



**Law  
Commission**  
Reforming the law

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**Sentencing law in England and Wales**  
**Legislation currently in force**  
Part 3.10 – Deportation

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9 October 2015

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## Part 3. Sentencing powers and duties

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## 3.10 Deportation

### 3.10.1. Automatic liability for deportation

#### 3.10.1.1. The duty to make a deportation order

##### Duty to make deportation order

##### **UKBA 2007 s.32<sup>1807</sup>: Automatic deportation**

- s.32(1) - in this section “*foreign criminal*” means a person–
- (a) who is not a British citizen,
  - (b) who is convicted in the United Kingdom of an offence, and
  - (c) to whom Condition 1 or 2 applies.
- s.32(2) - condition 1 is that the person is sentenced to a period of imprisonment of at least 12 months.
- s.32(3) - condition 2 is that–
- (a) the offence is specified by order of the Secretary of State under section 72(4)(a) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (serious criminal), and
  - (b) the person is sentenced to a period of imprisonment.
- s.32(4) - for the purpose of section 3(5)(a) of the Immigration Act 1971 (c. 77), the deportation of a foreign criminal is conducive to the public good.
- s.32(5) - the Secretary of State must make a deportation order in respect of a foreign criminal (subject to section 33).
- s.32(6) - the Secretary of State may not revoke a deportation order made in accordance with subsection (5) unless–
- (a) he thinks that an exception under section 33 applies,
  - (b) the application for revocation is made while the foreign criminal is outside the United Kingdom, or
  - (c) section 34(4) applies.
- s.32(7) - subsection (5) does not create a private right of action in respect of consequences of non-compliance by the Secretary of State.

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<sup>1807</sup> Commencement: 1 August 2008, in respect of a person to whom Condition 1 (within the meaning of UKBA 2007 s.32) applies, SI 2008/1818 art.2(a) and Sch.1.

## Exceptions to the duty to make an order

### **UKBA 2007 s.33<sup>1808</sup>: Exceptions**

- s.33(1) - Section 32(4) and (5)–
- (a) do not apply where an exception in this section applies (subject to subsection (7) below), and
  - (b) are subject to sections 7 and 8 of the Immigration Act 1971 (Commonwealth citizens, Irish citizens, crew and other exemptions).
- s.33(2) - exception 1 is where removal of the foreign criminal in pursuance of the deportation order would breach–
- (a) a person's Convention rights, or
  - (b) the United Kingdom's obligations under the Refugee Convention.
- s.33(3) - exception 2 is where the Secretary of State thinks that the foreign criminal was under the age of 18 on the date of conviction.
- s.33(4) - exception 3 is where the removal of the foreign criminal from the United Kingdom in pursuance of a deportation order would breach rights of the foreign criminal under the [EU] treaties.
- s.33(5) - exception 4 is where the foreign criminal–
- (a) is the subject of a certificate under section 2 or 70 of the Extradition Act 2003 (c. 41),
  - (b) is in custody pursuant to arrest under section 5 of that Act,
  - (c) is the subject of a provisional warrant under section 73 of that Act,
  - (d) is the subject of an authority to proceed under section 7 of the Extradition Act 1989 (c. 33) or an order under paragraph 4(2) of Schedule 1 to that Act, or
  - (e) is the subject of a provisional warrant under section 8 of that Act or of a warrant under paragraph 5(1)(b) of Schedule 1 to that Act.
- s.33(6) - exception 5 is where any of the following has effect in respect of the foreign criminal–
- (a) a hospital order or guardianship order under section 37 of the Mental Health Act 1983 (c. 20),
  - (b) a hospital direction under section 45A of that Act,
  - (c) a transfer direction under section 47 of that Act,
  - (e) a guardianship order under section 58 of that Act,
  - (f) a hospital direction under section 59A of that Act,
- s.33(6A) - exception 6 is where the Secretary of State thinks that the application of section 32(4) and (5) would contravene the United Kingdom's obligations under the Council of Europe Convention on Action against Trafficking in Human Beings (done at Warsaw on 16th May 2005).

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<sup>1808</sup> Commencement: 1 August 2008, in respect of a person to whom Condition 1 (within the meaning of UKBA 2007 s.32) applies, SI 2008/1818 art.2(a) and Sch.1.

- s.33(7) - the application of an exception–
- (a) does not prevent the making of a deportation order;
  - (b) results in it being assumed neither that deportation of the person concerned is conducive to the public good nor that it is not conducive to the public good;
- but section 32(4) applies despite the application of Exception 1 or 4.

**R. v Kluxen [2010] EWCA Crim 1081; [2011] 1 Cr. App. R. (S.) 39 (p.249)**

No useful purpose would be served in making a recommendation where automatic deportation applies.

**Rearranging sentences to avoid deportation**

**R. v Hakimzadeh [2009] EWCA Crim 959; [2010] 1 Cr. App. R. (S.) 10 (p.49)**

*Note: This is an example of a case where the defence suggested the sentences be rearranged to avoid the deportation provisions and having regard to the age of the offending and the fact that “deportation was never in the judge’s mind”, the Court of Appeal acceded to the request.*

**R. v Mintchev [2011] EWCA Crim 499**

As a matter of principle it would not be right to reduce an otherwise appropriate sentence so as to avoid the provisions of the UK Borders Act 2007 because: (a) sentences are intended to be commensurate with the seriousness of the offence, (b) when passing sentence a judge is neither entitled not obliged to reach a contrived result so as to avoid the operation of a statutory provision and (c) automatic deportation provisions are not a penalty included in the sentence. They are instead a consequence of the sentence.

**Deportation order may not be made while appeal pending**

**UKBA 2007 s.34<sup>1809</sup>: Timing**

- s.34(1) - Section 32(5) requires a deportation order to be made at a time chosen by the Secretary of State.
- s.34(2) - a deportation order may not be made under section 32(5) while an appeal or further appeal against the conviction or sentence by reference to which the order is to be made–
- (a) has been instituted and neither withdrawn nor determined, or
  - (b) could be brought.
- s.34(3) - for the purpose of subsection (2)(b)–
- (a) the possibility of an appeal out of time with permission shall be disregarded, and
  - (b) a person who has informed the Secretary of State in writing that the person does not intend to appeal shall be treated as being no longer able to appeal.

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<sup>1809</sup> Commencement: 1 August 2008, in respect of a person to whom Condition 1 (within the meaning of UKBA 2007 s.32) applies, SI 2008/1818 art.2(a) and Sch.1.

## Secretary of State may withdraw decision or revoke order

### **UKBA 2007 s.34<sup>1810</sup>: Timing**

- s.34(4) - the Secretary of State may withdraw a decision that section 32(5) applies, or revoke a deportation order made in accordance with section 32(5), for the purpose of–
- (a) taking action under the Immigration Acts or rules made under section 3 of the Immigration Act 1971 (c. 77) (immigration rules), and
  - (b) subsequently taking a new decision that section 32(5) applies and making a deportation order in accordance with section 32(5).

## Detention pending deportation

### **UKBA 2007 s.36<sup>1811</sup>: Detention**

- s.36(1) - a person who has served a period of imprisonment may be detained under the authority of the Secretary of State–
- (a) while the Secretary of State considers whether section 32(5) applies, and
  - (b) where the Secretary of State thinks that section 32(5) applies, pending the making of the deportation order.
- s.36(2) - where a deportation order is made in accordance with section 32(5) the Secretary of State shall exercise the power of detention under paragraph 2(3) of Schedule 3 to the Immigration Act 1971 (c. 77) (detention pending removal) unless in the circumstances the Secretary of State thinks it inappropriate.
- s.36(3) - a court determining an appeal against conviction or sentence may direct release from detention under subsection (1) or (2).
- s.36(4) - provisions of the Immigration Act 1971 which apply to detention under paragraph 2(3) of Schedule 3 to that Act shall apply to detention under subsection (1) (including provisions about bail).
- s.36(5) - Paragraph 2(5) of Schedule 3 to that Act (residence, occupation and reporting restrictions) applies to a person who is liable to be detained under subsection (1).

## Family members of the “foreign criminal”

### **UKBA 2007 s.37<sup>1812</sup>: Family**

- s.37(1) - where a deportation order against a foreign criminal states that it is made in accordance with section 32(5) (“the automatic deportation order”) this section shall have effect in place of the words from “A deportation order” to “after the making of the deportation order against him” in section 5(3) of the Immigration Act 1971 (period during which family members may also be deported).

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<sup>1810</sup> Commencement: 1 August 2008, in respect of a person to whom Condition 1 (within the meaning of UKBA 2007 s.32) applies, SI 2008/1818 art.2(a) and Sch.1.

<sup>1811</sup> Commencement: 1 August 2008, in respect of a person to whom Condition 1 (within the meaning of UKBA 2007 s.32) applies, SI 2008/1818 art.2(a) and Sch.1.

<sup>1812</sup> Commencement: 1 August 2008, in respect of a person to whom Condition 1 (within the meaning of UKBA 2007 s.32) applies, SI 2008/1818 art.2(a) and Sch.1.

- s.37(2) - a deportation order may not be made against a person as belonging to the family of the foreign criminal after the end of the relevant period of 8 weeks.
- s.37(3) - in the case of a foreign criminal who has not appealed in respect of the automatic deportation order, the relevant period begins when an appeal can no longer be brought (ignoring any possibility of an appeal out of time with permission).
- s.37(4) - in the case of a foreign criminal who has appealed in respect of the automatic deportation order, the relevant period begins when the appeal is no longer pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002 (c. 41)).

**IA 1971 s.5<sup>1813</sup>: Procedure for, and further provisions as to, deportation**

- s.5(3) - a deportation order shall not be made against a person as belonging to the family of another person if more than eight weeks have elapsed since the other person left the United Kingdom after the making of the deportation order against him; and a deportation order made against a person on [the ground that they belong to the family of another person] shall cease to have effect if he ceases to belong to the family of the other person, or if the deportation order made against the other person ceases to have effect.

*Note: The wording underlined in s.5(3) is the wording removed by s.37(1).<sup>1814</sup>*

**3.10.1.2. Appeals**

**UKBA 2007 s.35<sup>1815</sup>: Appeal**

- s.35(1) - the Nationality, Immigration and Asylum Act 2002 (c. 41) is amended as follows.
- s.35(2) - at the end of section 79 (no deportation order pending appeal) add–
  - “(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.”

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<sup>1813</sup> Commencement: 1 January 1973, SI 1972/1514 art.2.

<sup>1814</sup> s.37 is only partially in force (see footnote 12 above) and so it is necessary to retain IA 1971 s.5 and the underlined text as that text is only removed where s.37 applies.

<sup>1815</sup> Commencement: 1 August 2008, in respect of a person to whom Condition 1 (within the meaning of UKBA 2007 s.32) applies, SI 2008/1818 art.2(a) and Sch.1.

### 3.10.1.3. Interpretation etc.

#### Interpretation

##### **UKBA 2007 s.38<sup>1816</sup>: Interpretation**

- s.38(1) - in section 32(2) the reference to a person who is sentenced to a period of imprisonment of at least 12 months–
- (a) does not include a reference to a person who receives a suspended sentence (unless a court subsequently orders that the sentence or any part of it (of whatever length) is to take effect),
  - (b) does not include a reference to a person who is sentenced to a period of imprisonment of at least 12 months only by virtue of being sentenced to consecutive sentences amounting in aggregate to more than 12 months,
  - (c) 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) for at least 12 months, and
  - (d) 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 12 months).
- s.38(2) - in section 32(3)(b) the reference to a person who is sentenced to a period of imprisonment–
- (a) does not include a reference to a person who receives a suspended sentence (unless a court subsequently orders that the sentence or any part of it is to take effect), and
  - (b) 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).
- s.38(3) - for the purposes of section 32 a person subject to an order under section 5 of the Criminal Procedure (Insanity) Act 1964 (c. 84) (insanity, &c.) has not been convicted of an offence.
- s.38(4) - in sections 32 and 33–
- (a) “*British citizen*” has the same meaning as in section 3(5) of the Immigration Act 1971 (c. 77) (and section 3(8) (burden of proof) shall apply),
  - (b) “*Convention rights*” has the same meaning as in the Human Rights Act 1998 (c. 42),
  - (c) “*deportation order*” means an order under section 5, and by virtue of section 3(5), of the Immigration Act 1971, and
  - (d) “*the Refugee Convention*” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol.

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<sup>1816</sup> Commencement: 1 August 2008, in respect of a person to whom Condition 1 (within the meaning of UKBA 2007 s.32) applies, SI 2008/1818 art.2(a) and Sch.1.



## Consequential amendments

### **UKBA 2007 s.39<sup>1817</sup>: Consequential amendments**

- s.39(1) - this section amends section 72(11)(b) of the Nationality, Immigration and Asylum Act 2002 (removal: serious criminal: interpretation).
- s.39(2) - in sub-paragraph (i) for “(unless at least two years of the sentence are not suspended)” substitute “(unless a court subsequently orders that the sentence or any part of it is to take effect)”.
- s.39(3) - after sub-paragraph (i) insert–  
“(ia) does not include a reference to a person who is sentenced to a period of imprisonment of at least two years only by virtue of being sentenced to consecutive sentences which amount in aggregate to more than two years,”.

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<sup>1817</sup> Commencement: 1 August 2008, SI 2008/1818 art.2(b).

## 3.10.2. Recommendation for deportation

### 3.10.2.1. General

#### The use of other powers to deport foreign criminals

##### **R. (Dragoman) v Camberwell Green Magistrates' Court [2012] EWHC 4105 (Admin)**

The court imposed a community order with a requirement for the defendant to leave the UK for 12 months. The High Court held that there was no such power. The suggestion was that other powers should not be used to “ban” individuals from the UK.

#### **Automatic deportation applies: Do not make a recommendation**

##### **R. v Kluxen [2010] EWCA Crim 1081; [2011] 1 Cr. App. R. (S.) 39 (p.249)**

No useful purpose would be served in making a recommendation where automatic deportation applies.

#### **Recommendations should now be rare**

##### **R. v Kluxen [2010] EWCA Crim 1081; [2011] 1 Cr. App. R. (S.) 39 (p.249)**

[...] [I]t will rarely be that either [the *Nazari*<sup>1818</sup> and *Bouchereau*<sup>1819</sup> tests are] satisfied in the case of an offender none of whose offences merits a custodial sentence of 12 months or more. An offender who repeatedly commits minor offences could conceivably do so, as could a person who commits a single offence involving for example the possession or use of false identity documents for which he receives a custodial sentence of less than 12 months [...] But we repeat that such cases will be rare; and we observe that even if a court makes no recommendation for an offender's deportation, the Secretary of State may nevertheless deport him if he deems this conducive to the public good. (Maddison J, at [27], giving the judgment of the court)

##### **R. v Carmona [2006] EWCA Crim 508; [2006] 2 Cr. App. R. (S.) (p.662)**

A recommendation does not form part of the punishment of the offender. A reduction in sentence is not due just because a recommendation has been made.

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<sup>1818</sup> *R. v Nazari* [1980] 1 W.L.R. 1366; [1980] 3 All E.R. 880: The test was “does the potential detriment to this country justify the recommendation for deportation of this appellant?”. In *R. v Kluxen* [2010] EWCA Crim 1081; [2011] 1 Cr. App. R. (S.) 39 (p.249) it was said that the domestic courts have since viewed the *Nazari* and *Bouchereau* tests as being, for all practical purposes, the same.

<sup>1819</sup> *R. v Bouchereau* [1978] Q.B. 732: The test was “whether or not a full enquiry into the circumstances reveals that a genuine and sufficiently serious threat to the requirements of public policy has affected the fundamental interests of society.” In *R. v Kluxen* [2010] EWCA Crim 1081; [2011] 1 Cr. App. R. (S.) 39 (p.249) it was said that the domestic courts have since viewed the *Nazari* and *Bouchereau* tests as being, for all practical purposes, the same.

### 3.10.2.2. When can an order be made?

#### Availability

#### **IA 1971 s.3<sup>1820</sup>: General provisions for regulation and control**

s.3(6) - without prejudice to the operation of subsection (5) (liability to deportation where SoS deems it conducive to public good etc.), a person who is not a British citizen shall also be liable to deportation from the United Kingdom if, after he has attained the age of seventeen, he is convicted of an offence for which he is punishable with imprisonment and on his conviction is recommended for deportation by a court empowered by this Act to do so.

#### **IA 1971 s.6<sup>1821</sup>: Recommendations by court for deportation**

s.6(3) - for purposes of section 3(6) above—

- (a) a person shall be deemed to have attained the age of seventeen at the time of his conviction if, on consideration of any available evidence, he appears to have done so to the court making or considering a recommendation for deportation; and
- (b) the question whether an offence is one for which a person is punishable with imprisonment shall be determined without regard to any enactment restricting the imprisonment of young offenders or persons who have not previously been sentenced to imprisonment;

and for purposes of deportation a person who on being charged with an offence is found to have committed it shall, notwithstanding any enactment to the contrary and notwithstanding that the court does not proceed to conviction, be regarded as a person convicted of the offence, and references to conviction shall be construed accordingly.

#### Exceptions and exemptions

#### **IA 1971 s.7<sup>1822</sup>: Exemption from deportation for certain existing residents**

s.7(1) - notwithstanding anything in section 3(5) or (6) above but subject to the provisions of this section, a Commonwealth citizen or citizen of the Republic of Ireland who was such a citizen at the coming into force of this Act and was then ordinarily resident in the United Kingdom—

- (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;
- (c) shall not on conviction of an offence be recommended for deportation under section 3(6) if at the time of the conviction he had for the last five years been ordinarily resident in the United Kingdom and Islands.

s.7(2) - a person who has at any time become ordinarily resident in the United Kingdom or in any of the Islands shall not be treated for the purposes of this section as having ceased to be so by reason only of his having remained there in breach of the immigration laws.

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<sup>1820</sup> Commencement: 1 January 1973, SI 1972/1514 art.2.

<sup>1821</sup> Commencement: 1 January 1973, SI 1972/1514 art.2.

<sup>1822</sup> Commencement: 1 January 1973, SI 1972/1514 art.2.

- s.7(3) - the “last five years” before the material time under subsection (1)(b) or (c) above is to be taken as a period amounting in total to five years exclusive of any time during which the person claiming exemption under this section was undergoing imprisonment or detention by virtue of a sentence passed for an offence on a conviction in the United Kingdom and Islands, and the period for which he was imprisoned or detained by virtue of the sentence amounted to six months or more.
- s.7(4) - for purposes of subsection (3) above—
- (a) “*sentence*” includes any order made on conviction of an offence; and
  - (b) two or more sentences for consecutive (or partly consecutive) terms shall be treated as a single sentence; and
  - (c) a person shall be deemed to be detained by virtue of a sentence—
    - (i) at any time when he is liable to imprisonment or detention by virtue of the sentence, but is unlawfully at large; and
    - (ii) (unless the sentence is passed after the material time) during any period of custody by which under any relevant enactment the term to be served under the sentence is reduced.
- In paragraph (c)(ii) above “*relative enactment*” means section 240, 240ZA or 240A of the Criminal Justice Act 2003 (or, before that section operated, section 17(2) of the Criminal Justice Administration Act 1962) and any similar enactment which is for the time being or has (before or after the passing of this Act) been in force in any part of the United Kingdom and Islands.
- s.7(5) - nothing in this section shall be taken to exclude the operation of section 3(8) above in relation to an exemption under this section.

**IA 1971 s.8: Exceptions for seamen, aircrews and other special cases**

- s.8(2) - the Secretary of State may by order exempt any person or class of persons, either unconditionally or subject to such conditions as may be imposed by or under the order, from all or any of the provisions of this Act relating to those who are not British citizens.
- An order under this subsection, if made with respect to a class of persons, shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- s.8(3) - subject to subsection (3A) below, the provisions of this Act relating to those who are not British citizens shall not apply to any person so long as he is a member of a mission (within the meaning of the Diplomatic Privileges Act 1964), a person who is a member of the family and forms part of the household of such a member, or a person otherwise entitled to the like immunity from jurisdiction as is conferred by that Act on a diplomatic agent.
- s.8(3A) - for the purposes of subsection (3), a member of a mission other than a diplomatic agent (as defined by the 1964 Act) is not to count as a member of a mission unless—
- (a) he was resident outside the United Kingdom, and was not in the United Kingdom, when he was offered a post as such a member; and
  - (b) he has not ceased to be such a member after having taken up the post.
- s.8(5A) - an order under subsection (2) above may, as regards any person or class of persons to whom it applies, provide for that person or class to be in specified circumstances regarded (notwithstanding the order) as settled in the United Kingdom for the purposes of section 1(1) of the British Nationality Act 1981.

## Power to order

### **IA 1971 s.6<sup>1823</sup>: Recommendations by court for deportation**

s.6(1) - where under section 3(6) above a person convicted of an offence is liable to deportation on the recommendation of a court, he may be recommended for deportation by any court having power to sentence him for the offence unless the court commits him to be sentenced or further dealt with for that offence by another court:

## Proof of being a British citizen

### **IA 1971 s.3<sup>1824</sup>: General provisions for regulation and control**

s.3(8) - when any question arises under this Act whether or not a person is a British citizen, or is entitled to any exemption under this Act, it shall lie on the person asserting it to prove that he is.

### **3.10.2.3. Making the order**

#### **Defendant must be given seven days notice**

### **IA 1971 s.6<sup>1825</sup>: Recommendations by court for deportation**

s.6(2) - a court shall not recommend a person for deportation unless he has been given not less than seven days notice in writing stating that a person is not liable to deportation if he is a British citizen, describing the persons who are British citizens and stating (so far as material) the effect of section 3(8) above and section 7 below; but the powers of adjournment conferred by section 10(3) of the Magistrates' Courts Act 1980, section 179 or 380 of the Criminal Procedure (Scotland) Act 1975 or any corresponding enactment for the time being in force in Northern Ireland shall include power to adjourn, after convicting an offender, for the purpose of enabling a notice to be given to him under this subsection or, if a notice was so given to him less than seven days previously, for the purpose of enabling the necessary seven days to elapse.

## Human Rights Act 1998

### **R. v Carmona [2006] EWCA Crim 508; [2006] 2 Cr. App. R. (S.) (p.662)**

There is now no need for a sentencing court to consider the Convention rights of an offender whose offence justifies a recommendation for deportation. The offender's Convention rights will be considered if the Home Secretary makes an order for deportation against which the offender appeals to the Tribunal.

## Giving reasons

### **R. v Bozat [1997] 1 Cr. App. R. (S.) 270**

It is imperative for the judge to spell out the reasons for making a recommendation.

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<sup>1823</sup> Commencement: 1 January 1973, SI 1972/1514 art.2.

<sup>1824</sup> Commencement: 1 January 1973, SI 1972/1514 art.2.

<sup>1825</sup> Commencement: 1 January 1973, SI 1972/1514 art.2.

**R. v Carmona [2006] EWCA Crim 508; [2006] 2 Cr. App. R. (S.) 102 (p.662)**

A failure to give adequate or any reasons will not necessarily lead to [the recommendation] being quashed but will require [the Court of Appeal] to reconsider the recommendation. (Stanley Burnton J, at [12])

**3.10.2.4. European Union’s Directive**

**Directive 2004/38/EC of the European Parliament and of the Council**

Article 27:

1. Subject to the provisions of this Chapter, Member States may restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public health. These grounds shall not be invoked to serve economic ends.
2. Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures.  
  
The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.
3. In order to ascertain whether the person concerned represents a danger for public policy or public security, when issuing the registration certificate or, in the absence of a registration system, not later than three months from the date of arrival of the person concerned on its territory or from the date of reporting his/her presence within the territory, as provided for in Article 5(5), or when issuing the residence card, the host Member State may, should it consider this essential, request the Member State of origin and, if need be, other Member States to provide information concerning any previous police record the person concerned may have. Such enquiries shall not be made as a matter of routine. The Member State consulted shall give its reply within two months.
4. The Member State which issued the passport or identity card shall allow the holder of the document who has been expelled on grounds of public policy, public security, or public health from another Member State to re-enter its territory without any formality even if the document is no longer valid or the nationality of the holder is in dispute.

**3.10.2.5. Interaction with other sentencing orders**

**Conditional discharge**

**R. v Akan (1972) 56 Cr. App. R. 716**

A recommendation for deportation can be made with a conditional discharge.

**Imprisonment**

**R. v G [2011] EWCA Crim 3321**

The provisions described as “automatic deportation” do not necessarily lead to deportation, they lead to a liability for deportation. Judges should not therefore impose a shorter sentence or sentence in a different nature from they would otherwise have passed on the basis that they have been informed that the offender is liable to automatic deportation.

## Life imprisonment

### ***IA 1971 s.6<sup>1826</sup>: Recommendations by court for deportation***

- s.6(4) - notwithstanding any rule of practice restricting the matters which ought to be taken into account in dealing with an offender who is sentenced to imprisonment, a recommendation for deportation may be made in respect of an offender who is sentenced to imprisonment for life.

### **3.10.2.6. Appeals**

#### **Recommendation is a sentence for purpose of appeals**

### ***IA 1971 s.6<sup>1827</sup>: Recommendations by court for deportation***

- s.6(5) - where a court recommends or purports to recommend a person for deportation, the validity of the recommendation shall not be called in question except on an appeal against the recommendation or against the conviction on which it is made; but—  
the recommendation shall be treated as a sentence for the purpose of any enactment providing an appeal against sentence

#### **Order suspended where appeal pending**

### ***IA 1971 s.6<sup>1828</sup>: Recommendations by court for deportation***

- s.6(6) - a deportation order shall not be made on the recommendation of a court so long as an appeal or further appeal is pending against the recommendation or against the conviction on which it was made; and for this purpose an appeal or further appeal shall be treated as pending (where one is competent but has not been brought) until the expiration of the time for bringing that appeal

#### **Appeal from magistrates' court to Crown Court**

### ***Senior Courts Act 1981 s.48: Appeals to Crown Court***

- s.48(2) - On the termination of the hearing of an appeal the Crown Court:
- (a) may confirm, reverse or vary the decision appealed against any part of the decision appealed against, including a determination not to impose a separate penalty in respect of an offence; or
  - (b) may remit the matter with its opinion thereon to the authority whose decision is appealed against; or
  - (c) may make such other order in the matter as the court thinks just, and by such order exercise any power which the said authority might have exercised.
- s48(3) - subsection (2) has effect subject to any enactment relating to any such appeal which expressly limits or restricts the powers of the court on the appeal.

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<sup>1826</sup> Commencement: 1 January 1973, SI 1972/1514 art.2.

<sup>1827</sup> Commencement: 1 January 1973, SI 1972/1514 art.2.

<sup>1828</sup> Commencement: 1 January 1973, SI 1972/1514 art.2.

- s.48(4) - subject to section 11(6) of the Criminal Appeal Act 1995, if the appeal is against a conviction or a sentence, the preceding provisions of this section shall be construed as including power to award any punishment, whether more or less severe than that awarded by the magistrates' court whose decision is appealed against, if that is a punishment which that magistrates' court might have awarded.
- s.48(5) - this section applies whether or not the appeal is against the whole of the decision.
- s.48(6) - in this section “*sentence*” includes any order made by a court when dealing with an offender, including—
- [...]
- (b) a recommendation for deportation made when dealing with an offender.

*Note: Schedule 3 contains supplementary provisions as to deportation.*