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14. Section 3(6) – Court recommended Deportation

Any person of 17 years or over who does not have the right of abode and who is convicted of an offence for which he is liable to a custodial sentence may be recommended for deportation by a court which has the power to sentence him.

In order for a court to recommend deportation, the defendant must have been served with a notice of liability to deportation (sometimes known as form IM3) by the police or prosecuting authority at least 7 days prior to sentencing. This gives notice of the categories of persons who are not liable to deportation so that the opportunity is given to substantiate any claim he may have to be exempt from deportation (Section 6(2) of the 1971 Act). An adjournment may be requested between conviction and sentencing to allow an IM3 to be served.

A court may also make a recommendation for deportation in conjunction with a conditional discharge, a detention centre order, a sentence of youth custody or life imprisonment (sections 6(3) and (4) of the 1971 Act).

Contact the Criminal Casework Directorate to find out if a deportation order is to be made following a Court recommendation.

14.1 Criminal Casework - Exemptions to Deportation Action

Section 7(1) exemptions

Section 7(1) of the Immigration Act 1971 Act states that it is not possible to deport Irish or Commonwealth Citizens who:

were Irish or Commonwealth citizens at the commencement of the Act in January 1973;
were ordinarily resident in the UK in January 1973; and

have been ordinarily resident in the UK for at least five years before the decision to make a deportation order (excluding custodial sentences of over 6 months).

Also exempt under Section 7 (1) of the IA 1971 are British citizens and those with the Right of Abode in the UK.

Irish citizens

With effect from 19th February 2007 the Home Secretary has decided that the public interest will not generally be served by the deportation of Irish nationals (i.e. citizens of the Irish Republic), save in exceptional circumstances. Accordingly, Irish nationals will not generally be referred to the Border and Immigration Agency for consideration of deportation. Irish prisoners (including those with dual nationality) are not routinely referred from the various UK prison services to the Criminal Casework Directorate (CCD) for any purpose.

However, Irish prisoners who are the subject of a court recommendation for deportation will continue to be referred.

Deportation of Irish Nationals may be appropriate in rare, exceptional circumstances. For example, deportation may be considered where an offence involves national security matters or crimes that pose a serious risk to the safety of the public or a section of the public.

Turkish Nationals claiming to exercise rights under an EC Association Agreement.

Under the Turkey-EC Association Agreement, where a Turkish national worker is 'duly registered as belonging to the labour force' of the UK (and this means being in legal employment with an undisputed right of residence), he, (or family members who are 'authorised to join him') must be treated similarly to EEA Nationals, i.e.:

He/they are subject to the same deportation test as that applied to EEA nationals; but
The more restrictive EEA test at the 5 year plus and 10 year plus stage need not apply.

The right of establishment (or the provision of services) in Article 13 (and 14) of the Turkish ECAA does not have direct effect. Accordingly, Turkish self-established businessmen should not be treated in the same way as an EEA national. These cases should have the non EEA provisions applied.

14.2 Criminal Casework - Refugees: Cessation, Revocation and Refoulement in relation to deportation

If a court recommends deportation as part of a sentence for a recognised refugee, or if a refugee falls within the criteria for conducive deportation, the person's status as a refugee needs to be considered before any action is taken to obtain a deportation order.

14.2.1 Is the person a refugee?

Evidence must be provided to demonstrate the person's refugee status, either in the form of a Status Letter or a 1951 UN Travel Document, if the information is not already on file the person must be asked to provide this. If there is no evidence of refugee status forthcoming it can be assumed that the person is not a refugee.

For refugees recognised in another country, it is necessary to remove them to that country, once their status has been confirmed.

If it has been established that the person is a refugee, it will then be necessary to look at the reasons why they were initially given refugee status and assess whether those reasons still exist. It will need to be assessed whether significant and permanent changes have occurred that may allow deportation, such as the end of a war. If these are significant enough, **cessation clauses** should be invoked.

It still may be possible to deport a refugee. For example, the provisions of the convention do not apply if the person falls under Article 1F (exclusion) or Article 33 (Refoulement – see Chapter 78.3) of the Refugee Convention. Specifically:

- ◆ He has committed a crime against peace, a war crime, or a crime against humanity;
- ◆ He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; or
- ◆ He has been guilty of acts contrary to the purposes and principles of the United Nations.

14.2.2 Cessation of refugee status: Article 1C(5) of the 1951 UN

Can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, refuse to avail himself of the protection of the country of his nationality

That is, the person ceases to be a refugee because the circumstances in his home country have changed and he would no longer be at particular risk.

If the cessation clause is to be invoked to enable deportation a letter should be written to the subject informing them of the reasons why their refugee status is to be taken away. They have fourteen days to respond. The UNHCR are also informed where cessation action is proposed and are given opportunity to comment. If, after their representations, it is still appropriate to take cessation action, then the refugee will be informed of this decision. There is no right of appeal against the decision to cease refugee status. Leave to remain would then be removed by virtue of the deportation order signed against them.

14.2.3 Refoulement under Article 33 Paragraph 2 of the 1951 UN Convention

Article 33(2) states that if there are reasonable grounds for regarding a refugee *“as a danger to the security of the country in which he is, or who, having committed a particularly serious crime, constitutes a danger to the community of that country”* they may be removed within the Refugee Convention even if they have a well-founded fear of persecution, as 33(1) of the 1951 Convention (the principle of non-refoulement) does not apply in certain situations.

Section 72 of the NIA 2002 provides that for the purpose of Article 33(2) a serious criminal is:

- ◆ A person convicted in the United Kingdom and sentenced to at least a two years term of imprisonment. (Or)
- ◆ A person convicted outside of the United Kingdom of an offence and sentenced to a period of imprisonment of at least two years and could have been sentenced to a period of imprisonment of at least 2 years had his conviction been in the UK of a similar offence. (Or)
- ◆ A person convicted of an offence specified by order of the Secretary of State (see Nationality, Immigration and Asylum Act 2002- specification of particularly serious crimes)

If the crime committed is particularly serious the person should be removed back to the country where he fears persecution. However, removal will not proceed if an Article 3 (under the Convention for the Protection of Human Rights and Fundamental Freedoms) risk of ill treatment in that country remains.