9 Deportation and Expulsion

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I. Introduction

This chapter examines with the different regimes of deportation and expulsion or removal under United Kingdom and European law.

Deportation has to be distinguished from other forms of compulsory removal which only bring a particular application or entry to an end, even though this may create difficulties for an immigrant seeking to enter in the future.¹ There are powers given for administrative removal from the United Kingdom, which is in contrast to removal by deportation. Immigrants who are liable to removal include those refused leave to enter; illegal entrants; overstayers, those in breach of their conditions of stay; those using deception to remain; former refugees; family-members of those liable to removal, and crew-members remaining unlawfully.

I have provided in the Appendix the factual backgrounds of actual cases that I have dealt with recently. Readers can have the opportunity of digesting their facts and thus get a ‘flavour’ of their complexity. Special care and anxious scrutiny must always be given to such cases where the effects of a deportation or removal order can be traumatic and far-reaching. Two of these cases were appeals against deportation orders that came before the Immigration Tribunal deportation panel over which I presided. The third case was an appeal against a removal decision following an alleged breach of immigration provisions.

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¹ Ian A MacDonald and Frances Webber, MacDonald’s Immigration Law and Practice: First Supplement, vol 1 (8th ed, Butterworths Law 2011) 1272.
II. Deportation

Deportation from the United Kingdom can arise with respect to both non-British citizens and EEA Nationals.

Deportation concerns the process whereby a non-British citizen can be compulsorily removed from the United Kingdom and prevented from returning unless the deportation order is revoked. The deportation order continues in force until it is revoked. There is a separate statutory regime relating to deportation of EEA nationals. This is set out in Directive 2004/38/EC of the European Parliament and the Council of the European Union, dated the 29th April 2004. That Directive was implemented into United Kingdom by the Immigration (European Economic Area) Regulations 2006 – ‘the 2006 Regulations’. In particular, it is provided under the 2004 Directive that before taking an expulsion decision on grounds of public policy or public security, the host member state is required to take account of various considerations set out in Article 28 as implemented in the 2006 Regulations. I shall refer in due course to these considerations in some detail.

1. Grounds of Deportation

A person who is not a British citizen and exempt is liable to deportation from the United Kingdom in accordance with the provisions of section 32 of the UK Borders Act 2007 in the following circumstances: (i) following conviction for a criminal offence attracting at least one single sentence of imprisonment of twelve months or more; (ii) the Secretary of State deems his or her deportation to be conducive to the public good; (iii) another member of the family to which he or she belongs is to be deported; or (iv) a court recommends deportation in the case of person over the age of 17, after conviction of an offence punishable by imprisonment.

Prior to October 2006, there would have been other categories of persons liable to deportations such as overstayers and illegal entrants who are now liable to administrative removal.

The regime created by the UK Borders Act 2007, which came into force in August 2008, introduces automatic deportation provisions. There is a statutory pre-