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11. Entry in breach of a deportation order

Entry in breach of a deportation order is a criminal offence under section 24 (1) (a) of the 1971 Act. A deportation order remains extant until it is revoked and this must be done before a person may seek leave to enter the UK. Any leave that the person has whilst the Deportation Order is in force is invalid.

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11.1. Persons liable to deportation - Definition

Subject to certain transitional arrangements (see below), from 2 October 2000, deportation is reserved for more serious cases. The 1999 Act amended section 3(5) of the 1971 Act which now states that a person who is not a British citizen shall be liable to deportation from the United Kingdom:

- a) if the Secretary of State deems his deportation to be conducive to the public good; or
- b) If another person to whose family he belongs is or has been ordered to be deported.

Section 3(6) of the 1971 Act remains unchanged. This states that a person who is not a British citizen shall also be liable to deportation from the United Kingdom if, after he has reached the age of 17, he is convicted of an offence punishable by imprisonment and on his conviction is recommended for deportation by a court empowered to do so by the 1971 Act.

An overstayer will be liable to deportation if he applied for leave to remain under the Regularisation Scheme for Overstayers and that application has subsequently been refused.

Where a notice of intention to make a deportation order was served before 2 October 2000, the subject remains liable to removal by way of deportation rather than under section 10 powers.

On 1 August 2008, the automatic deportation provisions of the UK Borders Act 2007 for foreign criminals who are convicted in the UK and receive a custodial sentence of 12 months or more were commenced. Please note separate guidance has been produced for cases to be considered under the UK Borders Act 2007.

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11.1.1 The presumption that the public interest requires deportation - Paragraph 364 of HC 395

The full facts about an individual and the crime they have committed should be considered in the light of all relevant factors of Paragraph 364 of HC 395 which states -

“Subject to paragraph 380, while each case will be considered on its merits, where a person is liable to deportation the presumption shall be that the public interest requires deportation. The Secretary of State will consider all relevant factors in considering whether the presumption is outweighed in any particular case, although it will only be in exceptional circumstances that the public interest in deportation will be outweighed in a case where it would not be contrary to the Human Rights Convention and Protocol relating to the Status of Refugees to deport. The aim is an exercise of the power of deportation which is consistent and fair as between one person and another, although one case will rarely be identical with another in all material respects. In the cases detailed in paragraph 363A

deportation will normally be the proper course where a person has failed to comply with or has contravened a condition or has remained without authority.”

Human rights

Regard must be given to any Human Rights issues raised, and should be weighted against the presumption to deport.

Nature of offence

Not all crimes have the same consequence for society, nor are they viewed with the same seriousness. Crimes involving:

- ◆ murder
- ◆ a terrorism offence
- ◆ a drug trafficking offence
- ◆ a serious immigration offence
- ◆ a serious sexual or violent offence
- ◆ a maximum penalty of 10 years or more

are considered more serious than other offences. The more serious the nature of the offence, the sentence given, or the previous criminal history of the person concerned, the less likely it is that other relevant factors will outweigh the presumption towards deportation.

Penalty imposed

When a person is convicted of crime, the Court passing sentence can impose penalties of different types. These range from a fine to a term of imprisonment. The Criminal Justice Act 1991 requires that a term of imprisonment should be imposed only where the crime is so serious that no other penalty is appropriate. Therefore one indicator of the seriousness of the offence is imposition of a term of imprisonment. Where a custodial sentence is imposed the length of its duration is also reflective of the Seriousness of the crime.:

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11.1.2 Criminal Casework - Deprivation of Right of Abode or of British Citizenship obtained by registration or naturalisation

In some cases where a person has acquired British Citizenship or has right of abode in the UK (derived from possession of citizenship of another Commonwealth country) and has subsequently been imprisoned for serious offences, consideration can be given to deprivation of British Citizenship or removal of right of abode on the grounds that it would be conducive to the public good.

This can be done in cases involving national security, terrorism, serious organised crime, war crimes, and unacceptable behaviour such as preaching jihad (under section 40(2) of the British Nationality Act 1981 and section 2A of the immigration Act 1971) and may fall within the remit of Criminal Casework.

UKBA cannot remove citizenship in cases where a person would be left stateless.

UKBA can also deprive a person of British citizenship which was obtained by registration or naturalisation in cases where a person has exercised fraud, false representation or concealment of material fact in obtaining citizenship. In these cases the statelessness provision does not apply.

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11.2 Categories of people liable to deportation

- ◆ Those whose deportation is deemed conducive to the public good (section 3(5)(a));
- ◆ Those over the age of 17 who have been convicted of an offence punishable with imprisonment and on conviction have been recommended for deportation by a court (section 3(6));
- ◆ Those who were notified before 2 October 2000 that the Secretary of State had decided to make a deportation order against them (i.e. cases where a form APP104 has been served);
- ◆ Overstayers who applied for leave to remain under section 9 of the 1999 Act (Regularisation Scheme for Overstayers) and whose application has been refused;
- ◆ Spouse of a person liable to deportation;

- ◆ Dependent children aged under 18 of a person liable to deportation.
- ◆ Those subject to Sections 32-39 of the UK Borders Act 2007 - A Non British citizen who has been convicted in the UK of an offence and sentenced to a period of imprisonment of at least 12 months.

There is also provision in the act for a particularly serious offence which is specified by order made under section 72(4)(a) of the Nationality, Immigration and Asylum Act 2002.

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.**

Enforcement action against those liable to deportation under section 3(5)(a) or section 3(6) or the UK Borders Act 2007 is initiated in the Criminal Casework Directorate (CCD) but officers may encounter offenders in the field against whom such action has already begun, or they may be asked to undertake further work or serve papers in such a case.

Before a decision to deport is reached the Secretary of State must take into account all relevant factors known to him. It is imperative, therefore, that all the person's circumstances are reported.

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11.2.1 Criminal Casework: Criteria for Foreign National Offenders

A foreign national offender is liable to deportation consideration if they satisfy one or more of the following criteria.

- ◆ A court recommendation
- ◆ For non-EEA nationals - A custodial sentence of 12 months or more either in one sentence, or as an aggregate of 2 or 3 sentences over a period of 5 years¹ or a custodial sentence of any length for a drug offence listed below (an offence other than possession only)

¹ The five years counts backwards from the date of the last conviction and the most significant sentences should be taken into account

- ◆ For EEA nationals²: A custodial sentence of 12 months or more where the conviction was for a drugs, sex or violent offence or in other cases where the sentence received was for 24 months or more.

The following list provides details of the offences for which deportation should be considered if committed by a non EEA national and resulting in a custodial sentence of any length,.

DRUGS OFFENCES (excluding possession only)

Misuse of Drugs Act 1971 (c.38)

1. s. 4(2) or (3) (production and supply, including offer to supply, of controlled drugs);
2. s. 20 (assisting in or inducing commission outside United Kingdom of an offence punishable under a corresponding law);
3. s. 5(3) (possession with intent to supply)
4. s.19 (incitement)
5. s.6 (cultivation of cannabis).
6. s.8(a) (occupying or managing premises where the production or attempted production of a controlled drug is knowingly permitted on those premises)
7. s. 8(b) (occupying or managing premises where the supply, or attempted supply, of or the offer to supply a controlled drug is knowingly permitted on those premises)

Customs and Excise Management Act 1979 (c.2)

8. s. 50(2) or (3) (improper importation)
9. s. 68 (1) and (2) (improper exportation),
10. s.170 (fraudulent evasion)

² And their third country family members

in connection with a prohibition or restriction on importation or exportation having effect by virtue of section 3 of the Misuse of Drugs Act 1971 (c. 38);

Other Laws

11. s. 19 of Criminal Justice (International Co-operation) Act 1990 (using ship for illicit traffic in controlled drugs);
12. s.12 of the Criminal Justice (International Co-operation) Act 1990 (manufacture or supply of substance specified in Schedule 2 to that Act). (Note: this offence relates to drug precursors as opposed to controlled drugs as defined by the Misuse of Drugs Act 1971]
13. s.1 of the Criminal Law Act 1977 (c. 45) or Article 9 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 (S.I. 1983 1120 (N.I. 13)), or in Scotland at common law, of conspiracy to commit any of the offences listed at para 1-12 above;
14. s.1 of the Criminal Attempts Act 1981 (c. 47) or Article 3 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983, or in Scotland at common law, of attempting to commit any of the offences listed at para 1-12 above;
15. Part 2 Serious Crime Act 2007 (encouraging and assisting) any of the offences listed at para 1-12 above^{3*};
16. Common law offences (includes aiding, abetting, counselling or procuring the commission of any of the offences listed above at para 1-12 above);

Should a foreign national offender meet the criteria, then there is a different process depending on whether they are a non-EEA or an EEA national.

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The following list provides details of the offences for which deportation should be considered if committed by an EEA national and resulting in a custodial sentence of at least 12 months or more.

Drugs Offences

³ yet to be commenced by MOJ

Misuse of Drugs Act 1971 (c.38)

- s. 4(2) or (3) (Production and supply, including offer to supply, of controlled drugs.)
- s. 20 (Assisting in or inducing commission outside United Kingdom of an offence punishable under a corresponding law.)
- s. 5(3) (Possession with intent to supply.)
- s.19 (Incitement.)
- s.6 (Cultivation of cannabis.)
- s.8(a) (Occupying or managing premises where the production or attempted production of a controlled drug is knowingly permitted on those premises)
- s. 8(b) (Occupying or managing premises where the supply, or attempted supply, of or the offer to supply a controlled drug is knowingly permitted on those premises)

Customs and Excise Management Act 1979 (c.2)

- s. 50(2) or (3) (Improper importation.)
- s. 68 (1) and (2) (Improper exportation.)
- s.170 (Fraudulent evasion.)
- in connection with a prohibition or restriction on importation or exportation having effect by virtue of section 3 of the Misuse of Drugs Act 1971 (c. 38);

Other Laws

- s. 19 of Criminal Justice (International Co-operation) Act 1990 (Using ship for illicit traffic in controlled drugs.)
- s.12 of the Criminal Justice (International Co-operation) Act 1990 (Manufacture or supply of substance specified in Schedule 2 to that Act.) (Note: this offence relates to drug precursors as opposed to controlled drugs as defined by the Misuse of Drugs Act 1971]
- s.1 of the Criminal Law Act 1977 (c. 45) or Article 9 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 (S.I. 1983 1120 (N.I. 13)), or in Scotland at common law, of conspiracy to commit any of the offences listed at para 1-12 above;
- s.1 of the Criminal Attempts Act 1981 (c. 47) or Article 3 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983, or in Scotland at common law, of attempting to commit any of the offences listed at para 1-12 above;
- Part 2 Serious Crime Act 2007 (encouraging and assisting) any of the offences listed at para 1-12 above *;
- Common law offences (includes aiding, abetting, counselling or procuring the commission of any of the offences listed above);

* yet to be commenced by MOJ

Sex Offences

Sexual Offences Act 2003

- s. 1 (Rape.)
- s. 2 (Assault by penetration.)
- s. 3 (Sexual assault.)
- s. 4 (Causing a person to engage in sexual activity without consent.)
- s. 5 (Rape of a child under 13.)
- s. 6 (Assault of a child under 13 by penetration.)
- s. 7 (Sexual assault of a child under 13.)

- s. 8 (Causing or inciting a child under 13 to engage in sexual activity.)
- s. 9 (Sexual activity with a child under 16.)
- s. 10 (Causing or inciting a child under 16 to engage in sexual activity.)
- s. 11 (Engaging in sexual activity in the presence of a child under 16.)
- s. 12 (Causing a child under 16 to watch a sexual act.)
- s. 13 (Child sex offences committed by children or young persons.)
- s. 14 (Arranging or facilitating the commission of a child sex offence.)
- s. 15 (Meeting a child following sexual grooming etc (Offender is aged 18 or over and victim is under 16.)
- s. 16 (Abuse of position of trust: sexual activity with a child.)
- s. 17 (Abuse of position of trust: causing or inciting a child to engage in sexual activity.)
- s. 18 (Abuse of trust: sexual activity in the presence of a child.)
- s. 19 (Abuse of trust: causing a child to watch a sexual act.)
- s. 25 (Sexual activity with a child family member.)
- s. 26 (Inciting a child family member to engage in sexual activity.)
- s. 30 (Sexual activity with a person with a mental disorder impeding choice.)
- s. 31 (Causing or inciting a person with a mental disorder impeding choice to engage in sexual activity.)
- s. 32 (Engaging in sexual activity in the presence of a person with a mental disorder impeding choice.)
- s. 33 (Causing a person with a mental disorder impeding choice to watch a sexual act.)
- s. 34 (Inducement, threat or deception to procure sexual activity with a person with a mental disorder.)
- s. 35 (Causing a person with a mental disorder to engage in sexual activity by inducement, threat or deception.)
- s. 36 (Engaging in sexual activity in the presence, procured by inducement, threat or deception of a person with mental disorder.)
- s. 37 (Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception.)
- s. 38 (Care workers: Sexual activity with a person with a mental disorder.)
- s. 39 (Care workers: Causing or inciting sexual activity.)
- s. 40 (Care workers: Sexual activity in the presence of a person with a mental disorder.)
- s. 41 (Care workers: Causing a person with a mental disorder to watch a sexual act.)
- s. 47 (Paying for sexual service of a child.)
- s. 48 (Causing or inciting child prostitution or pornography.)
- s. 49 (Controlling a child prostitute or a child involved in pornography.)
- s. 50 (Arranging or facilitating child prostitution or pornography.)
- s. 52 (Causing or inciting prostitution for gain.)
- s. 53 (Controlling prostitution for gain.)
- s. 57 (Trafficking into the UK for sexual exploitation.)
- s. 58 (Trafficking within the UK for sexual exploitation.)
- s. 59 (Trafficking out of the UK for sexual exploitation.)
- s. 61 (Administering a substance with intent.)
- s. 62 (Committing an offence with intent to commit a sexual offence.)
- s. 63 (Trespass with intent to commit a sexual offence.)
- s. 64 & 65 (Sex with an adult relative.)
- s. 66 (Exposure.)
- s. 67 (Voyeurism.)
- s. 69 (Intercourse with an animal.)
- s. 70 (Sexual penetration of a corpse.)
- s. 91 (Offences relating to notification.)
- s. 113 (Breach of Sexual Offences Prevention Order (SOPO).)
- s. 122 (Breach of Foreign Travel Order.)
- s. 128 (Breach of Risk of Sexual Harm Order.)

Sexual Offences Act 1956

- s. 33(a) (Keeping a brothel used for prostitution.)

Protection of Children Act 1978

- s. 1 (Taking, producing or distributing indecent photographs or pseudo-photographs of children.)

Criminal Justice Act 1988

- s. 160 (Possession of indecent photographs and pseudo-photographs of children.)

Obscene Publications Act 1959

s. 2 (Publications and distribution of obscene material.)

Criminal Justice and Immigration Act 2008

s. 63 (Possession of extreme pornographic material.)

Common law offences (includes aiding, abetting, counselling or procuring the commission of any of the offences listed above);

Violent Offences

Common Law Offences

Murder

Manslaughter

Kidnapping.

False imprisonment

Criminal Attempts Act 1981 & Common Law

s.1 (Attempting to commit an offence (murder only).)

Offences against the Person Act 1861

s. 4 (Soliciting to commit murder.)

s.16 (Threats to kill.)

s. 17 (Impeding the saving of life from shipwreck.)

s. 18 (Wounding with intent to do grievous bodily harm.)

s. 20 (Inflicting grievous bodily harm.)

s. 21 (Attempting to choke etc in order to commit indictable offence.)

s. 22 (Using chloroform etc to commit indictable offence.)

s. 23 (Administering poison so as to endanger life.)

s. 24 (Administering poison with intent to injure or annoy.)

s. 26 (Neglecting to provide for apprentice or servant or doing bodily harm.)

s. 27 (Abandoning child under two years.)

s. 28 (Causing bodily injury by explosion.)

s. 29 (Causing explosions, sending explosive substance or throwing corrosive fluids with intent to do grievous bodily harm.)

s. 30 (Placing explosives in or near buildings with intent to do bodily harm.)

s. 31 (Setting spring guns etc with intent to inflict grievous bodily harm.)

s. 32 (Placing anything on railway, taking up rails, changing points and signals etc. with intent to endanger railway passengers)

s. 33 (Throwing anything at railway carriages etc. with intent to endanger railway passengers)

s. 34 (Endangering railway passengers by unlawful acts, or by omission or neglect.

s. 35 (Drivers injuring persons by furious driving.)

s. 36 (Obstructing or assaulting a clergyman etc; in the discharge of his duties in place of worship etc.)

s. 37 (Assault on person preserving wreck.)

s. 38 (Assault with intent to resist apprehension)

s. 47 (Assault occasioning actual bodily harm.)

s. 58 (Administering drugs or using instruments to procure abortion.)

s. 59 (Procuring drugs etc to cause abortion.)

s. 64 (Making or possessing explosives etc with intent.)

s. 60 (Concealment of birth.)

Offences Against Children and Vulnerable Adults

Infant Life (Preservation) Act 1929

s. 1 (Child Destruction.)

Infanticide Act 1938

s. 1(1) (Infanticide.)

Domestic Violence, Crime and Victims Act 2004

s. 5 (Causing or allowing the death of a child or vulnerable person.)

Children and Young Persons Act 1933

s. 1 (Cruelty to persons under 16.)

Child Abduction Act 1984 (as amended by the Children's Act 1989).

s. 1 (Abduction of a child by parent etc.)

s. 2 (Abduction of child by other persons.)

Road Traffic Offences

Road Traffic Act 1988

s. 1 (Causing death by dangerous driving.) (As added by the Road Traffic Act 1991 Sec 1 and amended by Criminal Justice Act 1993 Sec 67)

s. 2 (Dangerous Driving.) (As amended by Road Traffic Act 1991 Sec 2)

s. 2B (Causing death by careless or inconsiderate driving.) (As added by Road Safety Act 2006 Sec 20.)

s. 3A (Causing death by careless driving when under the influence of drink or drugs.) (As added by the Road Traffic Act 1991 Sec 3 and amended by Criminal Justice Act 1993 Sec 67.

s. 3ZB (Causing death by driving: unlicensed, disqualified or uninsured drivers.) (As added by Road Safety Act 2006 Sec 21.)

s. 22A (Causing danger to road-users.)

Aviation Offences

Aviation Security Act 1982

s. 2, 6 (Destroying, damaging or endangering safety of aircraft.)

s. 3, 6 (Other acts endangering safety of aircraft.)

Aviation and Maritime Security Act 1990

s. 1 (Endangering safety at aerodromes)

s. 9 & 10 (Hijacking of ships or fixed sea platform.)

s. 11 (Intentionally destroying ships or fixed platforms etc.)

s. 12 (Other acts of destroying etc likely to endanger safe navigation.)

s. 13 (Compelling by threatening to destroy or damage ship or sea platform or property used in navigation.)

s. 14(4) (Inducing or assisting commission of offence relating to safety of ship, cargo or sea platform outside UK.)

Railway Offences

Railways & Transport Safety Act 2003

s. 78 (Ability of masters, pilots and (when on duty) seamen to carry out duties being impaired by drink or drugs)

s. 79 (Ability of seamen not on duty to take action to protect passengers in event of emergency being impaired by drink or drugs)

s. 80 (Ability of non-professionals involved in the navigation of the ship being impaired by drink or drugs)

s. 92 (Performs an aviation function or ancillary function when impaired by drink or drugs.)

Channel Tunnel (Security) Order 1994

Art 6 (Destroying, damaging etc a Channel Tunnel train or the Tunnel system or committing acts of violence likely to endanger safety of operation.)

Articles 4, 5, 7, 8 (Hijacking, destroying or damaging Channel Tunnel train or system.)

Articles 11,13(8),14(9),15(9),16(8),23(1)(3),28,32(1a) (Public order acts (not elsewhere specified) against Channel Tunnel.)

Shipping Offences

Merchant Shipping Act 1995

s. 58 (Conduct of master or crew endangering ships, structures or individuals.)

s. 59 (Disobedience, neglect of duty, or impeding navigation of ship.)

s. 92 (Duty to assist re collision.)

s. 93 Failing to assist aircraft in distress

s. 98 (Dangerously unsafe ship.)

s. 100 (Failure of owner of ship to take all reasonable steps to secure that the ship is operated in a safe manner.)

Pilotage Act 1987

s. 21 (Endangering ship, life or limb on ship by breach of duty.)

Criminal Justice Offences

Criminal Justice Act 1988

s. 139 (Having an article with a blade or point in a public place)

s. 139A (Having an article with a blade or point on school premises)

s. 134 (Torture.)

Criminal Justice & Public Order Act 1994

s. 51(1) (Intimidating a juror or witness or person assisting in investigation of offence.)

s. 51(2) (Harming or threatening to harm a witness, juror or person assisting in investigation.)

Criminal Justice & Police Act 2001

s. 39 (Intimidating or intending to intimidate a witness.)

s. 40 (Harming or threatening to harm a witness.)

Weapons Offences

Explosive Substances Act 1883

s. 3 (Attempt to cause explosion or possession of explosives with intent to endanger life.)

Explosives Act 1875 or (Sec 33 Health and Safety at Work etc Act 1974)

Explosives Act 1875 (except Sec 80, and orders in council and rules thereunder).

s. 91 (Manufacture and keeping of gunpowder and other explosives.)

Prevention of Crime Act 1953

s. 1 (Having an offensive weapon in a public place)

Firearms Act 1968

s. 1(1) (Possessing etc firearms or ammunition without firearm certificate.) (As amended by Criminal Justice & Public Order Act 1994 Sec 157 Sch 8 part III.)

s. 2 (1) (Possessing etc shotgun without certificate.) (As amended by Criminal Justice & Public Order Act 1994 Sec 157 Sch 8 part III.)

s. 3(1) (Trading in firearms without being registered as a firearms dealer.) (As amended by Criminal Justice & Public Order Act 1994 Sec 157 Sch 8 part III.)

- s. 3(2) (Selling etc firearm to person without a certificate.) (As amended by Criminal Justice & Public Order Act 1994 Sec 157 Sch 8 part III.)
- s. 3(3) (Repairing, testing etc firearm for person without a certificate.) (As amended by Criminal Justice & Public Order Act 1994 Sec 157 Sch 8 part III.)
- s. 3(5) (Falsifying certificate etc with view to acquisition of firearm.) (As amended by Criminal Justice & Public Order Act 1994 Sec 157 Sch 8 part III.)
- s. 4(1) (Shortening a shot gun or other smooth bore gun.) (As amended by Criminal Justice & Public Order Act 1994 Sec 157 Sch 8 part III.)
- s. 4(3) (Conversion of firearms.) (As amended by Criminal Justice & Public Order Act 1994 Sec 157 Sch 8 part III.)
- s. 5 (Possessing etc prohibited weapons and ammunition.) (As amended by Criminal Justice Act 2003 Sec 288).
- s. 16 (Possession of firearm with intent to endanger life or injure property.)
- s. 16A (Possessing firearm or imitation firearm with intent to cause fear of violence.)
- s. 17(1) (Use of firearm or imitation firearm to resist arrest.)
- s. 17(2) (Possessing firearm or imitation firearm while committing or being arrested for offence specified in Schedule 1 of 2 of the Act.)
- s. 18 (1) (Carrying firearm or imitation firearm with intent to commit indictable offence or resist arrest.)
- s. 19 (Carrying a firearm in a public place.) (As amended by Violent Crime Reduction Act 2006.)
- s. 20(1) (Trespassing with firearm or imitation firearm in a building.) (As amended by Criminal Justice & Public Order Act 1994 Sec 157 Sch 8 part III.)
- s. 21(4) (Possession of firearms by persons previously convicted of crime.) (As amended by Criminal Justice & Public Order Act 1994 Sec 157 Sch 8 part III.)
- s. 21(5) (Supplying firearms to person denied them under Section 21.) (As amended by Criminal Justice & Public Order Act 1994 Sec 157 Sch 8 part III.)

Dangerous Dogs Act 1991

- s. 3(1) (Owner and person in charge allowing dog to be dangerously out of control in a public place injuring any person.)
- s. 3(3) (Owner or person in charge allowing dog to enter a non-public place and injure any person.)

Chemical Weapons Act 1996

- s. 2 (Use etc of chemical weapons.)
- s. 11 (Premises or equipment for producing chemical weapons.)

Firearms (Amendment) Act 1997

- s. 6 (Shortening of barrels.)
- s. 32 & 36A(i)(ii) (Failure to transfer firearms or ammunition in person (excluding shotguns).)
- s. 33 & 36A(i)(ii) (Failure to give notice in writing to the Chief Officer of Police of transfers involving firearms (excluding shotguns).)
- s. 34 & 36A(i)(ii) (Failure by certificate holder to notify in writing Chief Officer of Police of deactivation, destruction or loss of firearms or ammunition (excluding shotguns).)
- s. 35 & 36A(i)(ii) (Failure by certificate holder to notify in writing Chief Officer of Police of events taking place outside Great Britain involving firearms and ammunition (sold or otherwise disposed of, lost etc) (excluding shotguns).)
- Sub Sec 32(2) & 36(a)(i)(ii) (Failing to comply with instruction in firearm certificate upon transfer to person other than registered dealer.)

Knives Act 1997

- s. 1(1)(2)(3)(4A)(5) (Unlawful marketing of knives, selling or hiring.)
- s. 1(1)(2)(3)(4B)(5) (Unlawful marketing of knives. Offers or exposes to sell or hire.)
- s. 1(1)(2)(3)(4C)(5) (Unlawful marketing of knives - has in possession for purpose of sale or hire.)
- s. 2(1)A (Publication of any written, pictorial or other material in connection with the marketing of any knife – the material suggesting/indicating knife suitable for combat.)
- s. 2(1)B (Publication of any written, pictorial or other material in connection with the marketing of any knife - the material is otherwise likely to stimulate/encourage violent behaviour involving use of the knife as a weapon.)

Violent Crime Reduction Act 2006

s. 28 (Using someone to look after a dangerous weapon firearm.)

Treason

Treason Acts 1351-1814.

Treason.

Treason Act 1842

s. 2 (Attempting to injure or alarm the sovereign.)

Treason Felony Act 1848

Treason-felony.

Public Order Act 1936

s. 2 (Prohibition of quasi-military organisations.)

Terrorism

United Nations Personnel Act 1997

s. 2, 3 (Threats of attack on United Nations workers.)

Terrorism Act 2000

s. 11, 15-19, 22, 39, 54 and 56-59 (Public order offences in relation to terrorism.)

s. 21A (Failure to disclose knowledge gained in the course of business.) (As added by Anti-terrorism, Crime and Security Act 2001 Sch2 P3).

s. 38B (Failure to disclose information about acts of terrorism.) (As added by Anti-terrorism, Crime and Security Act 2001 Sec 117).

Anti-Terrorism, Crime & Security Act 2001

s. 47 (Use etc of nuclear weapons.)

s. 50 (Aiding, abetting etc chemical offences etc outside the UK.)

s. 79 (3) (Prohibition of disclosures – national security.)

s. 80 (3) (Prohibition of disclosures – uranium enrichment technology.)

s. 113 (Use of noxious substances or things to cause harm and intimidate.)

s. 114 (Hoaxes involving noxious substances or things.)

Prevention of Terrorism Act 2005

s. 9 (1)(4) (Person breaches, without reasonable excuse, an obligation imposed on him by a control order.)

s. 9 (2)(4) (Failure, without reasonable excuse, to report to a specified person when first returning to the UK as required by the terms of a control order, when the order has ceased to have effect.)

Terrorism Act 2006

s. 1 (Publish/cause another to publish a statement intending to/recklessly encouraging terrorism.)

s. 2(2)A & 11 (Distribute/circulate a terrorist publication.)

s. 2(2)B, C & 11. (Give/sell/lend/offer for sale/offer for loan a terrorist publication.)

s. 2(2)D & 11 (Provide service re reading/listening to a terrorist publication.)

s. 2(2)E & 11 (Transmit contents of a terrorist publication.)

s. 2(2)F & 11 (Possess terrorist publication with view to distribution/sale/ loan/read/listen to/seen etc.)

s. 5 (With intent that self/to assist another to commit act of terrorism engage in preparation.)

s. 6(1)(5) (Provide instruction/training for terrorism.)

s. 6(2)(5) (Receive instruction/training for terrorism.)

s. 8 (Attend any place in UK/elsewhere for instruction training in terrorism.)

s. 9(1)B,3 (Possess radioactive material with intent use it in commission / preparation for terrorism.)

s. 10(1)(3) (Use radioactive device/material in the course of /in connection with commission/purposes of terrorism.)

- s. 10(2)(3) (In course of/in connection with (S) commission/purposes of terrorism use/damage nuclear facility to cause release/ask of release of radioactive material.)
- s. 11(1) (Terrorist make demand relating to devices/materials/facilities.)
- s. 11(2) (Terrorist make threat to use radioactive device/material.)
- s. 9(1)A 3 (Make/possess radioactive device with intent use it in commission/ preparation for terrorism.)

Terrorism (UN Measures) Order 2006

- s. 6(5)&13(2) (Disclose without lawful authority confidential information provided by the Treasury.)
- s. 7(3) & 13(1) (Not under authority of a licence dealt with funds/economic resources belonging to/owned/held by an Art 7(2) person.)
- s. 8(3)&13(1) (Make funds/economic resources/financial services available directly to/indirectly to/for the benefit of Art 7(2) person.)
- s. 10 & 13(1) (Participate in activity object/effect to circumvent Art 7(1)/8(1) prohibition enable/facilitate Art 7/8 offence.)
- s. 11(5)&13(2) (Make a statement/furnish a document/information which is false in a material particular to obtain a Treasury licence.)
- s. 13(2) Sch.1 p4(b)(d) (Gives false information or documents or destroys, mutilates, etc, documents.)

Al-Qaida and Taliban (UN Measures) Order 2006

- s. 6 (Contravene prohibition on disclosure on information.)
- s. 7 (Contravene prohibition on dealing with funds/economic resources.)
- s. 8 (Contravene prohibition on making available funds/economic resources.)
- s. 10 (Knowingly & intentionally participate in activities to circumvent an Article 7 or 8 prohibition.)
- s. 11 (Fail to comply with a condition attached to an Article 7 or 9 exemption licence.)
- Sch.1 para4(b) (Knowingly/recklessly give any information/produce any document which is false in a material particular to Treasury.)
- Sch.1 para4(d) (With intent to evade provisions of Schedule 1, destroy/mutilate/deface/conceal/remove any document.)

Trafficking and Importation

Asylum & Immigration (Treatment of Claimants) 2004

- s. 4 (1)(5) (Trafficking people into the UK for the purpose of exploitation.)
- s. 4 (2)(5) (Trafficking people within the UK for the purpose of exploitation.)
- s. 4 (3)(5) (Trafficking people out of the UK for the purpose of exploitation.)

Customs and Excise Management Act 1979

- s. 50(1)(2)(3)(4)(5A) (Offence in relation to the unlawful **importation** of any weapon or ammunition of a kind mentioned in Sec 5(1)(a)(ab)(aba)(ac)(ad)(ae)(af) or (c) of Firearms Act 1968.)
- s. 68(2)(3)(4A) (Offence in relation to the unlawful **exportation** of any weapon or ammunition of a kind mentioned in Sec 5(1)(a)(ab)(aba)(ac)(ad)(ae)(af) or (c) of Firearms Act 1968.)
- s. 85(2) (Shooting at naval or revenue vessels engaged in preventing smuggling.)

Aiding / Abetting / Conspiracy

Criminal Law Act 1967

- s. 4 (Assisting offender (murder only).)

Criminal Law Act 1977

- s. 1 (Conspiracy (murder only).)
- s. 51 (Placing or dispatching articles to cause a bomb hoax. Communicating false information alleging presence of bomb.)

Serious Organised Crime & Police Act 2005

- s. 145 (Interference with contractual relationships so as to harm animal research organisations.)
- s. 146 (Intimidation of persons connected with animal research organisations.)

Serious Crime Act 2007

- s. 44 (Intentionally encouraging / assisting an offence.)
- s. 45 (Encouraging / assisting and offence believing that it will be committed.)
- s. 46 (Encouraging / assisting offences believing one of more will be committed.)

N Ireland (Emergency Provisions) Act 1991

- s. 54A (Failure to disclose knowledge or suspicion of offences.)

Common law offences (includes aiding, abetting, counselling or procuring the commission of any of the offences listed above)

Others

Suicide Act 1961

- s. 2(1) (Suicide (aiding, abetting etc).)

Crime and Disorder Act 1998

- s. 1(10) (Breach of Anti-Social Behaviour Order.)
- s. 29(1) (Racially or religiously aggravated assault.) (As added to by Anti-terrorism, Crime and Security Act 2001 Sec 39.)
- s. 30 (racially or religiously aggravated criminal damage) (As added to by Anti-terrorism, Crime and Security Act 2001 Sec 39.)
- s. 31 (1) (Racially or religiously aggravated offences under the Public Order Act 1986.) (As added to by Anti-terrorism, Crime and Security Act 2001 Sec 39.)
- s. 32 (1) (Racially or religiously aggravated harassment etc.) (As added to by Anti-terrorism, Crime and Security Act 2001 Sec 39.)

Female Genital Mutilation Act 2003

- s. 1, 2, & 3 (Excise, infibulate, mutilate, or aid, abet, etc a mutilation.)

Protection from Harassment Act 1997

- s. 3 (Breach of conditions of injunction against harassment.)
- s. 4 (Putting people in fear of violence.)
- s. 5 (Breach of a restraining order.)

Theft Act 1968

- s. 8 (Robbery, Assault with intent to rob.)
- s. 10 (Aggravated burglary.)
- s. 12A (Aggravated vehicle taking.) (as added by the Aggravated Vehicle Taking Act 1992 Sec 2).

Criminal Damage Act 1971

- s. 1 (Arson endangering life.)
- s. 1(2) (Criminal damage to a building or vehicle endangering life.) and Explosive Substances Act 1883 Sec 2 & 3(pt).)
- s. 2 (Threats to destroy or damage property - endangering life.)
- s. 3 (Possessing anything with intent to destroy or damage property - endangering life.)

Taking of Hostages Act 1982

- s. 1 (Detaining and threatening to kill or injure a hostage.)

Public Order Act 1986

- s. 1(Riot.)
- s. 2 (Violent disorder.)

- s. 3 (Affray.)
- s. 18 (Use of words or behaviour or display or written material.)
- s. 23 (Possession of racially inflammatory material.)

Public Order Act 1986 as added by Racial and Religious Hatred Act 2006.)

- s. 29B (Use of words or behaviour or display of written material (Acts intended to stir up religious hatred).)
- s. 29C (Publishing or distributing written material Acts intended to stir up religious hatred)
- s. 29D (Public performance of a play (Acts intended to stir up religious hatred).
- s. 29E (Distributing, showing or playing a recording (Acts intended to stir up religious hatred).)
- s. 29F(1)(2)A (Provider of programme-broadcasting or (S) including programme in programme service (Acts intended to stir up religious hatred).)
- s. 29F(1)(2)B (Producer or Director of programme – broadcasting or including programme in programme service. (Acts intended to stir up religious hatred).)
- s. 29F(1)(2)C (Person using offending words or behaviour - broadcasting or including programme in programme service (Acts intended to stir up religious hatred).)
- s. 29G (Possession of inflammatory material.) (Acts intended to stir up religious hatred).

Family Law Act 1996 (As added by Domestic Violence, Crime and Victims Act 2004 Sec 1.)

- s. 42A (Breach of non-molestation order.)

International Criminal Court Act 2001

- s. 51 (Genocide, Crimes against Humanity and War Crime)
- s. 52 (Conduct Ancillary to Genocide etc. committed outside jurisdiction)

11.2.2 Procedure for referring cases to the Criminal Casework Directorate (CCD)

Background

All cases meeting the following criteria should be referred to CCD for action:

- ◆ A court recommended deportation; or
- ◆ For non-EEA nationals⁴: A custodial sentence of 12 months or more either in one sentence, or as an aggregate of 2 or 3 sentences over a period of 5 years.⁵ or a custodial sentence of any length for a drug offence as listed above (an offence other than possession only).
- ◆ For EEA nationals⁶: A custodial sentence of 12 months or more where the conviction was for a drugs, sex or violent offence or in other cases where the sentence received was for 24 months or more.
- ◆ Other circumstances where deportation is considered to be conducive to the public good.

CRD deals with casework for all non-detained criminal cases not already in the CCD process.

⁴ Other than family members of EEA nationals

⁵ The five years counts backwards from the date of the last conviction.

⁶ And third country family members

Process for referrals to CCD

All referrals from within UKBA must be referred to CCD as outlined in their process instructions. Details should be forwarded on the pro forma below, directly to the relevant shared Email account. Anyone forwarding information in any other format will be asked to re-send it using this form.

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11.3 Those exempt from deportation

The following are exempt from deportation:

- ◆ British citizens - This includes:
 - (a) Anyone born in the UK or the Falkland Islands prior to 1 January 1983;
 - (b) Anyone born in the UK or the Falkland Islands on or after 1 January 1983, (or in any other qualifying territory, i.e. a British overseas territory other than the Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus) on or after 21 May 2002, whose father (if legitimate⁷) or mother is a British citizen or settled in the UK or relevant territory;
 - (c) Anyone who was a British overseas territories citizen immediately before 21 May 2002 by connection with a 'qualifying territory';
- ◆ those with Right of Abode in the UK
- ◆ Persons who were Irish or Commonwealth citizens on the 1st January 1973, who were ordinarily resident in the UK on the 1st January 1973 and who have been ordinarily resident in the UK and Islands for the last 5 years prior to the date of any decision to deport i.e. the notice of intention to deport.⁸
- ◆ those who are exempt from control by virtue of their diplomatic status (section 8(3) of the 1971 Act as amended by section 4 of the 1988 Act and Section 6 of the 1999 Act);

⁷ An illegitimate child whose father is British does not automatically qualify for British citizenship, but may be legitimate by the subsequent marriage of his parents

⁸ Under section 7(3) of the 1971 Act the 5 years prior to the decision to deport excludes periods of 6 months or more where the person was serving a criminal sentence.

- ◆ those who are exempt from control by virtue of their consular status (section 8(4) of the 1971 Act);
- ◆ anyone born outside the UK prior to 1 January 1983 who is a Commonwealth citizen whose mother was a citizen of the UK and Colonies by birth at the time of the birth. Such people have the right of abode under section 2(1) (b) of the 1971 Act but are not British citizens;

Pre-admission deportation cases

Under the Immigration (EEA) Regulations 2006 there is no provision to make a deportation order where a person has not been admitted to the UK. Therefore where an EEA national or a non-EEA national family member has been detained at immigration control on the basis of a criminal offence and refused admission to the UK, deportation action cannot be pursued (the person can, however, be refused admission). This does not apply to those EEA nationals who are stopped by customs after admittance or those who have acquired a right of residence and are returning to the UK after a period of travel (normally in the possession of either a registration certificate or a residence card).

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11.3.1 Criminal Casework Outstanding Asylum Claims

While a person's claim for asylum is pending he may not be removed from the UK (Section 77(1) (a) of the 2002 Act).

When a convicted criminal sentenced to imprisonment claims asylum, consideration and implementation of the asylum decision must be delayed until towards the end of the sentence – usually around 18 months before the earliest date of release. This will enable simultaneous service of the asylum decision with any Notice of Intention to Deport or other immigration decision, so that all issues relating to removal can be considered in one appeal. This requirement follows the case of *Chindamo* (Appeal Number [00/TH/2345]).

If an asylum claim is made after Notice of Intention to Deportation has been served then that notice need not be withdrawn while consideration is given to the asylum claim and consideration of both can occur simultaneously.

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11.4 Consideration of deportation of those who fall under 363A of the rules.

The cases detailed in paragraph 363A of the Rules are those which remain liable to deportation following the introduction of administrative removal under section 10 of the 1999 Act. i.e. where a decision to make a deportation order was taken before 2 October 2000, or where the person made a valid application under the Immigration (Regularisation Period for Overstayers) Regulations 2000.

Subject to paragraph 380 of the immigration rules, in considering whether deportation is the right course, the public interest will be balanced against any compassionate circumstances of the case. While each case will be considered in the light of the particular circumstances, the aim is an exercise of the power of deportation which is consistent and fair as between one person and another, although one case will rarely be identical with another in all material respects. In the cases detailed in paragraph 363A of the rules, deportation will normally be the proper course where a person has failed to comply with or has contravened a condition or has remained without authority. Before a decision to deport is reached the Secretary of State will take into account all relevant factors known to him including:

- ◆ age;
- ◆ length of residence in the United Kingdom;
- ◆ strength of connections with the United Kingdom;
- ◆ personal history, including character, conduct and employment record;
- ◆ domestic circumstances;
- ◆ previous criminal record and the nature of any offence of which the person has been convicted;
- ◆ compassionate circumstances;
- ◆ any representations received on the persons behalf

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11.4.1 Criminal Casework – Additional factors when considering if deportation is appropriate

Youth offences: When considering multiple convictions under the deportation guidance, consideration may also be given to youth offences (i.e. offences committed before a person's 21st birthday).

Cautions: If a person meets the criteria for deportation, additional consideration of police cautions received can be taken into account when considering whether deportation is conducive to the public good. Weight given to cautions should be less than given to previous convictions.

Spent Convictions: A spent conviction; is a conviction, which under the terms of Rehabilitation of Offenders Act 1974, can be effectively ignored after a specified amount of time. The amount of time for rehabilitation depends on the sentence imposed not on the offence. These convictions cannot be taken into account when assessing whether a person falls within the criteria for consideration of deportation apart from in exceptional circumstances (e.g. where a person has considerably delayed enforcement of a deportation order by going to ground). In such cases section 7(3) of the 1974 Act may allow evidence relating to a spent conviction to be admitted in evidence before the appellate authorities if, in the light of any relevant considerations, the Court or Tribunal decides that justice cannot be done in the case except by admitting or requiring evidence relating to the person's spent convictions.

Consideration of deportation outside the criteria: Deportation action outside of this guidance can be taken on a case by case basis if it is considered to be conducive to the public good.

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11.4.2 Further deportation considerations for CCD caseworkers

Human rights

Regard must be given to any Human Rights issues raised, and should be weighted against the presumption to deport - Chapter 21

11.5 Criminal Casework Deportation Consideration for EEA Nationals and Family Members

To be read in conjunction with the European Caseworking Instructions

Under EC law, a decision to deport an EEA national or their family must be taken on the grounds of public policy, public security or public health

In considering deportation, an assessment will be made on whether deportation would be compatible with regulation 21 of the Immigration (European Economic Area) Regulations 2006 and the associated case law.

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Deportation on grounds of public health, policy or public security

Deportation (within criminal casework) on public health grounds is rare. Under Regulation 21 of The Immigration (European Economic Area) Regulations 2006, in order to be removed on grounds of public policy or security, the person's conduct must represent a **genuine, present and sufficiently serious threat affecting one of the fundamental interests of society**, and comply with the principle of proportionality.

According to the European Court of Justice in the case of Bouchereau, an individual who constitutes a threat to public policy would normally be a person who has shown a propensity to re-offend. Although past conduct alone may constitute a threat past convictions generally should not be looked at in isolation.

Regulation 21(3) of the Regulations state that if the person has a permanent right of residence in the UK there must be **serious grounds of public policy or public security** for deportation to proceed. This means committing crimes that pose a particularly serious risk to the safety of the public or a section of the public **and** having a propensity to re-offend. For example, conviction for murder, a terrorism offence, a drug trafficking offence, a serious immigration offence, or a serious sexual or violent offence carrying a maximum penalty of 10 years or more with a proven track record of re-offending might constitute serious grounds of public policy or public security.

Under regulation 21(4) of the Regulations, if somebody has resided in the UK for a continuous period of at least 10 years prior to a decision to deport (excluding time spent in custody) there must be **imperative grounds of public security**. The difference between serious and imperative grounds is one of severity: alongside the propensity to re-offend, generally these grounds will include offences that carry a maximum penalty of at least 10 years **and** the person will have been sentenced to a custodial sentence of at least 5 years.

Where an EEA national is under the age of 18 they may **only** be deported on imperative grounds of public security unless if it is in the best interests of the child for them to be returned to their country, e.g. they have a proven tendency to re offend and to abscond from their legal carers

causing risk to themselves or others. This decision must be based upon and informed by advice from social services and other relevant agencies.

In practice, voluntary removal is the preferred option of removing under 18s, and it is very unlikely for an under 18 to be deported in these circumstances, as the vast majority of minors who commit crimes serious enough to warrant deportation on imperative grounds of public safety will be aged over 18 by the time of their release.

Proportionality

Once it is established that the threat posed by a person is sufficient in principle to justify his deportation on grounds of public policy or security under EC law, then there will be a presumption that the public interest requires deportation.

Regulation 21(5)(a) of the Immigration (European Economic Area) Regulations 2006 requires decisions to deport under those Regulations to comply with the principle of **proportionality**. Regulation 21(6) lists the type of considerations that must be taken into account. They are:

- ◆ age;
- ◆ state of health;
- ◆ family/economic situation;
- ◆ residence length in the UK;
- ◆ social and cultural integration into the UK; and
- ◆ the person's links with his country of origin.

The proportionality test under EC law requires -

- ◆ That any interference with a person's free movement rights must be both appropriate in the circumstances of the case and go no further than is necessary to achieve the public policy or public security need; and
- ◆ The consideration of proportionality encompasses Human Rights considerations, particularly Article 8 (but also others, e.g. Article 3).

The more serious the nature of the offence, the sentence given, or the previous criminal history of the person concerned, the greater the potential threat to the public is likely to be and the less likely it is that other considerations will outweigh the presumption towards deportation.

It may be appropriate to give particular weight contrary to the presumption towards deportation if the following circumstances apply to the person:

- ◆ **Residency** – where the person has been resident in the UK for 25 years or more (excluding periods in custody).
- ◆ **Formative years** (from 0-10 years old) – where these have been spent in the UK and the person has been resident here since.
- ◆ **Lack of links to the country of origin**, e.g. the person has no family there, doesn't speak the language and has not lived in the country for a significant period.
- ◆ **Domestic circumstances** – where a person is married, in a civil partnership or has children and there are insurmountable obstacles.
- ◆ **Health** – where the person has an illness that “has reached such a critical stage (i.e. he is dying) that it would be inhuman treatment to deprive him of the care he is currently receiving and send him home to an early death, unless there is care available there to enable him to meet that fate with dignity.”

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