

IMMIGRATION ACT 1971

SECTION 6(2)

NOTICE AS REGARDS LIABILITY TO DEPORTATION

1. Under the provision of the Immigration Act 1971, a court may recommend the deportation of a person who has attained the age of 17 years and who, on being charged with an offence punishable with imprisonment, is found to have committed it, unless the court is satisfied that that person is not liable under the provisions of the Act to be recommended for deportation,

2. A person is not liable to deportation if he or she is:—

(a) A British citizen, as explained in paragraph 4 below, or

(b) A Commonwealth citizen who, immediately before 1 January 1983, had the right of abode in the United Kingdom under the Immigration Act 1971 as then in force, as explained in paragraph 6 below, or

(c) A Commonwealth citizen or a citizen of the Republic of Ireland who was such a citizen on 1 January 1973, who was on that date ordinarily resident in the United Kingdom, and who has been ordinarily resident in the United Kingdom, the Channel Islands or the Isle of Man (see note (iii)) for a period of at least 5 years ending with the date of conviction (see note (vi)).

3. Section 3(8) of the Act has the effect that, if any question arises whether a person is a British citizen or is exempted from liability to deportation, it lies on him to prove that he is.

4. Acquisition of British citizenship is governed by Part I of the British Nationality Act 1981. A person will be a British citizen if: —

(a) He was either born in the United Kingdom (including for this purpose the Channel Islands and the Isle of Man) on or after 1 January 1983 to a mother or father (see note (ii)) who was at the time a British citizen or settled here (see note (iii)), or legally adopted in the United Kingdom on or after 1 January 1983 provided that the adopter or, in the case of a joint adoption, one of the adopters was at that time a British citizen; or

(b) He was born outside the United Kingdom and Islands on or after 1st January 1983 to a mother or father (see note (ii)) who was at the time a British citizen otherwise than by descent (see note (iv)) or a British citizen serving outside the United Kingdom in Crown service under the Government of the United Kingdom or in service of any description for the time being designated under Section 2(3) of the British Nationality Act 1981 (see note (v)) and who was recruited to that service in the United Kingdom or a British citizen serving outside the United Kingdom in service under a European Community institution, and who was recruited to that service in a country which was at the time of recruitment a member of the Communities; or

(c) He has been registered or naturalised as a British citizen and has not renounced his citizenship (or, if he has renounced it, has resumed it and not subsequently renounced it); or

(d) He became a British citizen on 1 January 1983 by virtue of Section 11 of the British Nationality Act 1981, being either:

(i) A person who, immediately before that date, was a citizen of the United Kingdom and Colonies who had the right of abode in the United Kingdom (as explained in paragraph 5) and was not within the exception set out at

The end of this sub-paragraph; or

(ii) A person who, immediately before that date, was a citizen of the United Kingdom and Colonies having been registered under Section 12(6) of the British Nationality Act 1948 under arrangements made by virtue of Section 12(7) (registration in independent Commonwealth country by United Kingdom High Commissioner), having been so registered on the basis of his descent in the male line from a person who was born or naturalised in the United Kingdom.

Exception: A person registered as a citizen of the United Kingdom and Colonies under Section 1 of the British Nationality (No 2) Act 1964 (stateless persons) on the ground that his mother was a citizen of the United Kingdom and Colonies at the time of his birth will not have become a British citizen on 1 January 1983 unless —

(a) His mother became a British citizen under Section 11(1) of the British Nationality Act 1981 or would have done so but for her death; or

(b) Immediately before 1 January 1983 he had the right of abode in the United Kingdom by virtue of Section 2(1)(c) of the Immigration Act 1971 as then in force, being a citizen of the United Kingdom and Colonies who had at some time been settled (see note (iii)) in the United Kingdom and Islands and had at that time (and while such a citizen) been ordinarily resident there for the last 5 years or more (see note (vi))

(e) He was born in a dependent territory on or after 1 January 1983 to a mother or father (see note (ii)) who was at the time a British citizen, and would, but for this provision, have been born stateless (para. 2, schedule 2 of the British Nationality Act 1981).

5. A citizen of the United Kingdom and Colonies will have had the right of abode immediately before 1 January 1983 if he or she; —

(a) Had that citizenship by his or her birth, adoption, naturalisation or registration (see notes (vii) and (viii)) in the United Kingdom (see note (i)), the Channel Islands or the Isle of Man; or

(b) Was born to or legally adopted by a mother or father (see note (ii)) who at the time of the birth or adoption was either a citizen of the United Kingdom and Colonies in one of the ways described in (a) above, or (being a citizen of the United Kingdom and Colonies in some other way) was himself or herself born to or legally adopted by a mother or father who was at that time a citizen of the United Kingdom and Colonies in one of the ways described in (a) above; or

(c) Had at any time been settled (see note (iii))in the United Kingdom, the Channel Islands or the Isle of Man, and had at that time (and while such a citizen) been ordinarily resident there for the last 5 years or more (see note (vi));or

(d) Was or had been the wife of a person within the descriptions set out in paragraph 5(a)to (c)above or of a Commonwealth citizen born to or legally adopted by a mother or father (see note (ii))who at the time of the birth or adoption was a citizen of the United Kingdom or Colonies by virtue of his birth in the United Kingdom, Channel Islands or Isle of Man, or the wife of a British subject who, but for his death, would on the date of commencement of the British Nationality Act 1948 (1 January 1949)have been such a citizen of the United Kingdom and Colonies as described in paragraph 5(a) and (b)above (Section 2(1)(a)and (b) of the Immigration Act 1971,as then in f o r c e).

- G A Commonwealth citizen will have had the right of abode immediately before 1 January 1983 if-
- (a) He or she was a Commonwealth citizen born to or legally adopted by a mother or father who at the time of the birth or adoption had citizenship of the United Kingdom and Colonies by birth in the United Kingdom, the Channel Islands or the Isle of Man; or
 - (b) She was a Commonwealth citizen who falls within the description set out in paragraph 5 (d) above.

NOTES

- (i) References to citizenship of the United Kingdom and Colonies, where they relate to a date before 1 January 1949,are to be read as references to British Nationality, and the United Kingdom, in relation to a time before 31 March 1922,means Great Britain and Ireland.
- (ii) "Father" does not include the father of an illegitimate child.
- (ii) "Settled" means ordinarily resident in the United Kingdom, Channel Islands or Isle of Man without being subject under the immigration laws to any restriction on the period for which one may remain. Except for the purpose of paragraph 2(c) of this notice, a person is not treated as being ordinarily resident in the United Kingdom or Islands during any period when he was then in breach of the Immigration Act 1971 (or of any previous immigration laws). Moreover, a person is not regarded as settled for the purposes of paragraph A(a) above at any time when he was entitled to an exemption under Section 8(3) (except as set out below)or (4)(b)or (c)of the Immigration Act 1971 or, unless the order under Section 8(2)of that Act conferring the exemption in question provides otherwise, to an exemption under Section 8(2),or to any corresponding exemption under the former immigration laws.

Exception: For the purposes of paragraph A(a)above a person may be regarded as settled in the United Kingdom at the time of the birth if he was settled in the United Kingdom immediately before becoming entitled to an exemption under Section 8(3)of the Immigration Act 1971,would still be so regarded if he were not entitled at that time to that exemption, and was ordinarily resident in the United Kingdom from the time he became entitled to that exemption to the time of the birth.

(iv) A British citizen 'otherwise than by descent' is a British citizen, born, adopted, naturalised or (in most cases) registered in the United Kingdom; or a British citizen born outside the United Kingdom before 1 January 1983 to a father (see note (ii) who was at the time serving outside the United Kingdom and Islands (a) in Crown service under the

Government of the United Kingdom, or (b) in service of any description at any time designated under Section 2(3) of the British Nationality Act 1981 (see note (iv)), and who was recruited to that service in the United Kingdom or (c) who was at the time in service under a European Community institution, and who was recruited in a country which was at the time of recruitment a member of the Communities; or a British citizen born on or after 1 January 1983 to a father or mother (see note (ii)) who was at the time serving in one of these types of service and who was so recruited.

(v) The services which have been designated under Section 2(3) of the British Nationality Act 1981 are as follows:

(a) Service as a Governor, an official, a judge or a magistrate in a United Kingdom dependency,

(b) Crown service under the Government of the United Kingdom where the Crown servant is temporarily on secondment overseas,

(c) Overseas service by certain civilians who are subject to the provisions of the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957;

(d) Service under the North Atlantic Treaty Organisation;

(e) Service under the Commonwealth War Graves Commission;

(f) Service under the British Council provided that the employee is paid wholly from British Council funds;

(g) Service under the British Tourist Authority.

(vi) Any period of 6 months or more which a person has spent in a prison or other place of detention serving a sentence following conviction of a criminal offence does not count towards ordinary residence.

(vii) This does not include citizenship acquired by registration under Section 6(2) of the British Nationality Act 1948 by virtue of marriage on or after 28 October 1971 to a man who had citizenship of the United Kingdom and Colonies.

(viii) This includes citizenship acquired by registration in an independent Commonwealth country, except the registration of a minor child under Section 7 of the British Nationality Act 1948 on or after 28 October 1971.

NOTICE TO BE SERVED UNDER SECTION 6(2) OF THE IMMIGRATION ACT 1971

TO.....

You have been* {charged with an offence which, if you are found to have committed it
{found to have committed an offence which

carries with it, in addition to any sentence which the Court may think proper, the possibility of a recommendation that you should be deported under the Immigration Act 1971. The notice attached sets out the grounds on which you may claim to be exempt from liability to deportation; for example, because you are a British citizen; or you are a Commonwealth citizen and one of your parents was born here; or because you were resident here on 1 January 1973 and have had your home here for at least 5 years (excluding any period of 6 months or more spent in prison).

A current passport will usually indicate if the holder is a British citizen and not therefore liable to deportation; and a Commonwealth citizen may hold a certificate of entitlement in proof that he has the right of abode and is not therefore liable to deportation.

You should study the notice carefully. If you think that any of the grounds for exemption applies to you, it will be up to you to prove it at the proper time, if the need arises. Meanwhile, you are asked to show that you have received the notice by signing the form of receipt below.

(The above is not part of the notice and should not be regarded as a statement of the law.)

Detach here.

**ACKNOWLEDGEMENT OF SERVICE OF NOTICE PURSUANT TO SECTION 6(2)
OF THE IMMIGRATION ACT 1971**

I have been served in pursuance of Section 6(2) of the Immigration Act 1971 with a notice describing the classes of person in respect of whom a recommendation for deportation may, and may not, be made and containing a statement to the effect of Section 3(8) of that Act.

(Signed)

Date