

**EXPLANATORY MEMORANDUM TO THE NATIONALITY,
IMMIGRATION AND ASYLUM ACT 2002 (SPECIFICATION OF
PARTICULARLY SERIOUS CRIMES) ORDER 2004**

2004 No. 1910

The subject of this explanatory memorandum is the Nationality, Immigration and Asylum Act 2002 (Specification of Particularly Serious Crimes) Order 2004.

This explanatory memorandum is laid before Parliament by Command of Her Majesty.

The Home Office is responsible for the making and laying of this Order.

1. Description of this Order

1.1 The Order sets out in six Schedules a list of offences (and descriptions of them) which are relevant for the purposes of construing and applying Article 33(2) of the 1951 United Nations Convention on the status of Refugees (“the Refugee Convention”). Article 33(2) enables a person to be removed from the United Kingdom if he is convicted by a final judgment of a particularly serious crime and constitutes a danger to the community of the United Kingdom. A person convicted of an offence listed in any of the six Schedules to the Order will be presumed to be such a person. The six Schedules reflect the territorial extent of the various offences listed. .

2. Legislative background

2.1 This Order is made in exercise of powers conferred on the Secretary of State by section 72 of the Nationality, Immigration and Asylum Act 2002¹. Section 72(4)(a) enables the Secretary of State, by order, to specify offences conviction of which shall attract the presumption that the offender in question has been convicted by a final judgment of a particularly serious crime and constitutes a danger to the community of the United Kingdom.

3. Matters of special interest to the JCSI

3.1 None.

4. Extent

4.1 The Order applies equally throughout the United Kingdom.

5. European Convention on Human Rights

5.1 The Minister of State is satisfied that the Order is compatible with the European Convention on Human Rights.

¹ 2002 c. 41.

6. Policy background

6.1 Section 72 of the 2002 Act is concerned with the construction and application of Article 33(2) of the Refugee Convention (exclusion from protection). As set out above, Article 33(2) allows the removal of someone, even if they are a refugee where that person is convicted by a final judgment of a particularly serious crime and constitutes a danger to the community of the United Kingdom. Section 72(2) provides that a person convicted of an offence and sentenced to two years in custody will be presumed to be a person to whom Article 33(2) applies. This presumption can be rebutted on production of appropriate evidence.

6.2 Additionally, section 72(4) allows the Secretary of State to list in an order offences simple conviction of which will attract a similarly rebuttable presumption that Article 33(2) applies, irrespective of the length of sentence imposed upon conviction. In the Secretary of State's view there are certain offences carrying a minimum sentence of less than two years which are so inherently serious that their very commission will indicate that a person convicted of any such offence automatically poses a danger to the community. In relation to these offences sentence length is not the ultimate arbiter of whether the offender is a danger to the community. It is offences of this type that are listed and described in this Order.

6.3 The offences list includes the following broad categories of offence: crimes of violence, sexual offences, crimes against children, drugs offences and terrorism offences. The commission of these offences has a significant and wide ranging impact, harming their victims and the wider community.

6.4 There are some serious offences that are not included in the list. Murder, for example, is not included because it carries a mandatory life sentence. As such, murder will always be covered under section 72(2) of the NIA Act 2002, because a sentence of over two years will always be imposed.

7. Impact

7.1 We expect there to be relatively few cases where we need to rely on the order as section 72(2) already provides for the application to those convictions of any offence (including those listed in the Order) where a custodial sentence of two or more years is imposed. The resource implications are therefore likely to be minimal. The Order will, however, ensure that where an individual is sentenced to less than two years and has committed a listed offence he will lose his ability to rely on the Refugee Convention to remain in the UK unless he can rebut the presumption that he is a danger to the community.

8. Contact

8.1 Any enquiries in connection with this explanatory memorandum should be addressed to Miss Joanna Thomson, 3rd floor podium, Apollo House, 40 Wellesley Road, Croydon CR9 3RR (Tel: 020 8760 8656 Fax: 020 8760 8689).

Home Office
21st July 2004