



# Criminal Justice and Immigration Act 2008

## 2008 CHAPTER 4

### PART 10

#### SPECIAL IMMIGRATION STATUS

#### **130 Designation**

- (1) The Secretary of State may designate a person who satisfies Condition 1 or 2 (subject to subsections (4) and (5)).
- (2) Condition 1 is that the person—
  - (a) is a foreign criminal within the meaning of section 131, and
  - (b) is liable to deportation, but cannot be removed from the United Kingdom because of section 6 of the Human Rights Act 1998 (c. 42) (public authority not to act contrary to Convention).
- (3) Condition 2 is that the person is a member of the family of a person who satisfies Condition 1.
- (4) A person who has the right of abode in the United Kingdom may not be designated.
- (5) The Secretary of State may not designate a person if the Secretary of State thinks that an effect of designation would breach—
  - (a) the United Kingdom's obligations under the Refugee Convention, or
  - (b) the person's rights under the Community treaties.

#### **131 "Foreign criminal"**

- (1) For the purposes of section 130 "foreign criminal" means a person who—
  - (a) is not a British citizen, and
  - (b) satisfies any of the following Conditions.

---

*Status: This is the original version (as it was originally enacted).*

---

- (2) Condition 1 is that section 72(2)(a) and (b) or (3)(a) to (c) of the Nationality, Immigration and Asylum Act 2002 (c. 41) applies to the person (Article 33(2) of the Refugee Convention: imprisonment for at least two years).
- (3) Condition 2 is that—
  - (a) section 72(4)(a) or (b) of that Act applies to the person (person convicted of specified offence), and
  - (b) the person has been sentenced to a period of imprisonment.
- (4) Condition 3 is that Article 1F of the Refugee Convention applies to the person (exclusions for criminals etc.).
- (5) Section 72(6) of that Act (rebuttal of presumption under section 72(2) to (4)) has no effect in relation to Condition 1 or 2.
- (6) Section 72(7) of that Act (non-application pending appeal) has no effect in relation to Condition 1 or 2.

### **132 Effect of designation**

- (1) A designated person does not have leave to enter or remain in the United Kingdom.
- (2) For the purposes of a provision of the Immigration Acts and any other enactment which concerns or refers to immigration or nationality (including any provision which applies or refers to a provision of the Immigration Acts or any other enactment about immigration or nationality) a designated person—
  - (a) is a person subject to immigration control,
  - (b) is not to be treated as an asylum-seeker or a former asylum-seeker, and
  - (c) is not in the United Kingdom in breach of the immigration laws.
- (3) Despite subsection (2)(c), time spent in the United Kingdom as a designated person may not be relied on by a person for the purpose of an enactment about nationality.
- (4) A designated person—
  - (a) shall not be deemed to have been given leave in accordance with paragraph 6 of Schedule 2 to the Immigration Act 1971 (c. 77) (notice of leave or refusal), and
  - (b) may not be granted temporary admission to the United Kingdom under paragraph 21 of that Schedule.
- (5) Sections 134 and 135 make provision about support for designated persons and their dependants.

### **133 Conditions**

- (1) The Secretary of State or an immigration officer may by notice in writing impose a condition on a designated person.
- (2) A condition may relate to—
  - (a) residence,
  - (b) employment or occupation, or
  - (c) reporting to the police, the Secretary of State or an immigration officer.

- (3) Section 36 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19) (electronic monitoring) shall apply in relation to conditions imposed under this section as it applies to restrictions imposed under paragraph 21 of Schedule 2 to the Immigration Act 1971 (with a reference to the Immigration Acts being treated as including a reference to this section).
- (4) Section 69 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (reporting restrictions: travel expenses) shall apply in relation to conditions imposed under subsection (2)(c) above as it applies to restrictions imposed under paragraph 21 of Schedule 2 to the Immigration Act 1971.
- (5) A person who without reasonable excuse fails to comply with a condition imposed under this section commits an offence.
- (6) A person who is guilty of an offence under subsection (5) shall be liable on summary conviction to—
  - (a) a fine not exceeding level 5 on the standard scale,
  - (b) imprisonment for a period not exceeding 51 weeks, or
  - (c) both.
- (7) A provision of the Immigration Act 1971 (c. 77) which applies in relation to an offence under any provision of section 24(1) of that Act (illegal entry etc.) shall also apply in relation to the offence under subsection (5) above.
- (8) In the application of this section to Scotland or Northern Ireland the reference in subsection (6)(b) to 51 weeks shall be treated as a reference to six months.

## 134 Support

- (1) Part VI of the Immigration and Asylum Act 1999 (c. 33) (support for asylum-seekers) shall apply in relation to designated persons and their dependants as it applies in relation to asylum-seekers and their dependants.
- (2) But the following provisions of that Part shall not apply—
  - (a) section 96 (kinds of support),
  - (b) section 97(1)(b) (desirability of providing accommodation in well-supplied area),
  - (c) section 100 (duty to co-operate in providing accommodation),
  - (d) section 101 (reception zones),
  - (e) section 108 (failure of sponsor to maintain),
  - (f) section 111 (grants to voluntary organisations), and
  - (g) section 113 (recovery of expenditure from sponsor).
- (3) Support may be provided under section 95 of the 1999 Act as applied by this section—
  - (a) by providing accommodation appearing to the Secretary of State to be adequate for a person's needs;
  - (b) by providing what appear to the Secretary of State to be essential living needs;
  - (c) in other ways which the Secretary of State thinks necessary to reflect exceptional circumstances of a particular case.

---

*Status: This is the original version (as it was originally enacted).*

---

- (4) Support by virtue of subsection (3) may not be provided wholly or mainly by way of cash unless the Secretary of State thinks it appropriate because of exceptional circumstances.
- (5) Section 4 of the 1999 Act (accommodation) shall not apply in relation to designated persons.
- (6) A designated person shall not be treated—
  - (a) as a person subject to immigration control, for the purposes of section 119(1) (b) of the 1999 Act (homelessness: Scotland and Northern Ireland), or
  - (b) as a person from abroad who is not eligible for housing assistance, for the purposes of section 185(4) of the Housing Act 1996 (c. 52) (housing assistance).

### **135 Support: supplemental**

- (1) A reference in an enactment to Part VI of the 1999 Act or to a provision of that Part includes a reference to that Part or provision as applied by section 134 above; and for that purpose—
  - (a) a reference to section 96 shall be treated as including a reference to section 134(3) above,
  - (b) a reference to a provision of section 96 shall be treated as including a reference to the corresponding provision of section 134(3), and
  - (c) a reference to asylum-seekers shall be treated as including a reference to designated persons.
- (2) A provision of Part VI of the 1999 Act which requires or permits the Secretary of State to have regard to the temporary nature of support shall be treated, in the application of Part VI by virtue of section 134 above, as requiring the Secretary of State to have regard to the nature and circumstances of support by virtue of that section.
- (3) Rules under section 104 of the 1999 Act (appeals) shall have effect for the purposes of Part VI of that Act as it applies by virtue of section 134 above.
- (4) Any other instrument under Part VI of the 1999 Act—
  - (a) may make provision in respect of that Part as it applies by virtue of section 134 above, as it applies otherwise than by virtue of that section, or both, and
  - (b) may make different provision for that Part as it applies by virtue of section 134 above and as it applies otherwise than by virtue of that section.
- (5) In the application of paragraph 9 of Schedule 8 to the 1999 Act (regulations: notice to quit accommodation) the reference in paragraph (2)(b) to the determination of a claim for asylum shall be treated as a reference to ceasing to be a designated person.
- (6) The Secretary of State may by order repeal, modify or disapply (to any extent) section 134(4).
- (7) An order under section 10 of the Human Rights Act 1998 (c. 42) (power to remedy incompatibility) which amends a provision mentioned in subsection (6) of section 134 above may amend or repeal that subsection.

### **136 End of designation**

- (1) Designation lapses if the designated person—
  - (a) is granted leave to enter or remain in the United Kingdom,
  - (b) is notified by the Secretary of State or an immigration officer of a right of residence in the United Kingdom by virtue of the Community treaties,
  - (c) leaves the United Kingdom, or
  - (d) is made the subject of a deportation order under section 5 of the Immigration Act 1971 (c. 77).
- (2) After designation lapses support may not be provided by virtue of section 134, subject to the following exceptions.
- (3) Exception 1 is that, if designation lapses under subsection (1)(a) or (b), support may be provided in respect of a period which—
  - (a) begins when the designation lapses, and
  - (b) ends on a date determined in accordance with an order of the Secretary of State.
- (4) Exception 2 is that, if designation lapses under subsection (1)(d), support may be provided in respect of—
  - (a) any period during which an appeal against the deportation order may be brought (ignoring any possibility of an appeal out of time with permission),
  - (b) any period during which an appeal against the deportation order is pending, and
  - (c) after an appeal ceases to be pending, such period as the Secretary of State may specify by order.

### **137 Interpretation: general**

- (1) This section applies to sections 130 to 136.
- (2) A reference to a designated person is a reference to a person designated under section 130.
- (3) “Family” shall be construed in accordance with section 5(4) of the Immigration Act 1971 (c. 77) (deportation: definition of “family”).
- (4) “Right of abode in the United Kingdom” has the meaning given by section 2 of that Act.
- (5) “The Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol.
- (6) “Period of imprisonment” shall be construed in accordance with section 72(11)(b)(i) and (ii) of the Nationality, Immigration and Asylum Act 2002 (c. 41).
- (7) A voucher is not cash.
- (8) A reference to a pending appeal has the meaning given by section 104(1) of that Act.
- (9) A reference in an enactment to the Immigration Acts includes a reference to sections 130 to 136.