (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).
- [<sup>F42</sup>(10A) Subsection (10) also applies in relation to the Upper Tribunal when it acts under section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007.]
- (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 [<sup>F43</sup>12 months] —

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- (i) does not include a reference to a person who receives a suspended sentence [<sup>F44</sup>(unless a court subsequently orders that the sentence or any part of it is to take effect)],
- <sup>F45</sup>(ia) does not include a reference to a person who is sentenced to a period of imprisonment of at least [<sup>F46</sup>12 months] only by virtue of being sentenced to consecutive sentences which amount in aggregate to more than [<sup>F46</sup>12 months],
- (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 [<sup>F47</sup>12 months]).

#### Textual Amendments

- F23** Words in s. 72(1) substituted (28.6.2022) by [Nationality and Borders Act 2022 \(c. 36\)](#), **ss. 38(2)**, 87(5)(d) (with s. 38(13))
- F24** Word in s. 72(2) substituted (28.6.2022) by [Nationality and Borders Act 2022 \(c. 36\)](#), **ss. 38(3)(a)(i)**, 87(5)(d) (with s. 38(13))
- F25** Words in s. 72(2) omitted (28.6.2022) by virtue of [Nationality and Borders Act 2022 \(c. 36\)](#), **ss. 38(3)(a)(ii)**, 87(5)(d) (with s. 38(13))
- F26** Words in s. 72(2)(b) substituted (28.6.2022) by [Nationality and Borders Act 2022 \(c. 36\)](#), **ss. 38(3)(b)**, 87(5)(d) (with s. 38(13))
- F27** Word in s. 72(3) substituted (28.6.2022) by [Nationality and Borders Act 2022 \(c. 36\)](#), **ss. 38(4)(a)(i)**, 87(5)(d) (with s. 38(13))
- F28** Words in s. 72(3) omitted (28.6.2022) by virtue of [Nationality and Borders Act 2022 \(c. 36\)](#), **ss. 38(4)(a)(ii)**, 87(5)(d) (with s. 38(13))
- F29** Words in s. 72(3)(b) substituted (28.6.2022) by [Nationality and Borders Act 2022 \(c. 36\)](#), **ss. 38(4)(b)**, 87(5)(d) (with s. 38(13))
- F30** Words in s. 72(3)(c) substituted (28.6.2022) by [Nationality and Borders Act 2022 \(c. 36\)](#), **ss. 38(4)(c)**, 87(5)(d) (with s. 38(13))
- F31** Word in s. 72(4) substituted (28.6.2022) by [Nationality and Borders Act 2022 \(c. 36\)](#), **ss. 38(5)(a)**, 87(5)(d) (with s. 38(13))
- F32** Words in s. 72(4) omitted (28.6.2022) by virtue of [Nationality and Borders Act 2022 \(c. 36\)](#), **ss. 38(5)(b)**, 87(5)(d) (with s. 38(13))
- F33** S. 72(5A) inserted (28.6.2022) by [Nationality and Borders Act 2022 \(c. 36\)](#), **ss. 38(6)**, 87(5)(d) (with s. 38(13))
- F34** Word in s. 72(6) substituted (28.6.2022) by [Nationality and Borders Act 2022 \(c. 36\)](#), **ss. 38(7)**, 87(5)(d) (with s. 38(13))
- F35** Word in s. 72(7) substituted (28.6.2022) by [Nationality and Borders Act 2022 \(c. 36\)](#), **ss. 38(8)**, 87(5)(d) (with s. 38(13))
- F36** Words in s. 72(8) substituted (28.6.2022) by [Nationality and Borders Act 2022 \(c. 36\)](#), **ss. 38(9)**, 87(5)(d) (with s. 38(13))
- F37** Words in s. 72(9)(a) omitted (20.10.2014) by virtue of [Immigration Act 2014 \(c. 22\)](#), s. 75(3), **Sch. 9 para. 31(a)**; 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))
- F38** Words in s. 72(9)(a) substituted (20.10.2014) by [Immigration Act 2014 \(c. 22\)](#), s. 75(3), **Sch. 9 para. 31(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,

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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))

- F39** Words in s. 72(9)(b) substituted (28.6.2022) by Nationality and Borders Act 2022 (c. 36), **ss. 38(10), 87(5)(d)** (with s. 38(13))
- F40** Word in s. 72(10) omitted (4.4.2005) by virtue of Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 26, 48(1)-(3), Sch. 2 para. 17**; S.I. 2005/565, **art. 2** (with savings in arts. 3-9)
- F41** Words in s. 72(10)(b) substituted (28.6.2022) by Nationality and Borders Act 2022 (c. 36), **ss. 38(11), 87(5)(d)** (with s. 38(13))
- F42** S. 72(10A) inserted (15.2.2010) by The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 (S.I. 2010/21), **art. 1, Sch. 1 para. 21** (with Sch. 4)
- F43** Words in s. 72(11)(b) substituted (28.6.2022) by Nationality and Borders Act 2022 (c. 36), **ss. 38(12)(a), 87(5)(d)** (with s. 38(13))
- F44** Words in s. 72(11)(b)(i) substituted (1.8.2008) by UK Borders Act 2007 (c. 30), **ss. 39(2), 59(2)**; S.I. 2008/1818, **art. 2(b)**
- F45** S. 72(11)(b)(ia) inserted (1.8.2008) by UK Borders Act 2007 (c. 30), **ss. 39(3), 59(2)**; S.I. 2008/1818, **art. 2(b)**
- F46** Words in s. 72(11)(b)(ia) substituted (28.6.2022) by Nationality and Borders Act 2022 (c. 36), **ss. 38(12)(b), 87(5)(d)** (with s. 38(13))
- F47** Words in s. 72(11)(b)(iii) substituted (28.6.2022) by Nationality and Borders Act 2022 (c. 36), **ss. 38(12)(c), 87(5)(d)** (with s. 38(13))

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

- C1** S. 72 applied (with modifications) (31.1.2020) by The Immigration (Citizens Rights Appeals) (EU Exit) Regulations 2020 (S.I. 2020/61), **reg. 1(2), Sch. 2 paras. 1-3**
- C2** S. 72(10)(a) restricted (31.8.2006) by Immigration, Asylum and Nationality Act 2006 (c. 13), **ss. 55(3)(5), 62**; S.I. 2006/2226, **art. 3, Sch. 1** (subject to transitional provisions in art. 4)

**Commencement Information**

- I1** 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**

- (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.”

- F48(2) .....
- F48(3) .....
- F48(4) .....

- (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”.

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**Textual Amendments**

**F48** S. 73(2)-(4) repealed (20.10.2014) by [Immigration Act 2014 \(c. 22\)](#), s. 75(3), [Sch. 9 para. 7](#) 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))

**F49** **74 Deception**

.....

**Textual Amendments**

**F49** S. 74 repealed (20.10.2014) by [Immigration Act 2014 \(c. 22\)](#), s. 75(3), [Sch. 9 para. 7](#) 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))

**75 Exemption from deportation**

- (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;”.

**F50**(4) .....

**Textual Amendments**

**F50** S. 75(4) repealed (20.10.2014) by [Immigration Act 2014 \(c. 22\)](#), s. 75(3), [Sch. 9 para. 7](#) 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))

**76 Revocation of leave to enter or remain**

- (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,
  - F51**(b) .....

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<sup>F51</sup>(c) .....

(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

<sup>F52</sup>  
...

(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.

<sup>F53</sup>(7) .....

#### Textual Amendments

**F51** S. 76(2)(b)(c) omitted (20.10.2014) by virtue of [Immigration Act 2014 \(c. 22\)](#), s. 75(3), [Sch. 9 para. 3\(3\)\(a\)](#); [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))

**F52** Words in s. 76(4) omitted (20.10.2014) by virtue of [Immigration Act 2014 \(c. 22\)](#), s. 75(3), [Sch. 9 para. 3\(3\)\(b\)](#); [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))

**F53** S. 76(7) repealed (20.10.2014) by [Immigration Act 2014 \(c. 22\)](#), s. 75(3), [Sch. 9 para. 7](#) 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))

## 77 No removal while claim for asylum pending

(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

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- (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.
- [<sup>F54</sup>(2A) This section does not prevent a person being removed to, or being required to leave to go to, a State falling within subsection (2B).
- (2B) A State falls within this subsection if—
- (a) it is a place where a person’s life and liberty are not threatened by reason of the person’s race, religion, nationality, membership of a particular social group or political opinion,
  - (b) it is a place from which a person will not be removed elsewhere other than in accordance with the Refugee Convention,
  - (c) it is a place—
    - (i) to which a person can be removed without their Convention rights under Article 3 (no torture or inhuman or degrading treatment or punishment) being contravened, and
    - (ii) from which a person will not be sent to another State in contravention of the person’s Convention rights, and
  - (d) the person is not a national or citizen of the State.
- (2C) For the purposes of this section—
- (a) any State to which Part 2 or 3 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 for the time being applies—
    - (i) is to be presumed to be a State falling within subsection (2B)(a) and (b), and
    - (ii) is, unless the contrary is shown by a person to be the case in their particular circumstances, to be presumed to be a State falling within subsection (2B)(c)(i) and (ii);
  - (b) any State to which Part 4 of that Schedule for the time being applies is to be presumed to be a State falling within subsection (2B)(a) and (b);
  - (c) a reference to anything being done in accordance with the Refugee Convention is a reference to the thing being done in accordance with the principles of the Convention, whether or not by a signatory to it;
  - (d) “State” includes any territory outside of the United Kingdom.]
- (3) In [<sup>F55</sup>this section, “Convention rights” means the rights identified as Convention rights by section 1 of the Human Rights Act 1998 (whether or not in relation to a State that is a party to the Convention); and] “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



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- (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.

#### Textual Amendments

- F54** S. 77(2A)-(2C) inserted (28.6.2022) by Nationality and Borders Act 2022 (c. 36), s. 87(1), **Sch. 4 para. 1**; S.I. 2022/590, reg. 2, **Sch. 1 para. 17** (with Sch. 2 para. 4(4))
- F55** Words in s. 77(3) substituted (28.6.2022) by Nationality and Borders Act 2022 (c. 36), s. 87(1), **Sch. 4 para. 2**; S.I. 2022/590, reg. 2, **Sch. 1 para. 17** (with Sch. 2 para. 4(4))

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

- C3** 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)

## 78 No removal while appeal pending

- (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)

- C4** 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))
- C5** Ss. 78-79 applied (with modifications) (31.1.2020) by The Immigration (Citizens Rights Appeals) (EU Exit) Regulations 2020 (S.I. 2020/61), reg. 1(2), **Sch. 2 paras. 1-3** (as amended (8.5.2023) by The Immigration (Citizens' Rights Appeals) (EU Exit) (Amendment) Regulations 2023 (S.I. 2023/441), reg. 7(2))

*Changes to legislation: Nationality, Immigration and Asylum Act 2002, Part 4 is up to date with all changes known to be in force on or before 05 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

## [<sup>F56</sup>78A Restriction on removal of children and their parents etc

- (1) This section applies in a case where—
- (a) a child is to be removed from or required to leave the United Kingdom, and
  - (b) an individual who—
    - (i) is a parent of the child or has care of the child, and
    - (ii) is living in a household in the United Kingdom with the child,
 is also to be removed from or required to leave the United Kingdom (a “relevant parent or carer”).
- (2) During the period of 28 days beginning with the day on which the relevant appeal rights are exhausted—
- (a) the child may not be removed from or required to leave the United Kingdom; and
  - (b) a relevant parent or carer may not be removed from or required to leave the United Kingdom if, as a result, no relevant parent or carer would remain in the United Kingdom.
- (3) The relevant appeal rights are exhausted at the time when—
- (a) neither the child, nor any relevant parent or carer, could bring an appeal under section 82 (ignoring any possibility of an appeal out of time with permission), and
  - (b) no appeal brought by the child, or by any relevant parent or carer, is pending within the meaning of section 104.
- (4) Nothing in this section prevents any of the following during the period of 28 days mentioned in subsection (2)—
- (a) the giving of a direction for the removal of a person from the United Kingdom,
  - (b) the making of a deportation order in respect of a person, or
  - (c) the taking of any other interim or preparatory action.
- (5) In this section—
- “child” means a person who is aged under 18;
- references to a person being removed from or required to leave the United Kingdom are to the person being removed or required to leave in accordance with a provision of the Immigration Acts.]

### Textual Amendments

**F56** S. 78A inserted (28.7.2014) by [Immigration Act 2014 \(c. 22\)](#), **ss. 2, 75(3)**; S.I. 2014/1820, art. 3(a)

### Modifications etc. (not altering text)

**C5** Ss. 78-79 applied (with modifications) (31.1.2020) by [The Immigration \(Citizens Rights Appeals\) \(EU Exit\) Regulations 2020 \(S.I. 2020/61\)](#), reg. 1(2), **Sch. 2 paras. 1-3** (as amended (8.5.2023) by [The Immigration \(Citizens’ Rights Appeals\) \(EU Exit\) \(Amendment\) Regulations 2023 \(S.I. 2023/441\)](#), reg. 7(2))

**Changes to legislation:** Nationality, Immigration and Asylum Act 2002, Part 4 is up to date with all changes known to be in force on or before 05 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

## 79 Deportation order: appeal

(1) A deportation order may not be made in respect of a person while an appeal under section 82(1) [<sup>F57</sup>that may be brought or continued from within the United Kingdom relating to] the decision to make the order—

- (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.

[<sup>F58</sup>(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.]

### Textual Amendments

**F57** Words in s. 79(1) substituted (28.7.2014) by [Immigration Act 2014 \(c. 22\)](#), s. 75(3), **Sch. 9 para. 32**; [S.I. 2014/1820](#), art. 3(cc)

**F58** S. 79(3)(4) added (1.8.2008 for specified purposes) by [UK Borders Act 2007 \(c. 30\)](#), **ss. 35(2)**, 59(2); [S.I. 2008/1818](#), art. 2(a), Sch.

### Modifications etc. (not altering text)

**C5** **Ss. 78-79** applied (with modifications) (31.1.2020) by [The Immigration \(Citizens Rights Appeals\) \(EU Exit\) Regulations 2020 \(S.I. 2020/61\)](#), reg. 1(2), **Sch. 2 paras. 1-3** (as amended (8.5.2023) by [The Immigration \(Citizens’ Rights Appeals\) \(EU Exit\) \(Amendment\) Regulations 2023 \(S.I. 2023/441\)](#), **reg. 7(2)**)

**C6** 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

<sup>F59</sup> .....

### Textual Amendments

**F59** S. 80 repealed (1.10.2004) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), **ss. 33(3)(a)**, 47, 48(1)-(3), **Sch. 4**; [S.I. 2004/2523](#), **art. 2**, Sch. (with art. 3)

**Changes to legislation:**

Nationality, Immigration and Asylum Act 2002, Part 4 is up to date with all changes known to be in force on or before 05 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Blanket amendment words substituted by [S.I. 2011/1043 art. 34](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 18(1)(1A) substituted for s. 18(1) by [2016 c. 19 Sch. 11 para. 31\(2\)](#)
- s. 22A inserted by [2022 c. 36 s. 13\(7\)](#)
- s. 27(ba) inserted by [2022 c. 36 s. 13\(10\)](#)
- s. 51(2)(d) and word inserted by [2016 c. 19 Sch. 11 para. 26\(6\)](#)
- s. 55(2)(aa) inserted by [2016 c. 19 Sch. 11 para. 26\(7\)](#)
- s. 62(3A) inserted by [2023 c. 37 s. 11\(8\)](#)
- s. 80A(5A) inserted by [2023 c. 37 s. 10\(8\)](#)
- s. 82A inserted by [2022 c. 36 s. 23\(1\)](#)
- s. 94(6B) inserted by [2006 c. 13 s. 13](#)
- s. 106(2)(ua) inserted by [2007 c. 30 s. 19\(3\)](#)
- s. 107(2A) inserted by [2022 c. 36 Sch. 3 para. 5\(a\)](#)
- s. 126(2A) inserted by [S.I. 2019/745 reg. 12\(3\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Reg. 12(2)(3) omitted immediately before IP completion day by virtue of S.I. 2020/1309, regs. 1(2)(a), 48)
- Sch. 3 para. 1(1)(ga) inserted by [2016 c. 19 Sch. 12 para. 2\(2\)](#) (This Act is amended by S.I. 2020/1309, Sch. 1 para. 3(a))
- Sch. 3 para. 1(2A) inserted by [2016 c. 19 Sch. 12 para. 2\(4\)](#) (This Act is amended by S.I. 2020/1309, Sch. 1 para. 3(b))
- Sch. 3 para. 1A inserted by [2016 c. 19 Sch. 12 para. 3](#)
- Sch. 3 para. 2(1)(ca) inserted by [2016 c. 19 Sch. 12 para. 4\(3\)](#)
- Sch. 3 para. 2A inserted by [2016 c. 19 Sch. 12 para. 5](#)
- Sch. 3 para. 3A-3C inserted by [2016 c. 19 Sch. 12 para. 6](#)
- Sch. 3 para. 7B7C and cross-headings inserted by [2016 c. 19 Sch. 12 para. 9](#)
- Sch. 3 para. 10A10B inserted by [2016 c. 19 Sch. 12 para. 10](#) (This Act is amended by S.I. 2020/1309, Sch. 1 para. 3(c))
- Sch. 3 para. 15(aa) inserted by [2016 c. 19 Sch. 12 para. 14\(2\)](#)
- Sch. 3 para. 15(d)-(f) inserted by [2016 c. 19 Sch. 12 para. 14\(4\)](#)
- Sch. 3 para. 7C(1)(c) word substituted by [S.I. 2019/745 reg. 12\(5\)\(d\)](#) (This amendment not applied to legislation.gov.uk. Reg. 12(5)(a)(c)(d) omitted immediately before IP completion day by virtue of S.I. 2020/1309, regs. 1(2)(a), 48)
- Sch. 5 para. 3(1) Sch. 5 para. 3 renumbered as Sch. 5 para. 3(1) by [2005 c. 4 Sch. 4 para. 407\(2\)](#) (This amendment not applied to legislation.gov.uk. The "original amending provision" is already fully in force, see Sch. 4 paras. 361, 407(5))
- Sch. 5 para. 3(2)-(4) inserted by [2005 c. 4 Sch. 4 para. 407\(4\)](#) (This amendment not applied to legislation.gov.uk. The "original amending provision" is already fully in force, see Sch. 4 paras. 361, 407(5))
- Sch. 5 para. 3(1) words inserted by [2005 c. 4 Sch. 4 para. 407\(3\)](#) (This amendment not applied to legislation.gov.uk. The "original amending provision" is already fully in force, see Sch. 4 paras. 361, 407(5))