Amnesty International UK

BRIEFING

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REFUGEE AND MIGRANT RIGHTS

Deportation (and Article 8)

Deportation receives much political and media attention. This briefing explains what it is, addresses some misinformation about it, and sets out some proposals relating to it.

What is deportation?

Although the words 'deport' and 'deportation' are sometimes used to describe any removal of a person from the country, these words have a more limited meaning in UK law. Deportation means the removal and exclusion of someone from the UK because their presence in the country is considered not conducive to the public good.[i] Someone is deported from the UK if this is the reason for their removal.

British citizens cannot be deported.[ii] Some Irish and Commonwealth citizens also cannot be deported if the UK was their home on 1 January 1973.[iii] Otherwise, anyone whose presence is considered not conducive to the public good is liable to deportation (i.e., they are within the scope of the power to deport). This includes people who are lawfully in the UK, even people lawfully here for many years. It can even include people born in the UK who have always lived here.[iv]

However, that someone is liable to deportation does not mean that they will be deported (or that they should be). Before anyone is deported, their individual circumstances should be considered. As explained in this briefing, successive Governments and Parliament have made that consideration largely or solely about Article 8 (the right to respect for private and family life) in most cases.

Conducive to the public good

In the context of deportation, conducive to the public good means significant reasons to consider that someone's presence in the UK is not in the public interest (beyond merely enforcing immigration rules). A person's deportation will be conducive to the public good if some significant matter concerning their character, conduct or associations makes their presence in the UK undesirable. Usually – but not always – consideration of deportation will arise because someone has been convicted of a criminal offence.[v]

People may also be removed if they require and are without permission to be in the UK, if they have permission but breach a condition of it (such as a restriction on their working or studying), or if they overstay the period for which they have been given permission. However, removal for these reasons is under other immigration powers (not deportation).[vi]

Considerations before deportation (and how this relates to Article 8)

Part 13 of the immigration rules sets out considerations in deportation cases ("the deportation rules").[vii] These rules have changed significantly since 2006:

- Before 20 July 2006, the rules set out several broad factors to be considered in total before a decision was made to deport someone from the UK. These included the person's age, how long they had lived in the UK, how strong was their connection to the UK, their personal history, their domestic (home and family) circumstances, any previous criminal record and the nature of any offending, and any compassionate circumstances.[viii]
- On 20 July 2006, these broad factors were removed from the rules.[ix] They were replaced with a primary focus on human rights.[x] Over time, this has been made into a narrow focus on Article 8 in most cases. Whether by mistake or design, Government policy has substituted a primary focus on Article 8 for consideration of broad factors set by ministers.[xi]

These changes to the rules were made by Labour and Conservative Home Secretaries. Parliament has passed Government legislation in support of these changes.[xii] Government and Parliament have therefore **required a narrow focus on Article 8** in place of consideration of broad factors set by ministers. They have gone further. The Immigration Act 2014 – introduced by a Conservative Home Secretary and passed by Parliament in May 2014 – requires that **all immigration cases must be made on human rights grounds for someone to have any appeal** to an immigration judge against a Home Office decision. Only human rights grounds can be considered on an appeal.[xiii] By that same Act, the Home Secretary also sought to restrict how judges consider Article 8.[xiv]

Why these changes to deportation rules were made

The changes that made Article 8 the narrow focus of so many deportation cases began as part of the response to a Home Office scandal in 2005-2006. The department had failed to consider whether many people liable to deportation should or should not be deported.[xv] This scandal cost the then Home Secretary his job.[xvi] His replacement and the then Prime Minister wrongly suggested fault lay with the law, including human rights law and stated they would change this.[xvii] This led to changes to deportation rules and the introduction of the UK Borders Act 2007, which requires someone to be deported if they are sentenced to 12 months imprisonment unless this is contrary to human rights.[xviii]

However, the scandal was not about law or human rights. It was simply a result of poor administration – a failure to ensure officials were properly resourced, instructed and supervised and doing the work expected of them (to consider whether people liable to deportation should be deported).[xix]

The impact of the changes to deportation rules (and related legislation)

These changes have had three broad effects. None of them positive:

- Home Office decision-makers have **lost sight of the many and very different circumstances in which consideration of deportation may arise**. They have been instructed that what generally matters is the length of sentence someone receives and little else.[xx] But the circumstances of a 40-year-old who has lived in the UK since they were two and is married with two children is very different to those of a 40-year-old who came to the UK three years ago and has no family here. That they have received the same sentence (even for the same offence) does not make their cases the same. Deportation rules and legislation (and the guidance given to Home Office decision-workers) no longer adequately reflect these and other distinctions.
- Deportation **decisions have been made to focus on human rights** – particularly Article 8. This has **encouraged and enabled criticism of these decisions and those who make them** (officials and judges) from political and media commentators hostile to human rights law. This criticism is based on misunderstanding when it attacks a decision or decision-maker for relying on Article 8 (because that is what Government and Parliament has required is done). This criticism is exploitative (financially or politically) when done to take advantage from that misunderstanding or hostility. Much of this criticism includes false claims and misrepresentation.[xxi]

- A **harmful and self-perpetuating situation has been created**. Home Office decision-making has been made insensitive to much that is relevant, increasing the risk of unfair decisions. Lawyers representing people in deportation cases and judges have been required to focus on Article 8. This has increased the focus on Article 8 when a Home Office decision is overturned. That has enabled harmful and false criticism. Government has failed to correct this. Instead, it has introduced rules, policy and laws as if the criticism has merit – maintaining the requirement to focus on Article 8 while perpetuating (and sometimes worsening) the risk of unfair decisions.

Wider concerns

Other concerns with how deportation powers are used include:

- When the Home Office exercises these powers, it obstructs rehabilitation. Someone may be held in prison or in an immigration removal centre[xxii] after they have completed their prison sentence. They may be excluded from rehabilitation programmes in the prison. If released, they may be refused permission to work or study. All of this undermines work of the probation service. This is bad for the individual and whichever community the person may return to (including in the UK).[xxiii]
- The Home Office uses these powers against people who have lived in the UK from childhood, including people born here and with rights to British citizenship. This is a form of exporting the UK's social problems to other countries not regulating immigration.

Recommendations

Problems outlined in this briefing result from a long and complex history of law and policy over nearly two decades. While there are immediate steps that can be taken, most particularly by Government, some of this cannot be resolved without legislation. The following are key recommendations:

- Government should take responsibility for **avoiding and correcting false criticism**, and ensure policy is not influenced by it. Editors, producers, commentators, presenters, and reporters should also take responsibility for avoiding and correcting false criticism.
- Government should make policy to enable Home Office decision-makers to **take full account of all that is relevant**. Government should introduce legislation to remove barriers to this. This should include repeal of 'automatic deportation' provisions in the UK Borders Act 2007[xxiv] and of Part 5A of the Nationality, Immigration and Asylum Act 2002.[xxv]
- The Home Secretary should change deportation rules back to **focus on broad factors specified by her policy rather than a narrow focus on Article 8** or other human rights considerations.[xxvi]
- Home Office decision-makers should ensure that deportation **decisions are made for immigration purposes**, not as additional punishment for offences (which only those liable to deportation face). People who are settled or long resident in the UK – particularly if they have lived here since their childhood – should not ordinarily face deportation.[xxvii]
- All **people with a right to British citizenship should be exempt from deportation** in the same way. That should include people who are required to have their citizenship registered, such as people born and always lived in the UK who acquire that right not at birth but later in childhood.[xxviii]

Conclusion

Deportation is an immigration power and should be used solely for immigration purposes. It must take account of wide differences in circumstances of people liable to deportation. Blanket policy that tends to treat everyone the same based on one factor (e.g., length of sentence) should be avoided. However, Government legislation and policy has wrongly adopted a near-blanket approach; and wrongly required deportation cases and decisions to focus on Article 8. This should be corrected.

Policy should instead be sensitive to people's true and full circumstances and enable decisions to be equally sensitive. In this way, policy and practice can be made human rights-compliant without requiring undue focus on Article 8 as distinct from reasonable and lawful policy set by ministers.

Notes

[i] Sections 3(5) and 5(1), Immigration Act 1971
[ii] Sections 1(1) and 2(1), Immigration Act 1971 (and expressly affirmed in section 3(5), Immigration Act 1971)
[iii] Section 7(1), Immigration Act 1971 (also affirmed by section 33(1)(b), UK Borders Act 2007)
[iv] Such people, if aged 10 or older, will be entitled to British citizenship under section 1(4), British Nationality Act 1981, and may even have been entitled to that citizenship from an earlier age. However, their citizenship must be registered for them to exempt from deportation; and if they are aged 10 or older their entitlement may be denied to them by the Home Office application of a requirement of 'good character' under section 41A, British Nationality Act 1981.
[v] Home Office guidance, *Deportation on conducive grounds*, version 5.0, 22 May 2025 provides information on how the Home Office applies its deportation powers.
[vi] Relevant provisions include paragraphs 8-10 and 16 of Schedule 2, Immigration Act 1971; section 10, Immigration and Asylum Act 1999; and section 62, Nationality, Immigration and Asylum Act 2002.
[vii] The Home Secretary makes the rules under powers given by sections 1(4) and 3(2), Immigration Act 1971.
[viii] Paragraph 364 as introduced by Statement of Changes in Immigration Rules (HC 395) made in May 1994 to take effect on 1 October 1994.
[ix] Statement of Changes in Immigration Rules (HC 1337), July 2006
[x] New paragraph 364 included that, "*...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 the Convention and Protocol relating to the Status of Refugees to deport.*"
[xi] This is described in more detail in *How ministers evaded responsibility for immigration policy and blamed Article 8 for the consequences*, IANL, Vol 38, No 4, 2024, pp319-334.
[xii] Section 32ff, UK Borders Act 2007 and section 19, Immigration Act 2014
[xiii] Section 14, Immigration Act 2014 (which amended Part 5, Nationality, Immigration and Asylum Act 2002)
[xiv] Section 19, Immigration Act 2014 (which introduced Part 5A, Nationality, Immigration and Asylum Act 2002)
[xv] HM Inspector of Prisons described the scandal in the introduction to her report, *Foreign National Prisoners: a thematic review*, July 2006, "*...it emerged that many foreign nationals leaving prison had neither been identified nor considered for deportation. This was not because of a gap in legislation or powers.*" The Joint Committee on Human Rights similarly considered the scandal for its *The Human Rights Act: the DCA and Home Office Reviews*, Thirty-second Report of Session 2005-06, HL Paper 278, HC 1716, November 2006, paras. 22-27.
[xvi] *Clarke is fired in Cabinet purge*, BBC News, 5 May 2006
[xvii] See e.g., Joint Committee on Human Rights report *op cit*
[xviii] Sections 32ff, UK Borders Act 2007
[xix] As confirmed by HM Inspector of Prisons and the Joint Committee on Human Rights *op cit*.
[xx] This is the effect of paragraphs 13.2.1 and 13.2.2. of the Immigration Rules.
[xxi] This is further discussed in Amnesty's June 2025 briefing on Article 8: private and family life.
[xxii] 'Immigration removal centre' is the formal name given to immigration detention centres.
[xxiii] A concern shared by the former Prison and Probation Ombudsman in Cm 9661, July 2018 (para. A7.145A).
[xxiv] The folly of sections 32ff, UK Borders Act 2007 is similar to that underlying the Illegal Migration Act 2023 in replacing a power to do something with an requirement to do it, thereby removing the Home Secretary's policy and decision-making discretion as to whether or not to exercise the power having regard to the facts of any particular case.
[xxv] The folly of Part 5A, Nationality, Immigration and Asylum Act 2002 is to attempt to direct what a decision-maker must do without considering or knowing the full facts before the decision-maker, thereby undermining the competence of the decision-maker to fulfil their appointed function.
[xxvi] That could include returning paragraph 364 of the Immigration Rules as it was from 1 October 1994 to 20 July 2006.
[xxvii] A similar, though less strident, recommendation was made by the former Prison and Probation Ombudsman in Cm 9661, July 2018 (recommendation 33).
[xxviii] See e.g., section 1(4), British Nationality Act 1981

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