



# Illegal Migration Act 2023

## 2023 CHAPTER 37

An Act to make provision for and in connection with the removal from the United Kingdom of persons who have entered or arrived in breach of immigration control; to make provision about detention for immigration purposes; to make provision about unaccompanied children; to make provision about victims of slavery or human trafficking; to make provision about leave to enter or remain in the United Kingdom; to make provision about citizenship; to make provision about the inadmissibility of certain protection and certain human rights claims relating to immigration; to make provision about the maximum number of persons entering the United Kingdom annually using safe and legal routes; to make further provision about the credibility of claimants making asylum and human rights claims; and for connected purposes. [20th July 2023]

BE IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PROSPECTIVE

### *Introduction*

#### **1 Introduction**

- (1) The purpose of this Act is to prevent and deter unlawful migration, and in particular migration by unsafe and illegal routes, by requiring the removal from the United Kingdom of certain persons who enter or arrive in the United Kingdom in breach of immigration control.
- (2) To advance that purpose, this Act—
  - (a) places a duty on the Secretary of State to make arrangements for the removal of certain persons who enter or arrive in the United Kingdom in breach of

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- immigration control as soon as is reasonably practicable after their entry or arrival, subject only to the exceptions specified by or under this Act;
- (b) provides for protection claims and certain human rights claims made by persons who meet the conditions for removal under this Act to be inadmissible;
  - (c) provides for the detention of persons who are subject to removal under this Act;
  - (d) provides for protections and entitlements to assistance and support which are available to victims of modern slavery or human trafficking not to apply to persons who are subject to removal under this Act;
  - (e) prevents persons who meet the conditions for removal under this Act from being given leave to enter or remain in the United Kingdom;
  - (f) prevents persons who meet the conditions for removal under this Act from settling in the United Kingdom or obtaining citizenship;
  - (g) provides a procedure for persons who are subject to removal under this Act to challenge their removal by means of a suspensive claim (as defined in section 38);
  - (h) has the effect that all other legal challenges to the removal of persons under this Act do not suspend the duty to make arrangements for their removal.
- (3) Accordingly, and so far as it is possible to do so, provision made by or by virtue of this Act must be read and given effect so as to achieve the purpose mentioned in subsection (1).
- (4) In addition, this Act makes provision—
- (a) about the period for which persons may be detained in immigration detention;
  - (b) for protections that apply to victims of modern slavery or human trafficking not to apply to persons who are a threat to public order or who have claimed to be victims in bad faith unless compelling circumstances apply;
  - (c) for persons who have been sentenced to a period of imprisonment for an offence or who are liable to deportation to be deemed to be a threat to public order for the purposes of the disapplication of those protections;
  - (d) for asylum claims and human rights claims made by nationals of certain safe States to be inadmissible;
  - (e) for the maximum number of persons who may enter the United Kingdom annually using safe and legal routes to be specified in regulations which are subject to approval by Parliament;
  - (f) for certain kinds of behaviour relating to an identity document or electronic information by a person who makes an asylum claim or a human rights claim to be taken into account as damaging the claimant's credibility.
- (5) Section 3 of the Human Rights Act 1998 (interpretation of legislation) does not apply in relation to provision made by or by virtue of this Act.

#### Commencement Information

- II** S. 1 not in force at Royal Assent, see s. 68(1)

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### *Duty to make arrangements for removal*

PROSPECTIVE

## **2 Duty to make arrangements for removal**

- (1) The Secretary of State must make arrangements for the removal of a person from the United Kingdom if the person meets the following four conditions.
- (2) The first condition is that—
  - (a) the person requires leave to enter the United Kingdom, but has entered the United Kingdom—
    - (i) without leave to enter, or
    - (ii) with leave to enter that was obtained by means which included deception by any person,
  - (b) the person has entered the United Kingdom in breach of a deportation order,
  - (c) the person has entered or arrived in the United Kingdom at a time when they were an excluded person within the meaning of section 8B of the Immigration Act 1971 (persons excluded from the United Kingdom under certain instruments) and—
    - (i) subsection (5A) of that section (exceptions to section 8B) does not apply to the person, and
    - (ii) an exception created under, or direction given by virtue of, section 15(4) of the Sanctions and Anti-Money Laundering Act 2018 (power to create exceptions to section 8B) does not apply to the person,
  - (d) the person requires entry clearance under the immigration rules, but has arrived in the United Kingdom without a valid entry clearance, or
  - (e) the person is required under immigration rules not to travel to the United Kingdom without an electronic travel authorisation that is valid for that person's journey to the United Kingdom, but has arrived in the United Kingdom without such an electronic travel authorisation.
- (3) The second condition is that the person entered or arrived in the United Kingdom as mentioned in subsection (2) on or after the day on which this Act is passed.
- (4) The third condition is that, in entering or arriving as mentioned in subsection (2), the person did not come directly to the United Kingdom from a country in which the person's life and liberty were threatened by reason of their race, religion, nationality, membership of a particular social group or political opinion.
- (5) For the purposes of subsection (4) a person is not to be taken to have come directly to the United Kingdom from a country in which their life and liberty were threatened as mentioned in that subsection if, in coming from such a country, they passed through or stopped in another country outside the United Kingdom where their life and liberty were not so threatened.
- (6) The fourth condition is that the person requires leave to enter or remain in the United Kingdom but does not have it.

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- (7) Any limited leave to enter or remain given under the immigration rules to a person within section 4(1) (unaccompanied children) is to be disregarded in determining whether the person meets the condition in subsection (6).
- (8) In this section—  
“country” includes territory;  
“deportation order” means an order under section 5 of the Immigration Act 1971;  
“electronic travel authorisation” means an authorisation in electronic form to travel to the United Kingdom;  
“entry clearance” has the meaning given by section 33(1) of the Immigration Act 1971.
- (9) In this Act “immigration rules” means rules under section 3(2) of the Immigration Act 1971.
- (10) Section 11(1) of the Immigration Act 1971 (person deemed not to enter the United Kingdom before disembarkation, while in controlled area or while under immigration control) applies for the purposes of this section as it applies for the purposes of that Act.
- (11) The only circumstances in which the duty in subsection (1) does not apply to a person who meets the four conditions in this section are where—  
(a) section 4(1) (unaccompanied children) applies to the person,  
(b) regulations under section 4(7) (other exceptions) apply to the person,  
(c) a Minister of the Crown has made a determination under section 55(2) (interim measures of the European Court of Human Rights) in relation to the person, or  
(d) section 61 or 62 of the Nationality and Borders Act 2022 (victims of slavery and human trafficking) apply in relation to the person, so far as they have effect by virtue of section 22 of this Act (modern slavery provisions relating to removal and leave).

#### Commencement Information

**I2** S. 2 not in force at Royal Assent, see s. 68(1)

### 3 Amendment of date in section 2(3) etc

- (1) The Secretary of State may by regulations amend the date which is for the time being specified in—  
(a) section 2(3) (duty to remove: date of entry or arrival in the United Kingdom);  
(b) section 5(7)(a) (application to claims made on or after passing of this Act);  
(c) section 6(12)(a) or (14)(a) (application to claims made on or after passing of this Act).
- (2) Regulations under subsection (1) may make consequential amendments to this Act or any other enactment.
- (3) Provision made by virtue of subsection (2) may, in particular, amend this Act or any other enactment to modify the operation of a provision which would otherwise apply

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to a person who meets, or has ever met, the condition in section 2(3) (including to enable that provision to operate as if an amendment to section 2(3) had not been made).

- (4) An amendment made by virtue of subsection (1) may have the effect that a provision mentioned in that subsection specifies—
  - (a) a particular calendar date, or
  - (b) a date which is determined by the occurrence of a particular event (for example the coming into force of a provision of this Act, generally or for a particular purpose).
- (5) But such an amendment may not have the effect that the provision specifies a date which is earlier than the date specified before the amendment was made.

#### Commencement Information

- I3** S. 3 in force at Royal Assent for specified purposes, see s. 68(4)(a)

## 4 Unaccompanied children and power to provide for exceptions

- (1) The duty in section 2(1) does not require the Secretary of State to make arrangements for the removal of a person from the United Kingdom at a time when the person is an unaccompanied child.
- (2) The Secretary of State may make arrangements for the removal of a person from the United Kingdom at a time when the person is an unaccompanied child.
- (3) The power in subsection (2) may be exercised only—
  - (a) where the person is to be removed for the purposes of reunion with the person’s parent;
  - (b) where the person is to be removed to a country listed in section 80AA(1) of the Nationality, Immigration and Asylum Act 2002 (safe States for the purposes of section 80A of that Act) which is—
    - (i) a country of which the person is a national, or
    - (ii) a country in which the person has obtained a passport or other document of identity;
  - (c) where the person has not made a protection claim or a human rights claim and the person is to be removed to—
    - (i) a country of which the person is a national,
    - (ii) a country or territory in which the person has obtained a passport or other document of identity, or
    - (iii) a country or territory in which the person embarked for the United Kingdom;
  - (d) in such other circumstances as may be specified in regulations made by the Secretary of State.
- (4) Regulations under subsection (3)(d) may confer a discretion on the Secretary of State.
- (5) For the purposes of this Act (other than sections 16 and 17) a person (“C”) is an “unaccompanied child” if—
  - (a) C meets the four conditions in section 2,
  - (b) C is under the age of 18, and

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- (c) at the relevant time no individual (whether or not a parent of C) who was aged 18 or over had care of C.
- (6) In subsection (5) “the relevant time” means the time of C’s entry or arrival in the United Kingdom by virtue of which the duty in section 2(1) would apply in relation to C apart from this section.
- (7) The Secretary of State may by regulations make provision for other exceptions from the duty in section 2(1).
- (8) Regulations under subsection (7) may make provision—
  - (a) for this Act or any other enactment to have effect with modifications, in relation to a person to whom an exception applies, in consequence of the application of the exception to that person;
  - (b) for an exception, or for any provision made by virtue of paragraph (a), to be treated as having had effect from a time before the coming into force of the regulations.
- (9) Regulations made by virtue of subsection (8)(a) may, in particular, disapply any provision of this Act or any other enactment in relation to a person to whom an exception applies.
- (10) In subsections (8) and (9) “enactment” includes—
  - (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;
  - (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;
  - (c) an enactment contained in, or in an instrument made under, a Measure or Act of Senedd Cymru;
  - (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation.
- (11) A statutory instrument containing regulations under subsection (7) must be laid before Parliament after being made.
- (12) Regulations contained in a statutory instrument laid before Parliament under subsection (11) cease to have effect at the end of the period of 28 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament.
- (13) In calculating the period of 28 days, no account is to be taken of any whole days that fall within a period during which—
  - (a) Parliament is dissolved or prorogued, or
  - (b) either House of Parliament is adjourned for more than four days.
- (14) If regulations cease to have effect as a result of subsection (12) that does not—
  - (a) affect the validity of anything previously done under the regulations, or
  - (b) prevent the making of new regulations.
- (15) In this Act—
  - “human rights claim” has the meaning given by section 113(1) of the Nationality, Immigration and Asylum Act 2002;
  - “national” includes citizen;

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“protection claim” has the meaning given by section 82(2) of the Nationality, Immigration and Asylum Act 2002.

#### Commencement Information

**I4** S. 4 in force at Royal Assent for specified purposes, see [s. 68\(4\)\(b\)](#)

PROSPECTIVE

## 5 Disregard of certain claims, applications etc

- (1) The duty in section 2(1) or the power in section 4(2) applies in relation to a person who meets the four conditions in section 2 regardless of whether—
  - (a) the person makes a protection claim,
  - (b) the person makes a human rights claim,
  - (c) the person claims to be a victim of slavery or a victim of human trafficking as defined by regulations made by the Secretary of State under section 69 of the Nationality and Borders Act 2022, or
  - (d) the person makes an application for judicial review in relation to their removal from the United Kingdom under this Act.
- (2) If a person who meets the four conditions in section 2 makes a protection claim, or a human rights claim within subsection (6), the Secretary of State must declare the claim inadmissible (and see section 41(4) in relation to human rights claims not within subsection (6)).
- (3) A protection claim or a human rights claim declared inadmissible under subsection (2) cannot be considered under the immigration rules.
- (4) A declaration under subsection (2) that a protection claim or a human rights claim is inadmissible is not a decision to refuse the claim and, accordingly, no right of appeal under section 82(1)(a) or (b) of the Nationality, Immigration and Asylum Act 2002 (appeal against refusal of protection claim or human rights claim) arises.
- (5) A human rights claim is within this subsection if it is a claim that removal of a person from the United Kingdom to—
  - (a) a country of which the person is a national, or
  - (b) a country or territory in which the person has obtained a passport or other document of identity,would be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Convention).
- (6) In this Act “application for judicial review” means—
  - (a) in England and Wales and Northern Ireland, an application to the High Court for judicial review,
  - (b) in Scotland, an application to the supervisory jurisdiction of the Court of Session, and
  - (c) any other application to a court or tribunal which is required by an enactment to be determined by applying the principles that would be applied by a court on an application within paragraph (a) or (b).

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- (7) In this section, references to a claim include a claim—
- (a) that was made on or after the day on which this Act is passed, and
  - (b) that has not been decided by the Secretary of State on the date on which this section comes into force.

#### Commencement Information

**I5** S. 5 not in force at Royal Assent, see [s. 68\(1\)](#)

PROSPECTIVE

## 6 Removal for the purposes of section 2 or 4

- (1) Where the Secretary of State is required by section 2(1) to make arrangements for the removal of a person from the United Kingdom, the Secretary of State must ensure that the arrangements are made—
- (a) as soon as is reasonably practicable after the person’s entry or arrival in the United Kingdom, or
  - (b) where the person has ceased to be an unaccompanied child, as soon as is reasonably practicable after the person has ceased to be an unaccompanied child.
- (2) The following provisions of this section apply where—
- (a) the Secretary of State is required by section 2(1) to make arrangements for the removal of a person (“P”) from the United Kingdom, or
  - (b) the Secretary of State may make arrangements for the removal of a person (“P”) from the United Kingdom under section 4(2).
- (3) Subject to section 4(3)(c) (removal of certain unaccompanied children) and to the following provisions of this section, P may be removed to—
- (a) a country of which P is a national,
  - (b) a country or territory in which P has obtained a passport or other document of identity,
  - (c) a country or territory in which P embarked for the United Kingdom, or
  - (d) a country or territory to which there is reason to believe P will be admitted.
- (4) If P is a national of a country listed in section 80AA(1) of the Nationality, Immigration and Asylum Act 2002 (inadmissibility of certain asylum and human rights claims: safe States), or has obtained a passport or other document of identity in such a country, P may not be removed to a country or territory within subsection (3)(a) or (b) if—
- (a) P makes a protection claim or a human rights claim, and
  - (b) the Secretary of State considers that there are exceptional circumstances which prevent P’s removal to that country or territory.
- (5) For the purposes of subsection (4), exceptional circumstances include—
- (a) in a case where P is a national of a country that is a signatory to the Human Rights Convention, or has obtained a passport or other document of identity in such a country, where that country is derogating from any of its obligations



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- under the Human Rights Convention in accordance with Article 15 of the Convention;
- (b) in a case where P is a national of a member State, or has obtained a passport or other document of identity in a member State, where the member State is the subject of a proposal initiated in accordance with the procedure referred to in Article 7(1) of the Treaty on European Union and—
- (i) the proposal has yet to be determined by the Council of the European Union or (as the case may be) the European Council,
  - (ii) the Council of the European Union has determined, in accordance with Article 7(1), that there is a clear risk of a serious breach by the member State of the values referred to in Article 2 of the Treaty, or
  - (iii) the European Council has determined, in accordance with Article 7(2), the existence of a serious and persistent breach by the member State of the values referred to in Article 2 of the Treaty.
- (6) Subsection (7) applies if—
- (a) P is a national of a country listed in section 80AA(1) of the Nationality, Immigration and Asylum Act 2002, or has obtained a passport or other document of identity in such a country, and
  - (b) P makes a protection claim or a human rights claim.
- (7) P may be removed to a country or territory within subsection (3)(c) or (d) only if it is listed in Schedule 1.
- (8) Subsection (9) applies if—
- (a) P is not a national of a country listed in section 80AA(1) of the Nationality, Immigration and Asylum Act 2002, and has not obtained a passport or other document of identity in such a country, and
  - (b) P makes a protection claim or a human rights claim.
- (9) P may not be removed to a country or territory within subsection (3)(a) or (b); and P may be removed to a country or territory within subsection (3)(c) or (d) only if it is listed in Schedule 1.
- (10) Where a country or territory is listed in Schedule 1 in respect of a description of person, subsection (7) or (9) has effect in relation to P and that country or territory only if the Secretary of State is satisfied that P is within that description.
- (11) Where a part of a country or territory is listed in Schedule 1, references to a country or territory in subsections (7), (9) and (10) have effect in relation to that country or territory as if they were references to that part.
- (12) In this section references to a claim include a claim—
- (a) that was made on or after the day on which this Act is passed, and
  - (b) that has not been decided by the Secretary of State on the date on which this section comes into force.
- (13) In this Act “the Human Rights Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4 November 1950, as it has effect for the time being in relation to the United Kingdom.
- (14) Where the Secretary of State exercises the power in subsection (2) of section 80AA of the Nationality, Immigration and Asylum Act 2002 to amend the list of States in

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subsection (1) of that section so as to add a State, subsections (4), (6) and (7) apply to a person who is a national of that State, or who has obtained a passport or other document of identity in that State, if—

- (a) they have made a protection claim or a human rights claim on or after the day on which this Act is passed, and
- (b) the claim has not been decided by the Secretary of State on the date on which the amendment comes into force.

#### Commencement Information

**I6** S. 6 not in force at Royal Assent, see [s. 68\(1\)](#)

## 7 Powers to amend Schedule 1

- (1) The Secretary of State may by regulations amend Schedule 1 to add a country or territory, or part of a country or territory, if satisfied that—
  - (a) there is in general in that country or territory, or part, no serious risk of persecution, and
  - (b) removal of persons to that country or territory, or part, pursuant to the duty in section 2(1) will not in general contravene the United Kingdom’s obligations under the Human Rights Convention.
- (2) If the Secretary of State is satisfied that the statements in subsection (1)(a) and (b) are true of a country or territory, or part of a country or territory, in relation to a description of person, regulations under subsection (1) may add the country or territory or part to Schedule 1 in respect of that description of person.
- (3) A description for the purposes of subsection (2) may refer to—
  - (a) sex,
  - (b) language,
  - (c) race,
  - (d) religion,
  - (e) nationality,
  - (f) membership of a social or other group,
  - (g) political opinion, or
  - (h) any other attribute or circumstance that the Secretary of State thinks appropriate.
- (4) In deciding whether the statements in subsection (1)(a) and (b) are true of a country or territory, or part of a country or territory, the Secretary of State—
  - (a) must have regard to all the circumstances of the country or territory, or part (including its laws and how they are applied), and
  - (b) must have regard to information from any appropriate source (including member States and international organisations).
- (5) The Secretary of State may by regulations amend Schedule 1 to omit a country or territory, or part of a country or territory; and the omission may—
  - (a) be general, or
  - (b) have the effect that the country or territory, or part, remains listed in Schedule 1 in respect of a description of person.

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### Commencement Information

**I7** S. 7 in force at Royal Assent for specified purposes, see [s. 68\(4\)\(c\)](#)

PROSPECTIVE

## 8 Further provisions about removal

- (1) [This section](#) applies where—
  - (a) the Secretary of State is required by section [2\(1\)](#) to make arrangements for the removal of a person (“P”) from the United Kingdom, or
  - (b) the Secretary of State may make arrangements for the removal of a person (“P”) from the United Kingdom under section [4\(2\)](#).
- (2) P may not be removed from the United Kingdom unless—
  - (a) the Secretary of State or an immigration officer has given a notice in writing to P stating—
    - (i) that P is to be removed, and
    - (ii) the country or territory to which P is to be removed, and
  - (b) the condition in subsection [\(3\)](#) is met.
- (3) The condition in [this subsection](#) is that—
  - (a) the claim period for any suspensive claim that may be made by P has expired, or
  - (b) P has notified the Secretary of State (orally or in writing) that P does not intend to make a suspensive claim.
- (4) The giving of a notification by P under subsection [\(3\)\(b\)](#) does not affect any ability of P to make a suspensive claim before P is removed from the United Kingdom under this Act (and accordingly if P makes such a claim, sections [38](#) to [53](#) apply in relation to the claim).
- (5) But where P has been removed from the United Kingdom under this Act following such a notification, P may not make a suspensive claim (regardless of whether the claim period has expired).
- (6) A notice under subsection [\(2\)\(a\)](#) must—
  - (a) contain details of any right P has to make a suspensive claim under this Act, and
  - (b) set out the claim period for any such suspensive claim.
- (7) In [this section](#)—

“claim period”—

  - (a) in relation to a suspensive claim within section [38\(2\)\(a\)](#) (serious harm suspensive claims), has the meaning given by section [42\(7\)](#), and
  - (b) in relation to a suspensive claim within section [38\(2\)\(b\)](#) (removal conditions suspensive claims), has the meaning given by section [43\(7\)](#);  
“suspensive claim” has the meaning given by section [38](#) (suspensive claims: interpretation).

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- (8) Subject to section 6 (removal for the purposes of section 2 or 4), the Secretary of State or an immigration officer may give directions to the owners or agents of a ship, aircraft, train or vehicle requiring them to make arrangements for P’s removal from the United Kingdom in any ship, aircraft, train or vehicle specified or indicated in the direction to a country or territory so specified.
- (9) Where the Secretary of State or an immigration officer may give directions for P’s removal in accordance with subsection (8) the Secretary of State or an immigration officer may instead give directions for P’s removal in accordance with arrangements to be made by the Secretary of State or an immigration officer to any country or territory to which P could be removed under subsection (8).
- (10) The costs of complying with any directions given under this section must be defrayed by the Secretary of State.
- (11) P may be placed, under the authority of an immigration officer or the Secretary of State, on board any ship, aircraft, train or vehicle in which P is to be removed in accordance with directions under this section.
- (12) Where subsection (11) applies, the captain of the ship or aircraft, the train manager of the train or the driver of the vehicle—
- (a) must, if so required by an immigration officer or the Secretary of State, prevent P from disembarking in the United Kingdom or before the directions for P’s removal have been fulfilled, and
  - (b) may for that purpose detain P in custody on board the ship, aircraft, train or vehicle.
- (13) A person is deemed to be in legal custody at any time when the person is detained under subsection (12)(b).
- (14) Paragraph 17A of Schedule 2 to the Immigration Act 1971 (period of detention) applies in relation to detention under subsection (12)(b) on board a ship, aircraft, train or vehicle as it applies in relation to detention on board a ship or aircraft under paragraph 16(4) of that Schedule.
- (15) In this section a reference to an “owner” of a ship, aircraft, train or vehicle includes a reference to any person who jointly owns it.
- (16) Where—
- (a) P is to be removed to a country or territory, and
  - (b) only part of that country or territory is listed in Schedule 1,
- references in this section to the country or territory are to that part.
- (17) In this Act “immigration officer” means a person appointed by the Secretary of State as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971.

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#### Commencement Information

**18** S. 8 not in force at Royal Assent, see s. 68(1)

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PROSPECTIVE

## 9 Support where asylum claim inadmissible

- (1) The Immigration and Asylum Act 1999 is amended in accordance with subsections (2) and (3).
- (2) If paragraph 1 of Schedule 11 to the Immigration Act 2016, which repeals section 4 of the Immigration and Asylum Act 1999, is not yet in force on the day this section comes into force, in subsection (2)(b) of that section, after “the Nationality, Immigration and Asylum Act 2002” insert “and section 5 of the Illegal Migration Act 2023”.
- (3) In section 94 (interpretation of Part 6: support for asylum-seekers etc)—
  - (a) in subsection (4A), after “the Nationality, Immigration and Asylum Act 2002” insert “or section 5 of the Illegal Migration Act 2023”,
  - (b) in subsection (4B), for “of that Act” substitute “of the Nationality, Immigration and Asylum Act 2002”, and
  - (c) in subsection (4C), for “of that Act” substitute “of the Nationality, Immigration and Asylum Act 2002 or under section 5 of the Illegal Migration Act 2023”.
- (4) The Nationality, Immigration and Asylum Act 2002 is amended as follows.
- (5) In section 18(1ZA) (asylum seeker: definition), after “section 80A or 80B” insert “of this Act or section 5 of the Illegal Migration Act 2023”.
- (6) In section 21 (sections 17 to 20: supplementary), in subsection (3)(a), after “section 80A or 80B” insert “of this Act or section 5 of the Illegal Migration Act 2023”.
- (7) In paragraph 17(2A) of Schedule 3 (withholding and withdrawal of support: interpretation), after “section 80A or 80B” insert “of this Act or section 5 of the Illegal Migration Act 2023”.

### Commencement Information

- 19** S. 9 not in force at Royal Assent, see [s. 68\(1\)](#)

PROSPECTIVE

## 10 Other consequential amendments relating to removal

- (1) The Immigration Act 1971 is amended in accordance with subsections (2) to (4).
- (2) In section 24(1) (illegal entry and similar offences), after paragraph (f) insert—
  - “(fa) if the person disembarks in the United Kingdom from a ship, aircraft, train or vehicle after being placed on board under section 8(11) of the Illegal Migration Act 2023 with a view to the person’s removal from the United Kingdom;”.
- (3) In section 27(1) (offences by persons connected with ships or aircraft)—
  - (a) after paragraph (a) insert—

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- “(aa) if, being the captain of a ship or aircraft, the train manager of a train or the driver of a vehicle, the person knowingly permits a person to disembark in the United Kingdom when required under section 8(12)(a) of the Illegal Migration Act 2023 to prevent it;”, and
- (b) after paragraph (b) insert—
- “(ba) if, as owner or agent of a ship, aircraft, train or vehicle, the person fails, without reasonable excuse, to make arrangements for or in connection with the removal of a person from the United Kingdom when required to do so by directions given under section 8(8) or (9) of the Illegal Migration Act 2023;”.
- (4) In Schedule 2 (administrative provisions as to control on entry etc), after paragraph 11 insert—
- “11A Paragraphs 8 to 10 do not apply to a person if—
- (a) the Secretary of State is required by section 2(1) of the Illegal Migration Act 2023 to make arrangements for the removal of the person from the United Kingdom, or
- (b) the Secretary of State may make arrangements for the removal of the person from the United Kingdom under section 4(2) of that Act,
- but see section 8 of that Act.”
- (5) The Immigration and Asylum Act 1999 is amended in accordance with subsections (6) and (7).
- (6) In section 10 (removal of persons unlawfully in the United Kingdom), after subsection (11) insert—
- “(12) This section does not apply to a person if—
- (a) the Secretary of State is required by section 2(1) of the Illegal Migration Act 2023 to make arrangements for the removal of the person from the United Kingdom, or
- (b) the Secretary of State may make arrangements for the removal of the person from the United Kingdom under section 4(2) of that Act,
- but see section 8 of that Act.”
- (7) In section 156(1)(b) (arrangements for the provision of escorts and custody), for “or this Act” substitute “, this Act or the Illegal Migration Act 2023”.
- (8) In section 80A of the Nationality, Immigration and Asylum Act 2002 (claims by nationals of listed safe States), after subsection (5) insert—
- “(5A) This section does not apply to a person who meets the four conditions in section 2 of the Illegal Migration Act 2023 (duty to make arrangements for removal).”
- (9) In Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (removal of asylum seeker to safe country)—
- (a) in paragraph 3, after sub-paragraph (2) insert—

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- “(3) This paragraph does not apply for the purposes of determining whether a person who has made an asylum claim or a human rights claim may be removed from the United Kingdom to a State of which the person is not a national or citizen if—
- (a) the Secretary of State is required by section 2(1) of the Illegal Migration Act 2023 to make arrangements for the removal of the person from the United Kingdom, or
  - (b) the Secretary of State may make arrangements for the removal of the person from the United Kingdom under section 4(2) of that Act,
- but see section 6 of that Act.”;
- (b) in paragraph 8, after sub-paragraph (2) insert—
- “(3) This paragraph does not apply for the purposes of determining whether a person who has made an asylum claim may be removed from the United Kingdom to a State of which the person is not a national or citizen if—
- (a) the Secretary of State is required by section 2(1) of the Illegal Migration Act 2023 to make arrangements for the removal of the person from the United Kingdom, or
  - (b) the Secretary of State may make arrangements for the removal of the person from the United Kingdom under section 4(2) of that Act,
- but see section 6 of that Act.”;
- (c) in paragraph 13, after sub-paragraph (2) insert—
- “(3) This paragraph does not apply for the purposes of determining whether a person who has made an asylum claim may be removed from the United Kingdom to a State of which the person is not a national or citizen if—
- (a) the Secretary of State is required by section 2(1) of the Illegal Migration Act 2023 to make arrangements for the removal of the person from the United Kingdom, or
  - (b) the Secretary of State may make arrangements for the removal of the person from the United Kingdom under section 4(2) of that Act,
- but see section 6 of that Act.”

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**Commencement Information**

**I10** S. 10 not in force at Royal Assent, see [s. 68\(1\)](#)

*Detention, bail etc*

## 11 Powers of detention

- (1) Schedule 2 to the Immigration Act 1971 (administrative provisions as to control on entry etc) is amended in accordance with subsections (2) and (3).

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(2) After paragraph 16(2B), insert—

“(2C) A person may be detained under the authority of an immigration officer—

- (a) if the immigration officer suspects that the person meets the four conditions in section 2 of the Illegal Migration Act 2023 (conditions relating to removal from the United Kingdom), pending a decision as to whether the conditions are met;
- (b) if the immigration officer suspects that the Secretary of State has a duty to make arrangements for the removal of the person from the United Kingdom under that section, pending a decision as to whether the duty applies;
- (c) if the Secretary of State has such a duty, pending the person’s removal from the United Kingdom in accordance with that section;
- (d) if the person meets those four conditions but the Secretary of State does not have such a duty by virtue of subsection (1) of section 4 of that Act—
  - (i) pending a decision to give limited leave to enter or remain under the immigration rules to the person for the purposes of that subsection,
  - (ii) pending a decision to give leave under section 8AA of the Immigration Act 1971 (discretionary leave for persons generally ineligible for leave etc),
  - (iii) pending a decision to give leave under section 65(2) of the Nationality and Borders Act 2022 (leave to remain for victims of slavery or human trafficking), or
  - (iv) pending a decision to remove the person under subsection (2) of section 4 of the Illegal Migration Act 2023 (power to remove unaccompanied children), and pending their removal in accordance with that subsection.

(2D) But if the immigration officer is satisfied that a woman being detained under sub-paragraph (2C) is pregnant, then the woman may not be detained under that sub-paragraph for a period of—

- (a) more than 72 hours from the relevant time, or
- (b) more than seven days from the relevant time, in a case where the longer period of detention is authorised personally by a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975).

(2E) A woman who has been released as a result of sub-paragraph (2D) may be detained again under sub-paragraph (2C) in accordance with sub-paragraph (2D).

(2F) Where a woman being detained under sub-paragraph (2C) has previously been detained under section 62(2A) of the Nationality, Immigration and Asylum Act 2002 and has not been released in between, the definition of “the relevant time” in sub-paragraph (2G) is to be read as if paragraph (b) referred to the time when the woman was first detained under sub-paragraph (2C) or section 62(2A) of that Act.

(2G) In sub-paragraphs (2D) to (2F)—

“the relevant time” means the later of—



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- (a) the time at which the immigration officer is first satisfied that the woman is pregnant, and
  - (b) the time at which the detention under sub-paragraph (2C) begins;
- “woman” means a female of any age.
- (2H) The powers in sub-paragraph (2C) may be exercised in respect of an unaccompanied child only in the circumstances specified in regulations made by the Secretary of State.
- (2I) The Secretary of State may, by regulations, specify time limits that apply in relation to the detention of an unaccompanied child under sub-paragraph (2C)(d)(iv) (detention of unaccompanied child in relation to removal).
- (2J) Regulations under sub-paragraph (2H) may confer a discretion on the Secretary of State or an immigration officer.
- (2K) Regulations under sub-paragraph (2H) or (2I)—
  - (a) may make different provision for different purposes;
  - (b) may make consequential, supplementary, incidental, transitional or saving provision;
  - (c) must be made by statutory instrument.
- (2L) A person who may be detained under sub-paragraph (2C) may no longer be detained under sub-paragraph (1), (1A), (1B), (2), (3) or (4).
- (2M) A person (of any age) detained under sub-paragraph (2C) may be detained in any place that the Secretary of State considers appropriate.
- (2N) A statutory instrument containing regulations under sub-paragraph (2H) or (2I) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (2P) In sub-paragraphs (2H) and (2I), “unaccompanied child” has the same meaning as in the Illegal Migration Act 2023 (see section 4 of that Act).”
- (3) In the italic heading before paragraph 16, at the end insert “, or for the purposes of the Illegal Migration Act 2023”.
- (4) In section 147 of the Immigration and Asylum Act 1999 (interpretation of Part 8 of that Act), in the definition of “pre-departure accommodation”—
  - (a) in the words before paragraph (a), omit “for a period of”;
  - (b) at the beginning of paragraph (a), insert “for a period of”;
  - (c) omit the “or” at the end of paragraph (a);
  - (d) at the beginning of paragraph (b), insert “for a period of”;
  - (e) at the end of paragraph (b), insert “, or
  - (c) for any period, where the detention is under—
    - (i) paragraph 16(2C) of Schedule 2 to the Immigration Act 1971 (detention under authority of immigration officer for the purposes of the Illegal Migration Act 2023), or
    - (ii) section 62(2A) of the Nationality, Immigration and Asylum Act 2002 (detention under authority of

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Secretary of State for the purposes of the Illegal Migration Act 2023);”.

(5) Section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State) is amended in accordance with subsections (6) to (10).

(6) After subsection (2), insert—

“(2A) A person may be detained under the authority of the Secretary of State—

- (a) if the Secretary of State suspects that the person meets the four conditions in section 2 of the Illegal Migration Act 2023 (conditions relating to removal from the United Kingdom), pending a decision as to whether the conditions are met;
- (b) if the Secretary of State suspects that the Secretary of State has a duty to make arrangements for the removal of the person from the United Kingdom under that section, pending a decision as to whether the duty applies;
- (c) if the Secretary of State has such a duty, pending the person’s removal from the United Kingdom in accordance with that section;
- (d) if the person meets those four conditions but the Secretary of State does not have such a duty by virtue of subsection (1) of section 4 of that Act—
  - (i) pending a decision to give limited leave under the immigration rules to the person for the purposes of that subsection,
  - (ii) pending a decision to give leave under section 8AA of the Immigration Act 1971 (discretionary leave for persons generally ineligible for leave etc),
  - (iii) pending a decision to give leave under section 65(2) of the Nationality and Borders Act 2022 (leave to remain for victims of slavery or human trafficking), or
  - (iv) pending a decision to remove the person under subsection (2) of section 4 of the Illegal Migration Act 2023 (power to remove unaccompanied children), and pending their removal in accordance with that subsection.

(2B) But if the Secretary of State is satisfied that a woman being detained under subsection (2A) is pregnant, then the woman may not be detained under that subsection for a period of—

- (a) more than 72 hours from the relevant time, or
- (b) more than seven days from the relevant time, in a case where the longer period of detention is authorised personally by a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975).

(2C) A woman who has been released as a result of subsection (2B) may be detained again under subsection (2A) in accordance with subsection (2B).

(2D) Where a woman being detained under subsection (2A) has previously been detained under paragraph 16(2C) of Schedule 2 to the Immigration Act 1971 and has not been released in between, the definition of “the relevant time” in subsection (2E) is to be read as if paragraph (b) referred to the time when the woman was first detained under subsection (2A) or paragraph 16(2C) of that Schedule to that Act.

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- (2E) In subsections (2B) to (2D)—  
“the relevant time” means the later of—  
(a) the time at which the Secretary of State is first satisfied that the woman is pregnant, and  
(b) the time at which the detention under subsection (2A) begins;  
“woman” means a female of any age.
- (2F) The powers in subsection (2A) may be exercised in respect of an unaccompanied child only in the circumstances specified in regulations made by the Secretary of State.
- (2G) The Secretary of State may, by regulations, specify time limits that apply to the detention of an unaccompanied child under subsection (2A)(d)(iv) (detention of unaccompanied child in relation to removal).
- (2H) Regulations under subsection (2F) may confer a discretion on the Secretary of State or an immigration officer.
- (2I) Regulations under subsection (2F) or (2G)—  
(a) may make different provision for different purposes;  
(b) may make consequential, supplementary, incidental, transitional or saving provision;  
(c) must be made by statutory instrument.
- (2J) A person who may be detained under subsection (2A) may no longer be detained under subsection (1) or (2).
- (2K) A person (of any age) detained under subsection (2A) may be detained in any place that the Secretary of State considers appropriate.
- (2L) A statutory instrument containing regulations under subsection (2F) or (2G) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (2M) In subsections (2F) and (2G), “unaccompanied child” has the same meaning as in the Illegal Migration Act 2023 (see section 4 of that Act).”
- (7) In subsection (3), in the opening words, for “that Act” substitute “the Immigration Act 1971”.
- (8) After subsection (3) insert—  
“(3A) But a provision of Schedule 2 to the Immigration Act 1971 which is expressed to relate only to a person who is detained or liable to detention under subparagraph (2) of paragraph 16 of that Schedule does not apply to a person who is detained or liable to detention under subsection (2A) of this section.”
- (9) In subsection (7), for “this section” substitute “subsection (1) or (2)”.
- (10) In subsection (7A), for “this section” substitute “subsection (1) or (2)”.
- (11) In section 60(8) of Immigration Act 2016 (limitation on detention of pregnant women), in paragraph (c) of the definition of “relevant detention power”, after “section 62” insert “(1) or (2)”.

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### Commencement Information

**III** S. 11(2)(6) in force at Royal Assent for specified purposes, see [s. 68\(4\)\(d\)\(e\)](#)

## 12 Period for which persons may be detained

(1) In Schedule 2 to the Immigration Act 1971 (administrative provisions as to control on entry etc.)—

(a) in paragraph 16 (powers to detain), after sub-paragraph (4) insert—

“(5) See paragraph 17A for further provision about the period for which persons may be detained under this paragraph.”;

(b) after paragraph 17 insert—

“17A (1) A person liable to be detained under paragraph 16 may be detained for such period as, in the opinion of the Secretary of State, is reasonably necessary to enable the examination or removal to be carried out, the decision to be made, or the directions to be given.

(2) Sub-paragraphs (1) to (2), (2C), (3) and (4) of paragraph 16 apply regardless of whether there is anything that for the time being prevents the examination or removal from being carried out, the decision from being made, or the directions from being given.

(3) Sub-paragraphs (1) and (2) are subject to—

- (a) paragraph 16(1B) (power to detain for examination for period not exceeding 12 hours);
- (b) paragraph 16(2A) and paragraph 18B (limitation on detention of unaccompanied children);
- (c) paragraph 16(2B) and section 60 of the Immigration Act 2016 (limitation on detention of pregnant women);
- (d) paragraph 16(2D) to (2G) (limitation on detention of pregnant women).

(4) Sub-paragraph (5) applies if, while a person is detained under paragraph 16, the Secretary of State no longer considers that the examination or removal will be carried out, the decision will be made, or the directions will be given within a reasonable period of time.

(5) The person may be detained under paragraph 16 for such further period as, in the opinion of the Secretary of State, is reasonably necessary to enable such arrangements to be made for the person’s release as the Secretary of State considers to be appropriate.

(6) In the application of this paragraph in relation to detention under paragraph 16(3), references to “the removal” are to—

- (a) the removal of the person from the ship or aircraft on which the person is detained so that the person may be detained under paragraph 16, or
- (b) the removal of the person from the United Kingdom in that ship or aircraft.

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- (7) In the application of this paragraph in relation to detention under paragraph 16(4), references to “the removal” are to the removal of the person from the United Kingdom in the ship or aircraft on which the person is detained.”
- (2) In paragraph 2 of Schedule 3 to the Immigration Act 1971 (detention or control pending deportation)—
- (a) after sub-paragraph (3) insert—
- “(3A) A person liable to be detained under sub-paragraph (1), (2) or (3) may be detained for such period as, in the opinion of the Secretary of State, is reasonably necessary to enable the deportation order to be made, or the removal to be carried out.
- (3B) Sub-paragraphs (1) to (3) apply regardless of whether there is anything that for the time being prevents the deportation order from being made or the removal from being carried out.
- (3C) Sub-paragraphs (3A) and (3B) are subject to sub-paragraph (4ZA) and section 60 of the Immigration Act 2016 (limitation on detention of pregnant women).
- (3D) Sub-paragraph (3E) applies if, while a person is detained under sub-paragraph (1), (2) or (3), the Secretary of State no longer considers that the deportation order will be made or the removal will be carried out within a reasonable period of time.
- (3E) The person may be detained under that sub-paragraph for such further period as, in the opinion of the Secretary of State, is reasonably necessary to enable such arrangements to be made for the person’s release as the Secretary of State considers to be appropriate.”;
- (b) in sub-paragraph (4), for “17 to 18A” substitute “17, 18, 18A”.
- (3) In section 10(9) of the Immigration and Asylum Act 1999 (application of Schedule 2 to the Immigration Act 1971 in relation to persons unlawfully in the United Kingdom)—
- (a) in paragraph (b), for “16(2) to (4)” substitute “16(2) to (2B), (3) and (4)”;
- (b) after paragraph (c) insert—
- “(ca) paragraph 17A (period for which persons may be detained);”.
- (4) In section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State)—
- (a) after subsection (2M) (inserted by section 11(6)), insert—
- “(2N) A person liable to be detained under this section may be detained for such period as, in the opinion of the Secretary of State, is reasonably necessary to enable the decision to be made, the removal or examination to be carried out, or the directions to be given.
- (2O) Subsections (1) to (2A) apply regardless of whether there is anything that for the time being prevents the decision from being made, the removal or examination from being carried out, or the directions from being given.
- (2P) Subsections (2N) and (2O) are subject to—

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- (a) paragraph 18B of Schedule 2 to the Immigration Act 1971 (limitation on detention of unaccompanied children), as applied by subsection (3);
    - (b) subsections (2B) to (2E) (limitation on detention of pregnant women);
    - (c) subsection (7A) and section 60 of the Immigration Act 2016 (limitation on detention of pregnant women).
  - (2Q) Subsection (2R) applies if, while a person is detained under this section, the Secretary of State no longer considers that the decision will be made, the removal or examination will be carried out, or the directions will be given within a reasonable period of time.
  - (2R) The person may be detained under this section for such further period as, in the opinion of the Secretary of State, is reasonably necessary to enable such arrangements to be made for the person's release as the Secretary of State considers to be appropriate.”;
  - (b) in subsection (3), in the opening words, after “under that Schedule” insert “, other than paragraph 17A,”.
- (5) In section 36 of the UK Borders Act 2007 (detention relating to deportation), after subsection (1) insert—
- “(1A) A person liable to be detained under subsection (1) may be detained for such period as, in the opinion of the Secretary of State, is reasonably necessary to enable the decision as to whether section 32(5) applies, or the deportation order, to be made.
  - (1B) Subsection (1) applies regardless of whether there is anything that for the time being prevents the decision or the deportation order from being made.
  - (1C) Subsections (1A) and (1B) are subject to subsection (2A) and section 60 of the Immigration Act 2016 (limitation on detention of pregnant women).
  - (1D) Subsection (1E) applies if, while a person is detained under subsection (1), the Secretary of State no longer considers that the decision or the deportation order will be made within a reasonable period of time.
  - (1E) The person may be detained under subsection (1) for such further period as, in the opinion of the Secretary of State, is reasonably necessary to enable such arrangements to be made for the person's release as the Secretary of State considers to be appropriate.”
- (6) In regulation 32 of the Immigration (European Economic Area) Regulations 2016 ([S.I. 2016/1052](#)) as it continues to have effect following its revocation (person subject to removal), for paragraph (1) substitute—
- “(1) If there are reasonable grounds for suspecting that a person is someone who may be removed from the United Kingdom under regulation 23(6)(b), that person may be detained under the authority of the Secretary of State pending a decision whether or not to remove the person under that regulation.
  - (2) A person liable to be detained under paragraph (1) may be detained for such period as, in the opinion of the Secretary of State, is reasonably necessary to enable the decision to be made.

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- (3) Paragraph (1) applies regardless of whether there is anything that for the time being prevents the decision from being made.
- (4) Paragraph (5) applies if, while a person is detained under paragraph (1), the Secretary of State no longer considers that the decision will be made within a reasonable period of time.
- (5) The person may be detained under paragraph (1) for such further period as, in the opinion of the Secretary of State, is reasonably necessary to enable such arrangements to be made for the person's release as the Secretary of State considers to be appropriate.
- (6) Paragraphs 17, 18 and 18A of Schedule 2 to the 1971 Act apply in relation to detention under paragraph (1) as they apply in relation to detention under paragraph 16 of that Schedule."

#### Commencement Information

- I12** S. 12 not in force at Royal Assent, see [s. 68\(1\)](#)  
**I13** S. 12 in force at 28.9.2023 by [S.I. 2023/989, reg. 2\(a\)](#)

PROSPECTIVE

### 13 Powers to grant immigration bail

- (1) Schedule 10 to the Immigration Act 2016 (immigration bail) is amended in accordance with subsections (2) to (4).
- (2) In paragraph 1 (power to grant immigration bail)—
  - (a) in sub-paragraph (1)(a), for “or (2)” substitute “, (2) or (2C)”,
  - (b) in sub-paragraph (3)(a), for “or (2)” substitute “, (2) or (2C)”, and
  - (c) in sub-paragraph (9), after “bail” insert “and paragraph 3A (legal proceedings)”.
- (3) In paragraph 3 (exercise of power to grant immigration bail)—
  - (a) in sub-paragraph (2), after paragraph (e) insert—

“(eza) whether the Secretary of State has a duty to make arrangements for the removal of the person from the United Kingdom under section 2(1) of the Illegal Migration Act 2023,”;
  - (b) after sub-paragraph (3) insert—

“(3A) A person who is being detained under paragraph 16(2C)(d)(iv) of Schedule 2 to the Immigration Act 1971 or section 62(2A)(d)(iv) of the Nationality, Immigration and Asylum Act 2002 (detention of unaccompanied child for purposes of removal) must not be granted immigration bail by the First-tier Tribunal until after the earlier of—

    - (a) the end of the period of 28 days beginning with the date on which the person's detention under any provision of paragraph 16(2C) of Schedule 2 to the Immigration Act

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1971 or section 62(2A) of the Nationality, Immigration and Asylum Act 2002 began, and

- (b) the end of the period of 8 days beginning with the date on which the person's detention under paragraph 16(2C)(d)(iv) of Schedule 2 to the Immigration Act 1971 or section 62(2A)(d)(iv) of the Nationality, Immigration and Asylum Act 2002 began.

(3B) A person who is being detained under—

- (a) paragraph 16(2C)(a), (b), (c) or (d)(i) to (iii) of Schedule 2 to the Immigration Act 1971, or
- (b) section 62(2A)(a), (b), (c) or (d)(i) to (iii) of the Nationality, Immigration and Asylum Act 2002,

must not be granted immigration bail by the First-tier Tribunal until after the end of the period of 28 days beginning with the date on which the person's detention under paragraph 16(2C) of that Schedule or section 62(2A) of that Act began.

(3C) Where a person is detained under a provision of the Immigration Act 1971 and then (without being released) under a provision of the Nationality, Immigration and Asylum Act 2002, or vice versa, the periods referred to in sub-paragraphs (3A) and (3B) begin with the date on which the person was first detained under the relevant provisions of either of those Acts.”

(4) After paragraph 3 insert—

*“Legal proceedings*

3A (1) This paragraph applies in relation to—

- (a) a decision to detain a person under the authority of an immigration officer under paragraph 16(2C) of Schedule 2 to the Immigration Act 1971,
- (b) a decision to detain a person under the authority of the Secretary of State under section 62(2A) of the Nationality, Immigration and Asylum Act 2002, and
- (c) where a person is being detained under a provision mentioned in paragraph (a) or (b), a decision of the Secretary of State to refuse to grant immigration bail to the person.

(2) In relation to detention during the relevant period, the decision is final and is not liable to be questioned or set aside in any court or tribunal.

(3) In particular—

- (a) the powers of the immigration officer or the Secretary of State (as the case may be) are not to be regarded as having been exceeded by reason of any error made in reaching the decision;
- (b) the supervisory jurisdiction does not extend to, and no application or petition for judicial review may be made or brought in relation to, the decision.



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(4) Sub-paragraphs (2) and (3) do not apply so far as the decision involves or gives rise to any question as to whether the immigration officer or the Secretary of State is acting or has acted—

- (a) in bad faith, or
- (b) in such a procedurally defective way as amounts to a fundamental breach of the principles of natural justice.

(5) Sub-paragraphs (2) and (3) do not affect any right of a person to—

- (a) apply for a writ of habeas corpus, or
- (b) in Scotland, apply to the Court of Session for suspension and liberation.

(6) In this paragraph—

“decision” includes any purported decision;

“relevant period” means the period of 28 days beginning with the date on which the person’s detention under the provision mentioned in sub-paragraph (1) began;

“the supervisory jurisdiction” means the supervisory jurisdiction of—

- (a) the High Court, in England and Wales or Northern Ireland, or
- (b) the Court of Session, in Scotland.”

(5) In Schedule 3 to the Special Immigration Appeals Commission Act 1997 (bail: modifications of Schedule 10 to the Immigration Act 2016), in paragraph 3(a), after “(3),” insert “(3A), (3B),”.

#### Commencement Information

**I14** S. 13 not in force at Royal Assent, see [s. 68\(1\)](#)

PROSPECTIVE

## 14 Disapplication of duty to consult Independent Family Returns Panel

In section 54A of the Borders, Citizenship and Immigration Act 2009 (Independent Family Returns Panel), after subsection (3) insert—

“(3A) The duty under subsection (2)(a) does not apply where the proposed removal is for the purposes of section 2 or 4(2) of the Illegal Migration Act 2023 (duty or power to make arrangements for removal).

(3B) The duty under subsection (2)(b) does not apply where the proposed detention is under—

- (a) paragraph 16(2C) of Schedule 2 to the Immigration Act 1971 (detention under authority of immigration officer relating to removal under the Illegal Migration Act 2023), or

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- (b) section 62(2A) of the Nationality, Immigration and Asylum Act 2002 (detention under authority of Secretary of State relating to removal under the Illegal Migration Act 2023).”

#### Commencement Information

**I15** S. 14 not in force at Royal Assent, see [s. 68\(1\)](#)

## 15 Electronic devices etc

Schedule 2 confers—

- (a) powers to search persons liable to be detained under paragraph 16(2C) of Schedule 2 to the Immigration Act 1971 (illegal migrants), and to search vehicles, premises and property, for things on which certain information is or may be stored in electronic form;
- (b) powers to seize and retain such things, and to access, copy and use information stored on those things.

#### Commencement Information

**I16** S. 15 not in force at Royal Assent, see [s. 68\(1\)](#)

**I17** [S. 15](#) in force at 28.9.2023 for specified purposes by [S.I. 2023/989](#), [reg. 2\(b\)](#)

### *Unaccompanied children*

PROSPECTIVE

## 16 Accommodation and other support for unaccompanied migrant children

- (1) The Secretary of State may provide, or arrange for the provision of, accommodation in England for unaccompanied children in England.
- (2) In this section, “accommodation for unaccompanied migrant children” means accommodation provided under [this section](#).
- (3) While a child is residing in accommodation for unaccompanied migrant children, the Secretary of State may provide, or arrange for the provision of, other types of support to the child.
- (4) Subsections (1) to (3) are to be treated as having had effect at all times on or after 7 March 2023.
- (5) For the purposes of this section and section 17, a person (“C”) is an unaccompanied child if—
  - (a) C meets the four conditions in section 2, reading subsection (3) of that section as if it referred to a person entering or arriving in the United Kingdom as mentioned in subsection (2) of that section on or after 7 March 2023,
  - (b) C is under the age of 18, and

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- (c) at the time of C’s entry or arrival in the United Kingdom by virtue of which C meets the condition in section 2(3), no individual (whether or not a parent of C) who was aged 18 or over had care of C.

#### Commencement Information

**I18** S. 16 not in force at Royal Assent, see s. 68(1)

PROSPECTIVE

### 17 Transfer of children from Secretary of State to local authority and vice versa

- (1) The Secretary of State may decide that a child is to cease residing in accommodation for unaccompanied migrant children on a certain date (the transfer date).
- (2) On making that decision, the Secretary of State must direct a local authority in England to provide accommodation to the child, under section 20 of the Children Act 1989, from the transfer date.
- (3) The transfer date must be a date falling after the end of the period of five working days beginning with the day on which the local authority was given the direction.
- (4) The Secretary of State may decide that an unaccompanied child who is being provided with accommodation by a local authority in England is to cease being provided with that accommodation on a certain date (the transfer date).
- (5) On making that decision, the Secretary of State must direct the local authority to cease providing the child with accommodation from the transfer date.
- (6) The transfer date must be a date falling after the end of the period of five working days beginning with the day on which the local authority was given the direction.
- (7) When a local authority ceases providing a child with accommodation in compliance with a direction under subsection (5), the Secretary of State must arrange for the child to reside in accommodation for unaccompanied migrant children from the transfer date.
- (8) In this section and sections 18 and 19—

“accommodation for unaccompanied migrant children” has the same meaning as in section 16;

“local authority” has the same meaning as in the Children Act 1989 (see section 105(1) of that Act);

“working day” means any day which is not Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.

#### Commencement Information

**I19** S. 17 not in force at Royal Assent, see s. 68(1)

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## 18 Duty of local authority to provide information to the Secretary of State

- (1) The Secretary of State may direct a local authority to provide information to the Secretary of State for the purposes of helping the Secretary of State to make a decision under [section 17\(1\)](#) or [\(4\)](#) (decision to transfer unaccompanied migrant child from Secretary of State to local authority or vice versa).
- (2) The information that the Secretary of State may direct a local authority to provide is—
  - (a) information about the accommodation and support provided to children by the local authority;
  - (b) such other information as may be specified in regulations made by the Secretary of State.
- (3) A local authority which is directed to provide information under this section must provide it—
  - (a) in such form and manner as the Secretary of State may direct, and
  - (b) before such time or before the end of such period as the Secretary of State may direct.

### Commencement Information

**I20** S. 18 in force at Royal Assent for specified purposes, see [s. 68\(4\)\(f\)](#)

PROSPECTIVE

## 19 Enforcement of local authorities' duties under sections 17 and 18

- (1) If the Secretary of State is satisfied that a local authority has failed, without reasonable excuse, to comply with a direction under [section 17](#) or a duty under [section 18](#), the Secretary of State may make an order declaring that authority to be in default with respect to that direction or duty.
- (2) An order under [subsection \(1\)](#) must give the Secretary of State's reasons for making it.
- (3) An order under [subsection \(1\)](#) may contain such directions for the purpose of ensuring that the direction or duty is complied with, within such period as may be specified in the order, as appears to the Secretary of State to be necessary.
- (4) Any such direction may be enforced on an application made on behalf of the Secretary of State, by a mandatory order.

### Commencement Information

**I21** S. 19 not in force at Royal Assent, see [s. 68\(1\)](#)

## 20 Extension to Wales, Scotland and Northern Ireland

- (1) The Secretary of State may make regulations enabling sections [16](#) to [19](#) to apply in relation to Wales, Scotland or Northern Ireland.

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- (2) The regulations may amend, repeal or revoke any enactment (including an enactment contained in this Act).
- (3) The regulations may not confer functions on—
  - (a) the Welsh Ministers,
  - (b) the Scottish Ministers,
  - (c) the First Minister and deputy First Minister in Northern Ireland,
  - (d) a Northern Ireland Minister, or
  - (e) a Northern Ireland department.
- (4) In this section, “enactment” includes—
  - (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;
  - (b) an enactment contained in, or in an instrument made under, an Act or Measure of Senedd Cymru;
  - (c) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;
  - (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation.

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**Commencement Information**

**I22** S. 20 in force at Royal Assent for specified purposes, see [s. 68\(4\)\(g\)](#)

PROSPECTIVE

**21 Transfer of children between local authorities**

- (1) Section 69 of the Immigration Act 2016 (transfer of responsibility for relevant children) is amended as follows.
- (2) In subsection (9) (definition of “relevant child”)—
  - (a) omit the “or” at the end of paragraph (b), and
  - (b) after paragraph (c) insert “, or
  - (d) an unaccompanied child, within the meaning of section 16 of the Illegal Migration Act 2023.”
- (3) In subsection (10), at the end insert “(a) to (c)”.

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**Commencement Information**

**I23** S. 21 not in force at Royal Assent, see [s. 68\(1\)](#)

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## Modern slavery

PROSPECTIVE

### 22 Provisions relating to removal and leave

- (1) Subsection (2) (disapplication of modern slavery provisions) applies in relation to a person if—
- (a) the Secretary of State is required by section 2(1) to make arrangements for the removal of the person from the United Kingdom, and
  - (b) a decision has been made by a competent authority that there are reasonable grounds to believe that the person is a victim of slavery or human trafficking (a “positive reasonable grounds decision”).

This is subject to subsections (3) to (7).

- (2) Where this subsection applies in relation to a person—
- (a) any prohibition arising under section 61 or 62 of the Nationality and Borders Act 2022 (recovery period) on removing the person from, or requiring them to leave, the United Kingdom does not apply in relation to the person, and
  - (b) any requirement under section 65 of that Act (leave to remain) to grant the person limited leave to remain in the United Kingdom does not apply in relation to the person.
- (3) Subsection (2) does not apply in relation to a person if—
- (a) the Secretary of State is satisfied that the person is cooperating with a public authority in connection with an investigation or criminal proceedings in respect of the relevant exploitation,
  - (b) the Secretary of State considers that it is necessary for the person to be present in the United Kingdom to provide that cooperation, and
  - (c) the Secretary of State does not consider that the public interest in the person providing that cooperation is outweighed by any significant risk of serious harm to members of the public which is posed by the person.
- (4) In subsection (3)—
- (a) the reference to a person cooperating with a public authority in connection with an investigation or criminal proceedings is to the person doing so to the extent that is reasonable having regard to the person’s circumstances, and
  - (b) “the relevant exploitation” means—
    - (i) the conduct or alleged conduct resulting in the positive reasonable grounds decision, and
    - (ii) where a positive conclusive grounds decision has also been made in relation to the person, any other conduct resulting in that decision.
- (5) The Secretary of State must assume for the purposes of subsection (3)(b) that it is not necessary for the person to be present in the United Kingdom to provide the cooperation in question unless the Secretary of State considers that there are compelling circumstances which require the person to be present in the United Kingdom for that purpose.

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- (6) In determining whether there are compelling circumstances as mentioned in subsection (5), the Secretary of State must have regard to guidance issued by the Secretary of State.
- (7) Subsection (2) does not apply in relation to a person (“A”) if subsection (3) applies in relation to a person (“P”) and—
- (a) A is P’s child, or a child living in the same household as P in circumstances where P has care of A, or
  - (b) in a case where P is a child—
    - (i) A is P’s parent, or
    - (ii) A lives in the same household as P and has sole responsibility for P.
- (8) Subsection (9) applies to a person if—
- (a) the Secretary of State is not required by section 2(1) to make arrangements for the removal of the person from the United Kingdom,
  - (b) the only reason why the Secretary of State is not required to do so is that the person has limited leave to remain in the United Kingdom granted under section 65(2) of the Nationality and Borders Act 2022,
  - (c) that leave was granted on or after 7 March 2023, and
  - (d) subsection (3) or (7) does not apply in relation to the person.
- (9) The Secretary of State may revoke the leave granted to the person under section 65(2) of the Nationality and Borders Act 2022.
- (10) Subsection (9) is to be treated for the purposes of section 3 of the Immigration Act 1971 as if it were provision made by that Act.
- (11) In this section—
- “child” means a person who is under the age of 18;
  - “competent authority” means a person who is a competent authority of the United Kingdom for the purposes of the Trafficking Convention;
  - “positive conclusive grounds decision” means a decision made by a competent authority that a person is a victim of slavery or human trafficking;
  - “public authority” means a public authority within the meaning of section 6 of the Human Rights Act 1998;
  - “the Trafficking Convention” means the Council of Europe Convention on Action against Trafficking in Human Beings (done at Warsaw on 16 May 2005);
  - “victim of slavery” and “victim of human trafficking” have the meanings given in regulations made by the Secretary of State under section 69 of the Nationality and Borders Act 2022.

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**Commencement Information**

**I24** S. 22 not in force at Royal Assent, see [s. 68\(1\)](#)

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PROSPECTIVE

## 23 Provisions relating to support: England and Wales

- (1) Subsection (2) applies in relation to a person if—
  - (a) the Secretary of State is required by section 2(1) to make arrangements for the removal of the person from the United Kingdom,
  - (b) a positive reasonable grounds decision has been made in relation to the person, and
  - (c) section 22(3) (cooperation with public authority) does not apply in relation to the person.
- (2) Any duty under section 50A of the Modern Slavery Act 2015 (assistance and support) to secure that any necessary assistance and support is available to the person does not apply in relation to the person.
- (3) In this section “positive reasonable grounds decision” has the same meaning as in section 22.

### Commencement Information

**I25** S. 23 not in force at Royal Assent, see s. 68(1)

## 24 Provisions relating to support: Scotland

- (1) Subsection (2) applies in relation to a person if—
  - (a) the Secretary of State is required by section 2(1) to make arrangements for the removal of the person from the United Kingdom, and
  - (b) a competent authority has determined that there are reasonable grounds to believe that the person is a victim of slavery or human trafficking or is determining whether or not that is the case.

This is subject to subsections (3) to (5).

- (2) Where this subsection applies in relation to a person, the following do not apply in relation to the person—
  - (a) any duty of the Scottish Ministers under section 9(1) of the [Human Trafficking and Exploitation \(Scotland\) Act 2015 \(asp 12\)](#) (human trafficking: support and assistance) to secure the provision of support and assistance for the person;
  - (b) any power of the Scottish Ministers under section 9(3) of that Act to secure the provision of support and assistance for the person;
  - (c) any duty or power of the Scottish Ministers under regulations under section 10(1) of that Act (slavery etc: support and assistance) relating to the provision of support or assistance to the person.
- (3) Subsection (2) does not apply in relation to a person if—
  - (a) the Secretary of State is satisfied that the person is cooperating with a public authority in connection with an investigation or criminal proceedings in respect of the relevant exploitation,



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- (b) the Secretary of State considers that it is necessary for the person to be present in the United Kingdom to provide that cooperation, and
  - (c) the Secretary of State does not consider that the public interest in the person providing that cooperation is outweighed by any significant risk of serious harm to members of the public which is posed by the person.
- (4) In subsection (3)—
- (a) the reference to a person cooperating with a public authority in connection with an investigation or criminal proceedings is to the person doing so to the extent that is reasonable having regard to the person’s circumstances, and
  - (b) “the relevant exploitation” means—
    - (i) the conduct or alleged conduct on the basis of which a competent authority has made or is making the determination mentioned in subsection (1)(b), and
    - (ii) where a conclusive determination has been made that the person is a victim of slavery or human trafficking, any other conduct resulting in that decision.
- (5) The Secretary of State must assume for the purposes of subsection (3)(b) that it is not necessary for the person to be present in the United Kingdom to provide the cooperation in question unless the Secretary of State considers that there are compelling circumstances which require the person to be present in the United Kingdom for that purpose.
- (6) In determining whether there are compelling circumstances as mentioned in subsection (5), the Secretary of State must have regard to guidance issued by the Secretary of State.
- (7) For the purposes of this section—
- (a) a person is a victim of slavery if they are a victim of an offence under section 4 of the Human Trafficking and Exploitation (Scotland) Act 2015;
  - (b) there is a conclusive determination that a person is a victim of slavery when a competent authority concludes that the person is such a victim;
  - (c) a person is a victim of human trafficking if they are a victim of an offence under section 1 of the Human Trafficking and Exploitation (Scotland) Act 2015;
  - (d) there is a conclusive determination that a person is a victim of human trafficking when, on completion of the identification process required by Article 10 of the Trafficking Convention, a competent authority concludes that the person is such a victim.
- (8) In this section the following expressions have the same meaning as in section 22—
- “competent authority”;
  - “public authority”;
  - “the Trafficking Convention”.
- (9) The Secretary of State may by regulations amend this section in consequence of regulations made by the Scottish Ministers under—
- (a) section 9(8) of the Human Trafficking and Exploitation (Scotland) Act 2015 (power to modify section 9), or
  - (b) section 10(1) of that Act (slavery etc: support and assistance).

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### Commencement Information

**I26** S. 24 in force at Royal Assent for specified purposes, see **s. 68(4)(h)**

PROSPECTIVE

## 25 Provisions relating to support: Northern Ireland

- (1) Subsection (2) applies in relation to a person if—
- (a) the Secretary of State is required by section 2(1) to make arrangements for the removal of the person from the United Kingdom, and
  - (b) a reference relating to the person has been, or is about to be, made to a competent authority for a determination whether there are reasonable grounds to believe that the person is a victim of slavery or trafficking in human beings.

This is subject to subsections (3) to (5).

- (2) Where this subsection applies in relation to a person, the following do not apply in relation to the person—
- (a) any duty of the Department of Justice in Northern Ireland under section 18 of the [Human Trafficking and Exploitation \(Criminal Justice and Support for Victims\) Act \(Northern Ireland\) 2015 \(c. 2 \(N.I.\)\)](#) (human trafficking and slavery etc: assistance and support) to ensure the provision of assistance and support to the person;
  - (b) any power under section 18(8) of that Act to continue the provision of assistance and support to the person;
  - (c) any power of the Department of Justice in Northern Ireland under section 18(9) of that Act to ensure the provision of assistance and support to the person.
- (3) Subsection (2) does not apply in relation to a person if—
- (a) the Secretary of State is satisfied that the person is cooperating with a public authority in connection with an investigation or criminal proceedings in respect of the relevant exploitation,
  - (b) the Secretary of State considers that it is necessary for the person to be present in the United Kingdom to provide that cooperation, and
  - (c) the Secretary of State does not consider that the public interest in the person providing that cooperation is outweighed by any significant risk of serious harm to members of the public which is posed by the person.
- (4) In subsection (3)—
- (a) the reference to a person cooperating with a public authority in connection with an investigation or criminal proceedings is to the person doing so to the extent that is reasonable having regard to the person's circumstances, and
  - (b) “the relevant exploitation” means—
    - (i) the conduct or alleged conduct on the basis of which the reference mentioned in subsection (1)(b) has been, or is about to be, made, and
    - (ii) where a conclusive determination has been made that the person is a victim of slavery or trafficking in human beings, any other conduct resulting in that decision.

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- (5) The Secretary of State must assume for the purposes of subsection (3)(b) that it is not necessary for the person to be present in the United Kingdom to provide the cooperation in question unless the Secretary of State considers that there are compelling circumstances which require the person to be present in the United Kingdom for that purpose.
- (6) In determining whether there are compelling circumstances as mentioned in subsection (5), the Secretary of State must have regard to guidance issued by the Secretary of State.
- (7) For the purposes of this section—
- (a) a person is a victim of slavery if they are a victim of—
    - (i) slavery or servitude, or
    - (ii) forced or compulsory labour,within the meaning of Part 3 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (see section 17(1A) of that Act);
  - (b) there is a conclusive determination that a person is a victim of slavery when, on completion of an identification process corresponding to one required by Article 10 of the Trafficking Convention, a competent authority concludes that the person is such a victim;
  - (c) “trafficking in human beings” has the same meaning as in Part 3 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (see section 17(2) of that Act);
  - (d) there is a conclusive determination that a person is a victim of trafficking in human beings when, on completion of the identification process required by Article 10 of the Trafficking Convention, a competent authority concludes that the person is such a victim.
- (8) In this section the following expressions have the same meaning as in section 22—
- “competent authority”;
  - “public authority”;
  - “the Trafficking Convention”.

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#### Commencement Information

**I27** S. 25 not in force at Royal Assent, see s. 68(1)

PROSPECTIVE

## 26 Suspension and revival of sections 22 to 25

- (1) The operation of a provision of sections 22 to 25 (a “relevant provision”) is suspended at the end of the period of 2 years beginning with the coming into force of that provision.
- (2) Subsection (1) does not apply to section 24(9) (power to amend section 24 in consequence of regulations made by the Scottish Ministers).
- (3) The Secretary of State may by regulations—

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- (a) provide for the operation of a relevant provision to be suspended before the time at which its operation would otherwise be suspended;
  - (b) provide that a relevant provision the operation of which would otherwise be suspended is to continue to operate for a period specified in the regulations;
  - (c) where the operation of a relevant provision has been suspended, provide that the operation of the provision is to revive for a period specified in the regulations.
- (4) A period specified in regulations under subsection (3)(b) must not exceed 12 months from the time at which the operation of the provision would otherwise be suspended.
- (5) A period specified in regulations under subsection (3)(c) must not exceed 12 months.
- (6) A power to make regulations under subsection (3) may be exercised more than once in relation to the same relevant provision.
- (7) Section 16(1) of the Interpretation Act 1978 applies in relation to the suspension of the operation of a relevant provision by or by virtue of this section as if the provision had been repealed by an Act.
- (8) The Secretary of State may by regulations make other transitional or saving provision in connection with the suspension of the operation of a relevant provision.
- (9) A reference in this section to a relevant provision the operation of which would be, or has been, suspended is to a relevant provision the operation of which would be, or has been, suspended—
- (a) by subsection (1),
  - (b) by regulations under subsection (3)(a), or
  - (c) on the expiry of the period specified in regulations under subsection (3)(b) or (c).

#### Commencement Information

**I28** S. 26 not in force at Royal Assent, see **s. 68(1)**

PROSPECTIVE

#### 27 Procedure for certain regulations under section 26

- (1) A statutory instrument containing (whether alone or with other provision) regulations under section 26(3)(c) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (2) Subsection (1) does not apply to regulations that contain a statement that the Secretary of State considers that there is an urgent need to make the regulations without the approval required by that subsection.
- (3) A statutory instrument containing regulations that contain such a statement must be laid before Parliament after being made.
- (4) Regulations contained in a statutory instrument laid before Parliament under subsection (3) cease to have effect at the end of the period of 28 days beginning with

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the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament.

- (5) In calculating the period of 28 days, no account is to be taken of any whole days that fall within a period during which—
  - (a) Parliament is dissolved or prorogued, or
  - (b) either House of Parliament is adjourned for more than four days.
- (6) If regulations cease to have effect as a result of subsection (4) that does not—
  - (a) affect the validity of anything previously done under the regulations, or
  - (b) prevent the making of new regulations.

#### Commencement Information

**I29** S. 27 not in force at Royal Assent, see [s. 68\(1\)](#)

PROSPECTIVE

## 28 Amendments relating to sections 22 to 25

- (1) In section 50A of the Modern Slavery Act 2015 (identified potential victims of slavery or human trafficking: assistance and support) (as inserted by section 64 of the Nationality and Borders Act 2022), after subsection (5) insert—

“(5A) This section is subject to section 23 of the Illegal Migration Act 2023 (provisions relating to support: England and Wales).”
- (2) The [Human Trafficking and Exploitation \(Scotland\) Act 2015 \(asp 12\)](#) is amended in accordance with subsections (3) and (4).
- (3) In section 9 (human trafficking: support and assistance), after subsection (9) insert—

“(10) This section is subject to section 24 of the Illegal Migration Act 2023 (provisions relating to support: Scotland).”
- (4) In section 10 (slavery etc: support and assistance), after subsection (2) insert—

“(3) This section is subject to section 24 of the Illegal Migration Act 2023 (provisions relating to support: Scotland).”
- (5) In section 18 of the [Human Trafficking and Exploitation \(Criminal Justice and Support for Victims\) Act \(Northern Ireland\) 2015 \(c. 2 \(N.I.\)\)](#) (human trafficking and slavery etc: assistance and support), after subsection (10) insert—

“(10A) This section is subject to section 25 of the Illegal Migration Act 2023 (provisions relating to support: Northern Ireland).”
- (6) The Nationality and Borders Act 2022 is amended in accordance with subsections (7) to (12).
- (7) In section 61(2) (identified potential victims of slavery or human trafficking: recovery period), after “section 63(2)” insert “and section 22 of the Illegal Migration Act 2023 (provisions relating to removal and leave)”.

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- (8) In section 62(2) (identified potential victims of slavery or human trafficking: additional recovery period), after “section 63(2)” insert “and section 22 of the Illegal Migration Act 2023 (provisions relating to removal and leave)”.
- (9) In section 63 (identified potential victims of slavery or human trafficking: disqualification from protection), after subsection (7) insert—
- “(8) See also section 22 of the Illegal Migration Act 2023 (provisions relating to removal and leave).”
- (10) Section 65 (leave to remain for victims of slavery or human trafficking) is amended in accordance with subsections (11) and (12).
- (11) In subsection (3), after “section 63(2)” insert “and section 22 of the Illegal Migration Act 2023 (provisions relating to removal and leave)”.
- (12) After subsection (8) insert—
- “(8A) Section 22 of the Illegal Migration Act 2023 also makes provision about the revocation of leave granted under subsection (2).”

#### Commencement Information

**I30** S. 28 not in force at Royal Assent, see s. 68(1)

PROSPECTIVE

## 29 Disapplication of modern slavery provisions

- (1) Section 63 of the Nationality and Borders Act 2022 (identified potential victims of slavery or human trafficking: disqualification from protection) is amended as follows.
- (2) In subsection (1)—
- (a) for “may” substitute “must”, and
- (b) after paragraph (b) insert—
- “This is subject to subsection (2A).”
- (3) After subsection (2) insert—
- “(2A) A competent authority may not determine that subsection (2) is to apply to a person if the competent authority considers that there are compelling circumstances which mean that subsection (2) should not apply to the person.”
- (4) In subsection (3)—
- (a) for paragraph (f) substitute—
- “(f) the person—
- (i) is not a British citizen,
- (ii) has been convicted in the United Kingdom of an offence, and
- (iii) has been sentenced to a period of imprisonment for the offence;”, and

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(b) after paragraph (f) insert—

- “(fa) the person is liable to deportation from the United Kingdom under section 3(5) or (6) of the Immigration Act 1971 (deportation for the public good etc or as a result of recommendation following conviction);
- (fb) the person is liable to deportation from the United Kingdom under any provision of, or made under, any other enactment that provides for such deportation;”.

(5) After subsection (5) insert—

“(5A) In subsection (3)(f)—

- (a) “British citizen” has the same meaning as in section 3(5) of the Immigration Act 1971 (and section 3(8) (burden of proof) applies), and
- (b) the reference to a person who has been sentenced to a period of imprisonment—
  - (i) does not include a reference to a person who receives a suspended sentence (unless a court subsequently orders that the sentence or any part of it is to take effect), and
  - (ii) includes a reference to a person who is sentenced to detention, or ordered or directed to be detained, in an institution other than a prison (including, in particular, a hospital or an institution for young offenders).

(5B) For the purposes of subsection (3)(f) a person subject to an order under section 5 of the Criminal Procedure (Insanity) Act 1964 (insanity etc) has not been convicted of an offence.”

(6) An amendment made by a provision of this section applies in relation to a person whether a positive reasonable grounds decision or a positive conclusive grounds decision within the meaning of Part 5 of the Nationality and Borders Act 2022 was made in relation to the person before or after the coming into force of the provision making the amendment.

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#### Commencement Information

**I31** S. 29 not in force at Royal Assent, see [s. 68\(1\)](#)

### *Entry, settlement and citizenship*

## **30 Entry into and settlement in the United Kingdom**

- (1) The Immigration Act 1971 is amended in accordance with subsections (2) and (3).
- (2) In section 8(1) (exceptions for seamen, aircrews and other special cases), at the end of paragraph (c) insert “or
  - (d) the person has ever met the four conditions in section 2 of the Illegal Migration Act 2023 (conditions relating to removal from the United Kingdom), reading subsection (3) of that section as if it referred to a

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person entering or arriving in the United Kingdom as mentioned in subsection (2) of that section on or after 7 March 2023;”.

(3) After section 8A, insert—

**“8AA Persons ineligible for leave to enter and remain, entry clearance and ETA**

- (1) This section applies in relation to a person who has ever met the four conditions in section 2 of the Illegal Migration Act 2023 (conditions relating to removal from the United Kingdom), reading subsection (3) of that section as if it referred to a person entering or arriving in the United Kingdom as mentioned in subsection (2) of that section on or after 7 March 2023.
- (2) Subject to subsections (3) to (5), the person—
  - (a) must not be given leave to enter or leave to remain in the United Kingdom, unless it is—
    - (i) limited leave given under the immigration rules to a person within section 4(1) of that Act (unaccompanied children), or
    - (ii) limited leave to remain given under section 65 of the Nationality and Borders Act 2022 (leave to remain for victims of slavery or human trafficking) as it has effect by virtue of section 22 of the Illegal Migration Act 2023 (provisions relating to removal and leave),
  - (b) must not be granted an entry clearance, and
  - (c) must not be granted an ETA.
- (3) The Secretary of State may give the person limited leave to enter the United Kingdom, or grant to the person an entry clearance or an ETA, if—
  - (a) the person has left or been removed from the United Kingdom after having become a person within subsection (1), and
  - (b) the Secretary of State considers that—
    - (i) failure to give the leave or grant the entry clearance or ETA would contravene the United Kingdom’s obligations under the Human Rights Convention, or
    - (ii) there are other exceptional circumstances which apply in relation to the person which mean that it is appropriate to give the leave or grant the entry clearance or ETA.
- (4) The Secretary of State may give the person limited leave to remain in the United Kingdom if—
  - (a) the Secretary of State considers that failure to do so would contravene the United Kingdom’s obligations under the Human Rights Convention or any other international agreement to which the United Kingdom is a party, or
  - (b) the Secretary of State has exercised the power in subsection (3) in respect of the person, and the Secretary of State considers that there are other exceptional circumstances which apply in relation to the person which mean that it is appropriate to give the person limited leave to remain.



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- (5) The Secretary of State may give the person indefinite leave to remain in the United Kingdom if the Secretary of State considers that failure to do so would contravene the United Kingdom’s obligations under the Human Rights Convention.
- (6) In this section, “the Human Rights Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4 November 1950 as it has effect for the time being in relation to the United Kingdom.”
- (4) Until section 2(1) comes into force in relation to a person, section 8AA of the Immigration Act 1971 has effect in relation to that person as if it also permitted the Secretary of State to give the person limited leave to enter or limited leave to remain in the United Kingdom in any other circumstances, subject as follows.
- (5) If a person in relation to whom section 8AA of the Immigration Act 1971 applies leaves or is removed from the United Kingdom after having become such a person, subsection (4) of this section does not permit the Secretary of State to give the person limited leave to enter the United Kingdom if the person returns to the United Kingdom (but see section 8AA(3) of that Act).
- (6) If a person in relation to whom section 8AA of the Immigration Act 1971 applies is given limited leave to enter the United Kingdom under subsection (3) of that section, subsection (4) of this section does not permit the Secretary of State to give the person limited leave to remain in the United Kingdom (but see section 8AA(4) of that Act).
- (7) Any leave to enter or remain in the United Kingdom given to a person by virtue of subsection (4) is to be disregarded in determining, for the purposes of this Act or any other enactment, whether the person meets the four conditions in section 2.

**Commencement Information**

**I32** S. 30 in force at Royal Assent, see [s. 68\(3\)\(a\)](#)

### **31 Persons prevented from obtaining British citizenship etc**

- (1) Sections 32 to 35 (ineligibility for routes to British citizenship, British overseas territories citizenship, British overseas citizenship and status as a British subject) apply in relation to a person who falls within subsection (3), read with the modifications in subsections (4) to (6).
- (2) Such a person is referred to in sections 32 to 35 as an “ineligible person”.
- (3) A person falls within this subsection if the person has ever met the four conditions in section 2 (conditions relating to removal from the United Kingdom), reading subsection (3) of that section as if referred to a person entering or arriving in the United Kingdom as mentioned in subsection (2) of that section on or after 7 March 2023.
- (4) For the purposes of this section, references to the United Kingdom in section 2 and this section are to be read as if they included references to the Islands and the British overseas territories.

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- (5) For the purposes of this section as it has effect by virtue of [subsection \(4\)](#) in relation to any of the Islands—
- (a) references in section 2 to provisions of the Immigration Act 1971 are to be read as if they included references to the provisions of that Act as extended to that Island under section 36 of that Act, and
  - (b) terms used in the four conditions in section 2 are to be interpreted in accordance with that Act as extended to that Island under section 36 of that Act.
- (6) For the purposes of this section as it has effect by virtue of [subsection \(4\)](#) in relation to any of the British overseas territories—
- (a) the references in section 2 to “leave to enter”, “leave to remain”, and “limited leave to enter or remain” are to be construed as references to any status formally granted under the immigration laws in force in that territory which is broadly equivalent to the status in question under the Immigration Act 1971,
  - (b) the references in section 2 to “deportation order”, “entry clearance” and “electronic travel authorisation” are to be construed as references to any order, clearance or authorisation made or given under the immigration laws in force in that territory which is broadly equivalent to the order, clearance or authorisation in question under that Act, and
  - (c) the references in section 2 to “entering”, “arriving” or to a document being “valid” are to be construed as references to any concept under the immigration laws in force in that territory which is broadly equivalent to the concept in question under that Act.
- (7) In this section, “the Islands” means the Channel Islands and the Isle of Man.
- (8) This section is subject to section 36 (disapplication of sections 32 to 35).

#### Commencement Information

**I33** S. 31 in force at Royal Assent, see [s. 68\(3\)\(a\)](#)

## 32 British citizenship

- (1) An ineligible person is not entitled to be registered as a British citizen under any of the following provisions—
- (a) section 3(2) or (5) of the British Nationality Act 1981 (acquisition of British citizenship by registration: minors);
  - (b) section 4(2) of that Act (acquisition of British citizenship by registration: British overseas territories citizens etc);
  - (c) section 5 of that Act (acquisition of British citizenship by registration: British overseas territories citizens having connection with Gibraltar);
  - (d) section 10(1) of that Act (registration as British citizen following renunciation of citizenship of UK etc);
  - (e) section 13(1) of that Act (resumption of British citizenship).
- (2) In relation to an application for British citizenship made by or in relation to an ineligible person, the Secretary of State may not—
- (a) cause the person to be registered as a British citizen under any of the following provisions—

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- (i) section 3(1) of the British Nationality Act 1981 (acquisition of British citizenship by registration: minors);
- (ii) section 4A of that Act (acquisition of British citizenship by registration: further provision for British overseas territories citizens);
- (iii) section 10(2) of that Act (registration as British citizen following renunciation of citizenship of UK etc);
- (iv) section 13(3) of that Act (resumption of British citizenship);
- (b) grant to the person a certificate of naturalisation as a British citizen under section 6 of that Act (acquisition of British citizenship by naturalisation).

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**Commencement Information**

**I34** S. 32 in force at Royal Assent, see [s. 68\(3\)\(a\)](#)

### **33 British overseas territories citizenship**

- (1) An ineligible person is not entitled to be registered as a British overseas territories citizen under any of the following provisions—
- (a) section 17(2) or (5) of the British Nationality Act 1981 (acquisition of British overseas territories citizenship by registration: minors);
  - (b) section 22(1) of that Act (right to registration as British overseas territories citizen replacing right to resume citizenship of UK etc);
  - (c) section 13(1) of that Act as applied by section 24 of that Act (resumption of British overseas territories citizenship).
- (2) In relation to an application made by or in relation to an ineligible person, the Secretary of State may not—
- (a) cause the person to be registered as a British overseas territories citizen under any of the following provisions—
    - (i) section 17(1) of the British Nationality Act 1981 (acquisition of British overseas territories citizenship by registration: minors);
    - (ii) section 22(2) of that Act (right to registration as British overseas territories citizen replacing right to resume citizenship of UK etc);
    - (iii) section 13(3) of that Act as applied by section 24 of that Act (resumption of British overseas territories citizenship);
  - (b) grant to the person a certificate of naturalisation as a British overseas territories citizen under section 18 of that Act (acquisition of British overseas territories citizenship by naturalisation).

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**Commencement Information**

**I35** S. 33 in force at Royal Assent, see [s. 68\(3\)\(a\)](#)

### **34 British overseas citizenship**

The Secretary of State may not cause an ineligible person to be registered as a British overseas citizen under section 27(1) of the British Nationality Act 1981 (registration of minors as British overseas citizens).

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#### Commencement Information

**I36** S. 34 in force at Royal Assent, see [s. 68\(3\)\(a\)](#)

### 35 British subjects

The Secretary of State may not cause an ineligible person to be registered as a British subject under section 32 of the British Nationality Act 1981 (registration of minors as British subjects).

#### Commencement Information

**I37** S. 35 in force at Royal Assent, see [s. 68\(3\)\(a\)](#)

### 36 Disapplication of sections 32 to 35

- (1) This section applies in relation to a person who would otherwise be an ineligible person for the purposes of sections 32 to 35 (see section 31).
- (2) The Secretary of State may determine that the person is not to be an “ineligible person” for the purposes of sections 32 to 35 if the Secretary of State considers that the application of those sections in relation to the person would contravene the United Kingdom’s obligations under the Human Rights Convention.

#### Commencement Information

**I38** S. 36 in force at Royal Assent, see [s. 68\(3\)\(a\)](#)

### 37 Amendments relating to sections 32 to 36

- (1) The British Nationality Act 1981 is amended as follows.
- (2) In section 3 (acquisition of British citizenship by registration: minors), after subsection (6) insert—
  - “(7) This section is subject to sections 31, 32 and 36 of the Illegal Migration Act 2023 (restriction of eligibility for citizenship etc).”
- (3) In section 4 (acquisition of British citizenship by registration: British overseas territories citizens etc), after subsection (6) insert—
  - “(7) This section is subject to sections 31, 32 and 36 of the Illegal Migration Act 2023 (restriction of eligibility for citizenship etc).”
- (4) In section 4A (acquisition of British citizenship by registration: further provision for British overseas territories citizens), after subsection (2) insert—
  - “(3) This section is subject to sections 31, 32 and 36 of the Illegal Migration Act 2023 (restriction of eligibility for citizenship etc).”
- (5) In section 5 (acquisition of British citizenship by registration: British overseas territories citizens having connection with Gibraltar), at the beginning insert “Subject

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to sections 31, 32 and 36 of the Illegal Migration Act 2023 (restriction of eligibility for citizenship etc).”.

- (6) In section 6 (acquisition of British citizenship by naturalisation), after subsection (2) insert—

“(3) This section is subject to sections 31, 32 and 36 of the Illegal Migration Act 2023 (restriction of eligibility for citizenship etc).”

- (7) In section 10 (registration as British citizen following renunciation of citizenship of UK etc), after subsection (4) insert—

“(5) This section is subject to sections 31, 32 and 36 of the Illegal Migration Act 2023 (restriction of eligibility for citizenship etc).”

- (8) In section 13 (resumption of British citizenship), after subsection (3) insert—

“(4) This section is subject to sections 31, 32 and 36 of the Illegal Migration Act 2023 (restriction of eligibility for citizenship etc).”

- (9) In section 17 (acquisition of British overseas territories citizenship by registration: minors), after subsection (6) insert—

“(7) This section is subject to sections 31, 33 and 36 of the Illegal Migration Act 2023 (restriction of eligibility for citizenship etc).”

- (10) In section 18 (acquisition of British overseas territories citizenship by naturalisation), after subsection (3) insert—

“(4) This section is subject to sections 31, 33 and 36 of the Illegal Migration Act 2023 (restriction of eligibility for citizenship etc).”

- (11) In section 22 (right to registration as British overseas territories citizen replacing right to resume citizenship of UK etc), after subsection (4) insert—

“(5) This section is subject to sections 31, 33 and 36 of the Illegal Migration Act 2023 (restriction of eligibility for citizenship etc).”

- (12) In section 24 (renunciation and resumption of British overseas territories citizenship), at the beginning insert “Subject to sections 31, 33 and 36 of the Illegal Migration Act 2023 (restriction of eligibility for citizenship etc).”.

- (13) In section 27(1) (registration of minors as British overseas citizens), at the beginning insert “Subject to sections 31, 34 and 36 of the Illegal Migration Act 2023 (restriction of eligibility for citizenship etc).”.

- (14) In section 32 (registration of minors as British subjects), at the beginning insert “Subject to sections 31, 35 and 36 of the Illegal Migration Act 2023 (restriction of eligibility for citizenship etc).”.

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#### Commencement Information

**I39** S. 37 in force at Royal Assent, see s. 68(3)(a)

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## Legal proceedings

PROSPECTIVE

### 38 Suspensive claims: interpretation

- (1) The definitions in subsections (2) to (8) have effect for the purposes of this section and sections 39 to 53.
- (2) “Suspensive claim” means—
  - (a) a serious harm suspensive claim (see section 39), or
  - (b) a removal conditions suspensive claim.
- (3) “Removal conditions suspensive claim” means a claim by a person who has been given a removal notice that the person does not meet the removal conditions.
- (4) “Removal notice” means a notice of removal given to a person under section 8(2)(a) (further provisions about removal).
- (5) “Third country removal notice” means a removal notice under which a person is to be removed to a third country.
- (6) “Third country”, in relation to a person, means a country or territory other than—
  - (a) a country of which the person is a national, or
  - (b) a country or territory in which the person has obtained a passport or other document of identity.
- (7) “Removal conditions” means the four conditions in section 2 (duty to make arrangements for removal).
- (8) “Working day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.
- (9) Where a removal notice specifies part of a country or territory, references in this section and sections 39 to 53 to the country or territory specified in the removal notice are to the part of the country or territory so specified.

#### Commencement Information

**I40** S. 38 not in force at Royal Assent, see s. 68(1)

PROSPECTIVE

### 39 Serious harm suspensive claims: interpretation

- (1) The definitions in subsections (2) and (3) have effect for the purposes of section 38, this section and sections 40 to 53.

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- (2) A “serious harm suspensive claim” means a claim by a person (“P”) who has been given a third country removal notice that the serious harm condition is met in relation to P.
- (3) The “serious harm condition” is that P would, before the end of the relevant period, face a real, imminent and foreseeable risk of serious and irreversible harm if removed from the United Kingdom under this Act to the country or territory specified in the third country removal notice.
- (4) The following are examples of harm that constitute serious and irreversible harm for the purposes of this Act—
  - (a) death;
  - (b) persecution falling within subsection (2)(a) or (b) of section 31 of the Nationality and Borders Act 2022 (read together with subsections (1) and (3) of that section) (Article 1(A)(2) of the Refugee Convention: persecution) where P is not able to avail themselves of protection from that persecution;
  - (c) torture;
  - (d) inhuman or degrading treatment or punishment;
  - (e) onward removal from the country or territory specified in the third country removal notice to another country or territory where P would face a real, imminent and foreseeable risk of any harm mentioned in paragraphs (a) to (d).

[<sup>F1</sup>(4A) But see sections 2 and 4 of the Safety of Rwanda (Asylum and Immigration) Act 2024 (safety of the Republic of Rwanda).]

- (5) The following are examples of harm that do not constitute serious and irreversible harm for the purposes of this Act—
  - (a) persecution not falling within subsection (2)(a) or (b) of section 31 of the Nationality and Borders Act 2022 (read together with subsections (1) and (3) of that section);
  - (b) persecution falling within subsection (2)(a) or (b) of section 31 of that Act (read together with subsections (1) and (3) of that section) where P is able to avail themselves of protection from that persecution;
  - (c) where the standard of healthcare available to P in the relevant country or territory is lower than is available to P in the United Kingdom, any harm resulting from that different standard of healthcare (including, in particular, a less favourable medical prognosis).
- (6) Subsection (7) is an example of harm that is unlikely to constitute serious and irreversible harm for the purposes of this Act.
- (7) Any pain or distress resulting from a medical treatment that is available to P in the United Kingdom not being available to P in the relevant country or territory.
- (8) For the purposes of subsections (4) and (5)—
  - (a) protection from persecution can be provided by—
    - (i) the government of the relevant country or territory, or
    - (ii) any party or organisation, including any international organisation, controlling the relevant country or territory or a substantial part of it;
  - (b) P is to be taken to be able to avail themselves of protection from persecution if—

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- (i) the government, party or organisation mentioned in paragraph (a) takes reasonable steps to prevent the persecution by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution, and
  - (ii) P is able to access the protection.
- (9) In this section “relevant period” means the total period of time that it would take—
- (a) for P to make a human rights claim in relation to P’s removal from the United Kingdom under this Act (see section 41 (relationship with other proceedings)),
  - (b) for the claim to be decided by the Secretary of State, and
  - (c) for any application for judicial review in relation to a decision of the Secretary of State to refuse the claim to be exhausted.

#### Textual Amendments

**F1** S. 39(4A) inserted (25.4.2024) by [Safety of Rwanda \(Asylum and Immigration\) Act 2024 \(c. 8\)](#), **ss. 7(2), 10(1)** (with s. 10(2))

#### Modifications etc. (not altering text)

**C1** S. 39(4)-(8) applied (with modifications) (25.4.2024) by [Safety of Rwanda \(Asylum and Immigration\) Act 2024 \(c. 8\)](#), **ss. 4(5), 10(1)** (with ss. 4(6), 10(2))

#### Commencement Information

**I41** S. 39 not in force at Royal Assent, see [s. 68\(1\)](#)

## 40 Meaning of “serious and irreversible harm”

- (1) The Secretary of State may by regulations amend section 39 to make provision about the meaning of “serious and irreversible harm” for the purposes of this Act.
- (2) Regulations under subsection (1) may in particular—
  - (a) define any aspect of serious and irreversible harm;
  - (b) give examples of what is or is not to be treated as serious and irreversible harm.
- (3) Regulations under subsection (1) may not amend subsection (4) of section 39 to remove any example of serious and irreversible harm which is listed in that subsection when this Act is passed.
- (4) Regulations under subsection (1) may make consequential amendments to this Act.

#### Commencement Information

**I42** S. 40 in force at Royal Assent for specified purposes, see [s. 68\(4\)\(i\)](#)



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PROSPECTIVE

#### 41 Relationship with other proceedings

- (1) A “serious harm suspensive claim” made under this Act is not a “human rights claim” for the purposes of the Nationality, Immigration and Asylum Act 2002 or the Nationality and Borders Act 2022.
- (2) Accordingly no right of appeal under section 82(1)(a) or (b) of the Nationality, Immigration and Asylum Act 2002 (appeal against refusal of protection claim or human rights claim) arises in relation to any decision of the Secretary of State made under section 42 (serious harm suspensive claims), 46 (out of time claims) or 48 (new matters) of this Act in respect of a serious harm suspensive claim.
- (3) The making of a serious harm suspensive claim by a person (or the possibility of a person making such a claim) does not affect any ability of the person to make a human rights claim in relation to their removal from the United Kingdom to a third country under this Act.
- (4) Where—
  - (a) a person subject to removal to a third country under this Act makes a human rights claim in relation to their removal to that third country, and
  - (b) the Secretary of State decides to refuse the claim,there is no right of appeal under section 82(1)(a) or (b) of the Nationality, Immigration and Asylum Act 2002 in relation to that decision.
- (5) Subsection (4) does not affect any ability of the person to make an application for judicial review in relation to a decision of the Secretary of State to refuse the claim (but section 5(1)(d) (disregard of application for judicial review) applies in relation to any such application).
- (6) In section 82(3) of the Nationality, Immigration and Asylum Act 2002, after “Part” insert “and in section 41(4) of the Illegal Migration Act 2023 (relationship with other proceedings)”.

#### Commencement Information

**I43** S. 41 not in force at Royal Assent, see s. 68(1)

#### 42 Serious harm suspensive claims

- (1) This section applies where, within the claim period, a person makes a serious harm suspensive claim to the Secretary of State.
- (2) The Secretary of State must, before the end of the decision period, consider the claim and make one of the following decisions—
  - (a) that the serious harm condition is met in relation to the person, or
  - (b) that the serious harm condition is not met in relation to the person.
- (3) If the Secretary of State makes a decision under subsection (2)(b), the Secretary of State may also certify that the claim is clearly unfounded (see sections 44(1)(c) and 45 (appeals)).

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- (4) In considering a serious harm suspensive claim, the Secretary of State must take into account the following factors—
- (a) any assurances given by the government of the country or territory specified in the removal notice;
  - (b) any support and services (including in particular medical services) provided by that government;
  - (c) in circumstances where it is reasonable to expect a person to have provided certain evidence and they have not done so, the fact that the person has not provided such evidence.
- (5) A claim under subsection (1) must—
- (a) contain compelling evidence that the serious harm condition is met in relation to the person,
  - (b) contain the prescribed information, and
  - (c) be made in the prescribed form and manner.

In this subsection “prescribed” means prescribed in regulations made by the Secretary of State.

- (6) Before the end of the claim period or the decision period in relation to a serious harm suspensive claim, the Secretary of State may, by notice to the person concerned, extend the period where the Secretary of State considers it appropriate to do so.
- (7) In this section—
- “claim period” means the period of 8 days beginning with the day on which the person is given the third country removal notice;
- “decision period” means the period of 4 days beginning with—
- (a) the day on which the person makes the serious harm suspensive claim, or
  - (b) where section 46(3) or (6) (out of time claims) applies, the day on which the Secretary of State makes the decision mentioned in section 46(3) or is given notice of the determination of the Upper Tribunal mentioned in section 46(6) (as the case may be).

#### Commencement Information

**I44** S. 42 in force at Royal Assent for specified purposes, see s. 68(4)(j)

### 43 Removal conditions suspensive claims

- (1) This section applies where, within the claim period, a person makes a removal conditions suspensive claim to the Secretary of State.
- (2) The Secretary of State must, before the end of the decision period, consider the claim and make one of the following decisions—
  - (a) that the person does not meet the removal conditions, or
  - (b) that the person meets the removal conditions.
- (3) If the Secretary of State makes a decision under subsection (2)(b), the Secretary of State may also certify that the claim is clearly unfounded (see sections 44(1)(c) and 45 (appeals)).

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- (4) In considering a removal conditions suspensive claim in circumstances where it is reasonable to expect a person to have provided certain evidence and they have not done so, the Secretary of State must take into account the fact that the person has not provided such evidence.
- (5) A claim under subsection (1) must—
- (a) contain compelling evidence that the person does not meet the removal conditions,
  - (b) contain the prescribed information, and
  - (c) be made in the prescribed form and manner.

In this subsection “prescribed” means prescribed in regulations made by the Secretary of State.

- (6) Before the end of the claim period or the decision period in relation to a removal conditions suspensive claim, the Secretary of State may, by notice to the person concerned, extend the period where the Secretary of State considers it appropriate to do so.
- (7) In this section—
- “claim period” means the period of 8 days beginning with the day on which the person is given the removal notice;
  - “decision period” means the period of 4 days beginning with—
    - (a) the day on which the person makes the removal conditions suspensive claim, or
    - (b) where section 46(3) or (6) (out of time claims) applies, the day on which the Secretary of State makes the decision mentioned in section 46(3) or is given notice of the determination of the Upper Tribunal mentioned in section 46(6) (as the case may be).

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#### Commencement Information

**I45** S. 43 in force at Royal Assent for specified purposes, see s. 68(4)(k)

PROSPECTIVE

#### 44 Appeals in relation to suspensive claims

- (1) This section applies if—
- (a) a person makes a suspensive claim,
  - (b) the Secretary of State makes a decision under section 42(2)(b) or 43(2)(b) (refusal of suspensive claim) in relation to the claim, and
  - (c) the Secretary of State has not certified the claim as clearly unfounded under section 42(3) or (as the case may be) 43(3).
- (2) The person may appeal to the Upper Tribunal against the decision mentioned in subsection (1)(b).
- (3) An appeal under subsection (2) must be brought on the ground that—

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- (a) in the case of a serious harm suspensive claim, the serious harm condition is met in relation to the person;
  - (b) in the case of a removal conditions suspensive claim, the person does not meet the removal conditions,
- and the notice of appeal must contain compelling evidence of such ground.
- (4) In considering an appeal in relation to a serious harm suspensive claim, the Upper Tribunal must take into account the factors mentioned in section 42(4).
- (5) In considering an appeal in relation to a removal conditions suspensive claim in circumstances where it is reasonable to expect a person to have provided certain evidence and they have not done so, the Upper Tribunal must take into account the fact that the person has not provided such evidence.
- (6) Where an appeal is brought under subsection (2), the Upper Tribunal must decide—
- (a) in relation to a serious harm suspensive claim, whether the serious harm condition is met in relation to the person;
  - (b) in relation to a removal conditions suspensive claim, whether the person meets the removal conditions.
- (7) See section 13 of the Tribunals, Courts and Enforcement Act 2007 (right of appeal to Court of Appeal etc) for provision about the only right of appeal against a decision of the Upper Tribunal under this section.

#### Commencement Information

**I46** S. 44 not in force at Royal Assent, see s. 68(1)

PROSPECTIVE

#### **45** Permission to appeal in relation to suspensive claims certified as clearly unfounded

- (1) This section applies if—
- (a) a person makes a suspensive claim,
  - (b) the Secretary of State makes a decision under section 42(2)(b) or 43(2)(b) (refusal of suspensive claim) in relation to the claim, and
  - (c) the Secretary of State has certified the claim as clearly unfounded under section 42(3) or (as the case may be) 43(3).
- (2) The person may not appeal to the Upper Tribunal against the decision mentioned in subsection (1)(b), but they may apply to the Upper Tribunal for permission to appeal to the Upper Tribunal against the decision.
- (3) In relation to a serious harm suspensive claim, the Upper Tribunal may grant permission to appeal in response to a person's application under subsection (2) only if it considers that there is compelling evidence that—
- (a) the serious harm condition is met in relation to the person, and
  - (b) the risk mentioned in section 39(3) is obvious.

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- (4) In relation to a removal conditions suspensive claim, the Upper Tribunal may grant permission to appeal in response to a person's application under subsection (2) only if it considers that there is compelling evidence that the person does not meet the removal conditions.
- (5) Unless the Upper Tribunal considers that an oral hearing is necessary to secure that justice is done in a particular case, an application under subsection (2) is to be determined by the Upper Tribunal only on the basis of written submissions and evidence.
- (6) If the Upper Tribunal grants permission to appeal, the person may appeal to the Upper Tribunal under section 44(2) against the decision mentioned in subsection (1)(b).
- (7) There is no right of appeal under section 13 of the Tribunals, Courts and Enforcement Act 2007 (right of appeal to Court of Appeal etc) in relation to a decision of the Upper Tribunal on an application under this section.
- (8) See also section 51 (finality of certain decisions by the Upper Tribunal).

#### Commencement Information

I47 S. 45 not in force at Royal Assent, see s. 68(1)

PROSPECTIVE

## 46 Suspensive claims out of time

- (1) This section applies if—
  - (a) a person makes a suspensive claim after the end of the claim period (see sections 42(7) and 43(7)) but before the person is removed from the United Kingdom under this Act, and
  - (b) the person has not—
    - (i) in the case of a serious harm suspensive claim, made a previous serious harm suspensive claim in relation to the same removal notice, or
    - (ii) in the case of a removal conditions suspensive claim, made a previous removal conditions suspensive claim in relation to the same removal notice.
- (2) The Secretary of State must, before the end of the decision period, consider whether there were compelling reasons for the person not to make the claim within the claim period.
- (3) If the Secretary of State decides that there were compelling reasons for the person not to make the claim within the claim period, the Secretary of State must consider the claim under section 42(2) (serious harm suspensive claims) or (as the case may be) 43(2) (removal conditions suspensive claims).
- (4) If the Secretary of State decides that there were not compelling reasons for the person not to make the claim within the claim period, the person may apply for a declaration

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from the Upper Tribunal that there were compelling reasons for the person not to make the claim within the claim period.

- (5) An application under subsection (4) must—
  - (a) contain compelling evidence that there were compelling reasons for the person not to make the claim within the claim period, and
  - (b) be determined by the Upper Tribunal only on the basis of written submissions and evidence.
- (6) If the Upper Tribunal grants a declaration on an application under subsection (4), the Secretary of State must consider the claim under section 42(2) or (as the case may be) 43(2).
- (7) There is no right of appeal under section 13 of the Tribunals, Courts and Enforcement Act 2007 (right of appeal to Court of Appeal etc) in relation to a decision of the Upper Tribunal on an application under subsection (4).
- (8) See also section 51 (finality of certain decisions by the Upper Tribunal).
- (9) Before the end of the decision period in relation to a suspensive claim mentioned in subsection (1)(a), the Secretary of State may, by notice to the person concerned, extend the period where the Secretary of State considers it appropriate to do so.
- (10) In this section “decision period” means the period of 4 days beginning with the day on which the person makes the suspensive claim.

#### Commencement Information

**I48** S. 46 not in force at Royal Assent, see s. 68(1)

PROSPECTIVE

#### 47 Suspensive claims: duty to remove

- (1) A person who has been given a removal notice may not be removed from the United Kingdom under this Act to the country or territory specified in the removal notice during any of the following periods—
  - (a) where the person makes a suspensive claim before the end of the claim period, before the Secretary of State makes a decision under section 42(2) (serious harm suspensive claim) or (as the case may be) 43(2) (removal conditions suspensive claim) in relation to the claim;
  - (b) where section 46 (out of time claims) applies in relation to a suspensive claim made by the person, before the Secretary of State makes a decision under section 46(3) or (4) in relation to the claim;
  - (c) where the Secretary of State makes a decision under section 46(4) in relation to a suspensive claim made by the person, before the process for making an application to the Upper Tribunal under section 46(4) has been exhausted;
  - (d) where the Secretary of State is required by section 46(3) or (6) (out of time claims) to consider a suspensive claim made by the person, before the Secretary of State makes a decision under section 42(2) or (as the case may be) 43(2) in relation to the claim;

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- (e) where the Secretary of State makes a decision under section 42(2)(b) or 43(2)(b) (refusal of suspensive claim) in relation to a suspensive claim made by the person, before the appeals process in relation to the decision has been exhausted.
- (2) Where—
- (a) the Secretary of State makes a decision under section 42(2)(a) or 43(2)(a) (acceptance of suspensive claim) in relation to a suspensive claim made by a person, or
  - (b) a person successfully appeals under section 44 (appeals) or section 2AA of the Special Immigration Appeals Commission Act 1997 (appeals in relation to the Illegal Migration Act 2023) against a decision of the Secretary of State under section 42(2)(b) or 43(2)(b) (refusal of suspensive claim),
- the person may not be removed from the United Kingdom under this Act to the country or territory specified in the removal notice.
- (3) But if at any time it appears to the Secretary of State that there has been a change of circumstances in relation to the person—
- (a) in a case within subsection (2)(a), the Secretary of State may revise the decision and instead make a decision under section 42(2)(b) or (as the case may be) 43(2)(b) in relation to the claim;
  - (b) in a case within subsection (2)(b), the Secretary of State or an immigration officer may give a new removal notice to the person (and accordingly a new claim period begins in relation to the making of a further suspensive claim).
- (4) In subsection (3) the reference to a change of circumstances in relation to a person includes in particular where any—
- (a) human rights claim, or
  - (b) application for judicial review,
- made by the person in relation to their removal from the United Kingdom is not successful.
- (5) Where the Secretary of State makes a decision under section 42(2)(b) or 43(2)(b) in relation to a suspensive claim, the person may, subject to any appeal (see sections 44, 45 and 53), be removed from the United Kingdom under this Act to the country or territory specified in the removal notice.

#### Commencement Information

**I49** S. 47 not in force at Royal Assent, see s. 68(1)

PROSPECTIVE

#### 48 Upper Tribunal consideration of new matters

- (1) This section applies where the Upper Tribunal is considering—
- (a) an appeal by a person under section 44(2) (appeals in relation to suspensive claims), or
  - (b) an application by a person under section 45(2) (permission to appeal: claims certified as clearly unfounded),

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in relation to a decision of the Secretary of State under section 42(2)(b) or 43(2)(b) (refusal of suspensive claim).

- (2) The Upper Tribunal may consider any matter which it considers relevant to the substance of the decision.
- (3) But the Upper Tribunal must not consider a new matter unless the condition in subsection (5) is met.
- (4) A matter is a “new matter” if—
  - (a) it is raised by the person in the course of the appeal or application, and
  - (b) the person did not provide details of the matter to the Secretary of State before the end of the claim period for the suspensive claim (see sections 42(7) and 43(7)).
- (5) The condition in this subsection is that—
  - (a) within the relevant period the Secretary of State has given the Upper Tribunal consent to consider the new matter, or
  - (b) where the Secretary of State has not given such consent within the relevant period, the Upper Tribunal determines that there were compelling reasons for the person not to have provided details of the matter to the Secretary of State before the end of the claim period.
- (6) The Secretary of State may provide consent under subsection (5)(a) only if the Secretary of State considers that there were compelling reasons for the person not to have provided details of the matter before the end of the claim period.
- (7) In subsection (5) “relevant period” means the period of 3 working days beginning with the day after the day on which the new matter is raised by the person in the course of the appeal or application.
- (8) There is no right of appeal under section 13 of the Tribunals, Courts and Enforcement Act 2007 (right of appeal to Court of Appeal etc) in relation to a decision of the Upper Tribunal to make or not to make a determination under subsection (5)(b).
- (9) See also section 51 (finality of certain decisions by the Upper Tribunal).

#### Commencement Information

**I50** S. 48 not in force at Royal Assent, see s. 68(1)

PROSPECTIVE

#### 49 Appeals in relation to suspensive claims: timing

- (1) Tribunal Procedure Rules must secure that in relation to an appeal under section 44(2) (appeal against decision to refuse suspensive claim)—
  - (a) the notice of appeal must be given to the Upper Tribunal within the period of 7 working days beginning with—
    - (i) the day on which the appellant was given notice of the decision against which the appeal is brought, or



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- (ii) where permission to appeal has been granted under section 45(2), the day on which the appellant was given notice of the Upper Tribunal's decision to grant such permission;
  - (b) the Upper Tribunal must make a decision on the appeal, and give notice of that decision to the parties, within the period of 23 working days beginning with the day on which the appellant gave notice of appeal to the Upper Tribunal.
- (2) Tribunal Procedure Rules must secure that in relation to an application for permission to appeal under section 45(2) (permission to appeal: claims certified as clearly unfounded)—
  - (a) the application must be made to the Upper Tribunal within the period of 7 working days beginning with the day on which the applicant was given notice that the Secretary of State had certified the person's suspensive claim as clearly unfounded;
  - (b) the Upper Tribunal must determine the application, and give notice of that determination to the parties, within the period of 7 working days beginning with the day on which the application was made to the Upper Tribunal.
- (3) Tribunal Procedure Rules must secure that in relation to an application for a declaration under section 46(4) (out of time claims)—
  - (a) the application must be made to the Upper Tribunal within the period of 7 working days beginning with the day on which the applicant was given notice of the decision in relation to which the application is brought;
  - (b) the Upper Tribunal must determine the application, and give notice of that determination to the parties, within the period of 7 working days beginning with the day on which the application was made to the Upper Tribunal.
- (4) But Tribunal Procedure Rules must—
  - (a) secure that the Upper Tribunal may, if it is satisfied that it is the only way to secure that justice is done in a particular case, order that any period of time mentioned in subsection (1), (2) or (3) is to be extended to such period as the Upper Tribunal may order, and
  - (b) without prejudice to paragraph (a), secure that the Upper Tribunal may order that any period of time mentioned in subsection (1)(b) or (2)(b) is to be extended by a period of up to 3 working days where a new matter (within the meaning of section 48(4)) is raised in the course of the appeal or application.

#### Commencement Information

**I51** S. 49 not in force at Royal Assent, see s. 68(1)

VALID FROM 01/05/2024

#### 50 Procedure for Tribunal Procedure Rules

- (1) The first time after the passing of this Act that Tribunal Procedure Rules are made for the purposes of any of sections 44 to 49 (appeals in relation to suspensive claims), the Rules may be made by the Lord Chancellor rather than by the Tribunal Procedure Committee.

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- (2) Before making Tribunal Procedure Rules by virtue of subsection (1), the Lord Chancellor must consult—
  - (a) the Senior President of Tribunals,
  - (b) the Lord Chief Justice of England and Wales,
  - (c) the Lord President of the Court of Session, and
  - (d) the Lord Chief Justice of Northern Ireland.
- (3) The Lord Chancellor is not required to undertake any other consultation before making Tribunal Procedure Rules by virtue of subsection (1).
- (4) A requirement to consult under subsection (2) may be satisfied by consultation that took place wholly or partly before the passing of this Act.
- (5) Tribunal Procedure Rules made by virtue of subsection (1) are to be made by statutory instrument.
- (6) A statutory instrument containing Tribunal Procedure Rules made by virtue of subsection (1) must be laid before Parliament after being made.
- (7) Tribunal Procedure Rules contained in a statutory instrument laid before Parliament under subsection (6) cease to have effect at the end of the period of 40 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament.
- (8) In calculating the period of 40 days, no account is to be taken of any whole days that fall within a period during which—
  - (a) Parliament is dissolved or prorogued, or
  - (b) either House of Parliament is adjourned for more than four days.
- (9) If Tribunal Procedure Rules cease to have effect as a result of subsection (7)—
  - (a) that does not affect the validity of anything previously done under the Rules, and
  - (b) subsection (1) applies again as if the Rules had not been made.
- (10) In this section “Tribunal Procedure Committee” means the committee of that name constituted under Part 2 of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007.

#### Commencement Information

**I52** S. 50 not in force at Royal Assent, see [s. 68\(1\)](#)

PROSPECTIVE

### 51 Finality of certain decisions by the Upper Tribunal

- (1) Subsections (2) and (3) apply in relation to a decision by the Upper Tribunal—
  - (a) to grant or refuse permission to appeal in response to an application under section 45(2) (permission to appeal: claims certified as clearly unfounded),
  - (b) to grant or refuse an application for a declaration under section 46(4) (out of time claims), or

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- (c) to make or not to make a determination under section 48(5)(b) (new matters).
- (2) The decision is final, and not liable to be questioned or set aside in any other court.
- (3) In particular—
  - (a) the Upper Tribunal is not to be regarded as having exceeded its powers by reason of any error made in reaching the decision;
  - (b) the supervisory jurisdiction does not extend to, and no application or petition for judicial review may be made or brought in relation to, the decision.
- (4) Subsections (2) and (3) do not apply so far as the decision involves or gives rise to any question as to whether—
  - (a) the Upper Tribunal has or had a valid application before it under section 45(2) or 46(4),
  - (b) the Upper Tribunal is or was properly constituted for the purpose of dealing with the application or, in the case of a decision mentioned in subsection (1)(c), for the purpose of making the decision, or
  - (c) the Upper Tribunal is acting or has acted—
    - (i) in bad faith, or
    - (ii) in such a procedurally defective way as amounts to a fundamental breach of the principles of natural justice.
- (5) In this section—
  - “decision” includes any purported decision;
  - “the supervisory jurisdiction” means the supervisory jurisdiction of—
    - (a) the High Court, in England and Wales or Northern Ireland, or
    - (b) the Court of Session, in Scotland.

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**Commencement Information**

**I53** S. 51 not in force at Royal Assent, see [s. 68\(1\)](#)

## 52 Judges of First-tier Tribunal and Upper Tribunal

In section 5(1) of the Tribunals, Courts and Enforcement Act 2007 (judges and other members of the Upper Tribunal), after paragraph (c) insert—

“(ca) is a judge of the First-tier Tribunal.”.

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**Commencement Information**

**I54** S. 52 in force at Royal Assent, see [s. 68\(3\)\(b\)](#)

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**Status:** Point in time view as at 28/09/2023. This version of this Act contains provisions that are not valid for this point in time.  
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PROSPECTIVE

### 53 Special Immigration Appeals Commission

- (1) This section applies where the Secretary of State makes a decision under section 42(2)(b) or 43(2)(b) (refusal of suspensive claim) in relation to a suspensive claim.
- (2) An appeal under section 44, or an application for permission to appeal under section 45, in relation to the decision may not be brought or continued if the Secretary of State acting in person certifies that the decision was made wholly or partly in reliance on information which, in the opinion of the Secretary of State, should not be made public—
  - (a) in the interests of national security,
  - (b) in the interests of the relationship between the United Kingdom and another country, or
  - (c) otherwise in the public interest.
- (3) Where a certificate is issued under subsection (2), any pending appeal, or application for permission to appeal, in relation to the decision lapses.
- (4) The Special Immigration Appeals Commission Act 1997 is amended as follows.
- (5) After section 2 insert—

#### “2AA Jurisdiction: appeals in relation to the Illegal Migration Act 2023

- (1) A person may appeal to the Special Immigration Appeals Commission against a refusal decision if—
  - (a) the person would, but for a certificate of the Secretary of State under section 53 of the Illegal Migration Act 2023 (Special Immigration Appeals Commission), be able to—
    - (i) appeal against the decision under section 44 of that Act, or
    - (ii) apply for permission to appeal against the decision under section 45 of that Act, or
  - (b) an appeal against the decision under section 44 of that Act, or an application for permission to appeal against the decision under section 45 of that Act, lapsed under section 53 of that Act by virtue of a certificate of the Secretary of State under that section.
- (2) Sections 44(3) to (6) and 48(2) to (7) of the Illegal Migration Act 2023 apply, with the modification in subsection (3), in relation to an appeal under this section as they apply in relation to an appeal under section 44 of that Act.
- (3) The modification is that references to the Upper Tribunal are to be read as references to the Special Immigration Appeals Commission.
- (4) In this section “refusal decision” means a decision of the Secretary State under section 42(2)(b) or 43(2)(b) of the Illegal Migration Act 2023 (refusal of suspensive claim).

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## **2AB Finality of certain decisions by the Special Immigration Appeals Commission**

- (1) Subsections (2) and (3) apply in relation to a decision by the Special Immigration Appeals Commission to make or not to make a determination under section 48(5)(b) of the Illegal Migration Act 2023 (consideration of new matters), as applied by section 2AA(2) of this Act.
- (2) The decision is final, and not liable to be questioned or set aside in any other court.
- (3) In particular—
  - (a) the Special Immigration Appeals Commission is not to be regarded as having exceeded its powers by reason of any error made in reaching the decision;
  - (b) the supervisory jurisdiction does not extend to, and no application or petition for judicial review may be made or brought in relation to, the decision.
- (4) Subsections (2) and (3) do not apply so far as the decision involves or gives rise to any question as to whether—
  - (a) the Special Immigration Appeals Commission is or was properly constituted for the purpose of making the decision, or
  - (b) the Special Immigration Appeals Commission is acting or has acted—
    - (i) in bad faith, or
    - (ii) in such a procedurally defective way as amounts to a fundamental breach of the principles of natural justice.
- (5) In this section—

“decision” includes any purported decision;

“the supervisory jurisdiction” means the supervisory jurisdiction of—

  - (a) the High Court, in England and Wales or Northern Ireland, or
  - (b) the Court of Session, in Scotland.”
- (6) In the following provisions, for “2 or 2B” substitute “2, 2AA or 2B”—
  - (a) section 5(1)(a) and (b);
  - (b) section 5(2);
  - (c) section 6A(1);
  - (d) section 6A(2)(a).
- (7) In section 5 (procedure in relation to jurisdiction under sections 2 and 3)—
  - (a) in the heading, after “2” insert “, 2AA”;
  - (b) in subsection (9), at the beginning, insert “Subject to subsection (10),”;
  - (c) after subsection (9), insert—

“(10) A statutory instrument containing the first rules made for the purposes of section 2AA (appeals in relation to the Illegal Migration Act 2023) must be laid before Parliament after being made.

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- (11) Rules contained in a statutory instrument laid before Parliament under subsection (10) cease to have effect at the end of the period of 40 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament.
- (12) In calculating the period of 40 days, no account is to be taken of any whole days that fall within a period during which—
- (a) Parliament is dissolved or prorogued, or
  - (b) either House of Parliament is adjourned for more than four days.
- (13) If rules cease to have effect as a result of subsection (11)—
- (a) that does not affect the validity of anything previously done under the rules, and
  - (b) subsection (10) applies again as if the rules had not been made.”

#### Commencement Information

**I55** S. 53 not in force at Royal Assent, see [s. 68\(1\)](#)

PROSPECTIVE

#### 54 Interim remedies

- (1) This section applies to any court proceedings relating to a decision to remove a person from the United Kingdom under this Act (whether the proceedings involve consideration of Convention rights or otherwise).
- (2) Any power of the court or tribunal to grant an interim remedy (whether on an application of the person or otherwise) is restricted as follows.
- (3) The court or tribunal may not grant an interim remedy that prevents or delays, or that has the effect of preventing or delaying, the removal of the person from the United Kingdom in pursuance of the decision.
- (4) In this section—
  - “Convention rights” has the same meaning as in the Human Rights Act 1998 (see section 1(1) of that Act);
  - “court proceedings” means proceedings in any court or tribunal (including, in particular, proceedings on an application for judicial review);
  - “decision” includes any purported decision;
  - “interim remedy” means any interim remedy or relief however described (including, in particular, an interim injunction or interdict).

#### Commencement Information

**I56** S. 54 not in force at Royal Assent, see [s. 68\(1\)](#)

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**Status:** Point in time view as at 28/09/2023. This version of this Act contains provisions that are not valid for this point in time.  
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PROSPECTIVE

## 55 Interim measures of the European Court of Human Rights

- (1) This section applies where the European Court of Human Rights indicates an interim measure in proceedings relating to the intended removal of a person from the United Kingdom under, or purportedly under, this Act.
- (2) A Minister of the Crown may (but need not) determine that the duty in section 2(1) (duty to make arrangements for removal) is not to apply in relation to the person.
- (3) A decision as to whether or not to make a determination under subsection (2) is to be taken personally by the Minister of the Crown.
- (4) In considering whether to make a determination under subsection (2), the Minister may have regard to any matter that the Minister considers relevant, including in particular the matter in subsection (5).
- (5) The matter mentioned in subsection (4) is the procedure by reference to which the interim measure was indicated, including in particular—
  - (a) whether the government of the United Kingdom was given an opportunity to present observations and information before the interim measure was indicated;
  - (b) the form of the decision to indicate the interim measure;
  - (c) whether the European Court of Human Rights will take account of any representations made to it by the government of the United Kingdom seeking reconsideration, without undue delay, of the decision to indicate the interim measure;
  - (d) the likely duration of the interim measure and the timing of any substantive determination by the European Court of Human Rights.
- (6) Where a Minister of the Crown does not make a determination under subsection (2), a person or body to which subsection (7) applies may not have regard, in the circumstances mentioned in subsection (7), to the interim measure.
- (7) This subsection applies to—
  - (a) the Secretary of State or an immigration officer when exercising a function under section 2(1) or 8(2), (8) or (9) (further provisions about removal),
  - (b) the Upper Tribunal when considering any application or appeal under this Act, and
  - (c) a court or tribunal when considering any application or appeal which relates to a decision to remove a person from the United Kingdom under this Act.
- (8) No inference is to be drawn from this section as to whether or not a person or body mentioned in subsection (7) would otherwise have been required to have regard to the interim measure.
- (9) Nothing in this Act requires the Secretary of State or an immigration officer to effect the removal of a person from the United Kingdom pending a decision by a Minister of the Crown as to whether or not to make a determination under subsection (2).
- (10) In this section—

“decision” includes any purported decision;

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“determination” includes any purported determination.

#### Commencement Information

**I57** S. 55 not in force at Royal Assent, see [s. 68\(1\)](#)

PROSPECTIVE

## 56 Legal aid

- (1) Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (civil legal services) is amended as mentioned in subsections (2) to (4).
- (2) In Part 1 (services), in paragraph 19 (judicial review)—
  - (a) after sub-paragraph (6) insert—
    - “(6A) Sub-paragraph (5) does not exclude services provided to an individual who is subject to removal to a third country under the Illegal Migration Act 2023, in relation to judicial review of a refusal of a human rights claim that—
      - (a) arises from Article 2 or 3 of the Human Rights Convention, and
      - (b) is made by the individual.”;
    - (b) in sub-paragraph (10) insert at the appropriate places—
 

““human rights claim” has the meaning given by section 113 of the Nationality, Immigration and Asylum Act 2002;”;

““the Human Rights Convention” has the meaning given by paragraph 30 of this Part of this Schedule;”;

““third country” has the meaning given by [section 38](#) of the Illegal Migration Act 2023.”
- (3) In that Part, after paragraph 31B insert—

#### *“Removal notices under the Illegal Migration Act 2023*

- 31C (1) Civil legal services provided to an individual who has received a removal notice, in relation to the removal notice (including in relation to a suspensive claim relating to the removal notice, and an application under [section 46\(4\)](#) of the Illegal Migration Act 2023 as regards such a claim).
- (2) [Sub-paragraph \(1\)](#) is subject to the exclusions in Parts 2 and 3 of this Schedule.
- (3) In this paragraph “removal notice” and “suspensive claim” have the meaning given by [section 38](#) of the Illegal Migration Act 2023.”
- (4) In Part 3 (advocacy: exclusions and exceptions) after paragraph 16 insert—



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- “16A Advocacy in proceedings in the Upper Tribunal under any of sections 44 to 49 of the Illegal Migration Act 2023, or under Tribunal Procedure Rules made for the purposes of any of those sections.”
- (5) In regulation 11(9) of the Civil Legal Aid (Merits Criteria) Regulations 2013 (S.I. 2013/104) (qualifying for civil legal services: cases in which merits criteria do not apply)—
- (a) omit the “or” at the end of sub-paragraph (d);
  - (b) after sub-paragraph (e) insert “, or
  - (f) in relation to any matter described in paragraph 31C of Part 1 of Schedule 1 to the Act (removal notices under the Illegal Migration Act 2023).”
- (6) The Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I. 10)) is amended in accordance with subsections (7) and (8).
- (7) In Article 14 (decisions about provision of funded services), after paragraph (2A) insert—
- “(2AA) But paragraph (2A) does not apply to a grant of representation for the purposes of—
- (a) proceedings before the Upper Tribunal mentioned in paragraph 2(ic) of Schedule 2 (proceedings under or for the purposes of the Illegal Migration Act 2023),
  - (b) proceedings before the Special Immigration Appeals Commission under or by virtue of section 2AA of the Special Immigration Appeals Commission Act 1997 (jurisdiction: appeals in relation to the Illegal Migration Act 2023), or under rules under section 5 of that Act made for the purposes of that section, or
  - (c) an appeal to the Court of Appeal or the Supreme Court in respect of proceedings mentioned in sub-paragraph (a) or (b).”
- (8) In paragraph 2 of Schedule 2 (civil legal services: exceptions to excluded services), after paragraph (ib) insert—
- “(ic) proceedings before the Upper Tribunal under any of sections 44 to 49 of the Illegal Migration Act 2023, or under Tribunal Procedure Rules made for the purposes of any of those sections,
  - (id) proceedings before the Upper Tribunal on an application for judicial review within the meaning of the Illegal Migration Act 2023 (see section 5(6) of that Act), where the application relates to that Act.”
- (9) The Civil Legal Services (General) Regulations (Northern Ireland) 2015 (S.R. (N.I.) 2015 No. 195) are amended in accordance with subsections (10) to (14).
- (10) In regulation 2 (interpretation), in the definition of “representation (higher courts)”, in paragraph (f), after “2(ib)” insert “, (ic) or (id)”.
- (11) In regulation 31 (applications for advice and assistance)—
- (a) in paragraph (1), after “Subject to” insert “paragraph (1A) and”,
  - (b) after paragraph (1), insert—

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“(1A) An application for advice and assistance may be made to a supplier by an applicant by telephone where the applicant is being detained under paragraph 16(2C) of Schedule 2 to the Immigration Act 1971 (detention under authority of immigration officer for the purposes of the Illegal Migration Act 2023) or section 62(2A) of the Nationality, Immigration and Asylum Act 2002 (detention under authority of Secretary of State for the purposes of the Illegal Migration Act 2023).”, and

(c) in paragraph (3), after “except where” insert “paragraph (1A),”

(12) In regulation 32 (extensions)—

- (a) in paragraph (1), for “paragraph (2)” substitute “paragraphs (2) and (2A)”, and
- (b) after paragraph (2) insert—

“(2A) No extension shall be required under paragraph (1) if the advice and assistance is advice and assistance mentioned in regulation 4(1)(n) of the Financial Regulations (advice and assistance relating to removal notices under the Illegal Migration Act 2023).”

(13) In regulation 41 (applications for certificates)—

- (a) in paragraph (2), after “Subject to” insert “paragraph (2A) and”,
- (b) after paragraph (2), insert—

“(2A) An application for a certificate under this Part may be made to a supplier by an applicant by telephone where the applicant is being detained under paragraph 16(2C) of Schedule 2 to the Immigration Act 1971 (detention under authority of immigration officer for the purposes of the Illegal Migration Act 2023) or section 62(2A) of the Nationality, Immigration and Asylum Act 2002 (detention under authority of Secretary of State for the purposes of the Illegal Migration Act 2023).”,

- (c) in paragraph (3), after “The applicant shall” insert “, except where paragraph (2A) applies”, and
- (d) in paragraph (3)(b), after “met” insert “(where they apply)”.

(14) In regulation 43 (determination of applications for certificates)—

- (a) in paragraph (1), for “paragraph (2)” substitute “paragraphs (2) and (3)”, and
- (b) after paragraph (2) insert—

“(3) But paragraphs (1) and (2) do not apply to an application for a certificate in respect of—

- (a) proceedings before the Upper Tribunal mentioned in paragraph 2(ic) of Schedule 2 to the Order (proceedings under or for the purposes of the Illegal Migration Act 2023),
- (b) proceedings before the Special Immigration Appeals Commission under or by virtue of section 2AA of the Special Immigration Appeals Commission Act 1997 (jurisdiction: appeals in relation to the Illegal Migration Act 2023), or under rules under section 5 of that Act made for the purposes of that section, or

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- (c) an appeal to the Court of Appeal or the Supreme Court in respect of proceedings mentioned in sub-paragraph (a) or (b).”

(15) In regulation 4 of the Civil Legal Services (Financial) Regulations (Northern Ireland) 2015 (S.R. (N.I.) 2015 No. 196) (exceptions from requirement to make a determination in respect of an individual’s financial resources)—

(a) in paragraph (1), after sub-paragraph (m) insert—

“(n) advice and assistance provided to an individual who has received a removal notice, in relation to the removal notice, and such advice and assistance—

(i) includes advice and assistance in relation to a suspensive claim relating to the removal notice, and an application under section 46(4) of the Illegal Migration Act 2023 as regards such a claim, but

(ii) does not include advice and assistance in relation to an application for judicial review within the meaning of the Illegal Migration Act 2023 (see section 5(6) of that Act) relating to the removal notice;

(o) representation in respect of—

(i) proceedings before the Upper Tribunal mentioned in paragraph 2(ic) of Schedule 2 to the Order (proceedings under or for the purposes of the Illegal Migration Act 2023),

(ii) proceedings before the Special Immigration Appeals Commission under or by virtue of section 2AA of the Special Immigration Appeals Commission Act 1997 (jurisdiction: appeals in relation to the Illegal Migration Act 2023), or under rules under section 5 of that Act made for the purposes of that section, or

(iii) an appeal to the Court of Appeal or the Supreme Court in respect of proceedings mentioned in paragraph (i) or (ii).”;

(b) in paragraph (3), at the appropriate places insert—

““removal notice” has the meaning given by section 38 of the Illegal Migration Act 2023;”

““suspensive claim” has the meaning given by section 38 of the Illegal Migration Act 2023;”.

#### Commencement Information

**I58** S. 56 not in force at Royal Assent, see s. 68(1)

**Status:** Point in time view as at 28/09/2023. This version of this Act contains provisions that are not valid for this point in time.  
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PROSPECTIVE

*Age assessments etc***57 Decisions relating to a person's age**

- (1) This section applies if a relevant authority decides the age of a person (“P”) who meets the four conditions in section 2 (duty to make arrangements for removal), whether that decision is for the purposes of this Act or otherwise.
- (2) If the decision is made on an age assessment under section 50 or 51 of the Nationality and Borders Act 2022, P may not bring an appeal against the decision under section 54(2) of that Act.
- (3) Subsections (4) and (5) apply if P makes an application for judicial review of—
  - (a) the decision mentioned in subsection (1), or
  - (b) any decision to make arrangements for the person's removal from the United Kingdom under this Act which is taken on the basis of that decision.
- (4) The application does not prevent the exercise of any duty or power under this Act to make arrangements for the person's removal from the United Kingdom.
- (5) The court or tribunal must determine the application on the basis that the person's age is a matter of fact to be determined by the relevant authority; and accordingly the court or tribunal—
  - (a) may grant relief only on the basis that the decision was wrong in law, and
  - (b) may not grant relief on the basis that the court or tribunal considers the decision mentioned in subsection (1) was wrong as a matter of fact.
- (6) In this section “relevant authority” means—
  - (a) the Secretary of State,
  - (b) an immigration officer,
  - (c) a designated person within the meaning of Part 4 (age assessments) of the Nationality and Borders Act 2022,
  - (d) a local authority within the meaning of that Part, subject to subsection (7), or
  - (e) a public authority within the meaning of that Part which is specified in regulations under section 50(1)(b) of that Act (referral of age-disputed person for age assessment).
- (7) This section applies in relation to a decision of a local authority which is a decision within subsection (1) only if it is for the purposes, or also for the purposes, of the local authority deciding whether or how to exercise any of its functions under relevant children's legislation within the meaning of Part 4 of the Nationality and Borders Act 2022.
- (8) For the purposes of this section, the cases in which a relevant authority decides the age of a person on an age assessment under section 50 or 51 of the Nationality and Borders Act 2022 include where a relevant authority is treated by virtue of regulations under section 58 of this Act as having decided that a person is over the age of 18.
- (9) This section applies only in relation to a decision which is made after this section comes into force.

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- (10) The Nationality and Borders Act 2022 is amended as follows.
- (11) In section 54(6) (appeals relating to age assessments)—
- (a) omit the “and” at the end of paragraph (a), and
  - (b) at the end of paragraph (b) insert “, and
  - (c) [section 57](#) of the Illegal Migration Act 2023 (decisions relating to a person’s age).”
- (12) In section 56(1) (new information following age assessment or appeal), for paragraph (b) (and the “and” at the end of that paragraph) substitute—
- “(b) an appeal under section 54(2)—
  - (i) could no longer be brought (ignoring any possibility of an appeal out of time),
  - (ii) has been finally determined, or
  - (iii) may not be brought as a result of [section 57\(2\)](#) of the Illegal Migration Act 2023 (age assessments relating to removal under that Act), and”.

#### Commencement Information

**I59** S. 57 not in force at Royal Assent, see [s. 68\(1\)](#)

### **58 Age assessments: power to make provision about refusal to consent to scientific methods**

- (1) The Secretary of State may make regulations about the effect of a decision by a relevant person (“P”) not to consent to the use of a specified scientific method for the purposes of an age assessment of P where there are no reasonable grounds for P’s decision.
- (2) The regulations may provide that, in the circumstances set out in the regulations—
- (a) [section 52\(7\)](#) of the Nationality and Borders Act 2022 (refusal to consent to scientific methods to be taken to damage credibility) does not apply, and
  - (b) P is to be treated as if the decision-maker had decided that P was over the age of 18.
- (3) In this section—
- “age assessment” means an assessment under [section 50](#) or [section 51](#) of the Nationality and Borders Act 2022;
  - “decision-maker” and “specified scientific method” have the same meanings as in Part 4 of the Nationality and Borders Act 2022 (see [section 49](#) of that Act);
  - “relevant person” means a person who meets the four conditions in [section 2](#) (duty to make arrangements for removal).
- (4) In Part 4 of the Nationality and Borders Act 2022 (age assessments)—
- (a) in [section 52](#) (use of scientific methods in age assessments), in subsection (7), at the end insert “(See also [section 58](#) of the Illegal Migration Act 2023 (power to make provision about refusal to consent to scientific methods).)”;

**Status:** Point in time view as at 28/09/2023. This version of this Act contains provisions that are not valid for this point in time.  
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- (b) in section 53 (regulations about age assessments), in subsection (1)(a)(iv), after “method,” insert “the circumstances in which a person may be considered to have reasonable grounds for a decision not to consent and”.

#### Commencement Information

**I60** S. 58 not in force at Royal Assent, see [s. 68\(1\)](#)

### *Inadmissibility of certain asylum and human rights claims*

## 59 Inadmissibility of certain asylum and human rights claims

- (1) Part 4A of the Nationality, Immigration and Asylum Act 2002 (inadmissible asylum claims) is amended as follows.
- (2) In section 80A (asylum claims by EU nationals)—
- (a) in subsection (1)—
    - (i) after “claim” insert “or a human rights claim”;
    - (ii) for “member State” substitute “State listed in section 80AA(1)”;
  - (b) in subsection (2), for “An asylum” substitute “A”;
  - (c) in subsection (3)—
    - (i) for “an asylum” substitute “a”;
    - (ii) after “82(1)(a)” insert “or (b)”;
    - (iii) after “protection claim” insert “or human rights claim”;
  - (d) in subsection (5)—
    - (i) in the words before paragraph (a), omit from “where” to “national”;
    - (ii) in paragraph (a), at the beginning insert “in a case where the claimant is a national of a State that is a signatory to the Human Rights Convention, where that State”;
    - (iii) in paragraph (b), at the beginning insert “in a case where the claimant is a national of a member State, where that State”;
  - (e) in subsection (6)—
    - (i) after “this section” insert “and section 80AA”;
    - (ii) after “claim,” insert ““human rights claim””;
    - (iii) at the appropriate place insert—
 

““national” includes citizen;”;
  - (f) for the heading, substitute “Claims by nationals of listed safe States”.
- (3) After section 80A insert—

#### **“80AA Safe States for the purposes of section 80A**

- (1) The States are—
- (a) Albania,
  - (b) Austria,
  - (c) Belgium,
  - (d) Bulgaria,

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- (e) Republic of Croatia,
- (f) Republic of Cyprus,
- (g) Czech Republic,
- (h) Denmark,
- (i) Estonia,
- (j) Finland,
- (k) France,
- (l) Germany,
- (m) Greece,
- (n) Hungary,
- (o) Iceland,
- (p) Republic of Ireland,
- (q) Italy,
- (r) Latvia,
- (s) Principality of Liechtenstein,
- (t) Lithuania,
- (u) Luxembourg,
- (v) Malta,
- (w) Netherlands,
- (x) Norway,
- (y) Poland,
- (z) Portugal,
- (z1) Romania,
- (z2) Slovak Republic,
- (z3) Slovenia,
- (z4) Spain,
- (z5) Sweden,
- (z6) Switzerland.

- (2) The Secretary of State may by regulations amend the list in subsection (1) so as to add or remove a State.
- (3) The Secretary of State may add a State to the list only if satisfied that—
  - (a) there is in general in that State no serious risk of persecution of nationals of that State, and
  - (b) removal to that State of nationals of that State will not in general contravene the United Kingdom's obligations under the Human Rights Convention.
- (4) In deciding whether the statements in subsection (3)(a) and (b) are true of a State, the Secretary of State—
  - (a) must have regard to all the circumstances of the State (including its laws and how they are applied), and
  - (b) must have regard to information from any appropriate source (including member States and international organisations).
- (5) Regulations under this section—
  - (a) must be made by statutory instrument;

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- (b) may include transitional or saving provision.
- (6) A statutory instrument containing—
  - (a) regulations which add a State to the list in subsection (1), or
  - (b) regulations which both add a State to, and remove a State from, that list,
 may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (7) A statutory instrument containing regulations under this section, other than one to which subsection (6) applies, is subject to annulment in pursuance of a resolution of either House of Parliament.”
- (4) In the heading to Part 4A, after “Asylum” insert “and Human Rights”.

#### Commencement Information

**I61** S. 59 not in force at Royal Assent, see [s. 68\(1\)](#)

**I62** S. 59 in force at 28.9.2023 for specified purposes by [S.I. 2023/989](#), [reg. 2\(c\)](#)

### *Safe and legal routes*

#### **60 Cap on number of entrants using safe and legal routes**

- (1) The Secretary of State must make regulations specifying the maximum number of persons who may enter the United Kingdom annually using safe and legal routes (see [subsection \(7\)](#)).
- (2) Before making the regulations the Secretary of State must consult—
  - (a) in England and Wales and Scotland, such representatives of local authorities as the Secretary of State considers appropriate,
  - (b) the Executive Office in Northern Ireland, and
  - (c) such other persons or bodies as the Secretary of State considers appropriate.
- (3) But the duty to consult does not apply where the Secretary of State considers that the number needs to be changed as a matter of urgency.
- (4) The Secretary of State must begin the consultation under subsection (2) in relation to the first regulations to be made under this section before the end of the period of 3 months beginning with the day on which this Act is passed.
- (5) If in any year the number of persons who enter the United Kingdom using safe and legal routes exceeds the number specified in the regulations, the Secretary of State must lay a statement before Parliament—
  - (a) setting out the number of persons who have, in that year, entered the United Kingdom using safe and legal routes, and
  - (b) explaining why the number exceeds that specified in the regulations.
- (6) The statement must be laid before Parliament before the end of the period of six months beginning with the day after the last day of the year to which the statement relates.
- (7) In [this section](#)—
  - “local authority” means—



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- (a) in England and Wales, a county council, a county borough council, a district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly, and
  - (b) in Scotland, a council constituted under section 2 of the Local Government etc (Scotland) Act 1994;
- “safe and legal route” means a route specified in regulations made by the Secretary of State.

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**Commencement Information**

- I63** S. 60(7) in force at Royal Assent for specified purposes, see **s. 68(4)(l)**  
**I64** S. 60 in force at 28.9.2023 in so far as not already in force by **S.I. 2023/989, reg. 2(d)**

## **61 Report on safe and legal routes**

- (1) The Secretary of State must, before the end of the relevant period—
  - (a) prepare and publish a report on safe and legal routes by which persons may enter the United Kingdom, and
  - (b) lay the report before Parliament.
- (2) The report must—
  - (a) contain details of the safe and legal routes by which persons may enter the United Kingdom when the report is published,
  - (b) contain details of any proposed additional safe and legal routes which have not come into operation at that time,
  - (c) specify the routes within paragraph (a) or (b) which are or will be available to adults,
  - (d) specify the routes within paragraph (a) or (b) which are or will be available to children, and
  - (e) contain details of how routes within paragraph (a) or (b) may be accessed by persons who are eligible to use them.
- (3) In this section—
  - “adult” means a person who is aged 18 or over;
  - “child” means a person who is under the age of 18;
  - “the relevant period” means the period of 6 months beginning with the day on which this Act is passed.

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**Commencement Information**

- I65** S. 61 not in force at Royal Assent, see **s. 68(1)**  
**I66** S. 61 in force at 28.9.2023 by **S.I. 2023/989, reg. 2(e)**

### *Credibility of claimant*

## **62 Credibility of claimant: concealment of information etc**

- (1) Section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (claimant’s credibility) is amended as follows.

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(2) In subsection (3)—

- (a) in paragraphs (a) and (c) for “a passport” substitute “an identity document”;
- (b) in paragraph (b) for “passport” substitute “identity document”;
- (c) after paragraph (d) (but before the “and”) insert—
  - “(da) failure to provide to an immigration officer or the Secretary of State, on request, any information or anything else required in order to access any information stored in electronic form on a thing in the possession of an immigration officer or the Secretary of State that—
    - (i) was found on the claimant, or
    - (ii) appears to an immigration officer or the Secretary of State to have been in the possession of the claimant,”.

(3) In subsection (7)—

- (a) insert at the appropriate place—
  - ““document” includes information recorded in any form;”;
  - ““identity document” means any document that may be used (whether by itself or otherwise and with or without modifications) to establish, or provide evidence of, a person’s identity or address;”;
- (b) omit the definition of “passport”.

(4) In subsection (8) for “A passport” substitute “An identity document”.

#### Commencement Information

- I67** S. 62 not in force at Royal Assent, see [s. 68\(1\)](#)  
**I68** S. 62 in force at 28.9.2023 by [S.I. 2023/989](#), [reg. 2\(f\)](#)

### General

#### 63 Financial provision

There is to be paid out of money provided by Parliament—

- (a) any expenditure incurred under or by virtue of this Act by a Minister of the Crown, and
- (b) any increase attributable to this Act in the sums payable under any other Act out of money so provided.

#### Commencement Information

- I69** S. 63 in force at Royal Assent, see [s. 68\(3\)\(c\)](#)

#### 64 Consequential and minor provision

- (1) The Secretary of State may by regulations make provision that is consequential on this Act.
- (2) Regulations under subsection (1) may, in particular, amend, repeal or revoke any enactment passed or made before, or in the same Session as, this Act.

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- (3) In subsection (2) “enactment” includes—
- (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;
  - (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;
  - (c) an enactment contained in, or in an instrument made under, a Measure or Act of Senedd Cymru;
  - (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation.
- (4) In section 61(2) of the UK Borders Act 2007 (meaning of “the Immigration Acts”)—
- (a) omit the “and” at the end of paragraph (l), and
  - (b) after paragraph (m) insert “, and
  - (n) the Illegal Migration Act 2023.”
- (5) In Schedule 5 to the Nationality and Borders Act 2022, in paragraph 8, omit subparagraph (2).

#### Commencement Information

**170** S. 64 in force at Royal Assent, see [s. 68\(3\)\(c\)](#)

## 65 Regulations

- (1) A power to make regulations under this Act is exercisable by statutory instrument.
- (2) Regulations under this Act may make—
- (a) consequential, supplementary, incidental, transitional or saving provision;
  - (b) different provision for different purposes.
- (3) Subsection (2) does not apply to regulations under section 68(1) (commencement).
- (4) A statutory instrument containing (whether alone or with other provision)—
- (a) regulations under section 4(3)(d) (circumstances in which power to make arrangements for removal of unaccompanied child applies),
  - (b) regulations under section 7(1) (powers to amend Schedule 1),
  - (c) regulations under section 20(1) (extension to Wales, Scotland and Northern Ireland),
  - (d) regulations under section 24(9) (amendments in consequence of regulations made by the Scottish Ministers),
  - (e) regulations under section 26(3)(b) (continuation of operation of modern slavery provisions),
  - (f) regulations under section 40 (meaning of “serious and irreversible harm”),
  - (g) regulations under section 60 (cap on number of entrants using safe and legal routes),
  - (h) regulations under section 64(1) (consequential provision) which amend, repeal or revoke primary legislation, or
  - (i) regulations under [paragraph 10](#) of Schedule 2 (powers relating to relevant articles containing items subject to legal privilege),

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may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

- (5) Any other statutory instrument containing regulations under this Act for which no Parliamentary procedure is otherwise specified by this Act is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Subsection (5) does not apply to a statutory instrument containing only regulations under—
- (a) section 26(8) (transitional etc provision in connection with suspension of operation of modern slavery provisions);
  - (b) section 68 (commencement).
- (7) In this section “primary legislation” means—
- (a) an Act of Parliament,
  - (b) an Act of the Scottish Parliament,
  - (c) a Measure or Act of Senedd Cymru, or
  - (d) Northern Ireland legislation.

#### Commencement Information

I71 S. 65 in force at Royal Assent, see s. 68(3)(c)

## 66 Defined expressions

In this Act an expression listed in the first column of the following table has the meaning given by, or is to be interpreted in accordance with, the corresponding provision listed in the second column of that table.

| <i>Expression</i>               | <i>Provision</i>                        |
|---------------------------------|---|
| application for judicial review | section 5(6)                            |
| human rights claim              | section 4(15)                           |
| the Human Rights Convention     | section 6(13)                           |
| immigration officer             | section 8(17)                           |
| immigration rules               | section 2(9)                            |
| national                        | section 4(15)                           |
| protection claim                | section 4(15)                           |
| unaccompanied child             | section 4(5) (subject to section 16(5)) |

#### Commencement Information

I72 S. 66 in force at Royal Assent, see s. 68(3)(c)

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## 67 Extent

- (1) This Act extends to England and Wales, Scotland and Northern Ireland, subject as follows.
- (2) Section 23 extends to England and Wales only.
- (3) Section 24 extends to Scotland only.
- (4) Section 25 extends to Northern Ireland only.
- (5) Subsections (7) to (10) of section 4 (and section 65 so far as applying to those subsections) also extend to the Channel Islands and the Isle of Man and the British overseas territories, but only so as to enable regulations under subsection (7) of section 4 to make provision for any of sections 31 to 36 to have effect with modifications in relation to a person to whom regulations under that subsection apply.
- (6) Sections 31 to 37 also extend to the Channel Islands and the Isle of Man and the British overseas territories.
- (7) His Majesty may by Order in Council provide for any of the provisions of this Act to extend, with or without modifications, to any of the Channel Islands or the Isle of Man.
- (8) Subsection (7) does not apply to—
  - (a) sections 4(7) to (10) and 65, so far as they extend to the Channel Islands and the Isle of Man by virtue of subsection (5), or
  - (b) sections 31 to 37.
- (9) Any amendment, repeal or revocation made by this Act has the same extent within the United Kingdom as the provision to which it relates.
- (10) A power under any provision listed in subsection (11) may be exercised so as to extend (with or without modifications) to any of the Channel Islands or the Isle of Man any amendment or repeal made by or under this Act of any part of an Act to which the provision listed in subsection (11) relates.
- (11) Those provisions are—
  - (a) section 36 of the Immigration Act 1971,
  - (b) section 9(3) of the Special Immigration Appeals Commission Act 1997,
  - (c) section 170(7) of the Immigration and Asylum Act 1999,
  - (d) section 163(4) of the Nationality, Immigration and Asylum Act 2002,
  - (e) section 49(3) of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004,
  - (f) section 60(4) of the UK Borders Act 2007,
  - (g) section 57(5) of the Borders, Citizenship and Immigration Act 2009,
  - (h) section 60(6) of the Modern Slavery Act 2015,
  - (i) section 95(5) of the Immigration Act 2016, and
  - (j) section 86(4) of the Nationality and Borders Act 2022.

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### Commencement Information

**I73** S. 67 in force at Royal Assent, see s. 68(3)(c)

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## 68 Commencement

- (1) Subject to subsections (3) and (4), this Act comes into force on such day as the Secretary of State may by regulations appoint.
- (2) Regulations under subsection (1) may appoint different days for different purposes.
- (3) The following provisions come into force on the day on which this Act is passed—
  - (a) sections 30 to 37;
  - (b) section 52;
  - (c) sections 63 to 67;
  - (d) this section;
  - (e) section 69.
- (4) The following provisions come into force on the day on which this Act is passed for the purposes of making regulations—
  - (a) section 3 (amendment of date in section 2(3) etc);
  - (b) section 4 (unaccompanied children and power to provide for exceptions);
  - (c) section 7 (powers to amend Schedule 1);
  - (d) section 11(2) (detention under authority of immigration officer);
  - (e) section 11(6) (detention under authority of Secretary of State);
  - (f) section 18 (duty of local authority to provide information to Secretary of State);
  - (g) section 20 (extension of provisions relating to unaccompanied children to Wales, Scotland and Northern Ireland);
  - (h) section 24 (modern slavery: support in Scotland);
  - (i) section 40 (meaning of “serious and irreversible harm”);
  - (j) section 42 (serious harm suspensive claims);
  - (k) section 43 (removal conditions suspensive claims);
  - (l) section 60(7) (definition of safe and legal routes).
- (5) The Secretary of State may by regulations make transitional or saving provision in connection with the coming into force of any provision of this Act.

### Commencement Information

**I74** S. 68 in force at Royal Assent, see [s. 68\(3\)\(d\)](#)

## 69 Short title

This Act may be cited as the Illegal Migration Act 2023.

### Commencement Information

**I75** S. 69 in force at Royal Assent, see [s. 68\(3\)\(e\)](#)

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## SCHEDULES

PROSPECTIVE

### SCHEDULE 1

Section 6

#### COUNTRIES OR TERRITORIES TO WHICH A PERSON MAY BE REMOVED

##### Commencement Information

**176** Sch. 1 not in force at Royal Assent, see [s. 68\(1\)](#)

- 1 Republic of Albania.
- 2 Austria.
- 3 Belgium.
- 4 Bolivia.
- 5 Bosnia and Herzegovina.
- 6 Brazil.
- 7 Bulgaria.
- 8 Republic of Croatia.
- 9 Republic of Cyprus.
- 10 Czech Republic.
- 11 Denmark.
- 12 Ecuador.
- 13 Estonia.
- 14 Finland.
- 15 France.
- 16 Gambia (in respect of men).
- 17 Germany.
- 18 Ghana (in respect of men).
- 19 Greece.
- 20 Hungary.
- 21 Iceland.
- 22 India.
- 23 Republic of Ireland.

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|    |                                   |
|----|-----------------------------------|
| 24 | Italy.                            |
| 25 | Jamaica.                          |
| 26 | Kenya (in respect of men).        |
| 27 | Kosovo.                           |
| 28 | Latvia.                           |
| 29 | Liberia (in respect of men).      |
| 30 | Principality of Liechtenstein.    |
| 31 | Lithuania.                        |
| 32 | Luxembourg.                       |
| 33 | Malawi (in respect of men).       |
| 34 | Mali (in respect of men).         |
| 35 | Malta.                            |
| 36 | Mauritius.                        |
| 37 | The Republic of Moldova.          |
| 38 | Mongolia.                         |
| 39 | Montenegro.                       |
| 40 | Netherlands.                      |
| 41 | Nigeria (in respect of men).      |
| 42 | North Macedonia.                  |
| 43 | Norway.                           |
| 44 | Peru.                             |
| 45 | Poland.                           |
| 46 | Portugal.                         |
| 47 | Romania.                          |
| 48 | Republic of Rwanda.               |
| 49 | Serbia.                           |
| 50 | Sierra Leone (in respect of men). |
| 51 | Slovak Republic.                  |
| 52 | Slovenia.                         |
| 53 | South Africa.                     |
| 54 | South Korea.                      |
| 55 | Spain.                            |
| 56 | Sweden.                           |
| 57 | Switzerland.                      |



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## SCHEDULE 2

Section 15

### ELECTRONIC DEVICES ETC

PROSPECTIVE

#### Introduction

- 1 In this Schedule “relevant person” means a person who—
- (a) is liable to be detained under paragraph 16(2C) of Schedule 2 to the Immigration Act 1971 (illegal migrants), and
  - (b) entered or arrived in the United Kingdom as mentioned in section 2(2) of this Act on or after the day this Schedule came into force.

#### Commencement Information

I77 Sch. 2 para. 1 not in force at Royal Assent, see s. 68(1)

- 2 (1) In this Schedule—
- “appropriate adult”, in relation to a person, means—
    - (a) a person appearing to an immigration officer to be the person’s parent or guardian,
    - (b) if the person is in the care of a relevant authority or voluntary organisation, a person representing that authority or organisation,
    - (c) a registered social worker, or
    - (d) if no person within a preceding paragraph is available, any responsible person aged 18 or over who is not an immigration officer or a person employed for, or engaged on, purposes relating to a relevant function;
  - “container” has the meaning given by section 1 of the Customs and Excise Management Act 1979;
  - “intimate search” has the meaning given by section 28H of the Immigration Act 1971;
  - “item subject to legal privilege” has the meaning given by section 65(1) of the Criminal Justice and Police Act 2001;
  - “local authority”—
    - (a) in relation to England, means a county council, a district council for an area for which there is no county council, a London borough council, the Common Council of the City of London in its capacity as a local authority or the Council of the Isles of Scilly;
    - (b) in relation to Wales, means a county council or a county borough council;
    - (c) in relation to Scotland, means a council constituted under section 2 of the Local Government etc (Scotland) Act 1994;
  - “registered social worker” means a person registered as a social worker in a register maintained by—
    - (a) Social Work England,
    - (b) Social Care Wales,
    - (c) the Scottish Social Services Council, or

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(d) the Northern Ireland Social Care Council;

“relevant article” means anything which appears to an immigration officer to be a thing on which relevant information is or may be stored in electronic form;

“relevant authority”—

- (a) in relation to England and Wales and Scotland, means a local authority;
- (b) in relation to Northern Ireland, means an authority within the meaning of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)) (see Article 2(2) of that Order);

“relevant function” means—

- (a) any function of an immigration officer, or
- (b) any function of the Secretary of State in relation to immigration, asylum or nationality;

“relevant information” means any information which appears to an immigration officer or the Secretary of State to be relevant to a relevant function;

“ship” has the meaning given by section 28Q of the Immigration Act 1971;

“vehicle” includes—

- (a) any ship, train (including any locomotive and railway rolling stock of any description), aircraft or bicycle, and
- (b) anything designed or adapted for towing by a vehicle;

“voluntary organisation”—

- (a) in relation to England and Wales, has the same meaning as in the Children Act 1989 (see section 105(1) of that Act);
- (b) in relation to Scotland, has the same meaning as in Part 2 of the Children (Scotland) Act 1995 (see section 93(1) of that Act);
- (c) in relation to Northern Ireland, has the same meaning as in the Children (Northern Ireland) Order 1995 (see Article 74(1) of that Order).

- (2) In paragraph (d) of the definition of “appropriate adult”, the reference to purposes relating to a relevant function does not include the purpose of performing the functions of an “appropriate adult” for the purposes of this Schedule.

#### Commencement Information

**I78** Sch. 2 para. 2 not in force at Royal Assent, see **s. 68(1)**

#### Commencement Information

**I77** Sch. 2 para. 1 not in force at Royal Assent, see **s. 68(1)**

**I78** Sch. 2 para. 2 not in force at Royal Assent, see **s. 68(1)**

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PROSPECTIVE

*Power to search relevant persons*

- 3 (1) An immigration officer may search a relevant person for any relevant article, if the officer has reasonable grounds to suspect that the relevant person is in possession of a relevant article.
- (2) The power of an immigration officer under this paragraph to search a person—
- (a) authorises the search of their mouth;
  - (b) authorises the officer to require the person to remove an outer coat, jacket or glove (but no other clothing) in public;
  - (c) if the conditions in [sub-paragraph \(3\)](#) are met, authorises the officer to require the person to remove any clothing;
  - (d) does not authorise the carrying out of an intimate search.
- (3) The conditions referred to in [sub-paragraph \(2\)\(c\)](#) are—
- (a) that the search is not carried out in public;
  - (b) that the person carrying out the search is of the same sex as the person searched;
  - (c) that the only persons present when the search is carried out are immigration officers, any person present at the request of the person searched, and any person present as a result of [paragraph \(e\)](#);
  - (d) that, subject to any exceptions made at the request of the person searched, the persons present when the search is carried out are of the same sex as the person searched;
  - (e) that if it appears to the person carrying out the search that the person searched is under the age of 18, an appropriate adult is present when the search is carried out.

**Commencement Information**

**I79** Sch. 2 para. 3 not in force at Royal Assent, see [s. 68\(1\)](#)

PROSPECTIVE

*Power to search vehicles and containers*

- 4 (1) An immigration officer may search a vehicle or container listed in [sub-paragraph \(2\)](#) for any relevant article, if the officer has reasonable grounds to suspect that a relevant article that is or has been in the possession of a relevant person is in the vehicle.
- (2) The vehicles and containers referred to in [sub-paragraph \(1\)](#) are—
- (a) a vehicle or container in which the relevant person was when encountered by an immigration officer or constable;
  - (b) a vehicle or container which an immigration officer has reasonable grounds to suspect the relevant person was in at the time of their arrival in the United Kingdom;

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- (c) a ship or container which an immigration officer has reasonable grounds to suspect the relevant person was in at any time during a journey which ended with their arrival in the United Kingdom.

**Commencement Information**

**180** Sch. 2 para. 4 not in force at Royal Assent, see [s. 68\(1\)](#)

PROSPECTIVE

*Power to search premises*

- 5 (1) This paragraph applies to premises in which a relevant person was when, or immediately before being, encountered by an immigration officer or a constable.
- (2) An immigration officer may search the premises for any relevant article if—
- (a) the officer is lawfully on the premises, and
  - (b) the officer has reasonable grounds to suspect that a relevant article that is or has been in the possession of the relevant person is on the premises.

**Commencement Information**

**181** Sch. 2 para. 5 not in force at Royal Assent, see [s. 68\(1\)](#)

PROSPECTIVE

*Power to search property*

- 6 (1) This paragraph applies to property which an immigration officer has reasonable grounds to suspect has been in the possession of a relevant person.
- (2) An immigration officer may search the property for any relevant article if the officer has reasonable grounds to suspect that the property includes a relevant article.

**Commencement Information**

**182** Sch. 2 para. 6 not in force at Royal Assent, see [s. 68\(1\)](#)

PROSPECTIVE

*Power of seizure*

- 7 An immigration officer may seize any relevant article that—
- (a) is found on a search under this Schedule, or

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- (b) appears to the officer to be, or have been, in the possession of a relevant person.

#### Commencement Information

**I83** Sch. 2 para. 7 not in force at Royal Assent, see [s. 68\(1\)](#)

#### Power of retention

- 8 (1) A relevant article seized under [paragraph 7](#)—
- (a) may be retained by an immigration officer or the Secretary of State, for so long as the officer or Secretary of State considers its retention necessary for a purpose relating to a relevant function;
  - (b) must, subject to any provision made under [sub-paragraph \(2\)](#), be returned when it ceases to be retained under this paragraph.
- (2) The Secretary of State may by regulations make, in relation to a relevant article retained under [sub-paragraph \(1\)](#)—
- (a) provision applying (with or without modifications) section 49 of the Immigration Act 2016 (duty to pass on certain seized items), or
  - (b) provision corresponding, or similar, to the provision made by that section.

#### Commencement Information

**I84** Sch. 2 para. 8 not in force at Royal Assent, see [s. 68\(1\)](#)

**I85** [Sch. 2 para. 8](#) in force at 28.9.2023 for specified purposes by [S.I. 2023/989, reg. 2\(b\)\(i\)](#)

PROSPECTIVE

#### Power to access, copy and use information stored on relevant article

- 9 The Secretary of State or an immigration officer may—
- (a) access and examine any information stored on a relevant article that is retained under [paragraph 8](#);
  - (b) copy and retain any relevant information that is stored on the relevant article;
  - (c) use any information retained under [paragraph \(b\)](#) for any purpose relating to a relevant function.

#### Commencement Information

**I86** Sch. 2 para. 9 not in force at Royal Assent, see [s. 68\(1\)](#)

#### Relevant articles containing items subject to legal privilege

- 10 (1) The Secretary of State may by regulations make provision about relevant articles that contain (or may contain) items subject to legal privilege.

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- (2) The provision that may be made includes in particular—
- (a) provision modifying this Schedule as it applies in relation to such relevant articles;
  - (b) provision applying (with or without modifications) any provision made by or under Part 2 of the Criminal Justice and Police Act 2001 (powers of seizure);
  - (c) provision corresponding, or similar, to any provision made by or under that Part.

**Commencement Information**

**I87** Sch. 2 para. 10 not in force at Royal Assent, see [s. 68\(1\)](#)

**I88** [Sch. 2 para. 10](#) in force at 28.9.2023 for specified purposes by [S.I. 2023/989, reg. 2\(b\)\(ii\)](#)

*Extension of powers to other persons*

- 11 (1) The Secretary of State may by regulations provide—
- (a) that references in this Schedule to an immigration officer include a person of a description specified in the regulations;
  - (b) that a person of a description so specified may, if necessary, use reasonable force in the exercise of any function conferred by virtue of the regulations.
- (2) The descriptions of person that may be specified in the regulations include persons designated by the Secretary of State, in accordance with the regulations.

If they do so, the regulations must contain such safeguards relating to the designation of persons as the Secretary of State considers appropriate.

**Commencement Information**

**I89** [Sch. 2 para. 11](#) in force at 28.9.2023 for specified purposes by [S.I. 2023/989, reg. 2\(b\)\(iii\)](#)

**Status:**

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