



EXPLANATORY NOTES

Immigration Act 2016

Chapter 19

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Immigration Act 2016

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What these notes do

These Explanatory Notes relate to the Immigration Act 2016 (c. 19) which received Royal Assent on 12 May 2016.

- These Explanatory Notes have been prepared by the Home Office in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act. So where a provision of the Act does not seem to require any explanation or comment, the Notes simply say in relation to it that the provision is self-explanatory.

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Overview of the Act

- 1 This Act implements a number of policies outlined in the Conservative Party Manifesto. The Act contains measures to tackle illegal working, enhance the enforcement of labour market rules, deny illegal migrants access to services including housing and banking, provide new powers for immigration officers, as well as other measures to improve the security and operation of the immigration system.
- 2 The purpose of the Act is to tackle illegal immigration by making it harder to live and work illegally in the United Kingdom. The intention behind the Act is that without access to work, illegal migrants will depart voluntarily, but where they do not, the Act contains other measures to support enforced removals.

Policy background

Labour Market and Illegal Working

- 3 Migrant workers are particularly vulnerable to labour market exploitation and may find themselves living and working in dangerous and degrading conditions. Protections are already in place to ensure that those entitled to work in the UK are paid at least the national minimum wage, enforced by HMRC. All workers benefit from regulation of employment agencies and businesses by the Employment Agency Standards Inspectorate and the licensing of legitimate labour providers by the Gangmasters Licensing Authority. The Modern Slavery Act 2015 ("the 2015 Act") provides further protections.
- 4 The Government believes that labour market exploitation is an increasingly organised criminal activity and that government regulators that enforce workers' rights need reform and better coordination. The Conservative Party Manifesto also committed to introduce tougher labour market regulation to tackle illegal working and exploitation. The Act establishes a new statutory Director of Labour Market Enforcement, responsible for providing a central hub of intelligence and facilitating the flexible allocation of resources across the different regulators.
- 5 Alongside the measures in the Act, on 13 October 2015 the Government published a consultation paper, '[Tackling Exploitation in the Labour Market](#)' to seek views on the functions of the new Director of Labour Market Enforcement as well as proposals to reform the Gangmasters Licensing Authority and to create a new offence of aggravated breach of labour market legislation. On 12 January 2016 the Government published its response to the consultation, '[Tackling Exploitation in the Labour Market: Government response](#)'. This consultation fulfils the statutory requirement under the 2015 Act for government to consult on the future of the Gangmasters Licensing Authority.
- 6 In the Government's view, illegal working represents one of the principal pull factors for illegal immigration and is often associated with the exploitation of workers, unfair competition and revenue evasion. Section 15 of the Immigration, Asylum and Nationality Act 2006 ("the 2006 Act") prohibits the employment of adults who are subject to immigration control and do not have leave to enter or remain in the UK, or who are subject to a condition preventing them from undertaking employment. The prohibition is supported through both a civil penalty regime and a criminal sanction for employers of illegal workers.
- 7 The 2006 Act regime replaced the former scheme under section 8 of the Asylum and Immigration Act 1996 which first made it a criminal offence to employ illegal workers. The civil penalty scheme in the 2006 Act, which was implemented in February 2008, is the

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principal means of dealing with cases of non-compliance by negligent businesses employing illegal workers. In 2013/2014 there were 2,150 civil penalties issued to employers. However, the Government's statistics show that the 2006 Act resulted in a significant decline in criminal prosecutions as civil penalties became a simpler, more cost effective, way to enforce the law in routine cases. In 2014/15 there were 1974 civil penalties issued to employers.

- 8 The Government believes that some employers are deliberately not checking whether their employees have the right to work. The Government believes that these employers are not knowingly employing illegal workers, because they are choosing not to know. This means that they can only be liable for a civil penalty and not be subject to a successful criminal prosecution. Civil penalties are served on businesses not individuals. However, the 2006 Act allows individuals to be prosecuted for knowingly employing an illegal worker when the individual has been indirectly involved in the offence. This enforces individual accountability and discourages employers from continuously using illegal workers by creating new businesses. This Act amends the criminal sanction in the 2006 Act to make it easier to bring prosecutions in these cases. The most serious cases involving the exploitation of illegal labour will continue to be dealt with under legislation prohibiting facilitation and trafficking.
- 9 A person with limited leave to enter or remain may be restricted from entering into employment under section 3(1)(c)(i) of the Immigration Act 1971 ("the 1971 Act"). A failure to observe this condition is an offence under section 24(1)(b)(ii) of the 1971 Act. While persons who require, but do not have, leave to enter or remain may be committing an offence under another limb of section 24, they do not commit a separate offence of working illegally if they engage in paid work, including employment or self-employment. The Act creates a new offence of illegal working with the aim of ensuring that the act of illegal working is always an offence unless the individual does not know or has reasonable cause to believe that their immigration status disqualifies them from working. The new offence will enable the earnings of illegal workers to be seized under the Proceeds of Crime Act 2002, as was announced by the Prime Minister in his immigration speech on 21 May 2015. The victims of modern slavery are not the target of this offence and can rely on the statutory defence in section 45 of the Modern Slavery Act 2015. When immigration officers conduct an enforcement visit to an employer's premises, under existing powers any illegal workers identified may be arrested and detained and the employer may be liable for a civil penalty or prosecution for an offence. Despite this, the employer may continue to operate their business and there is a risk that they may be continuing to use illegal workers, possibly not detected by immigration officers as they were not present at the time of the visit. The Act provides the power for immigration officers to close the premises for up to 48 hours in certain cases where the employer has previously been given a civil penalty or has been prosecuted for employing illegal workers. Unless the closure notice is cancelled an application must be made to a court for an illegal working compliance order. The compliance order may extend the closure of the premises or otherwise direct the employer to perform certain steps to ensure that illegal workers are not employed. The scheme is designed to be similar to the power to give closure notices to premises associated with nuisance or disorder in Part 4 of the Anti-social Behaviour, Crime and Policing Act 2014.
- 10 The Government believes that a significant proportion of illegal working happens on licensed premises, where there is the sale of alcohol or late night refreshments (hot food or drink sold between 11pm and 5am). The Act aims to tackle illegal working in these sectors by amending licensing legislation such that a licence cannot be issued to an illegal worker and to make the employment of illegal workers a factor that may be taken into consideration when issuing or revoking licences. The Act provides immigration officers with a power to enter premises that are being used for a licensable activity of selling alcohol by retail or providing late night

refreshment with a view to assessing whether an offence under any of the Immigration Acts is being committed in connection with the carrying on of the activity.

- 11 The majority of drivers of taxis and private hire vehicles are self employed meaning they are not subject to existing right to work checks undertaken by employers. This leaves scope for this sector to be exploited by those who intend to work illegally. Some licensing authorities conduct immigration checks but these are only advisory, not mandatory, at present. The Act makes immigration checks mandatory and embeds immigration safeguards into existing licensing regimes across the UK.

Access to Services

- 12 Access to private rented accommodation is restricted by the residential tenancies provisions at Chapter 1 of Part 3 of the Immigration Act 2014 (“the 2014 Act”). These provisions are referred to as the ‘right to rent scheme’. The scheme provides that landlords in the private rented sector should take steps to confirm the lawful immigration status of an individual before entering into an agreement to rent private accommodation to them and makes provision for a civil penalty regime to penalise non-compliance. The scheme was first brought into force on 1 December 2014 in parts of the West Midlands and on 20 October 2015, the Government published the ['Evaluation of the Right to Rent scheme'](#) considering the impact of the scheme over the first six months of operation. On 1 February 2016, the scheme was extended across the rest of England and the Government intends to extend the scheme across the rest of the United Kingdom in the future.
- 13 Despite the requirement to check immigration status before entering into a tenancy agreement a landlord may subsequently discover that their tenant no longer has lawful immigration status. This could be because the tenant’s leave to enter or remain has expired or been curtailed. The existing legislative scheme requires landlords to perform repeat checks on existing tenants and where they discover such a tenant they may obtain a statutory excuse from a civil penalty under section 24 of the 2014 Act by notifying the Secretary of State that the tenant’s leave has expired. The landlord may be able to evict the tenant under existing housing legislation but the immigration status of a tenant is not a ground for gaining possession of a property. The Act will enable landlords to obtain possession of their property where their tenant or any occupier of the property no longer has a right to rent under the 2014 Act scheme.
- 14 The main sanction for landlords who fail to perform adequate checks on their tenants will remain a civil penalty under the right to rent scheme. The Act creates four new offences to target those rogue landlords and agents who deliberately and repeatedly fail to comply with the right to rent scheme or fail to evict individuals who they know or have reasonable cause to believe are disqualified from renting as a result of their immigration status.
- 15 The Government believes that historically, it has been easy for illegal migrants to secure UK driving licences and enjoy the privileges of being able to drive and the advantages this brings in securing a settled lifestyle. A policy change in relation to the granting of licences was announced through a Written Ministerial Statement of 25 March 2010 with the effect that all applicants are required to demonstrate that they are lawfully resident in the UK. The 2014 Act extended this policy to provide powers to revoke a UK driving licence held by an illegal migrant. Where a licence is revoked it is an offence to fail to surrender the licence without a reasonable excuse. Over 16,000 driving licenses have been revoked under the powers of the 2014 Act. Revoked driving licences nonetheless remain in circulation. Accordingly, the Government wishes to build on the 2014 Act provisions by ensuring a consequence for illegal migrants using revoked licences. Therefore, the Act provides the police and immigration officers with a new power to search for and seize UK driving licences which are in the

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possession of a person who is not lawfully resident in the UK.

- 16 The Act also introduces a new criminal offence of driving in the UK whilst an illegal migrant. This fits within the wider agenda of making it difficult for those seeking to establish themselves in the UK unlawfully, and operates in parallel with other new measures with the same aim, including the new offence of illegal working. The new driving offence will apply to those illegally present in the UK, whether they have a driving licence (including a foreign licence) or are driving unlicensed. Upon summary conviction, the court could order a custodial sentence of up to six months and a fine. The court will also have the power to order the forfeiture of the vehicle. In practice, we anticipate that this new offence will be mainly used by the police who, in the course of their work, may encounter illegal migrants driving on UK roads. Vehicles driven by illegal migrants may be detained, pending a decision by the court on forfeiture. The police already hold similar powers in respect of vehicles that are uninsured or driven by an unlicensed driver.
- 17 The 2014 Act created a provision to ensure that illegal migrants are prevented from opening a current account. This provision was brought into force on 12 December 2014. The Home Office provides data on individuals who are known to be in the UK unlawfully to Cifas, an organisation through which information is exchanged to prevent fraud. Banks and building societies then check their prospective account holders against this data. While the 2014 Act measures only apply to new accounts, in his immigration speech on 21 May 2015, the Prime Minister committed to requiring banks and building societies to take action in respect of existing accounts held by illegal migrants.
- 18 The Act places a duty on banks and building societies to perform periodic checks and to notify the Home Office where a person disqualified from holding a current account by reason of their immigration status is identified. The Act specifies that secondary legislation may require the bank or building society to inform the Home Office of all accounts held by the individual concerned, not just current accounts. The Home Office may then either apply to a court to freeze the individual's accounts, with the possibility of exceptions to enable essential living needs to be met, or may notify the bank or building society that it is under a duty to close the accounts as soon as reasonably practicable. Depending on the circumstances of the case, the bank or building society may delay closure for a reasonable period, for example to allow it to seek repayment of an overdraft or to mitigate the effect of closure on other bodies or persons by or for whom the account is operated. They may alternatively remove a disqualified person from a jointly operated account without closing the account. The bank or building society must provide the Home Office with information about the steps it has taken to comply with this duty.

Enforcement

- 19 Immigration officers have various powers of entry, search and seizure for the purpose of removal or deportation. Immigration officers also seek to disrupt illegal immigration by enforcing the illegal working civil penalty scheme in the 2006 Act and the right to rent scheme in the 2014 Act. The Act provides immigration officers with additional search and seizure powers in connection with curtailment decisions and the imposition of civil penalties under these schemes. Typically this may involve searching for evidence of illegal working such as pay slips or time sheets, and evidence of illegal renting such as tenancy agreements and letting paperwork.
- 20 While using existing powers, immigration officers may find other evidence in relation to non-immigration offences. The Act will give officers powers to seize items where there are reasonable grounds to believe that they have been obtained in the commission of a criminal offence and where it is necessary to prevent them being concealed, damaged, or destroyed.

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- 21 The Government believes that it is important that the public sector works together to achieve effective immigration control. The Act provides immigration detainee custody officers, prison officers and prisoner custody officers with powers to search for and seize nationality documents for persons in their custody, expands an existing information gateway to enable public authorities to supply information for immigration purposes and places a duty on specified persons to supply nationality documents when directed to do so.
- 22 The Conservative Party Manifesto commits the Government to satellite tracking for every foreign national offender subject to an outstanding deportation order or deportation proceedings. Section 36 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 created the ability to impose electronic monitoring arrangements for certain migrants. Over 80% of foreign national offenders living in the community have been released on bail by the First-tier Tribunal (“the Tribunal”) and while the Tribunal has the power to apply an electronic monitoring condition, the Secretary of State cannot require it as a condition of bail. The Act places a duty on the Secretary of State or the Tribunal to impose an electronic monitoring condition when the Tribunal grants bail, unless the Secretary of State considers it would be impractical or in breach of the European Convention of Human Rights (ECHR) to do so.
- 23 Illegal migrants, including foreign national offenders, who are awaiting deportation or removal, exist within a complex legal framework where there are six different legal statuses including immigration bail and temporary admission. In implementing the above change to electronic monitoring, the Act takes the opportunity to simplify the legislative framework so that just one status is available to illegal migrants who are not detained.

Appeals

- 24 Section 82 of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”), as amended by the 2014 Act, sets out when there is a right of appeal to the Tribunal against a decision to refuse a human rights or protection claim (including an asylum claim), or the revocation of protection status. Section 92 of the 2002 Act sets out the circumstances in which the appeal must be brought while a person is in the UK and the circumstances in which the appeal cannot be brought until a person who is in the UK has left the country. A person may not bring an appeal while in the UK when the Secretary of State has certified a protection or human rights claim as clearly unfounded under section 94 of the 2002 Act, or when a human rights claim has been certified under section 94B of the 2002 Act. The latter power was inserted by the 2014 Act. It states that a human rights claim made by a person liable to deportation can be certified where it is considered that the temporary removal of such a person pending the outcome of an appeal would not breach the UK’s human rights obligations, including where removal would not create a real risk of serious irreversible harm.
- 25 For completeness, a power also exists in section 97A of the 2002 Act to prevent a person bringing an appeal while in the UK when the Secretary of State certifies that removal would be in the interest of national security. This latter power also allows the Secretary of State to certify in national security cases that the temporary removal of the appellant pending the outcome of an appeal would not breach the UK’s human rights obligations (this provision was added by section 54 of the Crime and Courts Act 2013).
- 26 The certification power in section 94B of the 2002 Act has become known in common parlance as the “deport first, appeal later” rule. The Conservative Party Manifesto commits the Government to extending this power beyond cases where persons are liable to deportation, who are principally foreign national offenders, to all human rights appeals. The Act implements this commitment by amending section 94B to remove the limitation that the

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power can only be applied in deportation cases.

Support for certain categories of migrant

- 27 Support is provided to asylum seekers under section 95 of the 1999 Act. Support is usually provided in the form of accommodation and a weekly cash allowance to cover the asylum seeker's essential living needs. Section 94(5) allows section 95 support to continue after the asylum claim has been finally determined if the failed asylum seeker has with them a dependent child. Section 4(2) of the 1999 Act provides the basis for supporting other categories of failed asylum seeker.
- 28 The Government believes that support should be provided to asylum seekers, as required by our international obligations, but it should not be provided to failed asylum seekers who have had their claim refused, who have exhausted any right of appeal they may have and who could and should leave the UK. On 4 August 2015 a consultation, '[Reforming support for failed asylum seekers and other illegal migrants](#)', sought the views of interested parties. On 3 November, the Government published their response to the [consultation](#). The Act amends the asylum support system, taking into consideration the responses submitted.
- 29 The Act simplifies the basis on which local authorities assess and provide accommodation and subsistence support for destitute families without immigration status, while continuing to enable any other social care needs of a child of such a family to be met by the local authority. The Act also prevents local authorities from providing care leaver support to adult migrants without immigration status, including failed asylum seekers who have exhausted their appeal rights. It makes alternative arrangements for their support prior to their departure from the UK.
- 30 When unaccompanied children are identified by immigration officers they are referred to local authority care. This means that certain local authorities have significant responsibility for the care of migrant children because of the presence of large ports of arrival in their locality. For example, Kent County Council is responsible for unaccompanied children referred from the Port of Dover and the London Borough of Hillingdon is responsible for unaccompanied children referred from Heathrow Airport. The Act contains measures to enable the transfer of these children between authorities to achieve a more even distribution.

Border Security

- 31 Paragraph 26(2) and (3) of Schedule 2 to the 1971 Act enables the Secretary of State, by written notice to the owners or agents of a ship or aircraft, or persons concerned with the management of a port, to designate a control area "for the embarkation or disembarkation of passengers in any port in the United Kingdom". Where a control area is so designated, the owner or agent shall take all reasonable steps to ensure that passengers "do not embark or disembark . . . at the port outside the control area." Where an owner or agent fails to comply with this an offence is committed.
- 32 Despite this legislation, and ongoing engagement with the aviation sector since 2013 to try and resolve this problem through non-regulatory means, airlines and port operators have continued to allow instances of passengers disembarking without being presented to the immigration control. The Act aims to reduce these occurrences of misdirected passengers by providing a civil penalty regime that can be applied to airlines and port operators who disembark passengers outside the control area.
- 33 At present, immigration officers have no maritime enforcement powers – their powers do not have extra-territorial effect. This prevents Border Force from tackling illegal immigration until a vessel has reached the UK and those on board have disembarked. The Act extends

some immigration officer powers into UK territorial waters so that facilitation of illegal migration can be disrupted while it is occurring. The Act also gives these powers to constables and the Armed Services.

- 34 Travel bans restrict the movement of named individuals associated with regimes or groups, including terrorist groups, whose behaviour is considered unacceptable by the international community. The decision to impose a travel ban is made either by the United Nations' Security Council or by the Council of the European Union. To implement travel bans in the UK, secondary legislation is put before Parliament to amend the Immigration (Designation of Travel Bans) Order 2000. The Act will remove the need to update secondary legislation. Instead international travel bans will take effect in the UK automatically.

Language Requirement for public sector workers

- 35 The Conservative Party Manifesto commits the Government to legislate to ensure that every public sector worker operating in a customer-facing role must speak fluent English. The Rt Hon Matthew Hancock, Minister for the Cabinet Office, announced on 2 August 2015 that the Immigration Act would implement this commitment. The Act will require public sector bodies to comply with a statutory duty and guidance will be provided in a code of practice. A [consultation](#) on the content of the code of practice was published on 13 October 2015. The Government [response](#) was published in February 2016.

Fees

- 36 The Prime Minister announced in his 21 May 2015 immigration speech that the Government will reform immigration and labour market rules to reduce the demand for skilled workers from overseas. The Act contains provision to collect an immigration skills charge from employers who sponsor non EEA migrants and to make regulations setting the scope and rate charged.
- 37 The Government has considered advice from the Migration Advisory Committee and additional views from employers. Following careful consideration, the Government has announced that an Immigration Skills Charge of £1,000 per migrant per year will be paid by employers who sponsor Tier 2 migrants. The Charge will be collected by the Home Office. A reduced rate of £364 per annum will apply to small businesses and charities as defined within Immigration and Asylum (Fees) Regulations and an exemption will be applied to migrants undertaking occupations skilled to PhD level and graduates switching from Tier 4 to Tier 2.
- 38 The Act amends the legislative framework for passport fees. The Home Office has been lowering the price of passports for a number of years. For example, in April 2014 fees for UK passports for British citizens applying from overseas were reduced by 35%. The Home Office intends to continue to reduce the cost of postal applications for standard passports by delivering further operational improvements. The Home Office's intention is also to improve premium services, which are currently charged at less than the operational cost. The Act will allow a fee to be introduced which will exceed the operational costs of premium services, to subsidise the basic service.
- 39 Finally, the Act amends the legislative framework for civil registration fees. Existing legislation governing the registration of births, deaths and marriages is, in the Government's view, restrictive in terms of the products and services for which fees may be charged. The Registration Service Act 1953 establishes the office of the Registrar General and the General Register Office (GRO). The GRO charges fees on a cost recovery basis for many, but not all, of its services. Free services include corrections of birth or death entries, the re-registration of births and registrations outside the statutory time limit.

40 The Act introduces modernised and flexible fee-raising powers in respect of services provided by the Registrar General, superintendent registrars and registrars, enabling fees to be set for a wider range of products and services than is currently possible. The introduction of a modernised funding framework seeks to reduce the burden on the taxpayer for providing registration services by allowing registration services to become increasingly self-sufficient, supporting the superintendent registrars and registrars in their ability to deliver critical services.

Legal background

41 The new Director of Labour Market Enforcement will prepare an enforcement strategy that concerns the enforcement of several legal schemes. These include enforcement of breaches of the Employment Agencies Act 1973, the National Minimum Wage Act 1998, the Gangmasters (Licensing) Act 2004 so far as it relates to England, Wales and Scotland, and sections 1, 2 and 4 of the 2015 Act.

42 The new illegal working offence criminalises those who work and who are subject to immigration control and have no right to work in the United Kingdom. It builds on existing immigration offences that are found in section 24 of the 1971 Act. The offence of employing an illegal worker in section 21 of the 2006 Act is also amended. The illegal working measures also amend the Licensing Act 2003 ("the 2003 Act").

43 The Act measures on access to services within Part 2 are mainly an extension of a previous provision made in 2014 Act. Chapter 1 of Part 3 of the 2014 Act created the right to rent scheme and the new measures in the Act on tenancies build on this. The driving measures build on sections 46 and 47 of the 2014 Act which ensure that people who are not lawfully resident in the United Kingdom are not entitled to United Kingdom driving licences. The bank accounts measure builds on section 40 of the 2014 Act which prohibits disqualified persons from opening accounts.

44 The amendments and expansion to the enforcement powers of immigration officers in the Act principally concern the search for and transfer of evidence. Immigration officer powers are largely found within Schedule 2 to the 1971 Act. The bail and tagging measures in the Act will also consolidate the parts of Schedules 2 and 3 to the 1971 Act that relate to temporary admission, temporary release and bail.

45 The immigration appeals system is found within Part 5 of the 2002 Act, which has been amended several times, most recently by the 2014 Act. The Act further amends this legislation.

46 The asylum support system is found within the 1999 Act, as amended. Existing limitations on local authority support for certain migrants is found in Schedule 3 to the 2002 Act. The Act amends this legislation.

47 The measure creating a civil penalty regime relating to airport control areas is concerned with enforcement of paragraph 26 of Schedule 2 to the 1971 Act where there is already a criminal sanction under section 27(b)(iv) of that Act. The maritime powers measure, extending the powers of immigration officers to UK territorial waters is based on similar powers in Part 3 of the 2015 Act that are aimed at tackling modern slavery at sea.

48 The current immigration fees framework is contained in Part 6 of the 2014 Act. The immigration skills charge builds on the existing fees powers in the 2014 Act. The civil registration fees measures amend the following existing legislation: the Births and Deaths Act

1953; the Marriage Act 1949; the Civil Partnership Act 2004; the Marriage (Same Sex Couples) Act 2013; the Registration Service Act 1953 and make a number of consequential and related amendments to other legislation. The passport fees measures will add to the framework set out under the Consular Fees Act 1980.

Territorial extent and application

- 49 Sections 1 to 33 of the Act concern the Director of Labour Market Enforcement. The Director's remit covers certain functions where legislative competence has been transferred to the Northern Ireland Assembly and Scotland. Legislative competence on this matter has not been devolved to the National Assembly for Wales. These sections extend to the whole of the United Kingdom but in Northern Ireland the Director's functions will be limited because firstly, the Employment Agencies Act 1973 and sections 1, 2 and 4 of the 2015 Act do not extend there and secondly because the Director's remit in respect of Gangmaster Licensing is limited by section 3(7). In Scotland the Director's functions will be limited because sections 1, 2 and 4 of the 2015 Act do not extend there.
- 50 Sections 69 to 72 of the Act concern the transfer of unaccompanied asylum seeking children between local authorities. These sections only relate to England and Wales. Directing local authorities to discharge functions on the basis of immigration status is not within the competence of devolved legislatures so section 73 allows these provisions to be extended to the rest of the UK, although there will be further consultation with the devolved administrations before this is done.
- 51 Part 7 of the Act concerns the new English language requirements for public sector workers. This measure will extend to England and to public authorities exercising "non-devolved" functions in Wales, Scotland and Northern Ireland.
- 52 Section 89 and Schedule 15 relate to civil registration, legislative competence in respect of which has been devolved to Scotland and the Northern Ireland Assembly, but not under the Government of Wales Act 2006. Accordingly the amendments for the large part are to legislation which extends to England and Wales only. Schedule 15 does, however, contain some consequential amendments to legislation with UK-wide extent, but they do not make any change to the law in Scotland or Northern Ireland.
- 53 All remaining sections of the Act will extend to the whole of the United Kingdom. In the view of the UK Government, the matters to which the provisions of the Act relate are not within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly.

Commentary on provisions of Act

Part 1: Labour Market and Illegal Working

Section 1: Director of Labour Market Enforcement

- 54 This section establishes the Director of Labour Market Enforcement.
- 55 *Subsections (1) and (2)* require the Secretary of State to appoint a Director of Labour Market Enforcement, who will hold office in accordance with their terms of appointment.
- 56 *Subsection (5)* allows the Government to make provisions for the Director of Labour Market Enforcement to receive a pension.

Section 2: Labour Market Enforcement Strategy

- 57 This section sets out the requirement for the Director to produce a Labour Market Enforcement Strategy.
- 58 *Subsection (1)* states that the Director must prepare a strategy before the beginning of each financial year and submit it to the Secretary of State for approval.
- 59 *Subsections (2) and (3)* prescribe the contents of the strategy. These include: an assessment of the scale and nature of non-compliance in the labour market; how labour market enforcement functions should be exercised (including education, training and research carried out by the relevant enforcers) and how the funding should be allocated; the activities the Director proposes to undertake during the year in relation to his or her intelligence hub; the information that relevant enforcers should provide to the Director (including the form, manner and frequency of provision) and other matters the Director considers appropriate.
- 60 *Subsection (4)* permits the Director to prepare a revised strategy and submit it for approval at any point during the year.
- 61 *Subsection (5)* allows the Secretary of State to approve the strategy with or without modifications; but prevents modification of the Director's assessment of the scale and nature of non-compliance in the labour market.
- 62 *Subsection (6)* requires those exercising labour market enforcement functions to have regard to the strategy once made.

Section 3: Non-compliance in the labour market etc: interpretation

- 63 This section sets out definitions that frame the scope of the annual labour market enforcement strategy.
- 64 *Subsections (1) and (3)* define non-compliance in the labour market by reference to: the commission of a labour market offence; failure to pay the National Minimum Wage or a financial penalty required by the National Minimum Wage Act 1998; or breaching a condition of a licence granted under the Gangmasters (Licensing) Act 2004.
- 65 *Subsection (2)* defines labour market enforcement functions by reference to functions contained in certain pieces of legislation and the functions conferred by Chapter 1 of this Act.
- 66 *Subsections (4)* provides that a breach of a Slavery Trafficking and Prevention Order made following investigations by the Gangmasters and Labour Abuse Authority is defined as a labour market offence for the purposes of the labour market enforcement strategy.

Section 4: Annual and other reports

- 67 This section sets out the arrangements for the Director's production of annual and other reports.
- 68 *Subsection (1)* requires the Director to submit an annual report to the Secretary of State as soon as possible after the end of the financial year to which the strategy relates.
- 69 *Subsection (2)* sets out the contents of the annual report. These are: an assessment of the extent to which labour market enforcement functions were exercised in accordance with the strategy; an assessment of the impact of the strategy on the scale and nature of non-compliance in the labour market; and a statement of other activities undertaken by the Director in relation to his or her intelligence hub.
- 70 *Subsection (3)* requires the Director to produce other reports as requested by the Secretary of State or as set out in the strategy.

Section 5: Publication of strategy and reports

- 71 This section sets out conditions relating to the publication of the Director's strategy and reports.
- 72 *Subsection (1)* requires the Secretary of State to lay any strategy which has been approved or any report which has been received before Parliament as soon as reasonably practicable.
- 73 *Subsections (2) and (3)* allow the Secretary of State to remove before publication any material which would be against the interests of national security, might jeopardise the safety of any person in the United Kingdom or might prejudice an investigation or prosecution.

Section 6: Information gateways

- 74 *Subsections (1) and (2)* enable the intelligence hub to gather information about non-compliance in the labour market (as required by section 8) by allowing anyone to share information with the Director of Labour Market Enforcement and intelligence hub staff if the information relates to the Director's functions.
- 75 *Subsections (3) and (4)* enable the Director and intelligence hub staff to fulfill the requirement in section 8 to disseminate information by allowing them to share with specific named bodies which are listed in Schedule 1.
- 76 *Subsection (5)* provides a power to add to Schedule 1 by Regulations (subject to the affirmative procedure).

Section 7: Information gateways: supplementary

- 77 This section set outs restrictions on data sharing.
- 78 *Subsection (2)* ensures that information may not be disclosed if the disclosure would contravene the Data Protection Act 1998 or Part 1 of the Regulation of Investigatory Powers Act 2000.
- 79 *Subsections (4), (5) and (6)* set out restrictions on data-sharing between the Director /intelligence hub staff and the intelligence service. The intelligence service may only share information with the Director or a relevant staff member if it is in accordance with intelligence service disclosure arrangements. Any onward disclosure of intelligence service information must be authorised by an appropriate service chief (defined in subsection 11).
- 80 *Subsections (7) (8) and (9)* set out that HMRC information unrelated to National Minimum Wage may not be disclosed by the Director or intelligence hub staff without authorisation

from HMRC Commissioners.

- 81 *Subsection (10)* makes unauthorised disclosure of HMRC information subject to the offence contained in section 19 of the Revenue and Customs Act 2005.

Section 8: Information hub

- 82 This section requires the Director to establish an intelligence hub in relation to non-compliance in the labour market.
- 83 *Subsection (2)* allows the Director to request information from labour market enforcement bodies (HMRC's National Minimum Wage enforcement team, the Employment Agency Standards inspectorate and the Gangmasters and Labour Abuse Authority).
- 84 *Subsection (4)* allows the labour market enforcement bodies to request information from the Director.

Section 9: Restriction on exercising functions in relation to individual cases

- 85 *Subsection (1)* of this section prevents the Director from making recommendations in relation to individual cases.
- 86 *Subsection (2)* of this section, however, allows the Director to consider individual cases and draw conclusions about them in relation to general issues within his or her remit.

Section 10: Renaming of Gangmasters Licensing Authority

- 87 This section renames the Gangmasters Licensing Authority the Gangmasters and Labour Abuse Authority (GLAA) and ensures that any references to the Gangmasters Licensing Authority in previous legislation should be thereafter read as references to the Gangmasters and Labour Abuse Authority.

Section 11: Functions in relation to labour market

- 88 This section introduces a new schedule – Schedule 2 Functions in relation to the labour market – which defines the functions of the new GLAA in relation to the labour market. It enables the Secretary of State to arrange for the GLAA to enforce matters beyond its current remit (the Gangmasters (Licensing) Act 2004) to include the Employment Agencies Act 1973, the National Minimum Wage Act 1998 and Parts 1 and 2 of the Modern Slavery Act 2015.
- 89 *Subsection (2)* allows the Secretary of State to give additional functions to either the GLAA itself or its officers, through regulations. This is because police-style powers are being given to its officers rather than the Authority itself.

Section 12: PACE powers in England and Wales for labour abuse prevention officers

- 90 This section inserts a new section 114B into the Police and Criminal Evidence Act 1984 (PACE) allowing the Secretary of State, by regulations, to apply the provisions of PACE to officers of the GLAA with any modifications necessary. It allows the Secretary of State to designate officers with police-style powers which they may only use in relation to labour market offences relating to National Minimum Wage rules, employment agency regulations and relevant criminal offences, including the new enforcement order and Modern Slavery Act 2015 offences, as well as those under the Gangmasters (Licensing) Act 2004. It means that the power to extend the purposes for which officers of the GLAA can be given these PACE powers would be subject to the affirmative procedure, as recommended by the House of Lords Delegated Powers and Regulatory Reform Committee.
- 91 *Subsection (2)* amends section 18 of the Gangmasters (Licensing) Act 2004 to also make it an offence for a person to obstruct an officer who is exercising his functions under PACE.

Section 13: Relationship with other agencies: requests for assistance

- 92 This section amends the Gangmasters (Licensing) Act 2004 by inserting a new section 22A, creating a formal statutory mechanism for the GLAA to request assistance from the police, Director General of the National Crime Agency, immigration officers and other prescribed persons when it believes that its efforts to tackle labour market exploitation can be improved by this assistance. Any such request that is made must be responded to in writing. This section also creates a reciprocal power for the police, immigration officers and other prescribed persons to request assistance from the GLAA, only when they believe that the assistance of the GLAA can support the delivery of their functions.
- 93 *Subsection (2)* makes clear that the regulation-making powers under this section can only be used in relation to reserved matters so that the GLAA will only be allowed to request assistance from UK bodies whose functions are reserved.
- 94 *Subsection (3)* would allow other bodies to be included in this list by the Secretary of State through regulations subject to the affirmative procedure.

Section 14: Powers to request LME undertakings

- 95 This section describes the circumstances in which an enforcing authority may request a labour market enforcement (LME) undertaking from a person.
- 96 *Subsection (1)* sets out the condition that the enforcing authority believes that the person has committed or is committing a trigger offence.
- 97 *Subsection (2)* requires the enforcing authority to give a notice setting out which offence they believe is being committed and reasons for this belief, and inviting the person to give an undertaking.
- 98 *Subsection (3)* explains that this is an undertaking to comply with any restrictions, prohibitions and requirements set out in the notice.
- 99 *Subsection (4)* defines trigger offence. These offences are taken from the Employment Agencies Act 1973, the National Minimum Wage Act 1998 and the Gangmasters (Licensing) Act 2004, plus ancillary offences. The Secretary of State may amend this list through regulations.
- 100 *Subsections (5) and (6)* define enforcing authority.
- 101 *Subsection (7)* restricts references to the Gangmasters (Licensing) Act 2004 in this section to England, Wales and Scotland.

Section 15: Measures in LME undertakings

- 102 This section sets out the purposes for which a measure may be included in an LME undertaking.
- 103 *Subsection (1)* sets out that a measure may be a prohibition, restriction or requirement which is just and reasonable. The measure must also fall within subsection (2) or (3).
- 104 *Subsection (2)* states that the purpose of a measure is either to prevent or reduce the risk of non-compliance with the relevant enactment; or to bring to the attention of interested parties the existence of an undertaking, the circumstances in which it was given and any remedial action taken.
- 105 *Subsection (3)* allows the Secretary of State to add measures through regulations.
- 106 *Subsections (4) and (5)* prevent an undertaking being sought unless one of the measures is

necessary to prevent or reduce the risk of the subject committing a (further) trigger offence.

107 *Subsection (6)* requires that the undertaking sets out how the measures in it will secure compliance with labour market legislation.

108 *Subsection (7)* defines “relevant enactment” as that which contains the trigger offence.

Section 16: Duration

109 This section explains when an LME undertaking has effect.

110 *Subsection (1)* explains that the undertaking takes effect when it is accepted by the enforcing authority unless alternative arrangements are specified in the undertaking.

111 *Subsection (2)* states that an undertaking has effect for the duration specified in it, to a maximum of 2 years.

112 *Subsection (3)* and *(4)* permit the enforcing authority to release the person from an undertaking; and require it to do so if the undertaking no longer contains a measure which is necessary to prevent further offending.

113 *Subsection (5)* requires the enforcing authority to bring the release to the attention of the person who has given it and any other persons likely to be interested in the matter.

Section 17: Further provisions about giving notice under section 14

114 This section explains how a notice requesting a LME undertaking may be served by the enforcing authority.

115 *Subsection (1)* sets out that the notice may be served by hand to the person or their address, by post to their address, or by electronic means.

116 A notice to a body corporate may be given to an officer of that body *Subsection (2)*.

117 A notice to a partnership may be given to any partner *Subsection (3)*.

118 A notice to an unincorporated association other than a partnership may be given to any member of its governing body (subsection 4).

119 *Subsection (5)* explains that the proper address of a person is a body corporate’s registered or principal office in the UK, a partnership or unincorporated association’s principal office in the UK or the person’s last known address.

120 *Subsection (6)* states that a notice may only be sent by electronic means if the respondent has agreed that notices may be sent to an electronic address in a format specified for that purpose.

121 A notice sent by electronic means is deemed to have been served on the working day after which it was sent (*subsection (7)*).

122 *Subsection (8)* defines “electronic address”, “officer” and “working day”.

Section 18: Power to make LME order on application

123 This section sets out the circumstances in which the appropriate court may make an LME order on the application of the enforcing authority.

124 *Subsection (1)* sets out that the court may make an order if it is satisfied that on the balance of probabilities the person has committed or is committing a relevant offence; and that it is just and reasonable to do so.

125 *Subsection (2)* explains that an LME order can prohibit or restrict the person against whom it is made (the respondent) from doing, or require them to do, anything set out in the order.

126 *Subsection (3)* defines the appropriate court as a magistrates' court, sheriff or court of summary jurisdiction, according to where the conduct constituting the relevant offence took place.

127 *Subsection (4)* explains that an application is to be made by complaint.

Section 19: Applications

128 This section sets out the circumstances in which an enforcing authority may apply to the court for an LME order.

129 *Subsection (1)* sets out that such an application may be made where a notice has been served on the proposed respondent and they have refused or failed to enter into an undertaking which is agreed before the end of the negotiation period.

130 *Subsection (2)* sets out that an application may also be made where the proposed respondent has failed to comply with an undertaking which has been given.

131 *Subsection (3)* explains that the negotiation period is 14 days from service of the notice or longer by agreement.

Section 20: Powers to make LME order on conviction

132 This section explains when a sentencing court can make an LME order following conviction for a trigger offence.

133 *Subsection (2)* states that the court may make an order where it is considered just and reasonable.

134 *Subsection (3)* prevents the court from making an order unless it is in addition to either a sentence or a conditional discharge (absolute discharge in Scotland).

Section 21: Measures in LME orders

135 This section sets out the purposes for which a measure may be included in an LME order. It mirrors the provisions for measures in an LME undertaking in section 15.

Section 22: Further provision about LME orders

136 *Subsection (1)* sets the maximum duration for an order at 2 years.

137 *Subsection (2)* prevents an order being made in respect of an individual who is under 18.

138 *Subsection (3)* permits the court to release the respondent from any previous LME undertakings or orders that were made by a court in the same UK jurisdiction.

Section 23: Variation and discharge

139 This section sets out the circumstances in which either the respondent or enforcing authority may apply to the court to vary or discharge an LME order.

140 *Subsection (1)* explains who may make such an application. This is: the respondent, the enforcing authority who applied for an order or the enforcing authority whose investigation led to an order being made following conviction for a trigger offence.

141 *Subsection (2)* explains which court may vary or discharge the order. This is a magistrates' court, sheriff court or court of summary jurisdiction.

142 *Subsection (3)* explains that an application is to be made by complaint.

These Explanatory Notes relate to the Immigration Act 2016 (c. 19) which received Royal Assent on 12 May 2016

Section 24: Appeals

- 143 This section sets out the circumstances in which a respondent can appeal against an LME order.
- 144 *Subsection (1)* explains that the respondent can appeal against the making of an order on application or the decision of the court on an application for variation or discharge.
- 145 *Subsection (2)* explains that the appeal will be heard by the Crown Court, Sheriff Appeal Court or County Court as appropriate.
- 146 *Subsection (3)* allows the court hearing the appeal to make an order which gives effect to its decision or an incidental or consequential order if this is just and reasonable.
- 147 *Subsection (4)* explains that an order which has been varied as the result of an appeal remains an order of the court that first made it for the purposes of an application for variation or discharge.
- 148 *Subsection (5)* explains that an appeal against an order made following conviction should be treated as an appeal against sentence.

Section 25: Code of practice

- 149 This section explains the arrangements for the Secretary of State to lay before parliament a Code of Practice on the new enforcement regime.
- 150 *Subsections (1) and (2)* require the Secretary of State to issue a Code of Practice, which may be revised, giving the enforcing authorities guidance on the exercise of their functions under sections 14 to 23. The code will be brought into force by a statutory instrument subject to the negative procedure.
- 151 *Subsection (3)* requires the Secretary of State to publish the code.
- 152 *Subsection (4)* requires enforcing authorities to have regard to the code.

Section 26: Investigative functions

- 153 This section explains the powers of each enforcing authority in relation to the new enforcement regime.
- 154 *Subsections (1) - (3)* explain that officers acting for the purposes of the Employment Agencies Act, National Minimum Wage Act and Gangmasters (Licensing) Acts respectively can use the same powers when investigating a breach of an undertaking or order based on a trigger offence in that particular Act.

Section 27: Offence

- 155 This section explains that an offence is committed when a respondent fails, without reasonable excuse, to comply with an LME order.
- 156 *Subsection (2)* sets out the maximum penalty for this offence, which is 2 years imprisonment and/or a fine for conviction on indictment; or 12 months imprisonment (6 months in Northern Ireland) and/or a fine on summary conviction.
- 157 *Subsection (3)* means that where an offence was committed in England and Wales before section 154(1) of the Criminal Justice Act 2004 was commenced, references to 12 months should be read as 6 months.

Section 28: Offence by bodies corporate

- 158 This section explains how section 27 applies to bodies corporate.

These Explanatory Notes relate to the Immigration Act 2016 (c. 19) which received Royal Assent on 12 May 2016

159 *Subsection (1)* explains that an officer as well as a body corporate shall be guilty of an offence under section 27 where it is proved that the offence was committed with the consent or connivance of that officer, or where it was attributable to the officer's negligence. The officer is liable to prosecution and punishment.

160 *Subsection (2)* defines "officer".

161 *Subsection (3)* applies subsection (1) to members of a body corporate where they manage its affairs.

Section 29: Application to unincorporated associations

162 This section explains how section 27 applies to unincorporated associations.

163 *Subsections (1) to (3)* provide that an unincorporated association may be prosecuted for an offence under section 27 if it can be prosecuted for the trigger offence in the name of the association.

164 *Subsection (4)* applies certain criminal procedure including the rules of court relating to the service of documents to an unincorporated association as if it were a body corporate.

165 *Subsection (5)* requires a fine imposed on conviction for an offence to be paid out of the funds of the association.

166 *Subsection (6)* explains that an officer as well as an unincorporated association corporate shall be guilty of an offence under section 27 where it is proved that the offence was committed with the consent or connivance of that officer, or where it was attributable to the officer's negligence. The officer is liable to prosecution and punishment.

167 *Subsection (7)* defines "officer".

Section 30: Application to partnerships

168 This section explains how section 27 applies to partnerships.

169 *Subsection (1)* means that where a partnership is not regarded as a legal person and an offence is committed by a partner, another partner shall be guilty of an offence under section 27 if it is proved that the offence was committed with the consent or connivance of another partner or was attributable to the neglect of that other partner. The other partner shall be liable to prosecution and punishment as well as the first.

170 Where the partnership is a legal person, proceedings shall be brought against the partnership in the firm name (subsection 2).

171 *Subsection (3)* applies certain criminal procedure including the rules of court relating to the service of documents to a partnership as if it were a body corporate.

172 *Subsection (4)* requires a fine imposed on conviction for an offence to be paid out of the funds of the partnership.

173 *Subsection (5)* provides that a partner as well as the partnership shall be guilty of an offence under section 27 where it is proved that the offence was committed with the consent or connivance of that partner, or where it was attributable to the partner's negligence. The partner is liable to prosecution and punishment.

174 *Subsection (6)* applies this section to a person purporting to act as a partner.

175 *Subsection (7)* explains that a partnership is not regarded as a legal person if it is not regarded as such under the law of the country under which it was formed.

Section 31: Consequential and related amendments

176 This section gives effect to Schedule 3 (Consequential and related amendments).

Section 32: Regulations under Chapter 1

177 This section defines how the regulation-making powers Part 1 confers on the Secretary State can be used.

Section 33: Interpretation of Chapter 1

178 This section provides further definitions to aid the interpretation of Chapter 1.

Section 34: Offence of illegal working

179 This section amends the 1971 Act to make it a criminal offence for a person subject to immigration control to work if they have not been granted leave to enter or remain, have overstayed that leave, or are in breach of a condition on that leave that prohibits work.

180 *Subsection (2)* amends section 3(1)(c)(i) of the 1971 Act to ensure that persons given limited leave to enter or remain in the United Kingdom may be subject to a condition restricting any type of work, rather than simply "employment" and therefore reflects the scope of the new offence.

181 *Subsection (3)* inserts new section 24B into the 1971 Act creating a new illegal working offence.

182 *Subsection (1)* of the new section 24B sets out the *mens rea* of the offence of illegal working, such that an individual must know or have reasonable cause to believe that they are disqualified from working by reason of their immigration status.

183 *Subsection (3)* and *(4)* of the new section 24B detail the maximum penalty. In England and Wales the maximum penalty is 6 months' imprisonment or an unlimited fine or both. The length of that maximum will be increased to 51 weeks upon the coming into force of section 281(5) of the Criminal Justice Act 2003. In Scotland and Northern Ireland, the maximum penalty is 6 months' imprisonment or a fine of the statutory maximum or both.

184 *Subsection (5)* and *(7)* of the new section 24B require a prosecutor to consider whether to ask the Magistrates' Court to commit a person to the Crown Court with a view to a confiscation order being considered under the Proceeds of Crime Act 2002 if a person is convicted of the new illegal working offence in England and Wales or Northern Ireland.

185 *Subsection (6)* of the new Section 24B requires a prosecutor to consider whether to ask the court to make a confiscation order under the Proceeds of Crime Act 2002 if a person is convicted of the new illegal working offence in Scotland.

186 *Subsection (8)* clarifies that the offence does not apply to British Citizens or others who do not need leave to enter or remain.

187 *Subsection (9)* of the new section 24B makes it clear that the offence can apply to those on immigration bail who have no right to work.

188 *Subsections (10), (11) and (13)* of the new section 24B make it clear that the offence applies to all categories of work, including apprenticeships, the self-employed and public servants.

189 *Subsection (12)* of the new section 24B makes an exception from the offence for members of the armed forces.

190 *Subsections (4) to (8)* make consequential amendments to apply the existing criminal enforcement powers of immigration officers to the new illegal working offence.

Section 35: Offence of employing an illegal worker

- 191 Sections 15 to 25 of the 2006 Act set out the constraints on whether a person subject to immigration control may be employed. The prohibition is supported through both a civil penalty and criminal sanction.
- 192 *Subsections (2) and (3)* amend the *mens rea*, or mental element, needed for commission of the offence at section 21(1) of the 2006 Act. The effect is that the offence is committed when an employer 'knows or has reasonable cause to believe' that an employee is disqualified from employment by virtue of their immigration status, and the employee is, in fact, so disqualified.
- 193 *Subsection (4)* amends section 21(2)(a)(i) of the 2006 Act to increase the maximum term of imprisonment for conviction of the offence on indictment from two years to five years.
- 194 *Subsections (5) to (7)* provide that a body will be treated as having 'reasonable cause to believe' a fact for the purposes of the amended offence, if an individual within that body with responsibility for an aspect of the employment has reasonable cause to believe that fact.
- 195 *Subsections (9) and (10)* amend sections 28A and 28AA respectively of the 1971 Act. The effect is that a person committing or attempting to commit the section 21 offence may be arrested without a warrant.

Section 36: Licensing Act 2003: amendments relating to illegal working

- 196 The purpose of this section is to prevent illegal working in licensed premises by making it a requirement for a personal or premises licence to sell alcohol that the licensee has the right to work in the UK. Additionally, the Secretary of State will be added to the list of responsible authorities so that she must be consulted before a premises licence is issued or transferred, allowing intervention where there are strong grounds for believing that the issue of a licence would give rise to a serious risk of illegal working. *Subsection (1)* gives effect to Schedule 4, where the amendments to the licensing framework in the Licensing Act 2003 are set out.
- 197 The 2003 Act only extends to England and Wales. *Subsection (2)* provides a power to extend the effect of the licensing measures to Scotland and Northern Ireland by regulations.
- 198 *Subsection (5)* allows regulations to be made to amend an Act of the Westminster Parliament. This was necessary because in Scotland, late night catering is dealt with by the Civic Government (Scotland) Act 1982, which is an Act of the Westminster Parliament which predates devolution.

Section 37: Private hire vehicles etc.

- 199 The purpose of this section is to tackle illegal working in the private hire vehicles and taxi sector by ensuring that operator and driver licences cannot be held by persons who do not have permission to work in the UK. The section gives effect to Schedule 5, which amends the licensing regimes for taxis and private hire vehicles across the UK.

Section 38: Illegal working closure notices and illegal working compliance orders

- 200 This section introduces Schedule 6 which provides immigration officers with a new power to issue a notice to close premises where an employer operating at the premises is employing illegal workers if certain conditions are met, and enables immigration officers to apply for illegal working compliance orders.

Part 2: Access to Services

Section 39: Offence of leasing premises

201 This section amends Chapter 1 of Part 3 of the 2014 Act by inserting new sections 33A to 33C, creating four new offences related to letting private residential premises to adults disqualified from renting as a result of their immigration status. Section 22 of the 2014 Act provides that a landlord must not allow an adult who is a disqualified person to occupy property under a residential tenancy agreement, unless that person has been granted permission to rent by the Secretary of State. Section 20 of the 2014 Act identifies the type of arrangements to which the restriction on letting applies. Adults who are disqualified from renting and therefore from accessing privately rented property under a residential tenancy agreement are defined at section 21. Sections 23 to 30 of the 2014 Act provide for the operation of a civil penalty scheme to penalise landlords and agents who rent properties without making appropriate right to rent checks on their occupants. New section 33A creates two new offences relating to landlords. The first offence is committed if a landlord under a residential tenancy agreement knows or has reasonable grounds to believe that the premises are occupied by an adult disqualified from renting as a result of their immigration status (new section 33A(1) – (3)). This applies where any adult is occupying the premises, regardless of whether the adult is a tenant under or is named in the agreement. However, new section 33A(4) and (5) provides that in areas where the right to rent scheme is in force, the landlord is not guilty of an offence under subsection (1) if the adult has a limited right to rent (as defined at section 21(4) of the 2014 Act) and the eligibility period (as defined at section 27 of the 2014 Act) of the occupier has not expired, unless the Secretary of State has given a written notice to the landlord which states that the adult is disqualified as a result of their immigration status from occupying premises under a residential tenancy agreement.

202 New section 33A(6) provides a defence for any landlord charged with the offence of renting to a disqualified person under subsection (1). The defence will be available to any landlord who has taken reasonable steps to end the tenancy within a reasonable period of time. In accordance with subsection (7), in determining whether the defence applies the courts must have regard to any guidance issued by the Secretary of State. Subsection (9) provides that the commission of an offence will not impact on a landlord or tenant's ability to enforce any provision of the residential tenancy agreement they have entered into.

203 The second offence (in new section 33A(10)) is committed only if a tenant's leave to remain in the UK expires during the course of a tenancy (having been valid when the tenancy was entered into), the tenant's eligibility period (as defined at section 27 of the 2014 Act) has expired, the tenant continues to occupy the property and the landlord knows or has reasonable cause to believe this has happened but does not notify the Secretary of State as soon as reasonably practicable. Subsection (11) makes it clear that the offence applies whether or not the landlord has been issued with a civil penalty notice under section 23 of the 2014 Act.

204 New section 33B is concerned with two new offences relating to agents.

205 New sections 33B(1) and (2) provide that an agent is guilty of an offence if the agent is responsible for carrying out right to rent checks on behalf of a landlord (under section 25 of the 2014 Act), knows or has reasonable cause to believe that the landlord will be authorising someone disqualified from renting to occupy the property if he enters into the tenancy agreement and has sufficient opportunity to notify the landlord beforehand, but does not do so.

206 New sections 33B(3) and (4) provide that an agent commits an offence if the agent carries out

right to rent checks on behalf of a landlord (under section 25 of the 2014 Act), a tenant's leave to remain in the UK expires during the course of the tenancy, having been valid at the time the tenancy was entered into, the tenant's eligibility period (as defined at section 27 of the 2014 Act) has expired, the tenant continues to occupy the property and the agent knows or has reasonable cause to believe this has happened but does not notify the landlord and Secretary of State as soon as reasonably practicable.

- 207 New section 33B(5) specifies that the agent commits an offence regardless of whether the agent has been issued with a civil penalty notice under section 25 of the 2014 Act.
- 208 New section 33C is concerned with the penalties available where an offence has been committed under section 33A or section 33B.
- 209 New section 33C(1) specifies that a landlord or agent who is guilty of an offence under section 33A or section 33B is liable to imprisonment for up to twelve months or to a fine (or both) on summary conviction or for up to five years' imprisonment or to a fine (or both) if they are convicted on indictment.
- 210 New section 33C(2) provides that if the offence is committed before section 154(1) of the Criminal Justice Act 2003 comes into force a landlord or an agent who is summarily convicted will be liable to imprisonment for up to six rather than twelve months.
- 211 New section 33C(3) provides that, where an offence is committed by a body corporate but with the connivance or consent of an officer of that body corporate, the officer, as well as the body, will be treated as having committed the offence. The reference to an officer of a body includes a director, manager or secretary, or person purporting to act as such or, if the affairs of a body are managed by its members, a member. In the case of a partnership, where a partner or person acting as a partner has consented to, or been complicit in, the commission of an offence under section 33A or 33B, the offence will be treated as having been committed by that individual as well as the partnership (see subsection (5)).
- 212 New subsection 33C(6) permits immigration officers to use powers provided in the 1971 Act such as entering and searching premises and searching persons in relation to these offences.
- 213 *Subsection (3)* makes it clear that new sections 33A to 33C, and the new routes to eviction under new sections 33D and 33E, apply whether the tenancy was entered into before or after these provisions come into force. However, the offences contained in new section 33A(10), which applies to landlords, and section 33B, which applies to agents, will only apply in relation to a contravention of the right to rent scheme which occurs after these measures come into force.
- 214 *Subsection (5)* provides that where two or more persons jointly constitute the landlord, any references to the landlord in section 33A are to be taken as references to any of those persons.
- 215 *Subsection (6)* amends section 28A of the 1971 Act by inserting a subsection (9C) which provides that an immigration officer may arrest without warrant a person who, or who the immigration officer has reasonable grounds for suspecting, has committed or attempted to commit an offence under section 33A or 33B.

Section 40: Eviction

- 216 This section amends Chapter 1 of Part 3 of the 2014 Act. *Subsection (2)* inserts new sections 33D and 33E, providing new powers for landlords to evict illegal migrants from private rented accommodation.
- 217 New section 33D empowers a landlord to serve a notice terminating a tenancy agreement

relating to premises in England if they have been notified by the Secretary of State that a person or persons who are occupying those premises are disqualified from renting under the 2014 Act. There is a specified notice period of 28 days. The notice may be given by delivering it to the tenant(s); leaving it at the premises; sending it by post to the tenant(s) at the address of the premises; or in any other prescribed manner.

- 218 This applies where all of the occupants are disqualified from renting under a residential tenancy agreement. A notice from the landlord is to be treated as a notice to quit where such notice is required to end a tenancy.
- 219 Subsection (7) of new section 33D provides that the landlord's notice is enforceable as if it were an order of the High Court and so will allow a landlord to seek enforcement of the notice through the courts as such an order.
- 220 Subsection (8) of new section 33D defines an occupier as a tenant, a person who is named in the tenancy agreement, or any other person who the landlord knows is occupying the premises.
- 221 New section 33E make provisions for landlords (in England) to evict in other circumstances where an occupant is a disqualified person. Subsections (1) and (2) provide that there shall be an implied term of any residential tenancy agreement that is not a protected or statutory tenancy (within the meaning of the Rent Act 1977) or an assured tenancy (within the meaning of the Housing Act 1988) that allows for the termination of the agreement where an adult occupant is disqualified from renting. Subsections (3) and (4) set out the position in relation to tenancies that are statutory, protected or assured tenancies.
- 222 *Subsection (3)* amends the 2014 Act by inserting new subsection (7) into section 35 which provides that an eviction under sections 33D and 33E can take place in respect of a tenancy that was entered into before or after these provisions came into force.
- 223 *Subsection (4)* amends the 2014 Act by inserting new sub-paragraphs (v) and (vi) into section 37(4)(a) to provide that references to the landlord in new sections 33D and 33E are to be taken as references to any of the landlords where two or more persons jointly constitute the landlord.
- 224 *Subsection (5)* amends section 3A of the Protection from Eviction Act 1977 to exclude from protection tenancies to which these provisions apply.
- 225 *Subsection (6)* amends section 5 of the Housing Act 1988 (security of tenure) to allow an assured tenancy to be brought to an end where these provisions apply and a landlord has served a notice in compliance with section 33D.
- 226 *Subsection (7)* makes it clear that the amendments made under subsections (5) and (6) apply in relation to a tenancy or a licence entered into before or after the coming into force of this section.

Section 41: Order for possession of dwelling-house

- 227 This section provides for amendments to be made to Part 1 of Schedule 2 to the Housing Act 1988 (assured tenancies: grounds on which court must order possession). The amendments provide for a new mandatory ground for a landlord to obtain possession of a property following receipt of notification from the Secretary of State that an occupant is a disqualified person.
- 228 *Subsection (2)* inserts a new Ground 7B into Part 1 of Schedule 2 to the Housing Act 1988. Landlords may rely on this mandatory ground for possession of a dwelling-house let on an

assured tenancy where the Secretary of State has given notice in writing to a landlord that any tenant or adult occupier is disqualified from occupying the property as a result of their immigration status. The landlord may serve a notice seeking possession. Where the tenants do not vacate the property, the landlord will be able to rely upon this new ground in seeking a possession order from the courts.

229 *Subsections (3) and (4)* make other consequential amendments to sections 7 and 8 of the Housing Act 1988 which are consequential on the introduction of new Ground 7B.

230 *Subsection (5)* inserts a new section 10A into the Housing Act 1988 which provides that where one or more tenants who are occupying a property let on an assured tenancy are disqualified persons, a court in possession proceedings may order that the interest in the property of the tenants who are disqualified be transferred to a tenant or tenants who are not disqualified, instead of making an order for possession.

231 *Subsection (6)* inserts a new Case 10A into Part 1 of Schedule 15 of the Rent Act 1977. A court may order possession of a dwelling house let on, or subject to, a protected or statutory tenancy if the Secretary of State has given notice in writing to a landlord that a tenant or other adult person who is occupying the dwelling house is disqualified from occupying the property as a result of their immigration status.

232 *Subsection (7)* provides that the amendments made by section 41 shall apply to those tenancies in existence prior to or subsequent to their coming into force.

Section 42: Extension to Wales, Scotland and Northern Ireland

233 This section provides for a power to make regulations to make such provision as the Secretary of State considers appropriate to enable the new residential tenancies provisions to apply in Wales, Scotland or Northern Ireland. The regulations are subject to the affirmative resolution procedure.

234 *Subsection (2)* provides that regulations under this section may make provision that applies in relation to Wales, Scotland or Northern Ireland and has similar effect to any of the residential tenancy provisions.

235 *Subsection (3)* provides that regulations under this section can amend, repeal or revoke any enactment, and can confer functions on any person. *Subsection (4)* provides that regulations under this section may not confer functions on Scottish or Welsh Ministers or on any Northern Ireland Minister or department.

Section 43: Powers to carry out searches relating to driving licences

236 This section amends Part 1 of Schedule 2 to the 1971 Act which contains provisions related to the entry and search of premises and the search of people.

237 *Subsection (2)* inserts new paragraphs 25CA, 25CB and 25CC into Schedule 2 to the 1971 Act. New paragraph 25CA creates a new power for authorised officers, including immigration and police officers, to enter premises and search for a driving licence. This power can only be exercised where there are reasonable grounds for believing that a driving licence held by an illegal migrant, is on the premises. For example, an authorised officer would have reasonable grounds to believe this and, therefore, to use this power when immigration enforcement apprehends an immigration offender who tells the officers that they have a driving licence. It can also only be used to the extent reasonably required to find the licence.

238 New paragraph 25CB creates a power for an authorised officer to search a person, to the extent necessary to find a licence (not including an intimate search) where there are reasonable grounds for believing that the person is not lawfully present in the UK and may

have a driving licence concealed on their person. New paragraph 25CC allows a driving licence found by an authorised officer, under either of these new search powers or under existing search powers, to be seized and retained if it belongs to, or was found in the possession of, an illegal migrant. Once a licence has been seized it must be given either to the Secretary of State (in practice this will be passed to the Driver and Vehicle Licensing Agency, an executive agency of the Department for Transport), or to the Department for Infrastructure in Northern Ireland, depending upon who granted the licence. Provision is made to ensure that a driving licence is returned to the holder should the holder successfully appeal against revocation.

239 *Subsection (3)* amends paragraph 25D of Schedule 2 to the 1971 Act so that a person cannot ask for access to, or be provided with a copy of, a seized driving licence. This ensures that a copy of the licence cannot be used as a form of identification to enable a settled life in the UK.

240 *Subsection (4)* amends section 146(2) of the 1999 Act, to allow an authorised officer to use reasonable force when exercising the powers contained in new paragraphs 25CA, 25CB and 25CC of Schedule 2 to the 1971 Act.

Section 44: Offence of driving when unlawfully in the United Kingdom

241 *Subsection (2)* inserts new sections 24C to 24F into the 1971 Act. New section 24C creates a new offence of a person who is not lawfully in the UK driving a vehicle on a road or other public place if, at the time of committing the offence, the person knew or had reasonable cause to believe that they were not lawfully resident. A person guilty of this offence will be liable on summary conviction to imprisonment of up to six months and/or a fine of up to the statutory maximum, or an unlimited fine in England and Wales.

242 When a person is arrested for this new offence, section 24D creates a new power to detain the vehicle used in the commission of the offence until a decision is made as to whether to charge the person (or a decision to institute proceedings in Scotland) and then while proceedings are ongoing.

243 The person who has been arrested might not be the owner or registered keeper of the vehicle used in the commission of the offence. Section 24D(8) provides the Secretary of State with the power to make provision, by regulations, about the circumstances in which a vehicle may be released from detention.

244 Section 24E provides the police and immigration officers with the power to enter premises in order to detain a relevant vehicle. This power can only be exercised without a warrant if the relevant officer knows the vehicle is on the premises (for example, the officer can see it on the drive), or with a warrant if a justice of the peace is satisfied that there are reasonable grounds for suspecting that the vehicle is on the premises.

245 Section 24F provides that if a person is convicted of an offence under section 24C, the court may order forfeiture of the relevant vehicle. Forfeiture orders cannot be made unless any person with an interest in the vehicle, who has applied to the court to make representations against forfeiture, has been allowed to present these to the court (section 24F(2)). The Secretary of State may make provision, by regulations, about the disposal of forfeited vehicles and the destination of proceeds arising from disposal.

246 *Subsection (3)* amends section 28A(3) (a) of the 1971 Act to allow immigration officers to arrest, without a warrant, a person who has committed, or who they have reasonable grounds for suspecting has committed, the new driving offence.

247 *Subsection (4)* amends section 28B(5) of the 1971 Act so that a justice of the peace (or a sheriff

or justice of the peace in Scotland) may issue a warrant permitting an immigration officer or constable to enter premises to search for and arrest a person suspected of committing the new driving offence.

248 *Subsection (5)* amends section 28CA(1) of the 1971 Act to provide the power for a constable or immigration officer to enter and search business premises for the purpose of arresting a person suspected of committing the offence.

249 *Subsection (6)* amends section 28D(4) of the 1971 Act to provide that a justice of the peace (or a sheriff or justice of the peace in Scotland) may issue a warrant permitting an immigration officer to enter and search premises, where there are reasonable grounds for believing that material may be found on those premises that relate to the offence.

250 *Subsection (7)* amends section 16(2A)(b) of the Police and Criminal Evidence Act 1984, and *subsection (8)* amends Article 18(2A)(b) of the Police and Criminal Evidence (Northern Ireland) Order 1989, in order to provide that a person accompanying a constable in the execution of a warrant, may detain a vehicle.

251 *Subsection (9)* amends section 146 (2) of the Immigration and Asylum Act 1999, so that a constable may use reasonable force in order to detain a vehicle.

Section 45: Bank accounts

252 This section introduces measures concerned with bank and building society accounts held by persons who are known to be unlawfully present in the UK. The purpose is to require banks and building societies to check the immigration status of current account holders and to, in the majority of cases, facilitate the closure of accounts held by illegal migrants.

253 *Subsection (1)* introduces the provision set out in Schedule 4, which amends the 2014 Act by inserting new sections 40A to 40H. These sections establish requirements on banks and building societies to carry out periodic checks of the immigration status of persons holding current accounts with them. Where such checks identify that a current account holder is a "disqualified person" (i.e. an illegal migrant who the Secretary of State considers should not be provided with a current account) the bank or building society is required to notify the Secretary of State that this is the case. The Secretary of State will then either apply for a court order freezing the disqualified person's account or accounts, or will notify the bank or building society that it is under a duty to close the account as soon as reasonably practicable.

254 *Subsections (2)* and *(3)* place a duty on the Secretary of State to review the measures contained in Schedule 4 and prepare a report for Parliament. This duty must be carried out within 5 years from the date that the measures come into force in full.

Part 3: Enforcement

Section 46: Powers in connection with examination, detention and removal

255 *Subsection (2)* amends paragraph 2(1) of Schedule 2 to the 1971 Act so that it is clear that examination by an immigration officer can happen where a person has leave, with regard to whether that leave should or should not be curtailed.

256 *Subsection (3)* inserts new paragraph 15A into Schedule 2 to the 1971 Act which gives immigration officers who are already lawfully on premises (new sub-paragraph (1)) a power to search for documents that relate to a person liable to detention and that will assist in removing them from the UK (new sub-paragraph (2)). Exercise of this power is restricted to circumstances in which there are reasonable grounds for believing sub-paragraph (2) applies and where it is necessary to obtain the documents.

257 Sub-paragraphs (4) to (10) of the new paragraph 15A provides immigration officers with a power to seize and retain relevant documents (including electronic documents) which may be evidence of grounds for curtailing a person's leave. Documents that benefit from legal privilege, such as solicitor-client correspondence, are excluded (sub-paragraph (8)). Original documents will not be retained if a photograph or copy is sufficient for the purpose of removing a person from the UK (sub-paragraph (10)).

258 *Subsections (4) and (5)* amend paragraphs 25A and 25B of Schedule 2 to the 1971 Act to clarify that these search powers also extend to electronic documents.

Section 47: Search of premises in connection with imposition of civil penalty

259 This section gives immigration officers, who are already lawfully on premises, a power to search for documents which might assist with imposing a civil penalty on a person. Civil penalties can be imposed when a person is employing an illegal migrant or renting premises to them (*subsection (2)*). This power is restricted to circumstances in which there are reasonable grounds for believing *subsection (2)* applies and where it is necessary to obtain the documents (*subsection (3)*).

260 *Subsections (4) to (10)* provide immigration officers with a power to seize and retain relevant documents (including electronic documents) that may be used as evidence to impose a civil penalty, such as pay slips or tenancy agreements, although documents subject to legal privilege are excluded (*subsection (8)*). Original documents will not be retained if a photograph or copy is sufficient (*subsection (10)*). *Subsection (11)* gives an employer or landlord the right to access documents that have been seized and copy them. However, if there are reasonable grounds to believe that this access would jeopardize an investigation against the employer or landlord, or the functions of an immigration officer, access will be denied.

Section 48: Seizure and retention in relation to offences

261 Currently, when immigration officers in England and Wales search premises for immigration purposes, (e.g. to check the immigration status of a person), they can only seize evidence of a non-immigration crime if they are trained criminal investigators by relying on the Police and Criminal Evidence Act 1984 (Application to immigration officers and designated customs officials in England and Wales) Order 2013. Therefore, often immigration officers must contact the local police and await their response when they encounter non-immigration crime. In the meantime the immigration officer has no specific powers to prevent that potential evidence from being removed or destroyed.

262 This section provides all immigration officers with a power to seize anything that has been acquired through committing a non-immigration offence, and evidence in relation to offences (*subsections (2) and (3)*), including electronic information (*subsections (4) and (5)*). Immigration officers cannot seize anything that is subject to legal privilege (*subsection (6)*).

263 *Subsection (7)* allows immigration officers to retain anything they seize under *subsections (2) to (5)* so long as necessary in all the circumstances and, in particular, for one of three purposes; use as evidence at trial; examination or investigation; or to establish the lawful owner of the property. However, *subsection (8)* provides that such items cannot be retained if a photograph or copy is sufficient. *Subsection (9)* gives an employer or landlord the right to access documents that have been seized and copy them. However, if there are reasonable grounds to believe that this access would jeopardize an investigation, access will be denied.

Section 49: Duty to pass on items seized under section 48

264 This section applies where an item has been seized under section 48. Under *subsection (2)*, an
These Explanatory Notes relate to the Immigration Act 2016 (c. 19) which received Royal Assent on 12 May 2016

immigration officer must notify the relevant investigating authority (normally the police or National Crime Agency) as soon as reasonably practicable, that they have seized items during a search.

265 *Subsection (3)* gives immigration officers the discretion to retain evidence where they have reasonable grounds for believing that it may be related to an immigration offence, as with some offences this may not be clear at the outset. Where an immigration officer makes a notification to another public authority under subsections (2) or (3), the relevant authority will tell the immigration officer whether they will accept the item or not (*subsections (4) and (5)*). If the item is accepted, the immigration officer must hand it over to the investigating authority (*subsection (6)*). If the investigating authority does not accept the item for example, because they do not believe it is evidence of an offence, and it is not being passed to another investigating authority (*subsections (8) – (9)*), it must be returned to the person it was taken from, or to the place it was seized (*subsection (10)*).

Section 50: Retention of things seized under Part 3 of the Immigration Act 1971

266 This section inserts a new section 28ZI after section 28H of the 1971 Act and aligns the framework for the retention of anything seized by an immigration officer for the purposes of a criminal investigation with that applying to police in England and Wales.

Section 51: Search for nationality documents by detainee custody officers etc

267 This section creates new search powers for detainee custody officers, prison officers and prisoner custody officers. The powers enable these officers to search a detained person who is liable to removal or deportation, or their property, when directed to do so by the Secretary of State if there are reasonable grounds to suspect that relevant documents will be found. A full search may be carried out but not in the presence of another detained person or a person of the opposite sex, including the persons conducting the search (*subsection (8)*). It does not permit an intimate search (*subsection (9)*). The purpose of the search is to obtain all documents relating to a person's nationality for example, documents that describe where a person is from and where they have been, in order to support the person's removal. The officers must then pass them to the Secretary of State. If documents are not retained by the Secretary of State, they must be returned to the person they were taken from or disposed of if return is not appropriate.

Section 52: Seizure of nationality documents by detainee custody officers etc

268 This section permits detainee custody officers, prison officers and prisoner custody officers to seize and retain nationality documents which they encounter during routine searches as part of the management of detention facilities and prisons. Officers must obtain authorisation from the Secretary of State before exercising the power to retain the document. Where the Secretary of State gives such authorisation, the officers must pass the documents to the Secretary of State, or, if authorisation is refused, return the documents to the person or location from where they were seized.

Section 53: Amendments relating to sections 51 and 52

269 This section amends Schedule 11 to the 1999 Act to expand the existing offences of assaulting or obstructing a detainee custody officer, prison officers or prisoner custody officers, to include where acting under the powers in the Act.

Section 54: Amendments to search warrant provisions

270 This section gives effect to Schedule 8.

Section 55: Supply of information to Secretary of State

271 This section expands the existing information gateway in section 20 of the 1999 Act which enables the supply of information to the Secretary of State for immigration purposes so that it includes all public authorities, or a person acting on behalf of one, other than some named exceptions. Currently, in addition to common law data sharing powers, section 20 only provides for the sharing of information, documents and articles from specified public authorities (e.g. the police and the National Crime Agency). This gives other public authorities who hold information that they are willing to share for immigration purposes, a clear statutory authority to do so.

272 *Subsection (11)* inserts a new section 20A into the 1999 Act which makes it a duty for specified persons (listed in new Schedule A1 to the 1999 Act, inserted by Schedule 9 of this Act) to provide the Secretary of State, when directed to do so, with a nationality document which may facilitate an illegal immigrant's removal from the United Kingdom. This section does not require the specified persons to collect data or information on behalf of the Secretary of State, or to seize documents from people, as it makes it clear that it only applies where the Secretary of State has reasonable grounds for believing that a document is already lawfully in their possession, i.e. that they hold the documents for the purposes of their own functions.

Example (1): Duty to supply information

Mr X is arrested for overstaying his leave in the UK. Immigration officers search his home for a passport or other nationality document which will assist with obtaining an emergency travel document from his embassy. They do not find one but they do discover a letter to him from his local authority. An immigration officer contacts the local authority and asks if they have taken a copy of Mr X's passport, ID card, or a record of the number. If the local authority confirms it has such a document, the immigration officer may direct that it is sent to the relevant immigration team. If the council confirms they do not have such a document, then there is no further action for them to take.

273 The Schedule of listed persons may be amended by regulations, which will be subject to the affirmative procedure when adding an entry to the list and the negative procedure when removing a reference or modifying an entry in consequence of a change of name or transfer of functions.

Section 56: Detention etc. by immigration officers in Scotland

274 This section amends the definition of "immigration offence" in the Criminal Law (Consolidation) (Scotland) Act 1995 to ensure that the Scottish powers of detention prior to arrest, and of arrest without warrant, apply to all immigration offences contained in, or for which an immigration officer has a power of arrest under, the Immigration Acts. This includes those offences listed in section 14 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 which immigration officers often encounter in the course of exercising a function under the Immigration Acts. It allows immigration officers to work effectively within the Scottish criminal justice system and ensures consistency in the immigration-related criminal investigation powers of immigration officers across the UK.

275 *Subsection (2)* clarifies that, under section 24A of the Criminal Law (Consolidation) (Scotland) Act 1995, the role of "custody review officer" can be undertaken by a police inspector and not

just a person of equivalent rank. For persons detained (pending arrest and charge) by an immigration officer on suspicion of an immigration or nationality offence, a 'custody review officer' may authorise an extension of the time period for which a person can be held in detention.

Section 57: Powers to take fingerprints etc. from dependants

276 This section amends the definition of dependants in sections 141 and 142 of the Immigration and Asylum Act 1999 (power to take fingerprints, and power to require attendance for fingerprinting) to bring them in line with the definition of family members in section 10 of the 1999 Act, as amended by the Immigration Act 2014, specifically to include other adult dependants, not just a spouse.

Section 58: Interpretation of Part

277 This section defines "immigration officer", "premises" and "legal privilege" for the purpose of Part 3.

Section 59: Guidance on detention of vulnerable persons

278 This section requires the Secretary of State to issue guidance to be taken into account by those assessing whether an individual would be particularly vulnerable if detained and, if it is determined that they would be, in determining whether to detain them.

279 *Subsection (4)* requires the Secretary of State to lay a draft of the guidance before Parliament prior to it being issued.

280 *Subsection (5)* provides that the guidance will be brought into force by regulations made by the Secretary of State.

Section 60: Limitation on detention of pregnant women

281 This section sets out certain limitations on the detention of women who the Secretary of State is satisfied are pregnant.

282 *Subsection (2)* provides that pregnant women may not be detained under a relevant detention power (as defined in *subsection (8)*) unless the Secretary of State is satisfied that the woman is shortly to be removed from the UK or there are exceptional circumstances to justify detention.

283 *Subsection (3)* sets out that regard must be had to a pregnant woman's welfare when a decision on detention is being reached.

284 *Subsections (4) and (5)* provide that a pregnant woman must not be detained for more than 72 hours from either the point at which the Secretary of State is satisfied that she is pregnant, or the point at which the detention begins (whichever is the later of the two). Detention can be extended up to a period of seven days in total if that longer period is authorised personally by a Minister of the Crown.

Section 61: Immigration bail

285 *Subsections (1) and (2)* give effect to Schedule 10.

286 *Subsections (3) and (4)* make clear that a person may be released, and remain on, bail under Schedule 2 to the 1971 Act where they are liable to detention, even if they can no longer be detained. This section returns the law to its previously-settled position, before the Court of Appeal's judgment in *B v The Secretary of State for the Home Department* [2015] EWCA Civ 445. *Subsection (5)* gives *subsection (3)* above retrospective effect.

Section 62: Power to cancel leave extended under section 3C of the Immigration Act 1971

287 A person who currently has leave and applies to extend their leave to enter or remain may find that their leave expires while their application remains undecided, or while an appeal or administrative review against a refusal decision remains pending. To prevent people being left without leave, section 3C of the 1971 Act provides for continuing leave to enter or remain subject to the same conditions (unless varied) pending the decision on an application, and for the duration of any appeal or administrative review in relation to such decision.

288 It is not currently possible to cancel continuing leave that exists by the operation of section 3C. Continuing leave only ends when the application is decided or withdrawn and any appeal or administrative review that may be brought is no longer pending. This creates a problem when non-compliant cases come to light as explained in the example below:

Example (1):

Mr X is a student with valid leave to remain that expires soon. He applies for further leave to remain as a student before that leave expires and while the application remains undecided his leave expires so it is extended by operation of section 3C of the 1971 Act. He remains able to work and study subject to the conditions of the leave he was granted as a student. During this period an immigration officer encounters Mr X and establishes that he is in breach of his conditions because of the employment he has entered into. The immigration officer also establishes that the original leave to remain was obtained by deception because of a fraudulently obtained English language certificate. Mr X continues to benefit from leave extended under section 3C of the 1971 Act until the application is decided and any opportunity to bring an administrative review application is concluded. (There is no right of appeal in this scenario).

Example (2):

Mr Y is a student with valid leave to remain that expires in 2 years time. An immigration officer encounters Mr Y and establishes that he is in breach of his conditions because of the employment he has entered into. The immigration officer also establishes that leave to remain was obtained by deception because of a fraudulently obtained English language certificate. The immigration officer may immediately curtail Mr Y's leave to remain, detain him and give notice that he will be removed.

289 The peculiarity of the different outcomes in the above examples is a consequence of changes to section 10 of the 1999 Act made by the 2014 Act. Until the 2014 Act came into force, section 10 set out circumstances in which a decision could be made to remove a person from the UK and provided (in section 10(8)) that the making of such a decision had the effect of invalidating any leave to enter or remain, including leave granted under section 3 of the 1971 Act, and continuing leave under section 3C of the 1971 Act.

290 *Subsection (1)* provides a mechanism to cancel leave to enter or remain extended by the

operation of section 3C. New subsection (3A) of section 3C provides a power to cancel leave which is or would otherwise be extended by section 3C, in circumstances in which either deception has been used by the applicant in seeking leave to enter or remain; or a condition attached to the person's leave has not been observed.

291 *Subsection (2)* provides that notification of cancellation of leave extended by section 3C will be given in accordance with section 4(1) of the 1971 Act, namely by notice in writing to the person affected.

Part 4: Appeals

Section 63: Appeals from within the UK: certification of human rights claims

292 Section 94B of the 2002 Act provides the Secretary of State with the power to certify that the temporary removal of a person liable to deportation (usually, a foreign national offender) pending the outcome of that person's appeal against a decision to refuse his or her human rights claim, would not breach the UK's human rights obligations. Where this power is exercised an appeal may only be brought (or continued) from outside the UK.

293 *Subsections (2), (3) and (6)* amend section 94B and section 92 of the 2002 Act by removing the existing restriction which limits the use of the power to those liable to deportation. The effect is to extend the Secretary of State's power to certify claims on this basis, to all those who have made a human rights claim (and are subject to immigration control), provided that their removal pending appeal does not breach their human rights (or those of any other person affected by the decision). This is consistent with the case-law of the European Court of Human Rights, which does not require that appeals against all human rights claims must suspend removal.

294 *Subsections (4) and (5)* amend section 94B of the 2002 Act to bring the scope of the power in line with the definition of a human rights claim in section 113 of the 2002 Act. The effect is to extend the certification power beyond appeals related to removals, such that it also includes circumstances where the individual is refused entry or required to leave the UK.

295 The Secretary of State must still consider, in each case, whether temporary removal would breach the UK's human rights obligations. This consideration will include an analysis, in particular, of whether the person concerned would face a real risk of serious irreversible harm if removed pending the outcome of the appeal. Where such a risk arises, or where removal would otherwise breach the person's human rights (or those of any other person affected by the decision), the claim will not be certified. Where the appellant has been removed but succeeds in the appeal, and there is no relevant change of circumstances or other matter which comes to light in the interim, the person will be allowed to return to the UK.

Section 64: Continuation of leave: repeals

296 This section removes section 3D of the 1971 Act.

297 The latter operated to extend a migrant's leave in circumstances in which:

- (i) the migrant's leave to enter or remain was revoked, or was varied with the result that he or she had no leave to enter or remain in the United Kingdom; and
- (ii) an appeal against, or administrative review of, such variation or revocation decision could be brought, or was pending.

298 This section has no continuing purpose in light of the substantial changes made to the

immigration appeals regime by the 2014 Act.

299 There is a saving provision dealing with those in respect of whom a decision to curtail leave was made before 6 April 2015. This is to protect those persons in relation to whom section 3D does have a continuing relevance, because their appeal right derives from, and is governed by, the previous iteration of the appeals regime.

Section 65: Deemed refusal of leave to enter: repeals

300 This section removes paragraph 2A(9) of Schedule 2 to the 1971 Act.

301 Paragraph 2A(9) applies where a person arrives at port with leave to enter that was given before his arrival. It provides that where such a person's leave is cancelled at port, the person is to be treated as if he had been refused leave to enter at a time when he had current entry clearance under Part 5 of the 2002 Act. However, following the substantial changes made to the appeals regime, by the 2014 Act, neither refusal of leave to enter, nor cancellation of entry clearance at port, gives rise to a right of appeal. Accordingly, the provision has no continuing purpose.

302 There is a saving provision in place in order to preserve the appeal right of persons with a pending appeal against a deemed refusal of leave to enter under the previous appeals regime.

Part 5: Support for certain categories of migrant

Section 66: Support for certain categories of migrant

303 This section gives effect to Schedule 11.

Section 67: Unaccompanied refugee children: relocation and support

304 This section sets out that the Secretary of State must make arrangements to relocate to the United Kingdom and support a specified number of unaccompanied refugee children from other countries in Europe and that the number of children to be resettled shall be determined by the Government in consultation with local authorities. This number must be in addition to the resettlement of children under the Vulnerable Persons Relocation Scheme.

Section 68: Availability of local authority support

305 This section gives effect to Schedule 12.

Section 69: Transfer of responsibility for relevant children

306 This section facilitates the transfer of responsibility for caring for particular categories of unaccompanied migrant children, including unaccompanied asylum seeking children (UASC), from one local authority in England, to another.

307 Subsection (9)(c) enables the UASC transfer provisions to be extended to those migrant children arriving in the UK with leave to enter or remain, for example to ensure that refugee children resettled as part of the Government's new resettlement scheme could be included in a dispersal scheme.

Section 70: Duty to provide information for the purposes of transfers of responsibility

308 This section enables the Secretary of State to direct local authorities in England to provide information about the support and accommodation provided to children in their care. This will inform arrangements made for the transfer of particular categories of unaccompanied migrant children from one local authority to another.

Section 71: Request for transfer of responsibility for relevant children

309 This section enables the Secretary of State to direct the provision of written reasons as to why a local authority in England refuses to comply with a request to accept responsibility for an unaccompanied migrant child from another local authority.

Section 72: Scheme for transfer of responsibility for relevant children

310 This section creates a mechanism for the Secretary of State to require local authorities in England to co-operate in the transfer of particular categories of unaccompanied migrant children from one local authority to another.

Section 73: Extension to Wales, Scotland and Northern Ireland

311 This section enables the Secretary of State to make regulations to extend any of the provisions made by sections 69 to 72 to Wales, Scotland and Northern Ireland or make similar provision applying to Wales, Scotland or Northern Ireland.

Part 6: Border Security

Section 74: Penalties relating to airport control areas

312 Under paragraph 26 to Schedule 2 to the 1971 Act, the Secretary of State can designate 'control areas'; a specific area in a port through which passengers must embark and disembark. Some airlines and port operators fail to take all reasonable steps to ensure that all passengers disembark through immigration control.

313 *Subsection (1)* inserts new sub-paragraph (4) into paragraph 26 of Schedule 2 to the 1971 Act. Sub-paragraph (4) refers to Part 1A of Schedule 2 which creates a civil penalty regime for those connected with aircraft or airports who have received a written notice from the Secretary of State that designates control areas for the embarkation or disembarkation of passengers and specifies conditions and restrictions in a control area. The civil penalty regime will apply when those connected with aircraft or airports fail to ensure that passengers embark or disembark in accordance with conditions set by the Secretary of State or for other breaches of conditions or restrictions in a control area.

314 *Subsection (2)* gives effect to Schedule 13.

Section 75: Maritime enforcement

315 This section gives effect to Schedule 14.

Section 76: Persons excluded from the United Kingdom under international obligations

316 This section makes various amendments to Part 1 of the 1971 Act.

317 *Subsection (1)* amends section 8 of the 1971 Act to clarify that the limited leave of individual who ceases to be entitled to an exemption under that section will not continue if that leave has expired, or otherwise ceased.

318 *Subsection (2)* amends section 8A of the 1971 Act to make clear that section 8A(2)(b) cannot bestow leave upon a person who has ceased to be exempt under section 8 by virtue of section 8B(3).

319 *Subsections (3) to (9)* amend section 8B of the 1971 Act, which provides for certain persons' exclusion from the UK pursuant to the UK's international obligations under UN Security Council resolutions and EU Council instruments.

- 320 *Subsection (4)* clarifies that any leave given to an excluded person is invalid.
- 321 *Subsection (5)* provides that seamen, aircrews and other special cases entitlements to be exempt from immigration control under the 1971 Act do not apply whilst the person is an excluded person.
- 322 *Subsections (6) and (7)* provide that a person identified in a relevant instrument of the UN or EU as being subject to a travel ban is an excluded person. Previously an individual was not an excluded person until the relevant UN or EU travel ban instrument was incorporated into UK law which required amendment to the Schedule to the Immigration (Designation of Travel Bans) Order 2000 for each travel ban implemented.
- 323 *Subsection (8)* inserts a new subsection (5A) into section 8B of the 1971 Act. This means that the exclusion will not apply if it would be contrary to the UK's Human Rights or Refugee Convention obligations, or if the EU or UN has allowed an exemption to apply.
- 324 *Subsection (9)* removes subsections (6) to (8) of section 8B from the 1971 Act as a consequence of the changes in subsections (4) and (5). This means that secondary legislation is no longer required to give effect in domestic law to resolutions of the UN Security Council or instruments of the Council of the European Union containing travel bans. They will have automatic effect in the UK.

Part 7: Language Requirements for Public Sector Workers

Section 77: English language requirements for public sector workers

- 325 In order to improve the quality of service provided by public authorities, such as the NHS and the Police, the Government believe that workers who regularly speak to the public as part of their role must be able to speak fluent English. Fluent English is defined in this section as a sufficient command of spoken English that enables workers, employed when or after this duty comes into effect, to perform their role effectively. The duty will only apply to public authorities defined in section 78, and such authorities should consider the applicable code of practice under section 80 when deciding how to comply with the duty. The section also requires such public authorities to operate procedures for handling complaints about breaches of the duty, and to have regard to the applicable code of practice under section 80 when deciding whether those procedures are adequate.

Section 78: Meaning of “public authority”

- 326 This section defines what is meant by a public authority for the purposes of this Part. The section excludes specified public authorities, and enables the Secretary of State or Chancellor of the Duchy of Lancaster (“the relevant Minister”) to make regulations to modify the exclusions. Modifications may include adding a new body with public functions or removing an existing body.
- 327 Subsection (3) to (7) clarify that for the purpose of Part 7 a ‘public authority’ in any of Scotland, Wales and Northern Ireland is limited to a person who exercises ‘non-devolved’ functions

Section 79: Power to expand meaning of person working for public authority

- 328 This section enables the relevant Minister to make regulations to extend the duty in section 77 to specified categories of workers employed by private or voluntary sector providers of contracted-out public services.

Section 80: Duty to issue codes of practice

329 This section requires the relevant Minister to issue and keep in force one or more codes of practice for the purposes of the duty in section 77. *Subsection (2)* lists the information that a code of practice must address including – the requisite standard of spoken English; how any failures to meet that standard can be dealt with; procedures for dealing with complaints for a breach of the duty in section 77; and how public authorities are to comply with that duty and their other legal obligations. The section also gives the relevant Minister discretion to make appropriate provision in the code to ensure the duty is complied with. The code’s provisions may relate to all, or specific public authorities, and may be different for different public authorities.

Section 81: Procedure for codes of practice

330 This section sets out the steps that the relevant Minister must take when preparing a code of practice under section 80. The section also allows the relevant Minister to review the code and then revise and re-issue it, so long as he has completed the steps he is required to take in relation to the original code.

Section 82: Application of Part to Wales

331 This section sets out the detail of how this Part applies to public authorities exercising functions in Wales. They must, in particular, ensure that someone working for them in a customer-facing role speaks fluent English or Welsh, in line with the requirements of language schemes made pursuant to the now-repealed Welsh Language Act 1993 and the standards stipulated by the Welsh Language (Wales) Measure 2011.

Section 83: Interpretation of Part

332 This section defines what is meant by contract, public authority, relevant Minister and Wales for the purposes of this Part.

Section 84: Crown application

333 The intention is for the English language measure in this part of the Act to include central government departments and other Crown bodies. This section ensures that Crown bodies are brought within the scheme.

Part 8: Fees

Section 85: Immigration skills charge

334 *Subsection (2)* inserts new section 70A into the 2014 Act.

335 Subsection (1) and (2) of new section 70A provide the Secretary of State with the power, through regulations, to require certain employers to pay an immigration skills charge for each worker from outside the European Economic Area whom they sponsor.

336 Subsection (3) of new section 70A provides that the regulations may include information about the amount, method of payment, consequences of non-payment and for exemptions from the charge. The regulations may also provide for a reduction, waiver or refund of all or part of the charge.

337 Any funds collected under this power must be paid to either the Consolidated Fund or applied as specified in the regulations (new subsection (4)). All regulations must be approved by the Treasury (new subsection (5)).

Section 86: Power to make passport fees regulations

338 This section provides a power to the Secretary of State to make regulations setting out the

fees to be charged in respect of applications for the issue of passports or other travel documents.

339 *Subsection (1)* provides the Secretary of State with a power to specify the functions in respect of which fees can be charged in regulations.

340 *Subsection (3)* provides that the fees to be charged must be a fixed amount specified in the regulations or an amount that is to be calculated by reference to the hourly rate or other factor specified in the regulations.

341 *Subsection (4)* provides that the fee charged may exceed the cost of exercising the function and *subsection (5)* lists the functions that can be considered by the Secretary of State when fixing a fee. *Subsection (6)* enables the regulations to provide for exceptions and the reduction, waiver or refund of part of all of a fee, including by conferring a discretion or otherwise. *Subsection (6)* also enables the Secretary of State to make provision about the failure to pay a fee, time limits for payment and enforcement.

342 *Subsections (7), (8) and (9)* provide definitions and clarification of terms used in this section.

Section 87: Passport fees regulations: supplemental

343 This section provides further detail on the power to charge fees for passports through regulations. Passport fees regulations can only be made with the consent of the Treasury (*subsection (1)*), fees may relate to functions exercised outside the UK (*subsection (2)*) and may be recovered as a debt owed to the Secretary of State (*subsection (3)*).

344 *Subsection (4)* provides that fees paid under the regulations must be paid into the Consolidated Fund or be applied in such other way as is specified in fees regulations.

345 *Subsection (5)* provides that these provisions are without prejudice to the existing powers to charge passport fees, namely those in the Consular Fees Act 1980 or the Finance (No.2) Act 1987 or in any other legislation.

Section 88: Power to charge fees for passport validation services

346 This section provides a power to charge fees for the provision of passport validation services. These are services in connection with the UK passport validation service, confirming the validity of a UK passport or the accuracy of the information in them.

347 *Subsection (3)* provides a definition of United Kingdom passport.

348 *Subsection (5)* provides that any fee payable may be recovered as a debt due to the Secretary of State and *subsection (4)* that fees paid under this provision must be paid into the Consolidated Fund unless an alternative is specified in regulations.

349 *Subsection (6)* provides that regulations under *subsection (5)* can only be made with Treasury consent and *subsection (7)* provides that this power, like that in Section 87, is without prejudice to existing powers to charge fees.

Section 89: Civil registration fees

350 This section gives effect to Schedule 15.

Part 9: Miscellaneous and general

Section 90: Duty regarding the welfare of children

351 Puts on the face of the Act that the powers being introduced continue to be subject to the duty to have regard to the welfare of children under section 55 of the Borders, Citizenship

These Explanatory Notes relate to the Immigration Act 2016 (c. 19) which received Royal Assent on 12 May 2016

and Immigration Act 2009.

Sections 91-96: Final provisions

352 These sections provide powers to make transitional and consequential provision. They also make provision for commencement by order and about the extent of the Act, as set out in paragraphs 48 to 52 of this document.

Schedules

Schedule 1: Persons to whom the Director etc may disclose information

353 This schedule lists the persons to whom the Director etc may disclose information.

Schedule 2: Functions in relation to labour market

354 This schedule contains amendments to other Acts that are necessary to extend the remit of the GLAA to other labour market enforcement functions.

355 Paragraphs 1-3 amend the Employment Agencies Act 1973 so that in addition to appointing his own officers to enforce the Act, the Secretary of State can also make arrangements for officers of other relevant authorities, including the GLAA, to enforce it.

356 Paragraphs 4-7 amend the National Minimum Wage Act 1998 so that in addition to appointing his own officers or arranging for any Minister of the Crown or government department or anybody performing functions on behalf of the Crown or their officers to enforce the Act, the Secretary of State can also make arrangements for the GLAA to enforce it.

357 Paragraphs 8-17 inserts new sections 11A and 30A of the Modern Slavery Act, giving the Secretary of State the power to make arrangements for the GLAA to enforce those offences within Parts 1 and 2 of the Act that are defined as labour market offences. This would enable the GLAA to investigate offences under the Modern Slavery Act 2015 of slavery, servitude, forced or compulsory labour or human trafficking. It would also enable the GLAA to apply to the courts to obtain Slavery and Trafficking Prevention Orders and Slavery and Trafficking Risk Orders and investigate breaches of their Orders, under Part 2 of the Modern Slavery Act 2015.

358 Currently section 33 of the Modern Slavery Act requires the Secretary of State to issue guidance to those bodies in the exercise of their powers under Part 2 of the Act. Paragraph 17 amends Section 33 to require the Secretary of State to also issue guidance to the GLAA, reflecting their new role.

Schedule 3: Consequential and related amendments

359 This schedule contains amendments to other Acts that are necessary for the labour market enforcement measures in Chapter 1 to be complete.

360 *Paragraphs 10 to 12* amend the Police Reform Act 2002.

361 *Paragraph 11* introduces Independent Police Complaints Commission (IPCC) oversight for GLAA officers' exercise of PACE powers.

362 *Paragraph 12* allows the Secretary of State to confer functions on the IPCC in relation to GLAA officers, including regulations making provision for the GLAA to make payment to the IPCC. It also allows the IPCC and Parliamentary Commissioner for Administration to jointly investigate GLAA officers and ensures that GLAA officers, the IPCC and Parliamentary

- Commissioner for Administration disclose information as part of any complaints procedure.
- 363 *Paragraphs 13 to 29* amend the Gangmasters (Licensing) Act 2004.
- 364 *Paragraphs 14 and 15* update Section 1 of the Act to reflect the Gangmasters and Labour Abuse Authority's new name.
- 365 *Paragraph 15* also introduces a duty on the GLAA to exercise their functions in accordance with the Director's strategy.
- 366 *Paragraph 16* means that before giving specific directions to the GLAA in writing, the Secretary of State must consult the GLAA and the Director of Labour Market Enforcement.
- 367 *Paragraph 17* allows the Secretary of State to apply the Act to prescribed areas of work, through regulations, after consulting with the GLAA and Director of Labour Market Enforcement.
- 368 *Paragraph 18* means that licensing rules would not only be introduced by statutory instrument, as they are currently, but would also be subject to the added requirement of the approval of the Secretary of State for all types of rule, including rules about fees.
- 369 *Paragraphs 19 to 22* provide that where they have them, GLAA enforcement officers can rely on their PACE powers, rather than relying on powers in the Gangmasters Licensing Act 2004.
- 370 *Paragraph 23* enables the GLAA to share information encompassing all labour market enforcement functions within the Director's remit and labour market enforcement undertaking and orders.
- 371 *Paragraph 24* amends Schedule 2 of the Gangmasters (Licensing) Act 2004, which covers the application of the Act to Northern Ireland. This makes sure that other than the name change it remains as it is in Northern Ireland as the GLAA's expanded role under the Gangmasters (Licensing) Act 2004 applies only in Great Britain.
- 372 *Paragraph 25* updates the Pensions Act 2004 to add the Director of Labour Market Enforcement and a member of his/her staff to the list of persons which the Pensions Regulator needs in order to share their information under that Act whilst retaining the restrictions in onward sharing in that Act.
- 373 *Paragraph 26* updates the Natural Environment and Rural Communities Act 2006 to reflect the Gangmasters and Labour Abuse Authority's new name.
- 374 *Paragraph 27* updates the Regulatory Enforcement and Sanctions Act 2008 to reflect the Gangmasters and Labour Abuse Authority's new name.
- 375 *Paragraphs 28 to 35* amend the Modern Slavery Act 2015.
- 376 *Paragraphs 29 and 34* update section 52 and Schedule 3 of the Modern Slavery Act 2015 respectively to change references to the Gangmasters Licensing Authority to the renamed Gangmasters and Labour Abuse Authority.
- 377 *Paragraph 30* inserts a new section 54A into the Modern Slavery Act allowing disclosure of information to the GLAA from specified persons and vice versa. A new Schedule 4A in the Modern Slavery Act 2015 will list those specified persons – this is inserted in paragraph 35. It also introduces the power for the Secretary of State to amend this list, through regulations.
- 378 *Paragraph 32* means that the power to add to this list is subject to the affirmative procedure.
- 379 *Paragraph 31* repeals section 55 of the Modern Slavery Act 2015 and the duty on the Secretary

of State to consult on the role of the Gangmasters Licensing Act, now that this has been completed.

380 *Paragraph 33* ensures that these new additions to the Modern Slavery Act 2015 (section 54A and Schedule 4A) only apply to England and Wales.

381 *Paragraph 36* updates the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 to reflect the Gangmasters and Labour Abuse Authority's new name.

Schedule 4: Licensing Act 2003: amendments relating to illegal working

382 *Paragraph 1* which inserts a new section 192A into the Licensing Act 2003 ('the 2003 Act') defines entitlement to work in the UK for the purposes of the 2003 Act.

383 *Paragraph 2* amends Part 3 of the 2003 Act (premises licences) with *paragraph 4* providing that a person without the entitlement to work in the UK may not apply for a licence to sell alcohol from particular premises, for example a public house, or to provide late night refreshment. The scheme only applies to licensees who are resident in the UK. Non-resident licensees are not subject to immigration controls.

384 *Paragraph 3* provides for the Secretary of State to be added to the list of responsible authorities notified when an application for a premises licence is submitted. This will enable the Secretary of State to make relevant representations in respect of such an application if she is satisfied that issuing the licence would undermine the licensing objective of the prevention of crime and disorder. Illegal working is a crime under the new offence created by section 34 of this Act and employing an illegal worker may also be an offence if the mens rea is satisfied under the offence amended by section 35 of this Act.

385 *Paragraph 5* inserts a new subsection (1A) into section 27 of the 2003 Act with the effect that an existing premises licence lapses if the licence holder ceases to be entitled to work in the UK. *Paragraphs 6 to 11* provide that this provision also applies to applications to transfer a licence and to interim authority notices.

386 Part 3 amends Part 6 of the 2003 Act (personal licences) with the effect that an applicant for a personal licence must have an entitlement to work in the UK and provides that the commission of immigration offences and requirements to pay civil penalties under immigration law on employers and landlords of illegal migrants may be considered by licensing authorities when considering whether to grant a licence. The commission of immigration offences may be considered by courts when considering forfeiture. Part 3 prescribes the circumstances in which a person has been required to pay a civil penalty, with reference to periods for objecting and appealing and the arrangements for establishing an excuse by conducting specified checks on workers and tenants.

387 *Paragraph 13* amends section 113 of the 2003 Act. *Paragraph 13(3)*, together with *paragraph 21*, inserts a new subsection (2A) into section 113 and amends Schedule 4 to the 2003 Act, to make an immigration offence a relevant offence for the purposes of Part 6 of the 2003 Act; and sub-paragraph (4) inserts provision defining 'immigration penalty' and provides when a person is treated as being subject to such a notice.

388 *Paragraph 14* amends section 115 of the 2003 Act (period of validity of personal licence) to provide that a personal licence ceases to have effect if the holder ceases to be entitled to work in the UK.

- 389 *Paragraph 15* amends section 120 of the 2003 Act (determination of application for grant) to provide that if the applicant for a personal licence has been convicted of an immigration offence or been issued with an immigration penalty the chief officer of police and the Secretary of State must be notified of the application. New subsection (5B) of the 2003 Act provides that if, having regard to the applicant's commission of an immigration offence (or foreign comparable offence) or requirement to pay an immigration penalty, the Secretary of State is satisfied that granting the licence would be prejudicial to the prevention of illegal working in licensed premises, the Secretary of State must issue an immigration objection notice within 14 days. *Paragraph 16* amends section 122 of the 2003 Act and inserts a new subsection (2A) into that section to provide for notification by the licensing authority of its decision after the Secretary of State has given an immigration objection notice. *Paragraph 17* amends section 123 of the 2003 Act to deal with convictions for an immigration offence or requirement to pay an immigration penalty during the application period and *paragraph 18* amends section 124 of the 2003 Act to make provision for convictions for an immigration offence or requirement to pay an immigration penalty which come to light after the grant of a personal licence. New subsection (3B) sets out the steps the Secretary of State may take on being notified of a previous immigration offence or requirement to pay an immigration penalty.
- 390 *Paragraph 19* amends section 125(3) of the 2003 Act to require details of immigration penalties to be included in a personal licence and *paragraph 20* amends section 132 of the 2003 Act to require a licence holder to notify a licensing authority if required to pay an immigration penalty.
- 391 *Paragraph 22* amends section 179 of the 2003 Act to provide power for an immigration officer to enter premises which he has reason to believe are being used for certain licensable activities with a view to seeing whether immigration offences are being committed in connection with that activity.
- 392 Part 5 amends Schedule 5 to the 2003 Act to enable the Secretary of State to appeal against a decision of a licensing authority where the Secretary of State has given notice opposing a transfer of a premises licence (*paragraph 24*), an interim authority notice (*paragraph 25*) or grant of a personal licence (*paragraph 27*). *Paragraph 28* inserts into Schedule 5 to the 2003 Act provision that on any appeal, a magistrates' court may not consider whether or not the individual should have been granted leave to enter or remain in the UK.
- 393 Part 6 amends the interpretation section of the 2003 Act (sections 193 and 194) to include a definition of the prevention of illegal working in licensed premises for the purpose of Parts 2 and 3 of this Schedule, and includes immigration offences and penalties in the Act's index of defined expressions.
- 394 Part 7 makes provision for transitional arrangements. *Paragraph 34* provides that a premises licence issued before these measures come into force will not lapse if the holder's entitlement to work in the UK ceases. *Paragraph 35* makes the same provision in respect of personal licences. *Paragraph 36* relates to personal licences granted before or after the measures comes into force and has the effect of providing that a licensing authority may take account of immigration offences which were committed before or after the commencement of these measures when considering applications for personal licences.

Schedule 5: Private hire vehicles etc.

Metropolitan Public Carriage Act 1869 (c.115)

395 *Paragraph 2* states that the following paragraphs make changes to the taxi licensing regime for London by amending the Metropolitan Public Carriage Act 1869 ('the 1869 Act'). The changes made to the 1869 Act are slightly different to those made to the Local Government (Miscellaneous Provisions) Act 1976 and the Private Hire Vehicles (London) Act 1998. This is because part of the taxi licensing regime in London is governed by secondary legislation rather than primary legislation (the London Cab Order 1934). The intention is that this order will be amended in line with these provisions.

396 *Paragraph 4* inserts a new section 8A into the 1869 Act which ensures that where someone's immigration leave is time-limited to less than the statutory length for a driver licence, the licence will be issued for a duration which does not exceed the applicant's period of leave. Where an applicant's leave has been extended by virtue of section 3C of the Immigration Act 1971 any licence granted will be limited to a period not exceeding six months.

Where a licence holder's leave comes to an end (for example, through curtailment) their licence automatically lapses. When this happens the holder must return their licence, any copy, and their driver's badge to the licensing authority. A person who fails to do so within seven days, without reasonable cause, will be committing an offence and, on summary conviction, is liable to a fine not exceeding level 3 on the standard scale, and in the case of a continuing offence, a daily fine for each day they fail to return the documents after conviction.

Plymouth City Council Act 1975 (c. xx)

397 Taxi and private hire vehicle licensing in Plymouth is governed by the Plymouth City Council Act 1975, and not the Local Government (Miscellaneous Provisions) Act 1976. *Paragraph 5* states that the 1975 Act is being amended in order to extend to Plymouth taxi and private hire vehicle licensing provisions equivalent to those in the rest of England and Wales, and set out under the 1976 Act. These changes are detailed in *paragraphs 6 to 16*.

The Local Government (Miscellaneous Provisions) Act 1976 (c. 57)

398 *Paragraph 17* states that the following paragraphs make changes to the taxi and private hire vehicle licensing regime in England and Wales (except London and Plymouth) by amending the Local Government (Miscellaneous Provisions) Act 1976 ('the 1976 Act').

399 *Paragraphs 18, 21 and 23* amend the 1976 Act to provide that driver and operator licences shall not be issued to applicants who are disqualified by their immigration status (*paragraph 18* deals with private hire vehicle drivers, *paragraph 21* with operators and *paragraph 23* with taxi drivers). The licensing authority must have regard to any guidance issued by the Secretary of State in making a decision about someone's immigration status.

400 *Paragraph 20* inserts a new section 53A into the 1976 Act which ensures that where someone's immigration leave is time-limited to less than the statutory length for a driver's licence, the licence will be issued for a duration which does not exceed the applicant's period of leave. Where an applicant's leave has been extended by virtue of section 3C of the Immigration Act 1971 any licence granted will be limited to a period not exceeding six months.

401 Where a licence holder's leave comes to an end (for example, through curtailment) their licence automatically lapses. When this happens the holder must return their licence, any copy, and their driver's badge to the licensing authority. A person who fails to do so within

These Explanatory Notes relate to the Immigration Act 2016 (c. 19) which received Royal Assent on 12 May 2016

seven days, without reasonable cause, will be committing an offence and on summary conviction, is liable to a fine not exceeding level 3 on the standard scale, and in the case of a continuing offence, a daily fine for each day they fail to return the documents after conviction.

402 *Paragraph 22* inserts a new section 55ZA which makes similar amendments as new section 53A in respect of operator licences.

403 *Paragraphs 24 and 25* make amendments to the 1976 Act to specify that grounds for suspension and revocation of driver and operator licences include where the holder has been convicted of an immigration offence or required to pay an immigration penalty.

404 *Paragraph 26* inserts a new section 62A which clarifies that the holder of a licence which has been suspended or revoked on immigration grounds must return that licence within a specified period. Failure to do so, without reasonable cause, is an offence. The Secretary of State may amend the fine amount in the case of a continuing offence, by means of regulations.

405 *Paragraph 27* clarifies that on any appeal against the refusal or revocation of a licence under part II of the 1976 Act, the court is not entitled to consider whether the appellant should be granted leave, or has been granted leave subsequent to the decision being appealed.

406 *Paragraph 28* inserts new section 79A into the 1976 Act which defines persons 'disqualified by reason of immigration status', which is used in the rest of the new provisions, as meaning someone who is subject to immigration control and has no valid and extant leave in the UK, or no right to undertake the work in question. It also specifies that these provisions apply to those who are on immigration bail who have no right to work, and defines a licensable activity.

407 *Paragraph 28* also inserts new section 79B which details what are relevant immigration offences and immigration penalties for the purposes of these provisions.

Civic Government (Scotland) Act 1982 (c. 45)

408 *Paragraph 29* states that the following paragraphs make changes to the Civic Government (Scotland) Act 1982.

409 *Paragraph 30* amends the 1982 Act to provide that taxi and private hire car driving licences shall not be issued to applicants who are disqualified by their immigration status. The licensing authority must have regard to any guidance issued by the Secretary of State in making a decision about someone's immigration status.

410 *Paragraph 31* inserts a new section 13A which describes the circumstances in which someone is disqualified from driving a taxi or private hire vehicle by reason of their immigration status.

411 *Paragraph 32* inserts a new paragraph 8A into Schedule 1 to the 1982 Act which ensures that where someone's immigration leave is time-limited to less than the statutory length for a driver's licence, the licence will be issued for a duration which does not exceed the applicant's period of leave. Where an applicant's leave has been extended by virtue of section 3C of the Immigration Act 1971 any licence granted will be limited to a period not exceeding six months. Sub-paragraph (7) to (9) of new paragraph 9A state that a licence which ceases to have effect must be returned to the licensing authority within 7 days and failure to return constitutes an offence.

412 *Paragraph 32(4)* specifies that grounds for suspension and revocation of driver licences and

that this includes where the holder has been convicted of an immigration offence or required to pay an immigration penalty.

413 *Paragraph 32(5)* clarifies that on any appeal against the refusal or revocation of a driver's licence the Sheriff is not entitled to consider whether the appellant should be granted leave, or has been granted leave subsequent to the decision being appealed.

414 *Paragraph 32(6)* provides details of the relevant immigration offences and immigration penalties for the purposes of these provisions.

Road Traffic Offenders (Northern Ireland) Order 1996 (SI 1996/1320 (NI 10))

415 *Paragraph 33* amends the Road Traffic Offenders (Northern Ireland) Order 1996 to specify the fine amount for the offence of failing to return an operator's licence when required to do so.

Private Hire Vehicles (London) Act 1998 (c. 34)

416 *Paragraph 34* states that the following paragraphs make changes to the private hire licensing regime in London by amending the Private Hire Vehicles (London) Act 1998 ('the 1998 Act').

417 *Paragraph 35* adds a definition of 'operate' to the 1998 Act because this term is subsequently used in other amendments made to the 1998 Act.

418 *Paragraphs 36 and 38* amend the 1998 Act to provide that private hire driver (*paragraph 38*) and operator (*paragraph 36*) licences shall not be issued to applicants who are disqualified by their immigration status. The licensing authority must have regard to any guidance issued by the Secretary of State in making a decision about someone's immigration status.

419 *Paragraph 37* inserts a new section 3A into the 1998 Act which ensures that where someone's immigration leave is time-limited to less than the statutory length for an operator's licence, the licence will be issued for a duration which does not exceed the applicant's period of leave. Where an applicant's leave has been extended by virtue of section 3C of the Immigration Act 1971, any licence granted will be limited to a period not exceeding six months.

420 Where a licence holder's leave comes to an end (for example, through curtailment) their licence automatically lapses. When this happens the holder must return their licence and driver's badge to the licensing authority. A person who fails to do so within seven days, without reasonable cause, will be committing an offence and on summary conviction, is liable to a fine not exceeding level 3 on the standard scale, and in the case of a continuing offence, a daily fine for each day they fail to return the documents after conviction.

421 *Paragraph 39* inserts a new section 13A which make similar amendments as new section 3A in respect of driver licences.

422 *Paragraph 40* makes amendments to the 1998 Act to specify that grounds for suspension and revocation of driver and operator licences include where the holder has been convicted of an immigration offence or required to pay an immigration penalty

423 *Paragraph 41* clarifies that on any appeal against the refusal or revocation of a licence under the 1998 Act the court is not entitled to consider whether the appellant should be granted leave, or has been granted leave subsequent to the decision being appealed.

424 *Paragraph 43* inserts new section 35A into the 1976 Act which defines 'persons disqualified by reason of immigration status', which is used in the rest of the new provisions, as meaning someone who is subject to immigration control and has no valid and extant leave in the UK, or no right to undertake the work in question. It also specifies that these provisions apply to

those who are on immigration bail who have no right to work, and defines a licensable activity.

425 *Paragraph 42* also inserts new section 35B which details what are relevant immigration offences and immigration penalties for the purposes of these provisions.

Taxis Act (Northern Ireland) 2008 (c. 4)

426 *Paragraph 45* states that the Taxis Act (Northern Ireland) 2008 is amended as set out in the paragraphs to follow.

427 *Paragraphs 46 and 48* amend the 2008 Act to provide that taxi operator (*paragraph 46*) and driver (*paragraph 48*) licences shall not be issued to applicants who are disqualified by their immigration status. The licensing authority must have regard to any guidance issued by the Secretary of State in making a decision about someone's immigration status.

428 *Paragraph 47* inserts a new section 2A into the 2008 Act which ensures that where someone's immigration leave is time-limited to less than the statutory length for an operator's licence, the licence will be issued for a duration which does not exceed the applicant's period of leave. Where an applicant's leave has been extended by virtue of section 3C of the Immigration Act 1971, any licence granted will be limited to a period not exceeding six months.

429 Where a licence holder's leave comes to an end (for example, through curtailment) their licence automatically lapses. Where a licence holder's leave disqualifies them from continuing to hold their licence or it expires, the holder must return their licence to the licensing authority. A person who fails to do so within seven days, without reasonable cause, will be committing an offence.

430 *Paragraph 49* inserts a new section 23A which makes similar amendments as new section 2A in respect of driver licences.

431 *Paragraph 50* specifies that grounds for suspension and revocation of driver and operator licences include where the holder has been convicted of an immigration offence or required to pay an immigration penalty

432 *Paragraph 52* clarifies that on any appeal against the refusal or revocation of a licence the court is not entitled to consider whether the appellant should be granted leave, or has been granted leave subsequent to the decision being appealed.

433 *Paragraph 53* inserts a new section 56A into the 2008 Act which defines 'persons disqualified by reason of immigration status', which is used in the rest of the new provisions, as meaning someone who is subject to immigration control and has no valid and extant leave in the UK, or no right to undertake the work in question. It also specifies that these provisions apply to those who are on immigration bail who have no right to work, and defines a licensable activity.

434 *Paragraph 53* also inserts new section 56B which details what are relevant immigration offences and immigration penalties for the purposes of these provisions.

Transitional provisions

435 *Paragraphs 54 to 56* ensure that the amendments to the licensing provisions in the various Acts set out in this Schedule do not have retrospective effect

Schedule 6: Illegal working closure notices and illegal working compliance orders

Paragraph 1: Illegal working closure notices

- 436 Sub-paragraphs (1) and (2) provide that a chief immigration officer or above can issue a notice to close premises for a specified period if two conditions are met (see below). The closure notice does not apply to a person who lives on the premises or who is authorised in writing by an immigration officer, to access the premises. The closure notice prohibits paid or voluntary work on the premises unless authorised in writing by an immigration officer.
- 437 Sub-paragraphs (3) and (4) set out the first condition, which is that there is an illegal worker employed by an employer operating at the premises. This is an employee who is subject to immigration control and does not have valid leave or whose leave prohibits employment.
- 438 Sub-paragraph (6) sets out the second condition, which is that the employer of the illegal worker, or a person connected with that employer, has previously breached illegal working legislation. This includes being convicted for an illegal working offence, receiving a valid civil penalty within the last three years or a valid civil penalty at any time which has not been paid. Sub-paragraph (9) describes people connected to the employer who may also fulfill the second condition.
- 439 Sub-paragraph (7) ensures that a conviction which is deemed spent is not relevant when determining whether the first condition for issuing the notice is satisfied.
- 440 Sub-paragraph (8) defines a valid civil penalty.
- 441 Sub-paragraph (10) prevents a notice being issued where the employer can show that he has conducted right to work checks in respect of each illegal worker.
- 442 Sub-paragraphs (11) and (12) require an immigration officer to make reasonable efforts to inform people who live on the premises and consult others as appropriate before issuing a notice.
- 443 Sub-paragraph (13) permits the Secretary of State to amend the minimum rank of immigration officer able to issue to the closure notice. These regulations are subject to the affirmative procedure.

Paragraph 2: Illegal working closure notices: further provision

- 444 Sub-paragraph (1) lists the information to be provided in an illegal working closure notice.
- 445 Sub-paragraphs (2), (3) and (4) provide that the closure cannot exceed 24 hours; or 48 hours (excluding Christmas day) if the notice is issued by an immigration officer of at least the rank of immigration inspector.
- 446 Sub-paragraphs (5) and (6) provide that an immigration inspector can extend the period of closure by 24 hours for up to a maximum of 48 hours.
- 447 Sub-paragraph (7) permits the Secretary of State to amend the minimum rank of immigration officer able to issue or extend the period of the closure notice beyond 24 hours. These regulations are subject to the affirmative procedure.

Paragraph 3: Cancellation of closure notices

- 448 Sub-paragraph (1) permits an immigration officer to issue a cancellation notice where they consider that one of the trigger conditions has not been met or the employer has shown that, if he were issued a civil penalty, he would be excused from paying it in relation to the

employment of each illegal worker.

449 Sub-paragraph (2) requires that the immigration officer cancelling the notice must be of at least equal rank to the immigration officer who issued or extended it.

Paragraph 4: Service of notices

450 Sub-paragraphs (1) and (2) require notices under this Schedule to be served by an immigration officer who must, if possible, fix a copy of the notice to various points at the premises and give a copy of the notice to at least one person who has control of or lives on the premises, or was informed that the notice was going to be issued.

451 Sub-paragraph (3) requires the immigration officer to serve a notice on any other person who they reasonably believe to occupy any other part of the building or other structure in which the premises are situated if their access to that other part will be impeded.

452 Sub-paragraph (4) allows an immigration officer to use reasonable force to enter any premises in order to fix or serve a copy of the notice.

Paragraph 5: Illegal working compliance orders

453 Sub-paragraphs (1) and (2) require an immigration officer to make an application for an illegal working compliance order where an illegal working closure notice is issued unless the notice has been cancelled.

454 Sub-paragraph (3) and (4) require the application for the compliance order to be heard by the court within 48 hours (excluding Christmas Day) of the closure notice being served.

455 Sub-paragraph (5) allows the court to make an order where it is satisfied on the balance of probabilities that the conditions in paragraph 1 sub-paragraphs (3) and (5) are met and it is necessary to prevent illegal working.

456 Sub-paragraph (6) sets out a non-exhaustive list of conditions that may be included in an illegal working compliance order. The court may prohibit or restrict access to the premises and require the employer to conduct right to work checks or produce documentation in relation to employees. The court may also specify when an immigration officer can enter the premises to carry out investigations and inspections to ensure compliance with illegal working legislation. The provision also makes clear that the court may also make any other provision it considers appropriate.

457 Sub-paragraph (7) is self explanatory.

458 Sub-paragraph (8) restricts the maximum duration of an order to 12 months.

459 Sub-paragraph (9) confirms that an order which prohibits or restricts access can do so in relation to particular persons, times or circumstances.

460 Sub-paragraph (10) permits an order to be made in respect of the whole or any part of the premises and can include provision as to access to other parts of the building or structure in which the premises is situated.

461 Sub-paragraph (11) applies to premises in England and Wales only. It requires the court to notify the relevant licensing authority if it makes an illegal working compliance order in respect of licensed premises.

Paragraph 6: Compliance orders: adjournment of hearing

462 Sub-paragraphs (1) and (2) allow the court to adjourn the hearing of the application for an order for 14 days to allow a person who occupies, controls or has an interest in the premises

to show why the order should not be made.

463 Sub-paragraph (3) allows the court to order that the closure notice continues in force until the hearing is resumed.

Paragraph 7: Extension of illegal working compliance orders

464 Sub-paragraph (1) permits an immigration officer to apply to the court to extend (or further extend) an illegal working compliance order.

465 Sub-paragraph (2) allows the court to grant such an application where it is satisfied, on the balance of probabilities, that changes to the order are necessary in order to prevent illegal working.

466 Sub-paragraph (3) allows the court to issue a notice summoning the employer or any other person with an interest in the premises to appear before a particular court at a particular time and date to respond to the application.

467 Sub-paragraph (4) specifies information which must be included in any summons issued by the court.

468 Sub-paragraph (5) prevents the extension of an order by more than 6 months as a result of any single application under this paragraph and places an absolute limit on the duration of an order of a maximum of 24 months.

Paragraph 8: Variation or discharge of illegal working compliance orders

469 Sub-paragraph (1) allows an immigration officer, a person on whom the order was served, or any other person with an interest in the premises, to apply to the court to vary or discharge an illegal working compliance order.

470 Sub-paragraph (2) allows the court to serve a notice on any of the parties mentioned above, summoning them to appear before a particular court on a particular date and time to respond to the application.

471 Sub-paragraph (3) specifies information which must be included in any summons issued by the court.

472 Sub-paragraph (4) prevents the court from discharging an illegal working compliance order unless it is satisfied, on the balance of probabilities, that the order is no longer necessary to prevent an employer operating at the premises from employing an illegal worker.

Paragraph 9: Notice and orders: appeals

473 Sub-paragraph (1) provides that an appeal can be made against a decision to make, extend, vary or not discharge an illegal working compliance order, or to continue an illegal working closure notice, by the person on whom the closure notice was served or any other person who has an interest in the premises.

474 Sub-paragraph (2) provides that an immigration officer may appeal against a decision not to make, extend, vary or continue an illegal working compliance order or a decision to vary or discharge such an order. An immigration officer may also appeal against a decision not to continue an illegal working closure notice.

475 Sub-paragraph (3) provides that an appeal under this section is to the Crown Court in England and Wales or Northern Ireland, or the sheriff appeal court in Scotland.

476 Sub-paragraph (4) requires an appeal under this paragraph to be made within 21 days of the decision in question.

477 Sub-paragraph (5) allows the court to make whatever order it thinks appropriate on an appeal.

478 Sub-paragraph (6) applies to premises in England and Wales only. It requires the court to notify the relevant licensing authority if it makes an illegal working compliance order in respect of licensed premises.

Paragraph 10: Notice and orders: enforcement

479 Sub-paragraphs (1) and (2) allow an immigration officer or constable to enter premises where access is prohibited or restricted by an illegal working closure order or compliance notice, using reasonable force if necessary, and do anything necessary in order to secure those premises against entry.

480 Sub-paragraph (3) allows a person acting under the supervision of and accompanied by an immigration officer or constable to enter the premises in order to carry out essential maintenance or repairs.

Paragraph 11: Notices and orders: offences

481 Sub-paragraphs (1) and (2) create offences where a person enters or remains on premises in contravention of an illegal working closure notice or contravenes a compliance order without a reasonable excuse.

482 Sub-paragraph (3) creates an offence where a person obstructs another person acting under *paragraphs 4 or 10(1)*.

483 Sub-paragraph (4) sets out the penalties for an offence in the relevant jurisdictions. The offence carries a maximum of 6 months imprisonment and/or an unlimited fine in England and Wales, a maximum of 12 months imprisonment and/or a fine of up to the statutory maximum in Scotland, and a maximum of 6 months imprisonment and/or a fine of up to the statutory maximum in Northern Ireland.

484 Sub-paragraph (5) increases the maximum term of imprisonment on summary conviction to 51 weeks for an offence committed under this paragraph in England and Wales before section 281(5) of the Criminal Justice Act 2003 comes into force.

Paragraph 12: Access to other premises

485 Sub-paragraph (1) allows the owner of premises which are in another part of the building or structure in which the closed premises are situated to apply for access where it is prohibited by an illegal working compliance order.

486 Sub-paragraph (2) requires notice of such an application to be served on an immigration officer, each person on whom the closure notice was served and any other person with an interest in the premises.

487 Sub-paragraphs (3) and (4) permit the court to make whatever order it thinks appropriate in relation to access to another part of the building or structure in which the closed premises is situated.

Paragraph 13: Reimbursement of costs

488 Sub-paragraph (1) allows the Secretary of State to apply to the court for an order requiring the owner or occupier of the premises to reimburse her for the costs of clearing, securing or maintaining the premises in respect of which an illegal working compliance order is in force.

489 Sub-paragraph (2) allows the court to make an order requiring the owner or occupier of the premises to reimburse the Secretary of State in full or in part.

490 Sub-paragraph (3) requires an application for reimbursement of costs to be made within 3 months of the illegal working compliance order ceasing to have effect.

491 Sub-paragraph (4) provides that an order for reimbursement of costs may only be made against a person who has been served with an application for the order.

Paragraph 14: Exemption from liability

492 Sub-paragraph (1) lists the persons who are exempt from liability for damages in certain categories of proceedings arising from acts or omissions in the exercise of a power under this Schedule.

493 Sub-paragraph (2) disapplies the exemption if the act or omission was in bad faith.

494 Sub-paragraph (3) clarifies that the exemption does not prevent the award of damages if the act or omission was unlawful under section 6(1) of the Human Rights Act 1998.

495 Sub-paragraph (4) clarifies that this exemption does not affect any other exemption under common law or otherwise.

Paragraph 15: Compensation

496 Sub-paragraphs (1) and (2) allow a person who claims to have suffered financial loss as a consequence of an illegal working closure notice to apply to the court for compensation within 3 months of the notice or order ceasing to have effect.

497 Sub-paragraph (3) gives the court discretion to order payment of compensation out of money provided by Parliament provided certain conditions for issuing the closure notice have not been satisfied.

Paragraph 16: Guidance

498 Sub-paragraphs (1) and (2) permit the Secretary of State to issue and revise guidance in relation to illegal working closure notices and compliance orders.

499 Sub-paragraph (3) requires the Secretary of State to consult certain persons before issuing or revising such guidance.

500 Sub-paragraph (4) requires the Secretary of State to publish the guidance.

Paragraph 17: Interpretation

501 This paragraph defines the terms used in the Schedule.

Paragraph 18: Amendment of Licensing Act 2003

502 This paragraph ensures that where a court makes an illegal working compliance order and the premises subject to the order have a licence to sell alcohol or late night refreshments in England and Wales, the licensing authority must review the licence for those premises in accordance with section 167(1) of the Licensing Act 2003.

Schedule 7: Bank accounts

503 *Paragraph 2* amends the 2014 Act, inserting new sections 40A – 40H.

504 New section 40A creates a duty for banks and building societies to carry out periodic checks on the immigration status of holders, signatories and beneficiaries of existing current accounts ("immigration check"), to identify whether they are disqualified persons. Subsection (3) of new section 40A defines a disqualified person as someone known to be unlawfully present in the UK, and for whom the Secretary of State considers that a current account

should not be provided by a bank or building society. The frequency of these checks will be specified in regulations made by HM Treasury (subsection (1) of new section 40A).

505 Subsection (2) of new section 40A defines an immigration check for the purposes of these provisions. Banks and building societies will be required to check current account holder details against information supplied by the Secretary of State to a specified anti-fraud organisation or a specified data-matching organisation. The check should ascertain whether a holder, signatory or beneficiary of an existing current account is a disqualified person. There is no requirement to contact account holders as part of the check or obtain additional documentary evidence.

506 New section 40B requires banks and building societies to notify the Secretary of State when an immigration check identifies that an account holder, signatory or beneficiary is a disqualified person.

507 New section 40C deals with the duties on the Secretary of State once she has been notified that an account holder is a disqualified person. On receiving such notification, the Secretary of State will first check that the individual has been correctly identified as a disqualified person.

508 If the Home Office confirms that the individual is a disqualified person, the Secretary of State must decide whether to apply to a court for an order to freeze the person's current account and any other accounts held by the disqualified person with that bank or building society. Subsection (2) of new section 40D provides that freezing orders are orders that prevent withdrawals from or payments from the account to which they relate.

509 The code of practice provided for in new section 40F will outline the factors which are to be taken into account in deciding whether to apply for a freezing order. For example, these might include the level of funds involved, the individual's immigration history and the risk they present to the public. It will also include guidance on keeping the orders under review and the circumstances in which it will be appropriate for the Secretary of State to apply for an order to be discharged. It is intended, in particular, that an application for discharge will be made when a disqualified person departs from the UK. The Code must be laid before Parliament before coming into effect.

510 If the Secretary of State does not wish to apply for a freezing order, she will notify the bank or building society (new section 40C).

511 New section 40D (freezing orders) provides for courts (as defined in subsection (9) of new section 40D) to be able to make an order to freeze accounts held by a disqualified person on application by the Secretary of State. A person whose account is frozen will not be able to make withdrawals or payment transfers from the account, subject to exceptions outlined below. A person other than the disqualified person may also be prevented from making withdrawals or payments from an account if it is jointly controlled with the disqualified person and the court consider it appropriate.

512 Freezing orders will not be limited to current accounts but may include any account which the disqualified person holds with the bank or building society provided notice has been given to the Secretary of State following an immigration check. The Secretary of State will have discretion as to which accounts are included in the application for a freezing order and the court will have discretion as to which accounts it includes in any order.

513 Where an account is frozen the order may make provision to allow payments necessary to meet an individual's basic living needs and legal expenses.

- 514 New section 40E makes statutory provision for appeals against freezing orders.
- 515 New section 40G establishes duties that will apply where a bank or building society has been notified that the Secretary of State does not intend to seek a freezing order (or where an application for a freezing order is unsuccessful, or where a freezing order is made but subsequently discharged). Subsection (2) requires that the bank or building society must close the accounts in question as soon as is reasonably practicable. This will allow notice to be given in line with the terms and conditions of an account. In the case of accounts that are overdrawn, or where the bank or building society believes that closure would significantly adversely affect other persons or bodies who operate or hold the accounts, the bank or building society may further delay closure for a reasonable period, but not indefinitely. This will enable the bank or building society to take necessary action to resolve the situation, including action to recover debt or open new accounts for third parties if that is appropriate.
- 516 Subsection (5) of new section 40G also provides that a bank or building society can comply with the duty in subsection (2) without closing an account. This will be the case where the account is also operated by others who are not disqualified persons and the bank or building society can prevent the disqualified person from continuing as a holder, beneficiary or signatory of the account while leaving the account open.
- 517 Where an account is closed under subsection (2) of new section 40G, the account holders must be informed that the closure is due to the fact that the account is operated by or for a disqualified person, where the bank may lawfully do so (that is, where notifying the person does not conflict with other legal duties). If a disqualified person is prevented from continuing to operate an account under subsection (5), account holders must also be informed.
- 518 The bank or building society will be under a further duty to notify the Secretary of State of the action it has taken to comply with the duty, in a manner to be prescribed in subsequent regulations made by the Treasury.
- 519 *Paragraph 3* amends section 41 of the 2014 Act to enable the Treasury to make regulations to enable the Financial Conduct Authority to regulate banks and building societies' compliance with these new requirements.
- 520 *Paragraph 4* of Schedule 4 amends section 42 of the 2014 Act with the effect that the definitions of 'bank' and 'building society' which it contains also apply in the case of these new sections inserted into the 2014 Act by paragraph 2 of Schedule 4 to the Act.
- 521 *Paragraph 5* extends to the new sections the power to amend the categories of institution or account to which the provisions apply. This power is contained in section 43 of the 2014 Act.
- 522 *Paragraph 6* is a consequential amendment to section 74 of the 2014 Act, which governs the making of orders and regulations under the Act.
- 523 *Paragraph 7* amends the Civil Jurisdiction and Judgments Act 1982, to ensure that a freezing order made under new section 40D is in the category of judgments which can be enforced across the UK.

Schedule 8: Amendments to search warrant provisions

- 524 When immigration warrants to enter premises were first added to the 1971 Act they closely reflected those available to the police in England and Wales, but over time amendments have been made to the Police and Criminal Evidence Act 1984 (PACE) so that the provisions are no longer aligned. This hampers efficient joint-working between immigration and police officers, as well as other agencies that are used to working alongside the police. The new

These Explanatory Notes relate to the Immigration Act 2016 (c. 19) which received Royal Assent on 12 May 2016

measures amend current laws to resolve the discrepancies between police and immigration warrants.

525 *Paragraph 2(3)* inserts new subsections (1A) to (1D) into section 28D of the 1971 Act. Under these new sections, one warrant can be used to enter multiple premises on a number of different occasions. Likewise, *paragraph 3(3)* does the same for warrants obtained under section 28FB of the 1971 Act, *paragraph 6(3)* for warrants obtained under paragraph 25A of Schedule 2 to the 1971 Act and *paragraph 7(3)* for a warrant obtained under section 45 of the UK Borders Act 2007. These changes do not extend to warrants issued in Scotland.

526 *Paragraph 4* amends section 28J (search warrants: safeguards) of the 1971 Act to clarify the matters which must be specified in the application for an entry warrant which authorises multiple entries or entry to multiple premises.

527 *Paragraph 5* amends section 28K (execution of warrants) of the 1971 Act. *Sub-paragraph (2)* inserts new subsections (2A) and (2B) which provide that any person who accompanies an immigration officer has the same power as the immigration officer in executing a warrant and seizing items to which the warrant relates, but only where supervised. *Sub-paragraph (3)* extends the validity of an immigration warrant from 1 to 3 months. *Sub-paragraph (4)* inserts new subsections (3A) and (3B) which give detail on the authorisation required for entry to those premises not specified on an all premises warrant and for entry a second or subsequent time on multiple entry warrants respectively. *Sub-paragraph (6)* inserts new subsection (8C) which removes the requirement for immigration search warrants obtained in Scotland to be returned after they have been executed. This reflects the treatment of warrants under the Scottish criminal justice system.

Schedule 9: Duty to supply nationality documents to Secretary of State: persons to whom duty applies

528 This is the new Schedule A1 to the 1999 Act which specifies the persons to whom the duty in new section 20A of the 1999 Act applies.

Schedule 10: Immigration bail

Part 1 - Main provisions

529 Prior to the amendments made by this Schedule, there were a number of provisions under which a person who would otherwise have been held in immigration detention, could be released or have avoided being detained altogether. These were generally known as: temporary admission; temporary release; release on restrictions; and immigration bail. The Schedule replaces these with a new consolidated framework.

530 Sub-paragraphs (1) to (3) of *paragraph 1* set out the categories of persons being detained or liable to be detained who may be given immigration bail by the Secretary of State or the First-tier Tribunal. Sub-paragraph (5) provides that a person can be granted immigration bail if they are liable to immigration detention, even if they cannot currently be detained. Sub-paragraph (8) sets out the point at which immigration bail comes to an end.

531 *Paragraph 2* sets out the conditions which may be applied to a person on immigration bail. A person cannot be given bail without being subject to at least one of these conditions. Sub-paragraphs (2), (3), and (5) to (9) require the Secretary of State or Tribunal, when granting immigration bail to a person who is the subject of deportation proceedings, to grant immigration bail subject to an electronic monitoring condition, unless the Secretary of State considers it would be impractical or in breach of the ECHR to do so.

532 Sub-paragraph (2) of *paragraph 3* sets out the factors which must be taken into account when considering whether to grant immigration bail and what conditions should be imposed. Sub-paragraphs (3) and (4) set out restrictions on when the Tribunal is able to grant immigration bail to a person Sub-paragraphs (5) to (8) require the decision to give bail to be set out in a notice.

533 Sub-paragraph (8) explains that the commencement of a grant of immigration bail can be conditional upon certain arrangements being in place. For example, if electronic monitoring is a condition for immigration bail, the grant of bail will not commence until the necessary equipment has been installed to allow that monitoring to take place.

534 *Paragraph 4* replaces section 36 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004, which will be repealed, in setting out the electronic monitoring condition.

535 *Paragraph 5* provides for the ability to insist on a financial condition being required as a condition of bail, and sets out the circumstances in which such a condition may be imposed, what the condition must specify and how monies owed can be collected, and provides that the person liable to make payment must be given an opportunity to make representations.

536 *Paragraph 6* sets out when a person's conditions of immigration bail may be amended or removed, or new conditions added. Conditions may only be varied by the party that granted immigration bail - unless the Tribunal, having granted bail, directs that the Secretary of State has the power to vary conditions. Notice of a decision to vary bail must be given to the person on immigration bail.

537 *Paragraphs 7 and 8* detail the circumstances in which an electronic monitoring condition must be imposed or removed, where a person subject to deportation action is on immigration bail.

538 *Paragraph 9* provides a power for the Secretary of State to provide accommodation for a person on immigration bail subject to a residence condition, where the person would otherwise not be able to support themselves at that address. There is also provision for the Secretary of State to make payments in relation to a person's travelling expenses. Both of these powers to assist a person's meeting bail conditions require there to be exceptional circumstances justifying the exercise of the power.

539 *Paragraph 10* empowers an immigration officer or constable to arrest a person, without a warrant, for failing to comply, or being likely to fail to comply, with a condition of immigration bail. The arrested person will be brought before the First-tier Tribunal of the Secretary of State as soon as practicable, who will decide whether the person should be detained or granted bail - and, if so, to what conditions that bail should be subject. This paragraph replaces the current powers of arrest for breaches of bail in Schedules 2 and 3 to the 1971 Act. This is separate to the arrest power immigration officers have under section 28A of the 1971 Act for the criminal offence in section 24(1) of that Act.

540 *Paragraph 11* requires that a reference be made to the Tribunal for it to decide whether to grant bail to certain detained persons. The Secretary of State is required to arrange such a reference once the person has been in detention for four months or, if the Tribunal has already considered whether to grant bail to the person, four months after that consideration.

541 *Paragraph 12* requires that Tribunal Procedure Rules make certain provisions in relation to applications for a grant of immigration bail by the Tribunal. *Sub-paragraphs (2) to (4)* detail the circumstances in which the Tribunal must dismiss, without a hearing, an application for immigration bail.

542 *Paragraph 13* allows transitional provisions to be made in order to manage the transition to

immigration bail under Schedule 10.

Part 2: Amendments to other Acts

543 *Paragraph 16* amends section 24 of the 1971 Act so that breaching a condition of immigration bail (without reasonable excuse) is an offence, and applies an extended time limit for such prosecutions.

Schedule 11: Support for certain categories of migrant

Part 1: Amendments of the Immigration Acts

544 The 1999 Act contains powers to support destitute asylum seekers and their dependants under section 95 of the Act. Failed asylum seekers and their dependants may also be supported under section 95 (if there were children aged under 18 in their household at the time their asylum claim and any appeal was finally rejected) or under section 4(2) of the 1999 Act. Certain other categories of migrants may be supported under section 4(1) of the 1999 Act.

545 Section 95 and section 4 both contain powers to make regulations to set out the circumstances and ways in which support may be provided.

546 This Schedule amends these provisions:

- a. Persons who have children in their household at the time their asylum claim and any appeal is finally rejected will no longer be treated as though they were still asylum seekers and so will no longer be eligible for support under section 95;
- b. Persons who have been refused asylum but made further submissions that they have asked to be treated as a fresh claim for asylum may be eligible for support under section 95 if a decision on the further submissions has not yet been made;
- c. Persons whose further submissions have been rejected but who have been granted permission to apply for a judicial review of the rejection may be eligible for support under section 95.

547 The Schedule repeals the whole of section 4 of the 1999 Act and creates a new power (“section 95A”) to support failed asylum seekers and their dependants who can demonstrate that they are destitute and that they face a genuine obstacle to leaving the UK at the point their appeal rights are exhausted.

548 The circumstances that will constitute a genuine obstacle may be set out in regulations. An example of a genuine obstacle may be the inability to access the requisite documentation in order to travel. As is already the case in respect of section 95 support, regulations may also specify how support may be provided. By virtue of section 166(5) of the 1999 Act as amended by paragraph 24 of the Schedule, the regulations governing section 95A support will be subject to the affirmative procedure.

Part 2: Transitional and saving provision

549 The Schedule also provides for transitional arrangements for failed asylum seekers who are currently supported under section 4 (mostly single adults but some families with children) and section 95 (all families with children) at the time the new arrangements come into force. Both categories will continue to be supported, but regulations will allow greater flexibility in determining the scope of the support. For example, in all cases support may be provided in the form of vouchers or cash (cash may not currently be provided in section 4 cases) but to continue to access support, persons may be required to show that they are complying with

specified steps to facilitate their departure from the United Kingdom.

550 There will be no right of appeal against a decision to discontinue support provided to transitional cases or against a decision to refuse or discontinue support provided under section 95A.

Schedule 12: Availability of local authority support

551 Schedule 3 to the 2002 Act already restricts the availability of local authority support to migrants without immigration status.

552 *Paragraph 2* of Schedule 12 to the Act amends paragraph 1(1) of Schedule 3 to the 2002 Act so that, in England, adult migrant care leavers (who are nearly all former asylum seeking children whose asylum and any other human rights claims have failed) who have exhausted their appeal rights and have established no lawful basis to remain here, are prevented from accessing local authority support for care leavers under the Children Act 1989.

553 *Paragraph 3* prevents local authorities in England from paying the higher education tuition fees of adult migrant care leavers deemed to be overseas students because of their immigration status. Instead, to obtain such support, the person will, like other migrants, be required to qualify under the Education (Student Support) Regulations 2011 (SI 2011/1986).

554 *Paragraph 5* retains Children Act care leaver support for those, e.g. who have been looked after by the local authority as a victim of trafficking, with an outstanding specified first application or appeal to regularise their immigration status.

555 *Paragraph 6* of this Schedule inserts a new paragraph 3A in Schedule 3 to the 2002 Act, which means that accommodation and subsistence support will be provided by local authorities in England to destitute families without immigration status under the regulations made under the new paragraph 10A of Schedule 3 to the 2002 Act (*paragraph 10* of this Schedule) rather than under section 17 of the 1989 Act. However, this Schedule will ensure that section 17 of the 1989 Act will remain available to the local authority, together with its other Children Act powers and duties, to deal with any other needs of the child or their family which the local authority considers it is necessary to meet in order to safeguard and promote the child's welfare.

556 Paragraph 6 also inserts new paragraphs 3B and 3C in Schedule 3 to the 2002 Act, which mean that support will be provided by local authorities in England to adult migrant care leavers under the regulations made under the new paragraph 10B of Schedule 3 to the 2002 Act (*paragraph 10* of this Schedule), or under the new section 95A of the 1999 Act, rather than under the Children Act 1989.

557 *Paragraph 9* of this Schedule inserts a new paragraph 7B in Schedule 3 to the 2002 Act to provide a new simplified definition in England of a person without immigration status, who will generally be ineligible for the forms of local authority support listed in paragraph 1(1) of Schedule 3.

558 Paragraph 9 also brings 'Zambrano carers' (non-EEA nationals reliant on being the primary carer of a British citizen for the lawfulness of their presence here) into the scope of the new scheme in England under paragraph 10A of Schedule 3 to the Nationality, Immigration and Asylum Act 2002 for local authority accommodation and subsistence support for destitute families. *Paragraph 10* of this Schedule inserts a new paragraph 10A in Schedule 3 to the 2002 Act, under which regulations may be made, subject to Parliamentary approval, to enable local authorities in England to provide for the accommodation and subsistence needs of destitute families without immigration status (according to the definition set out in the new

paragraph 7B). The circumstances in which this support may be provided are where:

- a. The family has an outstanding specified immigration application or appeal (destitute asylum seekers and destitute failed asylum seekers who face a genuine obstacle to departure at the point their appeal rights are exhausted will be supported by the Home Office);
- b. The family has exhausted all appeal rights and has not failed to co-operate with arrangements to leave the UK; or
- c. The local authority is satisfied that the provision of support is necessary to safeguard and promote the welfare of a dependent child.

559 *Paragraph 10* also inserts a new paragraph 10B in Schedule 3 to the 2002 Act under which regulations will be made by the Secretary of State, subject to Parliamentary approval, to enable local authorities in England to provide for the support of adult migrant care leavers who have:

- a. An outstanding specified immigration application or appeal and are destitute; or
- b. Exhausted their appeal rights and do not qualify for Home Office support under the new section 95A of the 1999 Act inserted by Schedule 11 because there is no genuine obstacle to their departure from the UK, but the local authority is satisfied that support needs to be provided. This will enable the local authority to ensure that support does not end abruptly and there can be a managed process of encouraging and enabling departure from the UK.

560 By virtue of paragraph 11 of Schedule 3 to the 2002 Act, the regulations under paragraph 10B will enable local authorities to provide such other social care support, as well as accommodation and subsistence, as they consider necessary in individual circumstances.

561 *Paragraph 15* amends paragraph 16 of Schedule 3 to the 2002 Act to provide that the regulations governing support under paragraphs 10A and 10B will be subject to the affirmative procedure

Schedule 13: Penalties relating to airport control areas

562 *Paragraph 1* inserts new Part 1A into Schedule 2 to the 1971 Act.

563 Paragraph 28 of new Part 1A introduces a civil penalty regime to be applied where an aircraft or port operator fails to take all reasonable steps to ensure that passengers embark or disembark through the control areas (new sub-paragraphs (1) to (4)). Sub-paragraph (5) provides that a civil penalty may be imposed in respect of each failure or in respect of each passenger. Sub-paragraph (6) allows the Secretary of State to set the penalty at an amount she considers appropriate as long as that amount does not exceed the prescribed maximum.

564 Paragraph 28A of new Part 1A requires the Secretary of State to issue a code of practice to be followed by aircraft agents or operators and airport managers who have been issued with designation notices (sub-paragraph (1)). Sub-paragraphs (2) and (4) require the Secretary of State to have regard to the codes and other relevant matters when deciding whether to impose a penalty, when imposing a penalty and when considering a notice of objection. Sub-paragraph (3) requires the Secretary of State to issue a code of practice specifying the matters to be considered in determining the amount of a penalty in individual cases. Sub-paragraphs (5) and (8) require the Secretary of State to lay the codes (and revised codes) before Parliament in draft. Sub-paragraphs (6) and (8) provide for the codes (and revised codes) to come into force under regulations made by the Secretary of State. Sub-paragraph (7) provides

for the Secretary of State to review the codes and revise and re-issue them following such a review.

Paragraph 28B - penalty notices

565 Sub-paragraph (1) stipulates that the Secretary of State must notify a person in writing if she decides that a person is liable to a penalty.

566 Sub-paragraph (2) stipulates that the penalty notice must be in writing, and include: the reasons for the penalty; the amount; the date of the notice; the payment method; the date by which payment must be made; and information about enforcement.

Paragraph 28C - objections

567 Sub-paragraph (1) provides that the recipient of a penalty notice may object on the ground that they are not liable to the imposition of the penalty, or that the amount of the penalty is too high

568 Sub-paragraphs (2) and (3) provide that the recipient of a penalty notice may object by giving a notice of objection in writing to the Secretary of State, giving reasons for the objection within 28 days from the date specified in the penalty notice.

569 Sub-paragraph (4) allows the Secretary of State to respond to the notice of objection by cancelling, reducing or increasing the penalty, or taking no further action.

570 Sub-paragraph (5) requires the Secretary of State to notify the recipient of the decision, including the amount of any increased or reduced penalty, and give the recipient a new penalty notice if the penalty level is increased.

571 Sub-paragraph (6) requires the Secretary of State to give notice of her decision, including the date on which it was made, before the end of the prescribed period, which may be extended by agreement with the recipient.

Paragraph 28D - appeals

572 Sub-paragraph (1) provides that the recipient may appeal to the court on the ground that the recipient is not liable to the imposition of a penalty, or that the amount of the penalty is too high.

573 Sub-paragraph (2) provides that an appeal can only be brought if the appellant has objected to the notice.

574 Sub-paragraph (3) requires that the appeal must be made within 28 days of the notification of the decision.

575 Sub-paragraph (4) provides for the court to allow the appeal and either cancel or reduce the penalty; or dismiss the appeal.

576 Sub-paragraph (5) requires the appeal to be a re-hearing of the Secretary of State's decision to impose a penalty and to be determined having regard to: any extant codes of practice under paragraph 28A, and any other matters which the court thinks relevant (which may include matters of which the Secretary of State was unaware).

577 Sub-paragraph (6) allows for a full re-hearing under sub-paragraph 3 irrespective of the Civil Procedure Rules (Part 52), or other rules applying to the court in question, that stipulate that an appeal must be on the basis of a point of law.

578 Sub-paragraph (7) and (8) stipulates that in this section "the court" means: the county court if the appeal relates to a penalty notice for a failure to comply at an airport in England and

Wales; the sheriff, if the appeal relates to a penalty for a failure to comply at an airport in Scotland; and a county court in Northern Ireland if the appeal relates to a penalty for a failure to comply at an airport in Northern Ireland.

Paragraph 28E - enforcement

- 579 Sub-paragraph (1) stipulates that this paragraph applies where a sum is payable to the Secretary of State as a penalty under paragraph 28.
- 580 Sub-paragraph (2) stipulates that the penalty is recoverable in England and Wales as if it were payable under an order of the county court in England and Wales.
- 581 Sub-paragraph (3) states that the penalty may be enforced in Scotland in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- 582 Sub-paragraph (4) stipulates that the penalty is recoverable in Northern Ireland as if it were payable under an order of a court in Northern Ireland.
- 583 Sub-paragraph (5) stipulates that where action is taken for the recovery of a sum payable as a penalty, the penalty is: in relation to England and Wales to be treated for the purposes of section 98 of the Courts Act 2003 as if it were a judgment entered in the county court; and in relation to Northern Ireland to be treated for the purposes of Article 116 of the Judgments Enforcement (Northern Ireland) Order 1981 as if it were a judgment in respect of which an application has been accepted under Article 22 or 23(1) of that Order.
- 584 Sub-paragraph (6) stipulates that money paid to the Secretary of State as a penalty under *paragraph 28* must be paid into the Consolidated Fund.

Paragraph 28F - service of documents

- 585 Sub-paragraph (1) stipulates that a document served on a person outside the UK as part of the penalty notice, objections or enforcement provisions of this section can be served: in person; by post; by fax; by email; or by any other prescribed manner.
- 586 Sub-paragraph (2) provides for the Secretary of State to make regulations stipulating that a document served as above, and in accordance with the regulations, is to be taken to have been received at a time specified by or determined in accordance with the regulations.

Paragraph 28G - interpretation of this part of this schedule

- 587 Sub-paragraph (1) stipulates in this Part of the schedule that: “penalty notice” has the same meaning as in 28B(2); “prescribed” means prescribed by regulations made by the Secretary of State; and “the recipient” has the same meaning as in 28C(1).

Paragraph 28H - regulations under this part of this schedule

- 588 Sub-paragraphs (1) to (4) stipulate that regulations under this Schedule are to be made by statutory instrument and may make different provision for different purposes; and may make incidental, supplementary, consequential, transitional, transitory or saving provision. A statutory instrument containing (whether alone or with other provision) regulations under paragraph 28(6) is subject to the affirmative procedure; a statutory instrument containing any other regulations under this Part of this Schedule and to which sub-paragraph (2) does not apply is subject to annulment in pursuance of a resolution of either House of Parliament i.e. the negative procedure.

Schedule 14: Maritime enforcement

589 The maritime powers in the Act are intended to combat three immigration offences in the *These Explanatory Notes relate to the Immigration Act 2016 (c. 19) which received Royal Assent on 12 May 2016*

territorial waters of the United Kingdom. Those offences are assisting unlawful immigration, assisting an asylum-seeker to arrive in the UK, and assisting entry to the United Kingdom in breach of a deportation or exclusion order (“the facilitation offences”). Prior to the amendments set out in this schedule, immigration officers had no powers to tackle facilitation offences committed beyond UK soil. Therefore immigration officers were powerless to stop ships being used to carry illegal migrants in UK waters until those ships reached port. This schedule changes that.

590 *Paragraphs 1 to 4(a) and 4(c)* make technical amendments to the facilitation offences to extend their scope to cover attempted facilitation. *Paragraphs 1 and 2* extend the offence of facilitating a breach of immigration law by a non-EU citizen, to cover a person who facilitates an attempted breach. *Paragraph 3* amends section 25A of the 1971 Act to include facilitating the attempted arrival or entry into the UK by an asylum-seeker. Sub-paragraph 4(a) amends section 25B of the 1971 Act to include facilitating the attempted breach of a deportation order. Sub-paragraph 4(c) amends 25B of the 1971 Act to include facilitating the attempted breach of an exclusion order made on the grounds of public policy, public security or public health.

591 Section 25B(2) of the 1971 Act refers to the Secretary of State personally directing the exclusion of an EU citizen from the United Kingdom for the public good. This part of the offence is out of alignment with the actual power and legal test to make exclusion orders in regulation 19 of the Immigration (European Economic Area) Regulations 2006 (“the 2006 Regulations”). Sub-paragraph 4(b) aligns section 25B(2) with the 2006 Regulations by removing the reference to the Secretary of State personally making these decisions and allowing them to be made by junior ministers or officials of the Secretary of State. Sub-paragraph 4(b) also aligns the reference to the legal test for an exclusion order in the offence with that in Regulation 21 of the 2006 Regulations to ensure it applies to exclusion orders made on the grounds of public policy, public security or public health. Sub-paragraph 4(d) ensures that the section 25B offence does not overlap with the separate existing offence of breaching a temporary exclusion order in section 10 of the Counter-Terrorism and Security Act 2015.

592 *Paragraph 5* disapplies the requirement in Section 3 of the Territorial Waters Jurisdiction Act 1878 to obtain the consent of the Secretary of State to prosecute the facilitation offences committed in UK territorial waters.

593 *Paragraph 6* clarifies that the existing powers of arrest without warrant for the facilitation offences are available in respect of attempted facilitation offences.

New Part 3A to 1971 Act

594 *Paragraph 7* of this Schedule inserts new Part 3A after Part 3 of the 1971 Act. Part 3A sets out the circumstances in which immigration officers, the police and members of the Armed Services can use the powers to stop, board, divert and detain a ship set out in new Schedule 4A of the 1971 Act (for which, see notes on [paragraph 8](#) below).

595 New section 28M subsections (1) and (2) set out an immigration officer’s, police officer’s and member of the Armed Services’ powers to combat the facilitation offences in the territorial waters adjoining England and Wales. Those powers are principally to stop, board, divert and detain any ship suspected of involvement in a facilitation offence, regardless of the ship’s nationality. Subsection (3) makes clear that the authority of the Secretary of State is required before these powers can be exercised in relation to a foreign ship or ship registered in the Isle of Man, Channel Islands, or a British Overseas Territory. Subsection (4) stipulates that this authority can only be given in respect of a foreign ship where the exercise of the powers would be in accordance with the United Nations Convention on the Law of the Sea.

596 New sections 28N and 28O make equivalent provision to section 28M in respect of the territorial waters adjacent to Scotland and Northern Ireland.

597 Section 28P provides officers with a power to pursue ships suspected of involvement in the facilitation offences sailing between different parts of UK territorial waters (England and Wales, Scotland and Northern Ireland). The power is available where an audible or visible signal has been given for a ship to stop, which has been ignored, and the pursuit has not been interrupted (subsections (7) to (8)). Subsection (9) makes it clear that a change of ship or mode of transport will not interrupt the pursuit. Subsections (1) and (2) enable an immigration officer, English or Welsh police officer or member of the Armed Services to pursue a ship from the territorial waters adjacent to England and Wales into the waters adjacent to Scotland or Northern Ireland. Subsections (3) and (4) and subsections (5) and (6) make equivalent provision for Scotland and Northern Ireland.

598 Subsection (10) ensures that any right an immigration officer, police officer or member of the Armed Services may have to pursue ships into international waters under the common law is unaffected.

599 Section 28Q is self explanatory and defines terms used in Part 3A.

Part 1 of new Schedule 4A to the Immigration Act 1971

600 *Paragraph 8* inserts a new Schedule 4A after Schedule 4 of the 1971 Act. Schedule 4A sets out the powers an immigration officer, police officer or member of the Armed Services has to stop, board, divert, detain and search a ship to investigate the facilitation offences. Paragraph 1 is self explanatory and introduces Part 1 of Schedule 4A which governs the powers applicable in UK territorial waters adjacent to England and Wales.

601 Paragraph 2(1) and (2) provides a power to stop and board a ship, and requires the ship to be taken to a port in the United Kingdom, and be detained there. These powers only apply where there are reasonable grounds to suspect that the ship is involved in a facilitation offence. Paragraph 2(3) allows officers to order the ship's crew to help steer the ship to port. If the ship is to be detained, the immigration or police officer must notify the master of the ship in writing (paragraph 2(4)) and the notice must tell the master that it will be detained until a further notice is served (paragraph 2(5)).

602 Paragraph 3(1) and (2) provides a power to search a ship and any person or object on that ship, where an immigration or police officer has reasonable grounds to suspect that there is evidence on the ship relating to a facilitation offence, or a connected offence. Paragraph 3(3) gives the officer the power to require a person on the ship to give information about themselves or about anything on the ship.

603 Sub-paragraphs (5) and (7) give examples of actions that can be carried out by officers during a search including opening containers, requiring documents and making copies. The power of search can only be used to the extent reasonably required to discover evidence of a facilitation or connected offence and does not authorise the removal of any clothing in public other than an outer coat, jacket or gloves (sub-paragraph (4)). Sub-paragraph (6) ensures that officers may require electronic evidence to be produced in a legible form and in a manner which may be taken away. Sub-paragraph (8) clarifies that the powers are exercisable elsewhere than on the ship which has been boarded.

604 Under paragraph 4, sub-paragraphs (1) and (2) permit officers to arrest any person, without warrant, that they reasonably suspect to have committed a facilitation offence on the ship under investigation. Sub-paragraph (3) also permits an officer to seize and retain any suspected evidence of a facilitation offence other than items of legal privilege. Sub-paragraph

- (4) clarifies that these powers can be exercised on the ship itself or elsewhere.
- 605 Under paragraph 5(1) and (2), officers can search a person on the ship for anything which they reasonably believe might be used to cause physical injury, damage to property or endanger the safety of a ship. Sub-paragraph (2) ensures that the powers can only be exercised where the officer has reasonable grounds to believe that such an item is concealed on a person and only to the extent necessary. Officers may also seize and retain such items (sub-paragraph (3)), but must return the items to the person they were taken from, if that person is released from detention (sub-paragraph (4)). This power does not authorise the removal of any clothing in public other than an outer coat, jacket or gloves, but it does authorise the search of a person's mouth (sub-paragraph (5)).
- 606 Paragraph 6 provides a power for officers to require any person on the ship to produce a nationality document and, if they reasonably believe that person is concealing documents that may establish that person's identity, such as a passport or identity card, search that person (sub-paragraphs (1) and (2)). The power of search may only be exercised where there are reasonable grounds to believe that such a document is concealed on a person and only to the extent necessary (sub-paragraph (3)). The officer can seize and retain a document relating to a person's identity for as long as they believe that person will arrive in the United Kingdom, but this does not affect any other power of retention the office may have (sub-paragraphs (4) and (5)). Documents seized and retained by constables or members of the Armed Services must be passed to an immigration officer as soon as possible after the ship has arrived in the United Kingdom (sub-paragraph (6)). The power does not authorise the removal of any clothing in public other than an outer coat, jacket or gloves, or the seizure or retention of any document that the officer reasonably believes is subject to legal privilege (sub-paragraph (7)). Sub-paragraph (8) defines "nationality document" and sub-paragraph (9) clarifies that the power may be used elsewhere than on the ship being boarded.
- 607 To ensure that relevant officers can perform their powers under this Schedule, paragraph 7 allows them to take another person, or relevant equipment and materials, on board a ship. The assistant may perform functions on behalf of the relevant officer under their supervision.
- 608 Paragraph 8 confirms that, where necessary, a relevant officer may use reasonable force to perform their functions set out in this Part of the Schedule.
- 609 Under paragraph 9 a relevant officer must provide evidence of their authority to exercise the powers set out in this Schedule, if requested to do so.
- 610 In order to carry out their functions, relevant officers require some protection from prosecution. Paragraph 10 protects officers from personal liability in any civil or criminal proceedings for anything done in performance of the functions in this Schedule, provided that a court is satisfied that they acted in good faith and had reasonable grounds for their actions.
- 611 Paragraph 11 creates two offences where a person does not comply with the investigation. The first (sub-paragraph (1)) makes it an offence where a person intentionally obstructs an officer exercising the powers in this Schedule, or fails to comply with a requirement made by an officer, without reasonable excuse. The second (sub-paragraph (2)) makes it an offence where a person knowingly or recklessly provides false information, or intentionally fails to disclose anything material, where an officer requires information when exercising the powers within this Schedule. Sub-paragraph (3) provides officers with a power of arrest without warrant for either of these offences. Both of these offences are summary only and on conviction the defendant is liable to an unlimited fine or 6 months imprisonment or both (sub-paragraph (4)). Sub-paragraph (5) increases the maximum period of imprisonment to 51

weeks after the commencement of section 281(5) of the Criminal Justice Act 2003.

Part 2 of new Schedule 4A

612 Part 2 of new Schedule 4A makes equivalent provision to Part 1 of Schedule 4A in respect of UK territorial waters adjacent to Scotland.

Part 3 of new Schedule 4A

613 Part 3 of new Schedule 4A makes equivalent provision to Part 1 of Schedule 4A in respect of UK territorial waters adjacent to Northern Ireland.

Schedule 15: Civil registration fees

Part 1: Powers to make regulations for the charging of fees

614 *Paragraph 1* inserts new section 71A into the Marriage Act 1949 ("the 1949 Act").

615 Subsection (1) of new section 71A enables fees to be set for a number of specified functions provided in connection with marriages, including under the 1949 Act and the Marriage (Registrar General's Licence) Act 1970, as well as for other marriage services provided by or on behalf of the Registrar General, superintendent registrars and registrars. Existing fees on the face of the 1949 Act are omitted (see *paragraphs 9 to 18* of this Schedule), as those fees may now be prescribed under the new section 71A. The power enables fees to be set for services previously provided without charge, and for any services provided in connection with marriages by the persons specified, including services performed under other enactments.

616 Subsections (3) and (4) of new section 71A provide that the regulations may require the superintendent registrar or registrar to pass on part of a fee paid to him or her to the Registrar General. In some cases, the Registrar General contributes to services provided by the superintendent registrar and registrar, and this provision enables the costs of that contribution to be recovered. For example, the Registrar General is involved in the verification of divorces obtained overseas, or provides blank certificate stock for use in issuing marriage certificates.

617 Subsection (5) of new section 71A enables the regulations to provide for the reduction, waiver, or refund of part or all of a fee, whether by conferring a discretion or otherwise, so that the regulations, and the person to whom the fee is payable, may respond where requiring payment of the fee would be unduly harsh or otherwise inappropriate.

618 Regulations under this section will be made by the Secretary of State and subject to the negative resolution procedure.

619 *Paragraph 2* inserts a new section 38A into the Births and Deaths Registration Act 1953 ("the 1953 Act"). Subsection (1) of new section 38A allows the Minister to make regulations to set fees for birth and death registration services. As for marriages, the fees currently specified on the face of the 1953 Act are omitted (see *paragraphs 22 to 28* of this Schedule) and those fees may instead be prescribed under new section 38A. The power also enables the setting of fees for services which have to date been provided without charge, and, more broadly, for any birth and death registration services (including those performed under other enactments) provided by or on behalf of the Registrar General, superintendent registrars and registrars, or by any other person.

620 Also as for marriage, subsections (3) and (4) of new section 38A enable the regulations to provide for part of the fee that is paid to superintendent registrars and registrars to be passed

on by them to the Registrar General, to cover the cost of the Registrar General's contribution to the particular service.

621 Regulations under this new section will be made by the Minister and will be subject to the negative resolution procedure.

622 *Paragraph 3* inserts new section 19B: Fees in respect of provision or copies of records etc. into the Registration Service Act 1953. The Registrar General holds a wide range of records, both modern and historic, and the powers to set fees in respect of those records are complex, widespread and often archaic.

623 Subsection (1) of new section 19B enables the Minister to prescribe fees for the provision of copies or other records of any information held by the Registrar General to ensure that the Registrar General is able to recover the costs of providing such services where no other fee is specified, or where it is more appropriate to specify a fee in a single place, rather than prescribing the same fee under a number of different enactments (for example relating to births, deaths, adoptions, parental orders, marriages, gender recognition and so on).

624 *Paragraph 4* amends section 34 of the Civil Partnership Act 2004 (fees) to align the provision for fees in connection with civil partnerships with that made for births, deaths and marriages.

625 *Paragraph 5* amends section 9 of the Marriage (Same Sex Couples) Act 2013 (conversion of civil partnership into marriage), to align the provision for fees in connection with conversions of civil partnerships into marriages with that made for births, deaths, marriages and civil partnerships.

Part 2: Consequential and related amendments

626 *Paragraphs 6 to 37* make consequential and related amendments to relevant legislation.

Commencement

627 Subsections (3) to (5) of section 61 come into force on the day this Act receives Royal Assent. These subsections confer a power to grant immigration bail while an individual is liable to detention, whether or not the power to detain can be exercised.

628 The immigration skills charge measure in section 85 comes into force two months after Royal Assent.

629 The remaining provisions of the Act will come into force by means of commencement regulations made by the Secretary of State. Subject to parliamentary approval of the Act and any necessary secondary legislation, it is intended to begin commencing the provisions of the Act from summer 2016.

Related documents

630 The following documents are relevant to the Act and can be read at the stated locations:

- Prime Minister's Speech on Immigration, 21 May 2015, <https://www.gov.uk/government/speeches/pm-speech-on-immigration>
- Government consultation 'Tackling Exploitation in the Labour Market' <https://www.gov.uk/government/consultations/labour-market-exploitation-improving-enforcement>

These Explanatory Notes relate to the Immigration Act 2016 (c. 19) which received Royal Assent on 12 May 2016

- Evaluation of the Right to Rent Scheme
<https://www.gov.uk/government/publications/evaluation-of-the-right-to-rent-scheme>
- Government consultation 'Reforming support for failed asylum seekers and other illegal migrants' <https://www.gov.uk/government/consultations/reform-of-support-for-failed-asylum-seekers-and-other-illegal-migrants>
- Government response to the consultation 'Reforming support for failed asylum seekers and other illegal migrants'
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/473231/Response_to_Consultation.pdf
- Government response to consultation 'Language Requirements for Public Sector Workers' <https://www.gov.uk/government/consultations/language-requirements-for-public-sector-workers>
- Migration Advisory Committee 'Call for evidence: Review of Tier 2'
<https://www.gov.uk/government/consultations/call-for-evidence-review-tier-2-route>
- Government response to the consultation "Tackling abuse in the Labour Market"
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/491260/BIS-16-11-government-response-to-tackling-exploitation-in-the-labour-market.pdf
- Government response to the Migration Advisory Committee's two reports on Tier 2 (Skilled Work)

[http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-03-24/HCWS660/Additional documents relating to the Immigration Act may be found on the Act webpage:](http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-03-24/HCWS660/Additional_documents_relati...)
[https://www.gov.uk/government/collections/immigration-Act-2015-16.](https://www.gov.uk/government/collections/immigration-Act-2015-16)

Annex A - Glossary

Term	Reference
1869 Act	Metropolitan Public Carriage Act 1869 (c.115)
1949 Act	Marriage Act 1949
1953 Act	Births and Deaths Registration Act 1953
1971 Act	Immigration Act 1971
1976 Act	Local Government (Miscellaneous Provisions) Act 1976
1998 Act	Private Hire Vehicles (London) Act 1998
1999 Act	Immigration and Asylum Act 1999
2002 Act	Nationality, Immigration and Asylum Act 2002
2003 Act	Licensing Act 2003
2006 Act	Immigration, Asylum and Nationality Act 2006
2014 Act	Immigration Act 2014
2015 Act	Modern Slavery Act 2015
ECHR	European Convention on Human Rights
MAC	Migration Advisory Committee
NHS	National Health Service
Non-EEA	non-European Economic Area
The Tribunal	First-tier Tribunal
Immigration Rules	Rules laid down by the Secretary of State pursuant to section 3(2) of the Immigration Act 1971

Annex B - Territorial extent and application

632. The table below sets out the extent and application [1] of each provision in the Act.

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion required?	Extends to Scotland?	Legislative Consent Motion required?	Extends to Northern Ireland?	Legislative Consent Motion required?
Part 1 Labour Market and Illegal working							
Section 1	Yes	Yes	No	Yes	No	Yes	No
Section 2	Yes	Yes	No	Yes	No	Partial	No
Section 3	Yes	Yes	No	Yes	No	Partial	No
Section 4	Yes	Yes	No	Yes	No	Yes	No
Section 5	Yes	Yes	No	Yes	No	Yes	No
Section 6	Yes	Yes	No	Yes	No	Yes	No
Section 7	Yes	Yes	No	Yes	No	Yes	No
Section 8	Yes	Yes	No	Yes	No	Yes	No
Section 9	Yes	Yes	No	Yes	No	Yes	No
Section 10	Yes	Yes	No	Yes	No	Yes	No
Section 11	Yes	Yes	No	Yes	No	Yes	No
Section 12	Yes	Yes	No	Yes	No	Yes	No
Section 13	Yes	Yes	No	Yes	No	Yes	No
Section 14	Yes	Yes	No	Yes	No	Yes	No
Section 15	Yes	Yes	No	Yes	No	Yes	No
Section 16	Yes	Yes	No	Yes	No	Yes	No
Section 17	Yes	Yes	No	Yes	No	Yes	No
Section 18	Yes	Yes	No	Yes	No	Yes	No
Section 19	Yes	Yes	No	Yes	No	Yes	No
Section 20	Yes	Yes	No	Yes	No	Yes	No
Section 21	Yes	Yes	No	Yes	No	Yes	No
Section 22	Yes	Yes	No	Yes	No	Yes	No
Section 23	Yes	Yes	No	Yes	No	Yes	No
Section 24	Yes	Yes	No	Yes	No	Yes	No
Section 25	Yes	Yes	No	Yes	No	Yes	No
Section 26	Yes	Yes	No	Yes	No	Yes	No

These Explanatory Notes relate to the Immigration Act 2016 (c. 19) which received Royal Assent on 12 May 2016

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion required?	Extends to Scotland?	Legislative Consent Motion required?	Extends to Northern Ireland?	Legislative Consent Motion required?
Section 27	Yes	Yes	No	Yes	No	Yes	No
Section 28	Yes	Yes	No	Yes	No	Yes	No
Section 29	Yes	Yes	No	Yes	No	Yes	No
Section 30	Yes	Yes	No	Yes	No	Yes	No
Section 31	Yes	Yes	No	Yes	No	Yes	No
Section 32	Yes	Yes	No	Yes	No	Yes	No
Section 33	Yes	Yes	No	Yes	No	Yes	No
Section 34	Yes	Yes	No	Yes	No	Yes	No
Section 35	Yes	Yes	No	Yes	No	Yes	No
Section 36	Yes	Yes	No	Yes	No	Yes	No
Section 37	Yes	Yes	No	Yes	No	Yes	No
Section 38	Yes	Yes	No	Yes	No	Yes	No
Part 2 Access to Services							
Section 39	Yes	Yes	No	Yes	No	Yes	No
Section 40	Yes	Yes	No	Yes	No	Yes	No
Section 41	Yes	Yes	No	Yes	No	Yes	No
Section 42	Yes	Yes	No	Yes	No	Yes	No
Section 43	Yes	Yes	No	Yes	No	Yes	No
Section 44	Yes	Yes	No	Yes	No	Yes	No
Section 45	Yes	Yes	No	Yes	No	Yes	No
Part 3 Enforcement							
Section 46	Yes	Yes	No	Yes	No	Yes	No
Section 47	Yes	Yes	No	Yes	No	Yes	No
Section 48	Yes	Yes	No	Yes	No	Yes	No
Section 49	Yes	Yes	No	Yes	No	Yes	No
Section 50	Yes	Yes	No	Yes	No	Yes	No
Section 51	Yes	Yes	No	Yes	No	Yes	No
Section 52	Yes	Yes	No	Yes	No	Yes	No
Section 53	Yes	Yes	No	Yes	No	Yes	No
Section 54	Yes	Yes	No	Yes	No	Yes	No

These Explanatory Notes relate to the Immigration Act 2016 (c. 19) which received Royal Assent on 12 May 2016

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion required?	Extends to Scotland?	Legislative Consent Motion required?	Extends to Northern Ireland?	Legislative Consent Motion required?
Section 55	Yes	Yes	No	Yes	No	Yes	No
Section 56	No	No	No	Yes	No	No	No
Section 57	Yes	Yes	No	Yes	No	Yes	No
Section 58	Yes	Yes	No	Yes	No	Yes	No
Section 59	Yes	Yes	No	Yes	No	Yes	No
Section 60	Yes	Yes	No	Yes	No	Yes	No
Section 61	Yes	Yes	No	Yes	No	Yes	No
Section 62	Yes	Yes	No	Yes	No	Yes	No
Part 4 Appeals							
Section 63	Yes	Yes	No	Yes	No	Yes	No
Section 64	Yes	Yes	No	Yes	No	Yes	No
Section 65	Yes	Yes	No	Yes	No	Yes	No
Part 5 Asylum							
Section 66	Yes	Yes	No	Yes	No	Yes	No
Section 67	Yes	Yes	No	Yes	No	Yes	No
Section 68	Yes	Yes	No	Yes	No	Yes	No
Section 69	Yes	Yes	No	No	No	No	No
Section 70	Yes	Yes	No	No	No	No	No
Section 71	Yes	Yes	No	No	No	No	No
Section 72	Yes	Yes	No	No	No	No	No
Section 73	Yes	Yes	No	Yes	No	Yes	No
Part 6 Border Security							
Section 74	Yes	Yes	No	Yes	No	Yes	No
Section 75	Yes	Yes	No	Yes	No	Yes	No
Section 76	Yes	Yes	No	Yes	No	Yes	No
Part 7 Language Requirements for Public Sector Workers							

These Explanatory Notes relate to the Immigration Act 2016 (c. 19) which received Royal Assent on 12 May 2016

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion required?	Extends to Scotland?	Legislative Consent Motion required?	Extends to Northern Ireland?	Legislative Consent Motion required?
Section 77	Yes	Yes	No	Yes	No	Yes	No
Section 78	Yes	Yes	No	Yes	No	Yes	No
Section 79	Yes	Yes	No	Yes	No	Yes	No
Section 80	Yes	Yes	No	Yes	No	Yes	No
Section 81	Yes	Yes	No	Yes	No	Yes	No
Section 82	Yes	Yes	No	Yes	No	Yes	No
Section 83	Yes	Yes	No	Yes	No	Yes	No
Section 84	Yes	Yes	No	Yes	No	Yes	No
Part 8 Fees							
Section 85	Yes	Yes	No	Yes	No	Yes	No
Section 86	Yes	Yes	No	Yes	No	Yes	No
Section 87	Yes	Yes	No	Yes	No	Yes	No
Section 88	Yes	Yes	No	Yes	No	Yes	No
Section 89	Yes	Yes	No	No	N/A	No	N/A
Part 9 Final Provisions							
Section 90	Yes	Yes	No	Yes	No	Yes	No
Section 91	Yes	Yes	No	Yes	No	Yes	No
Section 92	Yes	Yes	No	Yes	No	Yes	No
Section 93	Yes	Yes	No	Yes	No	Yes	No
Section 94	Yes	Yes	No	Yes	No	Yes	No
Section 95	Yes	Yes	No	Yes	No	Yes	No
Section 96	Yes	Yes	No	Yes	No	Yes	No
Schedules							
Schedule 1	Yes	Yes	No	Yes	No	Yes	No
Schedule 2	Yes	Yes	No	Yes	No	Yes	No
Schedule 3	Yes	Yes	No	Yes	No	Yes	No
Schedule 4	Yes	Yes	No	No	N/A	No	N/A
Schedule 5	Yes	Yes	No	No	N/A	No	N/A
Schedule 6	Yes	Yes	No	Yes	No	Yes	No
Schedule 7	Yes	Yes	No	Yes	No	Yes	No

These Explanatory Notes relate to the Immigration Act 2016 (c. 19) which received Royal Assent on 12 May 2016

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion required?	Extends to Scotland?	Legislative Consent Motion required?	Extends to Northern Ireland?	Legislative Consent Motion required?
Schedule 8	Yes	Yes	No	Yes	No	Yes	No
Schedule 9	Yes	Yes	No	Yes	No	Yes	No
Schedule 10	Yes	Yes	No	Yes	No	Yes	No
Schedule 11	Yes	Yes	No	Yes	No	Yes	No
Schedule 12	Yes	No	No	Yes	No	Yes	No
Schedule 13	Yes	Yes	No	Yes	No	Yes	No
Schedule 14	Yes	Yes	No	Yes	No	Yes	No
Schedule 15	Yes	Yes	No	No	N/A	No	N/A

Annex C – Hansard References

633. The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament:

Stage	Date	Hansard reference
House of Commons		
Introduction and First Reading	17 September 2015	Vol. 599 Cols. 1214 http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm150917/debtext/150917-0002.htm#15091732000011
Second Reading	13 October 2015	Vol. 600 Cols. 195 - 286 http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm151013/debtext/151013-0002.htm#15101362000002
Public Bill Committee First Sitting	20 October 2015	http://www.publications.parliament.uk/pa/cm201516/cmpublic/immigration/151020/am/151020s01.htm
Public Bill Committee Second Sitting	20 October 2015	http://www.publications.parliament.uk/pa/cm201516/cmpublic/immigration/151020/pm/151020s01.htm
Public Bill Committee Third Sitting	23 October 2015	http://www.publications.parliament.uk/pa/cm201516/cmpublic/immigration/151022/am/151022s01.htm
Public Bill Committee Fourth Sitting	23 October 2015	http://www.publications.parliament.uk/pa/cm201516/cmpublic/immigration/151022/pm/151022s01.htm
Public Bill Committee Fifth Sitting	27 October 2015	http://www.publications.parliament.uk/pa/cm201516/cmpublic/immigration/151027/am/151027s01.htm
Public Bill Committee Sixth Sitting	27 October 2015	http://www.publications.parliament.uk/pa/cm201516/cmpublic/immigration/151027/pm/151027s01.htm
Public Bill Committee Seventh Sitting	29 October 2015	http://www.publications.parliament.uk/pa/cm201516/cmpublic/immigration/151029/am/151029s01.htm
Public Bill Committee Eighth Sitting	29 October 2015	http://www.publications.parliament.uk/pa/cm201516/cmpublic/immigration/151029/pm/151029s01.htm
Public Bill Committee Ninth Sitting	3 November 2015	http://www.publications.parliament.uk/pa/cm201516/cmpublic/immigration/151103/am/151103s01.htm
Public Bill Committee Tenth Sitting	3 November 2015	http://www.publications.parliament.uk/pa/cm201516/cmpublic/immigration/151103/pm/151103s01.htm
Public Bill Committee Eleventh Sitting	5 November 2015	http://www.publications.parliament.uk/pa/cm201516/cmpublic/immigration/151105/am/151105s01.htm
Stage	Date	Hansard reference

These Explanatory Notes relate to the Immigration Act 2016 (c. 19) which received Royal Assent on 12 May 2016

Public Bill Committee Twelfth Sitting	5 November 2015	
http://www.publications.parliament.uk/pa/cm201516/cmpublic/immigration/151105/pm/151105s01.htm		
Public Bill Committee Thirteenth Sitting	10 November 2015	
http://www.publications.parliament.uk/pa/cm201516/cmpublic/immigration/151110/am/151110s01.htm		
Public Bill Committee Fourteenth Sitting	10 November 2015	
http://www.publications.parliament.uk/pa/cm201516/cmpublic/immigration/151110/pm/151110s01.htm		
Public Bill Committee Fifteenth Sitting	15 November 2015	
http://www.publications.parliament.uk/pa/cm201516/cmpublic/immigration/151117/am/151117s01.htm		
Report Stage and Third Reading	1 December 2015	Vol. 603 Cols. 174 – 281
http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm151201/debtext/151201-0002.htm#15120141000002		
House of Lords		
Introduction and First Reading	2 December 2015	Vol. 767 Cols. 1106
http://www.publications.parliament.uk/pa/ld201516/ldhansrd/text/151202-0001.htm#15120253000436		
Second Reading	22 December 2015	Vol. 607 Cols. 2452 - 2525
http://www.publications.parliament.uk/pa/ld201516/ldhansrd/text/151222-0001.htm#15122250000363		
Committee First Sitting	18 January 2016	Vol. 768 Cols. 525 – 547, 557 – 585 & 600 - 634
http://www.publications.parliament.uk/pa/ld201516/ldhansrd/text/160118-0001.htm#1601184000412		
Committee Second Sitting	20 January 2016	Vol. 768 Cols. 786 – 854 and 870 - 896
http://www.publications.parliament.uk/pa/ld201516/ldhansrd/text/160120-0001.htm#16012032000941		
Committee Third Sitting	1 February 2016	Vol. 768 Cols. 1589 – 1621, 1625 – 1659 and 1675 - 1712
http://www.publications.parliament.uk/pa/ld201516/ldhansrd/text/160201-0001.htm#1602019000478		
Committee Fourth Sitting	3 February 2016	Vol. 768 Cols. 1793 – 1861 and 1872 - 1910
http://www.publications.parliament.uk/pa/ld201516/ldhansrd/text/160203-0001.htm#16020358000424		
Grand Committee Fourth Sitting	9 February 2016	Vol. 768 GC. 125 – GC190
http://www.publications.parliament.uk/pa/ld201516/ldhansrd/text/160209-gc0001.htm#1602102000609		
Report First Sitting	9 March 2016	Vol. 769 Cols. 1292 - 1351
http://www.publications.parliament.uk/pa/ld201516/ldhansrd/text/160309-0001.htm#16030940000606		
Report Second Sitting	15 March 2016	Vol. 769 Cols. 1737 – 1812 and 1821 - 1842
http://www.publications.parliament.uk/pa/ld201516/ldhansrd/text/160315-0001.htm#16031556000351		
Stage	Date	Hansard reference
Report Third Sitting	21 March 2016	Vol. 769 Cols. 2091 – 2114 and 2138 - 2220

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http://www.publications.parliament.uk/pa/ld201516/ldhansrd/text/160321-0001.htm#16032110000508		
Third Reading	12 April 2016	Vol. 771 Cols. 125 - 164
https://hansard.parliament.uk/Lords/2016-04-12/debates/16041242000803/ImmigrationBill		
Ping Pong		
Commons Consideration of Lords Amendment	25 April 2016	Vol. 608 Cols. 1188 - 1258
https://hansard.parliament.uk/Commons/2016-04-25/debates/16042535000002/ImmigrationBill		
Lords Consideration of Commons Amendments	26 April 2016	Vol. 771 Cols. 1063 - 1120
https://hansard.parliament.uk/Commons/2016-04-25/debates/16042535000002/ImmigrationBill		
Commons Consideration of Lords Amendment	9 May 2016	Vol. 609 Cols. 485 –507
https://hansard.parliament.uk/Commons/2016-05-09/debates/1605103000001/ImmigrationBill		
Lords Consideration of Commons Amendment	10 May 2016	Vol. 771 Cols. 1651 - 1673
https://hansard.parliament.uk/lords/2016-05-10/debates/16051037000419/ImmigrationBill		
Royal Assent	12 May 2016	Lords: Vol. 771 Col. 1831 Commons: Vol. 609 Col. 19WS
https://hansard.parliament.uk/lords/2016-05-12/debates/16051248000398/RoyalAssent		

These Explanatory Notes relate to the Immigration Act 2016 (c. 19) which received Royal Assent on 12 May 2016

Annex D - Progress of Bill Table

634. This Annex shows how each section and Schedule of the Act was numbered during its passage through Parliament.

Section of the Act	Bill as Introduced in Commons	Bill as amended in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 1	Clause 1	Clause 1	Clause 1	Clause 1	Clause 1
Section 2	Clause 2	Clause 2	Clause 2	Clause 2	Clause 2
Section 3	Clause 3	Clause 3	Clause 3	Clause 3	Clause 3
Section 4	Clause 4	Clause 4	Clause 4	Clause 4	Clause 4
Section 5	Clause 5	Clause 5	Clause 5	Clause 5	Clause 5
Section 6					Clause 6
Section 7					Clause 7
Section 8	Clause 6	Clause 6	Clause 6	Clause 6	Clause 8
Section 9	Clause 7	Clause 7	Clause 7	Clause 7	Clause 9
Section 10				Clause 8	Clause 10
Section 11				Clause 9	Clause 11
Section 12				Clause 10	Clause 12
Section 13				Clause 11	Clause 13
Section 14				Clause 12	Clause 14
Section 15				Clause 13	Clause 15
Section 16				Clause 14	Clause 16
Section 17				Clause 15	Clause 17
Section 18				Clause 16	Clause 18
Section 19				Clause 17	Clause 19
Section 20				Clause 18	Clause 20
Section 21				Clause 19	Clause 21
Section 22				Clause 20	Clause 22
Section 23				Clause 21	Clause 23
Section 24				Clause 22	Clause 24
Section 25				Clause 23	Clause 25
Section 26				Clause 24	Clause 26

These Explanatory Notes relate to the Immigration Act 2016 (c. 19) which received Royal Assent on 12 May 2016

Section of the Act	Bill as Introduced in Commons	Bill as amended in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 27				Clause 25	Clause 27
Section 28				Clause 26	Clause 28
Section 29				Clause 27	Clause 29
Section 30				Clause 28	Clause 30
Section 31				Clause 29	Clause 31
Section 32				Clause 30	Clause 32
Section 33				Clause 31	Clause 33
Section 34	Clause 8	Clause 8	Clause 8	Clause 32	Clause 34
Section 35	Clause 9	Clause 9	Clause 9	Clause 33	Clause 35
Section 36	Clause 10	Clause 10	Clause 10	Clause 34	Clause 36
Section 37		Clause 11	Clause 11	Clause 35	Clause 37
Section 38	Clause 11	Clause 12	Clause 12	Clause 36	Clause 38
Section 39	Clause 12	Clause 13	Clause 13	Clause 37	Clause 41
Section 40	Clause 13	Clause 14	Clause 14	Clause 38	Clause 42
Section 41	Clause 14	Clause 15	Clause 15	Clause 39	Clause 43
Section 42	Clause 15	Clause 16	Clause 16	Clause 40	Clause 44
Section 43	Clause 16	Clause 17	Clause 17	Clause 41	Clause 45
Section 44	Clause 17	Clause 18	Clause 18	Clause 42	Clause 46
Section 45	Clause 18	Clause 19	Clause 19	Clause 43	Clause 47
Section 46	Clause 19	Clause 20	Clause 20	Clause 44	Clause 48
Section 47	Clause 20	Clause 21	Clause 21	Clause 45	Clause 49
Section 48	Clause 21	Clause 22	Clause 22	Clause 46	Clause 50
Section 49	Clause 22	Clause 23	Clause 23	Clause 47	Clause 51
Section 50	Clause 23	Clause 24	Clause 24	Clause 48	Clause 52
Section 51	Clause 24	Clause 25	Clause 25	Clause 49	Clause 53
Section 52	Clause 25	Clause 26	Clause 26	Clause 50	Clause 54
Section 53	Clause 26	Clause 27	Clause 27	Clause 51	Clause 55
Section 54	Clause 27	Clause 28	Clause 28	Clause 52	Clause 56
Section 55		Clause 29	Clause 29	Clause 53	Clause 57
Section 56		Clause 30	Clause 30	Clause 54	Clause 58
Section 57				Clause 55	Clause 59

These Explanatory Notes relate to the Immigration Act 2016 (c. 19) which received Royal Assent on 12 May 2016

Section of the Act	Bill as Introduced in Commons	Bill as amended in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 58	Clause 28	Clause 31	Clause 31	Clause 56	Clause 61
Section 59					Clause 62
Section 60					
Section 61	Clause 29	Clause 32	Clause 32	Clause 57	Clause 63
Section 62	Clause 30	Clause 33	Clause 33	Clause 58	Clause 64
Section 63	Clause 31	Clause 34	Clause 34	Clause 59	Clause 65
Section 64	Clause 32	Clause 35	Clause 35	Clause 60	Clause 66
Section 65	Clause 33	Clause 36	Clause 36	Clause 61	Clause 67
Section 66	Clause 34	Clause 37	Clause 37	Clause 62	Clause 68
Section 67					Clause 69
Section 68		Clause 38	Clause 38	Clause 63	Clause 70
Section 69			Clause 39	Clause 64	Clause 71
Section 70			Clause 40	Clause 65	Clause 72
Section 71			Clause 41	Clause 66	Clause 73
Section 72			Clause 42	Clause 67	Clause 74
Section 73			Clause 43	Clause 68	Clause 75
Section 74	Clause 35	Clause 39	Clause 44	Clause 69	Clause 76
Section 75	Clause 36	Clause 40	Clause 45	Clause 70	Clause 77
Section 76	Clause 37	Clause 41	Clause 46	Clause 71	Clause 78
Section 77	Clause 38	Clause 42	Clause 47	Clause 72	Clause 79
Section 78	Clause 39	Clause 43	Clause 48	Clause 73	Clause 80
Section 79	Clause 40	Clause 44	Clause 49	Clause 74	Clause 81
Section 80	Clause 41	Clause 45	Clause 50	Clause 75	Clause 82
Section 81	Clause 42	Clause 46	Clause 51	Clause 76	Clause 83
Section 82	Clause 43	Clause 47	Clause 52	Clause 77	Clause 84
Section 83	Clause 44	Clause 48	Clause 53	Clause 78	Clause 85
Section 84	Clause 45	Clause 49	Clause 54	Clause 79	Clause 86
Section 85	Clause 46	Clause 50	Clause 55	Clause 80	Clause 87
Section 86	Clause 47	Clause 51	Clause 56	Clause 81	Clause 88
Section 87	Clause 48	Clause 52	Clause 57	Clause 82	Clause 89
Section 88	Clause 49	Clause 53	Clause 58	Clause 83	Clause 90

These Explanatory Notes relate to the Immigration Act 2016 (c. 19) which received Royal Assent on 12 May 2016

Section of the Act	Bill as Introduced in Commons	Bill as amended in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 89	Clause 50	Clause 54	Clause 59	Clause 84	Clause 91
Section 90					Clause 92
Section 91	Clause 51	Clause 55	Clause 60	Clause 85	Clause 93
Section 92	Clause 52	Clause 56	Clause 61	Clause 86	Clause 94
Section 93	Clause 53	Clause 57	Clause 62	Clause 87	Clause 95
Section 94	Clause 54	Clause 58	Clause 63	Clause 88	Clause 96
Section 95	Clause 55	Clause 59	Clause 64	Clause 89	Clause 97
Section 96	Clause 56	Clause 60	Clause 65	Clause 90	Clause 98
Schedule 1					Schedule 1
Schedule 2				Schedule 1	Schedule 2
Schedule 3				Schedule 2	Schedule 3
Schedule 4	Schedule 1	Schedule 1	Schedule 1	Schedule 3	Schedule 4
Schedule 5		Schedule 2	Schedule 2	Schedule 4	Schedule 5
Schedule 6	Schedule 2	Schedule 3	Schedule 3	Schedule 5	Schedule 6
Schedule 7	Schedule 3	Schedule 4	Schedule 4	Schedule 6	Schedule 7
Schedule 8	Schedule 4	Schedule 5	Schedule 5	Schedule 7	Schedule 8
Schedule 9		Schedule 6	Schedule 6	Schedule 8	Schedule 9
Schedule 10	Schedule 5	Schedule 7	Schedule 7	Schedule 9	Schedule 10
Schedule 11	Schedule 6	Schedule 8	Schedule 8	Schedule 10	Schedule 11
Schedule 12		Schedule 9	Schedule 9	Schedule 11	Schedule 12
Schedule 13	Schedule 7	Schedule 10	Schedule 10	Schedule 12	Schedule 13
Schedule 14	Schedule 8	Schedule 11	Schedule 11	Schedule 13	Schedule 14
Schedule 15	Schedule 9	Schedule 12	Schedule 12	Schedule 14	Schedule 15

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