EXPLANATORY NOTES

Nationality and Borders Act 2022

Chapter 36

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EXPLANATORY NOTES—NATIONALITY AND BORDERS ACT 2022

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NATIONALITY AND BORDERS ACT 2022

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Nationality and Borders Act 2022 which received Royal Assent on 28 April 2022 (c. 36).

- These Explanatory Notes have been prepared by the Home Office in order to assist the reader of the Act and to help inform debate on it. 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.

Table of Contents

Overview of the Act

1 The Nationality and Borders Act 2022 has three main objectives:

- To increase the fairness of the system to better protect and support those in need of asylum;
- To deter illegal entry into the United Kingdom, thereby breaking the business model of people smuggling networks and protecting the lives of those they endanger; and
- To remove more easily those with no right to be in the United Kingdom.

Policy background

2 The United Kingdom's legal immigration system has been reformed by the ending of free movement and the introduction of a new points-based immigration system. This Act is intended to tackle illegal migration, reform the asylum system and control the UK borders.

3 Under new proposals, how someone enters the United Kingdom will impact on how a claim progresses through the system and the type of status granted in the UK if that claim is successful. The asylum framework will be streamlined, ensuring cases and appeals are dealt with more effectively, while improving the Home Office's ability to remove those with no right to remain, including Foreign National Offenders (FNOs). At the same time, the Government's aim is to strengthen safe and legal routes, offering protection to refugees fleeing persecution, and fixing historical anomalies in British nationality law.

New Plan for Immigration

4 On 24 March the Home Secretary published the *New Plan for Immigration* and opened a public consultation which ran from 24 March to 6 May 2021.

5 The results of the consultation were published on 22 July 2021 and have been used to inform measures in this Act.

Ending Anomalies in British Nationality Law

6 This Act will introduce new registration provisions for children of British Overseas Territories citizens, who were unable to acquire that status under earlier legislation, either because women could not pass on citizenship at the time of their birth, or because their parents were not married. The Act will also introduce a provision for children to acquire their father's citizenship where they were unable to do so because their mother was married to someone else. The Act will also create a new time-limited route for the descendants of those born on the Chagos Islands, now known as the British Indian Ocean Territory, to apply to register as both British Overseas Territories citizens and British citizens.

7 A new adult registration route will allow the Secretary of State to grant citizenship where, in the Secretary of State's opinion, a person failed to become a British citizen and/or British Overseas Territories citizen because of historical legislative unfairness, an act or omission by a public authority; or other exceptional circumstances relating to the person's case.

8 This Act also removes the requirement to have been in the United Kingdom at the start of the five (or three) year residential qualifying period for naturalisation in exceptional cases. This will mean that people will not be prevented from qualifying if there are good reasons why they could not have been in the United Kingdom at that time.

9 The Act will allow the Secretary of State to disapply the requirement to give notice of a decision to deprive a person of their nationality where notice of the decision would be impractical or a threat to national security.

10 The Act will amend the existing provisions for the registration of a stateless child as a citizen, adding a requirement that a child aged 5-17 will not qualify if they could reasonably acquire another nationality. This means that a child cannot benefit if their parents could, but choose not to, acquire their own nationality for their child.

Illegal Migration and Reforming the Asylum System

11 Prior to the COVID-19 pandemic, the numbers of those seeking asylum in the United Kingdom was rising. In 2019, the United Kingdom received 35,700 new asylum claims, a 21% increase on the previous year.[1] At the end of 2020, there were 109,000 asylum claims being progressed in the asylum system with 73% of these having been in the system for over one year.[2] This includes cases that are being worked towards initial or final decision, as well as cases that have reached a conclusion where the individuals are due to be removed from the United Kingdom.

12 As a result, the asylum system costs approximately £1 billion per year.[3]

13 The Government wants to improve its ability to provide protection to those who would be at risk of persecution on return to their country of nationality. To that end, this Act consolidates a test against which an asylum claim will be assessed, with a clear framework to set the standard for testing what amounts to a "well-founded fear of persecution". The Act also clarifies the definition of "persecution" to make clear the requirements for qualifying for protection, in line with the 1951 Refugee Convention.

14 This Act also reduces the criminality threshold so that those who have been convicted and sentenced to at least 12 months' imprisonment can be considered for removal in line with Article 33(2) of the Refugee Convention.

15 In the 12 months ending September 2019, around 62% of asylum applicants to the United Kingdom had entered the country irregularly (40% clandestinely, 22% without relevant documentation) with the remainder largely thought to have arrived regularly (e.g. on a visa), before subsequently applying for asylum.[4]

16 Methods of irregular entry can be unsafe, dangerous and leave migrants open to exploitation by organised crime groups. One such method of entry is across the English Channel via small boats, which saw a significant increase in 2020 and 2021.

17 This Act introduces a comprehensive set of measures to discourage irregular entry and improve the Home Office's ability to remove those with no right to remain in the United Kingdom. This is aimed at reducing the rapid intake of cases into the asylum system to improve the speed at which asylum seekers receive a decision, benefitting both the UK taxpayer and the asylum seekers themselves.

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[1] Home Office Immigration Statistics, Year Ending September 2020. 26 November 2020.

[2] Home Office "Immigration and Protection Q4 2020". 26 February 2021.

[3] Home Office, internal data.

[4] Home Office, internal data.

18 The sections in this Act will create a differentiated approach: how someone arrives in the United Kingdom will have an impact on the type of status granted in the United Kingdom if their asylum claim is successful. Under the framework created by this Act, people who enter the United Kingdom and engage the United Kingdom's protection obligations under the Refugee Convention may be granted temporary protection status where they do not meet certain conditions (aligned with those set out in Article 31(1) of the Refugee Convention). This includes circumstances where an individual does not come directly from a territory where their life or freedom was threatened, does not claim asylum without delay or, where relevant, does not show good cause for their illegal entry or presence

19 Temporary protection status will not include a defined route to settlement in the United Kingdom, but individuals may be eligible to apply for long residency settlement after 10 years if the necessary requirement are met. It will restrict family reunion rights and may only allow recourse to public funds in cases of destitution. People granted temporary protection status will be expected to leave the United Kingdom as soon as they are able to or as soon as they can be returned or removed, once no longer in need of protection.

20 The current asylum accommodation estate will be expanded to include basic full board accommodation centres. These centres may accommodate particular cohorts of asylum seekers and failed asylum seekers who are in need of support, in order to resolve their immigration status more efficiently and facilitate their removal where their claim has been refused. Examples include, but are not limited to, asylum seekers whose claims are being considered, and failed asylum seekers who fall to be removed from the United Kingdom once the practical arrangements are completed.

21 This Act also contains provisions that allow individuals to be removed to a safe third country before their asylum claim has been considered, providing opportunity for extraterritorial processing models to be developed in the future in line with the United Kingdom's international obligations. This is likewise aimed at removing any incentives which may attract economic migrants to the United Kingdom and to incentivise people to claim asylum in the first safe country.

22 In 2019, around 1 in 6 asylum seekers to the United Kingdom had already made an asylum claim in another European country.[5] Following the end of the Transition period, changes to the Immigration Rules were brought into effect which amended legal powers to treat cases as inadmissible (i.e. the United Kingdom does not take responsibility for assessing the asylum claim) where individuals have passed through safe countries or have connections to a safe country where they could have made a claim for asylum.

23 Through this Act, inadmissibility rules have been clarified and placed into primary legislation. This is aimed at encouraging asylum seekers to claim asylum in the first safe country they reach and to deter onward travel to the United Kingdom – often at the hands of criminal facilitators.

[5] Home Office, Eurodac data (internal).

24 Since 2015, the United Kingdom has received, on average, more than 3,000 unaccompanied asylum-seeking children per year. Where age was disputed and resolved from 2016-2020, 54% were found to be adults.[6] There are safeguarding risks if people over 18 are treated as children and placed in settings, including schools, with children.

25 This Act seeks to strengthen the framework for determining the age of people subject to immigration control, including those seeking asylum. This includes establishing a decision-making function in the Home Office to allow the Secretary of State to conduct age assessments. The measures also create a right of appeal against age assessment decisions and look to establish a framework for the use of scientific technology in decisions about age.

Streaming Asylum Claims and Appeals

26 Under the current appeals system it can take years to conclude an asylum appeal. As of May 2020, 32% of asylum appeals lodged in 2019 and 9% of appeals lodged in 2018 did not have a known outcome.[7]

27 Currently, if a person's asylum claim is refused, they have an automatic right to appeal the decision to the First-tier Tribunal (Immigration and Asylum Chamber). Nearly everyone who has their asylum claim rejected chooses to make this appeal. If the decision is upheld the person claiming asylum has a further route of appeal to the Upper Tribunal. If at that point they are not satisfied with the result, a decision can in some circumstances be appealed again at the Court of Appeal and Supreme Court. It is possible for a person, having exhausted all the above processes, to then make a new claim, in effect, starting the whole appeal process again.

28 A judicial review may also be brought against a Home Office decision at various points in the process of someone seeking to prevent their removal from the United Kingdom or when refused a right to remain in the United Kingdom. In 2019, there were 8,000 judicial reviews against Home Office immigration and asylum decisions.[8] Judges concluded 6,063 cases on paper, of which 90% were dismissed or refused, with around 17% being deemed by the judge to be "Totally Without Merit".[9] These figures illustrate that a large percentage of cases taken to judicial review are not well-founded, taking up judicial and administrative time and delaying legitimate cases.

29 The measures outlined in this Act seek to streamline the appeals process by introducing an expanded 'one-stop' process to ensure that asylum and human rights claims, referrals as potential victims of modern slavery and any other protection matters are made and considered together, ahead of any appeal hearing. Improved access to legal advice is intended to help people raise such matters as early as possible and avoid last minute and repeat issues being raised.

30 This Act aims to reduce the volume of sequential claims, appeals or legal action, while ensuring access to justice and upholding the rule of law. The envisioned outcome is to ensure swift access to justice, stop parallel and sequential litigation on different grounds and ensure

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[6] Home Office "Age Disputes - Asylum and Resettlements Datasets". 25 February 2021.

[7] Home Office "Asylum and resettlement datasets". 25 February 2021.

[8] Ministry of Justice (2020) "Tribunal Statistics Quarterly October to December 2020". 11 March 2021.

[9] Ibid.

an effective and efficient judicial system. A key part of this is the introduction of a Priority Removal Notice. People who are liable for removal and can be subject to an enforced return within a reasonable timescale will, on receipt of this, be able to access legal advice for a fixed number of hours, funded by legal aid, which is non-means and non-merits tested, on any aspect of their immigration status and claim(s) for remaining in the UK, including modern slavery matters. This will require recipients to bring forward any such grounds within a set time period. If a person raises a late claim, without good reason, outside of this period and that claim is refused, any right of appeal will be direct to the Upper Tribunal rather than the First-tier Tribunal. This will ensure that any appeals following a late claim will be dealt with in the most expeditious manner possible, while maintaining judicial oversight from the Tribunal.

31 The introduction of a new accelerated appeal process will ensure that cases which are deemed to be unfounded, or new claims which are raised late, are dealt with swiftly

Supporting Victims of Modern Slavery

32 The Government remains committed to ensuring the police and the courts have the necessary powers to bring perpetrators of modern slavery to justice, while giving victims the support they need to rebuild their lives. The United Kingdom is a signatory of the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT), which sets out signatory states' international obligations to identify and support victims of modern slavery.

33 When it is deemed that there are Reasonable Grounds (RG) to believe an individual is a victim of modern slavery, that individual is protected from removal (unless an exemption applies) for the 30-day recovery period or until they have received a Conclusive Grounds (CG) decision regarding whether they are a confirmed victim of modern slavery, whichever is longer. While individuals are protected from removal, they are also entitled to support in line with their needs.

34 Most potential victims of modern slavery receive a positive decision. In 2020, the Single Competent Authority (SCA) made 10,608 reasonable grounds decisions, of which 92% (9,765) were positive. They also made 3,454 conclusive grounds decisions, of which 89% (3,084) were positive.

35 The most common nationality of all referrals to the National Referral Mechanism (NRM) in 2020 was United Kingdom nationals, accounting for 34% (3,560) of all potential victims. This was followed by Albanian and Vietnamese nationals, that made up 15% (1,638) and 6% (653) of NRM referrals respectively. United Kingdom dual nationals made up 2% (231) of all NRM referrals in 2020.

36 The Government wants to ensure that victims are identified and provided with support, and that any gaps in the system which allow for the NRM to be misused are addressed. This will avoid resources being diverted away from victims who need support and unnecessary impacts on removal actions. In 2021, the NRM system is estimated to have cost at least £80m.

37 The measures outlined in this Act seek to ensure victims are identified as quickly as possible, while enabling decision makers to distinguish more effectively between genuine and non-genuine accounts of modern slavery and enabling the removal of serious criminals and people who pose a threat to United Kingdom national security.

38 There are concerns about the potential for a referral to the National Referral Mechanism to be used to frustrate Immigration Enforcement action or gain access to support inappropriately.

39 Of the individuals released from detention following being detained in the United Kingdom for immigration offences, 1,005 were referred to the NRM while in detention in 2020.

40 NRM referrals from Foreign National Offenders and foreign nationals held on remand are rising, with an average of 85 per month in the first five months of 2021 (compared to 19 per month in 2018). In 2019, only 6% of FNOs referred to the NRM from detention were returned.

41 FNOs were less likely to receive a positive RG decision (73%) compared to RG decisions for all referrals (90%) in 2019. The CG decision data between all NRM referrals and FNO referrals from detention are harder to compare due to the time lag to a conclusive decision and the number of outstanding decisions.

42 This raises concerns that some referrals are being made late in the process to frustrate immigration action and that legitimate referrals are not being made in a timely way.

43 The modern slavery measures in this Act aims to set out the rights and entitlements of possible victims and to bring clarity to victims and decision-makers as to how decisions should be taken to ensure individuals are identified and supported as quickly as possible.

44 This package of measures is enhanced by non-legislative changes.

Disrupting Criminal Gangs Behind People Smuggling

45 Illegal migration causes significant harm and endangers the lives of those undertaking dangerous journeys. In the summer of 2020, a record number of 8,500 people crossed the English Channel in small boats.[10] This is a dangerous crossing which the Government aims to make unviable.

46 The Government is already working with partners in Europe, especially France and Belgium, to prevent migrants attempting to make their way illegally to the United Kingdom. This includes work funded through overseas development aid and activities of law enforcement and intelligence partners including the National Crime Agency (NCA). The Government intends to continue working with these partners and all operational partners and agencies to tackle the upstream causes of illegal immigration.

47 This Act will introduce tougher criminal offences for those attempting to enter the United Kingdom illegally or found to be facilitating illegal immigration.

48 Border Force powers and capabilities to deal with maritime threats will be expanded through this Act. Border Force will be given strengthened powers to divert vessels they suspect are being used to facilitate illegal entry to the United Kingdom out of United Kingdom territorial seas and enable enforcement action to take place outside UK waters. The Act will set out how and where asylum claims must be made, expressly excluding claims from being made at sea.

49 A significant number of people entering the United Kingdom illegally arrive through concealment in vehicles travelling into the United Kingdom by tourist and freight transport routes. This Act gives Border Force Officers the power to search unaccompanied containers which have been removed from the ship or aircraft for the purpose of satisfying themselves whether there are any people they want to examine.

50 The Act will strengthen powers to allow migrants who arrive on small boats to be treated in line with arrivals at port. This section will allow Officers to examine those who have crossed the Channel via small boat at the location they are being processed for immigration purposes,

[10] Home Office Internal Management Information [unpublished].

away from port and border areas or location of entry. This will ensure that Counter-Terrorism Police are able to identify and examine individuals for the purpose of determining involvement in terrorist activity under the same power as if those individuals had passed through conventional border controls.

51 This Act will introduce a new civil penalty regime alongside the existing Clandestine Entrant Civil Penalty scheme. Under the current scheme, vehicles coming into the United Kingdom must be secured in order to stop clandestine entrants. Where a clandestine entrant is found on board a vehicle on arrival in the United Kingdom and the responsible person has failed to operate a system that prevented their entry, a civil penalty may be imposed. The additional regime will firstly create a new civil offence, whereby a civil penalty may be imposed if there has been a failure to adequately secure a commercial goods vehicle and to take the actions specified in regulations in relation to the securing of the vehicle against unauthorised access, regardless of whether a clandestine entrant is found within it. These actions will include a requirement to check the goods vehicle on an ongoing basis for signs of possible clandestine entry, to report any unauthorised access and to keep records that confirm the actions specified in regulations have been taken. The Immigration and Asylum Act 1999 will be amended to remove section 33 and the Prevention of Clandestine Entrant: Code of Practice.

52 Instead, the Secretary of State will specify in regulations the actions to be taken to secure the vehicle against unauthorised access. Secondly, the Act will also amend the regime so that liability to a fine will arise in all cases where a clandestine entrant is found on board a vehicle, save where there is evidence of duress. While the Secretary of State will have discretion to reduce the level of fine charged, the steps taken to secure the vehicle would no longer be relevant to liability to a fine. The regime is also amended so that train operators must comply with regulations made under section 34(3B). The regulations will specify the actions that a rail operator must have taken to secure a rail freight wagon against unauthorised access, in order to raise a defence, where it would be unsafe to stop the train on discovering a clandestine in a rail freight wagon.

53 A deportation order requires the subject to leave the United Kingdom and prohibits the subject from entering the United Kingdom. It invalidates any leave to enter or remain in the United Kingdom given to the subject before the order was made or while it is in force. The majority of those who receive deportation orders are Foreign National Offenders.

54 The current maximum sentence for entering in breach of a deportation order under section 24 of the Immigration Act 1971 is 6 months imprisonment which does not reflect the seriousness of this offence.

55 Increasing the maximum sentence from six months to five years' imprisonment will disrupt those who are subject to a deportation order who are also involved in organised criminal networks, including those involved in organised immigration crime.

56 Broadly, non-visa nationals visiting the United Kingdom for up to 6 months currently arrive at the United Kingdom border with limited prior checks by the Home Office. This presents a gap in border control and the ability to count people in and out of the United Kingdom.

57 The introduction of an Electronic Travel Authorisation (ETA) Scheme will assist with the ongoing digitization of the United Kingdom's border. This will mean, in the same way as for countries like the United States, Canada, Australia and New Zealand, before a person travels to the United Kingdom for a visit, they will need to apply for permission where aspects of any criminality must be provided through self-declaration. The Carrier Liability Scheme will be extended to incentivise carriers to check permission to travel before they bring an individual to the United Kingdom.

Enforcing Removals

58 Enforced returns refer to instances where the Home Office makes arrangements to remove immigration offenders or persons subject to a deportation order who do not intend to depart voluntarily from the United Kingdom. Voluntary return refers to any non-enforced departure of an individual with no right to remain.

59 There has been a gradual long-term reduction in enforced returns from the United Kingdom. In 2019, enforced returns fell to 7,192 - 22% lower than the previous year, and continuing a downward trend since 2013, when there were 14,900 enforced returns.[11]

60 This Act creates a power for the Secretary of State to impose visa penalties on nationals of particular countries which do not co-operate with removal of their nationals who have no right to be in the United Kingdom.

61 As of 2020, there are 10,000 Foreign National Offenders living in the community who are subject to deportation action; around a quarter of whom were released from prison more than 5 years ago.[12] And around 42,000 failed asylum seekers are still living in the community.[13] While there are various contributing factors to these trends, repeated legal challenges impede the Home Office's ability to enforce immigration laws, contributing to a downward trend in the number of people, including Foreign National Offenders, being removed from the United Kingdom.

62 In 2019, new claims, legal challenges or other issues were raised by 73% of people who had been detained within the United Kingdom following immigration offences, resulting in release from immigration detention in 94% of cases instead of removal from the United Kingdom. On full evaluation, very few of these claims amounted to a valid reason to remain in the United Kingdom. For all issues raised during immigration detention in 2017, 83% were ultimately unsuccessful.[14]

63 Foreign National Offenders serving prison sentences in the United Kingdom, where deportation is being pursued, become subject to the provisions of the Early Removal Scheme (ERS). This Scheme provides a window at the end of the custodial part of their sentence for offenders who are subject to a determinate sentence (a sentence with a defined length) during which they can be removed from prison for the purpose of immediate deportation.

64 This Act will increase the removal window from 9 months to 12 months, subject to the individual serving at least half of the requisite custodial period in prison. Expanding the removal window increases the opportunity for deportation, thereby reducing the numbers of Foreign National Offenders in prison.

65 The introduction of a "stop the clock" provision will pause a Foreign National Offender's sentence following their removal and reactivate it should the Foreign National Offender return to the UK. This section makes changes to the regime in the Criminal Justice Act 2003 relating to

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[11] Home Office "How many people are detained or returned?". 25 February 2021.

[12] Home Office "Immigration Enforcement Transparency Data". 26 February 2021.

[13] Home Office "Immigration and Protection: UK Visa & Immigration Transparency Data Q4 2020".

[14] Home Office "Issues raised by people facing return in Immigration Detention". 16 March 2021.

the early removal of prisoners, enabling them to be removed at an earlier point in their sentence and while on recall, and providing that if they return to the UK their sentence continues where it left off.

Non-Legislative Programme

66 This Act is supplemented by a programme of non-legislative reform within the New Plan for Immigration. This includes strengthening resettlement routes and enhancing support to victims of modern slavery.

Resettlement

67 Many of the measures contained within the Act are intended to reduce illegal migration and the criminality associated with it. In parallel, the Government intends to enhance resettlement routes to continue to provide pathways for refugees to be granted protection in the UK.

68 Between 2015 and 2019, around 25,000[15] refugees were resettled and a further 29,000[16] close relatives through refugee family reunion. Over the last 5 years, the UK's resettlement efforts have been focused on resettling people from countries hosting large numbers of refugees, such as Lebanon, Jordan and Turkey in response to the Syrian conflict.

69 Following the passing of China's National Security Law, which restricts the rights and freedoms of the people of Hong Kong, the UK introduced an immigration route for British Nationals (Overseas) status holders. This route provides the opportunity for such individuals and their family members to live, work and study in the United Kingdom. In the first quarter of 2021, approximately 34,300 individuals[17] submitted an application for this route to citizenship.

70 Going forward, the Government intends to broaden the scope of the United Kingdom's protection offer to encompass persecuted refugees from a broader range of minority groups. Under the New Plan for Immigration, refugees who are resettled into the United Kingdom will be granted indefinite leave to remain and receive enhanced integration support.

71 The United Kingdom's commitment to resettling refugees will continue to be a multi-year commitment with numbers subject to ongoing review guided by circumstances and capacity at any given time.

Modern Slavery

72 Alongside the suite of legislative measures relating to modern slavery contained within the Act, a range of non-legislative provisions were announced in the New Plan for Immigration to provide enhanced support to victims. This includes commitments to ensure that victims' overall support packages are more tailored to individual need from the outset, and that they have ready access to specific mental health provision. The Government also wishes to improve the support given to child victims of modern slavery, including those involved in county lines exploitation.

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15 Eurostat (2021a) "Resettled Persons - Annual Data". Updated 9 March 2021.

16 Home Office (2021a) "Immigration statistics data table year ending December 2020". 25 February 2021.

17 "How many people come to the UK each year (including visitors)?" - GOV.UK (www.gov.uk).

73 The Government intends to provide increased support to First Responders to enable them to identify victims as early as possible. Alongside this, a new way of identifying child victims of modern slavery is being piloted, enabling decisions to be taken within existing safeguarding structures by local authorities, police and health workers, who have a duty to work together to safeguard and promote the welfare of children.

74 In addition to the funding we are providing to the police to improve the response, the Home Office is providing further funding to support work to increase modern slavery prosecutions, including by ensuring victims have the support they need to engage with the criminal justice system (CJS).

75 As well as reforming the current system, a new fund to pilot interventions by non-governmental organisations and stakeholders will aim to prevent modern slavery upstream.

76 To ensure the United Kingdom's approach continues to meet the threat the 2014 Modern Slavery Strategy will be reviewed. The Government will seek to bring forward further legislation to support the wider NRM Transformation Programme and underpin any future changes to the system when Parliamentary time allows.

77 The Government also recognises that the United Kingdom cannot tackle this crime alone and must work with international partners to deliver progress. The United Kingdom continues to demonstrate international leadership, including at the G7 and G20, driving action towards the long-term ambition of eradicating modern slavery. The United Kingdom government has committed to investing up to £200m of United Kingdom aid to combat modern slavery across the globe.

Windrush

78 The Government published a comprehensive improvement plan in response to the Windrush Lessons Learned Review and has expressed its commitment to transformative change across the entire Home Office. This includes ensuring work on the New Plan for Immigration is progressed transparently, while engaging meaningfully with stakeholders and ensuring equalities impacts are assessed. The Government is also committed to upholding its international obligations, including the European Convention on Human Rights, the Refugee Convention and the UN Convention on the Law of the Sea (UNCLOS).

Legal background

79 This Act amends or repeals the following legislation:

- Part 1 of the Immigration Act 1971, which concerns regulation of entry into and stay in the United Kingdom.
- Section 24 of the Immigration Act 1971, outlining offences of illegal entry into the United Kingdom, including in breach of a deportation order.
- Section 25 of the Immigration Act 1971, setting out the offence of facilitating entry into the United Kingdom.
- Section 25A of the Immigration Act 1971, setting out the offence of helping an asylum seeker enter the United Kingdom.
- Sections 28B and 28FA of the 1971 Act, which relate to searching of premises for the purpose of arrest or seizure of records in relation to immigration offences.
- Section 33(1) of the 1971 Act, which deals with interpretation and references to Justices of the Peace in Northern Ireland.
- Part 3A of the Immigration Act 1971, which concerns maritime enforcement.
- Schedule 2 to the Immigration Act 1971, in relation to an immigration officer's power to inspect a ship or aircraft.
- Schedule 4A to the 1971 Act, setting out enforcement powers in relation to ships.
- Part 1 of the British Nationality Act 1981, outlining means of acquisition of British citizenship, including sections 4, 6, and 18, which set out the residence requirements to be satisfied for naturalisation as a British citizen.
- Part 2 of the British Nationality Act 1981 relating to British overseas territories citizenship, including section 17 which sets out requirements for minors to acquire British overseas territories citizenship.
- Sections 40 and 40A of the British Nationality Act 1981, which provide powers to deprive a person of their British citizenship and a right of appeal against deprivation decisions.
- Section 41A of the British Nationality Act 1981, which sets out the good character requirement to be satisfied for the registration of an adult or young person as a British citizen.
- Schedule 1 to the British Nationality Act 1981, setting out the requirements for naturalisation.
- Schedule 2 to the British Nationality Act 1981, outlining the provisions for reducing statelessness.
- Sections 4, 97, 98 and 98A of the Immigration and Asylum Act 1999, relating to the provision of support, including accommodation, for asylum seekers and failed asylum seekers.

- Section 10 of the Immigration and Asylum Act 1999, relating to the removal of persons unlawfully in the United Kingdom.
- Section 31 of the Immigration and Asylum Act 1999, which relates to defences based on Article 31(1) of the Refugee Convention.
- Part 2 of the 1999 Act, which outlines the liability of carriers when failing to prevent clandestine entry or entry of inadequately documented individuals.
- Section 94 of the Immigration and Asylum Act 1999, which provides interpretation of terms used in Part 6 of that Act.
- Regulation 4 of the Asylum Support Regulations 2000 (S.I. 2000/704), setting out circumstances where persons may not be provided with asylum support.
- Section 18 of the Nationality, Immigration and Asylum Act 2002, which provides a definition of "asylum seeker".
- Sections 17, 22, 24 and 27 of the Nationality, Immigration and Asylum Act 2002, which relate to the provision of accommodation for destitute asylum-seekers.
- Section 21 of the Nationality, Immigration and Asylum Act 2002, which contains supplementary provisions to sections 17 to 20 of that Act.
- Section 25 of the Nationality, Immigration and Asylum Act 2002, regarding the limits on length of stay at an asylum accommodation centre.
- Part 4 of the Nationality, Immigration and Asylum Act 2002, relating to detention and removal of persons subject to immigration control.
- Section 72 of the Nationality, Immigration and Asylum Act 2002, which set out the UK's interpretation of a "particularly serious crime" for the purpose of Article 33(2) of the 1951 Refugee Convention.
- Section 77 of the Nationality, Immigration and Asylum Act 2002, which prevents the removal of a person from the United Kingdom while their asylum claim is pending.
- Sections 82, 85 and 86 of the Nationality, Immigration and Asylum Act 2002, concerning rights of appeal to the Tribunal in relation to protection and human rights claims.
- Section 92 of the Nationality, Immigration and Asylum Act 2002, setting out the place from which an appeal may be brought or continued, whether from within or outside the United Kingdom.
- Section 94 of the Nationality, Immigration and Asylum Act 2002, which provides for the Secretary of State to certify protection claims or human rights claims as clearly unfounded.
- Sections 106, 107 and 108 of the Nationality, Immigration and Asylum Act 2002, relating to the Tribunal Procedure Rules, practice directions, and which make provision for conducting proceedings relating to forged documents in private.

- Section 113 of the Nationality, Immigration and Asylum Act 2002 and paragraph 17 of Schedule 3 to that Act, which provide interpretations of terms used.
- Sections 129 and 134 of the Nationality, Immigration and Asylum Act 2002, which provide that the Secretary of State may require a local authority or an employer to supply information in relation to a person who is suspected of certain immigration offences.
- Sections 260 and 261 of the Criminal Justice Act 2003, which provide for the Early Removal Scheme that is applicable to all serving determinate sentence foreign national offenders.
- Regulation 10 of the British Nationality (General) Regulations 2003 (S.I. 2003/548), which makes provision in relation to giving a person notice of a decision to deprive them of their British citizenship.
- Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, which sets out the behaviours which are considered damaging to a claimant's credibility.
- Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, concerning the removal of asylum seekers from the UK to safe countries.
- The Refugee or Person in Need of International Protection (Qualification) Regulations 2006 No. 2525, which transpose The Qualification Directive (2004/83/EC) into UK legislation.
- Section 13 of the Tribunals, Courts and Enforcement Act 2007, setting out the right to appeal to Court of Appeal.
- Section 29 of the Tribunals, Courts and Enforcement Act 2007, relating to costs and expenses of and incidental to the First-tier Tribunal and Upper Tribunal.
- Part 1 of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007, relating to the First-tier Tribunal and Upper Tribunal procedure rules.
- Section 61 of the UK Borders Act 2007, relating to the citing of that Act.
- Section 133 of the Criminal Justice and Immigration Act 2008, which makes provision for the Secretary of State to impose conditions on designated persons.
- Sections 39, 40, 41 and 49 of the Borders, Citizenship and Immigration Act 2009, which contain uncommenced provisions relating to requirements for naturalisation as a British citizen.
- Sections 9 and 10 of and Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which set out circumstances and exceptional circumstances in which civil legal services may be available to an individual.
- Regulation 11 of the Civil Legal Aid (Merits Criteria) Regulations 2013 (S.I. 2013/104) set out the criteria for the purposes of determining whether an individual or a legal person qualifies for civil legal services under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

- Regulation 5 of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 (S.I. 2013/480) which sets out exceptions from requirement to decide in respect of an individual's financial resources.
- Section 1 of the Citizenship (Armed Forces) Act 2014, which sets out the requirements to be met for citizenship by members or former members of the armed forces.
- Section 49 of the Modern Slavery Act 2015, which sets out the requirement to issue guidance about identifying and supporting victims of modern slavery.
- Sections 50 and 51 of the Modern Slavery Act 2015, relating to identifying, supporting and protecting victims of trafficking.
- Section 56 of the Modern Slavery Act 2015, which sets out interpretations of terms used in that Act.
- Schedule 10 to the Immigration Act 2016 which relates to immigration bail.

Territorial extent and application

80 Section 86 sets out the territorial extent of the Act, that is the jurisdictions in which the Act forms part of the law. The extent of an Act can be different from its application. Application is about where an Act produces a practical effect.

81 Almost all of the provisions in the Act deal with matters that are reserved to the UK Parliament. These provisions extend across the UK.

82 There are seven sections that extend only to England and Wales:

- Sections 25, 57, 66 and 67 make provision for civil legal services, by amending legislation that itself only extends to England and Wales (relevant sections of the Legal Aid, Sentencing and Punishment of Offenders Act 2012).
- Section 47 makes provision for measures regarding prisoners liable to removal from the United Kingdom, by amending legislation that itself only extends to England and Wales (relevant sections of the Criminal Justice Act 2003).
- Section 60 and 64 make provision for the identification of potential victims of slavery or human trafficking, and for support and assistance of victims of modern slavery, by amending legislation that itself only extends to England and Wales (relevant sections of the Modern Slavery Act 2015).

83 There is one section that may depending on the circumstances extend either across the UK or only to England and Wales or only to England: section 67 makes provision for the disapplication of retained EU law deriving from the Trafficking Directive insofar as its continued existence would be incompatible with provision made by or under the Act. This section extends UK-wide insofar as any incompatibility is between the Directive and a provision that is reserved and extends across the UK. It does not extend to Scotland, Wales or Northern Ireland insofar as any incompatibility is between the Directive and a provision that is devolved in Scotland, Wales or Northern Ireland.

84 Consequential powers at section 80 enable the Secretary of State to make provision by regulations in consequence of the act that amend, repeal or revoke any enactment, including Acts of the Scottish Parliament, Measures or Acts of Senedd Cymru and Northern Ireland legislation. These powers would by definition only be exercisable in consequence of provisions in the Act, which are either reserved to the UK Parliament or which extend only to England and Wales and which are not within the legislative competence of Senedd Cymru.

85 See the table at Annex B for a summary of the position regarding territorial extent and application in the United Kingdom.

86 In respect of territorial extent and application outside the United Kingdom, Part 1: Nationality extends and applies to the Crown Dependencies of Jersey, Guernsey and the Isle of Man, and to the British Overseas Territories.

Commentary on provisions of Act

Part 1: Nationality

Chapter 1: British Overseas Territories citizenship

Persons subject to immigration control: referral or assessment by local authority etc.

Section 1: Historical inability of mothers to transmit citizenship

87 Overview: This section creates a registration route for the adult children of British Overseas Territories Citizen (BOTC) mothers to acquire British Overseas Territories citizenship

88 Background: Before 1 January 1983 children could not acquire British nationality through their mother. While registration provisions have since been introduced to rectify this issue for the children of British citizens (section 4C of the British Nationality Act 1981), this was not changed for children of BOTCs.

89 Subsection 1 inserts new section 17A into the British Nationality Act 1981 ("the 1981 Act"). This enables a person to be registered as a BOTC if they meet three conditions. These are that, had women been able to pass on citizenship in the same way as men: they would have been a citizen of the UK and colonies immediately prior to the introduction of the 1981 Act; they would have become a British dependent territories citizen under section 23(1)(b) or (c) of that Act; and they would have become a BOTC under section 2 of the British Overseas Territories Act 2002. The intention of these conditions is that a person who would have become a BOTC automatically, had women been able to pass on citizenship in the same way as men before 1983, will be able to register. Section 17A(4) of this provision removes the need for a person's birth to have been registered under section 5 of the British Nationality Act 1948 had that provision benefited children of mothers. This change reflects the decision in the case of the Advocate General for Scotland v Romein.

90 Subsection 2 provides that a person registered as a BOTC under new section 17A is a BOTC "by descent". A BOTC by descent cannot usually pass on their nationality to a person born outside of an overseas territory.

Section 2: Historical inability of unmarried fathers to transmit citizenship

91 Overview: This section creates a registration route for the adult children of unmarried British Overseas Territories citizen (BOTC) fathers to acquire British Overseas Territories citizenship.

92 Background: Before 1 July 2006 children born to British unmarried fathers could not acquire British nationality through their father. While registration provisions have since been introduced to rectify this issue for the children of British citizens (sections 4E to 4I of the British Nationality Act 1981), this was not changed for children of BOTCs.

93 Subsection 1 inserts new sections 17B to 17G into the British Nationality Act 1981 ("the 1981 Act") to provide for registration as a BOTC for persons born before 1 July 2006 to a BOTC father, where their parents were unmarried at the time of their birth. In particular, the provisions provide an entitlement to be registered for those who would have become a BOTC automatically had their parents been married at the time of their birth and for those who would currently have an entitlement to registration were it not for the fact that their parents were not married at the time of their birth.

94 Section 17B stipulates the general conditions to be met that the person's parents were not married to each other at the time of their birth; that, in cases of assisted reproduction, no other person was treated as the person's father; and that the person has never previously been a BOTC or a British Dependent Territories citizen.

95 Section 17C entitles a person to be registered as a BOTC if the person meets the general conditions and would be entitled to be registered as a BOTC under the specified registration provisions of the 1981 Act had the person's mother been married to the person's natural father at the time of his or her birth. Section 17C(4) provides a power for the Secretary of State to waive the need for parental consent if the person would have been able to register under section 17(5) of the 1981 Act, had their parents been married.

96 Section 17D entitles a person to be registered as a BOTC if the person meets the general conditions in section 17B and if, at any time after commencement of the 1981 Act, the person would automatically have become a BOTC at birth under the 1981 Act, had the person's mother been married to the person's natural father at the time of the person's birth. Section 17D(3) requires that both parents provide consent for a child under 18 to make an application for registration. Section 17D(4) allows the preceding subsection to be read as a reference to either the person's mother or natural father where the person's father or mother has died on or before the date of the application, and section 17D(5) allows the Home Secretary to waive consent in the circumstances of a particular case.

97 Section 17E entitles a person to be registered as a BOTC if the person meets the general conditions in section 17B; was a citizen of the United Kingdom and Colonies immediately before commencement of the 1981 Act; and would automatically have become a British dependent territories citizen and then a BOTC under the 1981 Act had the person's mother been married to the person's natural father at the time of the person's birth.

98 Section 17F entitles a person to be registered as a BOTC if the person meets the general conditions in 17B; is an eligible former British national (defined at section 17F(3)) or an eligible non-British national (defined at section 17F(4)); and would have automatically become a BOTC under the 1981 Act had the person's mother been married to the person's natural father at the time of the person's birth.

99 Section 17G contains supplementary provisions, including to stipulate that a person's "natural father" is someone who satisfies the requirements as to proof of paternity (prescribed in regulations under section 50(9B) of the 1981 Act).

100 Section 17G(3) stipulates which people registered as a BOTC under this registration route are BOTCs "by descent" and section 17G(4) stipulates which people applying for BOTC under the section 17C route must meet the good character requirements of section 41A.

Section 3: Provisions for Chagos Islanders to acquire British Nationality

101 Overview: This section allows direct descendants of Chagos Islanders, to make an application to be registered as both British Overseas Territories citizens (BOTCs). The application must be submitted within five years of commencement or in the case of minors or those born within five years of commencement, before they reach the age of 23. Applicants who meet the requirements to be registered as a BOTC under this section will also qualify for British citizenship under section 4K.

102 Background: Since 1971 those born on the British Indian Ocean Territory (BIOT) have been unable to reside there and by 1973 all residents of the BIOT had been relocated outside of British territory. While the first generation born outside British territory acquired British nationality by descent from their parents, subsequent generations have been unable to acquire British nationality through their link to BIOT due to the limitation on British nationality being passed on beyond the first generation born outside UK territory.

103 This section inserts new section 17H into the British Nationality Act 1981 ("the 1981 Act") to provide for registration as a BOTC for anyone who is directly descended from a person who was born in the British Indian Ocean Territory ("BIOT").

104 Section 17H entitles a person to be registered as a BOTC, if they are the direct descendant of a person who was a Citizen of the UK and Colonies because they were born in the BIOT; and they have never been a BOTC or a British Dependent Territories citizen. Section 17H(2) requires an application under this section to be made within a specified timeframe. The timeframe for a person over the age of 18 on the date this section is commenced is five-year period beginning with the commencement date. The timeframe for a person under the age of 18 on the date of commencement or for a person born within five years of the commencement date is before they reach the age of 23. Section 17H(3) defines "commencement date" as the date section 17H comes into force.

Section 4: Sections 1 and 2: related British citizenship

105 Overview: This section creates a registration route as a British citizen for people who have registered as a BOTC under the new routes introduced by sections 1, 2 and 3.

106 Background: In 2002 all those with BOTC status additionally became British citizens by virtue of section 3 of the British Overseas Territories Act 2002 ("the 2002 Act"). Those who were unable to become BOTCs, due to the fact that women could not pass on citizenship, or because their parents were not married, were also unable to become British citizens under the 2002 Act.

107 Subsection 1 inserts new section 4K of the British Nationality Act 1981 ("the 1981 Act"). This enables a person to be registered as a British citizen if they are registered as a BOTC under sections 17A, 17C, 17D, 17E, 17F or 17H (introduced by sections 1, 2 and 3) or would be entitled to be registered as a BOTC under any of those sections, but for the fact that they have already become a BOTC under a different provision. This provision does not apply to BOTCs who acquired or would have acquired that status solely through the Sovereign Base Areas of Akrotiri and Dhekelia (a British Overseas Territory on the island of Cyprus), as these BOTCs did not benefit from section 3 of the 2002 Act (subsection 4K(2)). This provision also amends section 14 of the 1981 Act, to specify which persons registered as British citizens under this provision hold that status by descent (subsection 4K(3)). Those who acquire BOTC status on the basis that they would have qualified for registration as a BOTC, rather than automatically, had their parents been married will need to meet a good character requirement if there was one for the relevant registration provision (section 4K(4)).

108 Subsection 2 stipulates which people registered as a British citizen under this registration route are British citizens "by descent".

109 Subsection 3 stipulates which people applying for British citizenship under this provision must meet the good character requirements of section 41A.

Section 5: Period for registration of person born outside the British Overseas Territories

110 Overview: This section amends subsection 17(2) of the British Nationality Act 1981 ("the 1981 Act") to remove the requirement that an application for the registration of a child as a British Overseas Territories citizen (BOTC) must be made within 12 months of the birth.

111 Background: Subsection 17(2) provides a registration route for a child whose parent is a BOTC "by descent" (see paragraph 83 for meaning of "by descent") and had been in a territory for a continuous period of three years at some point before the child's birth. At present, an application under this route must be made within 12 months of the child's birth. The parallel provision for British citizens (subsection 3(2)) was amended in 2009, replacing the requirement

for the application to be made within 12 months of the child's birth (or within six years at the Secretary of State's discretion) with a requirement for the application to be made while the child is a minor. This provision amends the BOTC registration route in the same way.

112 Subsection 1 amends subsection 17(2) of the 1981 Act by removing the requirement for the application to be made within 12 months of the birth and replacing it with a requirement for the application to be made while the child is a minor. The second part of that subsection removes subsection (4) of section 17, which provided for the registration period to be extended from 12 months to six years, as this is no longer needed.

113 Subsection 2, as a consequence, amends subsection 41A(2) of the 1981 Act to include subsection 17(2) in the list of provisions which have a good character requirement.

British Citizenship

Section 6: Disapplication of historical registration requirements

114 Overview: This section amends sections 4C and 4I of the British Nationality Act 1981 ("the 1981 Act"), so that the requirement for a person's birth to have been registered within 12 months at a British consulate is to be ignored when assessing whether they would have become a citizen of the UK and Colonies under the British Nationality Act 1948 ("the 1948 Act"), had women and unmarried fathers been able to pass on citizenship at the time of their birth.

115 Background: Under the 1948 Act, citizenship could normally only be passed on for one generation to children born outside of the UK and Colonies. However, paragraph 5(1)(b) of the 1948 Act permitted it to be passed on to a further generation if the child was born in a foreign country and their birth was registered within a year at a British consulate. The child of a British mother or unmarried British father could not be registered, because they were unable to pass on citizenship at that time. This section amends the 1981 Act, so that applications under section 4C (British mothers) and section 4I (unmarried fathers) will not be refused solely because the requirement to register the birth within a year has not been met. This reflects the decision in the case of the Advocate General for Scotland v Romein.

116 Subsection 1 amends section 4C of the 1981 Act so that the requirement in paragraph 5(1)(b) of the 1948 Act, to register a person's birth at a United Kingdom consulate, does not apply.

117 Subsection 2 amends section 4I so that the requirement in paragraph 5(1)(b) of the 1948 Act, that a person's birth is registered at a United Kingdom consulate, does not apply.

Section 7: Citizenship where mother married to someone other than natural father

118 Overview: This section amends the British Nationality Act 1981 ("the 1981 Act") to provide an entitlement to British citizenship for individuals who were previously unable to acquire it because their mother was married to someone other than their biological British citizen father at the time of their birth. This addresses the decision in the case of K (A child) v Secretary of State for the Home Department, which found that, in these circumstances, the definition of father in the 1981 Act was incompatible with Article 8 (read with Article 14) of the European Convention on Human Rights.

119 Background: Subsection 50(9A) of the 1981 Act defines who is a "father" for the purposes of determining the nationality of the child. "Father" is either: the husband (or male civil partner) of the child's mother at the time of the child's birth, or the person treated as the father in IVF cases. If neither of those situations apply, the father is someone who can provide proof of paternity. This means that where the child's mother is married to someone other than the child's natural father, her husband is the child's father for nationality purposes, even if not biologically related to the child.

120 The above definition of "father" came into force on 1 July 2006. Before then, "father" was only defined as the husband of the child's mother. Therefore, where the child's biological parents were unmarried, the child could not take on the father's British Citizenship.

121 Remedial registration routes were subsequently inserted into the 1981 Act to allow the children of unmarried fathers born prior to 1 July 2006 to register as British citizens. These provisions are set out at sections 4E – 4J of the 1981 Act.

122 This section is intended to create an entitlement to British citizenship for children born on or after 1 July 2006 who did not become British because their mother was married to someone other than their natural father. By removing the 1 July 2006 cut-off date for registration under sections 4F – 4I, they will be able to apply.

123 Section 4D of the 1981 Act provides a registration route for children who were born outside of the UK and qualifying British Overseas Territories to members of the British armed forces, serving outside the UK and qualifying territories. Currently, a child does not qualify under this provision where their mother was married to someone other than their biological father at the time of the child's birth. This will also be remedied by this section.

124 Subsection 1 removes the 1 July 2006 date applicable to the remedial registration routes set out at 4F-4I, thereby providing those born on or after 1 July 2006 with an entitlement to British citizenship. Removing the date brings the later introduced Human Fertilisation and Embryology Act 2008 into scope. This subsection therefore inserts a reference to the 2008 Act.

125 Subsection 2 adds section 4D to the list of instances where a person may be entitled to be registered as a British citizen (section 4F of the 1981 Act). This enables a child of a member of the British Armed Forces to make an application to register as a British citizen despite their mother being married to someone other than their biological father at the time of their birth.

126 Subsection 3, as a consequence, amends section 41A(1A) of the 1981 Act to include section 4D in the list of registration provisions under section 4F which have a good character requirement.

Powers of the Secretary of State relating to citizenship etc.

Section 8: Citizenship: registration in special case

127 Overview: This clause enables the Secretary of State to waiver a requirement for naturalisation as a British citizen under section 6, naturalisation as a British Overseas Territories citizen under section 18 and registration as a British citizen under section 4 of the British Nationality Act 1981 ("the 1981 Act"), namely to have been present in the UK (or British Overseas Territory) at the start of the applicable residential qualifying period. In addition, it will allow the Secretary of State to not enquire into lawful residence in citizenship applications where such an assessment has already been undertaken in an earlier application for Indefinite Leave to Enter or Remain.

128 Background: Section 6 of the 1981 Act gives the Home Secretary the power to grant a certificate of naturalisation to an adult. The requirements for naturalisation are set out at Schedule 1 to the 1981 Act. There is a requirement to complete a period of either three or five years' residence in the UK (or a British Overseas Territory) before an application can be made (this is the residential qualifying period). The individual must have been present in the UK (or British Overseas Territory) at the beginning of the residential qualifying period, and have been here lawfully throughout that period

129 Section 4 of the 1981 Act, a provision for registration of British nationals as British citizens, has residence requirements which mirror those for naturalisation and so will be amended in line. Similar provisions exist for naturalisation as a British Overseas Territories citizen, at section 18 of the 1981 Act.

130 The rationale behind these requirements is that an individual must be able to demonstrate a sustained connection with the UK (or British Overseas Territory), although absences up to a specified number of days are permitted by the legislation.

131 The Secretary of State has the power to waive the requirement relating to the maximum number of days absence and to treat this requirement as fulfilled in the special circumstances of a particular case (set out at paragraphs 2 and 6 of Schedule 1 to the 1981 Act for British citizenship and BOTC, respectively, and in section 4(4) for registration).

132 There is currently no power to waive the requirement to have been present in the UK at the start of the qualifying period (except in relation to applications for naturalisation as British citizens from current or former members of the armed forces). This presents a barrier in otherwise deserving cases.

133 This clause amends the 1981 Act to allow the Secretary of State to waive the requirement that the individual must have been present in the UK or relevant territory at the start of the qualifying period in the special circumstances of a particular case.

134 There is currently some discretion to waive the requirement to have been lawfully in the UK throughout the residential qualifying period, but that needs to be considered on a case by case basis. This clause will allow the Secretary of State not to look at previous residence where the person has been granted indefinite leave to enter or remain in the UK, meaning that periods of residence in the UK do not need to be reassessed.

135 Both of these changes will be introduced in relation to the requirements to naturalise as British citizen under section 6 of the 1981 Act, naturalise as a British Overseas Territories citizen under section 18 of that Act, or register as a British citizen under section 4 of that Act.

136 Subsection 1 sets out that Schedule 1 amends the 1981 Act to allow the first requirement to be waived for sections 4, 6 and 18.

137 Subsection 1A sets out that Schedule 1 amends the 1981 Act to allow the second requirement to be waived for sections 4, 6 and 18.

138 Subsection 2 removes provisions in the Borders, Citizenship and Immigration Act 2009, which have never been commenced and are no longer required.

139 Subsection 3 removes the section of the Citizenship (Armed Forces) Act 2014 which amends section 39 of the Borders, Citizenship and Immigration Act 2009, relating to the uncommenced earned citizenship provisions.

Section 9: Requirements for naturalisation etc.

140 Overview: This section enables the Secretary of State to waiver a requirement for naturalisation as a British citizen under section 6, naturalisation as a British Overseas Territories citizen under section 18 and registration as a British citizen under section 4 of the British Nationality Act 1981 ("the 1981 Act"), namely to have been present in the UK (or British Overseas Territory) at the start of the applicable residential qualifying period.

141 Background: Section 6 of the 1981 Act gives the Home Secretary the power to grant a certificate of naturalisation to an adult. The requirements for naturalisation are set out at Schedule 1 to the 1981 Act. There is a requirement to complete a period of either three or five years' residence in the UK (or a British Overseas Territory) before an application can be made (this is the residential qualifying period). The individual must have been present in the UK (or British Overseas Territory) at the beginning of the residential qualifying period.

142 Section 4 of the 1981 Act, a provision for registration of British nationals as British citizens, has residence requirements which mirror those for naturalisation and so will be amended in line. Similar provisions exist for naturalisation as a British Overseas Territories citizen, at section 18 of the 1981 Act.

143 The rationale behind these requirements is that an individual must be able to demonstrate a sustained connection with the UK (or British Overseas Territory), although absences up to a specified number of days are permitted by the legislation.

144 The Secretary of State has the power to waive the requirement relating to the maximum number of days absence and to treat this requirement as fulfilled in the special circumstances of a particular case (set out at paragraphs 2 and 6 of Schedule 1 to the 1981 Act for British citizenship and BOTC, respectively, and in section 4(4) for registration).

145 There is currently no power to waive the requirement to have been present in the UK at the start of the qualifying period (except in relation to applications for naturalisation as British citizens from current or former members of the armed forces). This presents a barrier in otherwise deserving cases.

146 This section amends the 1981 Act to allow the Secretary of State to waive the requirement that the individual must have been present in the UK or relevant territory at the start of the qualifying period in the special circumstances of a particular case. This waiver will be introduced in relation to the requirements to naturalise as British citizen under section 6 of the 1981 Act, naturalise as a British Overseas Territories citizen under section 18 of that Act, or register as a British citizen under section 4 of that Act.

147 Subsection 1 sets out that Schedule 1 amends the 1981 Act to allow this requirement to be waived for sections 4, 6 and 18.

148 Subsection 2 removes provisions in the Borders, Citizenship and Immigration Act 2009, which have never been commenced and are no longer required.

149 Subsection 3 removes the section of the Citizenship (Armed Forces) Act 2014 which amends section 39 of the Borders, Citizenship and Immigration Act 2009, relating to the uncommenced earned citizenship provisions.

Section 10 – Notice of a decision to Deprive a person of British Citizenship

150 Overview: This section amends section 40 of the British Nationality Act 1981 ("the 1981 Act") to allow a decision to deprive a person of British citizenship to be made in the absence of contact with the person and to ensure that the associated deprivation order is valid. This section also ensures that any deprivation order made before subsections (2) to (4) of section 10 come into force remains valid where the person was not notified of the decision to deprive in accordance with section 40(5) of the 1981 Act. This section also confirms that those affected by the new provisions still have a right of appeal against the decision to deprive them of citizenship. This is necessary following the High Court judgment in D4 v Secretary of State for the Home Department [2021] EWHC 2179 in relation to regulation 10(4) of the British Nationality (General) Regulations 2003 (S.I. 2003/548). Regulation 10(4) provides that notice of a deprivation decision is deemed to have been given in certain circumstances when it is placed on a person's Home Office file. The judgment found regulation 10(4) to be ultra vires s.40(5) and s.41(1) of the 1981 Act and therefore void and of no effect. As a consequence, the Court declared the deprivation order made in that case to be null and void.

151 Background: The aim of this section is to provide a means of depriving a person of their British citizenship where it is not possible to give, or there are reasons for not giving, prior notice of the deprivation decision, as specified in subsection (2). This is necessary to ensure that deprivation powers can be used effectively in all appropriate circumstances including, for

example, where a person is no longer contactable by the Home Office. The aim of section 10 is also to ensure that deprivation orders made before subsections (2) to (4) come into force remain valid and cannot be declared null and void. It might otherwise be possible for a person to effectively have their British citizenship reinstated and, if overseas, travel back to the UK. The implications of this would be significant, particularly in cases where a decision to deprive a person of citizenship has been made on the basis that the person poses a threat to national security.

152 Subsection 1 defines "the 1981 Act" as meaning the British Nationality Act 1981.

153 Subsection 2 inserts new sections 40(5A) to 40(5E) into the 1981 Act. New section 40(5A) disapplies the requirement to give notice of the decision to deprive, in specified circumstances. These specified circumstances are: where the Secretary of State does not have the information needed to be able to give notice and where the Secretary of State reasonably considers it necessary in the interests of: national security, the investigation or prosecution of organised or serious crime, preventing or reducing a risk to the safety of any person or the relationship between the UK and another country, that notice should not be given. New section 40(5B) clarifies that references to giving notice are to giving notice in accordance with whichever regulations are in force at the relevant time. New sections 40(5C) and 40(5D) create an obligation for the Secretary of State to give notice, under the same terms as in section 40(5), if a person in respect of whom a deprivation order has been made subsequently makes contact with the Home Office. New section 40(5E) inserts a new Schedule 4A in the 1981 Act which provides that the Special Immigration Appeals Commission considers decisions by the Secretary of State not to give notice of deprivation or late notice after a deprivation order has already been made.

154 Subsection 3 inserts a new section 40A(1) into the 1981 Act. The effect of this amendment is to preserve the right of appeal in section 40A of the 1981 Act for those who are not given notice of a decision to deprive them of British citizenship under section 40(5). Subsection 3 also inserts a new subsection 2A into section 40A of the 1981 Act which clarifies that the timescales for lodging an appeal against a deprivation notice do not start until a notice is given.

155 Subsection 4 inserts Schedule 2 of this Act into the 1981 Act as a new Schedule 4A.

156 Subsection 5 removes regulation 10(4) of the British Nationality (General) Regulations 2003 (S.I. 2003/548) which provides that notice of a deprivation decision is deemed to have been given in certain circumstances when it is placed on the person's Home Office file.

157 Subsection 6 provides that a deprivation order made before subsections (2) to (5) come into force remains valid where the person was not notified of the decision to deprive in accordance with section 40(5).

158 Subsection 7 defines the term "pre-commencement deprivation order" used in this section as an order made before subsections (2) to (5) of this section are commenced.

159 Subsection 8 provides that a person has a right of appeal against a decision to deprive them of their citizenship where subsection (6) applies to the deprivation order made in relation to them.

Registration of stateless minors

Section 11: Citizenship: stateless minors

160 Overview: This section amends Schedule 2 to the British Nationality Act 1981 ("the 1981 Act") to introduce a new requirement for the registration of a stateless child (aged 5 to 17) as a British citizen or a British Overseas Territories citizen (BOTC) and maintains the existing requirements in relation to those aged 18 to 22.

161 Background: Provisions for reducing statelessness within the nationality framework are set out at section 36 and Schedule 2 of the 1981 Act. Specifically, paragraph 3 of Schedule 2 to the 1981 Act provides for a stateless child born in the UK or an overseas territory to be registered as a British citizen or BOTC. The conditions which apply to this provision include, amongst others, a residential requirement and a requirement that the individual has always been stateless.

162 There have been cases where parents have chosen not to register their child's birth, which would have acquired their own nationality for their child, which means that the child can register as a British citizen under the statelessness provisions.

163 This section ensures applicants are unable to take advantage of the statelessness provisions by choosing not to acquire their own nationality for their child. This is achieved by adding a requirement that the Secretary of State be satisfied that the child cannot reasonably acquire another nationality.

164 Subsection 1 notes that the section amends Schedule 2 to the 1981 Act.

165 Subsections 2 and 3 amend the age requirements at paragraph 3 of Schedule 2 to the 1981 Act, from having to be aged under 22, to having to be aged between 18 and 22.

166 Subsection 4 inserts new paragraph 3A into Schedule 2. This provision applies to those aged between 5 and 17 and mirrors the registration provision at paragraph 3 (as described above), with an additional requirement that the Secretary of State be satisfied that the child cannot reasonably acquire another nationality. Paragraph 3A(2) provides that a person is able to acquire a nationality where: that nationality is the same as one of the parents'; the person has been entitled to acquire that status since birth; and in all the circumstances, it is reasonable to expect them (or someone acting on their behalf) to take steps to acquire that nationality.

Part 2: Asylum

Chapter 1: Treatment of refugees; support for asylum-seekers

Section 12: Differential treatment of refugees

167 Overview: This section provides for a differentiated approach to the treatment of refugees based on the criteria set out in Article 31(1) of the Refugee Convention.

168 Background: In the 12 months ending September 2019, around 62% of asylum applicants to the UK had entered the UK irregularly. At present, all asylum seekers by and large have their claims processed in the same way and receive the same entitlements, if granted refugee status in the UK, irrespective of their route to or actions in the UK.

169 This section provides a power for the UK to treat refugees differently according to whether they satisfy certain criteria under Article 31(1) of the Refugee Convention, in respect of which our interpretation is set out in section 37. Article 31(1) sets out that States shall not impose penalties on refugees that come directly from a territory where their life or freedom is threatened, provided they present themselves to the authorities without delay and show good cause for their illegal entry or presence.

170 The purpose of differentiation is to discourage asylum seekers from travelling to the UK other than via safe and legal routes. It aims to influence the choices that migrants may make when leaving their countries of origin - encouraging individuals to seek asylum in the first safe country they reach after fleeing persecution, avoiding dangerous journeys across Europe.

171 All individuals recognised as refugees by the UK will continue to be afforded the rights and protections required under international law, specifically those afforded by the 1951 Refugee Convention.

172 Subsection 1 introduces the concept of "Group 1" and "Group 2" refugees. This states that a refugee is a Group 1 refugee if they meet the requirements set out in subsection 2. If these are not met, then a person will be a Group 2 refugee.

173 Subsection 2 sets out the relevant requirements based on Article 31(1) of the Refugee Convention, as stated in section 37: (a) they must have come to the United Kingdom directly from a country or territory where their life or freedom was threatened (in the sense of Article 1 of the Refugee Convention) and (b) they must have presented themselves without delay to the authorities.

174 Subsections 3 and 4 provide that where a refugee has entered or is present in the United Kingdom unlawfully, there is an additional requirement to show good cause for their unlawful entry or presence should they later claim asylum. A person's unlawful entry into or presence in the United Kingdom is defined as requiring leave to enter or remain but not having it.

175 Subsection 5 provides for a differential treatment of refugees based on their group. Differences may, for example, apply in terms of the duration of their permission to remain in the UK, the availability of routes to settlement, the ability to have recourse to public funds, and the ability of family members to join them in the UK. There is no obligation for these powers to be exercised and discretion may be applied.

176 Subsection 6 provides for differential treatment of family members of Group 1 and Group 2 refugees. Differences may, for example, apply in terms of granting family members permission to enter or remain in the UK, the duration of their permission to remain in the UK if granted, the availability of routes to settlement, and the ability to receive public funds. Again, there is no obligation for these powers to be exercised and discretion may be applied.

177 Subsection 7 confirms that subsection 6 would not apply where the family members are refugees in their own right.

178 Subsection 8 provides that the Immigration Rules may set out the differences in how Group 1 and Group 2 refugees are treated.

179 Subsection 9 confirms the meaning of the terms "limited leave", "indefinite leave" and "refugee". "Refugee" takes the meaning set out in the Refugee Convention as a person who, "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it" (Article 1(A)(2)). Section 30 provides interpretations of the terms used in Article 1(A)(2).

Section 13: Accommodation for asylum-seekers etc.

180 Overview: This section sets out the various factors the Secretary of State may take into account when deciding on the type of accommodation to allocate to asylum seekers and failed asylum seekers in need of support.

181 Background: Sections 95, 98 and section 4(2) of the Immigration and Asylum Act 1999 ("the 1999 Act") enables the Secretary of State to provide support, including accommodation, to asylum seekers and failed asylum seekers who are or may become destitute. Section 4(2) will be replaced by a new form of support for failed asylum seekers provided under section 95A or 98A of the 1999 Act, once changes in the Immigration Act 2016 come in to force.

182 There is currently no obligation to provide a specific form of accommodation. The accommodation provided to asylum seekers and failed asylum seekers is not linked to the progress of their claim, appeal, or their compliance with the rules. However, a breach of the conditions of their support may result in withdrawal of support.

183 The intention of this section is to allow for the use of certain types of accommodation to house certain cohorts of asylum seekers and failed asylum seekers in order to increase efficiencies within the system and increase compliance.

184 Subsection 1 inserts new subsection 3A into section 97 of the 1999 Act. New subsection 3A allows the Secretary of State, when deciding the type of accommodation an individual may be offered, to take into account the stage their protection claim has reached, as well as their past compliance with conditions of bail and conditions attached to any support they have previously been receiving. In practice, this would mean that the Secretary of State could use different types of accommodation at different stages of an individual's protection claim.

185 Subsections 2 to 8 contain consequential amendments to sections 97, 98 and 98A of the 1999 Act and sections 17, 22 and 24 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") and inserts section 22A into that Act to enable subsection 3A to also apply to asylum seekers supported under section 98 of the 1999 Act (temporary support pending consideration of whether they are eligible to section 95 support) and to failed asylum seekers receiving support under section 95A (support for failed asylum seekers) or section 98A (temporary support for failed asylum seekers).

186 Subsection 9 amends section 25 of the 2002 Act. Currently, an individual may not be accommodated in an accommodation centre if they have already been a resident of an accommodation centre for a continuous period of 6 months. However, that limit may be disapplied by agreement between the Secretary of State and the individual, and if the Secretary

of State deems it appropriate because of the circumstances of an individual's case she may direct that the limit be 9 months. The Secretary of State has a power under section 25 to reduce the time limits stipulated in that section. This amendment allows the Secretary of State to reduce or increase the time period an individual can be accommodated in an accommodation centre. The purpose of the amendment is provide for wider flexibility to ensure the appropriate form of accommodation is provided to individuals for as long as it is required.

187 Subsection 10 is a consequential amendment to section 27 of the 2002 Act that provides references in Part 2 of the 2002 Act to a "resident of an accommodation centre" include those supported under sections 95A (support for failed asylum seekers) or 98A (temporary support for failed asylum seekers).

Chapter 2: Place of Claim

Section 14: Requirement to make asylum claim at "designated place"

188 Overview: This section stipulates the places where asylum claims made in accordance with the Immigration Rules, must be made. These places (all in the UK) are an asylum intake unit, an immigration removal centre, a port or airport, a place where an officer authorised to accept an asylum application is present (except anywhere in the territorial seas of the United Kingdom), a place to which the person has been directed by the Secretary of State to make an asylum claim; and such other place as the Secretary of State may designate by regulations.

189 Background: Since the UK's withdrawal from the European Union, the 2005 Procedures Directive, which allows Member States to require that applications for asylum be made at a designated place, ceased to be applicable to the UK. Consequently, Immigration Rules changes came into effect on 31 December 2020, specifying where asylum claims can be made.

190 This section transfers these changes into primary legislation and provides greater clarification.

191 Subsection 1 provides that a claim for asylum be made in person and at a designated place.

192 Subsection 2 provides the definition of a "designated place" in the UK as being an asylum intake unit, an immigration removal centre, a port or airport, a location where an officer authorised to accept an asylum application is present and a location to which the person has been directed by the Secretary of State or an immigration officer to make an asylum claim.

193 Subsections 2(f) and 8 confer a power on the Secretary of State to add a designated place by regulations subject to the negative resolution procedure.

194 Subsections 3 to 5 implement uncommenced amendments that remove references to "at a place designated by the Secretary of State" in the relevant sections.

195 Subsection 6 provides a definition of "asylum claim" for the purposes of this section.

196 Subsection 7 stipulates that UK territorial seas are excluded from being considered a place of claim, despite their otherwise being a person present who is authorised to accept an asylum claim on behalf of the Secretary of State.

Chapter 3: Inadmissibility

Section 15: Asylum claims by EU nationals: inadmissibility

197 Overview: This section provides that asylum claims from EU nationals must generally be declared inadmissible to the UK's asylum system.

198 Background: Inadmissibility procedures allow a State to declare an asylum claim "inadmissible" when the claim is made by nationals of countries which are deemed inherently safe (such as those in the EU). This means that the State does not have to substantively consider the claim, except in exceptional circumstances, and individuals can be returned to their country of nationality.

199 While the UK was a member of the EU, inadmissibility processes were explicitly allowed under EU law, including through the Dublin Regulation and the Protocol on Asylum for Nationals of Member States ("the Spanish Protocol").

200 The Spanish Protocol provides, in effect, that an application for asylum made in an EU member state by a national of another EU member state should be considered inadmissible save in certain defined circumstances. The basis of the Spanish Protocol is founded in the fact that EU member states are required by Article 2 of the Treaty on European Union to respect human dignity, freedom, democracy, equality, the rule of law and human rights. It is therefore considered that the level of protection afforded to individuals' fundamental rights and freedoms in EU member states means that they are deemed to be safe countries. As such, there is, except in the most exceptional of circumstances, no risk of persecution for individuals entitled to reside in EU countries that would give rise to a need for international protection.

201 Paragraphs 326E and 326F of the Immigration Rules implemented the Spanish Protocol in the UK, providing that an asylum application from an EU national will only be admissible where the applicant satisfies the Secretary of State that there are exceptional circumstances which require the claim to be admitted.

202 The purpose of this section is to retain the UK's ability to treat protection claims made in the UK from nationals of EU member states, including Ireland, as inadmissible.

203 Subsection 1 inserts new Part 4A, containing new section 80A, into the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"), which relates to inadmissibility asylum claims by EU nationals.

204 80A(1) stipulates that the Secretary of State must declare an asylum claim made by a national of a member state inadmissible.

205 80A(2) provides that an asylum claim that has been declared inadmissible to the UK's asylum system will not be substantively considered in the UK.

206 80A(3) stipulates that a decision to declare an asylum claim inadmissible does not attract a right of appeal under section 82 of the 2002 Act.

207 80A(4) and (5) set out a non-exhaustive list of exceptions. They demonstrate the threshold that would have to be met in order for circumstances to be exceptional such that an asylum claim from an EU national would be admitted to the UK asylum system for consideration.

208 80A(6) defines terms used in this section.

209 Subsection 2 consequentially amends regulation 4 of the Asylum Support Regulations 2000 (setting out who may not be provided with asylum support).

Section 16: Asylum claims by persons with connection to safe third State: Inadmissibility

210 Overview: This section provides that asylum claims from an individual with a connection to a safe third state can be declared inadmissible to the UK's asylum system.

211 Background: Inadmissibility procedures allow a State to declare an asylum claim "inadmissible" when the claim is made by individuals who have travelled through a safe third state or have another connection to a safe third state where they could have claimed asylum.

212 While the UK was a member of the EU, inadmissibility processes were explicitly allowed under EU law. Paragraph 345A-345D of the Immigration Rules set out the inadmissibility rules in relation to asylum claims made by individuals who have travelled through a safe third country or have a connection to a safe third country.

213 The purpose of this section is to transfer these rules into primary legislation and to provide further clarification.

214 Subsection 1 inserts new sections 80B and 80C into Part 4A (itself inserted by Section 15), which relates to inadmissibility of asylum claims by persons with a connection to a safe third state.

215 80B(1) and (2) provide that a person who has a connection to a safe third state may have their asylum claim declared inadmissible to the UK's asylum system and, where declared inadmissible, will not have their asylum claim substantively considered.

216 80B(3) stipulates that a decision to declare a claim inadmissible, will not constitute a decision to refuse a protection claim and will therefore not attract a right of appeal in the way that protection claims do under section 82 of the Nationality, Immigration and Asylum Act 2002.

217 80B(4) defines a "safe third State".

218 80B(5) states that a claimant will be deemed to have a connection to a safe third state if they meet any of the conditions set out in section 80C.

219 80B(6) provides that an individual whose asylum claim has been declared inadmissible to the UK's asylum system under this section may be removed from the UK to any other safe third state. This means that an individual does not have to be removed to the state to which they have a connection.

220 80B(7) provides that if the individual whose claim has been declared inadmissible but there are exceptional circumstances or in other such cases which can be provided for in the immigration rules, their claim for asylum may nevertheless be considered.

221 80B(8) defines terms used in this section and in section 80C.

222 80C sets out what is meant by a "connection" to a safe third country. Condition 1 is where the person has been recognised as a refugee and can still access this protection. Condition 2 is whether the claimant has been granted another form of protection that would prevent them from being sent from that safe third state, to another state, and they can still access this protection. Condition 3 is where the claimant has already made a claim for protection in a safe third state, but that claim has not yet been determined or has been refused. Condition 4 is where the claimant was previously present in a safe third state where they could have made a claim, and that it is reasonable to expect them to have made a claim, but they failed to make a claim. Condition 5 is where it would be reasonable to expect them to have made a claim in a safe third state, instead of making a claim in the UK. An example might be where the person has close family members in a safe third state and there was nothing preventing them making a claim there.

223 80C(6) and (7) define terms used in this section.

Section 17: Clarification of basis for support where asylum claim inadmissible

224 Overview: This section makes consequential amendments to asylum support legislation to align with the provisions relating to inadmissibility (Sections 15 and 16). Where a claimant is declared inadmissible, their entitlement to asylum support will be comparable to that of a failed asylum seeker.

225 Subsections 1 and 2 amend section 4 of the Immigration and Asylum Act 1999 ("the 1999 Act") to extend the entitlement to accommodation and support to those whose claims have been declared inadmissible. This brings the entitlement in line with the accommodation and support provided to failed-asylum seekers.

226 Subsection 3 amends section 94 of the 1999 Act so that for the purposes of the definitions of "asylum-seeker" and "failed-asylum seeker", reference to a claim being determined or rejected will include when a claim is declared inadmissible under section 80A or 80B of the Nationality, Immigration and Asylum Act 2002. However, if a claim is declared inadmissible under section 80B of the 2002 Act but consequently considered, their claim will no longer be considered determined or rejected and they will be entitled to asylum accommodation or support as an asylum-seeker.

227 Subsections 4 to 7 amend the relevant sections of the Nationality, Immigration and Asylum Act 2002 to the same affect.

Chapter 4: Supporting evidence

Section 18: Provision of evidence in support of protection or human rights claim

228 Overview: This section provides for an evidence notice that requires a claimant to provide evidence in support of their protection or human rights claim before a specified date. Otherwise, the provision of evidence will be deemed "late" and the claimant will be required to provide a statement setting out their reasons for providing that evidence "late". The consequences for not complying with the evidence notice without good reason are provided for in section 26 and section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (claimant's credibility) ("the 2004 Act") as amended by section 19.

229 Background: It is intended that the new evidence notice will be served on a person under the same circumstances as a notice is served under sections 120(1)(a) and 120(2) of the Nationality, Immigration and Asylum Act 2002 (requirement to state additional grounds for application etc.). A notice served on a person under sections 120(1)(a) and 120(2) creates a duty on that person to provide a statement setting out the reasons and grounds in support of that claim.

230 Non-compliance with the new evidence notice will create consequences under section 26, which sets out that a decision-maker in an asylum or human rights claim or appeal must have regard to the principle that evidence raised by the claimant late is given minimal weight, unless there are good reasons why the evidence was provided late.

231 Further consequences arise in respect of non-compliance under section 19, which amends section 8 of the 2004 Act to include the provision of late evidence in support of an asylum or human rights claim or related appeal without good reason as a behaviour that shall be taken account of as damaging the claimant's credibility by the decision-maker.

232 Subsections 1 and 2 provide that an evidence notice may be served on an individual who has made a protection claim or a human rights claim. An evidence notice requires an individual to provide any evidence, which has not already been provided, to support their claim by a specified date.

233 Subsections 3, 4 and 5 provide that, where evidence is provided on or after the specified date, the individual must set out in a statement the reasons for providing their evidence late.

234 Subsection 6 outlines what is meant in the provision by "specified date", meaning the date stated in an evidence notice.

Section 19: Asylum or human rights claim: damage to claimant's credibility

235 Overview: This section inserts new subsections into the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (claimant's credibility) ("the 2004 Act"). It also inserts definitions for "immigration and nationality functions," "immigration legislation," and "Nationality Acts". In doing so, it creates a principle that if a person making an asylum or a human rights claim provides evidence late, or fails to act in good faith, this conduct shall be taken account of as damaging the claimant's credibility by the decision-maker. Evidence that is "late" means evidence that is provided on or after a specified date set out in an evidence notice that requires a claimant to provide evidence in support of their protection or human rights claim before that specified date (as provided for in Section 18).

236 Background: The intention behind this section is to dissuade claimants from producing late evidence without good reason, and to reiterate that those engaging with the immigration authorities should act in good faith, by providing that the consequence for adverse conduct is that such behaviour shall be taken account of as damaging the credibility of the individual. Section 8(1) of the 2004 Act sets out that in determining whether to believe a statement made by or on behalf of a person who makes an asylum claim or a human rights claim, a decision-maker shall take account of, as damaging the claimant's credibility, any behaviour to which the section applies. This section adds further behaviours to the list that follows in section 8.

237 Subsection 2 inserts new subsections 1A and 1B into section 8 of the 2004 Act. This places a duty on the responsible bodies for establishing procedural rules for the Tribunal and the Special Immigration Appeals Commission to provide rules that, as part of the reasons for their decision on asylum and human rights claims, explicitly address the application of section 8 of the 2004 Act.

238 Subsection 3 inserts new subsections 3A and 3B into section 8 of the 2004 Act. This provides that any "relevant behaviour" that the deciding authority thinks is not in good faith shall be taken account of as damaging the claimant's credibility and also defines the circumstances when such behaviour will be "relevant".

239 Subsection 4 inserts new subsections 6A and 6B into section 8 of the 2004 Act, which sets out that providing evidence late in respect of an asylum or a human rights claim will be treated as a behaviour which shall be taken account of as damaging the claimant's credibility, unless there are good reasons for lateness.

240 Subsection 5 inserts, at subsection 7 of section 8 of the 2004 Act, definitions of "immigration and nationality functions," "immigration legislation," and "Nationality Acts".

241 Subsection 6 inserts a new subsection 9B within section 8 of the 2004 Act. This excludes from the definition of "immigration and nationality functions" (as inserted by subsection 4) the following: powers of arrest, entry and search as mentioned in sections 28A to 28K of the Immigration Act 1971, and power of arrest as mentioned in section 14 of the 2004 Act.

242 Subsection 7 provides details regarding commencement.

Chapter 5: Priority removal notices

Section 20: Priority removal notices

243 Overview: This section provides for a priority removal notice (PRN) to be served to anyone who is liable for removal or liable for deportation. Factors which may lead to a person being issued with a PRN will be set out in guidance and will include, for example, where a person has previously made a human rights or protection claim. The subject of a PRN will be required to provide a statement, information and/or evidence within the time specified ("the PRN cut-off date") or their reasons for providing evidence after the date.

244 Background: The aim of the PRN is to reduce the extent to which people can frustrate removal through sequential or unmeritorious claims, appeals or legal action.

245 Subsections 1 and 2 provides for a PRN to be issued to a person who is liable for removal or deportation.

246 Subsection 3 defines a PRN. The notice imposes a duty on the claimant to provide a statement setting out their reasons for wishing to enter or remain in the United Kingdom, any grounds on which they should be permitted to do so and any grounds on which they should not be removed or required to leave the United Kingdom. The notice also requires them to provide any information relating to being a victim of slavery or human trafficking as defined by Section 58 and any evidence in support of any reasons, grounds or information. The statement, grounds, information and evidence must be provided before the PRN cut-off date included within the notice.

247 Subsection 4 removes the need for a PRN recipient to provide the information mentioned in subsection 3(a) if this has previously been provided to the Secretary of State or any other competent authority.

248 Subsections 5, 6 and 7 impose a duty on the PRN recipient, if they have not provided a statement, information or evidence before the PRN cut-off date, to also provide a statement setting out the reasons for not doing so.

249 Subsections 8 and 9 define some of the terms used in this section.

Section 21: Priority removal notices: supplementary

250 Overview: This section details how long the priority removal notice (PRN) will remain in force for. The PRN will remain in force until 12 months after the cut-off date or the person becomes appeal rights exhausted, whichever comes last.

251 Background: This section is supplementary to section 20.

252 Subsection 1 sets outs that a priority removal notice remains in force until (a) 12 months after the PRN cut-off date; or (b) where the PRN recipient makes a protection or human rights claim, 12 months after the date on which the PRN recipient's appeal rights are exhausted.

253 Subsection 2 defines relevant claim as any protection or human rights claim that is brought during the period a PRN is in force.

254 Subsection 3 defines appeal rights exhausted as the time when a claimant can no longer bring an appeal and no longer has an appeal pending.

255 Subsection 4 confirms that the PRN remains in force as provided for in subsection 1 even where the PRN recipient ceases to be liable for removal or deportation from the UK.

256 Subsection 5 specifies that a PRN may not be served on a claimant when there is an existing PRN in force.

257 Subsections 6 and 7 specifies that if the recipient of a PRN has previously received an evidence notice (section 18), slavery or trafficking information notice (Section 58) or a notice under section 120 of the Nationality, Immigration and Asylum Act 2002, the effects of the previous notice end when the PRN is served.

258 Subsection 8 confirms that the meanings of all terms used in section 21 have the same meanings as in section 20.

Section 22: Late compliance with priority removal notice: damage to credibility

259 Overview: This section creates a principle that material that is not provided in compliance with the priority removal notice (PRN) should be damaging to a claimant's credibility.

260 Background: This is a new provision which sets out the consequences of failing to comply with a priority removal notice.

261 Subsections 1, 2 and 3 set out that this section applies where a claimant has provided late material in response to a priority removal notice and either their claim is being considered or a competent authority is making a reasonable grounds or conclusive grounds decision concerning the claimant's status as a victim of slavery or human trafficking.

262 Subsection 4 specifies that a deciding authority must take into account material being brought late as damaging to a claimant's credibility unless there are good reasons why it was brought late.

263 Subsections 5 and 6 place a duty on the responsible bodies for establishing procedural rules for the Tribunal and the Special Immigration Appeals Commission to provide rules that, as part of the reasons for a decision on asylum and human rights claims, explicitly address how they have taken account of late material provided by the claimant.

264 Subsection 7 defines material as having been brought late if it is provided on or after the PRN cut-off date.

265 Subsection 8 defines a deciding authority as the Secretary of State, an Immigration Officer, the First-tier Tribunal, the Upper Tribunal in circumstances set out in subsection 9, the Special Immigration Appeals Commission or competent authority.

266 Subsection 9 sets out the circumstances when the Upper Tribunal is acting as a deciding authority. This includes where it is acting under section 12(2) of the Tribunals, Courts and Enforcement Act 2007 or in relation to an expedited appeal under section 82A of the Nationality, Immigration and Asylum Act 2002 or in relation to an expedited related appeal under section 24 where it involves a protection or human rights claim.

267 Subsection 10 provides a definition of terms used in this section.

268 Subsection 11 makes reference to section 26, which makes further provision relating to PRN recipients providing evidence late.

Section 23: Priority removal notices: expedited appeals

269 Overview: This section creates an expedited appeal route for appellants where they have been served with a priority removal notice (PRN) and made a protection or human rights claim or provided reasons or evidence as to why they should be allowed to remain in the UK after the PRN cut-off date but while the PRN is still in force. Their right of appeal will be to the Upper Tribunal instead of the First-tier Tribunal where certified by the Secretary of State.

270 Background: This is a new provision for a separate appeals process connected to the "priority removal notice" introduced in section 20.

271 Subsection 1 amends the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") to insert new section 82A providing for an expedited appeal process to the Upper Tribunal where certain conditions are met and the Secretary of State has certified that the appeal is an expedited appeal.

272 82A(1) sets out the expedited appeal conditions. These are that a person has been served with a PRN, has made a protection or human rights claim on or after the PRN cut-off date (but while the PRN is still in force), which has been refused with a right of appeal.

273 82A(2) stipulates that where the conditions in 82A(1) are met the Secretary of State must certify an appeal right as an expedited appeal unless satisfied that there were good reasons for the claimant raising their claim on or after the PRN cut-off date.

274 82A(3) confirms that a right of appeal under this section is to the Upper Tribunal instead of the First-tier Tribunal.

275 82A(4) provides that Tribunal Procedure Rules must make provision to try and ensure that expedited appeals are brought and determined more quickly than an appeal under section 82(1) in the First-tier Tribunal.

276 82A(5) states that Tribunal Procedure Rules must allow for the Upper Tribunal to make an order to remove a case from the expedited process when it is the only way to secure that justice is done. Accordingly, the expedited appeal will continue as an appeal in the First-tier Tribunal and be transferred there.

277 82A(6) confirms that "priority removal notice" and "PRN cut-off date" have the same meaning as in Section 20.

278 Subsection 2 amends section 13(8) of the Tribunals, Courts and Enforcement Act 2007 to provide that any decision of the Upper Tribunal on an expedited appeal is an "excluded decision" for the purposes of that Act so that there is no right of appeal to the Court of Appeal.

279 Subsection 3 introduces Schedule 3 which provides consequential amendments to the 2002 Act necessary by reason of this provision.

Section 24: Expedited appeals: joining of related appeals

280 Overview: This section provides that where a person brings an expedited appeal under section 82A of the Nationality, Immigration and Asylum Act 2002, certain other appeals brought by that person are also to be subject to the expedited procedure as a "related appeal".

281 Background: The aim of this section is to prevent people from using the appeal process as a means of frustrating their removal, by ensuring that where an individual is subject to the expedited appeal process, any "related appeal" (which will normally be heard at the First-tier tribunal) should be joined to the expedited appeal and transferred to the Upper Tribunal. This will make sure that the expedited appeal process provides finality and that an individual has no outstanding appeal rights once the expedited appeal process is concluded.

282 Subsections 1, 2 and 5 define an expedited section 82 appeal, a related appeal and an expedited related appeal for the purpose of this section.

283 Subsections 3 and 4 provide for a related appeal that is pending or that may be brought to the First-tier Tribunal, to be transferred to the Upper Tribunal where an expedited section 82 appeal is brought.

284 Subsection 6 sets out that Tribunal Procedure Rules must make provision to ensure that an expedited section 82 appeal and an expedited related appeal are combined or heard together.

285 Subsection 7 provides that Tribunal Procedure Rules must allow for the Upper Tribunal to make an order to remove a case from the expedited process when it is the only way to secure that justice is done. Accordingly, the expedited related appeal will continue as an appeal in the First-tier Tribunal and be transferred there.

286 Subsection 8 defines pending appeal for the purpose of this section.

287 Subsection 9 amends section 13(8) of the Tribunals, Courts and Enforcement Act 2007 to provide that any decision of the Upper Tribunal on an expedited related appeal is an "excluded decision" for the purposes of that Act so that there is no right of appeal to the Court of Appeal.

Section 25: Civil legal services for recipients of priority removal notices

288 Overview: This section amends Part 1 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO 2012") to enable recipients of a priority removal notice (PRN) to receive advice and assistance in the form of civil legal services.

289 Background: Each paragraph of Part 1 of Schedule 1 to LASPO 2012 describes the types of civil legal service that may be made available. Services listed in that Part are known colloquially as "in scope". To obtain legal aid, an applicant must have a determination from the Director of Legal Aid Casework that their issue is in scope by virtue of being listed in Schedule 1, and that they qualify for the services in accordance with the statutory means and merits tests which are set out in section 11 LASPO 2012 and in Regulations made under that Act.

290 The intention of this section is to introduce certain types of civil legal service into scope. In particular, by amending Schedule 1 to add the following civil legal services for recipients of a PRN: advice and assistance on, a) the priority removal notice; b) the recipient's immigration status; c) the lawfulness of their removal from the United Kingdom; and d) immigration detention. The advice provided under c might, for example, include advice on the National Referral Mechanism (NRM) insofar as it was relevant to the lawfulness of the individual's removal from the UK.

291 The aim of the section is to help individuals to understand their immigration status, the meaning of the PRN and to determine their next steps (if any), in raising claims that they may have as to why they should not be removed from the country.

292 Subsection 1 amends Part 1 of Schedule 1 by inserting a new paragraph 31ZA which sets out that civil legal services are made available to recipients of a PRN.

293 31ZA(1) sets out that advice and assistance can be provided to these individuals on the PRN itself; the individual's immigration status; the lawfulness of the removal of the individual from the UK; and immigration detention.

294 31ZA(2) and (3) provide that these civil legal services are available under this paragraph for up to but no more than 7 hours, and that these civil legal services are available to individuals for each PRN issued to them. The intention of the sub-paragraph is that advice will generally be available for no more than 5 hours, but where certain circumstances demand it, no more than 7 hours will be available.

295 31ZA(4) to (5) provide for certain services to be excluded from being provided within the time limit. Those services are: attendance at an interview under the NRM, attendance at an interview as part of an individual's application in relation to rights to enter and remain in the UK, advocacy (as this advice is for advice and assistance only), and also private law rights or claims for damages. These exclusions reflect that the intention is for advice and assistance to be provided primarily on an individual's immigration status and potential removal from the country, rather than the exercise of private law rights or anything not directly related to either of those things.

296 31ZA(6) provides a definition.

297 Subsection 2 amends the Lord Chancellor's power in section 9 of LASPO 2012 to allow the Lord Chancellor to change the maximum amount of time the civil legal services in subsection 1 may be provided for, and to allow the Lord Chancellor to make an order to show how the time limit could operate in practice, including an order setting out the circumstances where a full 7 hours of advice may be provided.

298 Subsection 3 amends the Civil Legal Aid (Merits Criteria) Regulations 2013 to say that these civil legal services provided to recipients of a PRN are available without the application of the merits criteria (to assess the merits of their case).

299 Subsection 4 amends the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 to say that these civil legal services provided to recipients of a PRN are available without a determination in respect of an individual's financial resources.

Chapter 6: Evidence

Section 26: Late provision of evidence in asylum or human rights claim: weight

300 Overview: This section creates the principle that a decision-maker in an asylum or human rights claim or appeal must have regard to the principle that evidence raised by the claimant late should be given minimal weight, unless there are good reasons why the evidence was provided late. For this purpose, evidence is considered "late" if it is provided in response to an evidence notice and it is provided on or after the date specified by that notice (as provided for by section 18); and also, if it is provided in response to a priority removal notice (PRN) and is provided on or after the PRN cut-off date (as required by section 20).

301 Background: The aim of this section is to strengthen existing provisions in respect of late evidence following an evidence notice or a PRN. It adds a further consideration for decision-makers when considering how much weight should be applied to evidence provided late without good reason.

302 Subsection 1 sets out that this section will apply to evidence that is provided late as part of an asylum or human rights claim. It will apply when a deciding authority, as defined by subsections 7 and 8, considers evidence as part of a claim or as part of a decision where such claims are subject to an appeal.

303 Subsection 2 imposes a duty on the deciding authority, when considering the evidence in a claim or appeal, to have regard to the principle of giving minimal weight to evidence that is provided late unless there are good reasons why the evidence was provided late.

304 Subsections 3 to 5 relate to the definition of late evidence. Subsection 4 provides for evidence that has been provided on or after the specified date in the evidence notice as detailed in section 18; and subsection 5 provides for evidence that is provided on or after a PRN cut-off date provided for in section 20.

305 Subsection 6 specifies that determining a claim includes deciding whether a claim should be certified as clearly unfounded and whether to accept or reject evidence as a further submission.

306 Subsection 7 defines a deciding authority as an Immigration Officer, the Secretary of State, the First-tier or Upper Tribunals or the Special Immigration Appeals Commission. It also defines a "relevant appeal" as an appeal that is heard at the First-tier or Upper Tribunals or by the Special Immigration Appeals Commission.

307 Subsection 8 sets out the circumstances when the Upper Tribunal is acting as a deciding authority.

Chapter 7: Appeals

Section 27: Accelerated Detained Appeals

308 Overview: This section imposes a duty on the Tribunal Procedure Rules Committee to make rules for an accelerated timeframe for certain appeals made from detention which are considered suitable for consideration within the accelerated timeframe.

309 Background: The Tribunal Procedure Committee is responsible for drafting procedural rules for tribunal cases. The procedure for immigration and asylum appeals is set out in the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 ("the Rules").

310 While appeals involving detained appellants are administratively prioritised by Her Majesty's Courts and Tribunals Service (HMCTS) under the Detained Immigration Appeals (DIA) approach, there is no set timeframe in which these have to be determined under the Rules.

311 This section aims to establish an accelerated route for those appeals made in detention which are considered suitable for a quick decision, to allow appellants to be released or removed more quickly.

312 Subsections 1, 2 and 6 define an accelerated detained appeal for the purpose of this section and set out criteria which must apply for an appeal to be certified as such. An accelerated detained appeal is an appeal brought by an appellant who:

- is appealing against a deprivation of citizenship, protection and human rights, EU citizens' rights, or EEA immigration decision;
- received notice of that decision while in detention;
- remains in detention under a relevant detention provision;
- is appealing a decision which was certified by the Secretary of State as suitable for an accelerated detained appeal; and
- meets further criteria which will be set out in regulations.

313 Subsection 4 sets out that if an appellant is released from detention their appeal will cease to be an accelerated detained appeal.

314 Subsections 3 and 5 impose a duty on the Tribunal Procedure Committee to introduce procedure rules for accelerated detained appeals, setting time limits for certain stages of the appeal process and stipulating that the rules must contain provision for the tribunal to transfer cases out of the accelerated route where that is the only way to secure that justice is done.

Section 28: Claims certified as clearly unfounded: removal of right of appeal

315 Overview: This section removes the out-of-country right of appeal for human rights and protection claims that are certified as clearly unfounded.

316 Background: Currently if an asylum claim is determined as being clearly unfounded and certified under section 94 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"), the claimant is provided with an out-of-country right of appeal. However, for asylum further submissions, which in effect are repeat asylum claims, the test is higher – namely "the claimant has to show that their claim has a realistic prospect of success" in order to be provided with a right of appeal. This creates a perverse situation whereby certain claimants with unfounded claims are given a right of appeal, whereas others who have claims that have a low or unrealistic prospect of success (but are not themselves entirely without merit) are not given such right to appeal.

317 Subsection 2 amends section 92 of the 2002 Act, removing the out-of-country right of appeal where a human rights or protection claim certified under section 94. It also removes the right to continue an in-country appeal as an out-of-country appeal if an appellant leaves the UK, if the human rights or protection claim that they are appealing has been certified as clearly unfounded.

318 Subsection 3 amends section 94 of the 2002 Act, removing the right of appeal against a human rights or protection claim that has been certified as clearly unfounded.

319 Subsection 4 limits the application of this section to human rights or protection claims that are certified after this section comes into effect.

Chapter 8: Removal to safe third country

Section 29: Removal of asylum seeker to safe country

320 Overview: This section and Schedule 4 make amendments to the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (the "2004 Act") in relation to the removal of asylum seekers, and those individuals who have had their asylum claim refused, to safe third countries. This includes provision for the removal of asylum seekers from the UK, provided such removal is in accordance with the UK's international obligations. It also creates a new rebuttable presumption that certain specified countries are compliant with their obligations under the 1950 European Convention of Human Rights (ECHR) to the extent that an individual's Convention rights under Article 3 (no torture or inhuman or degrading treatment or punishment) would be respected upon an individual's return to these specified countries.

321 Background: Section 77 of the 2002 Act prevents the removal of an asylum seeker from the UK while their asylum claim is pending. While the UK was a member of the EU and until the end of the Transition Period (11pm on 31 December 2020), this operated alongside the Dublin Regulations, which permitted removal of asylum seekers who had already made protection claims to safe third countries that were EU Member States and managed the UK's asylum intake.

322 This section and Schedule 4, by amending section 77 of the 2002 Act, makes it possible to remove someone to a safe third country while their asylum claim is pending without having to issue a certificate under Schedule 3 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. This supports the future object of enabling asylum claims to be processed outside the UK and in another country. The purpose of such a model is to manage the UK's asylum intake and deter irregular migration and clandestine entry to the UK.

323 The UK Government is committed to upholding its international obligations under the Refugee Convention and the ECHR; therefore, any such removal of asylum seekers will be considered in line with these obligations. One of the core principles of the Refugee Convention is non-refoulement, which provides that a state must not expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion (see Article 33(1)). Under Article 3 of the ECHR, no one shall be subjected to torture or to inhuman or degrading treatment or punishment. This places an absolute bar on removing an individual from the UK where there are substantial grounds to believe that there is a real risk that the individual would experience such treatment in the country to which they are being removed.

324 Schedule 3 of the 2004 Act is amended to include a rebuttable presumption that certain countries specified in Schedule 3 of the 2004 Act are safe. "Safe" in this context means that an individual does not face a risk that their rights under Article 3 of the ECHR will be breached and that they will not be sent onwards to another country in contravention of their ECHR rights. In some instances, individuals who have had their asylum claim refused and are facing removal from the UK, try to frustrate their removal from the UK by claiming that their Article 3 rights may be breached in the country to which they are being removed. This can include where the removal is to countries which the UK considers to be safe. EU member states, for example, are countries which the UK considers, due to the constitutional and administrative structures of the European Union, are highly likely to be compliant with their ECHR obligations and therefore safe for the purpose of removing an individual whose claim for asylum has failed. The presumption will only be overturned where an individual can provide evidence that there is a real risk that their Article 3 rights will be breached upon removal to the safe country.

325 This section and Schedule 4 also amend an existing power which allows the Secretary of State to add countries to the list of safe countries specified in paragraph 2 of Schedule 3 to the 2004 Act so that the Secretary of State can also remove countries from the list of safe countries in paragraph 2.

326 The Section and Schedule 4 also clarify that there is no right of appeal in reliance on an asylum claim which asserts that to remove the person to a safe country would breach the UK's obligations under the Refugee Convention. They also remove rights of appeal for human rights claims brought against removal to the safe country which are declared clearly unfounded in line with the amendments to section 94 of the 2002 Act.

Interpretation of Refugee Convention

327 The current UK asylum law is derived from a range of sources: international and European law, primary and secondary legislation, the Immigration Rules (which are in turn supported by policy and guidance), and a substantial body of case law.

328 The following sections intend to consolidate the legislation which underpins the system to make it easier to navigate for all those who use it.

329 The Refugee Convention, which sets out the international legal framework for the protection of refugees, contains broad concepts and principles, many of which are open to some degree of interpretation as to exactly what they mean in practice.

330 In order to create a consistent and fair EU-wide asylum system, the EU created the Common European Asylum System (CEAS) in 1999. CEAS sets out common standards and co-operation to ensure that asylum seekers are treated equally in an open and fair system. This was set out in a number of Directives, the contents of which were transposed into domestic law (where there was not already a suitable domestic provision), largely via the Immigration Rules. Several statutory instruments were also made to complete transposition where there was no pre-existing domestic statute, or the Immigration Rules were not suitable.

331 One such statutory instrument was the Refugee or Person in Need of International Protections (Qualification) Regulations 2006, which transposed (in part) The Qualification Directive (2004/83/EC) into UK legislation. This is an EU law which set out criteria for the CEAS when determining when an individual is eligible for recognition as a refugee and the rights and assistance that must be afforded to those individuals who are recognised as such.

332 The UK's departure from the EU provides an opportunity to clearly define, in a unified source, some of the key elements of the Refugee Convention in UK domestic law.

Section 30: Refugee Convention: general

333 Overview: This section instructs decision makers to use the definitions in the following sections when considering whether an individual meets the definition of refugee in accordance with the Refugee Convention.

334 Subsection 1 instructs decision-makers, including immigration officers, the Secretary of State or a court or tribunal, to use the sections in this section for the interpretation of Article 1(A)(2) of the Refugee Convention.

335 Article 1(A)(2) defines "refugee" as a person who, "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it".

336 Subsection 2 instructs the decision-maker to use section 36 when deciding whether a person should be excluded from the definition of a refugee on the basis of serious criminal behaviour or behaviour contrary to the principles of the UN.

337 Subsection 3 instructs the decision-maker to use section 37 when deciding whether a person should be immune from penalty.

338 Subsection 4 revokes the Refugee or Person in Need of International Protections (Qualification) Regulations 2006. The provisions of the 2006 regulations are added to the statute book via the sections in this section, such as the definition of persecution (section 31).

339 Subsection 5 stipulates that the provisions in this section and those in sections 31 to 36 only apply to claims made on or after the day this section takes effect.

340 Subsection 6 confirms that a "claim for asylum" in subsection 5, refers to a claim as set out in subsection 1 of this section.

Section 31: Article 1(A)(2): persecution

341 Overview: This section provides a definition of "persecution" for the purpose of interpreting Article 1(A)(2) of the Refugee Convention.

342 Background: For an individual to be considered a refugee, they must have a well-founded fear of being "persecuted" for a Convention reason. The UK currently relies on the definition of "persecution" provided in regulation 5 of the 2006 Regulations, which is revoked by section 30(4). The intention of this section is to create a definition in primary legislation.

343 Subsection 1 specifies that persecution can be carried out by: the state; a party or organisation which controls the state, or a large part of it; or a person or organisation that is not part of the state, but which the state cannot or is unwilling to protect the individual from.

344 Subsection 2 specifies that an act will be considered as persecution if it breaches a basic human right, particularly those rights which cannot be limited: Articles 2 (Right to life), 3 (prohibition of torture), 4 (prohibition of slavery and forced labour) and 7 (No punishment without law). Alternatively, breaches of other human rights in accumulation, resulting in a severe violation, may be defined as persecution.

345 Subsection 3 provides examples of persecution.

Section 32: Article 1(A)(2): Well-founded Fear

346 Overview: This section sets out a two-limb test to be used by a relevant decision maker (persons, Courts or tribunals) when deciding whether an individual has a "well-founded fear" of persecution in accordance with Article 1(A)(2) of the Refugee Convention.

347 Background: For an individual to be considered a refugee, they must have a "well-founded fear" of being persecuted for a Convention reason. The Refugee Convention does not elaborate on the definition of a "well-founded fear" and so the Courts have developed case law in this area. Under current case law, the standard to which a claim must be assessed is low. The claimant must show that there is a "reasonable degree of likelihood" of persecution due to one, or more, of the reasons outlined in the Refugee Convention. The decision maker will take into account statements made by the claimant together with information about the situation in the country to which the claimant may be removed if the claim fails.

348 This provision establishes a clear two-limb test for assessing whether an asylum seeker has a well-founded fear of persecution and will raise the standard of proof which an asylum seeker must satisfy for certain elements of the test.

349 Subsection 1 provides that the approach set out by this section is to be taken when deciding whether a person's fear of persecution is "well-founded".

350 Subsection 2 sets out the first limb of a two-limb test. Under the first limb, the decision-maker determines whether the claimant has established that they have a characteristic, as set out in the Refugee Convention, which could cause them to fear persecution in their country of nationality (or the country of their former habitual residence) and whether they do in fact fear such persecution based on that characteristic. This is assessed on the "balance of probabilities" standard.

351 Subsections 3 to 5 set out the second limb of the test. Should the first test be met, the decision maker is instructed to consider whether the claimant may be persecuted if returned to their country of nationality (or the country of their former habitual residence) as a result of the reason established under subsection 2. This is assessed on the basis of whether there is a "reasonable likelihood" that they may face such persecution. This assessment must include an assessment of protection from persecution (see section 34) and internal relocation (see section 35).

Section 33: Article 1(A)(2): Reasons for Persecution

352 Overview: This section provides a definition of the term "particular social group" as used in Article 1(A)(2) of the Refugee Convention, and provides examples illustrating the meaning of race, religion and other terms used in the Refugee Convention.

353 Background: For an individual to be considered a refugee, they must have a well-founded fear of being persecuted for a Convention reason, one of which may be membership of a "particular social group". The UK currently relies on the definition of "particular social group" provided in regulation 6 of the 2006 Regulations, which is revoked by section 30(4). The intention of this section is to create a definition in primary legislation.

354 Subsection 1 provides examples of matters that are included in concepts from Article 1(A)(2) of the Refugee Convention which can be the basis of persecution. This includes race, religion, and nationality.

355 Subsections 2 to 4 provide two conditions, both of which must be satisfied by a group for it to meet the definition of "particular social group". Firstly, all members of the group must share an innate characteristic or common background which cannot be changed, or a characteristic or belief which is so central to a person's identity they should not be forced to renounce it, for example a religious belief. Secondly, the group's possession of such characteristics must distinguish it from the relevant society at large.

356 Subsection 5 provides a particular social group may be based on a characteristic of sexual orientation but does not include acts that are criminal in the UK.

Section 34: Article 1(A)(2): Protection from Persecution

357 Overview: This section provides a definition of "protection" as used in Article 1(A)(2) of the Refugee Convention.

358 Background: In determining whether a fear of persecution is likely to manifest, decision makers will also consider what protection is available to the individual within the country of origin to protect them from the risk of persecution.

359 The UK currently relies on the definition of "protection" provided in regulation 4 of the 2006 Regulations, which is revoked by section 30(4). The intention of this section is to create a definition of protection from persecution in primary legislation.

360 Subsection 1 specifies who is considered able to provide protection from persecution: the state or a party or organisation in control of the state, or a large part of it.

361 Subsection 2 provides that consideration be given to the sufficiency of protection. Actors of protection mentioned in subsection 1 must take reasonable steps to provide protection through its criminal law system, police force and judicial system.

Section 35: Article 1(A)(2): Internal Relocation

362 Overview: This section provides that a decision-maker must consider an asylum seeker's opportunity for internal relocation when determining whether or not they meet the definition of "refugee" found in Article 1(A)(2) of the Refugee Convention.

363 Background: The concept of internal relocation refers to a situation where a person may be at risk in one part of a country, but not in another. If an individual could relocate to part of the country where they would not fear persecution, then the individual is considered to be able to avail themselves of the protection.

364 Subsection 1 provides that an individual will not meet the definition of "refugee" as found in the Refugee Convention if, by relocating within their country, they would no longer have a well-founded fear of being persecuted. The reasonableness of any potential relocation must be weighed into this consideration.

365 Subsection 2 provides that, when considering the reasonableness of any potential internal relocation, the decision-maker must consider the circumstances in that part of the country to which the individual could relocate, and the circumstances of the individual so as to determine whether it would be practical to expect them to move there. Any technical obstacles which might cause difficulty in relocating are not to be considered.

Section 36: Article 1(F): Disapplication of Convention in Case of Serious Crime etc.

366 Overview: This section defines the situations where the Refugee Convention will not apply to someone where they have committed, or been involved in committing, a serious crime as stipulated in Article 1(F) of the Refugee Convention.

367 Background: There are circumstances where a person is excluded from the definition of a refugee on the basis of serious criminal behaviour, or behaviour contrary to the principles of the UN (Article 1(F) of the Refugee Convention). The UK currently applies this through regulation 7 of the 2006 Regulations, which is revoked by section 30(4). The intention of this section is to reflect these exclusions in primary legislation.

368 Subsection 1 provides that an individual be considered to have committed a crime described in Article 1(F) if they encouraged or played a role in those crimes. Article 1(F) relates to serious crimes, including crimes against peace, war crimes, crimes against humanity, serious non-political crimes outside the country of refuge, or acts contrary to the purpose and principles of the UN.

369 Subsection 2 provides an interpretation for "serious non-political crime", which includes a particularly cruel action, even if it is committed with an allegedly political objective, for example murder, rape, arson and armed robbery.

370 Subsection 3 clarifies that crimes committed outside the country of refuge include crimes committed at any point up until and including the day the individual is granted permission to enter or remain in the UK as a refugee.

371 Subsection 4 provides a definition of "biometric immigration document" for the purpose of subsection 3.

Section 37: Article 31(1): Immunity from Penalties

372 Overview: This section sets out the UK's interpretation of Article 31(1) of the Refugee Convention, setting out the circumstances in which refugees who have entered a country illegally, or are present in a country illegally, are immune from penalties.

373 Background: The UK is a signatory of the 1951 Refugee Convention. Article 31(1) of the Refugee Convention instructs that refugees be protected from penalties for their illegal entry or illegal presence where they have come directly from a territory where their life or freedom was threatened, presented themselves without delay to the authorities, and shown good cause for their illegal entry or presence.

374 The Refugee Convention does not explicitly define what is meant by "coming directly from a territory where their life or freedom was threatened" and "present themselves without delay to the authorities".

375 The purpose of this section is to create an interpretation of the criteria set out in Article 31(1), in order to clarify when a refugee would and would not benefit from the immunity from penalty provided for by that Article.

376 Subsection 1 provides an interpretation of the term "coming directly" as found in Article 31(1). It stipulates that a person will not be deemed to have come directly if they have stopped in another country between leaving the country where they faced persecution and arriving in the UK. An exception would apply if the individual can demonstrate that it was not reasonable for them to have sought protection under the Refugee Convention in the country they stopped in, for example, where a person was under the control of people smugglers and therefore unable to present themselves to the authorities in that country. Individuals who are deemed not to have come directly, as defined by this section, may not be immune to penalties imposed on them on grounds of their illegal presence or illegal entry into the UK.

377 Subsection 2 specifies what it means for a refugee to "present themselves without delay" in making a claim for asylum. In cases where an individual has fled persecution and arrives in the UK, they would be expected to make a claim for asylum as soon as it was reasonably practicable to do so after their arrival in the UK. In cases where an individual was present in the UK with permission (for example on a visa) and experienced a change in their circumstances meaning they have a well-founded fear of persecution preventing them from returning to their country of nationality, they would be expected to make their claim for asylum before their permission to stay in the UK expires. In cases where an individual was present in the UK without permission (for example a visa overstayer) and experienced a change in their circumstances preventing them from returning to their country of nationality, they would also be expected to make their claim for asylum as soon as it was reasonably practicable after their need for protection arose. Such individuals who require permission to be present in the UK and do not have it will be considered to be present in the UK illegally (subsection 3). Therefore, such individuals even if they present themselves without delay, as defined by this section, would not be immune to penalties imposed on them on grounds of not having good cause for their illegal presence or illegal entry into the UK.

378 Subsection 4 provides an exemption to imposing penalties on individuals where they have broken these rules in the course of leaving the UK.

379 Subsection 5 substitutes wording used in subsection 2 of section 31 of the Immigration and Asylum Act 1999 to align it to wording used in Section 36, and also inserts new subsection 4A into section 31 relating to the defences based on Article 31(1) that an individual may rely upon if charged of an offence. 4A provides an exception, whereby an individual may not use the section 31 defence if they committed an offence in their attempt to leave the UK.

380 Subsection 6 provides definitions for terms used in this section.

Section 38: Article 33(2): Particularly Serious Crime

381 Overview: This section reduces the threshold at which a refugee is considered to have committed a particularly serious crime. It reduces the threshold from a period of imprisonment of at least two years to a period of imprisonment of at least 12 months.

382 Background: Under the Refugee Convention, a refugee is defined as a person who, "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it" (Article 1A(2)).

383 One of the core principles of the Refugee Convention is non-refoulement, which stipulates that a state must not expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion (see Article 33(1)).

384 Article 33(2) of the Refugee Convention provides an exception to non-refoulement and allows signatories to the Convention to remove refugees where there are reasonable grounds for regarding them as a danger to the security of the country of refuge or where, having been convicted by a final judgement of a particularly serious crime, they constitute a danger to the community of that country.

385 The Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") was enacted for the purpose of applying Article 33(2) of the Refugee Convention. Section 72(2) of the 2002 Act sets out the UK's interpretation of "particularly serious crime". It currently provides that, where a person has been convicted in the UK of an offence and sentenced to a period of imprisonment of at least two years, they are considered to have committed a particularly serious crime. The individual can rebut the presumption that their "particularly serious crime" means that they pose a danger to the community of the UK, and if successful, the exception to non-refoulement will not apply. Likewise, this section also provides that where an individual has been convicted of an offence outside the UK which would have attracted a sentence of at least two years if convicted in the UK of a similar offence, they will be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community. This section also confers a power to the Secretary of State to make an order specifying which offences are considered to constitute a particularly serious crime, including where offences have been committed outside the UK.

386 There is currently ambiguity in this section as to what elements of this test in section 72 an individual may seek to rebut. Specifically whether the rebuttable presumption applies to both the assertion that a crime attracting a particular sentence is therefore particularly serious, and the presumption that, as a result of being convicted for a particularly serious crime, the individual poses a danger to the community of the UK.

387 This section is intended to lower the criminality threshold in section 72 meaning that crimes which attract a sentence of 12 months or more will be considered to be particularly serious. This is to ensure that all those who commit serious crimes can be considered for removal from the UK.

388 Additionally, this section intends to clarify that the rebuttable presumption applies only to whether an individual constitutes a danger to the community of the UK. The fact that a crime is considered to be particularly serious based on the sentence passed by the Court, is not rebuttable.

389 Subsection 1 provides for the amendment of Section 72 of the Nationality, Immigration and Asylum Act 2002, which outlines when a person is considered to have committed a particularly serious crime for the purpose of applying Article 33(2) of the Refugee Convention.

390 Subsection 2 amends the wording in section 72(1) to clarify that a person would not be denied status under the Refugee Convention, but rather would lose their immunity from return to their country of nationality or removal from the UK.

391 Subsections 3 to 5 amend sections 72(2), (3) and (4).

392 The rebuttable presumption, as currently drafted, has been construed as having two limbs: to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom. This section amends the wording in these subsections of section 72, so that the rebuttable presumption applies only to the fact that someone who has committed a particularly serious crime, constitutes a danger to the community

393 These subsections also amend what is considered to be a particularly serious crime. Crimes attracting a 12-month sentence or more are to be considered particularly serious crimes, rather than crimes attracting a prison sentence of at least two years.

394 Subsection 6 creates new subsection 5A, which serves to clarify that those convicted of a particularly serious crime are to be considered a danger to the community. This is not rebuttable.

395 Subsections 7 to 11 make consequential amendments to reflect new subsection 5A.

396 Subsection 12 amends wording to reflect the reduced threshold from two years to 12 months.

397 Subsection 13 stipulates that the amendments made by this section apply only in relation to a person convicted on or after the date on which this section comes into force.

Chapter 9: Interpretation

Section 39: Interpretation of Part 2

398 This section provides definitions for terms used in this Part.

Part 3: Immigration Offences and Enforcement

Immigration Offences and Penalties

Section 40: Illegal Entry and Similar Offences

399 Overview: This section creates two new criminal offences of arriving in the UK without a valid entry clearance or electronic travel authorisation (ETA) where required, in addition to the existing offence of entering without leave. This section increases the maximum penalty for those returning to the UK in breach of a deportation order from 6 months to 5 years, and for entering without leave or arriving without a valid entry clearance or ETA, or overstaying a grant of leave, from 6 months to 4 years.

400 Background: The offence of knowingly entering the UK without leave is currently set out in section 24(1)(a) of the Immigration Act 1971 ("the 1971 Act"). "Leave" refers to permission, under the 1971 Act, to enter or remain in the UK – such leave may be limited in terms of duration, or indefinite.

401 The concept of "entering the UK without leave" has caused difficulties about precisely what "entering" means in the context of the current section 24(1)(a) of the 1971 Act.

402 "Entry" is defined in section 11(1) of the 1971 Act as meaning disembarking and subsequently leaving the immigration control area. Where a person is detained and taken from the area, or granted immigration bail, they are not deemed to have entered the UK.

403 The offence of knowingly entering the UK without leave dates back to the original version of the 1971 Act. Entering the UK without leave is no longer considered entirely apt given the changes in ways in which people have sought to come to the UK through irregular routes.

404 This section creates two new offences so that it encompasses arrival, as well as entry into the UK. The intention is that these new offences of people arriving in the UK without a required entry clearance (EC) or ETA apply to everyone who requires an EC or ETA on arrival. These offences will cover all asylum claimants who arrive without the necessary EC or ETA. As a matter of law, refugees will be in scope of the offence but decisions on prosecutions remain a matter for the Crown Prosecution Service (CPS) in England and Wales, the Crown Office and Procurator Fiscal Service (COFPS) in Scotland, and the Public Prosecution Service (PPS) in Northern Ireland, who will take into account the public interest test.

405 This will allow prosecutions of individuals who are intercepted in UK territorial seas and brought into the UK who arrive in but don't technically "enter" the UK.

406 The definition of "immigration law" in section 25(2) of the 1971 Act is consequently amended to encompass arrival in the UK in addition to entry to allow for prosecutions of those who facilitate the arrival or attempted arrival of persons in breach of immigration law.

407 The offence set out in section 24(1)(a) of the 1971 Act also covers knowingly entering the UK in breach of a deportation order. Currently, entering the UK without leave or in breach of a deportation order can carry an unlimited fine and/or a maximum of 6 months' imprisonment (section 24(1)(a)). The Government's assessment is that the current maximum term of imprisonment does not provide a sufficient deterrent to those seeking to enter the UK without leave. It is also considered that the current maximum term of imprisonment does not reflect the seriousness of the offence, in particular where there are factors such as where conduct endangers life.

408 This section raises the maximum term of imprisonment to create a stronger deterrent and with the intention of disrupting the activities of organised criminal groups, including those involved in organised immigration crime. Raising the maximum term of imprisonment above

6 months automatically makes the offences triable in the Crown Court or magistrates court, and thereby subject to the same maximum as applies on conviction on indictment for the offence attempted.

409 This section raises the maximum penalty for the offence of overstaying a grant of leave (section 24(1)(a)(b)(i) of the 1971 Act) from 6-months to 4-years. Raising the maximum term of imprisonment above 6 months automatically makes the offences triable in the Crown Court or magistrates court. The longer sentence length will ensure that the police, prosecutors and the courts consider the offence as serious enough to take through the Criminal Justice System. If individuals are given a sentence of 12 months or more it will make them subject to auto-deportation unless an exception applies.

410 Subsections 1 and 2 set out that this section amends the Immigration Act 1971 and inserts new subsections A1 – E1 into section 24, which sets out illegal entry and similar offences. Subsections A1– E1 make it an offence to:

- Knowingly enter the UK in breach of a deportation order (A1)
- Knowingly enter the UK without permission to do so (B1)
- Knowingly remain beyond the time limited by the leave, if having only a limited leave to enter or remain in the UK (C1)
- Knowingly arrive in the UK without valid entry clearance (D1), otherwise known as a visa (see the Glossary at Annex A for full definition)
- Knowingly arrive in the UK without a valid electronic travel authorisation (E1).

411 A summary conviction of any of these offences, in England and Wales, will result in up to six months' imprisonment (moving to 12 months when paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 comes into force), a fine, or both. In Scotland, up to 12 months' imprisonment, a fine of up to £5,000 (the statutory maximum), or both. In Northern Ireland, up to 6 months' imprisonment, a fine of up to £5,000 (the statutory maximum), or both.

412 A conviction on indictment for an offence of knowingly entering in breach of a deportation order (A1) will attract a prison sentence of up to 5 years, a fine, or both. A conviction on indictment for an offence under B1, C1, D1 or E1 will attract a prison sentence of up to 4 years, a fine, or both.

413 Subsection 3 removes 24(1)(a), as the offence to enter in breach of a deportation order or without permission is now covered in new subsections A1 and B1, and replaces 14(1)(b)(i) with subsection (C1). This subsection also amends references to the offence under 24(1)(a) for the purpose of extending the time limit for prosecutions provided for by way of section 28(1) of the 1971 Act, substituting it with relevant references to A1, B1, D1 and/or E1. However, it should be noted that by virtue of the offences in new subsections A1 – E1 now being triable either way, there is no time limit for prosecutions and therefore no statutory requirement to extend the time limit as there would be for summary only offences.

414 This subsection also amends subsection 4 and inserts new subsection 5, which provides that, in legal proceedings relating to an offence under D1, a document, such as a vignette, attached to a passport or travel document will be considered evidence of entry clearance if it has been issued by the Secretary of State for the period covering the time of arrival. In both cases (B1 and D1), the burden of proof lies on the defendant to prove that he or she had leave to enter or valid entry clearance as appropriate.

415 Subsection 4 amends section 25 of the 1971 Act, (criminal offence of assisting unlawful immigration) to include arrival in the UK as part of the definition of "immigration law". The meaning of "immigration law" as provided in current section 25(2) means a law which controls non-UK nationals' entitlement to enter the state, transit across the state, or be in the state. This limits the application of section 25 in practice. As noted regarding the offence of entry without leave, migrants who are intercepted at sea and are brought into an immigration control area may not have "entered" the UK unlawfully and so a person facilitating their journey may not be charged with assisting a breach of immigration law for that offence. This amendment will ensure that the offence of facilitation also applies to those assisting persons to arrive in the UK without a valid entry clearance.

416 Subsections 5 to 9 amend references to section 24 and 24(1)(a) to reflect the revised offences.

Section 41: Assisting unlawful immigration or asylum seeker

417 Overview: This section amends the facilitation offences in sections 25 and 25A of the Immigration Act 1971 ("the 1971 Act"), raising the maximum penalty from 14 years' to life imprisonment and removing the requirement of facilitation being "for gain" in relation to section 25A.

418 Background: Under section 25 of the 1971 Act, as currently in force, it is an offence to carry out an act (including outside of the UK) to facilitate the commission of a breach (or attempted breach) of immigration law by an individual who is not a UK national. Facilitation may include behaviour linked to recruiting, transporting, transferring, or harbouring. The required mental element is that the person doing the act must know or have reasonable cause for believing that the act facilitates the commission of a breach or attempted breach of immigration law by the individual, and must know or have reasonable cause for believing that the individual is not a UK national.

419 Under current section 25A(1), it is an offence for a person, knowingly and for gain, to facilitate the arrival or entry (or attempted arrival or entry) of an asylum seeker into the UK. Section 25A contains a requirement to prove gain. Gains from facilitation may be cash-in-hand, taken while abroad, or otherwise difficult to link back to facilitation, making this difficult to evidence in some prosecutions.

420 This section removes the requirement to prove gain, broadening the section 25A offence, to allow the Home Office to charge more people for facilitating the arrival of asylum seekers to the UK. It remains the case that this offence does not apply to persons acting on behalf of an organisation which aims to assist asylum seekers and does not charge for its services.

421 Section 25 offences currently attract a prison sentence of up to 14 years. This section increases the penalty to life imprisonment in order to discourage unlawful facilitation of migrants to the UK.

422 Subsection 2 amends subsection (6)(a) of section 25, increasing the maximum custodial penalty for assisting unlawful immigration from 14 years to life imprisonment. By virtue of section 25A(4), the maximum penalty set out here also applies to the other offence of facilitating the arrival or entry of an asylum seeker to the UK.

423 Subsection 3 amends section 25A(1)(a) of the 1971 Act, removing the requirements to demonstrate that facilitation has been for gain.

424 Subsection 4 inserts new sections 25BA and 25BB into the 1971 Act. Section 25BA provides exclusions or defences to the section 25 and 25A offences where a person rescues another person at sea.

425 Section 25BA(1) makes it clear that a person does not commit a facilitation offence if they are acting for, on behalf of or co-ordinated by HM Coastguard (HMCG) or overseas equivalent. This protects organisations such as the Royal National Lifeboat Institute (RNLI), independent lifeboats, and individual seafarers who first contact HMCG or who respond to a mayday relay issued by HMCG or equivalent search and rescue authority.

426 Section 25BA(2) provides a defence for a person to show that the act of facilitation was to assist an individual who is in danger or distress at sea and the assistance is provided between the time of the individual first being in danger or distress and the time when they are taken to a place of safety. However, this is limited by subsection (3) in that the defence does not apply if delivery of the person is to the UK when this is not the nearest place of safety on land and there is no good reason for this. Subsection (3) also sets out that the act of steering a ship does not count as an act of assistance in the case where the steerer is on the same ship as the person being rescued. Subsection (4) sets out in statute that there is a burden on the defence to raise sufficient evidence that they were rescuing a person as set out in subsection (2) to raise an issue in respect of it and if they do so it is then for the prosecution to prove that this was not the case to the standard of beyond reasonable doubt. Subsection (5) provides definitions for the purpose of this section regarding "act of facilitation", "assisted individual", "facilitation offence" and "ship".

427 The intention behind section 25BA is to ensure that suitable protections are in place for the RNLI and other seafarers whose actions are co-ordinated by HMCG but to allow for the investigation and potential prosecution of those acting in the absence of such co-ordination where there is doubt that they are genuinely rescuing people or may otherwise be acting as a "taxi service" to bring migrants to the UK. Good reasons for delivering assisted persons to the UK where this is not the nearest place of safety on land might include weather conditions or a commercial ferry continuing its scheduled route. The statutory defence will not be available to those persons steering these small boats as it is not acceptable that those who are assisting unlawful immigration in this way should be able to easily escape prosecution if they claim that they were doing so as an act of rescue. However, such individuals will still have access to defences available at common law.

428 New section 25BB provides defences for the master of a ship and crew in relation to stowaways. Subsection (1) provides a defence to the master or person acting on the master's behalf where a stowaway is discovered on board after leaving port and as long as they appropriately notify the authorities as soon as reasonably practicable before they then dock in the UK. It is also a defence under subsection (2) for crew members or passengers to provide humanitarian assistance to the stowaway so long as the presence of the stowaway is reported to the master of the ship as soon as reasonably practicable. Subsection (3) sets out in statute that there is a burden on the defence to raise sufficient evidence with regard to discovering and reporting the presence of the stowaway as set out in subsections (1) and (2) to raise an issue in respect of it and if they do so it is then for the prosecution to prove that this was not the case to the standard of beyond reasonable doubt. Subsection (4) provides a definition of a stowaway for the purpose of section 25BB and subsection (5) sets out when a person ceases to be a stowaway. Subsection (6) applies the same definitions as those in section 25BA.

429 Section 25BA and 25BB ensure there is no conflict with the UK's international maritime obligations. For stowaways on other modes of transport (i.e. aviation and international rail), investigative and independent prosecutorial discretion will be relied on, on a case-by-case basis, in deciding whether a prosecution is in the public interest, taking into account what security measures are in place to prevent access to potential stowaways.

Section 42: Penalty for failure to secure goods vehicle

430 Overview: This section extends the scope of the civil penalties regime for clandestine entrants to create a new civil penalty that may be issued on persons responsible for goods vehicles that have not been adequately secured, whether or not there is a clandestine present in the vehicle. It also makes amendments to the current regime by requiring those operating vehicles to take measures to secure their vehicles against unauthorised access by clandestine entrants.

431 Background: Part 2 of the Immigration and Asylum Act 1999 ("the 1999 Act") created a civil penalty regime for those responsible for allowing clandestine entrants into the UK. While these provisions have been in place in various forms for over 20 years, a high proportion of drivers and hauliers still fail to properly secure their vehicles, thereby enabling clandestines to enter the UK illegally within these vehicles. In a compliance sampling exercise carried out in March 2021, more than a third of vehicles were found not to have basic security measures in place. When considering how this differs between hard-sided and soft-sided vehicles, 55% of soft-sided vehicles lacked basic security measures.19

432 Until now, the focus of the penalty regime has been on the presence of clandestines.

433 The intention is to create an alternative basis for civil liability to apply in the case of goods vehicles. Accordingly, persons responsible for goods vehicles that have not been adequately secured against unauthorised access, and where that person has not taken the actions specified in regulations in relation to the securing of the vehicle against unauthorised access before or during its journey, can receive a civil penalty, regardless of whether a clandestine is present.

434 The intent is to require drivers and hauliers to check the security of their goods vehicles during or prior to arrival in the UK or presentation at UK immigration control and to alert the relevant authorities (i.e. police in the country concerned) as soon as clandestine entrants are suspected to have entered a vehicle, and not when that driver reaches immigration controls. Drivers will be required to keep and produce documentation when presenting at UK immigration controls, or upon arrival in the UK, to establish that actions have been taken in relation to securing the vehicle against unauthorised access. This will include keeping evidence that ongoing checks have been carried out to identify signs of clandestine entry and to prevent unauthorised entry.

435 The current regime is underpinned by the two statutory codes of practice specified in sections 32A and 33 of the 1999 Act. The Department will retain the requirement for the Secretary of State to issue a Level of Penalty Code of Practice at section 32A, which specifies matters to be considered by the Secretary of State when determining the level of penalty payable for both the existing and new regime. A code of practice will be brought into operation following a public consultation of such persons as the Secretary of State considers appropriate. The Secretary of State will have the option to issue a single Code of Practice or a separate one for each regime. The Prevention of Clandestine Entrant: Code of Practice specified in section 33 will be removed and replaced with regulations specifying what is required of responsible persons to secure their vehicle and the actions required to secure the vehicle against unauthorised access. Regulations will be laid following a public consultation.

436 This section provides for the amendment of the 1999 Act to provide for the imposition of a penalty for a failure to adequately to secure a goods vehicle against unauthorised access and other related matters.

Section 43: Working in United Kingdom Waters: Arrival and Entry

437 Overview: This section clarifies the legal framework for the requirement that individuals working in UK waters need permission to do so. This includes working in the territorial seas and internal waters of the United Kingdom, and it ensures a consistent position with those coming to work on the UK landmass. All foreign nationals require permission to work in UK waters, unless they are covered by an exemption, and the section confirms this position.

438 Background: Under the Immigration Act 1971 ("the 1971 Act") a migrant with permission to enter or stay in the UK for a limited period may be subject to conditions such as restricting their work or occupation in the UK. This also applies to those working in UK waters, but the framework of the 1971 Act can give rise to confusion about the way in which these restrictions operate. This section will clarify the position.

439 Subsection 1 inserts new section 11A and 11B into the 1971 Act.

440 Section 11A provides that a person is an "offshore worker" where they arrive in UK waters for the purpose of working in those waters, and they have not already entered the UK (e.g., by arriving and disembarking on the UK landmass). The provision confirms that an offshore worker "arrives in" the UK when they arrive in UK waters and that they "enter" the UK when they start working in those waters. It confirms that references to "arriving in" or "entering" the UK in the Immigration Acts include those who are covered by this provision and stipulates that where a person temporarily enters non-UK waters in connection with their work, they will not be considered to have left the United Kingdom. The section confirms that crew exercising the right of innocent passage or transit passage in the territorial sea are not affected, and it will not affect crew covered by section 8(1).

441 Section 11B provides a regulation-making power to enable the Secretary of State to make provision to require workers and, if they have one, their sponsor to provide information about the worker's arrival and entry into, and departure from, the UK.

442 Subsection 2 inserts a Schedule 5, which makes consequential amendments to enforcement provisions.

Section 44: Power to search container unloaded from ship or aircraft

443 Overview: This section provides an immigration officer (IO) with additional powers to search containers for concealed irregular migrants attempting to enter the UK illegally, where those containers are no longer on board a ship, or aircraft, and are not on any vehicle on which they were removed from a ship or aircraft.

444 Background: There is evidence irregular migrants and people smugglers are taking greater risks when attempting to enter the UK illegally, including hiding in containers (as well as freight vehicles) with the intention of avoiding detection and examination by an IO. This method is also used by human traffickers to move vulnerable people into the UK.

445 The Immigration Act 1971 ("the 1971 Act") allows an IO to examine any persons who have arrived in the UK by ship or aircraft for the purposes of determining whether or not any of them is a British citizen, and if not, whether they require permission to be in the UK.

446 The 1971 Act also provides an IO with the power to search any ship or aircraft and anything on board it, or any vehicle taken off a ship or aircraft which has been brought to the UK.

447 There is currently no provision for an IO to conduct a search of a container no longer on a ship or aircraft or found on any vehicle which has been removed from the ship or aircraft for the purposes of the 1971 Act outlined above.

448 This means that if a container has been offloaded (without anything having come to light suggesting the need for a search while still on the ship or aircraft) and the IO then identifies something suspicious or receives information raising suspicion, the IO is not currently able to initiate a search.

449 Subsection 1 states that this section will make changes to the 1971 Act, specifically paragraph 1 of Schedule 2, which gives authority to an IO to inspect ships or aircrafts.

450 Subsection 2 amends the Schedule to give powers to an IO to specifically inspect containers, as well as ships and vehicles.

451 Subsection 3 allows an immigration officer to direct where a container should be delivered for the purpose of carrying out an inspection. The definition of "container" is that of the Customs and Excise Management Act 1979, a "bundle or package and any baggage, box, cask or other receptacle whatsoever ".

452 Subsection 4 creates a general offence under section 26(1) of the 1971 Act for failing without reasonable excuse to comply with a direction from an IO.

Section 45: Maritime Enforcement

453 Overview: This section and accompanying Schedule (Schedule 6) expand current maritime enforcement powers enabling maritime enforcement action to take place outside of UK waters in order to detect, prevent, investigate and prosecute the illegal entry of migrants as well as its facilitation. It includes powers to require migrant vessels to leave UK waters as well as powers intending to support the disembarkation of non-compliant passengers a non-UK Ports.

454 Background: Over the past two years increasing numbers of migrants have been crossing the English Channel in small boats which are dangerously unsuitable for this purpose. At present, migrants crossing in this way are being intercepted by Border Force and then brought to the UK to have their asylum claims processed in accordance with the Immigration Act 1971 ("the 1971 Act").

455 This route which is being exploited by criminal groups who are increasing the size of vessels used to facilitate illegal entry to the UK. This year a new unwanted record was broken when a vessel carrying 88 migrants arrived on the south coast.

456 Persons operating in the maritime field currently have powers to effect maritime enforcement under the 1971 Act, the Modern Slavery Act 2015 and the Policing and Crime Act 2017. Under the Modern Slavery Act 2015, Customs Officers have maritime enforcement powers for the purpose of preventing, detecting or prosecuting an offence of slavery, servitude and forced or compulsory labour or human trafficking. Under the Policing and Crime Act 2017, Law Enforcement officers (which does not include Immigration Officers) also have powers to intercept vessels in UK seas and international waters for the purpose of preventing, detecting or prosecuting a criminal offence. However, these powers cannot be used by Immigration Officers for tackling immigration offences. Under the 1971 Act, Immigration Officers' maritime enforcement powers focus on the detection, prevention, investigation and prosecution of facilitation offences (facilitating a breach of immigration law or facilitating the arrival or entry of asylum seekers) and can only be used for these purposes in UK waters

457 At present, the enforcement powers which can be exercised by relevant officers do not extend to ships that are in foreign or international waters.

458 This section supplements and expands the current maritime enforcement powers so that relevant persons may divert migrant vessels in international waters away from UK shores. It also provides the ability to take control of the vessel and those on board and return them to a safe country, such as the country from which they embarked or to another location where they have been accepted in order to ensure the relevant offences are prevented and/or detected.

459 By expanding these powers, the Home Office aims to reduce the number of migrants attempting the crossing and preserve life, secure the UK's borders, and dismantle the serious organised crime gangs who are abusing this route.

460 Additionally, Border Force Immigration Officers currently have limited powers to seize vessels used in the commission of immigration offences and to dispose of such seizures. This section refines these measures to enable a more flexible and efficient approach to disposal of vessels seized in the exercise of these powers. This section therefore also aims to refine powers in this area.

Section 46: Removals: notice requirements

461 Overview: This section is intended to provide a statutory minimum period to enable individuals to access justice prior to their removal. It includes the provision of written notices of intention to remove and departure details.

462 Background: This section makes provision for removing individuals, following a failed departure or an unsuccessful JR relating to their removal, without the need for a further notice period. In addition, a PRN recipient can be removed in certain circumstances, without the need for a notice period.

463 The Secretary of State has a power to remove a person who requires leave to enter or remain in the UK but does not have it from the United Kingdom under section 10 of the Immigration and Asylum Act 1999 (as amended by the Immigration Act 2014). Those subject to removal include: those refused leave to enter; illegal entrants; overstayers, those whose leave has been cancelled following a breach of their conditions of stay or using deception to remain; former refugees who no longer have leave; crew members remaining unlawfully; and deportees.

464 At present, individuals are served a notice, setting out their destination, routing, date, time and airport of their departure (those departing via a charter flight are provided with their destination, routing, and date of departure), but unlike removal directions given to the transport carrier, this is not a statutory requirement.

465 The current Home Office guidance on notice periods can be found in the Judicial Reviews and Injunctions guidance. In some cases, individuals are given a minimum of 72 hours' notice of their removal, and in some cases a minimum of 5 working days.

466 This section will amend the current policy, increasing the minimum notice period to 5 working days in all cases (with a limited exception for port cases). The purpose of this is to provide a statutory minimum period and standardise the time to access legal advice.

467 Currently, where a person has been given the required notice of removal, but the removal fails or is deferred for certain reasons, a further notice period is not required if the removal can be implemented within 10 days of the failed or deferred removal. This section will place this policy on a statutory basis and increase the timeframe to 21 days, without the need for a fresh notice period.

468 This section provides that a PRN recipient can be removed within 21 days following the PRN cut-off date (if no human rights or protection claim was made) or when the individual's appeal rights have been exhausted (if a human rights or protection claim was made), without a notice period. This is subject to other existing statutory bars on removal.

469 Where an initial removal is deferred because of a JR relating to the removal and the court decides that the person can be removed, then they can be removed within 21 days of that decision without receiving a fresh notice period.

470 There will be a requirement for a further notice period where the individual is to be removed to a different destination, or there has been a change of route to include a stop, which is not in the UK or a safe country, of which they have not previously been notified.

471 Subsections 2 and 3 amend sections 10(1) and (2) of the 1999 Act, making it clear that individuals and their family members (subject to specified conditions) are liable to removal where the individual requires leave to enter or remain in the UK but does not have it.

472 Subsection 4 inserts that a person liable to removal under this section can only be removed under the authority of the Secretary of State or an immigration officer and in accordance with subsections 10A to 10E.

473 Subsection 6 amends a power for the Secretary of State to make Regulations about the time period during which a family member may be removed and inserts a power to make Regulations about serving removal notices under subsections 10A to 10E.

474 Subsection 7 inserts new subsections 10A to 10E. These subsections are not mutually exclusive. 10A provides that before a person who is liable to removal may be removed, they must be given a written notice of intention to remove setting out the destination of removal and a minimum notice period of 5 working days before that removal can occur. They must also be given a written notice of departure details, setting out the date on which the individual will be removed and the destination of their removal, including any stops on their route. These notices can be given separately or can be combined.

475 If the person is due to be removed to a different destination or via a different route to that previously notified in the notice of intention to remove, then the individual must be given a new notice period of a minimum of 5 working days with the notice of departure details, unless the route is via the UK or a safe third country.

476 The definition of "working day" excludes weekends, national and bank holidays where the person is at the time when they are given the notice of intention to remove.

477 10B sets out the scenarios where a further notice period is not required when there has been a previous attempt to remove the individual on the date specified in the notice of departure details, but that removal did not go ahead for reasons reasonably beyond the control of the Secretary of State. The individual can be removed (without a fresh notice period), provided they are removed within 21 days starting with the date of removal specified on the first notice of departure details. This provision only applies in cases which notice of removal has previously been served under subsection 10A.

478 10C caters for the limited exception to 10A, for what is known as a port case. A notice period is not required to be given to an individual who was refused entry upon arrival into the UK; provided they can be removed within 7 days of that refusal decision.

479 10D provides that a PRN recipient, who did not make a protection or human rights claim before the PRN cut-off date, can be removed within 21 days of the PRN cut-off date without the need for a notice period. Where the PRN recipient does make a protection or human rights claim, they can be removed within 21 days of becoming appeal rights exhausted without the need for a notice period. Note that this is subject to any other statutory bars on removal.

480 Under 10E, where the first removal was deferred because of judicial review proceedings relating to the person's removal, the person can be removed within 21 days of the court deeming that the individual may be removed, without the need for a further notice period.

481 Subsection 8 amends Schedule 10 to the Immigration Act 2016. This provides that an individual in detention must not be granted bail by the First-tier Tribunal without the consent of the Secretary of State if their removal is due to take place within 21 days of the bail hearing. This is an increase on the current period which is 14 days. The purpose of the increase is to align with the provisions of new subsections 10A to 10E, which would otherwise be undermined if an individual could successfully be granted bail if their removal was set for the period 15-21 days after their failed removal. Aligning the period reduces the chance for individuals to abscond ahead of their removal.

Section 47: Prisoners liable for removal from the United Kingdom

482 Overview: This new section provides further detail on how to treat Foreign National Offenders who return to the UK having been removed under the Early Removal Scheme

483 Background: This section amends the ERS in three ways. First, it extends the period a Foreign National Offender (FNO) can be removed early from their custodial sentence, increasing the early removal window from a maximum of 9 months to 12 months before the earliest point they may be released from custody (either automatically or via Parole Board review). The FNO must still have served half of the requisite custodial period before removal.

484 Second, it allows removal to take place at any point in the sentence after this removal window opens when the FNO is in prison. This will bring into scope for removal under the scheme those FNOs released on license and who are subsequently recalled to custody by the Secretary of State.

485 Third, this section introduces a "stop the clock" provision, which will apply to FNOs removed under ERS. The new provision will, in effect, pause the sentence at the point a person is removed from prison under ERS. If the removed FNO returns to the UK at any point in the future, they would be liable to be detained and returned to custody to serve the balance of their sentence, "ignoring" any days after they were removed from prison. They would be subject to release based on their circumstances at the point of removal, either after serving their requisite custodial period or in accordance with the release provisions that apply to recalled persons. Such release may require a decision of the Parole Board.

Section 48: Matters Relevant to Decisions Relating to Immigration Bail

486 Overview: The Early Removal Scheme helps to remove as many FNOs from England and Wales as early as possible, minimising the chance they may be released into the community before deportation can take place.

487 Background: Determinate sentences are made up of a custodial period, spent in prison, and a licence period, spent in the community. To maintain confidence in the justice system, FNOs will still be required to serve at least half of the requisite custodial period of the sentence in custody before being eligible for removal under the ERS. The new "stop the clock" provision will ensure that any FNO who returns to the UK following removal from custody and deportation will remain liable to serve the remainder of their requisite custodial period in prison – i.e., the sentence is paused at the time of removal from prison, to be resumed should the prisoner return. If at the point of removal under ERS an FNO is in prison having been recalled, if they should then return to the UK, upon their return to custody they would be treated as if they had been recalled to prison and require a new decision of the Parole Board in order to be released before the end of their sentence.

488 Sections 260 and 261 of the Criminal Justice Act 2003 ("the 2003 Act") set out the provisions of the Early Removal Scheme, which is applicable to all determinate sentenced Foreign National Prisoners in custody who are liable to removal from the United Kingdom (UK).

489 Subsections 3 to 8 amend section 260 of the 2003 Act, which sets out the provision for the early removal of prisoners liable to removal from the UK.

490 Subsection 3 sets out the provisions that enable the Secretary of State to remove from prison any prisoner liable to removal from the UK once they have served the minimum pre-removal custodial period, which is the later date out of a) half of the requisite custodial period or b) 12 months before the end of the requisite custodial period. The Secretary of State may remove the prisoner from prison whether or not the Parole Board has directed the prisoner's release.

491 Subsection 4 makes technical changes to subsection (2C) to ensure the power to remove continues to not apply to terrorist prisoners.

492 Subsection 5 replaces paragraph (4)(b) to provide that a person removed from prison under the section remains liable to be detained in pursuance of their sentence both after removal from prison and in the event of their return to the UK.

493 Subsection 6 makes provision, by way of new subsection (4A), for a person removed from prison under the section to not have any day or part of a day when they are not in prison or otherwise detained in pursuance of their sentence to count towards the sentence. This effectively "pauses" a prisoner's sentence from the day after their removal from prison until the day before they are returned to custody in pursuance of their sentence. Unless otherwise directed by the Secretary of State, any provision in Chapter 6 of Part 12 of the 2003 Act which requires determination of how many days of their sentence a person has served would not include this period. That includes for the purposes of determining when a person's case should be referred to the Parole Board. New subsection (4B) further provides that where the Secretary of State has, before their removal from prison, referred a person's case to the Parole Board and such person is subsequently removed from the UK before the Parole Board has disposed of that person's case, the reference will lapse upon their removal from the UK. Should the person return to the UK, their case will be determined in accordance with new Schedule 19B to the 2003 Act.

494 Subsection 7 omits subsection (5). Accordingly, for the duration of the "paused" period, the Secretary of State has no duty or power exercisable in relation to the prisoner as if they were in prison.

495 Subsection 8 amends subsection (6), to ensure the Secretary of State retains the power by order to amend the time periods which determine the minimum pre-removal custodial period.

496 Subsection 9 makes provision for the release and other provisions modified by new Schedule 19B to the 2003 Act, to apply to those removed from prison who have been removed from, and then return to, the UK.

497 Subsection 10 provides that where a person is serving concurrent terms (sentences served at the same time), they may not be removed from prison unless and until they are eligible to be removed from prison in accordance with each term they are serving.

498 Subsection 11 inserts Schedule 6 as new Schedule 19B to the 2003 Act.

Part 4: Age Assessment

Section 49: Interpretation

499 Overview: This section defines a number of terms referred to in the sections that Part 4, which relates to age assessment. This includes the definition of an age-disputed person to Part 4 will apply.

500 Background: In recent years, the UK has typically received an average of 3,000 asylum claims from unaccompanied children. These claims make up approximately 9-10% of the overall number of asylum seekers that arrive in the UK each year. The vast majority of UASC claim to be aged 16-17. In the year ending June 2021, 74% of UASC fell into this age range.

501 The age of a person arriving in the UK is normally established from the documents with which they have travelled. However, many who claim to be under the age of 18 do not have any definitive documentary evidence to support their claimed age. While many are clearly children, for others it is less clear and there is a need to make a decision on their claimed age. This situation carries significant safeguarding risks. An incorrect determination can result in adults being placed with or alongside children. Conversely, if a child is wrongly assessed to be an adult, they will be deprived of the statutory support owed to them.

502 This section substitutes section 94 (7) of the Immigration and Asylum Act 1999 with a subsection that makes reference to the conduct of age assessments under this Part.

503 Subsection 1 defines an age-disputed person. The effect of this is that age assessments under this Part will only be carried out on those who are subject to immigration control, where there is not enough evidence to be sure of their age.

504 Subsection 2 defines a number of terms used in this Part, including local authority, immigration functions, immigration officers, a designated person, a decision-maker and a specified scientific method of age assessment.

505 Subsection 3 defines "relevant children's legislation" across the United Kingdom for the purposes of these provisions

506 Subsection 4 defines the terms "corresponding function" and "statutory provision" referred to in subsection 3.

507 Subsection 5 replaces section 94(7) of the Immigration and Asylum Act 1999 with a reference to the conduct of age assessments under this Part of the Act. This is because age assessments which need to be carried out to establish eligibility for support under the Immigration and Asylum Act 1999 can now be carried out under this Part.

Section 50: Persons subject to immigration control: referral or assessment by local authority etc.

508 Overview: This section confers a power on the Secretary of State to conduct full age assessments on age-disputed persons (as defined in section 49), upon referral from a local authority in England, Wales and Scotland or a Health and Social Care Trust in Northern Ireland.

509 Background: There is no single technique, or combination of techniques, that can determine someone's age with precision. However, where an age dispute arises in relation to a person subject to immigration control, a decision must be made on their age.

510 Where there is doubt about whether a person claiming to be under 18 years old is an adult or a child, they are temporarily treated as a child until further consideration of their age is undertaken and they are referred into the care of local authority children's services. Local authority social workers will usually proceed to conduct a holistic age assessment, known as a Merton assessment.

511 As a result, local authorities currently carry the burden of conducting these age assessments on individuals subject to immigration control. The outcomes of these assessments are assigned significant weight by the Secretary of State when making their decision on age for immigration purposes. Merton assessments must adhere to a set of standards that have been set out by the courts in a series of judgments that have considered age disputes. Merton assessments typically involve an interview or series of interviews between the age-disputed person and two appropriately qualified social workers. They should also consider any other information obtained, including the views of other people with a role in the young person's life. However, local authorities face significant challenges in conducting these assessments.

512 This section confers a power on the Secretary of State to conduct full age assessments on age-disputed persons, upon referral from a local authority. Local authorities will retain the right to conduct age assessments themselves if they prefer to do so. This decision-making function, referred to as the National Age Assessment Board, will largely consist of a team of qualified social workers dedicated to age assessments.

513 The intention is that the establishment of the board will achieve greater consistency in quality of assessments and reduce the incentives for adults to provide incorrect ages. In doing so, it will seek to reduce the financial and administrative burden of undertaking assessments on local authorities and ensure that the ages of those people are recorded accurately for the purposes of their immigration or asylum application.

514 Subsection 1 provides that local authorities or a public authority specified in regulations made by the Secretary of State, may refer an age-disputed person to a designated person for an age assessment to be conducted. A designated person is defined in clause 49 as an official designated by the Secretary of State to conduct age assessments under this section.

515 Subsection 2 defines the circumstances in which the actions required under subsections 3 and 4 apply. The first circumstance is where a local authority - needs to know the age of an age-disputed person for the purposes of deciding whether or how to exercise any of its functions under relevant children's legislation. This may happen where, for example, a person who is subject to immigration control presents to the local authority seeking support as a child, and the local authority needs to establish their age in order to decide, whether to provide them with children's support. The second circumstance is where the Secretary of State notifies a local authority that it doubts that an age-disputed person, in relation to whom the local authority has exercised or may exercise functions under relevant children's legislation, is the age that they claim to be. This may happen where, for example, a person who is subject to immigration control presents to the Home Office claiming to be a child, and the Home Office decides to refer them to a local authority on the basis that, although their age is doubted, they may be a child who requires local authority support, and an age assessment is needed to establish this.

516 Subsection 3 requires that where subsection 2 applies, a local authority must either refer the age-disputed person to the designated person to conduct an age assessment or conduct an age assessment themselves and inform the Secretary of State of the results of its assessment. Alternatively, if the local authority is satisfied the person is the age they claim to be and considers that an age assessment is not required, the local authority must notify the Secretary of State of this in writing.

517 Subsection 4 requires that where a local authority either conducts an assessment themselves or confirms that they are satisfied that the age of an age-disputed person is as claimed, they must, on request from the Secretary of State, provide the Secretary of State with such evidence as the Secretary of State reasonably requires, to allow the Secretary of State to consider that decision.

518 Subsection 5 requires that, where a local authority refers an age-disputed person to a designated person for an age assessment, the local authority must provide any assistance that the designated person reasonably requires for the purposes of conducting that assessment.

519 Subsection 6 stipulates that the standard of proof for an age assessment under this section, either conducted by the designated person or a local authority, is the balance of probabilities.

520 Subsection 7 stipulates that an age assessment conducted by a designated person under this section following a referral from a local authority is binding on the Secretary of State and on a local authority that is aware of the age assessment. Whether the assessment is binding or continues to be binding is subject to section 54 (Appeals relating to age assessments) which provides a right of appeal against an age assessment conducted by the designated person or a local authority. It is also subject to section 56, (Civil legal services relating to age assessments) which makes provision about situations where new information comes to light after an age assessment has been conducted or an appeal against that assessment has been determined. This means that the age assessment conducted by a designated person would no longer be binding if it is overturned on appeal, or if a new assessment decision is taken under section 56 because significant new evidence has come to light.

521 Subsection 8 specifies that regulations under subsection (1)(b) are subject to the negative resolution procedure. Where regulations under this Act are subject to "negative resolution procedure" the statutory instrument containing the regulations is subject to annulment in pursuance of a resolution of either House of Parliament.

Section 51: Persons subject to immigration control: assessment for immigration purposes

522 Overview: This section confers a power on the Secretary of State to conduct full age assessments on age-disputed persons (as defined in section 49), for the purposes of deciding whether or how the Secretary of State should exercise any immigration functions in relation to the person.

523 Background: It is expected that most age assessments undertaken by the National Age Assessment Board will be conducted upon referral from a local authority, but this section enables the board to conduct age assessments for the purposes of deciding whether or how the Secretary of State should exercise any immigration functions.

524 This section confers a specific power on a designated person (an official designated by the Secretary of State) to conduct age assessments on an age-disputed person.

525 Subsection 1 stipulates that a designated person may conduct an age assessment on an age-disputed person for the purposes of deciding whether or how the Secretary of State should exercise any immigration functions in relation to that person.

526 Subsection 2(a) states that the Secretary of State may conduct an age assessment on an age-disputed person under subsection (1) in circumstances where subsection (3) and subsection (4) of section 50 do not apply. This allows for a designated person to conduct an age assessment on an age-disputed person where the person is not in the care of a local authority and is not claiming to be an unaccompanied child. This could include where an age-disputed person seeking asylum is claiming to be a child dependent of another person and does not require accommodation or support from a local authority.

527 Subsection 2(b) says that even where subsections (3) and (4) of section 50 do apply, there are two circumstances where a designated person would be permitted to conduct an age assessment of an age-disputed person. Firstly, an age assessment may be conducted by the designated person at any time before a local authority has referred an age-disputed person to the designated person or conducted an age assessment itself. Secondly, an age assessment can also be conducted if the Secretary of State has reason to doubt an age assessment conducted by a local authority on an age-disputed person or has reason to doubt a local authority's decision not to conduct an age assessment.

528 Subsection 3 specifies that an age assessment under this section is binding on the Secretary of State when exercising immigration functions. Whether the assessment is binding or continues to be binding is subject to section 54, and also subject to section 56. This means that the age assessment conducted by a designated person under this section would no longer be binding if it is overturned on appeal, or if a new assessment decision is taken under section 56 because significant new evidence has come to light.

529 Subsection 4 stipulates that the standard of proof for an age assessment under this section is the balance of probabilities.

Section 52: Use of Scientific Methods in Age Assessments

530 Overview: The purpose of this section is to provide the Secretary of State with the power to make regulations specifying the use of scientific methods of age assessment and for a decision-maker to be able to take a negative credibility inference from a refusal to comply with a request to undergo a scientific age assessment, without good reason.

531 Background: Currently, scientific age assessments are infrequently used by local authorities or the Home Office, though such information, if presented, can be considered alongside other evidence of age. In addition, there is no specific provision that permits a local authority or the Home Office to take a negative credibility inference from an individual's refusal – without reasonable grounds – to comply with a request to undergo a scientific age assessment.

532 In view of the inherent difficulty in reliably assessing age, the Government considers it is necessary and appropriate to provide decision-makers with a wider breadth of evidence on which to base their decisions. Assessing someone's age in the absence of documentary evidence is a highly challenging task. Local authorities regularly report difficulties in handling cases that involve age disputes. As the courts have recognised, even comprehensive and thorough holistic age assessment can carry a significant margin of error. Similarly, there have been cases where assessments have been conducted on the same individual by different social workers, which have led to very different conclusions.

533 The use of scientific methods offers the opportunity for more informed decision-making around an age-disputed person's age. The United Kingdom is one of few countries in Europe that does not routinely make use of scientific methods of age assessment. Many other European countries make use of a variety of scientific techniques to assist in making decisions on age. It is the Government's intention to fully explore the options available.

534 These sections confer powers:

- on the Secretary of State to make regulations concerning the use of scientific methods of age assessment; and
- for a decision-maker to take a negative credibility inference from a refusal to comply with a request to undergo a scientific age assessment without good reason.

535 Subsection 1 stipulates that the Secretary of State may make regulations specifying scientific methods of age assessment that may be used for the purposes of age assessments conducted under sections 50 and 51.

536 Subsection 2 sets out a non-exhaustive list of the types of scientific methods that may be specified in regulations by the Secretary of State under Subsection 1. In particular, it references methods involving examinations or measurements of a person's body (which may include, for instance, X-rays, Magnetic Resonance Imaging, or ultrasound) and methods involving the analysis of samples taken from the body (such as the analysis of DNA methylation).

537 Subsection 3 states that the Secretary of State's power to make regulations specifying a scientific method under Subsection 1 is conditional on the Secretary of State having determined that the method is appropriate for assessing age, after seeking scientific advice.

538 Subsection 4 stipulates that the specified scientific method may be used for the purposes of an age assessment conducted under sections 50 and 51, only where appropriate consent is given.

539 Subsection 5 defines the nature of the appropriate consent that must be given under Subsection 4, including where an age-disputed person is judged to have the capacity to consent and where they are not considered to have capacity to consent. Where the latter applies, this subsection also makes provision for the Secretary of State to stipulate, in regulations, another person who can give consent on behalf of the age-disputed person.

540 Subsection 6 stipulates the conditions where subsection 7 (concerning the consequences of a refusal to consent) applies. It states that a negative inference may only be taken from a refusal to provide consent where there are no reasonable grounds for refusing that consent.

541 Subsection 7 stipulates the consequences of a refusal to provide appropriate consent under Subsection 5, either by the age disputed individual or an adult acting on their behalf. It states that when the decision-maker is considering an age-disputed person's age, they must take into account a refusal to consent to undergo a scientific age assessment, without reasonable grounds, as damaging to credibility.

542 Subsection 8 stipulates that the regulations made under this section will be subject to the affirmative resolution procedure. This means that any regulations made by the Secretary of State must be approved by both Houses of Parliament before coming into law.

543 Subsection 9 clarifies that this section does not preclude the ability to undertake other scientific methods of age assessment not specified in regulations provided that it is considered appropriate to do so and the appropriate consent is sought. This reflects the pre-existing position that does not explicitly prohibit the use of scientific methods of age assessment and ensures that decision-makers retain the ability to employ other methods of age assessment where appropriate. However, failure to consent to a non-specified scientific method would not affect credibility under this section.

Section 53: Regulations about Age Assessments

544 Overview: The purpose of this section is to provide the Secretary of State the power to make regulations about the way in which age assessments are conducted under sections 50 and 51.

545 Background: Where there is doubt about whether a person claiming to be under 18 years old is an adult or a child, they are temporarily treated as a child until further consideration of their age is undertaken and they are referred into the care of local authority children's services. Local authority social workers will usually proceed to conduct a holistic age assessment, known as a Merton assessment. As a result, local authorities currently carry the burden of conducting these age assessments on individuals subject to immigration control. The outcomes

of these assessments are assigned significant weight by the Secretary of State when making its decision on age for immigration purposes. Merton assessments must adhere to a set of standards that have been set out by the courts in a series of judgments that have considered age disputes. Merton assessments typically involve an interview or series of interviews between the age-disputed person and two appropriately qualified social workers.

546 In addition to caselaw, best practice guidance has also been issued which provides further assistance to those conducting age assessments. Therefore, local authorities are required to rely on the body of caselaw and the best available guidance to approach the task of age assessment. The absence of a more prescribed manner to conduct these age assessments has inevitably meant that the way in which local authorities approach this task can vary – in turn this leads to variance in how age is assigned for immigration purposes.

547 The intention of this section is to allow the Secretary of State the power to provide more clarity on what an age assessment should entail, including where appropriate, existing elements of age assessment caselaw.

548 This section confers a specific power on the Secretary of State to make regulations on the process of conducting age assessments on age-disputed persons

549 Subsection 1 provides that the Secretary of State may make regulations about age assessments carried out by local authorities and designated persons (officials of the Secretary of State) conducted under section 50 or section 51. Regulations may make provision for the processes to be followed, the necessary qualifications and experience of the person conducting the age assessment (including those conducting scientific methods of age assessment), the content and distribution of age assessment reports, how decisions and appeal rights should be communicated to the age-disputed person and the consequences of a lack of co-operation by the age-disputed person.

550 Subsection 2 provides that the Secretary of State may make further provision about the referral process by a local authority of an age-disputed person, how and when a local authority must inform the Secretary of State of the outcome of its age assessment decision and the evidence the Secretary of State may require when a local authority conducts an assessment itself or accepts the claimed age of the individual.

551 Subsection 3 provides that regulations made under the section are subject to the affirmative resolution procedure. This means that any regulations made by the Secretary of State must be approved by both Houses of Parliament before coming into law

Section 54: Appeals Relating to Age Assessment

552 Overview: This section provides for a right of appeal to the First Tier Tribunal for an age-disputed person who was determined, following an age assessment under this Part, to be an age different to the age they claimed to be.

553 Background: At present, where an age assessment is undertaken which determines that the individual subject to immigration control is an adult, and that individual wishes to challenge that assessment, their only route to do so is via judicial review. While capable of addressing disputes of this nature, judicial reviews are complex, expensive and can take a long period of time to conclude. There is a need to provide for a simpler, less expensive and swifter form of dispute resolution. The provision of a right of appeal to the First Tier Tribunal against certain age assessment decisions will accomplish that objective.

554 An age-disputed person will be able to lodge an appeal against an age assessment decision under this Part when the assessment concludes that person is not the age they have claimed to be.

555 In consideration of the appeal, the Tribunal will not be limited to an evaluation of whether the correct process was followed during the age assessment but will be required to come to its own determination of the age of the person. In doing so the Tribunal will be able to consider any evidence it deems relevant, not simply that which was before the initial decision maker. The Tribunal will determine the age of the age-disputed individual and assign them a date of birth.

556 The determination of the court will be binding on both the Home Office for immigration purposes and local authorities.

557 Subsections 1 and 2 provide that an age-disputed-person may appeal to the First-tier Tribunal where an age assessment conducted under sections 50 or 51 has assessed their age to be different from the age they claim to be.

558 Subsection 3 states that the Tribunal must come to a conclusion on how old the age-disputed person is on the balance of probabilities. The Tribunal must also assign a specific date of birth to the age-disputed person.

559 Subsection 4 details that the Tribunal is able to consider any matter or evidence it believes relevant when deciding an appeal. This means that the Tribunal is not limited to evaluating the evidence that was available to the decision maker at the time the decision was taken.

560 Subsection 5 provides that a judgment of the Tribunal will be binding on the Secretary of State when exercising immigration functions, as well as any local authority that has provided or may provide services under relevant children's legislation. Relevant children's legislation is defined in section 49.

561 Subsection 6 confirms which other sections need to be read in connection with this section. In particular, the effect of this is that, although appeal determinations are binding, as set out in subsection 5, this is subject to section 56 (which allows for new age assessment decisions to be taken after an appeal, where there is significant new evidence).

Section 55: Appeals relating to Age Assessment: Supplementary

562 Overview: This section details procedural matters for the provision of a right of appeal against age assessment decisions of people subject to immigration control.

563 Background: This section sets out a number of further matters on how the appeal process will work. It confirms that an appeal may only be brought by a person who is in the United Kingdom. Should that person depart the United Kingdom while the appeal process is ongoing, the appeal will be considered withdrawn.

564 In line with judicial reviews, age-disputed persons will be able to seek interim relief from the Tribunal , in the form of an order from the Tribunal that they be treated as a child pending the conclusion of their appeal.

565 Under existing legislation, a determination of the First-Tier Tribunal (which will include an age assessment determination under this Part) can be appealed to the Upper Tribunal (and onwards to a higher court) on a point of law, which would require permission to appeal.

566 Subsection 1 states that this section applies to appeals under section 54.

567 Subsection 2 details that an appeal may only be brought by an age-disputed person who is in the UK.

568 Subsection 3 details that if the age-disputed person leaves the UK before the appeal is finally determined the Tribunal must treat the appeal as abandoned.

569 Subsection 4 provides for an interim relief mechanism. This allows an age-disputed person who is bringing an appeal to ask the Tribunal for an order that the relevant local authority must treat them as a child pending the conclusion of the appeal process. The Tribunal must decide whether or not it would be appropriate to grant such an order.

570 Subsection 5 and subsection 6 state that following an allegation that relevant documents are forged, the Tribunal may hold further proceedings in private where to do otherwise would not be in the public interest. Many types of documents may be submitted in evidence, and these may rely on sophisticated technologies. The security features, ways of forging or defeating them and forgery detection methods should not normally be divulged to the public.

571 Subsections 7 and 8 provide for the Tribunal, at its discretion, to introduce a system for reporting certain appeal judgments that it believes illustrate important legal principles, and for these judgments to set precedents in such matters for Tribunal judges to follow in other appeals.

572 Subsection 9 details when an appeal is to be considered as finally determined. It will not be finally determined where there remains time for an application for permission to appeal to be made to a higher court, or where such permission has been granted and the appeal is pending, or where an appeal has been remitted by a superior court and is awaiting determination by the Tribunal.

Section 56: New Information following Age Assessment or Appeal

573 Overview: This section details the process for assessing new evidence that may come to light only after an age assessment has been made, including cases where the individual has been through the appeal process.

574 Background: Where an age assessment has been carried out and an appeal has either not been brought or has been concluded, this provision provides a mechanism to consider any further information regarding an individual's age that comes to light. To prevent vexatious applications, the evidence submitted needs to be significant, it will not be sufficient for a person to make representations that amount to little more than a disagreement with earlier findings of fact in respect of their age. Where a decision-maker concludes that the evidence is significant but is nevertheless not sufficient to arrive at a new decision on the person's age, the individual will continue to be treated by the decision-maker as the age they were previously assessed to be, but the individual will be afforded a new right of appeal to the First-tier Tribunal.

575 This section sets out the framework for consideration of new information following an age assessment decision, including after an appeal process has been concluded.

576 Subsection 1 defines when this section shall apply, namely when an age assessment has been carried out (referred to in subsection 2 as the "first age assessment") and an appeal has either not been brought or has been concluded, but new information about the person's age is brought to the attention of the decision maker.

577 Subsection 3 sets out the process to be followed where the first age assessment was conducted by a designated person. In the first instance they must satisfy themselves that the new information is significant and if it is, they must conduct a further age assessment on the individual.

578 Subsection 4 sets out the process to be followed where the first age assessment was conducted by a local authority. In the first instance they must assess (or ask a designated person to assess) whether the information represents significant new evidence. If a decision is taken that the evidence is significant, then they must undertake a further age assessment or refer the matter to a designated person for a further age assessment.

579 Subsection 5 explains what is meant by significant new evidence. Evidence will be considered significant only where there is a realistic prospect of that information leading to the age-disputed person being assessed as an age different to that determined in the first age assessment or on appeal.

580 Subsection 6 and Subsection 7 provide that a new assessment undertaken under this section on new information following an age assessment or appeal shall be treated, for the purposes of the wider age assessment sections, in the same way as if it was carried out under section 50 or section 51. The effect of this is that the new age assessment will be appealable to the First-tier Tribunal if it meets the requirements for a right of appeal under section 54.

581 Subsection 8 states that if a decision maker is required to conduct a further age assessment, they do not need to revisit issues covered in the first age assessment, where they believe that to be unnecessary. This means that a subsequent age assessment would not need to repeat the processes undertaken in the first age assessment but would instead need to reconsider the first age assessment in light of the new evidence that has been presented.

Section 57: Civil legal services relating to age assessments

582 Overview: This section amends Part 1 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO 2012") to enable individuals seeking to appeal an age assessment decision to receive advice, assistance and representation in the form of civil legal services. It also amends Part 3 of Schedule 1 to LASPO 2012 to allow advocacy at age assessment appeals to be funded under legal aid.

583 Background: Each paragraph of Part 1 of Schedule 1 to LASPO 2012 describes the types of civil legal service that may be made available. Services listed in that Part are known as "in scope". To obtain legal aid, an applicant must have a determination from the Director of Legal Aid Casework that their issue is in scope by virtue of being listed in Schedule 1. There are also statutory means and merits test which are set out in section 11 LASPO 2012 and in Regulations made under that Act.

584 Part 3 of Schedule 1 to LASPO 2012 describes when advocacy is permitted as part of a civil legal service listed under Part 1 of Schedule 1.

585 The intention of this section is to bring civil legal services for age assessment appeals into scope by amending Part 1 of Schedule 1 and to allow for advocacy at an age assessment appeal by amending Part 3 of Schedule 1.

586 The aim of this section is that individuals seeking to appeal an age assessment decision in England and Wales can be supported by receiving advice and representation for that appeal.

587 Subsection 1 sets out that Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is being amended.

588 Subsection 2 inserts a new paragraph 31B into Part 1 of Schedule 1 which sets out that civil legal services are made available to individuals appealing an age assessment decision. New paragraph 31B(1) sets out that civil legal services are being provided for an age assessment appeal under the Nationality and Borders Act 2021, an application for an order for support to be provided pending determination of that appeal, and an onward appeal to either the Upper Tribunal, Court of Appeal or Supreme Court. Sub-paragraph (2) of new paragraph 31B sets out that sub-paragraph (1) is subject to the exclusions set out in Part 2 and Part 3 of Schedule 1 to LASPO 2012.

589 Subsection 3 amends paragraph 13 of Part 3 of Schedule 1 to LASPO 2012 to provide that advocacy before the First-tier Tribunal for an age assessment appeal is permitted.

Part 5: Modern Slavery

Section 58: Provision of information relating to being a victim of slavery or human trafficking

590 Overview: This section provides that the Secretary of State may serve a slavery or trafficking information notice on a person who has made a protection claim or a human rights claim. A recipient of such a notice is required to provide relevant information relating to being a victim of slavery or human trafficking within a specified period and, if providing information outside of that period, to provide a statement setting out the reasons for doing so.

591 The purpose of this change is to achieve the following:

- To identify individuals who have made an asylum or human rights claims who may also be potential victims of modern slavery at an early stage. This approach seeks to support the Government's proactive duty to identify potential victims as early as possible and aims to ensure they receive the correct support package from the authorities at the earliest opportunity.

- To enable potential grounds to be a victim of modern slavery to be considered alongside a protection or human rights claim, ahead of any appeal hearing. The factual account of previous experiences that can give rise to a referral as a potential victim of modern slavery can overlap with the factual accounts used to determine a protection or human rights claim. Considering all claims and information at the same time is intended to support both Home Office and judicial decision makers as well as victims by speeding up processes and considering all grounds collectively.

592 Subsections 1 and 2 provide that a "slavery or trafficking information notice" may be served on individuals who have made an asylum claim or human rights claim. An information notice requires individuals to provide the Secretary of State (and any other competent authority specified in the notice) with any relevant status information before a specified time. Provision of late information will not bar modern slavery referrals from being considered. Whenever modern slavery grounds are raised, they will be considered.

593 Subsections 3 sets out what is meant by "relevant status information", which is information that may be relevant for the purposes of making a reasonable grounds decision or a conclusive grounds decision in relation to the potential victim.

594 Subsection 4 to 6 provide that, where information is provided on or after the date specified in the notice, the individual must set out in a statement the reasons for providing their evidence late.

Section 59: Late compliance with slavery or trafficking information notice: damage to credibility

595 Overview: This section sets out the consequence if an individual, aged 18 or over, who has been served with a slavery or trafficking information notice under section 58, provides information relating to being a victim of modern slavery after the specified time period, without good reason.

596 Background: Modern slavery matters are frequently raised after asylum or human rights grounds for remaining in the UK have been refused. This can also occur at the point of removal leading to that removal being delayed. Inappropriate use of detention and failed removal action results in costs to the Home Office and wider government, which could be prevented if all grounds are raised at the earliest point in the process.

597 The purpose of this section is to reduce the potential for misuse of the National Referral Mechanism (NRM) system from referrals requested with the intention of delaying removal action from those who have made an asylum or human rights claim and to ensure that victims are identified as early as possible to receive appropriate support.

598 Subsection 1 sets out that this section applies to individuals who have been served an information notice under section 58, and who were aged 18 or over when the most recent information notice was served, who have provided information late, and a competent authority is making a reasonable grounds or conclusive grounds decision.

599 Subsection 2 sets out that the competent authority must take account, as damaging the individual's credibility the late provision of evidence unless there are good reasons why the information was provided late.

600 Subsections 3 and 4 provide the definition of "late" as being on or after the date specified in the slavery or trafficking information notice. It also provides the meaning of "relevant status information", which is set out in section 58.

Section 60: Identification of potential victims of slavery or human trafficking

601 Overview: This section delivers two outcomes. Firstly, it clarifies the threshold applied in determining whether a person should be considered a potential victim of trafficking, so that assistance and support are made available to someone when there are reasonable grounds to believe the individual "is", rather than "may be", a victim of slavery or human trafficking. It also confirms in legislation the "balance of probabilities" threshold for the Conclusive Grounds ("CG") decision.

602 Background: Under the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT), certain obligations flow if there are "Reasonable grounds to believe that a person has been a (sic) victim of trafficking ". ("RG" and the RG Threshold), subject to exemptions. Whereas the European Convention on Action against Trafficking uses the terms "is" or "has been" a victim, the Modern Slavery Act 2015 uses the term "may be" a victim in reference to satisfying the Reasonable Grounds threshold. Following a positive Reasonable Grounds decision in the UK, individuals receive a Recovery and Reflection period (the "recovery period"), currently a minimum of 45 days, during which they are protected from removal. The recovery period is set out at sections 61 and 64 and the disqualifications to it at section 63.

603 The objective of this measure is that sections 49 and 50 of the Modern Slavery Act 2015, which create an obligation to publish guidance and a power to make subordinate legislation, and section 51 "Presumption of Age", which makes direct reference to the provisions in Sections 49 and 50, should be changed from referencing "reasonable grounds to believe a person may be a victim of trafficking" to referencing whether "there are reasonable grounds to believe someone is a victim of trafficking" or "are victims of trafficking". This will bring the Modern Slavery Act in line with the test set out in the European Convention on Action against Trafficking. This will also bring England and Wales in closer alignment with the Scottish and Northern Irish definitions, both of which provide support when there are reasonable grounds to believe an individual" is" rather than "may be" a victim.

604 A Conclusive Grounds decision, regarding whether an individual is a confirmed victim of modern slavery, should be made as soon as possible once there is sufficient information to make the decision. The Modern Slavery Statutory Guidance sets out that the Conclusive Grounds decision should be based on whether there is sufficient evidence to decide on the "balance of probabilities" that the individual is a confirmed victim of modern slavery.

605 Regarding the Conclusive Grounds threshold, the intention of this section is to confirm in primary legislation that the test is to be based on the "balance of probabilities" in line with obligations under the European Convention on Action against Trafficking. This is the current test as accepted by the Courts.

606 Subsections 1 to 3 and 5 to 6 amend references to the Reasonable Grounds threshold in the Modern Slavery Act 2015, specifically in sections 49, 50 and 51, changing these from reasonable grounds to believe a person "may be" a victim of trafficking to reasonable grounds to believe someone "is" a victim of trafficking.

607 Subsection 4 inserts new subsection 1A, requiring that the guidance provide that the determination regarding whether an individual is a confirmed victim of modern slavery be based on the "balance of probabilities"

608 With regards to extent and application of this section, Section 60 subsections 1-6 apply to England and Wales only, as these subsections amend sections 49 to 51 of the Modern Slavery Act 2015 (MSA), which apply only to England and Wales.

609 Subsection 7 of Section 60 applies across the UK, as it amends Section 56 of the MSA, which itself extends UK wide.

Section 61: Identified potential victims of slavery or human trafficking: recovery period

610 Overview: This section implements the UK's Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) obligations to provide a recovery period to potential victims of modern slavery, during which the victim must not be removed from the UK.

611 Background: ECAT provides that once there are reasonable grounds to believe a person has been a victim of trafficking, states have obligations to that person (such person being a "potential victim"). These obligations last until someone is determined to be a confirmed victim or not to be a victim, or until the end of 30 days from the Reasonable Grounds decision, whichever is later.

612 ECAT provides (in Article 13) that states shall provide potential victims with a "recovery and reflection period" of at least 30 days (England and Wales provide 45 days in guidance) and until it is determined whether they are a confirmed victim unless disqualifications apply. Parties are obliged to authorise persons to stay in their territory during this period. The UK's approach to implementing the provisions of ECAT is set out in guidance. This Section puts some of the key principles of the guidance into primary legislation.

613 Subsection 1 provides that this section applies to those identified as potential victims of modern slavery following a Reasonable Grounds (RG) decision, provided this is not a further RG decision as set out in Section 62.

614 Subsections 2 to 3 set out that those identified as potential victims of modern slavery are not removed from the UK during the recovery period. This requirement is subject to the disqualifications contained in Section 63. The recovery period is the period following a Reasonable Grounds (RG) decision, until such a time as a Conclusive Grounds (CG) decision is made. This period must be at least 30 days, as stipulated under ECAT or until a Conclusive Grounds decision is made – whichever is later. This does not amend the minimum 30-day recovery period for victims provided in ECAT. An identified potential victim is entitled to a

recovery period (giving them protection from removal) of at least 30-days even where a Conclusive Grounds decision is made within 30-days of the positive Reasonable Grounds decision.

Section 62: No entitlement to additional recovery period etc.

615 Overview: This section provides that only one period of recovery will be provided to a potential victim, unless the Secretary of State considers it appropriate to provide a further period of protection from removal in the particular circumstances of the case, or unless the further instance of exploitation occurred after the previous reasonable grounds decision.

616 Background: The Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) provides that once there are reasonable grounds (RG) to believe a person has been a victim of trafficking, states have obligations to that person (such person being a "potential victim"). These obligations last until someone is determined to be a confirmed victim or not to be a victim., and for a minimum of 30 days.

617 During this time, states are obliged to authorise persons to stay in their territory and provide potential victims with support to aid their recovery, unless disqualifications apply. Section 60 will bring these obligations into domestic legislation. Section 61 seeks to set out the disqualification from an additional recovery period, where additional recovery periods are not needed.

618 This section provides that additional recovery periods will only be granted in certain cases.

619 Subsection 1 provides that a person who has previously been identified as a potential victim of modern slavery or human trafficking, and as such benefitted from a recovery period, may not be entitled to a further recovery period if they bring forward further grounds to be treated as a potential victim and those matters occurred wholly before the previous decision.

620 Subsection 2 provides for discretion to enable a competent authority to protect the individual from removal from the UK during the additional 30-day recovery period or until the further Conclusive Grounds decision is made, if later.

Section 63: Identified potential victims etc.: disqualification from protection

621 Overview: This section sets out disqualifications to providing a recovery period to a potential victim of modern slavery (as set out in Section 61), based on grounds that the individual is a threat to public order or has claimed to be a victim in bad faith.

622 Background: The Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) contains provisions for an exemption to the protections conferred during the recovery period on public order grounds or if it is found that victim's status is being claimed improperly. This Section puts these disqualifications into primary legislation.

623 Subsection 1 provides that subsection 2 may apply if a competent authority is satisfied that the individual concerned is a threat to public order or has claimed in bad faith to be a victim.

624 Subsection 2 provides that the individual is no longer protected from removal from the UK by Section 60 and 61, and that where a positive conclusive grounds decision is made, there is no requirement to consider the individual for a grant of limited leave under Section 65. This is intended to enable the removal of those who pose a threat to the UK. This is in keeping with the UK's ECAT obligations.

625 Subsection 3 stipulates that an individual is considered a threat to public order if: they have been convicted of any of the offences listed in Schedule 4 to the Modern Slavery Act 2015, or a corresponding offence under the law of Scotland or of Northern Ireland or under the law of any other country; they are a foreign criminal within the meaning of section 32 of the UK

Borders Act 2007; the individual has been convicted of a terrorist offence; they are subject to a TPIM notice, which imposes specified terrorism prevention and investigation measures on an individual who is, or has been, involved in terrorism-related activity; the individual is subject to a temporary exclusion order, which requires an individual not to return to the UK where the Secretary of State reasonably suspects the individual is, or has been, involved in terrorism-related activity outside the UK, or reasonably considers that an exclusion order is necessary to protect members of the public in the UK from a risk of terrorism; the individual has been deprived of citizenship status on grounds that the Secretary of State was satisfied that deprivation was conducive to the public good; or if they are considered a risk to national security.

626 Subsection 4 defines a "terrorist offence" for the purposes of subsection 3(a).

627 Subsection 5 defines "corresponding offence" for the purposes of subsection 3(b).

628 Subsection 4 defines a "terrorist offence".

629 Subsection 6 provides that whether or not an act that is punishable under the law of a country outside of the UK is described as an "offence", it is to be regarded as an offence for the purposes of this section.

630 Subsection 7 provides definitions of terms used in this section.

Section 64: Identified potential victims etc. in England and Wales: assistance and support

631 Overview: This section implements the UK's Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) obligations to provide a recovery period to potential victims of modern slavery, during which the victim must be provided with assistance and support to aid their recovery.

632 Background: The Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) provides that once there are reasonable grounds (RG) to believe a person has been a victim of trafficking, states have obligations to that person (such person being a "potential victim"). These obligations last until someone is determined to be a confirmed victim or not to be a victim. If a conclusive grounds decision is made within the recovery period, victims will still receive the minimum 30-day recovery period.

633 ECAT provides (in Article 13) that states shall provide potential victims with a "recovery and reflection period" of at least 30 days (England and Wales provide 45 days) and until it is determined whether they are a confirmed victim. During this time, potential victims are entitled to support from the state to help them recover. The UK's approach to implementing the provisions of ECAT is set out in guidance. This Section puts provision relating to assistance and support during the recovery period into primary legislation.

634 Subsection 1 inserts new section 50A into Part 5 of the Modern Slavery Act 2015. This requires that those identified as potential victims of modern slavery are provided with assistance in their recovery from any physical, psychological or social harm arising from the conduct which resulted in the positive reasonable grounds decision concerned. The requirement to provide support is subject to disqualifications contained in Sections 62 and 63.

635 Subsections 3 and 4 provide that when a further Reasonable Grounds (RG) decision, within the meaning given by section 61, is made in relation to a person, and it is appropriate to do so, the Secretary of State must secure that any necessary assistance and support is available to the person during the recovery period. This period starts on the day the RG decision is made until whichever is later a) the date the relevant CG decision is made or b) 30 days from the date of the RG decision.

Section 65: Leave to remain for victims of slavery or human trafficking:

636 Overview: This section sets out the circumstances in which the Secretary of State must grant temporary, limited leave to remain to confirmed victims of modern slavery. Further detail pertaining to the grant of leave will be set out in the Immigration Rules. This section will also set out the circumstances in which the Secretary of State is not required to grant leave. It further makes provision for the circumstances in which leave, which has already been given, may be revoked.

637 Background: Under Article 14 of the Council of Europe Convention on Action Against Trafficking in Human Beings (ECAT) a renewable residence permit should be issued to victims of modern slavery if one, or both, of the following situations apply: the competent authority considers that their stay is necessary owing to their personal situation; the competent authority considers that their stay is necessary for the purpose of their cooperation with the competent authorities in investigation or criminal proceedings (Article 14(1)(a) and (b)). Section 65 also provides for a grant of leave where necessary to enable the person to seek compensation in respect of the relevant exploitation in line with the previous non-statutory guidance "Discretionary Leave for Victims of Modern Slavery" and in light of Article 15 of ECAT "Compensation and legal redress".

638 Subsection 1 stipulates that this section applies to confirmed victims of modern slavery who are not British citizens and who do not have leave to remain in the UK.

639 Subsection 2A provides that where the authority is satisfied that 63 (1) (a) or (b) applies there is no requirement to grant limited leave to remain in the United Kingdom to a person who meets any requirement under this section.

640 Subsection 2 provides that the Secretary of State must grant limited leave to remain if it is considered necessary for the purposes of (a) assisting the person in their recovery from any physical or psychological harm arising from the relevant exploitation, (b) enabling the person to seek compensation in respect of the relevant exploitation, or (c) enabling the person to co-operate with a public authority in connection with an investigation or criminal proceedings in respect of the relevant exploitation.

641 Subsection (2)(a) clarifies the obligation in Article 14(1)(a) of ECAT which provides for a grant of leave where it is "necessary owing to their personal situation". This subsection provides that leave is necessary owing to the individual's personal situation where, it is necessary in order to assist with recovery from any physical or psychological harm arising from the relevant exploitation.

642 Subsection 2(b) provides a grant of leave for confirmed victims of modern slavery to pursue compensation in respect of the relevant exploitation, in light of the obligations in Article 15 ECAT.

643 Subsection 2(c) reflects Article 14(1)(b) ECAT and provides for a grant of leave where necessary to enable the person to co-operate with a public authority in connection with an investigation or criminal proceedings in respect of the relevant exploitation

644 Subsection 3 (a) provides that, if the Secretary of State considers that the person's need for assistance is capable of being met in another country or territory, as defined in subsection 4, leave is not necessary for the purpose of assisting the individual with their recovery.

645 Subsection 3 (b) sets out that leave is not necessary for the purpose of Subsection (2)(b) if the Secretary of State considers that the person is capable of seeking compensation from outside the UK, and it would be reasonable for them to do so in the circumstances.

646 Subsection 4 clarifies the meaning of "country" or "territory" for the purpose of subsection 3(a).

647 Subsections 5 and 6 state that the Secretary of State is not required to grant leave under subsection 2 and may revoke any such leave if it has been granted where the Secretary of State is satisfied that the individual is a threat to public order (see Section 63 for further details) or has claimed to be a victim in bad faith.

648 Subsection 7 sets out that leave given to a person under subsection 2 may be revoked in such other circumstances as may be prescribed in Immigration Rules.

649 Subsection 8 sets out that subsections 3 to 7 of Section 63 apply for the purposes of this section.

650 Subsection 9 provides definitions of "positive conclusive grounds decision" and "the relevant exploitation", for the purposes of this section. The "relevant exploitation" is defined as the conduct that resulted in the positive conclusive grounds decision.

651 Subsection 10 stipulates that this section is to be treated for the purposes of section 3 of the Immigration Act as if it were provision made by that Act.

Section 66: Civil legal services under section 9 of LASPO: add-on services in relation to the national referral mechanism

652 Overview: This section amends various paragraphs of Part 1 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO 2012") to enable advice on referral into the national referral mechanism (NRM) to be provided as "add-on" advice where individuals are in receipt of civil legal services for certain immigration and asylum matters.

653 Background: Each paragraph of Part 1 of Schedule 1 to LASPO 2012 describes the types of civil legal service that may be made available. Services listed in that Part are known colloquially as "in scope". To obtain legal aid, an applicant must have a determination from the Director of Legal Aid Casework that their issue is in scope by virtue of being listed in Schedule 1, and that they qualify for the services in accordance with the statutory means and merits tests which are set out in section 11 LASPO 2012 and in Regulations made under that Act.

654 The aim of the section is to identify and support individuals who may be potential victims of modern slavery or human trafficking. This section will ensure that where individuals are receiving advice on an in scope immigration issue listed in these specific paragraphs of Part 1 of Schedule 1 to LASPO 2012, that they are also entitled to add-on advice on referral into the NRM as part of that advice. The intention is that potential victims of modern slavery or human trafficking will be able to understand what the NRM is and what it does, and provide informed consent to be referred into it.

655 Subsection 1 sets out that Part 1 of Schedule 1 to LASPO 2012 is being amended.

656 Subsections 2 to 5 amend paragraphs 19, 25, 26, 27, 27A, 30 and 31A by inserting a new paragraph into each of those paragraphs, setting out that civil legal services on referral into the NRM will also be available to an individual who is already receiving advice under one of those paragraphs. It also provides that certain civil legal services cannot be provided as part of this advice, such as advocacy and attendance at an interview.

657 Subsection 6 provides definitions.

658 Subsection 7 sets out that civil legal services on referral into the NRM will only be available as add-on services in relation to a determination made after the amendment comes into force.

Section 67: Civil legal services under section 10 of LASPO: add-on services in relation to national referral mechanism

659 Overview: This section amends the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO 2012") to enable advice on referral into the national referral mechanism (NRM) to be provided as "add-on" advice where individuals have received an exceptional case determination under section 10 of LASPO 2012.

660 Background: Section 10 of LASPO 2012 makes civil legal services that are not described in Part 1 of Schedule 1 to LASPO available in exceptional cases. The determination by the Director of Legal Aid Casework that an applicant can get these services is called an "exceptional case determination", and to get such a determination the Director must determine that the circumstances in subsection 10(3) apply, which is that a failure to provide funding could give rise to a breach of the individual's ECHR or other retained enforceable EU rights. The Director must also determine that the individual qualifies for the services in accordance with the statutory means and merits tests which are set out in section 11 LASPO 2012 and in Regulations made under LASPO 2012.

661 The aim of this section is to identify and support individuals who may be potential victims of modern slavery or human trafficking by ensuring they receive advice on referral into the NRM to understand what it does and how it could help them.

662 This section inserts new subsections 3A, 3B, 3C, 3D and 3E into section 10 of LASPO 2012 providing that civil legal services relating to advice on referral into the NRM are also available to an individual who has an exceptional case determination. The exceptional case determination must have been made in relation to a claim under section 6 of the Human Rights Act 1998 that removing the individual from, or requiring the individual to leave, the UK, would be unlawful.

Section 68: Disapplication of retained EU law deriving from Trafficking Directive

663 Overview: This section states that the Trafficking Directive should be disapplied in so far as it is incompatible with any provisions in this Act.

664 Background: Directive 2011/36/EU, on preventing and combatting trafficking in human beings and protecting its victims (the "Trafficking Directive") was adopted by the UK on 5 April 2011. Following the UK's departure from the EU the Trafficking Directive should be disapplied in so far as it is incompatible with any provisions in this Act.

665 Subsection 1 provides for the disapplication of the Trafficking Directive in so far as it is incompatible with any provisions in this Act.

666 Subsection 2 provides a definition of "The Trafficking Directive" as explained above.

Section 69: Part 5: Interpretation

667 Overview: This section provides definitions of terms used in Part 5 of this Act and confers a power on the Secretary of State to set out the meaning of "victim of slavery" and "victim of human trafficking" in Regulations.

668 Subsection 2 provides that regulations made under this section are subject to affirmative resolution procedure.

669 There is an amendment to Section 82 of the Nationality and Borders Act which applies to this section. Subsection 82(4) of the Act provides that Section 69 comes into effect two months after Royal Assent. This will be amended so that the power to make regulations under Section 69 come into effect at Royal Assent. This is to ensure that the regulations which will define

"victim of slavery" and "victim of trafficking" have time to progress through Parliament and themselves come into force in line with the commencement of the sections relating to modern slavery.

Part 6: Miscellaneous

Section 70: Visa penalty provision: general

670 Overview: This section sets out the general provisions on the application of visa penalties where the Secretary of State has specified a country under section 71 or 72. A country may be specified where it: presents a risk to international peace and security, or its actions lead or are likely to lead to armed conflict or a breach of humanitarian law; or is not cooperating on the return of its nationals who do not have a legal right to be in the UK.

671 This section creates a power to impose the following types of visa penalty in relation to applications for entry clearance:

- Requiring that visas are not granted before the end of a specific period (thereby slowing down the visa application process for relevant applicants);
- Suspending the power to grant entry clearance to applicants;
- Requiring the application to be treated as invalid for the purposes of the immigration rules;
- Requiring the applicant to pay a surcharge of £190 in connection with the making of a visa application (which is separate from, and in addition to, existing visa fees and other amounts payable pursuant to the application).

672 This section provides that the powers to impose visa penalties on countries can be exercised under the immigration rules.

673 Background: The Government has a number of levers at its disposal to respond to certain actions of foreign governments by applying pressure which may disadvantage that state's citizens through our visa system. This measure provides for increased levers at the punitive end of the spectrum available either in relation to a country specified under section 71 (countries which are taking certain prescribed hostile actions) or under section 72 (countries which do not cooperate on the matter of returning their nationals who have no right to be in the UK).

674 The four types of penalty have been designed to create a nuanced and flexible tool which provides an escalatory ladder to move up or down according to the specific situation.

675 Exercising the power through the immigration rules will allow the Government sufficient flexibility to impose and revoke penalties in response to changes in specific situations.

676 This section creates a new power to make visa penalty provisions as the Secretary of State considers appropriate against specific countries. This section does not amend or repeal existing legislation.

677 Subsection 1 allows visa penalty provisions to be made under the immigration rules in relation to a country specified under section 71 (a country which, in the opinion of the Secretary of State, is taking certain prescribed hostile actions) or section 72 (countries which do not cooperate on the matter of returning their nationals who have no right to be in the UK).

678 Subsection 2 sets out types of visa penalty provision that may be made in relation to an application for entry clearance made by a person as a national or citizen of a country specified under section 71 or section 72. They are:

- Requiring that entry clearance must not be granted before the end of a specified period;
- Suspending the power to grant entry clearance pursuant to such an application;
- Requiring an application to be treated as invalid for the purposes of the immigration rules;
- Requiring the applicant to pay a surcharge of £190 in connection with the making of such an application, in addition to any fee or other cost (such as the immigration health surcharge) that is payable.

679 Subsection 3 allows the Secretary of State to vary the amount payable pursuant to subsection (2)(d).

680 Subsection 4 requires the Secretary of State to give the government of any country on which visa penalties may be imposed reasonable notice of the proposal to do so. The period that can be considered reasonable notice will vary depending upon the specific context in which penalties are applied.

681 Subsection 5 requires that the immigration rules set out that visa penalty provision does not apply in relation to any application made before the day on which the provision comes into force.

682 Subsection 6 sets out how the powers to make immigration rules in relation to visa penalty provisions may be used, including to provide for exceptions or exemptions to the application of visa penalties.

683 Subsection 7 sets out that the amount payable under subsection (2)(d) may be increased by statutory instrument subject to the affirmative procedure and decreased by statutory instrument subject to the negative resolution procedure.

684 Subsection 8 sets out that income generated by virtue of subsection (2)(d) must be paid into the Consolidated Fund.

685 Subsection 9 sets out definitions of the terms "country", "entry clearance", "immigration rules" and "specified" used in this section.

Section 71: Visa penalties for countries posing risk to international peace and security etc.

686 Overview: The visa penalties outlined in section 70 may be imposed on a country where, in the opinion of the Secretary of State, the government of the country has taken action that present a risk to international peace and security, or whose actions lead or are likely to lead to armed conflict or a breach of humanitarian law.

687 In determining whether to apply visa penalties, the Secretary of State must take into account:

- The extent of the action taken;
- The likelihood of further action being taken;
- The reasons for the action being taken; and
- Any other matters the Secretary of State considers appropriate.

688 Background: Disadvantaging a state's citizens through our visa system is intended to generate domestic dissatisfaction with that state's actions and result in pressure to change its behaviour. These measures could be in isolation or form part of a wider package of measures by the UK Government to influence the behaviour of a foreign government.

689 This section enables the Secretary of State to specify a country for the purpose of applying visa penalties under section 70. This section does not amend or repeal existing legislation.

690 Subsection 1 allows a country to be specified under this section if, in the opinion of the Secretary of State, the government of that country has taken action that gives, or is likely to give, rise to a threat to international peace and security; results, or is likely to result, in armed conflict; gives, or is likely to give, rise to a breach of international humanitarian law.

691 Subsection 2 sets out the factors the Secretary of State must take into account when determining whether to specify a country under this section.

692 Subsection 3 sets out definitions of the terms "action", and cross-refers to the definitions of "country" and "specified" in section 70.

Section 72: Removals from the UK: visa penalties for uncooperative countries

693 Overview: The visa penalties outlined in section 70 may be imposed on a country which, in the opinion of the Secretary of State, does not cooperate with the UK in relation to the return of its nationals who not have a legal right to be in the UK. The section sets out that the Secretary of State must take account of the following criteria when forming an opinion on whether a country is cooperating in relation to the return of its nationals:

- Any arrangements (whether formal or informal) entered into by the government of the relevant country with the UK with a view to facilitating returns;
- The extent to which the government of the country is promptly taking steps to facilitate returns;
- Such other matters as the Secretary of State considers appropriate.

694 In determining whether to apply visa penalties, the Secretary of State must take into account:

- The length of time for which the country has been uncooperative;
- The extent of the lack of cooperation (such as severity of the non-cooperation, proportion of nationals or citizens of that country that the Secretary of State has been unable to return);
- The reasons for the lack of cooperation; and
- Any other matters the Secretary of State considers appropriate.

695 Background: Where individuals do not have a legal right to be in the UK, the Home Office may seek to remove them, usually to their country of nationality. The UK expects cooperation by a country in receiving back its nationals (for example, by assisting with issuing travel documents if required and giving permission for flights to land) where a person has no right to be in the UK. The majority of countries cooperate with the UK on the matter of returns ; however, a small number of countries do not cooperate.

696 This section enables the Secretary of State to specify a country for the purpose of applying visa penalties under section 70. This section does not amend or repeal existing legislation.

697 Subsection 1 allows a country to be specified under this section if, in the opinion of the Secretary of State, the government of that country is not cooperating with the UK in relation to the return of its nationals or citizens who are in the UK with no legal right to be and, as a result of that lack of cooperation, there are nationals or citizens of the country that the Secretary of State has been unable to return, whether or not others have been returned.

698 Subsection 2 sets out the factors the Secretary of State must take into account when forming an opinion as to whether a country is cooperating with returns.

699 Subsection 3 sets out the factors the Secretary of State must take into account when determining whether to specify a country for visa penalties under this section.

700 Subsection 4 cross-refers to the definitions of the terms "country" and "specified" in section 70, and sets out definitions for "facilitating returns", used in this section.

Section 73: Visa penalties under section 71: review and revocation

701 Overview: This section creates a duty to review visa penalty provisions made pursuant to section 71, and a duty to revoke visa penalty provisions as soon as practicable if the Secretary of State concludes penalties are no longer necessary or expedient in connection with the promotion of international peace and security, the resolution or prevention of armed conflict, or the promotion of compliance with international humanitarian law.

702 Background: For policy background, see explanatory notes for section 71.

703 This section creates a duty on the Secretary of State to review and, if necessary, revoke any visa penalty provisions. This section does not amend or repeal existing legislation.

704 Subsection 1 establishes that this provision applies where any visa penalty provision is in force in relation to a specified country pursuant to section 71.

705 Subsection 2 requires the Secretary of State to review the actions of the country in question and, in light of that review, whether it is appropriate to amend the visa penalty provision, before the end of a set period.

706 Subsection 3 requires that visa penalties must be revoked as soon as practicable if the Secretary of State concludes penalties are no longer necessary or expedient in connection with the promotion of international peace and security, the resolution or prevention of armed conflict, or the promotion of compliance with international humanitarian law.

707 Subsection 4 sets the period relevant for this section at 2 months beginning with the date on which the visa penalty provision came into force and each subsequent period of 2 months.

708 Subsection 5 cross-refers to the definition of the term "visa penalty provision" in section 70.

Section 74: Visa penalties under section 72: review and revocation

709 Overview: This section creates a duty to review visa penalty provisions made pursuant to section 72, and a duty to revoke visa penalty provisions if the relevant country is no longer considered uncooperative on the matter of returning its nationals who do not have a legal right to be in the UK.

710 Background: For policy background, see explanatory notes for section 72.

711 This section creates a new duty to review and, if necessary, revoke visa penalty provisions. This section does not amend or repeal existing legislation.

712 Subsection 1 establishes that this provision applies where any visa penalty provision is in force in relation to a specified uncooperative country pursuant to section 72.

713 Subsection 2 requires the Secretary of State to review whether the country in question should continue to be specified as uncooperative and, in light of that review, whether it is appropriate to amend the visa penalty provision, before the end of a set period.

714 Subsection 3 requires that visa penalties must be revoked as soon as practicable if the Secretary of State is no longer of the opinion that the specified country is uncooperative .

715 Subsection 4 sets the period relevant for this section at 2 months beginning with the date on which the visa penalty provision came into force and each subsequent period of 2 months.

716 Subsection 5 cross-refers to the definition of "visa penalty provision" in section 70, and sets out the definition of the term "cooperation with returns" used in this section.

Section 75: Electronic Travel Authorisations (ETAs)

717 Overview: This section enables the Secretary of State to require individuals who do not need a visa, entry clearance or other specified immigration status to obtain permission to travel, in the form of an Electronic Travel Authorisation, in advance of their journey to the UK. This section will also build on existing legislation to incentivise carriers to check passengers are in possession of an Electronic Travel Authorisation, where so required, or risk a civil penalty.

718 Background: The UK Government is committed to strengthening the security of the UK border by ensuring that everyone wishing to travel to the UK (except British and Irish citizens) has permission to do so in advance of travel. This section will provide for the creation of an Electronic Travel Authorisation scheme to close the current gap in advance permissions and enhance the Government's ability to screen people in advance of arrival and prevent the travel of those who pose a threat to the UK.

719 The type of permission a person has will depend on their individual circumstances. For those coming or returning to the UK, having been granted leave to enter or remain, their permission to travel to the UK will be their immigration status as evidenced by an entry clearance, biometric residence document or other physical document or digital status. These individuals will not be expected to obtain an Electronic Travel Authorisation.

720 The requirement to obtain an Electronic Travel Authorisation will also not apply to British and Irish citizens, who do not require leave to enter or remain in the UK. Their permission to travel will be their nationality, demonstrated by their passports

721 At present, non-visa nationals (including EEA citizens) coming to the UK for up to six months as visitors (and in limited other categories) can travel to the UK solely on the basis of their nationality, evidenced by their passport or other travel document. This information is sent to the Government by the majority of carriers as Advance Passenger Information shortly before the individual embarks on their journey. This means that UK border control and law enforcement authorities have less information and time to assess the risk posed by most non-visa nationals in advance of their arrival in the UK.

722 This section will provide for the creation of an Electronic Travel Authorisation scheme, requiring individuals who do not need a visa, entry clearance or other specified immigration status to obtain a valid Electronic Travel Authorisation before travelling to the UK. The intention is to close the current gap in advance permissions and enhance the Government's ability to screen arrivals and prevent the travel of those who pose a threat to the UK. There will be no right of appeal against a decision to refuse an Electronic Travel Authorisation. Those who are considered unsuitable for an Electronic Travel Authorisation may apply for a visit visa if they still wish to travel to the UK.

723 To protect the integrity and security of the Common Travel Area, this section also provides for the Secretary of State to make regulations to recognise an Electronic Travel Authorisation issued by a Crown Dependency and allows the Secretary of State to administer the Electronic Travel Authorisation scheme on behalf of a Crown Dependency, if requested to do so. As now, those arriving in the UK via the Common Travel Area must continue to enter in line with the UK's immigration framework including the Electronic Travel Authorisation (ETA) requirement.

724 Subsection (2) inserts a new section 11C and 11D into Part 1 of the Immigration Act 1971,

725 Subsection (3) makes consequential amendments to section 24A of the Immigration Act 1971.

726 Subsection (4) makes consequential amendments to section 33 of the Immigration Act 1971.

727 Subsection (5) makes consequential amendments to section 82 of the Immigration and Asylum Act 1999.

728 Subsection (6) makes consequential amendments to section 126 of the Nationality, Immigration and Asylum Act 2002.

Section 76: Liability of Carriers

729 Overview: This section builds on the existing carriers liability scheme by incentivising carriers to check that a traveller holds an ETA or another form of permission, such as a visa or an immigration status in digital form, prior to boarding or risk a civil penalty.

730 Background: At present, carriers are incentivised to check for the presence of a valid "immigration document" which satisfactorily establishes identity and nationality or citizenship, and, if the person requires a visa, a visa of the required kind. To enforce the ETA scheme and the wider requirement that everyone (except British and Irish citizens) has permission to travel to the UK, carriers will need to check and confirm an individual's permission to travel prior to carriage. This section incentivises carriers to check that all passengers have the appropriate permission, including to check with the Home Office where that permission may only be held in digital form, or risk a penalty.

731 The section also provides a statutory excuse against the imposition of a penalty, to cater for circumstances where it has not been possible for the carrier to check for the presence of an ETA or another form of permission through no fault of their own.

732 Section 76 amends section 40 of the Immigration and Asylum Act 1999.

Section 77: Special Immigration Appeals Commission

733 Overview: This section relates to immigration decisions in respect of a person's entitlement to enter, reside or remain in the UK, or to their removal from the UK, and allows the Secretary of State to decide that any legal challenge brought against such decisions will be heard in the Special Immigration Appeals Commission (SIAC), rather than the Upper Tribunal of the Immigration and Asylum Chamber or the High Court, where satisfied that the decision is based on information that should not be disclosed in the public interest.

734 Background: The intention is to close the "SIAC gap" via this amendment to the Special Immigration Appeals Commission Act 1997 to allow immigration decisions to be made and defended on the basis of sensitive material that should not be disclosed in (a) the interests of national security; (b) the interests of the relationship between the UK and another country; (c) the public interest generally, but without giving individuals rights of appeal which they otherwise would not be entitled to. The purpose of the amendment to the legislation is to ensure that any immigration decision that may be challenged by way of an application for

judicial review (JR) can be certified to ensure any legal challenge is heard by the Special Immigration Appeals Commission in the same way that any decision that can be challenged by appeal can be certified.

735 SIAC is an independent judicial tribunal that can hear immigration appeals where the decision is based on sensitive information, for example where information has been provided by the Security Services. However, some types of immigration-related decisions relying on sensitive information that needs to be protected have no right of appeal, and can only be challenged by judicial review—and so cannot be heard in SIAC. This is known as the "SIAC Gap".

736 There is some limited mitigation in that while most immigration related JRs are heard by the Upper Tribunal (Immigration and Asylum Chamber), legal challenges to decisions that are based on national security information can still be heard in a closed session in the High Court, upon the instruction of the Lord Chief Justice. This is called a Closed Material Procedure (CMP). This mitigation is limited: firstly, a detailed application from the Secretary of State must be filed and considered and a declaration made by the court permitting an application for a CMP (whereas closed material can always be used in SIAC cases); and secondly, under a CMP "sensitive material" covers only that which would be damaging to the interests of national security and so it cannot be utilised for cases concerning serious organised crime or sensitive international relations material or cases that rely upon historic security information. This section amends the following legislation:

- Sections 2, 6A and 7 of the Special Immigration Appeals Commission Act 1997.
- Section 115(8) of the Equality Act 2010.

737 The amendment seeks to reinstate the position as it was before the introduction of the Points Based System in 2008, a position that has previously been agreed by Parliament.

Section 78: Counterterrorism questioning of detained entrants away from place of arrival

738 Overview: This section amends Schedule 7 to the Terrorism Act 2000 in order to enable Counter-Terrorism Police Officers to conduct examinations away from port locations where individuals have arrived in the UK by sea within the previous 5 days and have been arrested or detained under the Immigration Acts.

739 Background: Paragraph 2 of Schedule 7 grants Counter-Terrorism Police Officers the power to examine individuals for the purpose of determining their involvement in the commission, preparation, or instigation of acts of terrorism. At present, individuals can only be examined under Schedule 7 if they are physically within a port or border area, and their presence there is connected to entering or leaving the UK.

740 Subsection 1 amends Schedule 7 by including within the scope of the power migrants who have been arrested or detained under the Immigration Act, provided the officer believes the individual arrived in the UK by sea and has been in the UK no more than 5 days since the date of their arrival.

Section 79: References to Justices of the Peace in relation to Northern Ireland

741 Overview: This section will ensure that references to "justice of the peace" in the context of obtaining entry and search warrants in immigration legislation, as regards Northern Ireland, are treated as references to "lay magistrates".

742 Background: On 1 April 2005 the functions at that date of justices of the peace in Northern Ireland were largely transferred to lay magistrates by section 10 of the Justice (Northern Ireland) Act 2002. The effect of paragraph 6(a) of Schedule 4 to that Act is that references to justices of the peace are to be read as, or as including, references to a lay magistrate. However,

that only applies in relation to the pre-1 April 2005 functions transferred by section 10 of the 2002 Act. There are some functions of justices of the peace which were conferred after 1 April 2005, so that provision does not apply. The section makes it clear that references to justices of the peace in relation to those later conferred functions are to be treated as references to lay magistrates. Four of the provisions in question are the power to enter and search premises for the purpose of detaining a vehicle relating to a person who is not lawfully resident in the UK under section 24E of the Immigration Act 1971, the power to enter and search premises for relevant identity documents under paragraph 25A of Schedule 2 to the 1971 Act, the power to search premises for things relevant to the functions of the Immigration Services Commissioner under paragraph 10A of Schedule 5 to the Immigration and Asylum Act 1999 and the power to enter and search for nationality documents of a person arrested for a criminal offence under section 45 of the UK Borders Act 2007.

743 No new powers to apply for a warrant are created.

Section 80: Tribunal charging power in respect of wasted resources

744 Overview: This section amends section 29 of the Tribunals, Courts and Enforcement Act 2007 (TCEA) providing a new power for the First-tier and Upper-Tier Tribunals to order a party to pay a charge in respect of wasted or unnecessary tribunal costs incurred due to a party's unreasonable actions.

745 Background: Failure to comply with tribunal directions by legal representatives can disrupt or prevent the proper preparation of an appeal, and lead to cases being adjourned at a late stage.

746 This can lead to the parties incurring additional unnecessary costs. Allocated tribunal time can also be wasted, leading to delays in determining appeals, adding to backlogs of outstanding appeals, and delaying justice for those with genuine claims while valuable judicial resources are wasted.

747 At present the power in Section 29 of the TCEA which gives Tribunals power to make costs orders is limited to the legal costs of the parties.

748 Subsection 1 inserts new section 25A into the TCEA which provides that when a relevant participant has acted "improperly, unreasonably or negligently" and as a result, the Tribunal's resources have been wasted, then the First-tier or Upper Tribunal may charge the participant.

749 A charge may be made against a relevant participant in proceedings, which will include legal and other representatives of the parties, and also the Secretary of State (where they have not instructed a legal representative). The amounts charged under this section must be paid into the Consolidated Fund.

750 The power is subject to Tribunal Procedure Rules and amendment is also made to Schedule 5 to the TCEA to specify that rules made by the Tribunal Procedure Committee may include rules under this power.

Section 81: Tribunal Procedure Rules to be made in respect of costs orders etc.

751 Overview: This section imposes a duty on the Tribunal Procedure Committee to introduce procedure rules in the First-tier and Upper Tribunal Immigration and Asylum Chamber which ensure that judicial consideration will be given to the making of a charge or cost order where specified events have happened.

752 Background: The Tribunal Procedure Rules will specify that there is a rebuttable presumption that certain conduct is to be treated as unreasonable and triggers the consideration of a costs order. It will be for the representative to demonstrate why the conduct is not unreasonable and why a charge or cost order should not be made in such circumstances.

753 Improper, unreasonable or negligent behaviour on the part of legal and other representatives in the Immigration and Asylum Chamber can disrupt or prevent the proper preparation and progress of an appeal. This can lead to increased and unnecessary costs being incurred by the parties and is an inefficient use of tribunal resources.

754 Under powers provided in the Tribunals, Courts and Enforcement Act 2007 (TCEA) and as amended by section 76 and this section, the tribunal has powers to make a wasted resources charge, or a wasted costs or unreasonable costs order.

755 Wasted Costs Orders (WCOs) allow the tribunal to order legal costs incurred by one party to be paid by a legal or other representative where it finds that those were unnecessary costs which arose as a result of "improper, unreasonable or negligent behaviour" of the representative. A litigant can seek a WCO against the legal representative of any party including the litigant's own representative. In addition, the tribunal can make a WCO on its own motion.

756 In addition, an unreasonable costs order may be made where a party or their legal or other representative has acted "unreasonably in bringing, defending or conducting proceedings". An unreasonable costs order may be made against a party to the appeal, including the Secretary of State for the Home Department.

757 Subsection 1 imposes a duty on the Tribunal Procedure Committee to introduce procedural rules which specify conduct which in the absence of explanation or evidence to the contrary will be treated as unreasonable, improper or negligent for the purposes of the provisions of the TCEA powers to impose Wasted Costs Orders, Unreasonable Costs Orders and a Wasted Resources Charge.

758 Subsection 2 provides that procedural rules will require that, where satisfied the prescribed conduct has taken place, the Tribunal will consider the making of a wasted costs order, an unreasonable costs order or a wasted tribunal charge, but subsection 3 makes clear that the Tribunal retains absolute discretion as to whether to make such an order.

759 Subsections 4 and 5 define terms used in this section.

760 Subsection 6 amends the TCEA to allow the tribunal to make a costs order where a party to proceedings, or their legal representative, acts unreasonably in bringing or conducting proceedings. Procedural rules in many of the chambers of the tribunal already contain provision for unreasonable costs orders in such circumstances.

Section 82: Pre-consolidation amendments of immigration legislation

761 Overview: This section gives the Secretary of State power by regulation to amend immigration legislation in order to make pre-consolidation changes to facilitate a consolidation Act.

762 Background: The Windrush Lessons Learned Review (WLLR), published on 19 July 2018, said that it is widely accepted that immigration and nationality law is very complex.

763 WLLR Recommendation 21 is: "Reduce the complexity of immigration and nationality law, immigration rules and guidance – Building on the Law Commission's review of the Immigration Rules the Home Secretary should request that the Law Commission extend the remit of its simplification programme to include work to consolidate statute law. This will make sure the law is much more accessible for the public, enforcement officers, caseworkers, advisers, judges and Home Office policy makers ".

764 At least 16 Acts have been passed that wholly or partly concern immigration or nationality since 1971. This makes it difficult for applicants, legal advisers and caseworkers to navigate the system. This provision relates to the consolidation of immigration laws.

765 Subsection 1 gives the Secretary of State power by regulations to amend or modify previous Acts which relate to immigration where to do so would facilitate, or be desirable in connection with, the consolidation of immigration laws.

766 Subsection 2 sets out the existing Acts to which this would apply, and includes immigration provisions in any other Acts, whenever passed.

767 Subsection 3 provides that "amend" includes repeal (and similar terms are to be read accordingly).

768 Subsections 4 and 5 set out that the powers are conditional on the passing of a future Act which will consolidate all or a large proportion of the Acts relating to immigration. Any regulations made under this section will come into effect immediately before that Act comes into effect.

769 Subsection 6 stipulates that statutory instrument must be the means by which any regulations are made under this section, and that the regulations are subject to the affirmative resolution procedure.

Part 7: General

Section 83: Financial provision

770 This section sets out that Parliament is to provide the finances to cover costs incurred by this Act, as well as costs incurred by other Acts as a consequence of this Act.

Section 84: Transitional and consequential provision

771 This section provides that the Secretary of State may by regulations make transitional, or temporary provisions in relation to the provisions of this Act coming into effect.

772 Subsections 2 and 3 enable the Secretary of State to make provision that is consequential on this Act by regulations. Such regulations may amend any enactment.

773 Subsection 4 provides a definition of "enactment".

774 Subsections 5 and 6 provide that consequential regulations which amend an Act of Parliament, retained direct principal EU legislation, an Act of the Scottish Parliament, a Measure or Act of Senedd Cymru, or Northern Ireland legislation are to be made under the affirmative resolution procedure. Any other consequential regulations under subsection 2 may be made under the negative resolution procedure.

775 Subsection 7 makes consequential amendments to the UK Borders Act 2007, adding this Act to the list of Immigration Acts contained in section 61 of that Act.

Section 85: Regulations

776 This section sets out how the powers to make regulations conferred on the Secretary of State will be used in practice.

777 Subsection 1 explains that any regulations made using powers granted to the Secretary of State by this Act must be made by statutory instrument.

778 Subsection 2 sets out that regulations under this Act may make different provisions for different purposes.

779 Subsection 3 explains the meaning of "negative resolution procedure".

780 Subsection 4 explains the meaning of "affirmative resolution procedure".

781 Subsection 5 stipulates that a provision which would be subject to the negative resolution procedure may be changed to require the affirmative resolution procedure. This increases the level of scrutiny since regulations under the affirmative resolution procedure must be actively approved by both Houses of Parliament.

782 Subsection 6 provides that, if a provision would be subject to no Parliamentary procedure under this Act, it may be included in regulations subject to either the negative resolution procedure or the affirmative resolution

Section 86: Extent

783 This section sets out the territorial extent of each provision in the Act (see also Annex B). It also provides a permissive extent section for provisions in the Act to be extended by Order in Council to the any of the Channel Islands or the Isle of Man.

784 Subsection 1 provides that the Act extends to England and Wales, Scotland and Northern Ireland, subject to the remaining subsections of this section.

785 Subsection 2 provides that where this Act amends, repeals or revokes other legislation, the changes will have the same extent as the legislation to which those changes are made.

786 Subsection 3 provides that provisions in Part 1 of this Act extends to the Channel Islands and the Isle of Man and the British overseas territories.

787 Subsection 4 provides that any of the provisions in this Act may be extended by Order in Council, with or without modifications, to any of the Channel Islands or the Isle of Man.

788 Subsections 5 and 6 provide that where the Act amends or repeals any part of an Act listed under subsection 6, the existing permissive extent section in that Act may be used to extend the amendment or repeal made by the Act by Order in Council, with or without modifications, to the any of the Channel Islands or the Isle of Man

Section 87: Commencement

789 This section explains when the provisions of the Act will come into force.

790 Subsections 1 and 2 provide that the Secretary of State may by regulations appoint the day or days on which the provisions in this Act will come into force, with the exception of those provisions which will come into force either when this Act becomes an Act of Parliament or two months after that date (see subsections 3 to 5).

791 Subsection 3 sets out which provisions of this Act come into force on the day this Act becomes an Act of Parliament.

792 Subsection 4 sets out the provisions of this Act which come into force on the day this Act becomes an Act or Parliament, for the purpose of making (and where required, consulting on) regulations.

793 Subsection 5 sets out the provisions of this Act which come into force at the end of the period of two months beginning with the day on which this Act is passed.

Section 88: Short title

794 This section establishes the short title of the Act as the Nationality and Borders Act 2022.

Schedule 1: Waiver of requirement of presence in UK etc.

795 Paragraph 2 amends section 4 of the 1981 Act providing that the Secretary of State may, in the special circumstances of a particular case, treat a British national registering as a British citizen as fulfilling the first residence requirement set out at section 4(2)(a) of the 1981 Act although they were not present in the UK at the start of the five-year residential qualifying period.

796 Paragraph 3 amends Schedule 1 of the 1981 Act, providing that the Secretary of State may, in the special circumstances of a particular case, treat an individual applying for naturalisation as a British citizen as fulfilling the first residence requirement set out at Schedule 1(2)(a) of the 1981 Act although they were not present in the UK at the start of the residential qualifying period. Paragraph 3 also provides that the Secretary of State may, in the special circumstances of a particular case, treat an individual registering as a British overseas territories citizen as fulfilling the first residence requirement set out at paragraph 5 of Schedule 1 to the 1981 Act despite not being present in the relevant overseas territory at the start of the residential qualifying period.

797 Paragraph 3 also removes paragraphs 2(2) and 2(3) of Schedule 1 to the 1981 Act, which specified that the Secretary of State could waive the requirements to be present in the UK, where an applicant was a member of the armed forces. These are removed because the new section creates the same discretion to waive this requirement for all applicants, including members of the armed forces.

798 Paragraph 4 makes consequential amendments to the Citizenship (Armed Forces) Act 2014 due to paragraph 3 above.

Schedule 2: Deprivation of Citizenship Without Notice: Judicial Oversight

799 This Schedule inserts a new Schedule 4A into the British Nationality Act 1981 in accordance with section 10(4) of this Act to provide for a process of judicial oversight by the Special Immigration Appeals Commission (SIAC) in cases where a decision to deprive a person of British citizenship has been made without giving them a notice of the decision.

800 Paragraph 1(1) makes provision for the Secretary of State to apply to SIAC before making a decision to deprive on the ground that it is conducive to the public good, without giving notice.

801 Subparagraph (2) provides that where a decision to deprive on the ground that it is conducive to the public good without giving notice has already been made, the Secretary of State must apply to SIAC within 7 days of the decision.

802 Subparagraph (3) sets out that the function of SIAC is to determine if the Secretary of State's decision not to give notice is obviously flawed.

803 Subparagraph (4) sets out that in making a determination, SIAC must apply judicial review principles.

804 Subparagraph (5) makes provision for circumstances when SIAC determines that the Secretary of State's decision to deprive without notice is obviously flawed. Subsection (5)(a) sets out that if the Secretary of State has not yet made a decision, then notice must be given in accordance with section 40(5) of the British Nationality Act 1981. Subsection (5)(b) sets out that if a decision to deprive has already been made, within 14 days of SIAC's determination, the Secretary of State must either i) give late notice, ii) revoke the order, or iii) make a fresh application to SIAC.

805 Subparagraph (6) provides that the Secretary of State may make a further application to SIAC if there is fresh evidence or the circumstances in the case have materially changed.

806 Paragraph 2 sets out a means to review cases where a decision is made to deprive a person of British citizenship on the ground it is conducive to the public good without giving notice.

807 Subparagraph (2) obliges the Secretary of State to review cases and decide if circumstances have changed so that a notice may be given.

808 Subparagraph (3) sets out that the Secretary of State must give late notice to the person unless any of the conditions in section 40(5A) is met.

809 Subparagraph (4) sets out that if the Secretary of State decides to give late notice it must be done as soon as reasonably practicable, and (b) once the notice is given, sub-paragraph (2) ceases to apply in relation to the person.

810 Subparagraph (5) provides that if the Secretary of State has not given, or has not decided to give, late notice an application must be made to SIAC within 7 days of the end of the review period.

811 Subparagraph (6) applies the provisions of paragraph 1(3) to 1(6) of this Schedule to an application made to SIAC under paragraph 2(5).

812 Subparagraph (7) sets out that the first review period is at the end of 4 months after SIAC makes a determination under paragraph 1(3), and subsequent review periods are every 4 months thereafter until a total of 2 years has elapsed.

813 Paragraph 3 relates to interpretation of terms.

814 Subparagraph (1) explains that references to making a deprivation order on conducive grounds are to making an order under paragraph 40(2) of the British Nationality Act 1981.

815 Subparagraph (2) explains that "late notice" means where a notice of deprivation is given to a person after the Secretary of State has already made a deprivation order.

Schedule 3: Expedited appeals where priority removal notice served: consequential amendments

816 This Schedule makes a number of consequential amendments to the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 ("the 2004 Act").

817 Paragraph 2 amends section 85 of the 2002 Act so that the matters to be considered in an appeal to the First-tier Tribunal apply equally in the case of an expedited appeal to the Upper Tribunal.

818 Paragraph 3 amends section 86 of the 2002 Act to include a reference to the Upper Tribunal. Section 86 describes what judges are required to do in consideration of appeals under sections 82(1) or 83 of the 2002 Act.

819 Paragraph 4 amends sections 106(3) and (4) of the 2002 Act to include references to the Upper Tribunal. The amendment to section 106(3) means that the power derived from the Tribunal Procedure Rules under this section to certify an appeal as being without merit (and to make consequential provision) extends to the Upper Tribunal when determining an expedited appeal. Section 106(4) provides for circumstances in which an offence will be committed if, without reasonable excuse, a person fails to attend before the Tribunal. The amendment to section 106(4) has the effect of extending this to include a failure to attend before the Upper Tribunal on an expedited appeal.

820 Paragraph 5 inserts a new subsection 107(2A) and substitutes words in section 107(3). Section 107 of the 2002 Act permits the use of practice directions to require the Tribunal or Upper Tribunal to treat a specified decision of either Tribunal as authoritative in respect of a particular matter. The combined effect of these amendments is to extend section 107 so that it applies to expedited appeals and expedited related appeals in the Upper Tribunal.

821 Paragraph 6 amends section 108 by inserting a reference to the Upper Tribunal. Section 108 of the 2002 Act makes special provision for the conduct of appeal hearings where it is alleged that a document relied on by a party is a forgery and where it would be contrary to the public interest to disclose matters relating to the detection of the forgery to that party. The effect of this amendment is that the provisions in section 108 extend equally to such circumstances arising in an expedited appeal at the Upper Tribunal.

822 Paragraph 7 amends section 8(9A) of the 2004 Act to ensure that section 8 of the 2004 Act applies to the Upper Tribunal when hearing expedited appeals or expedited related appeals.

Schedule 4: Removal of asylum seeker to safe country

823 Paragraph 1 inserts new subsections 2A, 2B and 2C into section 77 of the 2002 Act. These new subsections create an exemption to section 77, allowing for the removal of an asylum seeker to a safe country, provided the individual is not a national or citizen of that country. Any such removal is only permitted to states where the individual will not be at risk of persecution for reasons of race, religion, nationality, membership to a particular social group or political opinion, in line with the Article 1A(2) of the Refugee Convention, and from where they will not be returned to the country from which they are seeking protection, in keeping with the principle of "non-refoulement". Additionally, individuals may only be removed to states where their Article 3 rights will not be breached and to states which will not remove them to countries where their Article 3 rights may be breached. It is acknowledged that not all countries are signatories to the Refugee Convention, therefore the references to anything being done in accordance with the Refugee Convention in this section refer to the thing being done in accordance with the principles of the Refugee Convention whether or not that country is a signatory to it.

824 Paragraph 2 amends section 77(3) to insert a definition of "Convention rights".

825 Paragraph 4 makes consequential amendments to Schedule 3 to the 2004 Act, removing the need to certify before a person with a pending asylum claim can be removed.

826 Paragraph 5(2) amends paragraph 3(1) of Schedule 3 to the 2004 Act. It provides that a person who has made an asylum claim or a human rights claim will be referred to as "the claimant" for the purpose of the subsequent paragraphs of Schedule 3.

827 Paragraph 5(3) inserts new sub-paragraph (1A) into Schedule 3 to the 2004 Act, creating a presumption that a country to which a person may be removed under this section, is considered safe unless proven otherwise by the claimant. "Safe", in this context, means that an individual's rights under Article 3 of ECHR would not be contravened by their removal to the country and that the country would not send the individual on to another country where their rights under the Convention would be contravened.

828 Paragraph 5(4) makes a consequential amendment, removing paragraph (b) from paragraph 3(2), since this is now captured in new paragraph (1A).

829 Paragraphs 6 amends paragraphs 5(3) of the 2004 Act in order to simplify the current drafting in relation to asylum claim appeals. It removes 5(3)(b) and 5(5) and amends paragraph 5(4) so that all human rights claims are treated the same.

830 Paragraph 7 inserts a definition of "state" into paragraph 1(1). The definition is intended to capture British Overseas Territories.

831 Paragraph 8 adds the Republic of Croatia and Liechtenstein to the list of countries considered safe (and listed in the First List of Safe Countries).

832 Paragraph 9 inserts a new paragraph (b) under 20(1) to confer a power to the Secretary of State to remove countries from the list of countries considered safe to return to under the Refugee Convention and ECHR. This is in addition to the power the Secretary of State already has under this section to add countries to that list.

833 Paragraph 10 amends paragraph 21 as a result of the changes made by paragraph 9. This is to ensure that any additions to the list of safe countries are made by statutory instrument and subject to the affirmative resolution procedure, and that removals from that list are made by statutory instrument subject to the negative resolution procedure.

834 Paragraphs 11 to 17 amend paragraphs 5, 10, 15 and 19 and omit paragraphs 6, 11 and 16 of Schedule 3. As currently drafted, these paragraphs allow immigration appeals against the individual's removal to the safe country to be brought from outside the UK. This section removes all appeal rights in respect of claims that removal to a specified State to which each Part applies would breach the UK's obligations under the Refugee Convention and in respect of human rights claims brought against removal to the safe country, where the claim is deemed to be clearly unfounded.

835 Paragraph 18 makes consequential amendments to the 2002 Act.

836 Paragraph 19 sets out transitional provisions: claimants will retain a right to appeal from outside the UK if their claim was certified before the amendments by paragraphs 11, 13, 15 and 17 of this Schedule come into effect.

Schedule 5: Penalty for failure to secure goods vehicle etc.

837 Paragraph 1 confirms that this schedule amends Part 2 of the 1999 Act, which outlines the liability of carriers when failing to prevent clandestine entry or entry of inadequately documented individuals.

838 Paragraph 2 amends the title of Part 2 of the 1999 Act from "Clandestine entrants" to "Penalties for failure to secure goods vehicle and for carrying clandestine entrants", so as to encompass new provisions.

839 Paragraph 3 inserts a new section 31A at the start of Part 2 of the 1999 Act. Section 31A(1) and (2) confer powers on the Secretary of State to impose a civil penalty on a responsible person for failing to adequately secure their goods vehicle against unauthorised access and for failing to take actions required of them by regulations before their arrival in the UK or at a place where immigration control is operated.

840 31A(3) confirms that a civil penalty may be imposed in the event of a failure to adequately secure a goods vehicle, regardless of whether a clandestine entrant has gained access to it.

841 31A(4) directs that the Secretary of State define by regulations what is meant by a goods vehicle being adequately secured against unauthorised access, as well as what actions are expected to be undertaken by a person when securing their goods vehicle.

842 31A(5) creates an obligation on the person responsible for the vehicle to ensure that they check whether a person has gained unauthorised access before and during their journey to a place mentioned in subsections (2)(a) or (2)(b), that they report any suspected unauthorised access to their vehicle, and that they keep records to record the appropriate actions having been taken. Subsection (6) creates a requirement for the Secretary of State to consult with appropriate persons before such Regulations are made.

843 31A(7) sets out that the Secretary of State must specify penalty amounts within a prescribed limit and allows for penalties to be imposed on more than one responsible person for a vehicle and that penalties may not be imposed which amount in aggregate to more than the maximum prescribed.

844 31A(8) stipulates that civil penalties must be paid before the end of the prescribed period.

845 31A(9) creates a defence for those drivers who failed to comply with actions specified in regulations made under this section as a result of being subjected to threats or violence.

846 31A(10) establishes that a penalty can only be applied to a single journey by a goods vehicle, thus protecting against penalising for more than a single offence if a vehicle is encountered more than once on a single trip.

847 31A(11) provides that a penalty may not be imposed under section 31A if already issued under section 32 in the same circumstances.

848 31A(12) provides for cases where penalties are imposed on drivers of goods vehicles who are retained pursuant to a contract (whether or not an employment contract) by the vehicle's owner or hirer, and makes the driver and owner/hirer joint and severally liable for the penalty imposed on the driver.

849 31A(13) provides for operators of detached trailers to be treated as if they are drivers for the purposes of subsection 12.

850 31A(14) provides that, for the purposes of section 31A, where the goods vehicle is a detached trailer, the persons responsible for the goods vehicle, are the owner, hirer and operator of the trailer. Where the goods vehicle is not a detached trailer, the owner, hirer and driver of the vehicle are responsible persons.

851 31A(15) ensures that anybody acting in more than one capacity by virtue of subsection 14 may have more than one penalty applied.

852 31A(16) defines "immigration control" as meaning United Kingdom immigration control and includes any control operated by the UK, be it within the UK or outside the UK, such as the juxtaposed border controls located in France, Belgium and the Netherlands.

853 Section 32(2B) of the 1999 Act is inserted to provide for the Secretary of State to exercise discretion to reduce the amount of penalty payable for carrying a clandestine entrant, if the responsible person is able to demonstrate having complied with the requirements set out in regulations under subsection (2C), in relation to the securing of the transporter against unauthorised access. Subsection (2C) places a duty on the Secretary of State to specify these requirements in regulations.

854 Subsection (2D) provides a non-exhaustive list of the types of actions that may be specified in the regulations.

855 Subsection (2E) places a duty on the Secretary of State to consult appropriate persons ahead of making the regulations outlined in subsection (2C).

856 Paragraph 4 amends section 32 of the 1999 Act to ensure that joint and several liability arises on the basis of a contract between the owner/hirer and the driver, which does not have to be a contract of employment. It also imposes a requirement that a penalty may not be imposed under section 32(2) if a penalty has already been imposed under section 31A(1) for the same circumstances.

857 Paragraph 5 amends section 32A, regarding the Level of Penalty: Code of Practice, which specifies matters to be considered by the Secretary of State when issuing a penalty. These amendments include the insertion of new subsections A1 and B1 directing the Secretary of State to issue a code of practice to specify matters to be considered when determining the level of penalty payable under section 31A. Further amendments to section 32A ensure that the existing provisions about codes of practice apply to the new penalties issued under section 31A. Section 32A is amended to enable the Secretary of State to issue a single code of practice or two separate codes of practice when determining the level of penalty payable under section 32 and section 31A.

858 Paragraph 6 removes section 33 (prevention of clandestine entrants: code of practice). Instead, the Secretary of State will specify in regulations made under section 31A(4) what is meant by a goods vehicle being adequately secure against unauthorised access and the actions to be taken by responsible persons in relation to securing their vehicle against unauthorised access.

859 The statutory defence at section 34(3) is removed, meaning that it is no longer a defence against liability for a carrier to show that they were not aware of the presence of a concealed clandestine entrant, and that an effective system for preventing the carriage of clandestines was in operation. Instead, liability would arise in all cases where a clandestine is present in a transporter, save where there is evidence of duress, in which case a statutory defence arises (section 34(2)). While the steps taken to secure the transporter are no longer relevant to liability, the Secretary of State may exercise discretion to reduce the level of penalty where carriers can demonstrate compliance with section 32(2B).

860 Section 34(3A)(c) is also amended so that rail wagon operators must comply with regulations made under section 34(3B). The regulations will specify that a rail operator must have taken actions to secure a rail freight wagon against unauthorised access in order to raise a defence, where it would be unsafe to stop the train on discovering a clandestine in a rail freight wagon.

861 Paragraph 8 amends section 35, which sets out the procedure to be followed when issuing a penalty and disputing a penalty. These amendments extend the procedures contained in section 35 to penalties issued under section 31A and section 32. New subsection 35(12)(ca) provides for service of penalty notices to persons outside the UK via e-mail.

862 Paragraph 9 amends section 35A, which sets out the procedure to be followed when issuing a statutory appeal. These amendments extend the procedure in section 35A to penalties issued under section 31A and section 32.

863 Paragraph 10 amends section 36, setting out the power to detain vehicles in connection with penalties issued under section 31A and section 32. This paragraph also amends section 36(2A)(a) to provide that the vehicle may only be detained where the driver of the vehicle is retained pursuant to a contract (whether or not an employment contract) by the vehicle's owner or hirer. It also adds subsection 2AA to provide that in the case of a detached trailer, subsection 2A is to take effect as if a reference to a driver were a reference to an operator. This paragraph adds new subsections 6 and 7 confirming the position for the service of documents on persons outside the UK.

864 Paragraph 11 amends section 36A, which provides for detention of a vehicle where a person has failed to pay the penalty within the required timeframe. This paragraph amends section 36A(4)(b) to provide that the vehicle may only be detained under this section where the driver of the vehicle is retained pursuant to a contract (whether or not an employment contract) by the vehicle's owner or hirer. It also adds subsection 4A to provide that in the case of a detached trailer, subsection 4A is to take effect as if a reference to a driver a reference to an operator were. It also adds subsections 7 and 9 to mirror the provisions in section 36 and adds subsections 10 and 11 to confirm the position for the service of documents on persons outside of the UK.

865 Paragraph 12 amends section 43, setting out definitions for terms in Part 2 of the 1999 Act. This paragraph inserts a definition of "goods vehicle" as meaning a mechanically propelled vehicle designed or adapted solely or principally to be used for the carriage or haulage of goods and at the time in question, is being used for commercial purposes. Alternatively, any trailer, semitrailer or other such thing, which is designed or adapted to be towed by a vehicle specified in paragraph (a)(i). This paragraph also amends the definition of "transporter", specifying that a "vehicle" includes a "goods vehicle".

866 Paragraph 12 also inserts new subsections 43(1A) and 43(1B). These provide a definition of "container" and stipulate that references to the securing of a "goods vehicle" against unauthorised access in Part 2 of the 1999 Act also include the securing of any "container", which is being carried by a goods vehicle against unauthorised access.

Schedule 6: Working in United Kingdom Waters: consequential and related amendments

867 This schedule is supplementary to section 42 and makes consequential amendments to enforcement provisions. It makes a number of amendments to the Immigration Act 1971 and the Immigration, Asylum and Nationality Act 2006.

868 Paragraph 2 inserts a new subsection 1A after section 8(1) to make clear that those who are migrant workers do not benefit from the exemption in section 8(1) of the 1971 Act.

869 Paragraph 3 inserts new subsection 1ZA after section 11(1) to direct readers that they may also need to consider section 11(A) to understand the meanings of "arrival" and "entry".

870 Paragraph 4 amends section 28 (proceedings for offences) and inserts new subsection A1 before subsection (1) to ensure that illegal working offences committed in the UK's territorial seas can be prosecuted. These amendments will allow the proceedings related to those offences to be taken at any appropriate location in the UK, and not limited to the location where the offence took place.

871 Paragraph 5 amends section 28L by inserting new subsection 1A to provide that a structure, artificial island or installation in the United Kingdom's territorial seas would be counted as premises for the purposes of exercising enforcement powers.

872 Paragraphs 6-8 make amendments to section 28M, 28N and 28O to ensure that existing maritime enforcement powers available in connection with specified offences are available in respect of illegal working offences.

873 Paragraph 9 amends schedule 2 to clarify that immigration officers are able to examine individuals whom they have reason to believe have arrived for the purpose of working in UK waters for the purposes of checking they have permission to enter or remain, just as they can do now on the UK landmass.

874 Paragraph 9, sub-paragraph 3 confirms that the obligations on captains of ships or aircraft arriving in the UK to ensure the orderly conduct of examination of individuals by immigration officers apply equally to those carrying offshore workers arriving in UK waters.

875 Paragraph 9, sub-paragraphs 4-5 confirm that the powers to require information about those arriving to work in UK waters can be exercised in the same way as advance passenger information regulations are applied on the UK landmass.

876 Paragraph 10 amends schedule 4A to ensure maritime enforcement powers are available in respect of illegal working offences

877 Paragraph 11 amends section 21 of the Immigration, Asylum and Nationality Act 2006 to make employing migrants in the territorial seas without permission to work a prosecutable offence. These amendments will allow the proceedings related to those offences to be taken at any appropriate location in the UK, and not limited to the location where the offence took place

Schedule 7: Maritime Powers

878 Paragraph 1 provides for amendments to Part 3A of the Immigration Act 1971, which concerns maritime enforcement.

879 Paragraph 2 inserts new section 28LA. This provides that relevant officers may exercise the powers conferred to them by Part A1 (see paragraph 9 of this Schedule) in UK waters, foreign waters or international waters. They may exercise these powers in relation to a UK ship, a ship without nationality, or a ship registered to another country or territory. Such powers detailed in Part A1 are only to be exercised with the purpose of preventing, detecting, investigating, or prosecuting an offence.

880 Paragraphs 3 to 5 remove references to "immigration officer" and "enforcement officer" in sections 28M, 28N and 28O. This means that only constables may exercise the enforcement powers in these sections.

881 "An English and Welsh constable" refers to a member of a police force in England and Wales, a member of the British Transport Police Force, or a port constable (section 28Q of the 1971 Act).

882 "A Scottish constable" refers to a person who is "a chief constable, other senior officers, any special constable, any constable on temporary service outwith the Police Service, and any individual engaged on temporary service as a constable of the Police Service".

883 "A Northern Ireland constable" refers to a person who is "a member of the Police Service of Northern Ireland, a member of the Police Service of Northern Ireland Reserve, a person appointed as a special constable in Northern Ireland" (section 28Q of the 1971 Act).

884 Paragraph 6 also serves to remove references to "immigration officer" and "enforcement officer" from section 28P, which allows Immigration Officers to carry out hot pursuit of ships in UK waters.

885 Paragraph 7 inserts new section 28PA "Power to seize and dispose of ships etc.". The current disposal regime under the UK Borders Act 2007 and the Immigration (Disposal of Property) Regulations 2008 (S.I. 2008/786) allows for the disposal of seized property; however, in practice this requires the property to be held for 12 months before it can be disposed of unless the owner has been found guilty of a criminal offence; a court order has been obtained allowing the property to be disposed of earlier under certain conditions; or the property is perishable or its custody involves unreasonable expense or inconvenience.

886 The section allows an Immigration Officer to seize a ship (or any part of a ship), and property on that ship if an Immigration Officer has reasonable grounds to suspect that the ship has been used in the commission of a relevant offence in UK waters, or foreign waters, as long as the ship is encountered in UK waters and the Secretary of State gives her authority. Where the ship seized is a ship without nationality, it allows the Secretary of State to dispose of that ship and other property or retain it after 31 days from the day of seizure and disapplies Section 26 of the UK Borders Act 2007 and any regulations made under that Act in relation to such ships. This paragraph provides flexibility specifically for those small boats encountered in the exercise of these powers, as opposed to that currently available to any items seized under existing legislation.

887 There is provision for Immigration Officers to notify the home state or relevant territory if a foreign ship or ship registered under the law of a relevant territory is seized.

888 Paragraph 8 amends the interpretation of section 28Q to insert definitions of "foreign waters", "international waters", "Part 1A powers", "relevant offence" and "United Kingdom waters". The definition of "ship" is broadened to include any "other structure…constructed or used to carry persons, goods, plant or machinery by water", which is intended to include anything which may be used to cross the English Channel.

889 Paragraphs 9 and 10 insert new Part A1 into Schedule 4A setting out enforcement powers in relation to ships. Part A1 sets out new powers afforded to Immigration Officers and enforcement officers, collectively referred to as "relevant officers".

890 A1 sets out the powers exercisable by the named officers as a result of section 28LA and explains the meaning of "items subject to legal privilege" and "ship" in doing so. References to "items subject to legal privilege" mean communication between a legal adviser and their client, and any items enclosed with or referred to, in connection with the giving of legal advice or legal proceedings, which are protected from disclosure. References to "the ship" relate only to the ship in relation to which powers are exercised.

891 B1 confers powers to the relevant officer to stop, board, divert, detain, or require a ship to leave the UK territorial seas. The current maritime powers allow a ship to be required to be taken only to a port in the UK and detained there. Therefore this paragraph provides the capability to require a vessel to be taken to a place outside of the UK. Any tactics employed to divert a ship will only be used where it was safe to do so, in line with international law, including UNCLOS.

892 The powers conferred under the 1971 Act do not allow for a ship to be taken elsewhere, only to a port in England and Wales. This paragraph permits relevant officers to require the ship to be taken to a foreign port and be detained or to another place on water or land.

893 This paragraph also requires that the Secretary of State's permission is obtained before relevant officers require a ship to be taken to any place outside the UK.

894 This paragraph provides that relevant officers may require foreign ships to be taken back to the state they departed from or, at the state's request, to another state willing to receive it.

895 A notice is to be given in writing to the master of any ship which is detained under this paragraph. The ship will be detained until another notice is given to withdraw the first notice. A notice to require detention is not needed if the master of the ship cannot be reasonably identified.

896 A "home state" is defined as the state in which a foreign ship is registered or is otherwise entitled to fly the flag of.

897 C1 confers power to the relevant officers, where there are reasonable grounds to suspect that there is evidence on the ship relating to a relevant offence or to an offence that is connected to a relevant offence, to require persons on the ship to provide information or produce documents, books or records. Officers are permitted to search the ship, anyone on the ship and anything on the ship, including cargo, for evidence and in so doing open containers and make copies or photographs of anything they have required production of.

898 D1 confers a power on a relevant officer to seize any evidence found on the ship (excluding anything they have reasonable grounds to believe is subject to legal privilege), where they have reasonable grounds to believe that a relevant offence has been or is being committed on the ship. This paragraph also grants relevant officers a power to arrest anyone suspected of being guilty of an offence, without the need for a warrant. These powers may be exercised on the ship or elsewhere and on anything on the ship including cargo.

899 E1 confers a power on relevant officers to search anyone on the ship if they have reasonable grounds to believe they may be concealing an implement, or anything which the officer has reasonable grounds may endanger the safety of the ship. Any such items may be seized and retained by the relevant officer. Officers are not authorised to require a person to remove clothing in public, other than an outer coat, jacket or gloves. These powers may be exercised on the ship, on anyone on the ship or elsewhere.

900 F1 allows relevant officers to require anyone on board the ship to produce a nationality document. A "nationality document" refers to a document which may confirm a person's identity, nationality, citizenship, or where a person has travelled from or is travelling to. Where an officer has grounds to believe a nationality document is being concealed on a person, they may search the person only to the extent that it is reasonably required for the purpose of discovering any such document. In carrying out searches, officers are not authorised to require a person to remove clothing in public, other than an outer coat, jacket or gloves. Officers may retain nationality documents until the person whose document it is arrives in the UK, in cases where the ship is being redirected to the UK. These powers may be exercised on the ship or elsewhere.

901 G1 provides that relevant officers may be accompanied by assistants and may take equipment or materials to assist in the exercise of any of the powers under Part A1. Assistants may perform any of the officer's functions set out under Part A1 but only under a relevant officer's supervision.

902 H1 allows relevant officers to use reasonable force, if necessary, in the performance of functions under this Part of this Schedule.

903 I1 requires that relevant officers provide evidence of their authority when asked.

904 J1 provides that relevant officers, if purporting to exercise the powers conferred on them by this Part are not to be held responsible if legal action is taken against them. As long as the act was done in good faith and there were reasonable grounds for doing it.

905 K1 makes it an offence to obstruct a relevant officer while they are carrying out the powers conferred to them by this Part, in relation to a ship in England and Wales, England and Wales waters, international waters or foreign waters or to fail to comply with any requirements made by the officer while exercising their powers. It is also an offence to knowingly provide false information or fail to disclose information when information has been requested by the relevant officer. This paragraph also permits relevant officers to arrest anyone suspected of an offence under this paragraph. Such persons may be imprisoned for up to 51 weeks (or 6 months if the offence is committed before section 281(5) of the Criminal Justice Act 2003 comes into force), or fined, or both. These offences apply under the law of England and Wales.

906 L1 makes it an offence to obstruct a relevant officer while they are carrying out the powers conferred to them by this Part, in relation to a ship in Scotland, Scotland waters, international waters or foreign waters or to fail to comply with any requirements made by the officer while exercising their powers. It is also an offence to knowingly provide false information or fail to disclose information when information has been requested by the relevant officer. This paragraph also permits relevant officers to arrest anyone suspected of an offence under this paragraph. Such persons may be imprisoned for up to 12 months, or fined up to £5,000, or both. These offences apply under the law of Scotland.

907 M1 makes it an offence to obstruct a relevant officer while they are carrying out the powers conferred to them by this Part, in relation to a ship in Northern Ireland, Northern Ireland waters, international waters or foreign waters or to fail to comply with any requirements made by the officer while exercising their powers. It is also an offence to knowingly provide false information or fail to disclose information when information has been requested by the relevant officer. This paragraph also permits relevant officers to arrest anyone suspected of an offence under this paragraph. Such persons may be imprisoned for up to 6 months, or fined up to £5,000, or both. These offences apply under the law of Northern Ireland.

Schedule 8: Prisoners returning to the UK: modifications of the 2003 Act.

908 Schedule 7 contains the schedule to be inserted as Schedule 19B of the 2003 Act. It modifies the existing provisions that set out the treatment of those prisoners who return to the UK having been removed under the Early Removal Scheme.

909 Paragraphs 1 to 3 of the new Schedule modifies the date pursuant to which, after a return to custody, the Secretary of State would otherwise be required to refer certain persons to the Parole Board. Where, on removal from prison, a person was due for referral to the Parole Board within 28 days, on their return they would be treated as though they required a new referral within that timeframe to provide time for the Secretary of State to prepare and make the referral.

910 Paragraphs 4 to 6 of the new Schedule are concerned with certain persons who, before their removal from the UK, the Parole Board had directed release but who had not actually been released on licence. On the return to the UK of such persons, the direction of the Parole Board to release is to be treated as having no effect. Instead, the person is to be treated on their return to the UK as if they had been recalled to prison.

911 Paragraphs 7 to 9 of the new Schedule are concerned with certain persons whose case had been referred to the Parole Board before their removal from prison but whose reference had lapsed because they were removed from the UK prior to their case being disposed of by the Parole Board. For those persons, they will require a new reference to the Parole Board to be made within 28 days on their return to custody.

912 Paragraphs 10 to 12 of the new Schedule are concerned with persons whom, at the time of their removal from prison, were in prison following a recall to custody. On their return to custody, each such person should be treated as if they had been recalled to prison and where any direction of the Parole Board to release the person on license was made before their return to the UK, it is to be treated as having no effect.

Commencement

913 Section 83(3) provides for Part 7 (General) to come into force on Royal Assent.

914 Section 83(4) provides for the provisions listed in that subsection to come into force on Royal Assent for the purpose of making (and where required consulting on) regulations. This will ensure that regulations can be prepared in advance of the substantive provisions being commenced.

915 Section 83(5) provides for the provisions listed in that subsection to come into force two months after Royal Assent.:

- Section 10(2) to (4) (modifications of duty to give notice of decision to deprive a person of citizenship);
- Section 28 (claims certified as clearly unfounded: removal of right of appeal); paragraphs 5 to 19 of Schedule 3, and section 28 so far as it relates to those paragraphs (removal of asylum seeker to safe third country);
- Section 30(1), (2) and (4) to (6) (Refugee Convention: general);
- Section 31 to 36 and 38 (interpretation of Refugee Convention);
- Section 39 (interpretation of Part 2);
- Section 44 (power to search container).
- Section (1) to (4) (interpretation of Part 4);
- Section 70 and 71 (visa penalties)
- Section 75 (counter-terrorism questioning of detained entrants away from place of arrival).

916 The remaining provisions will be brought into force by means of commencement regulations made by the Secretary of State (Sections 87).

Related documents

917 The following documents are relevant to the Act and can be found on Parliament.uk:

- Memorandum for the Joint Committee on Human Rights.
- Delegated powers memorandum.

Annex A – Glossary

Affirmative resolution procedure	Affirmative procedure is a type of parliamentary procedure that applies to statutory instruments (SIs). An SI laid under the affirmative procedure must be actively approved by both Houses of Parliament. Certain SIs on financial matters are only considered by the Commons.
BN(O)	British National (Overseas): Someone who was a British dependent territories citizen by connection with Hong Kong was able to register as a British national (overseas) before 1 July 1997. British dependent territories citizens from Hong Kong who did not register as British nationals (overseas) and had no other nationality or citizenship on 30 June 1997 became British overseas citizens on 1 July 1997.
British national	A person who holds a type of British nationality, of which there are 6, including British citizenship and British overseas territories citizen.
BOTC	British overseas territories citizen: People who were British dependent territories citizens on 26 February 2002 became British Overseas Territories citizens (BOTC) under the British Overseas Territories Act 2002. Those who remained BOTCs on 21 May 2002 also became British citizens under that Act. People born before 1 January 1983 became British dependent territories citizens if they were a citizen of the United Kingdom and Colonies (CUKC) on 31 December 1982 and had connections with a British overseas territory because they, their parents or their grandparents were born, registered or naturalised in that British overseas territory. Women also became British dependent territories citizens if they were married to a man who became a British overseas territories citizen on 1 January 1983. People born in a British overseas territory on or after 1 January 1983, and at the time of their birth, where one of their parents is a British overseas territories citizen or legally settled in a British overseas territory. People who were adopted in an overseas territory by a British overseas territories citizen or were born outside the overseas territory to a parent who was able to pass on British overseas territories citizenship.
Conviction on indictment	A conviction resulting from an indictable offence, which may be committed to the crown court for trial before a jury.
Deportation	The process of removing a foreign national from the UK where they are subject to a deportation order.
Deportation Order	A deportation order requires the subject to leave the UK. It invalidates any leave to enter or remain in the UK and also prohibits the individual from re-entering the country for as long as it is in force.

ECAT	Council of Europe Convention on Action against Trafficking in Human Beings.
ECHR	The European Convention on Human Rights.
Enforced return	Where the Home Office makes arrangements to remove immigration offenders from the UK.
Entry clearance	A visa, entry certificate or other document which, in accordance with the immigration rules, is to be taken as evidence or the requisite evidence of a person's eligibility, though not a British citizen, for entry into the United Kingdom (but does not include a work permit).
ERS	Early Removal Scheme
ETA	Electronic Travel Authorisation
IO	Immigration Officer
Leave to remain/leave to enter	Permission, under the 1971 Act, to enter or remain in the UK. Such leave may be limited in terms of duration, or indefinite.
Merton assessment	Social work led age assessment named after the leading case of B v London Borough of Merton [2003] EWHC 1689 (Admin), which must adhere to procedures set out in that case and developed in subsequent caselaw. Merton assessments will normally include a number of interviews which explore the person's background and also consider information obtained from others who have contact with the individual.
Naturalisation	A process by which an adult can become a citizen following a period of residence.
Negative resolution procedure	Negative procedure is a type of parliamentary procedure that applies to statutory instruments (SIs). An SI laid under the negative procedure becomes law on the day the Minister signs it and automatically remains law unless a motion – or "prayer" – to reject it is agreed by either House within 40 sitting days.
Non-refoulement	The principle that no signatory to the Refugee Convention shall expel or return ("refouler") a refugee to a country where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion (Article 33(1) of the 1951 Refugee Convention).
NRM	National Referral Mechanism
Primary legislation	The general term used to describe the main laws passed by the legislative bodies of the UK, including the UK Parliament. For example an Act of Parliament.
PRN	Priority removal notice
Refugee	A person who, "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality

	and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it" (Article 1(A)(2) of the 1951 Refugee Convention).
1951 Refugee Convention	The Convention Relating to the Status of Refugees done at Geneva on 28th July 1951 and the Protocol to that Convention.
Secondary legislation	Secondary legislation is law created by ministers (or other bodies) under powers given to them by an Act of Parliament (primary legislation). Secondary legislation is also known as "delegated" or "subordinate" legislation and often takes the form of a statutory instrument.
Statutory Instruments	Documents drafted by a government department to make changes to the law. They are the most frequently used type of secondary legislation (law created by ministers or other bodies under powers given to them by an Act of Parliament.)
Summary conviction	A conviction in relation to a summary offence, which is tried in a Magistrate's or Sheriff's Court without a jury.
UNCLOS	UN Convention on the Law of the Sea

Annex B – Territorial extent and application

Provision	England Extends to E & W and applies to England?	Wales Extends to E & W and applies to Wales?	Scotland Extends and applies to Scotland?	Northern Ireland Extends and applies to Northern Ireland?
Part 1: Nationality				
Section 1 to 11	Yes	Yes	Yes	Yes
Part 2: Asylum				
Section 12 to 24	Yes	Yes	Yes	Yes
Section 25	Yes	Yes	No	No
Section 26 to 39	Yes	Yes	Yes	Yes
Part 3: Immigration Control				
Section 40 to 46	Yes	Yes	Yes	Yes
Section 47	Yes	Yes	No	No
Section 48	Yes	Yes	Yes	Yes
Part 4: Age Assessments				
Section 49 to 56	Yes	Yes	Yes	Yes
Section 57	Yes	Yes	No	No
Part 5: Modern Slavery				
Section 58 to 59	Yes	Yes	Yes	Yes
Section 60	Yes	Yes	No	No
Section 61 to 63	Yes	Yes	Yes	Yes
Section 64	Yes	Yes	No	No
Section 65	Yes	Yes	Yes	Yes
Section 66 to 68	Yes	Yes	No	No
Section 69	Yes	Yes	Yes	Yes
Part 6: Miscellaneous				
Section 70 to 82	Yes	Yes	Yes	Yes
Part 7: General				
Section 83 to 88	Yes	Yes	Yes	Yes

Annex C – Hansard References

919 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	6th July 2021	Vol. 698 Col. 783
Second Reading	19th & 20th July 2021	Vol. 699 Col. 705 Vol. 699 Col. 827
Public Bill Committee	21st September 2021 23rd September 2021 19th October 2021 21st October 2021 26th October 2021 28th October 2021 2nd November 2021 4th November 2021	Col. 1 Col. 23 Col. 73 Col. 85 Col. 135 Col. 171 Col. 217 Col. 247 Col. 303 Col. 343 Col. 415 Col. 447 Col. 503 Col. 541 Col. 595 Col. 647
Report	7th December 2021	Vol. 705 Col. 216
Third Reading	8th December 2021	Vol. 705 Col. 390
House of Lords		
Introduction	9th December 2021	Vol. 816
Second Reading	5th January 2022	Vol. 817 Col. 572
Grand Committee	27th January 2022 1st February 2022 3rd February 2022 8th February 2022 10th February 2022	Vol. 818 Col. 451 Vol. 818 Col. 488 Vol. 818 Col. 871 Vol. 818 Col. 1014 Vol. 818 Col. 1086 Vol. 818 Col. 1401 Vol. 818 Col. 1829 Vol. 818 Col. 1905

Report	28th February 2022	Vol. 819 Col. 551 Vol. 819 Col. 645
Third Reading	14th March 2022	Vol. 820 Col. 21
Commons Consideration of Lords Amendments	22nd March 2022	Vol. 711 Col. 179
Lords Consideration of Commons Reasons and Amendments	4th April 2022	Vol. 820 Col. 1852
Commons Consideration of Lords Amendments	20th April 2022	Vol. 712 Col. 235
Lords Consideration of Commons Reasons and Amendments	26th April 2022	Vol. 821 Col. 136
Consideration of Lords Message	27th April 2022	Vol. 712
Consideration of Commons Amendments	27th April 2022	Vol. 821 Col. 295
Royal Assent	28th April 2022	Vol. 821 Col. 383

Annex D – Progress of Bill Table

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

Section of the Act	As Introduced	As Amended in Public Bill Committee	As Brought from the Commons	As Amended on Report
Section 1	Clause 1	Clause 1	Clause 1	Clause 1
Section 2	Clause 2	Clause 2	Clause 2	Clause 2
Section 3				Clause 5
Section 4	Clause 3	Clause 3	Clause 3	Clause 3
Section 5	Clause 4	Clause 4	Clause 4	Clause 4
Section 6	Clause 5	Clause 5	Clause 5	Clause 6
Section 7	Clause 6	Clause 6	Clause 6	Clause 7
Section 8	Clause 7	Clause 7	Clause 7	Clause 8
Section 9	Clause 8	Clause 8	Clause 8	Clause 9
Section 10		Clause 9	Clause 9	
Section 11	Clause 9	Clause 10	Clause 10	Clause 10
Section 12	Clause 10	Clause 11	Clause 11	
Section 13	Clause 11	Clause 12	Clause 12	Clause 12
Section 14	Clause 12	Clause 13	Clause 13	Clause 14
Section 15	Clause 13	Clause 14	Clause 14	Clause 15
Section 16	Clause 14	Clause 15	Clause 15	Clause 16
Section 17	Clause 15	Clause 16	Clause 16	Clause 18
Section 18	Clause 16	Clause 17	Clause 17	Clause 19
Section 19	Clause 17	Clause 18	Clause 18	Clause 20
Section 20	Clause 18	Clause 19	Clause 19	Clause 21
Section 21	Clause 19	Clause 20	Clause 20	Clause 22
Section 22	Clause 20	Clause 21	Clause 21	Clause 23
Section 23	Clause 21	Clause 22	Clause 22	Clause 24
Section 24		Clause 23	Clause 23	Clause 25
Section 25	Clause 22	Clause 24	Clause 24	Clause 26
Section 26	Clause 23	Clause 25	Clause 25	Clause 27
Section 27	Clause 24	Clause 26	Clause 26	Clause 28
Section 28	Clause 25	Clause 27	Clause 27	Clause 29
Section 29	Clause 26	Clause 28	Clause 28	Clause 30
Section 30	Clause 27	Clause 29	Clause 29	Clause 31

Section 31	Clause 28	Clause 30	Clause 30	Clause 32
Section 32	Clause 29	Clause 31	Clause 31	Clause 33
Section 33	Clause 30	Clause 32	Clause 32	Clause 34
Section 34	Clause 31	Clause 33	Clause 33	Clause 35
Section 35	Clause 32	Clause 34	Clause 34	Clause 36
Section 36	Clause 33	Clause 35	Clause 35	Clause 37
Section 37	Clause 34	Clause 36	Clause 36	Clause 38
Section 38	Clause 35	Clause 37	Clause 37	Clause 39
Section 39	Clause 36	Clause 38	Clause 38	Clause 43
Section 40	Clause 37	Clause 39	Clause 39	Clause 44
Section 41	Clause 38	Clause 40	Clause 40	Clause 45
Section 42	Clause 39	Clause 41	Clause 41	Clause 46
Section 43	Clause 42	Clause 42	Clause 42	Clause 47
Section 44	Clause 40	Clause 43	Clause 43	Clause 48
Section 45	Clause 41	Clause 44	Clause 44	Clause 49
Section 46	Clause 43	Clause 45	Clause 45	Clause 50
Section 47	Clause 44	Clause 46	Clause 46	Clause 51
Section 48	Clause 45	Clause 47	Clause 47	Clause 52
Section 49		Clause 48	Clause 48	Clause 53
Section 50		Clause 49	Clause 49	Clause 54
Section 51		Clause 50	Clause 50	Clause 55
Section 52		Clause 51	Clause 51	Clause 56
Section 53		Clause 52	Clause 52	Clause 57
Section 54		Clause 53	Clause 53	Clause 58
Section 55		Clause 54	Clause 54	Clause 59
Section 56		Clause 55	Clause 55	Clause 60
Section 57		Clause 56	Clause 56	Clause 61
Section 58	Clause 46	Clause 57	Clause 57	Clause 63
Section 59	Clause 47	Clause 58	Clause 58	
Section 60	Clause 48	Clause 59	Clause 59	Clause 64
Section 61	Clause 49	Clause 60	Clause 60	Clause 65
Section 62	Clause 50	Clause 61	Clause 61	Clause 66
Section 63	Clause 51	Clause 62	Clause 62	Clause 67
Section 64	Clause 52	Clause 63	Clause 63	Clause 68
Section 65	Clause 53	Clause 64	Clause 64	
Section 66	Clause 54	Clause 65	Clause 65	Clause 71
Section 67	Clause 55	Clause 66	Clause 66	Clause 72

Section 68	Clause 56	Clause 67	Clause 67	Clause 73
Section 69	Clause 57	Clause 68	Clause 68	Clause 64
Section 70				Clause 75
Section 71				Clause 76
Section 72				Clause 77
Section 73		Clause 70	Clause 70	Clause 78
Section 74		Clause 70	Clause 70	Clause 79
Section 75	Clause 60	Clause 71	Clause 71	Clause 80
Section 76		Clause 72	Clause 72	Clause 81
Section 77	Clause 61	Clause 73	Clause 73	Clause 82
Section 78		Clause 74	Clause 74	Clause 83
Section 79			Clause 75	Clause 84
Section 80	Clause 62	Clause 75	Clause 76	Clause 85
Section 81	Clause 63	Clause 76	Clause 77	Clause 86
Section 82	Clause 65	Clause 77	Clause 78	Clause 87
Section 83	Clause 66	Clause 78	Clause 79	Clause 88
Section 84	Clause 67	Clause 79	Clause 80	Clause 89
Section 85	Clause 68	Clause 80	Clause 81	Clause 90
Section 86	Clause 69	Clause 81	Clause 82	Clause 91
Section 87	Clause 70	Clause 82	Clause 83	Clause 92
Section 88	Clause 71	Clause 83	Clause 84	Clause 93
Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1
Schedule 2				Schedule 2
Schedule 3	Schedule 2	Schedule 2	Schedule 2	Schedule 3
Schedule 4	Schedule 3	Schedule 3	Schedule 3	Schedule 4
Schedule 5	Schedule 4	Schedule 4	Schedule 4	Schedule 5
Schedule 6		Schedule 5	Schedule 5	Schedule 6
Schedule 7	Schedule 5	Schedule 6	Schedule 6	Schedule 7
Schedule 8		Schedule 7	Schedule 7	Schedule 8

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