



# Nationality and Borders Act 2022

## 2022 CHAPTER 36

### PART 3

#### IMMIGRATION CONTROL

##### *Immigration offences and penalties*

#### **40**    **Illegal entry and similar offences**

- (1) The Immigration Act 1971 is amended in accordance with subsections (2) to (7).
- (2) In section 24 (illegal entry and similar offences), before subsection (1) insert—
  - “(A1) A person who knowingly enters the United Kingdom in breach of a deportation order commits an offence.
  - (B1) A person who—
    - (a) requires leave to enter the United Kingdom under this Act, and
    - (b) knowingly enters the United Kingdom without such leave, commits an offence.
  - (C1) A person who—
    - (a) has only a limited leave to enter or remain in the United Kingdom, and
    - (b) knowingly remains beyond the time limited by the leave, commits an offence.
  - (D1) A person who—
    - (a) requires entry clearance under the immigration rules, and
    - (b) knowingly arrives in the United Kingdom without a valid entry clearance, commits an offence.
  - (E1) A person who—

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- (a) is required under immigration rules not to travel to the United Kingdom without an ETA that is valid for the person’s journey to the United Kingdom, and
  - (b) knowingly arrives in the United Kingdom without such an ETA, commits an offence.
- (F1) A person who commits an offence under any of subsections (A1) to (E1) is liable—
  - (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or a fine (or both);
  - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
  - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both);
  - (d) on conviction on indictment—
    - (i) for an offence under subsection (A1), to imprisonment for a term not exceeding five years or a fine (or both);
    - (ii) for an offence under any of subsections (B1) to (E1), to imprisonment for a term not exceeding four years or a fine (or both).
- (G1) In relation to an offence committed before paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 comes into force, the reference in subsection (F1)(a) to 12 months is to be read as a reference to six months.”
- (3) In that section—
  - (a) in subsection (1)—
    - (i) omit paragraph (a);
    - (ii) in paragraph (b), for the words from “either” to the end, substitute “fails to observe a condition of the leave;”;
  - (b) in subsection (1A), for “subsection (1)(b)(i)” substitute “subsection (C1)”;
  - (c) in subsection (3), for “subsection (1)(a) and (c)” substitute “subsections (A1), (B1), (D1), (E1) and (1)(c)”;
  - (d) in subsection (4)—
    - (i) in the words before paragraph (a), for “against subsection (1)(a)” substitute “under subsection (B1)”;
    - (ii) in paragraph (b), omit the words from the first “if” to the end.
  - (e) after subsection (4) insert—
    - “(5) In proceedings for an offence under subsection (D1) above of arriving in the United Kingdom without a valid entry clearance—
      - (a) any document attached to a passport or other travel document purporting to have been issued by the Secretary of State for the purposes of providing evidence of entry clearance for a particular period is to be presumed to have been duly so issued unless the contrary is proved;
      - (b) proof that a person had a valid entry clearance is to lie on the defence.”

- (4) In section 25 (assisting unlawful immigration), in subsection (2)(a), after “enter” insert “or arrive in”.
- (5) In section 28B (search and arrest by warrant), in subsection (5), for “24(1)(a), (b)” substitute “24(A1), (B1), (C1), (D1), (E1) or (1)(b)”.
- (6) In section 28D (entry and search of premises), in subsection (4), for “24(1)(a), (b)” substitute “24(A1), (B1), (C1), (D1), (E1) or (1)(b)”.
- (7) In section 28FA (search for personnel records: warrant unnecessary), in subsection (1)  
—
  - (a) in paragraph (a), for “24(1)” substitute “24”;
  - (b) in paragraph (c), for “24(1)” substitute “24”.
- (8) In the Nationality, Immigration and Asylum Act 2002—
  - (a) in section 129(1) (duty on local authority to disclose information on suspected immigration offences), in paragraph (a), for “24(1)(a), (b), (c), (e)” substitute “24(A1), (B1), (C1), (D1), (E1) or (1)(b), (c)”;
  - (b) in section 134(1) (duty on employer to disclose information on suspected immigration offences), in paragraph (a), for “24(1)(a), (b), (c), (e)” substitute “24(A1), (B1), (C1), (D1), (E1) or (1)(b), (c)”.
- (9) In section 133(7) of the Criminal Justice and Immigration Act 2008 (conditions), for “any provision of section 24(1)” substitute “section 24”.

#### **41 Assisting unlawful immigration or asylum seeker**

- (1) The Immigration Act 1971 is amended as follows.
- (2) In section 25(6)(a) (assisting unlawful immigration to member State or the United Kingdom: penalties) for “imprisonment for a term not exceeding 14 years” substitute “imprisonment for life”.
- (3) In section 25A(1)(a) (helping asylum seeker to enter United Kingdom) omit “and for gain”.
- (4) Before section 25C insert—

##### **“25BA Facilitation offences: application to rescuers**

- (1) A person does not commit a facilitation offence if the act of facilitation was an act done by or on behalf of, or co-ordinated by—
  - (a) Her Majesty’s Coastguard, or
  - (b) an overseas maritime search and rescue authority exercising similar functions to those of Her Majesty’s Coastguard.
- (2) In proceedings for a facilitation offence, it is a defence for the person charged with the offence to show that—
  - (a) the assisted individual had been in danger or distress at sea, and
  - (b) the act of facilitation was an act of providing assistance to the individual at any time between—
    - (i) the time when the assisted individual was first in danger or distress at sea, and

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- (ii) the time when the assisted individual was delivered to a place of safety on land.
- (3) For the purposes of subsection (2), the following are not to be treated as an act of providing assistance—
- (a) the act of delivering the assisted individual to the United Kingdom in circumstances where—
    - (i) the United Kingdom was not the nearest place of safety on land to which the assisted individual could have been delivered, and
    - (ii) the person charged with the offence did not have a good reason for delivering the assisted individual to the United Kingdom instead of to a nearer place of safety on land;
  - (b) the act of steering a ship in circumstances where the person charged with the offence was on the same ship as the assisted individual at the time when the individual was first in danger or distress at sea.
- (4) A person is taken to have shown a fact mentioned in subsection (2) if—
- (a) sufficient evidence of the fact is adduced to raise an issue with respect to it, and
  - (b) the contrary is not proved beyond reasonable doubt.
- (5) In this section—
- “act of facilitation”—
    - (a) in relation to an offence under section 25 (assisting unlawful immigration), means the act mentioned in subsection (1)(a) of that section;
    - (b) in relation to an offence under section 25A (helping asylum-seeker to enter the UK), means the act of facilitating the arrival (or attempted arrival) in, or entry (or attempted entry) into, the United Kingdom of an individual, as mentioned in subsection (1)(a) of that section;
    - (c) in relation to an offence under section 25B(1) (facilitating breach of deportation order), means the act mentioned in subsection (1)(a) of that section;
    - (d) in relation to an offence under section 25B(3) (assisting entry to UK in breach of an exclusion order), means the act mentioned in subsection (3)(a) of that section;
  - “assisted individual”—
    - (a) in relation to an offence under section 25, means the individual whose breach (or attempted breach) of immigration law is facilitated by the act of facilitation;
    - (b) in relation to an offence under section 25A, means the individual whose arrival (or attempted arrival) in, or entry (or attempted entry) into, the United Kingdom is facilitated by the act of facilitation;
    - (c) in relation to an offence under section 25B(1), means the individual whose breach (or attempted breach) of a deportation order is facilitated by the act of facilitation;
    - (d) in relation to an offence under section 25B(3), means the individual who is assisted to arrive in, enter or remain (or to

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attempt to arrive in, enter or remain) in the United Kingdom by the act of facilitation;

“facilitation offence” means—

- (a) an offence under section 25 (assisting unlawful immigration),
- (b) an offence under section 25A (helping asylum-seeker to enter the United Kingdom), or
- (c) an offence under section 25B (assisting entry to the United Kingdom in breach of deportation or exclusion order) to the extent that the section continues to apply by virtue of regulation 5(7) of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (S.I. 2020/1309);

“ship” includes—

- (a) every description of vessel (including a hovercraft), and
- (b) any other structure (whether with or without means of propulsion) constructed or used to carry persons, goods, plant or machinery by water.

#### **25BB Facilitation offences: defences relating to stowaways**

- (1) In proceedings for a facilitation offence brought against a master of a ship, it is a defence for the master to show—
  - (a) that the assisted individual was a stowaway when the act of facilitation took place, and
  - (b) that the master, or a person acting on the master’s behalf, reported the presence of the assisted individual on the ship to the Secretary of State or an immigration officer—
    - (i) in a case where the ship was scheduled to go to the United Kingdom, as soon as reasonably practicable after the time when the ship’s next scheduled port of call became a port in the United Kingdom, or
    - (ii) in a case where the ship was not scheduled to go to the United Kingdom but the master of the ship decided that the ship needed to go to the United Kingdom (whether for reasons relating to the presence of the assisted individual on board or for other reasons), as soon as reasonably practicable after the master made that decision.
- (2) In proceedings for a facilitation offence, it is a defence for the person charged with the offence to show—
  - (a) that the assisted individual was a stowaway when the act of facilitation took place,
  - (b) that they were acting to ensure the security, general health, welfare or safety of the assisted individual, and
  - (c) that they had reported the presence of the assisted individual to the master of the ship as soon as reasonably practicable.
- (3) A person is taken to have shown a fact mentioned in subsection (1) or (2) if—
  - (a) sufficient evidence of the fact is adduced to raise an issue with respect to it, and

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- (b) the contrary is not proved beyond reasonable doubt.
- (4) For the purposes of this section, an individual is a stowaway on a ship if—
  - (a) they boarded the ship without the knowledge of the master of the ship, and
  - (b) the master was not aware of their presence on the ship when the ship departed from the port where the individual boarded.
- (5) But an individual ceases to be a stowaway if, after the master of the ship has become aware of their presence on the ship, the individual is given permission to leave the ship by the immigration authorities of a country that the ship arrives at (whether or not they do in fact leave the ship there).
- (6) In this section, “act of facilitation”, “assisted individual”, “facilitation offence” and “ship” have the same meanings as in section 25BA.”

#### **42 Penalty for failure to secure goods vehicle**

Schedule 5 amends the Immigration and Asylum Act 1999 to make provision for the imposition of a penalty for failure adequately to secure a goods vehicle against unauthorised access and other related matters.

*Working in United Kingdom waters: arrival and entry*

#### **43 Working in United Kingdom waters: arrival and entry**

- (1) After section 11 of the Immigration Act 1971 (construction of references to entry etc) insert—

##### **“11A Working in United Kingdom waters**

- (1) An “offshore worker” is a person who arrives in United Kingdom waters—
  - (a) for the purpose of undertaking work in those waters, and
  - (b) without first entering the United Kingdom (see, in particular, section 11(1)).

But see subsection (6).

- (2) An offshore worker arrives in the United Kingdom for the purposes of this Act when they arrive in United Kingdom waters as mentioned in subsection (1)(a).
- (3) An offshore worker enters the United Kingdom for the purposes of this Act when they commence working in United Kingdom waters.
- (4) Any reference in, or in a provision made under, the Immigration Acts to a person arriving in or entering the United Kingdom, however expressed, is to be read as including a reference to an offshore worker arriving in or entering the United Kingdom as provided for in subsection (2) or (3).
- (5) References in this section to work, or to a person working, are to be read in accordance with section 24B(10).
- (6) A person is not an offshore worker if they arrive in United Kingdom waters while working as a member of the crew of a ship that is—

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- (a) exercising the right of innocent passage through the territorial sea or the right of transit passage through straits used for international navigation, or
  - (b) passing through United Kingdom waters from non-UK waters to a place in the United Kingdom or vice versa.
- (7) For the purposes of any provision of, or made under, the Immigration Acts, a person working in United Kingdom waters who, in connection with that work, temporarily enters non-UK waters is not to be treated by virtue of doing so as leaving, or being outside, the United Kingdom.
- (8) In this section—
- “non-UK waters” means the sea beyond the seaward limits of the territorial sea;
  - “right of innocent passage”, “right of transit passage” and “straits used for international navigation” are to be read in accordance with the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941) and any modifications of that Convention agreed after the passing of the Nationality and Borders Act 2022 that have entered into force in relation to the United Kingdom;
  - “the territorial sea” means the territorial sea adjacent to the United Kingdom;
  - “United Kingdom waters” means the sea and other waters within the seaward limits of the territorial sea.

#### **11B Offshore workers: requirements to notify arrival and entry dates etc**

- (1) The Secretary of State may by regulations make provision for and in connection with requiring—
- (a) an offshore worker, or
  - (b) if an offshore worker has one, their sponsor;
- to give notice to the Secretary of State or an immigration officer of the dates on which the offshore worker arrives in, enters and leaves the United Kingdom.
- (2) The regulations may make provision for the failure of an offshore worker to comply with a requirement imposed under the regulations to be a ground for—
- (a) the cancellation or variation of their leave to enter or remain in the United Kingdom;
  - (b) refusing them leave to enter or remain in the United Kingdom.
- (3) The failure of an offshore worker’s sponsor to comply with a requirement imposed under the regulations may be taken into account by the Secretary of State when operating immigration skills arrangements made with the sponsor.
- (4) Regulations under this section—
- (a) are to be made by statutory instrument;
  - (b) may make different provision for different cases;
  - (c) may make incidental, supplementary, consequential, transitional, transitory or saving provision.
- (5) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

(6) For the purposes of this section—

- (a) “offshore worker” has the same meaning as in section 11A;
- (b) a person is an offshore worker’s “sponsor” if they have made immigration skills arrangements with the Secretary of State in relation to the offshore worker;
- (c) “immigration skills arrangements” has the meaning given by section 70A(2) of the Immigration Act 2014.”

(2) Schedule 6 makes consequential and related amendments.

### *Enforcement*

#### **44 Power to search container unloaded from ship or aircraft**

(1) The Immigration Act 1971 is amended as follows.

(2) In sub-paragraph (5) of paragraph 1 of Schedule 2 (powers to search ship or aircraft etc), after “vehicle” insert “or container”.

(3) After that sub-paragraph insert—

“(6) For the purposes of searching a container under sub-paragraph (5), an immigration officer may direct any person who has control of the container to deliver the container to a place specified by the immigration officer.

(7) In this paragraph, “container” has the same meaning as in the Customs and Excise Management Act 1979 (see section 1(1) of that Act).”

(4) In section 26(1) (general offences in connection with administration of Act), after paragraph (g) insert—

“(h) if, without reasonable excuse, the person fails to comply with a direction under paragraph 1(6) of Schedule 2 (direction to move a container for purposes of a search).”

#### **45 Maritime enforcement**

Schedule 7 contains amendments to Part 3A of the Immigration Act 1971 (maritime enforcement).

### *Removals*

#### **46 Removals: notice requirements**

(1) Section 10 of the Immigration and Asylum Act 1999 (removal of persons unlawfully in the United Kingdom) is amended as set out in subsections (2) to (6).

(2) In subsection (1)—

- (a) for “may be removed” substitute “is liable to removal”;
- (b) omit “under the authority of the Secretary of State or an immigration officer”.

(3) For subsection (2) substitute—



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“(2) Where a person (“P”) is liable to removal, or has been removed, from the United Kingdom under this section, a member of P’s family who meets the following three conditions is also liable to removal from the United Kingdom, provided that the Secretary of State or an immigration officer has given the family member written notice of the fact that they are liable to removal.”

(4) After subsection (6) insert—

“(6A) A person who is liable to removal from the United Kingdom under this section may be removed only under the authority of the Secretary of State or an immigration officer and in accordance with sections 10A to 10E.”

(5) In subsection (7), for “subsection (1) or (2)” substitute “this section”.

(6) In subsection (10)—

- (a) in paragraph (a), for “subsection (2)” substitute “this section”;
- (b) in paragraph (b), at the end insert “or sections 10A to 10E”.

(7) After that section insert—

#### **“10A Removal: general notice requirements**

(1) This section applies to a person who is liable to removal under section 10; but see sections 10C to 10E for the circumstances in which such a person may be removed otherwise than in accordance with this section.

(2) The person may be removed if—

- (a) the Secretary of State or an immigration officer has given the person—
  - (i) a notice of intention to remove (see subsection (3)), and
  - (ii) a notice of departure details (see subsection (4)), and
- (b) any notice period has expired.

(3) A notice of intention to remove is a written notice which—

- (a) states that the person is to be removed,
- (b) sets out the notice period, (see subsection (7)), and
- (c) states the destination to which the person is to be removed.

(4) A notice of departure details under this section is a written notice which—

- (a) states the date on which the person is to be removed,
- (b) states the destination to which the person is to be removed and any stops that are expected to be made on the way to that destination, and
- (c) if subsection (6) applies, sets out the notice period (see subsection (7)).

(5) The notice of intention to remove and the notice of departure details may be combined.

(6) This subsection applies if the notice of departure details states, under subsection (4)(b)—

- (a) a destination which is different to the destination stated under subsection (3)(c) in the notice of intention to remove, or

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- (b) any stops that were not stated in the notice of intention to remove, other than a stop in—
  - (i) the United Kingdom, or
  - (ii) a country that is for the time being specified in Part 2 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004.
- (7) The notice period must be no shorter than the period of five working days beginning with the day after the day on which the person is given the notice.
- (8) At any time before the person is removed, the Secretary of State or an immigration officer may replace a notice of departure details under this section.
- (9) This section is subject to section 10B (failed removals).
- (10) In this section “working day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom where the person is when they are given the notice.

#### **10B Failed removals**

- (1) This section applies where as a result of matters reasonably beyond the control of the Secretary of State, such as—
  - (a) adverse weather conditions,
  - (b) technical faults or other issues causing delays to transport, or
  - (c) disruption by the person to be removed or others,
 a person is not removed from the United Kingdom on the date stated in a notice of departure details under section 10A (“the original notice”).
- (2) The person may be removed from the United Kingdom if—
  - (a) the Secretary of State or an immigration officer has given the person a notice of departure details (see subsection (3)), and
  - (b) they are removed before the end of the period of 21 days beginning with the date stated in the original notice.
- (3) A notice of departure details under this section is a written notice which—
  - (a) states the date on which the person is to be removed, and
  - (b) states the destination to which the person is to be removed and any stops that are expected to be made on the way to that destination.
- (4) But this section does not apply if the notice under subsection (3) states, under subsection (3)(b)—
  - (a) a destination which is different to the destination stated in the original notice, or
  - (b) any stops that were not stated in the original notice, other than a stop in—
    - (i) the United Kingdom, or
    - (ii) a country that is for the time being specified in Part 2 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004.

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- (5) At any time before the person is removed, the Secretary of State or an immigration officer may replace a notice of departure details under this section.

#### **10C Removal: notice requirements in port cases**

- (1) This section applies to a person who is liable to removal under section 10 if the person was refused leave to enter upon their arrival in the United Kingdom.
- (2) The person may be removed if—
- (a) the Secretary of State or an immigration officer has given the person a notice of departure details under this section which—
    - (i) states the date on which the person is to be removed, and
    - (ii) states the destination to which the person is to be removed and any stops that are expected to be made on the way to that destination, and
  - (b) the date stated under paragraph (a)(i) is a date before the end of the period of seven days beginning with the day after the day on which the person was refused leave to enter.
- (3) At any time before the person is removed, the Secretary of State or an immigration officer may replace a notice of departure details under this section.

#### **10D Removal: PRN recipients**

- (1) This section applies to a person who is liable to removal under section 10 and is a PRN recipient.
- (2) If the person does not make a protection claim or a human rights claim before the PRN cut-off date, the person may be removed from the United Kingdom if—
- (a) the Secretary of State or an immigration officer has given the person a notice of departure details (see subsection (4)), and
  - (b) they are removed before the end of the period of 21 days beginning with the day after the PRN cut-off date.
- (3) If the PRN recipient makes a protection claim or a human rights claim, the person may be removed from the United Kingdom if—
- (a) the Secretary of State or an immigration officer has given the person a notice of departure details (see subsection (4)),
  - (b) their appeal rights are exhausted, and
  - (c) they are removed before the end of the period of 21 days beginning with the day after the date on which their appeal rights are exhausted;
- and for the purposes of this subsection, whether a PRN recipient's appeal rights are exhausted is to be determined in accordance with section 21(3) of the Nationality and Borders Act 2022 (and see, in particular, section 82A of the Nationality, Immigration and Asylum Act 2002).
- (4) A notice of departure details under this section is a written notice which—
- (a) states the date on which the person is to be removed,

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- (b) states the destination to which the person is to be removed and any stops that are expected to be made on the way to that destination.
- (5) But this section does not apply unless the priority removal notice stated—
  - (a) a destination to which the person is to be removed which is the same as the destination stated in the notice of departure details under subsection (4)(b), and
  - (b) stops, other than stops falling within subsection (6), that are expected to be made on the way to that destination which are the same as those stated in the notice of departure details under subsection (4)(b).
- (6) A stop falls within this subsection if it is a stop in—
  - (a) the United Kingdom, or
  - (b) a country that is for the time being specified in Part 2 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004.
- (7) At any time before the person is removed, the Secretary of State or an immigration officer may replace a notice of departure details under this section.
- (8) For the purposes of this section and section 10E—
  - “priority removal notice”, “PRN cut-off date” and “PRN recipient” have the same meaning as in section 20 of the Nationality and Borders Act 2022;
  - “protection claim” and “human rights claim” have the same meaning as in Part 5 of the Nationality, Immigration and Asylum Act 2002.

### **10E Removal: judicial review**

- (1) This section applies to a person (whether or not they are a PRN recipient) who is liable to removal under section 10 where—
  - (a) the person has made an application for judicial review or (in Scotland) an application to the supervisory jurisdiction of the Court of Session, relating to their removal, and
  - (b) a court or tribunal has made a decision the effect of which is that the person may be removed from the United Kingdom.
- (2) The person may be removed from the United Kingdom if—
  - (a) the Secretary of State or an immigration officer has given the person a notice of departure details (see subsection (3)), and
  - (b) they are removed before the end of the period of 21 days beginning with the day after the day on which the court or tribunal made the decision mentioned in subsection (1)(b).
- (3) A notice of departure details under this section is a written notice which—
  - (a) states the date on which the person is to be removed,
  - (b) states the destination to which the person is to be removed and any stops that are expected to be made on the way to that destination.
- (4) But this section does not apply unless the person has received a priority removal notice or a notice of intention to remove under section 10A(3) which stated—

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- (a) a destination to which the person is to be removed which is the same as the destination stated in the notice of departure details under subsection (3)(b), and
  - (b) stops, other than stops falling within subsection (5), that are expected to be made on the way to that destination which are the same as those stated in the notice of departure details under subsection (3)(b).
- (5) A stop falls within this subsection if it is a stop in—
  - (a) the United Kingdom, or
  - (b) a country that is for the time being specified in Part 2 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004.
- (6) At any time before the person is removed, the Secretary of State or an immigration officer may replace a notice of departure details under this section.”
- (8) In Schedule 10 to the Immigration Act 2016 (immigration bail), in paragraph 3(4) (bail not to be granted to person subject to removal directions without consent of Secretary of State), in paragraph (b) for “14” substitute “21”.

#### **47 Prisoners liable to removal from the United Kingdom**

- (1) The Criminal Justice Act 2003 is amended as follows.
- (2) Section 260 (early removal of prisoners liable to removal from the United Kingdom) is amended as set out in subsections (3) to (8).
- (3) For subsections (1) to (2B) substitute—
  - “(1) Where a fixed-term prisoner is liable to removal from the United Kingdom, the Secretary of State may remove the prisoner from prison under this section at any time after the prisoner has served the minimum pre-removal custodial period (whether or not the Board has directed the prisoner’s release under this Chapter).
  - (2) The minimum pre-removal custodial period is the longer of—
    - (a) one half of the requisite custodial period, and
    - (b) the requisite custodial period less one year.”
- (4) In subsection (2C), for “Subsections (1) and (2A) do” substitute “Subsection (1) does”.
- (5) In subsection (4), for paragraph (b) substitute—
  - “(b) so long as remaining in the United Kingdom, and in the event of a return to the United Kingdom after removal, is liable to be detained in pursuance of his sentence.”
- (6) After subsection (4) insert—
  - “(4A) Where a person has been removed from prison under this section, a day on which the person has not spent any part of the day in prison or otherwise detained in pursuance of their sentence is not, unless the Secretary of State otherwise directs, to be included—
    - (a) when determining for the purposes of any provision of this Chapter how much of their sentence they have (or would have) served, or

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*Status: This is the original version (as it was originally enacted).*

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- (b) when determining for the purposes of section 244ZC(2), 244A(2)(b) or 246A(4)(b) the date of an anniversary of a disposal of a reference of the person’s case to the Board (so that the anniversary is treated as falling  $x$  days after the actual anniversary, where  $x$  is the number of days on which the person has not spent any part of the day in prison or otherwise detained in pursuance of their sentence).

(4B) Where—

- (a) before a prisoner’s removal from prison under this section their case had been referred to the Board under section 244ZB(3), 244ZC(2), 244A(2) or 246A(4), and
- (b) the person is removed from the United Kingdom before the Board has disposed of the reference,

the reference lapses upon the person’s removal from the United Kingdom (and paragraph 8 of Schedule 19B applies in the event of their return).”

(7) Omit subsection (5).

(8) In subsection (6), for paragraphs (a) to (c) substitute—

- “(a) amend the fraction for the time being specified in subsection (2)(a);
- (b) amend the time period for the time being specified in subsection (2)(b).”

(9) For section 261 substitute—

**“261 Removal under section 260 and subsequent return to UK: effect on sentence**

Where a person—

- (a) has been removed from prison under section 260 on or after the day on which section 47 of the Nationality and Borders Act 2022 came into force,
- (b) has been removed from the United Kingdom following that removal from prison, and
- (c) returns to the United Kingdom,

this Chapter applies to the person with the modifications set out in Schedule 19B.”

(10) In section 263 (concurrent terms), after subsection (2), insert—

- “(2A) Where this section applies, nothing in section 260 authorises the Secretary of State to remove the offender from prison in respect of any of the terms unless and until that section authorises the Secretary of State to do so in respect of each of the others.”

(11) After Schedule 19A, insert the Schedule 19B set out in Schedule 8.

### *Immigration bail*

#### **48 Matters relevant to decisions relating to immigration bail**

In paragraph 3(2) of Schedule 10 to the Immigration Act 2016 (matters to be taken into account in making decision on immigration bail), for the “and” at the end of paragraph (e) substitute—

- “(ea) whether the person has failed without reasonable excuse to cooperate with any process—
- (i) for determining whether the person requires or should be granted leave to enter or remain in the United Kingdom,
  - (ii) for determining the period for which the person should be granted such leave and any conditions to which it should be subject,
  - (iii) for determining whether the person’s leave to enter or remain in the United Kingdom should be varied, curtailed, suspended or cancelled,
  - (iv) for determining whether the person should be removed from the United Kingdom, or
  - (v) for removing the person from the United Kingdom, and”.