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Deportation 2 – Automatic Deportation

17th September 2012

The July 2012 “Deportation” information sheet [<http://tinyurl.com/8ot9kay>] provides information about deportation, including ‘automatic deportation’. This information sheet provides more information specific to ‘automatic deportation’.

What is ‘automatic deportation’?

Automatic deportation is deportation under the regime established by the UK Borders Act 2007. The key difference between that regime and the deportation regime in the Immigration Act 1971 is that where automatic deportation applies the UK Border Agency is required to deport the person. There is no discretion – i.e. it is not left to the decision of the UK Border Agency or the Home Secretary whether to deport the person or not.

The key provisions of the UK Borders Act 2007 include:

- Section 32 – which sets out the circumstances in which automatic deportation applies
- Section 33 – which sets out several exceptions to automatic deportation

Section 32 – when automatic deportation applies

Automatic deportation applies where someone, other than a British citizen, has been convicted of a criminal offence in the UK and is sentenced to imprisonment for a period of 12 months or more for that offence. It applies whether or not the person spends or will spend 12 months or more in prison, provided the sentence imposed was for 12 months or more. Therefore, a person sentenced to 12 months imprisonment, who can normally be expected to be released after spending no less than six months in prison, will still face automatic deportation.

If a person is convicted of more than one offence, automatic deportation will only apply if he or she receives a prison sentence of at least 12 months specific to one of the offences. It does not, therefore, apply where someone is sentenced to two or more periods of imprisonment of less than 12 months each but where (because he or she is ordered to serve the sentences consecutively) the total period of imprisonment is more than 12 months.

Section 33 – exceptions to automatic deportation

Certain people who are generally exempt from deportation are also exempt from automatic deportation – e.g. certain Irish or Commonwealth citizens who were living in the UK on 1 January 1973 will be exempt from deportation if they have lived in the UK for at least five years immediately before their conviction (excluding any period of six months or more imprisonment before that conviction).

Automatic deportation will not apply in the following cases:

- If removing the person from the UK would breach the 1951 Refugee Convention or 1950 European Convention on Human Rights (e.g. because the person would be at risk of torture in the place to which he or she would be removed, or because his or her removal from the UK would be a disproportionate interference with private or family life – see information sheets on “Article 8” [<http://tinyurl.com/6skjen6> and <http://tinyurl.com/cezhxjh>]). In this case, the UK Borders Act 2007 provides that the person’s deportation would be conducive to the public good, even though it cannot be carried out.
- If the person was a child (i.e. under 18) at the time of the conviction for which he or she received a prison sentence of 12 months or more. This does not prevent the UK Border Agency considering whether it is appropriate to deport the person under the provisions of the Immigration Act 1971.
- If removing the person from the UK would be a breach of European Union law – see the “Deportation 3” information sheet [<http://tinyurl.com/8qdsxfb>].
- If the person is subject to various provisions of extradition law. This prevents a person being deported from the UK in circumstances where the UK is obliged under extradition law to ensure the person is handed over to the authorities of another State. In this case, the UK Borders Act 2007 provides that the person’s deportation would be conducive to the public good, even though it cannot be carried out.
- If the person is subject to various provisions of mental health law. This does not prevent the UK Border Agency considering whether it is appropriate to deport the person under the provision of the Immigration Act 1971.
- If removing the person from the UK would be a breach of the UK’s obligations to a victim of trafficking under the 2005 Council of Europe Convention on Action against the Trafficking of Human Beings.

Further information and background to the introduction of automatic deportation

Those whom the automatic deportation regime requires to be deported could have been deported even before the UK Borders Act 2007 and the introduction of automatic deportation. Such people could have been deported under the Immigration Act 1971 without the introduction of automatic deportation. Automatic deportation was not and is not necessary for the deportation of anyone, and does not extend the number of persons who may be deported from the UK. However, in the cases where it applies it removes any discretion of the UK Border Agency or the Home Secretary to consider whether, on the facts of the individual case, deportation of the person is appropriate.

The introduction of automatic deportation resulted from the revelation in April 2006 that the Home Office had failed, in over a thousand cases, to consider whether a convicted foreign national should be deported before he or she was released from prison. This led to the then Home Secretary, Charles Clarke MP, losing his job. His replacement as Home Secretary, John Reid MP, later described the Home Office as “not fit for purpose”. He introduced the Bill which became the UK Borders Act 2007, by which automatic deportation was introduced. It was suggested that automatic deportation would address the earlier failings of the Home Office. However, the failings of the Home Office were administrative, and the Act did nothing to improve administration at the Home Office (now the UK Border Agency). While the use of the word ‘automatic’ suggests that administrative failings are addressed, the reality is that no deportation process can be automatic. Any such process needs administration. The Act, where its provisions apply, makes deportation mandatory (i.e. required) not automatic. Yet individual cases ought to be considered on their individual facts. Generally where the Act applies, it prevents the UK Border Agency from doing this unless Article 8 (see above) applies. Even where Article 8 applies, the Act may have the effect of discouraging the UK Border Agency from considering the individual facts of a case, leaving such consideration to any appeal. Further background is provided by the House of Commons Library Research Paper 07/11 of January 2007:

<http://www.parliament.uk/documents/commons/lib/research/rp2007/rp07-011.pdf>