

Prisoners' Advice Service – Information Sheet

Deportation and foreign national prisoners with refugee status

If you are a refugee who has been convicted of a particularly serious crime, the Home Office will write to say it wants to deport you even though you have previously been (or might be) considered a refugee under the United Nations Convention on the Status of Refugees. This sheet explains how you can respond.

Home Office letter

The letter will make reference to deportation on the basis of a person who has been convicted of a particularly serious crime, and who is considered to constitute a danger to the community.

This letter will explain that the Home Office wants to make a deportation order because you are considered not to have the protection of refugee status due to your criminal offence.

Usually, the Home Office will give 20 working days to respond to this letter. If you do not respond to this letter the Home Office will think that you do not oppose the deportation and it will move to deport you.

If you respond to this letter it will also give you the opportunity to put on the record the reasons why you believe you should not be deported. However, you should expect the Home Office will continue to try to deport you no matter what you say.

If you have an immigration lawyer they can do this for you, but if you do not have a lawyer you can respond yourself. It is very important that you get legal advice if you can, as anything you say in the reply may be used against you in the later stages of the process. Legal aid is available for asylum cases.

Responding to the Home Office letter

You can say that you consider the Home Office to be wrong, that (1) your crime was not particularly serious (if this is the case) and that (2) you are not a danger to the community.

You can use any of the following points that apply to you if you want to demonstrate that you are not now - and will not be in the future - a danger to the community:

- The nature of your conviction is not particularly serious
- You have no previous convictions

- You accept responsibility for your offence and have shown remorse, and this can be evidenced over a period of time

Evidence of your good behaviour in prison

- You have not had any proven adjudications
- You are on Enhanced IEP status.
- You have done specific rehabilitation programmes
- You have an OASys assessment of risk in the community as low and/or medium.
- You have previously complied with conditions such as tagging and curfew.
- Any other evidence in support of the fact that you are not a danger to the community, for example: you worked while in prison, you held a responsible position while in prison, or you have good reports from your Offender Supervisor and Offender Manager.

If there are any errors in your OASys report, for example in relation to adjudications, you should put in applications/comps asking for these to be corrected.

Next steps

The Home Office will issue you with a Certificate which states why it thinks that you have been convicted of a particularly serious crime and that you are a danger to the community of the United Kingdom.

After they have issued you a Section 72 certificate, make sure you read this in connection with any revocation of your refugee status decision. It is important to obtain expert legal advice, and ensure any deadlines are met. Even when your prison sentence has many years to be completed, the Home Office may take early action to deport and/or repatriate you.

PRISONERS' ADVICE SERVICE
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Advice Line: TEL: 020 7253 3323
Mon-Wed-Fri 10-12.30. and 2-4.30pm

Extracts from the relevant legal provisions are reproduced for your information below

Article 33 of the United Nations Convention on the Status of Refugees.

1. No Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

Section 72 of the Nationality, Immigration and Asylum Act 2002

72 Serious criminal

(1) This section applies for the purpose of the construction and application of Article 33(2) of the Refugee Convention (exclusion from prohibition of expulsion or return).

(2) A person is convicted by a final judgment of a particularly serious crime if he is—

- (a) convicted in the United Kingdom of an offence, and
- (b) sentenced to a period of imprisonment of at least 12 months.

(3) A person is convicted by a final judgment of a particularly serious crime if—

- (a) he is convicted outside the United Kingdom of an offence,
- (b) he is sentenced to a period of imprisonment of at least 12 months, and
- (c) he could have been sentenced to a period of imprisonment of at least 12 months] had his conviction been a conviction in the United Kingdom of a similar offence.

(4) A person is convicted by a final judgment of a particularly serious crime if—

- (a) he is convicted of an offence specified by order of the Secretary of State, or
- (b) he is convicted outside the United Kingdom of an offence and the Secretary of State certifies that in his opinion the offence is similar to an offence specified by order under paragraph (a).

(5) An order under subsection (4)—

- (a) must be made by statutory instrument, and
- (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5A) A person convicted by a final judgment of a particularly serious crime (whether within or outside the United Kingdom) is to be presumed to constitute a danger to the community of the United Kingdom.

(6) A presumption under subsection (5A) that a person constitutes a danger to the community is rebuttable by that person.

(7) A presumption under subsection (5A) does not apply while an appeal against conviction or sentence—

- (a) is pending, or
- (b) could be brought (disregarding the possibility of appeal out of time with leave).

(8) Section 34(1) of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (no need to consider gravity of fear or threat of persecution) applies for the purpose of considering whether a presumption under subsection (5A) has been rebutted as it

applies for the purpose of considering whether Article 33(2) of the Refugee Convention applies.

(9) Subsection (10) applies where—

(a) a person appeals under section 82 of this Act or under section 2 of the Special Immigration Appeals Commission Act 1997 (c. 68) wholly or partly on the ground mentioned in section 84(1)(a) or (3)(a) of this Act (breach of the United Kingdom's obligations under the Refugee Convention), and

(b) the Secretary of State issues a certificate that a presumption under subsection (5A) applies] to the person (subject to rebuttal).

(10) The Tribunal or Commission hearing the appeal—

(a) must begin substantive deliberation on the appeal by considering the certificate, and

(b) if in agreement that [F19a presumption under subsection (5A) applies] (having given the appellant an opportunity for rebuttal) must dismiss the appeal in so far as it relies on the ground specified in subsection (9)(a).

(10A) Subsection (10) also applies in relation to the Upper Tribunal when it acts under section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007.

(11) For the purposes of this section—

(a) “the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol, and

(b) a reference to a person who is sentenced to a period of imprisonment of at least 12 months

(i) 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),

(ia) 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 which amount in aggregate to more than 12 months.

(ii) 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), and

(iii) 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).