

# Immigration Bill

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Home Office, are published separately as Bill 110 – EN.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

Secretary Theresa May has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Immigration Bill are compatible with the Convention rights.



# Immigration Bill

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Make provision about immigration law; to limit, or otherwise make provision about, access to services, facilities and employment by reference to immigration status; to make provision about marriage and civil partnership involving certain foreign nationals; and for connected purposes.

**B**E IT ENACTED by the Queen’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:—

**PART 1**

REMOVAL AND OTHER POWERS

*Removal directions*

**1 Removal of persons unlawfully in the United Kingdom**

For section 10 of the Immigration and Asylum Act 1999, substitute— 5

**“10 Removal of persons unlawfully in the United Kingdom**

- (1) A person may be removed from the United Kingdom under the authority of the Secretary of State or an immigration officer if the person requires leave to enter or remain in the United Kingdom but does not have it. 10
- (2) Where a person is liable to be or has been removed from the United Kingdom under subsection (1), a member of the person’s family may also be removed from the United Kingdom under the authority of the Secretary of State or an immigration officer.
- (3) For the purposes of removing a person from the United Kingdom under subsection (1) or (2), the Secretary of State or an immigration officer may give any such direction for the removal of the person as may be given under paragraphs 8 to 10 of Schedule 2 to the 1971 Act. 15



- (4) But subsection (3) does not apply where a deportation order is in force against a person (and any directions for such a person’s removal must be given under Schedule 3 to the 1971 Act).
- (5) The following paragraphs of Schedule 2 to the 1971 Act apply in relation to directions under subsection (3) (and the persons subject to those directions) as they apply in relation to directions under paragraphs 8 to 10 of Schedule 2 (and the persons subject to those directions) – 5
- (a) paragraph 11 (placing of person on board ship or aircraft);
  - (b) paragraph 16(2) to (4) (detention of person where reasonable grounds for suspecting removal directions may be given or pending removal in pursuance of directions); 10
  - (c) paragraph 17 (arrest of person liable to be detained and search of premises for person liable to arrest);
  - (d) paragraph 18 (supplementary provisions on detention); 15
  - (e) paragraph 18A (search of detained person);
  - (f) paragraphs 19 and 20 (payment of expenses of custody etc);
  - (g) paragraph 21 (temporary admission to UK of person liable to detention);
  - (h) paragraphs 22 to 25 (bail); 20
  - (i) paragraphs 25A to 25E (searches etc).
- (6) The Secretary of State may by regulations make further provision about the removal of family members under this section or any other provision of the Immigration Acts, and in particular about – 25
- (a) when a person is considered to be a family member; 25
  - (b) the time period during which a family member may be removed;
  - (c) whether a family member to be removed is to be given notice, and, if so – 30
    - (i) the effect that being given notice has on the person’s leave, and
    - (ii) how notice is to be served.”

*Powers of immigration officers*

**2 Enforcement powers**

Schedule 1 (enforcement powers) has effect. 35

*Bail*

**3 Immigration bail: repeat applications and effect of removal directions**

- (1) Schedule 2 to the Immigration Act 1971 (administrative provisions as to control on entry etc) is amended as follows.
- (2) In paragraph 22 (bail) at the end insert – 40
- “(4) A person must not be released on bail in accordance with this paragraph without the consent of the Secretary of State if –

- 
- (a) directions for the removal of the person from the United Kingdom are for the time being in force, and
- (b) the directions require the person to be removed from the United Kingdom within the period of 14 days starting with the date of the decision on whether the person should be released on bail.” 5
- (3) In paragraph 25 –
- (a) the existing paragraph is re-numbered as sub-paragraph (1);
- (b) in that sub-paragraph, for “may” substitute “must”;
- (c) after that sub-paragraph insert – 10
- “(2) Tribunal Procedure Rules must secure that, where the First-tier Tribunal has decided not to release a person on bail under paragraph 22, the Tribunal is required to dismiss without a hearing any further application by the person for release on bail (whether under paragraph 22 or otherwise) that is made during the period of 28 days starting with the date of the Tribunal’s decision, unless the person demonstrates to the Tribunal that there has been a material change in circumstances.” 15
- (4) In paragraph 29 (grant of bail pending appeal), in sub-paragraph (1), at the end insert “(and paragraph 22 does not apply)”. 20
- (5) In paragraph 30 (restrictions on grant of bail pending appeal), in sub-paragraph (1) –
- (a) after “if” insert “ – (a)”;
- (b) for “or the power to give such directions is for the time being exercisable” substitute “and 25
- (b) the directions require the person to be removed from the United Kingdom within the period of 14 days starting with the date of the decision on whether the person should be released on bail.” 30
- (6) After paragraph 33, insert –
- “33A(1) Tribunal Procedure Rules must make provision with respect to applications to the First-tier Tribunal under paragraphs 29 to 33 and matters arising out of such applications.
- (2) Tribunal Procedure Rules must secure that, where the First-tier Tribunal has decided not to release a person on bail under paragraph 29, the Tribunal is required to dismiss without a hearing any further application by the person for release on bail (whether under paragraph 29 or otherwise) that is made during the period of 28 days starting with the date of the Tribunal’s decision, unless the person demonstrates to the Tribunal that there has been a material change in circumstances.” 35 40

*Biometrics*

- 4 Provision of biometric information with immigration applications**
- (1) Section 126 of the Nationality, Immigration and Asylum Act 2002 (power to require provision of physical data with certain immigration applications) is amended as follows. 5
- (2) In subsection (2), after paragraph (c) insert—
- “(d) a transit visa (within the meaning of section 41 of the Immigration and Asylum Act 1999), or
- (e) a document issued as evidence that a person who is not a national of an EEA state or Switzerland is entitled to enter or remain in the United Kingdom by virtue of an enforceable EU right or of any provision made under section 2(2) of the European Communities Act 1972.” 10
- (3) In subsection (4), after paragraph (f) insert—
- “(fa) provide for biometric information to be recorded on any document issued as a result of the application in relation to which the information was provided;” 15
- (4) In subsection (9), after the definition of “code” insert—
- ““document” includes a card or sticker and any other method of recording information (whether in writing or by the use of electronic or other technology or by a combination of methods);” 20
- 5 Identifying persons liable to detention**
- In paragraph 18(2) of Schedule 2 to the Immigration Act 1971 (power to take steps for identifying persons detained under paragraph 16 of that Schedule) after “detained” insert “or liable to be detained”. 25
- 6 Provision of biometric information with citizenship applications**
- (1) Section 41 of the British Nationality Act 1981 (regulations for giving effect to the Act) is amended as follows.
- (2) In subsection (1), after paragraph (b) insert— 30
- “(bza) requiring an application for registration or naturalisation of a person as a British citizen to be accompanied by biometric information, or enabling an authorised person to require an individual to whom such an application relates to provide biometric information;” 35
- (3) After subsection (1) insert—
- “(1ZA) In subsection (1)(bza) “authorised person” and “biometric information” have the same meaning as in section 126 of the Nationality, Immigration and Asylum Act 2002.
- “(1ZB) Section 126(4) to (7) of that Act applies to regulations under subsection (1)(bza) as it applies to regulations under section 126(1) of that Act. 40

- (1ZC) Section 8 of the UK Borders Act 2007 (power to make regulations about use and retention of biometric information) applies to biometric information provided in accordance with regulations under subsection (1)(bza) as it applies to biometric information provided in accordance with regulations under section 5(1) of that Act. 5
- (1ZD) But (despite section 8(5)(b) of that Act) regulations made by virtue of subsection (1ZC) may provide for photographs of a person who is registered or naturalised as a British citizen to be retained until the person is issued with a United Kingdom passport describing the person as a British citizen.” 10
- (4) In subsection (8)(b) for “(1)(bc)” substitute “(1)(bza), (bc)”.

## 7 Biometric immigration documents

After section 7(2) of the UK Borders Act 2007 (effect of failure to comply with regulations about biometric immigration documents) insert –

- “(2A) If the regulations require a biometric immigration document to be used in connection with an application or claim, they may require or permit the application or claim to be disregarded or refused if that requirement is not complied with.” 15

## 8 Meaning of “biometric information”

- (1) Section 15 of the UK Borders Act 2007 (biometric immigration documents: interpretation) is amended as follows. 20
- (2) In subsection (1), omit paragraphs (b) and (c).
- (3) After subsection (1) insert –
- “(1A) For the purposes of section 5 “biometric information” means – 25
- (a) information about a person’s external physical characteristics (including in particular fingerprints and features of the iris), and
  - (b) any other information about a person’s physical characteristics specified in an order made by the Secretary of State.
- (1B) An order under subsection (1A)(b) – 30
- (a) may specify only information that can be obtained or recorded by an external examination of a person;
  - (b) must not specify information about a person’s DNA.
- (1C) Section 6(6) applies to an order under subsection (1A)(b) as it applies to regulations under section 5(1).” 35
- (4) Schedule 2 (which amends other enactments) has effect.

## 9 Safeguards for children

- (1) Schedule 2 to the Immigration Act 1971 (entry control) is amended as follows.
- (2) In paragraph 4 (power to take biometric information on examination), after

sub-paragraph (6) (as inserted by paragraph 1(3) of Schedule 2) insert –

- “(7) A person (“P”) who is under 16 may not be required to provide biometric information under sub-paragraph (5) unless –
- (a) the decision to require P to provide the information has been confirmed by a chief immigration officer, and 5
  - (b) the information is provided in the presence of a person of full age who is –
    - (i) P’s parent or guardian, or
    - (ii) a person who for the time being takes responsibility for P. 10
- (8) The person mentioned in sub-paragraph (7)(b)(ii) may not be –
- (a) a person who is entitled to require the provision of information under sub-paragraph (5) (an “authorised person”), or
  - (b) an officer of the Secretary of State who is not such a person. 15
- (9) Sub-paragraph (7) does not prevent an authorised person requiring the provision of biometric information by a person the authorised person reasonably believes to be 16 or over.”
- (3) In paragraph 18 (power to take biometric information from detained persons), after sub-paragraph (2A) insert – 20
- “(2B) Paragraph 4(7) to (9) applies to sub-paragraph (2) as it applies to paragraph 4(5).”

## 10 Use and retention of biometric information

- (1) For section 8 of the UK Borders Act 2007 substitute –
- “8 Use and retention of biometric information 25**
- (1) The Secretary of State must by regulations make provision about the use and retention by the Secretary of State of biometric information provided in accordance with regulations under section 5(1).
- (2) The regulations must provide that biometric information may be retained only if the Secretary of State thinks that it is necessary to retain it for use in connection with – 30
- (a) the exercise of a function by virtue of the Immigration Acts, or
  - (b) the exercise of a function in relation to nationality.
- (3) The regulations may include provision permitting biometric information retained by virtue of subsection (2) also to be used – 35
- (a) in connection with the prevention, investigation or prosecution of an offence,
  - (b) for a purpose which appears to the Secretary of State to be required in order to protect national security,
  - (c) in connection with identifying persons who have died, or are suffering from illness or injury, 40
  - (d) for the purpose of ascertaining whether a person has acted unlawfully, or has obtained or sought anything to which the person is not legally entitled, and

- (e) for such other purposes (whether in accordance with functions under an enactment or otherwise) as the regulations may specify.
- (4) The regulations must include provision about the destruction of biometric information. 5
- (5) In particular the regulations must require the Secretary of State to take all reasonable steps to ensure that biometric information is destroyed if the Secretary of State –
  - (a) no longer thinks that it is necessary to retain the information for use as mentioned in subsection (2), or 10
  - (b) is satisfied that the person to whom the information relates is a British citizen, or a Commonwealth citizen who has a right of abode in the United Kingdom as a result of section 2(1)(b) of the Immigration Act 1971.
- (6) The regulations must also – 15
  - (a) require that any requirement to destroy biometric information by virtue of the regulations also applies to copies of the information, and
  - (b) require the Secretary of State to take all reasonable steps to ensure – 20
    - (i) that data held in electronic form which relates to biometric information which has to be destroyed by virtue of the regulations is destroyed or erased, or
    - (ii) that access to such data is blocked.
- (7) But a requirement to destroy biometric information or data is not to apply if and in so far as the information or data is retained in accordance with and for the purposes of another power. 25
- (8) The regulations must include provision –
  - (a) entitling a person whose biometric information has to be destroyed by virtue of the regulations, on request, to a certificate issued by the Secretary of State to the effect that the Secretary of State has taken the steps required by virtue of subsection (6)(b), and 30
  - (b) requiring such a certificate to be issued within the period of 3 months beginning with the date on which the request for it is received by the Secretary of State. 35
- (9) Section 6(6) applies to regulations under this section as it applies to regulations under section 5(1).”
- (2) In the Immigration and Asylum Act 1999, after section 144 insert –  
**“144A Use and retention of fingerprints etc. 40**
  - (1) Section 8 of the UK Borders Act 2007 (power to make regulations about use and retention of biometric information) applies to –
    - (a) fingerprints taken by virtue of section 141, and
    - (b) biometric information taken by virtue of regulations under section 144, 45as it applies to biometric information provided in accordance with regulations under section 5(1) of that Act.

- (2) Regulations made by virtue of subsection (1)(a) must require fingerprints taken from a person (“F”) by virtue of section 141(7)(f) to be destroyed when fingerprints taken from the person whose dependant F is are destroyed.
- (3) Regulations made by virtue of subsection (1)(b) must make equivalent provision in relation to biometric information taken by virtue of any provision of regulations under section 144 which is equivalent to section 141(7)(f).” 5
- (3) In section 126 of the Nationality, Immigration and Asylum Act 2002 (power to require provision of physical data with certain immigration applications), after subsection (8) insert – 10
- “(8A) Section 8 of the UK Borders Act 2007 (power to make regulations about use and retention of biometric information) applies to biometric information provided in accordance with regulations under subsection (1) as it applies to biometric information provided in accordance with regulations under section 5(1) of that Act.” 15

## PART 2

### APPEALS ETC

#### 11 Right of appeal to First-tier Tribunal

- (1) Part 5 of the Nationality, Immigration and Asylum Act 2002 (immigration and asylum appeals) is amended as follows. 20
- (2) For section 82 substitute –
- “82 Right of appeal to the Tribunal**
- (1) A person (“P”) may appeal to the Tribunal where –
- (a) the Secretary of State has decided to refuse a protection claim made by P, 25
- (b) the Secretary of State has decided to refuse a human rights claim made by P, or
- (c) the Secretary of State has decided to revoke P’s protection status. 30
- (2) For the purposes of this Part –
- (a) a “protection claim” is a claim made by a person (“P”) that removal of P from the United Kingdom –
- (i) would breach the United Kingdom’s obligations under the Refugee Convention, or 35
- (ii) would breach the United Kingdom’s obligations in relation to persons eligible for a grant of humanitarian protection;
- (b) P’s protection claim is refused if the Secretary of State makes one or more of the following decisions – 40
- (i) that removal of P from the United Kingdom would not breach the United Kingdom’s obligations under the Refugee Convention;



- (ii) that removal of P from the United Kingdom would not breach the United Kingdom’s obligations in relation to persons eligible for a grant of humanitarian protection;
  - (c) a person has “protection status” if the person has been granted leave to enter or remain in the United Kingdom as a refugee or as a person eligible for a grant of humanitarian protection; 5
  - (d) “humanitarian protection” is to be construed in accordance with the immigration rules;
  - (e) “refugee” has the same meaning as in the Refugee Convention.
- (3) The right of appeal under subsection (1) is subject to the exceptions and limitations specified in this Part.” 10
- (3) Sections 83 and 83A (appeal rights in respect of asylum claims) are repealed.
- (4) For section 84 substitute –
  - “84 Grounds of appeal**
  - (1) An appeal under section 82(1)(a) (refusal of protection claim) must be brought on one or more of the following grounds – 15
    - (a) that removal of the appellant from the United Kingdom would breach the United Kingdom’s obligations under the Refugee Convention;
    - (b) that removal of the appellant from the United Kingdom would breach the United Kingdom’s obligations in relation to persons eligible for a grant of humanitarian protection; 20
    - (c) that removal of the appellant from the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Human Rights Convention). 25
  - (2) An appeal under section 82(1)(b) (refusal of human rights claim) must be brought on the ground that the decision is unlawful under section 6 of the Human Rights Act 1998.
  - (3) An appeal under section 82(1)(c) (revocation of protection status) must be brought on one or more of the following grounds – 30
    - (a) that the decision to revoke the appellant’s protection status breaches the United Kingdom’s obligations under the Refugee Convention;
    - (b) that the decision to revoke the appellant’s protection status breaches the United Kingdom’s obligations in relation to persons eligible for a grant of humanitarian protection.” 35
- (5) In section 85 (matters to be considered), for subsection (5) substitute –
  - “(5) But the Tribunal must not consider a new matter unless the Secretary of State has given the Tribunal consent to do so. 40
  - (6) A matter is a “new matter” if –
    - (a) it constitutes a ground of appeal of a kind listed in section 84 or any reason that the appellant has for wishing to enter or remain in the United Kingdom, and
    - (b) the Secretary of State has not previously considered the matter in the context of – 45
      - (i) the decision mentioned in section 82(1), or



(ii) a statement made by the appellant under section 120.”

## 12 Place from which appeal may be brought or continued

- (1) Part 5 of the Nationality, Immigration and Asylum Act 2002 (immigration and asylum appeals) is amended as follows.
- (2) For section 92 substitute— 5
- “92 Place from which an appeal may be brought or continued**
- (1) This section applies to determine the place from which an appeal under section 82(1) may be brought or continued.
- (2) In the case of an appeal under section 82(1)(a) (protection claim appeal)— 10
- (a) the appeal must be brought from within the United Kingdom unless the claim to which the appeal relates has been certified under section 94(1) or (7) (claim clearly unfounded or removal to safe third country);
- (b) the appeal must be brought from outside the United Kingdom if the claim to which the appeal relates has been certified under section 94(1) or (7). 15
- (3) In the case of an appeal under section 82(1)(b) (human rights claim appeal)— 20
- (a) the appeal must be brought from within the United Kingdom if the claim to which the appeal relates—
- (i) was made while the appellant was in the United Kingdom, and
- (ii) has not been certified under section 94(1) or (7) (claim clearly unfounded or removal to safe third country) or section 94B (certification of human rights claims made by foreign criminals); 25
- (b) the appeal must be brought from outside the United Kingdom if the claim to which the appeal relates—
- (i) was made while the appellant was outside the United Kingdom, or 30
- (ii) has been certified under section 94(1) or (7) or section 94B.
- (4) In the case of an appeal under section 82(1)(c) (revocation of protection status)— 35
- (a) the appeal must be brought from within the United Kingdom if the decision to which the appeal relates was made while the appellant was in the United Kingdom;
- (b) the appeal must be brought from outside the United Kingdom if the decision to which the appeal relates was made while the appellant was outside the United Kingdom. 40
- (5) If, after an appeal under section 82(1)(a) or (b) has been brought from within the United Kingdom, the Secretary of State certifies the claim to which the appeal relates under section 94(1) or (7) or section 94B, the appeal must be continued from outside the United Kingdom. 45

- 
- (6) Where a person brings or continues an appeal under section 82(1)(a) (refusal of protection claim) from outside the United Kingdom, for the purposes of considering whether the grounds of appeal are satisfied, the appeal is to be treated as if the person were not outside the United Kingdom. 5
- (7) Where an appellant brings an appeal from within the United Kingdom but leaves the United Kingdom before the appeal is finally determined, the appeal is to be treated as abandoned unless the claim to which the appeal relates has been certified under section 94(1) or (7) or section 94B.” 10
- (3) After section 94A, insert –
- “94B Appeal from within the United Kingdom: certification of human rights claims made by foreign criminals**
- (1) This section applies where a foreign criminal (“C”) has made a human rights claim. 15
- (2) The Secretary of State may certify the claim if the Secretary of State considers that, despite the appeals process not having been begun or not having been exhausted, removal of C to the country or territory to which C is proposed to be removed, pending the outcome of an appeal in relation to C’s claim, would not be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Human Rights Convention). 20
- (3) The grounds upon which the Secretary of State may certify a claim under subsection (2) include (in particular) that C would not, before the appeals process is exhausted, face a real risk of serious irreversible harm if removed to the country or territory to which C is proposed to be removed. 25
- (4) In this section, “foreign criminal” has the same meaning as in Part 5A (see section 117D).”
- 13 Review of certain deportation decisions by Special Immigration Appeals Commission 30**
- In the Special Immigration Appeals Commission Act 1997, after section 2D insert –
- “2E Jurisdiction: review of certain deportation decisions**
- (1) Subsection (2) applies in relation to a relevant deportation decision which has been certified under section 97 or 97A(1) of the Nationality, Immigration and Asylum Act 2002 (certification on grounds of national security etc). 35
- (2) The person to whom the decision relates may apply to the Special Immigration Appeals Commission to set aside the decision. 40
- (3) In determining whether the decision should be set aside, the Commission must apply the principles which would be applied in judicial review proceedings.

- 
- (4) If the Commission decides that the decision should be set aside, it may make any such order, or give any such relief, as may be made or given in judicial review proceedings.
- (5) In this section “relevant deportation decision” means a decision of the Secretary of State about the deportation of a person from the United Kingdom, if and to the extent that – 5
- (a) the decision is not subject to a right of appeal, or
  - (b) the decision (being subject to a right of appeal) gives rise to issues which may not be raised on such an appeal.”
- 14 Article 8 of the ECHR: public interest considerations** 10
- After Part 5 of the Nationality, Immigration and Asylum Act 2002 insert –
- “PART 5A**
- ARTICLE 8 OF THE ECHR: PUBLIC INTEREST CONSIDERATIONS
- 117A Application of this Part**
- (1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts – 15
- (a) breaches a person’s right to respect for private and family life under Article 8, and
  - (b) as a result would be unlawful under section 6 of the Human Rights Act 1998. 20
- (2) In considering the public interest question, the court or tribunal must (in particular) have regard –
- (a) in all cases, to the considerations listed in section 117B, and
  - (b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C. 25
- (3) In subsection (2), “the public interest question” means the question of whether an interference with a person’s right to respect for private and family life is justified under Article 8(2).
- 117B Article 8: public interest considerations applicable in all cases**
- (1) The maintenance of effective immigration controls is in the public interest. 30
- (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English – 35
- (a) are less of a burden on taxpayers, and
  - (b) are better able to integrate into society.
- (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons – 40
- (a) are not a burden on taxpayers, and
  - (b) are better able to integrate into society.

- 
- (4) Little weight should be given to –  
(a) a private life, or  
(b) a relationship formed with a qualifying partner,  
that is established by a person at a time when the person is in the United  
Kingdom unlawfully. 5
- (5) Little weight should be given to a private life established by a person at  
a time when the person’s immigration status is precarious.
- (6) In the case of a person who is not liable to deportation, the public  
interest does not require the person’s removal where –  
(a) the person has a genuine and subsisting parental relationship 10  
with a qualifying child, and  
(b) it would not be reasonable to expect the child to leave the  
United Kingdom.
- 117C Article 8: additional considerations in cases involving foreign  
criminals 15**
- (1) The deportation of foreign criminals is in the public interest.
- (2) The more serious the offence committed by a foreign criminal, the  
greater is the public interest in deportation of the criminal.
- (3) In the case of a foreign criminal (“C”) who has not been sentenced to a  
period of imprisonment of four years or more, the public interest 20  
requires C’s deportation unless Exception 1 or Exception 2 applies.
- (4) Exception 1 applies where C –  
(a) has been lawfully resident in the United Kingdom for most of  
C’s life,  
(b) is socially and culturally integrated in the United Kingdom, and 25  
(c) there would be very significant obstacles to C’s integration into  
the country to which C is proposed to be deported.
- (5) Exception 2 applies where C has a genuine and subsisting relationship  
with a qualifying partner, or a genuine and subsisting parental  
relationship with a qualifying child, and the effect of C’s deportation on 30  
the partner or child would be unduly harsh.
- (6) In the case of a foreign criminal who has been sentenced to a period of  
imprisonment of at least four years, the public interest requires  
deportation unless there are very compelling circumstances, over and 35  
above those described in Exceptions 1 and 2.
- (7) The considerations in subsections (1) to (6) are to be taken into account  
where a court or tribunal is considering a decision to deport a foreign  
criminal only to the extent that the reason for the decision was the  
offence or offences for which the criminal has been convicted.
- 117D Interpretation of this Part 40**
- (1) In this Part –  
“Article 8” means Article 8 of the European Convention on  
Human Rights;  
“qualifying child” means a person who is under the age of 18 and  
who – 45

- (a) is a British citizen, or  
 (b) has lived in the United Kingdom for a continuous period of seven years or more;
- “qualifying partner” means a partner who –
- (a) is a British citizen, or  
 (b) who is settled in the United Kingdom (within the meaning of the Immigration Act 1971 – see section 33(2A) of that Act). 5
- (2) In this Part, “foreign criminal” means a person –
- (a) who is not a British citizen, 10  
 (b) who has been convicted in the United Kingdom of an offence, and  
 (c) who –  
 (i) has been sentenced to a period of imprisonment of at least 12 months, 15  
 (ii) has been convicted of an offence that has caused serious harm, or  
 (iii) is a persistent offender.
- (3) For the purposes of subsection (2)(b), a person subject to an order under – 20
- (a) section 5 of the Criminal Procedure (Insanity) Act 1964 (insanity etc),  
 (b) section 57 of the Criminal Procedure (Scotland) Act 1995 (insanity etc), or  
 (c) Article 50A of the Mental Health (Northern Ireland) Order 1986 (insanity etc), 25
- has not been convicted of an offence.
- (4) In this Part, references to a person who has been sentenced to a period of imprisonment of a certain length of time –
- (a) do not include a person who has received a suspended sentence (unless a court subsequently orders that the sentence or any part of it (of whatever length) is to take effect); 30  
 (b) do not include a person who has been sentenced to a period of imprisonment of that length of time only by virtue of being sentenced to consecutive sentences amounting in aggregate to that length of time; 35  
 (c) include 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) for that length of time; and 40  
 (d) include a person who is sentenced to imprisonment or detention, or ordered or directed to be detained, for an indeterminate period, provided that it may last for at least that length of time.
- (5) If any question arises for the purposes of this Part as to whether a person is a British citizen, it is for the person asserting that fact to prove it.” 45

**PART 3**

ACCESS TO SERVICES ETC

**CHAPTER 1**

RESIDENTIAL TENANCIES

*Key interpretation*

5

**15 Residential tenancy agreement**

- (1) This section applies for the purposes of this Chapter.
- (2) “Residential tenancy agreement” means a tenancy which –
  - (a) grants a right of occupation of premises for residential use,
  - (b) provides for payment of rent (whether or not a market rent), and
  - (c) is not an excluded agreement.
- (3) In subsection (2), “tenancy” includes –
  - (a) any lease, licence, sub-lease or sub-tenancy, and
  - (b) an agreement for any of those things,and in this Chapter references to “landlord” and “tenant”, and references to premises being “leased”, are to be read accordingly.
- (4) For the purposes of subsection (2)(a), an agreement grants a right of occupation of premises “for residential use” if, under the agreement, one or more adults have the right to occupy the premises as their only or main residence (whether or not the premises may also be used for other purposes).
- (5) In subsection (2)(b) “rent” includes any sum paid in the nature of rent.
- (6) In subsection (2)(c) “excluded agreement” means any agreement of a description for the time being specified in Schedule 3.
- (7) The Secretary of State may by order amend Schedule 3 so as to –
  - (a) add a new description of excluded agreement,
  - (b) remove any description, or
  - (c) amend any description.

**16 Persons disqualified by immigration status or with limited right to rent**

- (1) For the purposes of this Chapter, a person (“P”) is disqualified as a result of their immigration status from occupying premises under a residential tenancy agreement if –
  - (a) P is not a relevant national, and
  - (b) P does not have a right to rent in relation to the premises.
- (2) P does not have a “right to rent” in relation to premises if –
  - (a) P requires leave to enter or remain in the United Kingdom but does not have it, or
  - (b) P’s leave to enter or remain in the United Kingdom is subject to a condition preventing P from occupying the premises.

- (3) But P is to be treated as having a right to rent in relation to premises (in spite of subsection (2)) if the Secretary of State has granted P permission for the purposes of this Chapter to occupy premises under a residential tenancy agreement.
- (4) References in this Chapter to a person with a “limited right to rent” are references to – 5
- (a) a person who has been granted leave to enter or remain in the United Kingdom for a limited period, or
  - (b) a person who – 10
    - (i) is not a relevant national, and
    - (ii) is entitled to enter or remain in the United Kingdom by virtue of an enforceable EU right or of any provision made under section 2(2) of the European Communities Act 1972.
- (5) In this section “relevant national” means – 15
- (a) a British citizen,
  - (b) a national of an EEA State other than the United Kingdom, or
  - (c) a national of Switzerland.

*Penalty notices*

**17 Persons disqualified by immigration status not to be leased premises**

- (1) A landlord must not authorise an adult to occupy premises under a residential tenancy agreement if the adult is disqualified as a result of their immigration status. 20
- (2) There is a contravention of this section in either of the following cases.
- (3) The first case is where a residential tenancy agreement is entered into that, at the time of entry, grants a right to occupy premises to – 25
- (a) a tenant who is disqualified as a result of their immigration status,
  - (b) another adult named in the agreement who is disqualified as a result of their immigration status, or
  - (c) another adult not named in the agreement who is disqualified as a result of their immigration status (subject to subsection (5)). 30
- (4) The second case is where –
- (a) a residential tenancy agreement is entered into that grants a right to occupy premises on an adult with a limited right to rent,
  - (b) the adult later becomes a person disqualified as a result of their immigration status, and 35
  - (c) the adult continues to occupy the premises after becoming disqualified.
- (5) There is a contravention as a result of subsection (3)(c) only if –
- (a) reasonable enquiries were not made of the tenant before entering into the agreement as to the relevant occupiers, or
  - (b) reasonable enquiries were so made and it was, or should have been, 40  
apparent from the enquiries that the adult in question was likely to be a relevant occupier.
- (6) Any term of a residential tenancy agreement that prohibits occupation of premises by a person disqualified by their immigration status is to be ignored



- for the purposes of determining whether there has been a contravention of this section if –
- (a) the landlord knew when entering into the agreement that the term would be breached, or
  - (b) the prescribed requirements were not complied with before entering into the agreement. 5
- (7) It does not matter for the purposes of this section whether or not –
- (a) a right of occupation is exercisable on entering into an agreement or from a later date;
  - (b) a right of occupation is granted unconditionally or on satisfaction of a condition. 10
- (8) In this Chapter –
- “post-grant contravention” means a contravention in the second case mentioned in subsection (4);
  - “pre-grant contravention” means a contravention in the first case mentioned in subsection (3); 15
  - “relevant occupier”, in relation to a residential tenancy agreement, means any adult who occupies premises under the agreement (whether or not named in the agreement).
- 18 Penalty notices: landlords** 20
- (1) If there is a contravention of section 17, the Secretary of State may give the responsible landlord a notice requiring the payment of a penalty.
  - (2) The amount of the penalty is such an amount as the Secretary of State considers appropriate, but the amount must not exceed £3,000.
  - (3) “Responsible landlord” means – 25
    - (a) in relation to a pre-grant contravention, the landlord who entered into the residential tenancy agreement;
    - (b) in relation to a post-grant contravention, the person who is the landlord under the agreement at the time of the contravention.
  - (4) But if there is a superior landlord in relation to the residential tenancy agreement who is responsible for the purposes of this section, the “responsible landlord” means that superior landlord (and references to the landlord in the following provisions of this Chapter are to be read accordingly). 30
  - (5) A superior landlord is “responsible for the purposes of this section” if arrangements in writing have been made in relation to the residential tenancy agreement between the landlord and the superior landlord under which the superior landlord accepts responsibility for – 35
    - (a) contraventions of section 17 generally, or
    - (b) contraventions of a particular description and the contravention in question is of that description. 40
  - (6) The Secretary of State may by order amend the amount for the time being specified in subsection (2).



## 19 Excuses available to landlords

- (1) This section applies where a landlord is given a notice under section 18 requiring payment of a penalty.
- (2) Where the notice is given for a pre-grant contravention, the landlord is excused from paying the penalty if the landlord shows that – 5
  - (a) the prescribed requirements were complied with before the residential tenancy agreement was entered into, or
  - (b) a person acting as the landlord’s agent is responsible for the contravention (see section 20(2)).
- (3) The prescribed requirements may be complied with for the purposes of subsection (2)(a) at any time before the residential tenancy agreement is entered into. 10
- (4) But where compliance with the prescribed requirements discloses that a relevant occupier is a person with a limited right to rent, the landlord is excused under subsection (2)(a) only if the requirements are complied with in relation to that occupier within such period as may be prescribed. 15
- (5) The excuse under subsection (2)(a) or (b) is not available if the landlord knew that entering into the agreement would contravene section 17.
- (6) Where the notice is given for a post-grant contravention, the landlord is excused from paying the penalty if any of the following applies – 20
  - (a) the landlord has notified the Secretary of State of the contravention as soon as reasonably practicable;
  - (b) a person acting as the landlord’s agent is responsible for the contravention;
  - (c) the eligibility period in relation to the limited right occupier whose occupation caused the contravention has not expired. 25
- (7) For the purposes of subsection (6)(a), the landlord is to be taken to have notified the Secretary of State of the contravention “as soon as reasonably practicable” if the landlord – 30
  - (a) complied with the prescribed requirements in relation to each limited right occupier at the end of the eligibility period, and
  - (b) notified the Secretary of State of the contravention without delay on it first becoming apparent that the contravention had occurred.
- (8) Notification under subsection (6)(a) must be in the prescribed form and manner. 35
- (9) In this Chapter “limited right occupier”, in relation to a residential tenancy agreement, means a relevant occupier who had a limited right to rent at the time when the occupier was first granted a right to occupy the premises under the agreement.

## 20 Penalty notices: agents 40

- (1) Subsection (3) applies where –
  - (a) a landlord contravenes section 17, and
  - (b) a person acting as the landlord’s agent (“the agent”) is responsible for the contravention.

- (2) For the purposes of this Chapter, an agent is responsible for a landlord’s contravention of section 17 if (and only if) –
  - (a) the agent acts in the course of a business, and
  - (b) under arrangements made with the landlord in writing, the agent was under an obligation for the purposes of this Chapter to comply with the prescribed requirements on behalf of the landlord. 5
- (3) The Secretary of State may give the agent a notice requiring the agent to pay a penalty.
- (4) The amount of the penalty is such an amount as the Secretary of State considers appropriate, but the amount must not exceed £3,000. 10
- (5) The Secretary of State may by order amend the amount for the time being specified in subsection (4).

## 21 Excuses available to agents

- (1) This section applies where an agent is given a notice under section 20 requiring payment of a penalty. 15
- (2) Where the notice is given for a pre-grant contravention, the agent is excused from paying the penalty if the agent shows that the prescribed requirements were complied with before the residential tenancy agreement was entered into.
- (3) The prescribed requirements may be complied with for the purposes of subsection (2) at any time before the residential tenancy agreement is entered into. 20
- (4) But where compliance with the prescribed requirements discloses that a relevant occupier is a person with a limited right to rent, the agent is excused under subsection (2) only if the requirements are complied with in relation to that occupier within such period as may be prescribed. 25
- (5) The excuse under subsection (2) is not available if the agent –
  - (a) knew that the landlord would contravene section 17 by entering into the agreement,
  - (b) had sufficient opportunity to notify the landlord of that fact before the landlord entered into the agreement, but
  - (c) did not do so. 30
- (6) Where the notice is given for a post-grant contravention, the agent is excused from paying the penalty if either of the following applies –
  - (a) the agent has notified the Secretary of State and the landlord of the contravention as soon as reasonably practicable; 35
  - (b) the eligibility period in relation to the limited right occupier whose occupation caused the contravention has not expired.
- (7) For the purposes of subsection (6)(a), the agent is to be taken to have notified the Secretary of State and the landlord of the contravention “as soon as reasonably practicable” if the agent –
  - (a) complied with the prescribed requirements in relation to each limited right occupier at the end of the eligibility period, and
  - (b) notified the Secretary of State and the landlord of the contravention without delay on it first becoming apparent that the contravention had occurred. 45

- (8) Notification under subsection (6)(a) must be in the prescribed form and manner.

## 22 Eligibility period

- (1) An eligibility period in relation to a limited right occupier is established if the prescribed requirements are complied with in relation to the occupier. 5
- (2) An eligibility period established under subsection (1) may be renewed (on one or more occasions) by complying with the prescribed requirements again.
- (3) But an eligibility period in relation to a limited right occupier is only established or renewed under this section at any time if it reasonably appears from the information obtained in complying with the prescribed requirements at that time that the occupier is a person with a limited right to rent. 10
- (4) The length of an eligibility period established or renewed under this section in relation to a limited right occupier is the longest of the following periods –
- (a) the period of one year beginning with the time when the prescribed requirements were last complied with in relation to the occupier; 15
  - (b) so much of any leave period as remains at that time;
  - (c) so much of any validity period as remains at that time.
- (5) In subsection (4) –
- “leave period” means a period for which the limited right occupier was granted leave to enter or remain in the United Kingdom; 20
  - “validity period” means the period for which an immigration document issued to the limited right occupier by or on behalf of the Secretary of State is valid.
- (6) In subsection (5) “immigration document” means a document of a prescribed description which – 25
- (a) is issued as evidence that a person who is not a national of an EEA state or Switzerland is entitled to enter or remain in the United Kingdom by virtue of an enforceable EU right or of any provision made under section 2(2) of the European Communities Act 1972, or
  - (b) grants to the holder a right to enter or remain in the United Kingdom for such period as the document may authorise. 30

## 23 Penalty notices: general

- (1) The Secretary of State may give a penalty notice –
- (a) to a landlord under section 18 without having established whether the landlord is excused from paying the penalty under section 19; 35
  - (b) to an agent under section 20 without having established whether the agent is excused from paying the penalty under section 21.
- (2) A penalty notice must –
- (a) be in writing,
  - (b) state why the Secretary of State thinks the recipient is liable to the penalty, 40
  - (c) state the amount of the penalty,
  - (d) specify a date, at least 28 days after the date specified in the notice as the date on which it is given, before which the penalty must be paid,

- (e) specify how a penalty must be paid,
  - (f) explain how the recipient may object to the penalty or make an appeal against it, and
  - (g) explain how the Secretary of State may enforce the penalty.
- (3) A separate penalty notice may be given in respect of each adult disqualified by their immigration status in relation to whom there is a contravention of section 17. 5
- (4) Where a penalty notice is given to two or more persons who jointly constitute the landlord or agent in relation to a residential tenancy agreement, those persons are jointly and severally liable for any sum payable to the Secretary of State as a penalty imposed by the notice. 10
- (5) A penalty notice may not be given in respect of any adult if –  
(a) the adult has ceased to occupy the premises concerned, and  
(b) a period of 12 months or more has passed since the time when the adult last occupied the premises, 15  
but this subsection is not to be taken as affecting the validity of a penalty notice given before the end of that period.
- (6) Subsection (5) does not apply to a penalty notice given after the end of the 12 month period mentioned in that subsection if –  
(a) it is a new penalty notice given by virtue of section 24(6)(b) on the determination of an objection to another penalty notice, and 20  
(b) that other penalty notice was given before the end of the period.

*Objections, appeals and enforcement*

**24 Objection**

- (1) The recipient of a penalty notice (“the recipient”) may object on the ground that – 25  
(a) the recipient is not liable to the imposition of the penalty,  
(b) the recipient is excused by virtue of section 19 or 21, or  
(c) the amount of the penalty is too high.
- (2) An objection must be made by giving a notice of objection to the Secretary of State. 30
- (3) A notice of objection must –  
(a) be in writing,  
(b) give the reasons for the objection,  
(c) be given in the prescribed manner, and 35  
(d) be given before the end of the prescribed period.
- (4) In considering a notice of objection to a penalty the Secretary of State must have regard to the code of practice under section 27.
- (5) On considering a notice of objection the Secretary of State may – 40  
(a) cancel the penalty,  
(b) reduce the penalty,  
(c) increase the penalty, or  
(d) determine to take no action.

- (6) After reaching a decision as to how to proceed under subsection (5) the Secretary of State must –
- (a) notify the recipient of the decision (including the amount of any increased or reduced penalty) before the end of the prescribed period or such longer period as the Secretary of State may agree with the recipient, and 5
  - (b) if the penalty is increased, issue a new penalty notice under section 18 or (as the case may be) section 20.

## 25 Appeals

- (1) The recipient may appeal to the court on the ground that – 10
- (a) the recipient is not liable to the imposition of a penalty,
  - (b) the recipient is excused payment as a result of section 19 or 21, or
  - (c) the amount of the penalty is too high.
- (2) The court may – 15
- (a) allow the appeal and cancel the penalty,
  - (b) allow the appeal and reduce the penalty, or
  - (c) dismiss the appeal.
- (3) An appeal is to be a re-hearing of the Secretary of State’s decision to impose a penalty and is to be determined having regard to – 20
- (a) the code of practice under section 27 that has effect at the time of the appeal, and
  - (b) any other matters which the court thinks relevant (which may include matters of which the Secretary of State was unaware).
- (4) Subsection (3) has effect despite any provisions of rules of court.
- (5) An appeal may be brought only if the recipient has given a notice of objection under section 24 and the Secretary of State – 25
- (a) has determined the objection by issuing to the recipient the penalty notice (as a result of increasing the penalty under section 24(5)(c)),
  - (b) has determined the objection by – 30
    - (i) reducing the penalty under section 24(5)(b), or
    - (ii) taking no action under section 24(5)(d), or
  - (c) has not informed the recipient of a decision before the end of the period that applies for the purposes of section 24(6)(a).
- (6) An appeal must be brought within the period of 28 days beginning with the relevant date. 35
- (7) Where the appeal is brought under subsection (5)(a), the relevant date is the date specified in the penalty notice issued in accordance with section 24(6)(b) as the date on which it is given.
- (8) Where the appeal is brought under subsection (5)(b), the relevant date is the date specified in the notice informing the recipient of the decision for the purposes of section 24(6)(a) as the date on which it is given. 40
- (9) Where the appeal is brought under subsection (5)(c), the relevant date is the date on which the period that applies for the purposes of section 24(6)(a) ends.
- (10) In this section “the court” means –

- (a) the county court, if the appeal relates to a residential tenancy agreement in relation to premises in England and Wales;
- (b) the sheriff, if the appeal relates to a residential tenancy agreement in relation to premises in Scotland;
- (c) a county court in Northern Ireland, if the appeal relates to a residential tenancy agreement in relation to premises in Northern Ireland. 5

## 26 Enforcement

- (1) This section applies where a sum is payable to the Secretary of State as a penalty under this Chapter.
- (2) In England and Wales the penalty is recoverable as if it were payable under an order of the county court in England and Wales. 10
- (3) In Scotland the penalty may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (4) In Northern Ireland the penalty is recoverable as if it were payable under an order of a county court in Northern Ireland. 15
- (5) Where action is taken under this section for the recovery of a sum payable as a penalty under this Chapter, the penalty is –
  - (a) in relation to England and Wales, to be treated for the purposes of section 98 of the Courts Act 2003 (register of judgments and orders etc) as if it were a judgment entered in the county court; 20
  - (b) in relation to Northern Ireland, to be treated for the purposes of Article 116 of the Judgments Enforcement (Northern Ireland) Order 1981 (S.I. 1981/226 (N.I. 6)) (register of judgments) as if it were a judgment in respect of which an application has been accepted under Article 22 or 23(1) of that Order. 25
- (6) *Money paid to the Secretary of State by way of a penalty must be paid into the Consolidated Fund.*

### *Codes of practice*

## 27 General matters 30

- (1) The Secretary of State must issue a code of practice for the purposes of this Chapter.
- (2) The code must specify factors that the Secretary of State will consider when determining the amount of a penalty imposed under this Chapter.
- (3) The code may contain guidance about – 35
  - (a) factors that the Secretary of State will consider when determining whether –
    - (i) a residential tenancy agreement grants a right of occupation of premises for residential use, or
    - (ii) a person is occupying premises as an only or main residence; 40
  - (b) the reasonable enquiries that a landlord should make to determine the identity of relevant occupiers in relation to a residential tenancy agreement (so far as they are not named in the agreement);



- 
- (c) any other matters in connection with this Chapter that the Secretary of State considers appropriate.
- (4) Guidance under subsection (3)(a) may in particular relate to the treatment for the purposes of this Chapter of arrangements that are made in connection with holiday lettings or lettings for purposes connected with business travel. 5
- (5) The Secretary of State must from time to time review the code and may revise and re-issue it following a review.
- (6) The Secretary of State must lay the code, and any revision of the code, before Parliament.
- 28 Discrimination** 10
- (1) The Secretary of State must issue a code of practice specifying what a landlord or agent should or should not do to ensure that, while avoiding liability to pay a penalty under this Chapter, the landlord or agent also avoids contravening –
- (a) the Equality Act 2010, so far as relating to race, or
- (b) the Race Relations (Northern Ireland) Order 1997 (S.I. 1997/869 (N.I. 6)). 15
- (2) The Secretary of State must from time to time review the code and may revise and re-issue it following a review.
- (3) Before issuing the code (or a revised code) the Secretary of State must consult –
- (a) the Commission for Equality and Human Rights, 20
- (b) the Equality Commission for Northern Ireland, and
- (c) such persons representing the interests of landlords and tenants as the Secretary of State considers appropriate.
- (4) After consulting under subsection (3) the Secretary of State must –
- (a) publish a draft code, and 25
- (b) consider any representations made about the published draft before issuing the code (with or without modifications to reflect the representations).
- (5) A breach of the code –
- (a) does not make a person liable to civil or criminal proceedings, but 30
- (b) may be taken into account by a court or tribunal.
- (6) The Secretary of State must lay the code, and any revision of the code, before Parliament.
- General*
- 29 Prescribed requirements** 35
- An order prescribing requirements for the purposes of this Chapter may, in particular, require a landlord or agent to –
- (a) obtain a document of a prescribed description from relevant occupiers before or during the course of a residential tenancy agreement;
- (b) obtain one document of each of a number of prescribed descriptions from relevant occupiers before or during the course of a residential tenancy agreement; 40

- (c) take steps to verify, retain, copy or record the content of a document obtained in accordance with the order;
- (d) take such other steps before or during the course of a residential tenancy agreement as the order may specify.

**30 Transitional provision** 5

- (1) This Chapter does not apply in relation to a residential tenancy agreement entered into before the commencement day.
- (2) This Chapter does not apply in relation to a residential tenancy agreement entered into on or after the commencement day (“the renewed agreement”) if –
  - (a) another residential tenancy agreement was entered into before the commencement day between the same parties (“the original agreement”), and
  - (b) the tenant has always had a right of occupation of the premises leased under the renewed agreement since entering into the original agreement. 15
- (3) In this section “the commencement day” means such day as the Secretary of State may by order appoint; and different days may be appointed for different purposes or areas.

**31 Crown application** 20

This Chapter binds the Crown, except where the Crown is the responsible landlord for the purposes of section 18.

**32 Interpretation**

- (1) In this Chapter –
  - “adult” means a person who has attained the age of 18; 25
  - “agreement” includes an agreement in any form (whether or not in writing);
  - “eligibility period”, in relation to a limited right occupier, is to be read in accordance with section 22;
  - “limited right occupier” has the meaning given in section 19(9); 30
  - “occupy” means occupy as an only or main residence;
  - “penalty notice” means a penalty notice given under this Chapter;
  - “person with a limited right to rent” has the meaning given in section 16(4);
  - “post-grant contravention” has the meaning given in section 17(8); 35
  - “pre-grant contravention” has the meaning given in section 17(8);
  - “premises” includes land, buildings, moveable structures, vehicles and vessels;
  - “prescribed” means prescribed in an order made by the Secretary of State;
  - “recipient” means the recipient of a penalty notice; 40
  - “relevant occupier” has the meaning given in section 17(8);
  - “residential tenancy agreement” has the meaning given in section 15(2).
- (2) For the purposes of this Chapter a residential tenancy agreement grants a person a right to occupy premises if –



- 
- (a) the agreement expressly grants that person the right (whether or not by naming the person), or
- (b) the person is permitted to occupy the premises by virtue of an express grant given to another person,
- and references to a person occupying premises under an agreement are to be read accordingly. 5
- (3) A reference in this Chapter to the “prescribed requirements”, in connection with compliance with the requirements at a particular time, is a reference only to such of the requirements as are capable of being complied with at that time.
- (4) Where two or more persons jointly constitute the landlord in relation to a residential tenancy agreement – 10
- (a) the references to the landlord in –
- (i) section 17(6)(a),
- (ii) section 19(5), (6)(a) and (7), and
- (iii) section 21(6)(a) and (7)(b), 15
- are to be taken as references to any of those persons;
- (b) any other references to the landlord in this Chapter are to be taken as references to all of those persons.
- (5) Where two or more persons jointly constitute the agent in relation to a residential tenancy agreement – 20
- (a) the references to the agent in section 21(5), (6)(a) and (7) are to be taken as references to any of those persons;
- (b) any other references to the agent in this Chapter are to be taken as references to all of those persons.
- (6) The Secretary of State may by order prescribe cases in which – 25
- (a) a residential tenancy agreement is, or is not, to be treated as being entered into for the purposes of this Chapter;
- (b) a person is, or is not, to be treated as occupying premises as an only or main residence for the purposes of this Chapter.
- (7) An order under subsection (6) prescribing a case may modify the application of this Chapter in relation to that case. 30
- (8) The cases mentioned in subsection (6)(a) include, in particular, cases where –
- (a) an option to renew an agreement is exercised;
- (b) rights of occupation under an agreement are varied;
- (c) an agreement is assigned (whether by the landlord or the tenant); 35
- (d) a periodic tenancy arises at the end of a fixed term;
- (e) an agreement grants a right of occupation on satisfaction of a condition;
- (f) there is a change in the persons in occupation of the premises leased under the agreement or in the circumstances of any such person.

## CHAPTER 2

### OTHER SERVICES ETC

#### *National Health Service*

### **33 Immigration health charge**

- (1) *The Secretary of State may by order provide for a charge to be imposed on –* 5  
(a) *persons who apply for immigration permission, or*  
(b) *any description of such persons.*
- (2) “Immigration permission” means –  
(a) *leave to enter or remain in the United Kingdom for a limited period,*  
(b) *entry clearance which, by virtue of provision made under section 3A(3) of the Immigration Act 1971, has effect as leave to enter the United Kingdom for a limited period, or* 10  
(c) *any other entry clearance which may be taken as evidence of a person’s eligibility for entry into the United Kingdom for a limited period.*
- (3) *An order under this section may in particular –* 15  
(a) *impose a separate charge on a person in respect of each application made by that person;*  
(b) *specify the amount of any charge (and different amounts may be specified for different purposes);*  
(c) *make provision about when or how a charge may or must be paid to the Secretary of State;* 20  
(d) *make provision about the consequences of a person failing to pay a charge (including provision for the person’s application to be refused);*  
(e) *provide for exemptions from a charge;*  
(f) *provide for the reduction, waiver or refund of part or all of a charge (whether by conferring a discretion or otherwise).* 25
- (4) *In specifying the amount of a charge under subsection (3)(b) the Secretary of State must (among other matters) have regard to the range of health services that are likely to be available free of charge to persons who have been given immigration permission.* 30
- (5) *Sums paid by virtue of an order under this section must –*  
(a) *be paid into the Consolidated Fund, or*  
(b) *be applied in such other way as the order may specify.*
- (6) *In this section –*  
“entry clearance” has the meaning given by section 33(1) of the Immigration Act 1971;  
“health services” means services provided as part of the health service in England, Wales, Scotland and Northern Ireland;  
and the references to applying for leave to enter or remain for a limited period include references to applying for a variation of leave to enter or remain which would result in leave to enter or remain for a limited period. 40

### **34 Related provision: charges for health services**

- (1) A reference in the NHS charging provisions to persons not ordinarily resident in Great Britain or persons not ordinarily resident in Northern Ireland includes (without prejudice to the generality of that reference) a reference to—
- (a) persons who require leave to enter or remain in the United Kingdom but do not have it, and 5
  - (b) persons who have leave to enter or remain in the United Kingdom for a limited period.
- (2) The “NHS charging provisions” are—
- (a) section 175 of the National Health Service Act 2006 (charges in respect of persons not ordinarily resident in Great Britain); 10
  - (b) section 124 of the National Health Service (Wales) Act 2006 (charges in respect of persons not ordinarily resident in Great Britain);
  - (c) section 98 of the National Health Service (Scotland) Act 1978 (charges in respect of persons not ordinarily resident in Great Britain); 15
  - (d) Article 42 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)) (provision of services to persons not ordinarily resident in Northern Ireland).

#### *Bank accounts*

### **35 Prohibition on opening current accounts for disqualified persons** 20

- (1) A bank or building society (B) must not open a current account for a person (P) who is within subsection (2) unless—
- (a) B has carried out a status check which indicates that P is not a disqualified person, or
  - (b) at the time when the account is opened B is unable, because of circumstances that cannot reasonably be regarded as within its control, to carry out a status check in relation to P. 25
- (2) A person is within this subsection if he or she—
- (a) is in the United Kingdom, and
  - (b) requires leave to enter or remain in the United Kingdom but does not have it. 30
- (3) For the purposes of this section—
- (a) carrying out a “status check” in relation to P means checking with a specified anti-fraud organisation or a specified data-matching authority whether, according to information supplied to that organisation or authority by the Secretary of State, P is a disqualified person; 35
  - (b) a “disqualified person” is a person within subsection (2) for whom the Secretary of State considers that a current account should not be opened by a bank or building society; 40
  - (c) opening an account for P includes—
    - (i) opening a joint account for P and others;
    - (ii) opening an account in relation to which P is a signatory or is identified as a beneficiary;
    - (iii) adding P as an account holder or as a signatory or identified beneficiary in relation to an account. 45

- (4) In subsection (3)(a) –
- “anti-fraud organisation” has the same meaning as in section 68 of the Serious Crime Act 2007;
  - “data-matching authority” means a person or body conducting data matching exercises, within the meaning of Schedule 9 to the Local Audit and Accountability Act 2013, under or by virtue of that or any other Act; 5
  - “specified” means specified by an order made by the Secretary of State for the purposes of this section.
- (5) Subsection (1)(b) does not apply where – 10
- (a) a bank or building society is required to pay a reasonable fee for carrying out status checks, and
  - (b) its inability to carry out a status check is due to its failure to pay the fee.
- (6) A bank or building society that refuses to open a current account for someone on the ground that he or she is a disqualified person must tell the person, if it may lawfully do so, that that is the reason for its refusal. 15

### 36 Regulation by Financial Conduct Authority

- (1) The Treasury may make regulations to enable the Financial Conduct Authority to make arrangements for monitoring and enforcing compliance with the prohibition imposed on banks and building societies by section 35. 20
- (2) The regulations may (in particular) –
- (a) provide for the Financial Conduct Authority to be given free access to the information to which banks and building societies are given access when carrying out status checks under section 35;
  - (b) apply, or make provision corresponding to, any of the provisions of the Financial Services and Markets Act 2000, including in particular those mentioned in subsection (3), with or without modification. 25
- (3) The provisions are –
- (a) provisions about investigations, including powers of entry and search and criminal offences; 30
  - (b) provisions for the grant of an injunction (or, in Scotland, an interdict) in relation to a contravention or anticipated contravention;
  - (c) provisions giving the Financial Conduct Authority powers to impose disciplinary measures (including financial penalties) or to give directions; 35
  - (d) provisions giving a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975) or the Financial Conduct Authority powers to make subordinate legislation;
  - (e) provisions for the Financial Conduct Authority to charge fees.

### 37 “Bank” and “building society” 40

- (1) In sections 35 and 36 “bank” means an authorised deposit-taker that has its head office or a branch in the United Kingdom.  
This is subject to subsection (4).
- (2) In subsection (1) “authorised deposit-taker” means –

- 
- (a) a person who under Part 4A of the Financial Services and Markets Act 2000 has permission to accept deposits;
  - (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act that has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) to accept deposits. 5
  - (3) A reference in subsection (2) to a person or firm with permission to accept deposits does not include a person or firm with permission to do so only for the purposes of, or in the course of, an activity other than accepting deposits.
  - (4) “Bank” does not include – 10
    - (a) a building society;
    - (b) a person who is specified, or is within a class of persons specified, by an order under section 38 of the Financial Services and Markets Act 2000 (exemption orders);
    - (c) a credit union within the meaning given by section 31(1) of the Credit Unions Act 1979 or by Article 2(2) of the Credit Unions (Northern Ireland) Order 1985; 15
    - (d) a friendly society within the meaning given by section 116 of the Friendly Societies Act 1992.
  - (5) In sections 35 and 36, and in subsection (4), “building society” means a building society incorporated (or deemed to be incorporated) under the Building Societies Act 1986. 20

### **38 Power to amend**

- (1) The Treasury may by order amend any of sections 35 to 37 so as – 25
  - (a) to alter the categories of financial institution to which those sections apply;
  - (b) to alter the categories of account to which the prohibition in section 35(1) applies;
  - (c) to include provision defining a category of account specified in that section. 30
- (2) In subsection (1) “account” includes a financial product by means of which a payment may be made.

### *Work*

### **39 Appeals against penalty notices**

- In section 17 of the Immigration, Asylum and Nationality Act 2006 (appeal), for subsections (4) and (5) substitute – 35
- “(4A) An appeal may be brought only if the employer has given a notice of objection under section 16 and the Secretary of State – 40
  - (a) has determined the objection by issuing to the employer the penalty notice (as a result of increasing the penalty under section 16(4)(c)),
  - (b) has determined the objection by –
    - (i) reducing the penalty under section 16(4)(b), or
    - (ii) taking no action under section 16(4)(d), or

- (c) has not informed the employer of a decision before the end of the period that applies for the purposes of section 16(5)(b).
- (4B) An appeal must be brought within the period of 28 days beginning with the relevant date.
- (4C) Where the appeal is brought under subsection (4A)(a), the relevant date is the date specified in the penalty notice issued in accordance with section 16(5)(c) as the date on which it is given. 5
- (4D) Where the appeal is brought under subsection (4A)(b), the relevant date is the date specified in the notice informing the employer of the decision for the purposes of section 16(5)(b) as the date on which it is given. 10
- (4E) Where the appeal is brought under subsection (4A)(c), the relevant date is the date on which the period that applies for the purposes of section 16(5)(b) ends.”
- 40 Recovery of sums payable under penalty notices 15**
- In section 18 of the Immigration, Asylum and Nationality Act 2006 (enforcement), for subsections (1) and (2) substitute—
- “(1) This section applies where a sum is payable to the Secretary of State as a penalty under section 15.
- (1A) In England and Wales the penalty is recoverable as if it were payable under an order of the county court. 20
- (1B) In Scotland, the penalty may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (1C) In Northern Ireland the penalty is recoverable as if it were payable under an order of a county court in Northern Ireland. 25
- (1D) Where action is taken under this section for the recovery of a sum payable as a penalty under section 15, the penalty is—
- (a) in relation to England and Wales, to be treated for the purposes of section 98 of the Courts Act 2003 (register of judgments and orders etc) as if it were a judgment entered in the county court; 30
- (b) in relation to Northern Ireland, to be treated for the purposes of Article 116 of the Judgments Enforcement (Northern Ireland) Order 1981 (S.I. 1981/226 (N.I. 6)) (register of judgments) as if it were a judgment in respect of which an application has been accepted under Article 22 or 23(1) of that Order.” 35

*Driving licences*

**41 Grant of driving licences: residence requirement**

- (1) In section 97 of the Road Traffic Act 1988 (grant of licences), in the opening words of subsection (1), after “who” insert “meets the relevant residence requirement (see section 97A) and”. 40



- (2) After that section insert –

**“97A Residence requirement**

- (1) For the purposes of an application under section 97, a person meets the relevant residence requirement if, on the date the application is made –
- (a) in the case of an application that is made by virtue of section 89(1)(ea) (application by holder of Community licence), the applicant is lawfully resident in the United Kingdom and is also normally resident in the United Kingdom or has been attending a course of study in the United Kingdom during the period of six months ending on that date; 5
  - (b) in the case of an application that is made by virtue of section 89(1)(f) (application by holder of exchangeable licence), the applicant is normally and lawfully resident in Great Britain but has not been so resident for more than the prescribed period; 10
  - (c) in the case of an application that is made by virtue of section 97(2) (application for provisional licence), the applicant is lawfully resident in Great Britain and the Secretary of State is satisfied that the applicant will remain so for not less than 185 days; and 15
  - (d) in any other case, the applicant is normally and lawfully resident in Great Britain. 20
- (2) For the purposes of subsection (1) a person is not lawfully resident in Great Britain or the United Kingdom if the person requires leave to enter or remain in the United Kingdom but does not have it.”
- (3) In Article 13 of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/154 (N.I. 1)) (grant of licences), in the opening words of paragraph (1), after “who” insert “meets the relevant residence requirement (see Article 13A) and”. 25

- (4) After that Article insert –

**“13A Residence requirement**

- (1) For the purposes of an application under Article 13, a person meets the relevant residence requirement if, on the date the application is made – 30
- (a) in the case of an application that is made by virtue of Article 5(1)(ea) (application by holder of Community licence), the applicant is lawfully resident in the United Kingdom and is also normally resident in the United Kingdom or has been attending a course of study in the United Kingdom during the period of six months ending on that date; 35
  - (b) in the case of an application that is made by virtue of Article 5(1)(f) (application by holder of exchangeable licence), the applicant is normally and lawfully resident in Northern Ireland but has not been so resident for more than the prescribed period; 40
  - (c) in the case of an application that is made by virtue of Article 13(2) (application for provisional licence), the applicant is lawfully resident in Northern Ireland and the Department is satisfied that the applicant will remain so for not less than 185 days; and 45
  - (d) in any other case, the applicant is normally and lawfully resident in Northern Ireland.

- (2) For the purposes of paragraph (1) a person is not lawfully resident in Northern Ireland or the United Kingdom if the person requires leave to enter or remain in the United Kingdom but does not have it.”

#### **42 Revocation of driving licences on grounds of immigration status**

- (1) In section 99 of the Road Traffic Act 1988 (duration of licences) – 5
- (a) after subsection (3) insert –
- “(3ZA) Where it appears to the Secretary of State that a licence holder is not lawfully resident in the United Kingdom, the Secretary of State may serve notice in writing on that person revoking the licence and requiring the person to surrender the licence and its counterpart forthwith to the Secretary of State, and it is the duty of that person to comply with the requirement. 10
- (3ZB) For the purposes of subsection (3ZA) a person is not lawfully resident in the United Kingdom if the person requires leave to enter or remain in the United Kingdom but does not have it.”; 15
- (b) in subsection (5), after “(3)” insert “, (3ZA)”; 15
- (c) in subsection (7ZZA) –
- (i) after “(3)” insert “, (3ZA)”; 20
- (ii) after “subsections and” insert “, except in the case of a licence and counterpart surrendered in pursuance of subsection (3ZA),”.
- (2) In section 100 of that Act (appeals) –
- (a) in subsection (1)(c), after “99(3)” insert “, (3ZA)”; 25
- (b) at the end insert –
- “(4) In any proceedings under this section about the revocation of a licence in pursuance of section 99(3ZA) (revocation on grounds of immigration status), the court or sheriff is not entitled to entertain any question as to whether – 25
- (a) the appellant should be, or should have been, granted leave to enter or remain in the United Kingdom, or 30
- (b) the appellant has, after the date that the Secretary of State served notice under section 99(3ZA), been granted leave to enter or remain in the United Kingdom.”
- (3) In Article 15 of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/154 (N.I. 1)) (duration of licences) – 35
- (a) after paragraph (5) insert –
- “(5ZA) Where it appears to the Department that a licence holder is not lawfully resident in the United Kingdom, the Department may serve notice in writing on that person revoking the licence and requiring the person to surrender the licence and its counterpart forthwith to the Department, and it is the duty of that person to comply with the requirement. 40
- (5ZB) For the purposes of paragraph (5ZA) a person is not lawfully resident in the United Kingdom if the person requires leave to enter or remain in the United Kingdom but does not have it.”; 45
- (b) in paragraph (7), after “(5)” insert “, (5ZA)”.



- (4) In Article 16 of that Order (appeals) –
- (a) in paragraph (1)(c), after “15(5)” insert “, (5ZA)”;
  - (b) at the end insert –
    - “(4) In any proceedings under this Article about the revocation of a licence in pursuance of Article 15(5ZA) (revocation on grounds of immigration status), the court is not entitled to entertain any question as to whether –
      - (a) the appellant should be, or should have been, granted leave to enter or remain in the United Kingdom, or
      - (b) the appellant has, after the date that the Department served notice under Article 15(5ZA), been granted leave to enter or remain in the United Kingdom.”

## PART 4

### MARRIAGE AND CIVIL PARTNERSHIP

#### CHAPTER 1

#### REFERRAL AND INVESTIGATION OF PROPOSED MARRIAGES AND CIVIL PARTNERSHIPS

##### *Investigation*

### 43 Decision whether to investigate

- (1) This section applies if –
- (a) a superintendent registrar refers a proposed marriage to the Secretary of State under section 28H of the Marriage Act 1949, or
  - (b) a registration authority refers a proposed civil partnership to the Secretary of State under section 12A of the Civil Partnership Act 2004.
- (2) The Secretary of State must decide whether to investigate whether the proposed marriage or civil partnership is a sham.
- (3) The Secretary of State may not decide to conduct such an investigation unless conditions A and B are met.
- (4) Condition A is met if the Secretary of State is satisfied that –
- (a) only one of the parties to the proposed marriage or civil partnership is an exempt person, or
  - (b) neither of the parties are exempt persons.
- (5) Condition B is met if the Secretary of State has reasonable grounds for suspecting that the proposed marriage or civil partnership is a sham.
- (6) In making the decision whether to investigate, regard must be had to any guidance published by the Secretary of State for this purpose.
- (7) In the case of a proposed marriage, the Secretary of State must give notice of the decision made under this section to –
- (a) both of the parties to the proposed marriage, and
  - (b) the superintendent registrar who referred the proposed marriage to the Secretary of State.

- (8) In the case of a proposed civil partnership, the Secretary of State must give notice of the decision made under this section to –
- (a) both of the parties to the proposed civil partnership,
  - (b) the registration authority who referred the proposed civil partnership to the Secretary of State, and 5
  - (c) if different, the registration authority responsible for issuing the civil partnership schedule under section 14(1) of the Civil Partnership Act 2004 in relation to the proposed civil partnership.
- (9) The Secretary of State must make the decision, and give the notice, required by this section within the relevant statutory period. 10

#### 44 Exempt persons

- (1) A person who is a party to a proposed marriage or civil partnership is an exempt person if the person –
- (a) is a relevant national;
  - (b) has the appropriate immigration status; or 15
  - (c) holds a relevant visa in respect of the proposed marriage or civil partnership.
- (2) A person has the appropriate immigration status if the person –
- (a) has a right of permanent residence in the United Kingdom by virtue of an enforceable EU right or of any provision made under section 2(2) of the European Communities Act 1972; 20
  - (b) is exempt from immigration control; or
  - (c) is settled in the United Kingdom (within the meaning of the Immigration Act 1971 – see section 33(2A) of that Act).
- (3) The question of whether a person is exempt from immigration control is to be determined in accordance with regulations made for this purpose by the Secretary of State. 25
- (4) A person holds a relevant visa if the person holds a visa or other authorisation that is of a kind specified for this purpose in regulations made by the Secretary of State. 30
- (5) The Secretary of State may not specify a visa or other authorisation under subsection (4) unless the Secretary of State considers that the purpose of issuing that kind of visa or authorisation is, or includes, enabling a person to enter or remain in the United Kingdom to marry or form a civil partnership.

#### 45 Conduct of investigation 35

- (1) An investigation must be conducted in accordance with any regulations made by the Secretary of State for this purpose.
- (2) In conducting an investigation, regard must also be had to any guidance published by the Secretary of State for this purpose.
- (3) As part of an investigation, the Secretary of State must decide whether or not each of the relevant parties has complied with the investigation (the “compliance question”). 40
- (4) The compliance question must be decided in accordance with any regulations made by the Secretary of State for this purpose.

- (5) In deciding the compliance question, regard must also be had to any guidance published by the Secretary of State for this purpose.
- (6) Within the 70 day period, the Secretary of State must –
- (a) decide the compliance question; and
  - (b) give notice of that decision to the persons to whom the Secretary of State gave the section 43 notice relating to the proposed marriage or civil partnership. 5
- (7) If the Secretary of State’s decision is that one or both of the relevant parties have not complied with the investigation, the notice under subsection (6) must include a statement of the Secretary of State’s reasons for reaching that decision. 10
- (8) Regulations made under this section may, in particular, make provision about –
- (a) the circumstances in which a relevant party is to be taken to have failed to comply with a relevant requirement; 15
  - (b) the consequences of a relevant party’s failure to comply with a relevant requirement.
- (9) The provision that may be made under subsection (8)(b) includes provision for the compliance question to be decided (in whole or in part) by reference to a relevant party’s compliance or non-compliance with one or more relevant requirements. 20
- (10) In this section –
- “70 day period” means the period of 70 days beginning with the day on which the relevant statutory period begins;
  - “investigation” means an investigation, conducted following a decision by the Secretary of State under section 43, whether a proposed marriage or civil partnership is a sham; 25
  - “relevant party” means a person who is a party to a proposed marriage or civil partnership that is the subject of an investigation;
  - “relevant requirement” means any requirement imposed by law, including a requirement imposed by – 30
    - (a) regulations under section 46;
    - (b) sections 27E, 28B or 28C of the Marriage Act 1949;
    - (c) regulations under section 28D of that Act;
    - (d) section 8A, or any of sections 9 to 9B, of the Civil Partnership Act 2004. 35

#### **46 Investigations: supplementary**

- (1) A section 43 notice which states that the Secretary of State has decided to investigate whether a proposed marriage or civil partnership is a sham must include – 40
- (a) notice that the compliance question must be decided within the period of 70 days mentioned in section 45(6);
  - (b) notice of the date on which that period will end; and
  - (c) prescribed information about the investigation.
- (2) The section 43 notice may also include such other information as the Secretary of State considers appropriate. 45

- (3) For the purposes of subsection (1)(c) “prescribed information” means information prescribed by the Secretary of State by regulations; and the information that may be prescribed includes information about –
- (a) the conduct of the investigation;
  - (b) requirements with which the relevant parties must comply in relation to the investigation; 5
  - (c) the consequence of a failure to comply with those or any other requirements;
  - (d) the possible outcomes of the investigation;
  - (e) the consequences of those outcomes. 10
- (4) The Secretary of State may, by regulations, impose on relevant parties requirements relating to the conduct of investigations.
- (5) Regulations made under subsection (4) may, in particular, impose any of the following requirements –
- (a) a requirement to be present at a particular place at a particular time; 15
  - (b) a requirement to be visited at home;
  - (c) a requirement to be interviewed;
  - (d) a requirement to provide information (whether orally or in writing);
  - (e) a requirement to provide photographs;
  - (f) a requirement to provide evidence. 20
- (6) The provisions of this Part, and any investigation or other steps taken under those provisions (including the decision of the compliance question), do not limit the powers of the Secretary of State in relation to marriages or civil partnerships that are, or are suspected to be, a sham (including any powers to investigate such marriages or civil partnerships). 25
- (7) In this section “investigation”, “relevant party” and “compliance question” have the same meanings as in section 45.

### *Referral*

#### **47 Referral of proposed marriages and civil partnerships in England and Wales**

Schedule 4 (referral of proposed marriages and civil partnerships in England and Wales) has effect. 30

### *Scotland and Northern Ireland*

#### **48 Extension of scheme to Scotland and Northern Ireland**

- (1) The Secretary of State may, by order, make such provision as the Secretary of State considers appropriate for extending the referral and investigation scheme to any of the following – 35
- (a) proposed marriages under the law of Scotland;
  - (b) proposed civil partnerships under the law of Scotland;
  - (c) proposed marriages under the law of Northern Ireland;
  - (d) proposed civil partnerships under the law of Northern Ireland. 40
- (2) An order under this section may –

- (a) make provision having a similar effect to the provision made by section 52, Schedule 4, or Parts 1, 2 and 4 of Schedule 5;
  - (b) confer functions on any person, including, in the case of persons exercising functions in Scotland or Northern Ireland in relation to marriage or civil partnership, power to make relevant administrative provision by subordinate legislation; 5
  - (c) amend, repeal or revoke any enactment (including an enactment contained in this Act).
- (3) The power under subsection (2)(b) to confer functions includes power to impose a duty of referral on persons exercising functions in Scotland or Northern Ireland in relation to marriage or civil partnership. 10
- (4) But an order under this section may not impose that or any other duty, or otherwise confer functions, on—
- (a) the Scottish Ministers,
  - (b) the First Minister and deputy First Minister in Northern Ireland, 15
  - (c) a Northern Ireland Minister, or
  - (d) a Northern Ireland department.
- (5) In this section—
- “duty of referral” means a duty to refer a proposed marriage or proposed civil partnership to the Secretary of State in a case where— 20
    - (a) one of the parties is not an exempt person, or
    - (b) both of the parties are not exempt persons;
  - “enactment” includes—
    - (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978; 25
    - (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, Northern Ireland legislation;
  - “referral and investigation scheme” means the provision made by sections 43 to 46; 30
  - “relevant administrative provision” means administrative provision relating to proposed marriages or civil partnerships.

## CHAPTER 2

### SHAM MARRIAGE AND CIVIL PARTNERSHIP 35

#### 49 Meaning of “sham marriage” and “sham civil partnership”

- (1) The Immigration and Asylum Act 1999 is amended in accordance with this section.
- (2) In section 24 (duty to report suspicious marriages), for subsection (5) substitute— 40
  - “(5) A marriage (whether or not it is void) is a “sham marriage” if—
    - (a) either, or both, of the parties to the marriage is not a relevant national,

- (b) there is no genuine relationship between the parties to the marriage, and
  - (c) either, or both, of the parties to the marriage enter into the marriage for one or more of these purposes –
    - (i) avoiding the effect of one or more provisions of United Kingdom immigration law or the immigration rules; 5
    - (ii) enabling a party to the marriage to obtain a right conferred by that law or those rules to reside in the United Kingdom.
- (6) In subsection (5) – 10
  - “relevant national” means –
    - (a) a British citizen,
    - (b) a national of an EEA state other than the United Kingdom, or
    - (c) a national of Switzerland; 15
  - “United Kingdom immigration law” includes any subordinate legislation concerning the right of relevant nationals to move between and reside in member States.”.
- (3) In section 24A (duty to report suspicious civil partnerships), for subsection (5) substitute – 20
  - “(5) A civil partnership (whether or not it is void) is a “sham civil partnership” if –
    - (a) either, or both, of the parties to the civil partnership is not a relevant national,
    - (b) there is no genuine relationship between the parties to the civil partnership, and 25
    - (c) either, or both, of the parties to the civil partnership enter into the civil partnership for one or more of these purposes –
      - (i) avoiding the effect of one or more provisions of United Kingdom immigration law or the immigration rules; 30
      - (ii) enabling a party to the civil partnership to obtain a right conferred by that law or those rules to reside in the United Kingdom.
- (5A) In subsection (5) – 35
  - “relevant national” means –
    - (a) a British citizen,
    - (b) a national of an EEA state other than the United Kingdom, or
    - (c) a national of Switzerland; 40
  - “United Kingdom immigration law” includes any subordinate legislation concerning the right of relevant nationals to move between and reside in member States.”.

## 50 Duty to report suspicious marriages and civil partnerships

- (1) The Immigration and Asylum Act 1999 is amended in accordance with this section. 45
- (2) In section 24 (duty to report suspicious marriages), in subsection (1) –

- (a) after paragraph (a) insert –  
     “(aa) a superintendent registrar, or registrar of births, deaths and marriages, who receives information in advance of a person giving such a notice,”;
- (b) at the end of paragraph (c), omit “or”; 5
- (c) after paragraph (c) insert –  
     “(ca) a district registrar who receives information in advance of a person submitting such a notice or certificate,”;
- (d) after paragraph (d) insert “or  
     (da) a registrar or deputy registrar who receives information in advance of a person giving such a notice,”. 10
- (3) In section 24A (duty to report suspicious civil partnerships), in subsection (1) –
- (a) after paragraph (a) insert –  
     “(aa) a registration authority that receives information in advance of a person giving such a notice,”; 15
- (b) at the end of paragraph (c), omit “or”;
- (c) after paragraph (c) insert –  
     “(ca) a district registrar who receives information in advance of a person giving such a notice,”;
- (d) after paragraph (d) insert “or  
     (da) a registrar who receives information in advance of a person giving such a notice,”. 20

### CHAPTER 3

#### OTHER PROVISIONS

*Persons not relevant nationals etc: marriage on superintendent registrar’s certificates* 25

#### **51 Solemnization of marriage according to rites of Church of England**

- (1) The Marriage Act 1949 is amended in accordance with this section.
- (2) In section 5 (methods of authorising marriages) –
- (a) at the beginning insert –  
     “(1) ”; 30
- (b) in the words after paragraph (d), for “except that paragraph (a)” substitute –  
     “(2) Subsection (1)(a)”;
- (c) at the end insert –  
     “(3) In a case where one or both of the persons whose marriage is to be solemnized is not a relevant national – 35  
         (a) subsection (1)(a) shall not apply unless the banns are published in accordance with section 14 (whether or not the banns are also published otherwise);  
         (b) subsection (1)(c) shall not apply.”. 40
- (3) In section 8 (notice to clergy before publication of banns) –



- (a) at the beginning insert –
    - “(1) ”;
  - (b) for “delivered to him a notice” substitute “delivered to him –
    - (a) a notice”;
  - (c) at the end insert “, and 5
    - (b) specified evidence that both of the persons are relevant nationals.
- (2) In this section “specified evidence” means evidence that is in accordance with regulations made under section 28G.”
- (4) In section 16 (provisions as to common licences), before subsection (2) insert – 10  
“(1C) A common licence shall not be granted unless the persons to be married deliver to the person granting the licence specified evidence that both of the persons are relevant nationals.
- (1D) For that purpose “specified evidence” means evidence that is in accordance with regulations made under section 28G.” 15

## 52 Requirement as to giving of notice of marriage or civil partnership

- (1) Section 19 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (procedure for marriage in England and Wales) is amended in accordance with subsections (2) and (3).
- (2) For subsection (1) substitute – 20  
“(1) This section applies to a marriage that is to be solemnised on the authority of certificates issued by a superintendent registrar under Part 3 of the Marriage Act 1949 (the “1949 Act”) unless each party to the marriage falls within exception A or exception B.
- (1A) A party to the marriage falls within exception A if the person is a relevant national. 25
- (1B) A party to the marriage falls within exception B if –
  - (a) the person is exempt from immigration control, and
  - (b) the notice of marriage is accompanied by the specified evidence required by section 28C(2) of the 1949 Act that the person is exempt from immigration control.” 30
- (3) For subsection (4) substitute –  
“(4) In this section –
  - (a) a reference to a person being a relevant national, or being exempt from immigration control, has the same meaning as in section 44 of the Immigration Act 2014; 35
  - (b) “notice of marriage” means a notice of marriage given under section 27 of the 1949 Act.”
- (4) Schedule 23 to the Civil Partnership Act 2004 (immigration control and formation of civil partnerships) is amended in accordance with subsections (5) to (7). 40

- (5) Before paragraph 1 insert –
- “A1 (1) Part 2 of this Schedule applies to a civil partnership that is to be formed in England and Wales by signing a civil partnership schedule unless each party to the civil partnership falls within exception A or exception B. 5
- (2) A party to the civil partnership falls within exception A if the person is a relevant national.
- (3) A party to the civil partnership falls within exception B if –
- (a) the person is exempt from immigration control, and
- (b) the notice of civil partnership is accompanied by the specified evidence required by section 9A(2) that the person is exempt from immigration control. 10
- (4) In this paragraph, a reference to a person being a relevant national, or being exempt from immigration control, has the same meaning as in section 44 of the Immigration Act 2014.”. 15
- (6) In paragraph 1(1), for the words before paragraph (a) substitute –
- “1 (1) Part 3 or 4 of this Schedule applies if –”.
- (7) For paragraph 3 substitute –
- “3 This paragraph of this Schedule applies as mentioned in paragraph A1.”. 20

*Information*

**53 Information**

Schedule 5 (information) has effect.

*Miscellaneous*

- 54 Regulations about evidence** 25
- (1) The Secretary of State may make regulations about evidence relevant to the determination of any of the following questions for a purpose of this Part –
- (a) whether a person is a relevant national;
- (b) whether a person has the appropriate immigration status;
- (c) whether a person has a relevant visa. 30
- (2) The regulations may, in particular, make provision about –
- (a) the kind of evidence which is to be supplied;
- (b) the form in which evidence is to be supplied;
- (c) the manner in which evidence is to be supplied;
- (d) the period within which evidence is to be supplied; 35
- (e) the supply of further evidence;
- (f) the sufficiency of evidence supplied;
- (g) the consequences of failing to supply sufficient evidence in accordance with the regulations (including provision to secure that, in such a case, a particular decision is made or is to be treated as having been made); 40

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(h)	the retention or copying of evidence supplied.	
(3)	The Secretary of State must consult the Registrar General before making regulations under this section.	
(4)	In this section “evidence” includes a photograph or other image.	
<b>55</b>	<b>Notices</b>	<b>5</b>
(1)	The Secretary of State may, by regulations, make provision about the giving of –	
(a)	notices under any provision of this Part;	
(b)	notices relating to the referral of proposed marriages under section 28H of the Marriage Act 1949 which are given under any provision of that Act;	10
(c)	notices relating to the referral of proposed civil partnerships under section 12A of the Civil Partnership Act 2004 which are given under any provision of that Act.	
(2)	The regulations may, in particular, make provision that a notice given in accordance with the regulations is to be presumed to have been received by the person to whom it is given.	15
(3)	The Secretary of State must consult the Registrar General before making regulations under this section.	
<b>56</b>	<b>Interpretation of this Part</b>	<b>20</b>
(1)	These expressions have the meanings given –	
	“exempt person” has the meaning given in section 44;	
	“registrar” means a registrar of births, deaths and marriages;	
	“Registrar General” means the Registrar General for England and Wales;	
	“registration authority” has the same meaning as in the Civil Partnership Act 2004 (see section 28 of that Act);	25
	“relevant national” means –	
(a)	a British citizen,	
(b)	a national of an EEA State other than the United Kingdom, or	
(c)	a national of Switzerland;	30
	“relevant statutory period” means –	
(a)	in relation to a proposed marriage, the period –	
(i)	beginning the day after notice of the proposed marriage is entered in the marriage book in accordance with Part 3 of the Marriage Act 1949, or is entered in an approved electronic form by virtue of section 27(4A) of that Act, and	35
(ii)	ending at the end of the period of 28 days beginning with that day;	
(b)	in relation to a proposed civil partnership, the period –	40
(i)	beginning the day after notice of the proposed civil partnership is recorded in the register in accordance with Chapter 1 of Part 2 of the Civil Partnership Act 2004, and	

<p style="margin-left: 40px;">(ii) ending at the end of the period of 28 days beginning with that day;</p> <p style="margin-left: 40px;">“section 43 notice” means a notice given under section 43(7) or (8);</p> <p style="margin-left: 40px;">“superintendent registrar” means a superintendent registrar of births, deaths and marriages.</p> <p>(2) A reference to a person being a party to a proposed marriage or civil partnership is a reference to a person who would be a party to the marriage or civil partnership if it took place as proposed.</p> <p>(3) A reference to a proposed marriage or civil partnership being a sham is a reference to a marriage or civil partnership which would (if it took place as proposed) be a sham marriage or sham civil partnership (within the meaning of the Immigration and Asylum Act 1999 – see section 24 or 24A of that Act).</p> <p>(4) For provision about the interpretation of the following expressions, see section 44 –</p> <p style="margin-left: 40px;">(a) the appropriate immigration status;</p> <p style="margin-left: 40px;">(b) a relevant visa.</p> <p>(5) This section, and the provision mentioned in subsection (4), apply for the purposes of this Part.</p>	<p>5</p> <p>10</p> <p>15</p>
<b>PART 5</b>	
OVERSIGHT	
<p><b>57 Immigration advisers and immigration service providers</b></p> <p>Schedule 6 (immigration advisers and immigration service providers) has effect.</p>	<p>20</p>
<b>PART 6</b>	
MISCELLANEOUS	
<i>Embarkation checks</i>	
<p><b>58 Embarkation checks</b></p> <p>Schedule 7 (embarkation checks) has effect.</p>	
<i>Fees</i>	
<p><b>59 Fees</b></p> <p>(1) <i>The Secretary of State may provide, in accordance with this section, for fees to be charged in respect of the exercise of functions in connection with immigration or nationality.</i></p> <p>(2) The functions in respect of which fees are to be charged are to be specified by the Secretary of State by order (“a fees order”).</p> <p>(3) For any specified function, a fees order must specify –</p> <p style="margin-left: 40px;">(a) whether the fee is to be –</p>	<p>30</p> <p>35</p>

- (i) a fixed amount, or
    - (ii) calculated by reference to an hourly rate or other factor of a kind specified in the order,
  - (b) in a case within paragraph (a)(i), a maximum amount, and
  - (c) in a case within paragraph (a)(ii) – 5
    - (i) how the fee is to be calculated, and
    - (ii) a maximum rate or other factor.
- (4) For any specified function, a fees order may specify a minimum amount, or minimum rate or other factor.
- (5) The amount of the fee in respect of any function specified in a fees order, or the rate or other factor by reference to which it is to be calculated, is to be set by the Secretary of State by regulations (“fees regulations”). 10
- (6) A fees order may not provide for a fee to be charged in respect of the exercise of a function otherwise than in connection with an application or claim, or on request. 15
- (7) The amount, or rate or other factor, set by fees regulations in respect of a specified function –
  - (a) must not –
    - (i) exceed the maximum specified for the function;
    - (ii) be less than the minimum, if any, specified for the function; 20
  - (b) subject to that, may be intended to exceed, or result in a fee which exceeds, the costs of exercising the function.
- (8) In setting the amount of any fee, or rate or other factor, in fees regulations, the Secretary of State may have regard only to –
  - (a) the costs of exercising the function; 25
  - (b) benefits that the Secretary of State thinks are likely to accrue to any person in connection with the exercise of the function;
  - (c) the costs of exercising any other function in connection with immigration or nationality;
  - (d) the promotion of economic growth; 30
  - (e) fees charged by or on behalf of governments of other countries in respect of comparable functions;
  - (f) any international agreement.
- (9) In respect of any fee provided for under this section, fees regulations may –
  - (a) provide for exceptions; 35
  - (b) provide for the reduction, waiver or refund of part or all of a fee (whether by conferring a discretion or otherwise);
  - (c) make provision about –
    - (i) the consequences of failure to pay a fee;
    - (ii) enforcement; 40
    - (iii) when a fee may or must be paid.
- (10) Any provision that may be made by fees regulations by virtue of subsection (9) may be included instead in a fees order (and any provision so included may be amended or revoked by fees regulations).
- (11) In this section – 45
  - “costs” includes –

- (a) the costs of the Secretary of State, and  
 (b) the costs of any other person (whether or not funded from public money);  
 “fees order” has the meaning given by subsection (2);  
 “fees regulations” has the meaning given by subsection (5); 5  
 “function” includes a power or a duty;  
 “function in connection with immigration or nationality” includes a function in connection with an enactment (including an enactment of a jurisdiction outside the United Kingdom) that relates wholly or partly to immigration or nationality; 10  
 “specified” means specified in a fees order.
- (12) Any reference in this section to the exercise of a function includes a reference to its exercise in particular circumstances, including its exercise –  
 (a) at particular times or in a particular place;  
 (b) under particular arrangements; 15  
 (c) otherwise in particular ways,  
 and, for this purpose, “arrangements” includes arrangements for the convenience of applicants, claimants or persons making requests for the exercise of a function.
- 60 Fees orders and fees regulations: supplemental 20**
- (1) A fees order or fees regulations may be made only with the consent of the Treasury.  
 (2) A fee under section 59 may relate to something done outside the United Kingdom.  
 (3) Fees payable by virtue of section 59 may be recovered as a debt due to the Secretary of State. 25  
 (4) *Fees paid to the Secretary of State by virtue of section 59 must –*  
 (a) *be paid into the Consolidated Fund, or*  
 (b) *be applied in such other way as the relevant order may specify.*  
 (5) Section 59 is without prejudice to – 30  
 (a) section 1 of the Consular Fees Act 1980 (fees for consular acts etc);  
 (b) section 102 of the Finance (No. 2) Act 1987 (government fees and charges), or  
 (c) any other power to charge a fee.
- PART 7 35**
- FINAL PROVISIONS
- 61 Financial provision**
- The following are to be paid out of money provided by Parliament –*  
 (a) *expenditure incurred under or by virtue of this Act by the Secretary of State, and* 40  
 (b) *any increase attributable to this Act in the sums payable under any other Act out of money so provided.*

## 62 Transitional and consequential provision

- (1) The Secretary of State may, by order, make such transitional, transitory or saving provision as the Secretary of State considers appropriate in connection with the coming into force of any provision of this Act.
- (2) The Secretary of State may, by order, make such provision as the Secretary of State considers appropriate in consequence of this Act. 5
- (3) The provision that may be made by an order under subsection (2) includes provision amending, repealing or revoking any enactment.
- (4) “Enactment” includes –
  - (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978; 10
  - (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 the National Assembly for Wales; 15
  - (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation.
- (5) In section 61(2) of the UK Borders Act 2007 (definition of “the Immigration Acts”) –
  - (a) at the end of paragraph (h), omit “and”; 20
  - (b) at the end of paragraph (i) insert “, and  
(j) the Immigration Act 2014.”.
- (6) Schedule 8 (transitional and consequential provision) has effect.

## 63 Orders and regulations

- (1) Any power of the Secretary of State or Treasury to make an order or regulations under this Act is exercisable by statutory instrument. 25
- (2) A statutory instrument containing any of the following orders or regulations may not be made unless a draft of the instrument has been laid before each House of Parliament and approved by a resolution of each House of Parliament –
  - (a) an order under section 15(7), 18(6) or 20(5);
  - (b) an order under section 33;
  - (c) regulations under section 36 or an order under section 38;
  - (d) an order under section 48;
  - (e) a fees order (within the meaning of section 59); 35
  - (f) an order under section 62(2) which amends or repeals primary legislation.
- (3) “Primary legislation” means any of the following –
  - (a) a public general Act;
  - (b) an Act of the Scottish Parliament; 40
  - (c) a Measure or Act of the National Assembly for Wales;
  - (d) Northern Ireland legislation.



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- (4) A statutory instrument containing any other order or regulations made by the Secretary of State or Treasury under this Act is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) But subsection (4) does not apply to a statutory instrument containing an order under any of sections 30(3), 62(1) and 64(3) (subject to subsection (7)). 5
- (6) Subsection (7) applies if an order under section 64(3) is made which –
- (a) brings into force a provision of Chapter 1 of Part 3,
  - (b) brings that provision into force only in relation to a particular area or areas within England and Wales, Scotland or Northern Ireland, and
  - (c) is the first order to be made bringing into force a provision of that Chapter only in relation to an area or areas within England and Wales, Scotland or Northern Ireland. 10
- (7) A statutory instrument containing any subsequent order under section 64(3) (after the order mentioned in subsection (6)) that brings into force a provision of Chapter 1 of Part 3 for anywhere other than the area or areas mentioned in paragraph (b) of that subsection is subject to annulment in pursuance of a resolution of either House of Parliament. 15
- (8) An order or regulations made by the Secretary of State or Treasury under this Act may –
- (a) make different provision for different purposes or areas, 20
  - (b) make provision which applies generally or only for particular purposes,
  - (c) make transitional, transitory or saving provision, or
  - (d) make incidental, supplementary or consequential provision.
- 64 Commencement 25**
- (1) This Part, other than section 62(6) and Schedule 8, comes into force on the day on which this Act is passed.
- (2) Section 50, section 53 and Schedule 5, and section 56 come into force at the end of the period of two months beginning with the day on which this Act is passed. 30
- (3) Subject to subsections (1) and (2), this Act comes into force on such day as the Secretary of State may by order appoint; and different days may be appointed for different purposes or areas.
- 65 Extent**
- (1) This Act extends to England and Wales, Scotland and Northern Ireland. 35
- (2) Subsection (1) is subject to subsection (3).
- (3) Section 53 and Schedule 5 extend to England and Wales only.
- (4) Subsections (1) to (3) do not apply to an amendment, repeal or revocation made by this Act.
- (5) An amendment, repeal or revocation made by this Act has the same extent as the provision amended, repealed or revoked (ignoring extent by virtue of an Order in Council). 40

- (6) Her 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.
- (7) Subsection (6) does not apply in relation to the extension to a place of a provision which extends there by virtue of subsection (5).

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**66 Short title**

This Act may be cited as the Immigration Act 2014.

## SCHEDULES

## SCHEDULE 1

Section 2

## ENFORCEMENT POWERS

*Power to escort detained persons*

- 1 In Schedule 2 to the Immigration Act 1971, in paragraph 18(3) (power to escort detained persons) for the first “or of” substitute “an immigration officer, or”. 5

*Power to search detained persons*

- 2 (1) In Schedule 2 to the Immigration Act 1971, after paragraph 18 insert –
- “18A(1) An immigration officer or constable may search a person (“P”) who is detained under paragraph 16 for anything which P might use –
- (a) to cause physical injury to P or others, or
- (b) to assist P’s escape from legal custody.
- (2) The power to search P –
- (a) unless sub-paragraph (3) applies, does not include power to require P to remove any clothing other than an outer coat, jacket or glove, but
- (b) includes power to require P to open P’s mouth.
- (3) This sub-paragraph applies if an immigration officer or constable has reasonable grounds to believe that there is concealed on P anything which P might use as mentioned in sub-paragraph (1).
- (4) The power to search P may be exercised only to the extent reasonably required for the purpose of discovering anything which P might use as mentioned in sub-paragraph (1).
- (5) An intimate search (as defined in section 28H(11)) may not be conducted under this paragraph.
- (6) An immigration officer or constable may seize and retain anything found on a search of P if the officer or constable has reasonable grounds to believe P might use it as mentioned in sub-paragraph (1).
- (7) Nothing seized under sub-paragraph (6) may be retained when P is released from detention under paragraph 16.”
- (2) In paragraph 2(4) of Schedule 3 to the Immigration Act 1971 (which applies certain provisions of Schedule 2 to that Act), for “, 18” substitute “to 18A”. 35

- (3) In section 10(7) of the Immigration and Asylum Act 1999 (which applies certain provisions of Schedule 2 to the Immigration Act 1971), for “18” substitute “18A”.
- (4) In section 47(3) of the Immigration, Asylum and Nationality Act 2006 (which applies certain provisions of Schedule 2 to the Immigration Act 1971), for “18” substitute “18A”. 5
- (5) In regulation 22(2) of the Immigration (European Economic Area) Regulations 2006 (S.I. 2006/1003) (which applies certain provisions of Schedule 2 to the Immigration Act 1971), for “18” substitute “18A”.

*Entry and search of premises*

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- 3 (1) Paragraph 25A of Schedule 2 to the Immigration Act 1971 (power to enter premises and search for documents following arrest) is amended as follows.
- (2) In sub-paragraph (1)(b) for “by a constable (other than under this Schedule)” substitute “other than under this Schedule”.

- (3) After sub-paragraph (6) insert –

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“(6A) If, on an application made by an immigration officer, a justice of the peace is satisfied that –

- (a) there are reasonable grounds for believing that relevant documents may be found on premises not within sub-paragraph (2) which are specified in the application, and
  - (b) any of the conditions in sub-paragraph (6B) is met,
- the justice of the peace may issue a warrant authorising an immigration officer to enter and search the premises.

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(6B) The conditions are that –

- (a) it is not practicable to communicate with any person entitled to grant entry to the premises;
- (b) it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the relevant documents;
- (c) entry to the premises will not be granted unless a warrant is produced;
- (d) the purpose of a search may be frustrated or seriously prejudiced unless an immigration officer arriving at the premises can secure immediate entry.

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(6C) In the application of sub-paragraph (6A) to Scotland, references to a justice of the peace are to be treated as references to the sheriff or a justice of the peace.”

- (4) In sub-paragraph (7) –

- (a) for “sub-paragraph (2)” substitute “this paragraph”;
- (b) in paragraph (a) omit “and retain”;
- (c) omit paragraph (b) and the “but” before it.

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(5) After sub-paragraph (8) insert –

“(8A) An immigration officer may retain a document seized under sub-paragraph (7) while the officer has reasonable grounds for believing that –

- (a) the arrested person may be liable to removal from the United Kingdom in accordance with a provision of the Immigration Acts, and
- (b) retention of the document may facilitate the person’s removal.”

4 In sections 28J(11) and 28K(14) of the Immigration Act 1971 (warrants - safeguards and execution) after “paragraph 17(2)” insert “or 25A(6A)”. 10

*General power to use reasonable force*

5 In section 146(1) of the Immigration and Asylum Act 1999 (power of immigration officer to use reasonable force when exercising powers under certain enactments) for “the 1971 Act or this Act” substitute “the Immigration Acts”. 15

SCHEDULE 2

Section 8

MEANING OF BIOMETRIC INFORMATION

*Immigration Act 1971 (c. 77)*

- 1 (1) Schedule 2 to the Immigration Act 1971 (entry control) is amended as follows. 20
- (2) In paragraph 4(5) –
- (a) after “provide” insert “biometric”;
  - (b) omit from “about his external physical characteristics” to the end.
- (3) After paragraph 4(5) insert – 25
- “(6) “Biometric information” has the meaning given by section 15 of the UK Borders Act 2007.”
- (4) In paragraph 18(2A), for “fingerprints” substitute “biometric information (within the meaning given by section 15 of the UK Borders Act 2007)”. 30

*Immigration and Asylum Act 1999 (c. 33)*

- 2 (1) Section 144 of the Immigration and Asylum Act 1999 (provision for collecting physical data other than fingerprints) is amended as follows. 30
- (2) In subsection (1), for “data about external physical characteristics” substitute “biometric information”.
- (3) For subsection (2) substitute – 35
- “(2) “Biometric information” has the meaning given by section 15 of the UK Borders Act 2007.”

*Nationality, Immigration and Asylum Act 2002 (c. 41)*

- 3 (1) Section 126 of the Nationality, Immigration and Asylum Act 2002 (power to require provision of physical data with certain immigration applications) is amended as follows.
- (2) In subsection (1) – 5
- (a) in paragraph (a), for “information about external physical characteristics of the applicant” substitute “biometric information”;
- (b) in paragraphs (b) and (c), for “information about his external physical characteristics” substitute “biometric information”.
- (3) In subsection (4)(a), (b) and (c), before “information” insert “biometric”. 10
- (4) In subsection (9), after the definition of “authorised person” insert –  
““biometric information” has the meaning given by section 15 of the UK Borders Act 2007,”.
- (5) In that subsection, omit the definition of “external physical characteristics” (and the “and” before it). 15
- 4 (1) Section 127 of that Act (voluntary provision of physical data) is amended as follows.
- (2) In subsection (1), for “information about his external physical characteristics” substitute “biometric information”.
- (3) In subsection (2)(a) and (b), before “information” insert “biometric”. 20
- (4) In subsection (3) –
- (a) after paragraph (a) insert –  
“(aa) “biometric information”, and”;
- (b) omit the “and” at the end of paragraph (b);
- (c) omit paragraph (c). 25

*Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19)*

- 5 In section 35(2) of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (imposition of requirements to facilitate deportation or removal), for paragraph (c) substitute – 30
- “(c) provide biometric information (within the meaning of section 15 of the UK Borders Act 2007), or submit to a process by means of which such information is obtained or recorded;”.

SCHEDULE 3

Section 15

EXCLUDED RESIDENTIAL TENANCY AGREEMENTS

*Social housing* 35

- 1 (1) An agreement that grants a right of occupation in social housing.
- (2) “Social housing” means accommodation provided to a person by virtue of a relevant provision.

- (3) “Relevant provision” means –
- (a) in relation to England and Wales, a provision of –
    - (i) Part 2 of the Housing Act 1985, or
    - (ii) Part 6 or 7 of the Housing Act 1996;
  - (b) in relation to Scotland, Part 2 of the Housing (Scotland) Act 1987; 5
  - (c) in relation to Northern Ireland, Part 2 of the Housing (Northern Ireland) Order 1988 (S.I. 1988/1990 (N.I. 23)).
- (4) Accommodation provided to a person by virtue of a relevant provision includes accommodation provided in pursuance of arrangements made under any such provision. 10
- (5) For the purposes of this paragraph, any allocation of housing accommodation by a local housing authority in England to a person who is already –
- (a) a secure or introductory tenant, or
  - (b) an assured tenant of housing accommodation held by a private registered provider of social housing or a registered social landlord, 15
- is to be treated as an allocation of housing accommodation by virtue of Part 6 of the Housing Act 1996 (and accordingly section 159(4A) of that Act is to be ignored).
- (6) Terms used in sub-paragraph (5) have the same meanings as in Part 6 of the Housing Act 1996. 20

*Care homes*

- 2 (1) An agreement that grants a right of occupation in a care home.
- (2) “Care home” means –
- (a) in relation to England and Wales, an establishment that is a care home for the purposes of the Care Standards Act 2000; 25
  - (b) in relation to Scotland, accommodation that is provided as a care home service within the meaning of Part 5 of the Public Services Reform (Scotland) Act 2010;
  - (c) in relation to Northern Ireland, an establishment that is a residential care home, or a nursing home, for the purposes of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (S.I. 2003/431 (N.I. 9)). 30

*Hospitals and hospices*

- 3 (1) An agreement that grants a right of occupation of accommodation in a hospital or hospice. 35
- (2) “Hospital” –
- (a) in relation to England, has the meaning given in section 275 of the National Health Service Act 2006;
  - (b) in relation to Wales, has the meaning given in section 206 of the National Health Service (Wales) Act 2006; 40
  - (c) in relation to Scotland, has the meaning given in section 108 of the National Health Service (Scotland) Act 1978;



- (d) in relation to Northern Ireland, has the meaning given in Article 2(2) of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)).
- (3) “Hospice” means an establishment other than a hospital whose primary function is the provision of palliative care to persons resident there who are suffering from a progressive disease in its final stages. 5

*Other accommodation relating to healthcare provision*

- 4 (1) An agreement –
  - (a) under which accommodation is provided to a person as a result of a duty imposed on a relevant NHS body by an enactment, and 10
  - (b) which is not excluded by another provision of this Schedule.
- (2) “Relevant NHS body” means –
  - (a) in relation to England –
    - (i) a clinical commissioning group, or
    - (ii) the National Health Service Commissioning Board; 15
  - (b) in relation to Wales, a local health board;
  - (c) in relation to Scotland, a health board constituted by order made under section 2 of the National Health Service (Scotland) Act 1978;
  - (d) in relation to Northern Ireland, a Health and Social Services trust.

*Hostels* 20

- 5 (1) An agreement that grants a right of occupation of accommodation in a hostel.
- (2) “Hostel” means a building which satisfies the following two conditions.
- (3) The first condition is that the building is used for providing to persons generally, or to a class of persons – 25
  - (a) residential accommodation otherwise than in separate and self-contained premises, and
  - (b) board or facilities for the preparation of food adequate to the needs of those persons (or both).
- (4) The second condition is that any of the following applies in relation to the building – 30
  - (a) it is managed by a registered housing association;
  - (b) it is not operated on a commercial basis and its costs of operation are provided wholly or in part by a government department or agency, or by a local authority; 35
  - (c) it is managed by a voluntary organisation or charity.
- (5) In this paragraph –
  - “government department” includes –
    - (a) any part of the Scottish Administration;
    - (b) a Northern Ireland department; 40
    - (c) the Welsh Assembly Government;
    - (d) any body or authority exercising statutory functions on behalf of the Crown;
  - “registered housing association” means –

	(a) a private registered provider of social housing;	
	(b) a registered social landlord within the meaning of Part 1 of the Housing Act 1996 or section 165 of the Housing (Scotland) Act 2010;	
	(c) a housing association which is registered in a register maintained under Article 14 of the Housing (Northern Ireland) Order 1992 (S.I. 1992/1725 (N.I. 15));	5
	“voluntary organisation” means a body, other than a public or local authority, whose activities are not carried on for profit.	
<i>Accommodation from or involving local authorities</i>		10
6	(1) An agreement –	
	(a) under which accommodation is provided to a person as a result of a duty or relevant power that is imposed or conferred on a local authority by an enactment (whether or not provided by the local authority), and	15
	(b) which is not excluded by another provision of this Schedule.	
	(2) “Relevant power” means a power that is exercised for, or in connection with, a purpose of providing accommodation to a person who is homeless or is threatened with homelessness.	
	(3) In sub-paragraph (2) the references to a person who is homeless or is threatened with homelessness is to be read in accordance with –	20
	(a) in relation to England and Wales, section 175 of the Housing Act 1996;	
	(b) in relation to Scotland, section 24 of the Housing (Scotland) Act 1987;	
	(c) in relation to Northern Ireland, Article 3 of the Housing (Northern Ireland) Order 1988 (S.I. 1988/1990 (N.I. 23)).	25
<i>Accommodation provided by virtue of immigration provisions</i>		
7	An agreement granting a right of occupation of accommodation that is provided to an individual by virtue of any of the following provisions of the Immigration and Asylum Act 1999 –	30
	(a) section 4 (provision of accommodation to persons granted temporary admission etc);	
	(b) section 95 (provision of support to asylum seekers etc);	
	(c) section 98 (provision of temporary support to asylum seekers etc).	
<i>Mobile homes</i>		35
8	An agreement to which the Mobile Homes Act 1983 applies.	
<i>Tied accommodation</i>		
9	(1) An agreement that grants a right of occupation of tied accommodation.	
	(2) “Tied accommodation” means accommodation that is provided –	
	(a) by an employer to an employee in connection with a contract of employment, or	40
	(b) by a body providing training in a trade, profession or vocation to an individual in connection with that training.	

- (3) In this paragraph “employer” and “employee” have the same meanings as in the Employment Rights Act 1996 (see section 230 of that Act).

*Student accommodation*

- 10 (1) An agreement that grants a right of occupation in a building which—
- (a) comprises a hall of residence predominantly for the accommodation of students, and 5
  - (b) satisfies either of the following conditions.
- (2) The first condition is that the building is owned or managed by any of the following—
- (a) an institution within the meaning of paragraph 5 of Schedule 1 to the Local Government Finance Act 1992; 10
  - (b) a body that is specified in regulations made under Article 42(2A) of the Rates (Northern Ireland) Order 1977 (S.I. 1977/2157 (N.I. 28));
  - (c) a body established for charitable purposes only.
- (3) The second condition is that the building is the subject of one or more agreements allowing one or more institutions or bodies of the kind mentioned in sub-paragraph (2) to nominate the majority of the persons who are to occupy the accommodation provided in the hall of residence. 15
- (4) In this paragraph “student” —
- (a) in relation to England and Wales or Scotland, has the same meaning as in paragraph 4 of Schedule 1 to the Local Government Finance Act 1992; 20
  - (b) in relation to Northern Ireland, means a person who satisfies such conditions as to education or training as may be specified in regulations made under Article 42(2A) of the Rates (Northern Ireland) Order 1977 (S.I. 1977/2157 (N.I. 28)). 25

*Long leases*

- 11 (1) An agreement that —
- (a) is, or is for, a long lease, or
  - (b) grants a right of occupation for a term of 7 years or more. 30
- (2) “Long lease” means —
- (a) in relation to England and Wales, a lease which is a long lease for the purposes of Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993 or which, in the case of a shared ownership lease (within the meaning given by section 7(7) of that Act), would be such a lease if the tenant’s total share (within the meaning given by that section) were 100 per cent; 35
  - (b) in relation to Scotland, has the meaning given by section 9(2) of the Land Registration (Scotland) Act 2012.
- (3) An agreement does not grant a right of occupation for a term of 7 years or more if the agreement can be terminated at the option of a party before the end of 7 years from the commencement of the term. 40

*Interpretation*

- 12 (1) This paragraph applies for the purposes of this Schedule.

- (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; 5
  - (c) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales;
  - (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation.
- (3) “Local authority” means— 10
- (a) in relation to England—
    - (i) a county, district or parish council in England,
    - (ii) a London borough council,
    - (iii) the Common Council of the City of London in its capacity as a local authority, or 15
    - (iv) the Council of the Isles of Scilly;
  - (b) in relation to Wales, any county, county borough or community council in Wales;
  - (c) in relation to Scotland, a council constituted under section 2 of the Local Government etc (Scotland) Act 1994; 20
  - (d) in relation to Northern Ireland, a district council constituted under section 1 of the Local Government Act (Northern Ireland) 1972 (c. 9 (N.I.)).

## SCHEDULE 4

Section 47

## REFERRAL OF PROPOSED MARRIAGES AND CIVIL PARTNERSHIPS IN ENGLAND AND WALES 25

## PART 1

## MARRIAGE

*Introduction*

- 1 The Marriage Act 1949 is amended in accordance with this Part of this Schedule. 30

*Supply of additional information and evidence*

- 2 (1) Section 27 (notice of marriage) is amended in accordance with this paragraph.
- (2) In subsection (3), after “surname,” insert “the date of birth,”.
- (3) In subsection (4), for “27A” substitute “27ZA”. 35
- 3 (1) After section 27 insert—

**“27ZA Entry of particulars in notice book: compliance with requirements**

The superintendent registrar shall not enter the particulars relating to a marriage in the marriage notice book in accordance with section

27(4), or in an approved electronic form by virtue of section 27(4A), in a case where any of the following requirements is applicable but is not complied with—

- (a) a requirement imposed by or under any of the following provisions of this Act—
  - section 27A(2) or (3);
  - section 27A(4);
  - section 27B(2);
  - section 27D(2);
  - section 27E(2) to (6)
  - section 27E(8);
  - section 28A;
  - section 28B(1);
  - section 28C(2) to (4);
- (b) the requirement imposed by section 19(2) of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004.”.

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(2) Omit section 27A(5).

4 After section 27D insert—

**“27E Additional information if party not relevant national**

- (1) This section applies to notice of marriage given to a superintendent registrar in accordance with section 27 if one, or each, of the parties to the proposed marriage is not a relevant national.
- (2) For each party to the proposed marriage who is not a relevant national, the notice must include whichever of statements A, B or C is applicable to that person.
- (3) Statement A is a statement that the person has the appropriate immigration status.
- (4) Statement B is a statement that the person holds a relevant visa in respect of the proposed marriage.
- (5) Statement C is a statement that the person neither—
  - (a) has the appropriate immigration status, nor
  - (b) holds a relevant visa in respect of the proposed marriage.
- (6) The notice must be accompanied by the details, photographs or addresses referred to in an entry in the first column of this table if the notice contains the statement, or one of the statements, referred to in the corresponding entry in the second column—

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25

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<i>The notice must be accompanied by...</i>	<i>...if the notice includes this statement or one of these statements...</i>
Details of the particular immigration status which a party to the proposed marriage has	Statement A (for that party)
Details of the relevant visa which a party to the proposed marriage has	Statement B (for that party)

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<i>The notice must be accompanied by...</i>	<i>...if the notice includes this statement or one of these statements...</i>	
Specified photographs of each of the parties to the proposed marriage	Statement B (for either or both of the parties) Statement C (for either or both of the parties)	5
For each party to the proposed marriage (if any) whose usual address is different from that party's stated place of residence – (a) the party's usual address, and (b) if that usual address is outside the United Kingdom, an address in the United Kingdom at which that party can be contacted by post	Statement C (for either or both of the parties)	10  15

- (7) If the notice includes statement C for a party to the proposed marriage –
- (a) the notice may be accompanied by a statement (“statement D”) of that person's immigration position in the United Kingdom; 20
  - (b) if the notice is accompanied by statement D for a party to the proposed marriage, the person may provide the superintendent registrar with details of his or her immigration position in the United Kingdom; and 25
  - (c) if any such details are provided, the superintendent registrar must record them.
- (8) For each party to the proposed marriage who is not a relevant national, the notice must be accompanied by a statement of – 30
- (a) any names (other than the name stated in the notice in accordance with section 27(3)) previously used by that person, and
  - (b) any aliases previously or currently used by that person.
- (9) In this section – 35
- (a) a reference –
    - (i) to a person having the appropriate immigration status, or
    - (ii) to a person holding a relevant visa, 40
 has the same meaning as in section 44 of the Immigration Act 2014;
  - (b) a reference to the particular immigration status which a person has is a reference to the immigration status set out in any of paragraphs (a) to (c) of section 44(2) of that Act which the person has; 45
  - (c) a reference to a person's immigration position in the United Kingdom includes a reference to the person's not being entitled to be in the United Kingdom.

- (10) In this section –
- “specified photograph” means a photograph that is in accordance with regulations made under section 28G (and for this purpose “photograph” includes other kinds of images);
  - “stated place of residence” means the place of residence of a person stated in a notice of marriage in accordance with section 27(3).”.
- 5
- 5 In section 28 (declaration to accompany notice of marriage), in subsection (1), after paragraph (c) insert –
- “(d) that he or she believes all of the information stated in the notice, and all information and evidence supplied with the notice, is true.”.
- 10
- 6 (1) Section 28A (power to require evidence) is amended in accordance with this paragraph.
- 15
- (2) For the title substitute “**Power to require evidence of consent to marriages of same sex couples**”.
- (3) Omit subsection (1).
- (4) In subsection (2), for the words before “may” substitute “A requirement under subsection (1A)”.
- 20
- (5) Omit subsection (3)
- 7 After section 28A insert –
- “28B Provision of evidence**
- (1) A notice of marriage under section 27 must, in relation to each of the parties to the marriage, be accompanied by specified evidence of the following matters –
- (a) the person’s name and surname;
  - (b) the person’s date of birth;
  - (c) the person’s place of residence;
  - (d) the person’s nationality.
- 25
- 30
- (2) A person giving a notice of marriage under section 27 must provide the superintendent registrar to whom the notice is given with specified evidence –
- (a) as to whether the person has previously been married or formed a civil partnership; and
  - (b) if so, as to the ending of the marriage or civil partnership.
- 35
- (3) In this section “specified evidence” means evidence that is in accordance with regulations made under section 28G.
- 28C Additional evidence if party not relevant national**
- (1) This section applies to notice of marriage given to a superintendent registrar in accordance with section 27 if one, or each, of the parties to the proposed marriage is not a relevant national.
- 40
- (2) If the notice includes statement A (referred to in section 27E(3)), and accordingly is accompanied by details of the particular immigration



status which a party to the proposed marriage has, the notice must be accompanied by specified evidence of that status.

- (3) If the notice includes statement B (referred to in section 27E(4)), the notice must be accompanied by specified evidence of the holding of the relevant visa by the party to the proposed marriage. 5
- (4) If, in accordance with section 27E(6), the notice is accompanied by the usual address of a party to the proposed marriage, the notice must also be accompanied by specified evidence that it is that party's usual address.
- (5) If the notice includes statement D (referred to in section 27E(7)), the notice may be accompanied by evidence of the person's immigration position in the United Kingdom. 10
- (6) In this section "specified evidence" means evidence that is in accordance with regulations made under section 28G.

**28D Change of usual address or UK contact address** 15

- (1) The Secretary of State may, by regulations, make provision about the giving to the Secretary of State of –
- (a) notice of a person's usual address, if the person's notified usual address changes;
  - (b) notice of a UK contact address, if the person's notified usual address is not in the United Kingdom; 20
  - (c) notice of a person's UK contact address, if the person's notified UK contact address changes;
  - (d) evidence of any address notified in accordance with regulations under paragraph (a), (b) or (c). 25
- (2) The provision that may be made in regulations under this section includes –
- (a) provision imposing a requirement on a person;
  - (b) provision about the rejection of information or evidence which there are reasonable grounds to suspect to be false. 30
- (3) Regulations under subsection (1)(d) may, in particular, make any provision of the kind that may be made under section 28G(3).
- (4) Regulations under this section are to be made by statutory instrument; and a statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of either House of Parliament. 35
- (5) In this section –
- "notified UK contact address" means an address in the United Kingdom, at which a person can be contacted by post, that has been notified in accordance with – 40
    - (a) section 27E(6), or
    - (b) regulations under this section;
  - "notified usual address" means the usual address of a person that has been notified in accordance with – 45
    - (a) section 27E(6), or
    - (b) regulations under this section.

### **28E Rejection of false information or evidence**

- (1) A superintendent registrar may reject –
  - (a) any information or photograph provided under section 27 or 27E, or
  - (b) any evidence provided under section 28A, 28B or 28C, 5  
if (in particular) the superintendent registrar has reasonable grounds for suspecting that the information, photograph or evidence is false.
- (2) If the superintendent registrar rejects any information, photograph or evidence, the superintendent registrar may proceed under this Act as if the rejected information, photograph or evidence had not been provided. 10
- (3) This section does not limit the powers of superintendent registrars to reject anything provided under any other enactment.

### **28F Amendment of notice and evidence provisions**

- (1) The Secretary of State may by order – 15
  - (a) amend section 27 or 27E so as to vary the information that must or may be given in cases where that section applies;
  - (b) amend section 28B or 28C so as to vary the matters in respect of which evidence must or may be given in cases where that section applies; 20
  - (c) make such provision (including provision amending section 27ZA, 28D or 28G or any other enactment) as the Secretary of State considers appropriate in consequence of provision made under paragraph (a) or (b).
- (2) The Secretary of State must consult the Registrar General before making an order under this section. 25
- (3) An order under this section is to be made by statutory instrument; and no statutory instrument containing such an order may be made unless a draft of it has been laid before, and approved by resolution of, each House of Parliament. 30

### **28G Specified evidence**

- (1) The Registrar General may make regulations about the evidence that is required to be given for the purposes of section 8, 16 or 28B.
- (2) The Secretary of State may make regulations about the evidence that is required to be given for the purposes of section 28C. 35
- (3) Regulations under this section may, in particular, make provision about –
  - (a) the kind of evidence which is to be supplied;
  - (b) the form in which evidence is to be supplied;
  - (c) the manner in which evidence is to be supplied; 40
  - (d) the period within which evidence is to be supplied;
  - (e) the supply of further evidence;
  - (f) the sufficiency of evidence supplied;
  - (g) the consequences of failing to supply sufficient evidence in accordance with the regulations (including provision to 45

- secure that, in such a case, a particular decision is made or is to be treated as having been made);
- (h) the retention or copying of evidence supplied.
- (4) In this section “evidence” includes a photograph or other image.
- (5) The Secretary of State must consult the Registrar General before making regulations under this section. 5
- (6) The Registrar General must obtain the approval of the Secretary of State before making regulations under this section.
- (7) Regulations under this section are to be made by statutory instrument. 10
- (8) A statutory instrument containing regulations under this section made by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament.”.

*Referral to Secretary of State*

- 8 After section 28G insert – 15

**“28H Referral of proposed marriage to Secretary of State**

- (1) On every occasion when notice of marriage is given under section 27, a superintendent registrar must decide whether or not each of the parties to the proposed marriage is an exempt person.
- (2) But this section does not apply if section 39A applies to the proposed marriage. 20
- (3) In making a decision under subsection (1) about a party to a proposed marriage, a superintendent registrar may rely on any advice given in relation to that decision by the Secretary of State.
- (4) In a case where – 25
- (a) section 27E applies to the notice of marriage, and
- (b) specified evidence required by section 28C(2) or (3) is not produced in accordance with that section,
- the superintendent registrar must decide that any party to the proposed marriage who is not a relevant national is not an exempt person. 30
- (5) If the superintendent registrar decides that either of the parties is not an exempt person, or that both of the parties are not exempt persons, the superintendent registrar must –
- (a) refer the proposed marriage to the Secretary of State; 35
- (b) notify the parties to the proposed marriage that the proposed marriage must be referred to the Secretary of State;
- (c) give the parties to the proposed marriage prescribed information about –
- (i) the effects of the referral; 40
- (ii) the requirement under regulations under section 28D to notify the Secretary of State of changes of address.

- (6) The superintendent registrar must act in accordance with regulations when complying with the duty in subsection (5)(a) to refer a proposed marriage to the Secretary of State.
- (7) Regulations may, in particular, make provision about –
- (a) the form, manner or timing of the referral of a proposed marriage; 5
  - (b) information, photographs or evidence – or copies of any of those things – to be included with the referral of a proposed marriage.
- (8) Regulations are to be made by statutory instrument; and a statutory instrument containing regulations is subject to annulment in pursuance of a resolution of either House of Parliament. 10
- (9) If the superintendent registrar refers the proposed marriage to the Secretary of State, this Act has effect in relation to the proposed marriage subject to the modifications in Schedule 3A. 15
- (10) In this section –
- (a) a reference to a person being an exempt person has the same meaning as in section 44 of the Immigration Act 2014;
  - (b) “prescribed information” means information prescribed in regulations; 20
  - (c) “regulations” means regulations made by the Secretary of State after consulting the Registrar General.”.
- 9 Before Schedule 4 insert –

“SCHEDULE 3A

MODIFICATIONS IF PROPOSED MARRIAGE REFERRED UNDER SECTION 28H 25

*Introduction*

- 1 (1) These are the modifications subject to which this Act has effect if the superintendent registrar refers a proposed marriage to the Secretary of State.
- (2) In this Schedule – 30
- “2014 Act” means the Immigration Act 2014;
  - “referred marriage” means the proposed marriage referred to the Secretary of State.

*No certificate to be issued until decision about investigation etc*

- 2 (1) The duty under section 31(2) to issue a certificate in respect of the referred marriage does not apply until the Secretary of State gives the superintendent registrar notice under section 43(7) of the 2014 Act (notice of whether the Secretary of State has decided to investigate whether the referred marriage is a sham). 35
- (2) In a case where that notice is of a decision to investigate whether the referred marriage is a sham, the duty under section 31(2) does not apply unless (additionally) the Secretary of State gives the superintendent registrar notice under section 45(6) of the 2014 Act 40

that both of the parties to the referred marriage have complied with that investigation.

(3) This paragraph applies in addition to any other requirements applicable to the issue of the certificate.

(4) This paragraph is subject to paragraph 4. 5

*Marriage to be investigated: extension of waiting period to 70 days*

3 (1) The modifications in this paragraph have effect if the Secretary of State gives the superintendent registrar notice under section 43(7) of the 2014 Act of a decision to investigate whether the referred marriage is a sham. 10

(2) Section 31(2): the reference to the said period of 28 days has effect as a reference to the relevant 70 day period.

(3) Section 31(4A)(a): the reference to the period of 28 days has effect as a reference to the relevant 70 day period.

(4) Section 31(5A) and (5C): the reference to the 28 day period has effect as a reference to the relevant 70 day period. 15

(5) Section 31(5B) does not apply.

(6) Section 75(3)(a): the reference to 28 days has effect as a reference to 70 days (and the reference in section 31(5C) to 28 days has effect accordingly). 20

(7) This paragraph does not affect the exercise of the power conferred by section 31(5A).

(8) In this paragraph “relevant 70 day period” means the period –  
 (a) beginning the day after notice of the proposed marriage is entered in the marriage book in accordance with Part 3 of the Marriage Act 1949, or is entered in an approved electronic form by virtue of section 27(4A) of that Act, and  
 (b) ending at the end of the period of 70 days beginning with that day. 25

*Effect of reducing statutory period* 30

4 (1) This paragraph applies if –  
 (a) the Secretary of State gives notice under section 31(5EB) of the grant of an application made under section 31(5A) (reduction of statutory period) in relation to the referred marriage, and 35

(b) that notice is given at a time when the duty under section 31(2) to issue a certificate in respect of the referred marriage has not arisen in accordance with paragraph 2.

(2) The duty under subsection 31(2) to issue a certificate in respect of the referred marriage arises on the giving of the notice, subject to any other requirements applicable to the issue of the certificate being met. 40

- (3) But the requirements of paragraph 2 are not applicable in such a case.
- (4) The Secretary of State is not prevented from deciding to conduct, conducting, or continuing, an investigation if a certificate in respect of the referred marriage is issued as mentioned in subparagraph (2). 5
- (5) But in such a case, nothing in the 2014 Act requires the Secretary of State to decide whether to conduct, to conduct, or to continue, an investigation.
- (6) In this paragraph “investigation” means an investigation, conducted following a decision by the Secretary of State under section 43 of the 2014 Act, whether a proposed marriage is a sham.”. 10

*Notice period*

- 10 (1) Section 31 (marriage under certificate without licence) is amended in accordance with this paragraph. 15
- (2) In section 31 –
  - (a) for “15 successive days” (in each place) substitute “28 successive days”;
  - (b) for “15 days” (in each place) substitute “28 days”; 20
  - (c) for “15 day period” (in each place) substitute “28 day period”.
- (3) After subsection (5E) insert –
  - “(5EA) If a proposed marriage is referred to the Secretary of State under section 28H –
    - (a) any application under subsection (5A) is to be made to the Secretary of State; and 25
    - (b) the power conferred by subsection (5A) is exercisable by the Secretary of State;
  - and the reference to the Registrar General in subsection (5C) accordingly has effect as a reference to the Secretary of State. 30
  - (5EB) If the Secretary of State grants an application made under subsection (5A), the Secretary of State must give notice of the grant of the application to the superintendent registrar to whom notice of the marriage was given.
  - (5EC) Regulations under subsection (5D) do not apply to applications made to the Secretary of State in accordance with subsection (5EA). 35
  - (5ED) The Secretary of State may by regulations make provision with respect to the making, and granting, of applications made in accordance with subsection (5EA).
  - (5EE) The Secretary of State must consult the Registrar General before making regulations under subsection (5ED).” 40
- (4) In subsection (5H), after “(5D)” insert “or (5ED)”.



*Marriage referred to Secretary of State: issue of certificates*

11 (1) In section 31 (marriage under certificate without licence), at the end insert –

“(7) This section has effect subject to section 31ZA.”.

(2) After section 31 insert –

**“31ZA Notice of marriage: false information or evidence** 5

(1) A superintendent registrar may refuse to issue a certificate under section 31(2) in a case where –

- (a) notice of marriage has been given under section 27, and
- (b) a superintendent registrar has reasonable grounds for suspecting that a relevant decision was made incorrectly because of the provision of false information or evidence. 10

(2) If the superintendent registrar refuses to issue the certificate, the parties to the proposed marriage are to be taken not to have given notice under section 27; but that does not prevent criminal proceedings from being brought against either party, or any other person, in relation to the giving of the notice. 15

(3) This section does not limit the powers of superintendent registrars to refuse to issue certificates under section 31 in respect of marriages.

(4) In this section –  
 “evidence” includes a photograph or other image; 20  
 “exempt person” has the same meaning as in section 28H;  
 “relevant decision” means a decision of a superintendent registrar that a party to a proposed marriage is an exempt person.”.

(3) In section 31A (appeal on refusal under section 31(2)(a)) – 25

- (a) in the title, at the end insert “**or 31ZA**”;
- (b) in subsection (1), after “31(2)(a)” insert “**or 31ZA**”;
- (c) after subsection (2) insert –

“(2A) In a case where –  
 (a) in reliance on section 31ZA, a superintendent registrar refuses to issue a certificate, and 30  
 (b) on an appeal against the refusal, the Registrar General directs that a certificate be issued,  
 section 31ZA(2) is of no effect – and is to be taken to have never had any effect – in relation to the parties’ giving of notice under section 27.”; 35

(d) after subsection (3) insert –

“(3A) If –  
 (a) relying on section 31ZA, a superintendent registrar refuses to issue a certificate, and 40  
 (b) on an appeal against the refusal, the Registrar General declares the appeal to have been frivolous,  
 the person making the appeal is liable for the costs of the proceedings before the Registrar General.”;

(e) in subsection (4) – 45



- (i) for “such costs and damages” substitute “costs and damages in accordance with subsection (3) or (3A)”;
- (ii) at the end insert “(in the case of subsection (3)) or evidence that the Registrar General has declared the appeal to have been frivolous (in the case of subsection (3A))”.

5

#### *Certificates*

- 12 (1) In section 35 (marriage in registration district in which neither party resides), in subsection (3), after “them,” insert “or in which the marriage may be solemnized by virtue of section 1 of the Church of England Marriage Measure 2008 or section 2 of the Marriage (Wales) Act 2010,”.
- (2) Omit section 38.

10

#### *Regulations etc*

- 13 In section 74 (regulations), after subsection (2) insert –
- “(3) Any order or regulations made under this Act may make different provision for different cases.”.

15

#### *Offences*

- 14 In section 75 (offences relating to solemnization of marriages), in subsection (3)(a), for “15 days” substitute “28 days”.

#### *Relevant nationals*

- 15 In section 78 (interpretation of the 1949 Act), in subsection (1), after the definition of “registration district” insert –
- ““relevant national” means –
- (a) a British national,
  - (b) a national of an EEA state other than the United Kingdom, or
  - (c) a national of Switzerland;”.

20

25

## PART 2

### CIVIL PARTNERSHIP

#### *Introduction*

- 16 The Civil Partnership Act 2004 is amended in accordance with this Part of this Schedule.

30

#### *Supply of additional information and evidence*

- 17 (1) Section 8 (notice of proposed civil partnership and declaration) is amended in accordance with this paragraph.
- (2) In subsection (4), after paragraph (b) insert –
- “(c) that the proposed civil partner believes all of the information stated in the notice, and all information and evidence supplied with the notice, is true.”.

35

(3) After subsection (5) insert –

“(5A) Subsection (5) is subject to section 9F.”.

18 After section 8 insert –

**“8A Additional information if party not relevant national**

- |   |    |
|---|----|
| (1) This section applies to notice of proposed civil partnership given to a registration authority in accordance with section 8 if one, or each, of the parties to the proposed civil partnership is not a relevant national.                                       | 5  |
| (2) For each party to the proposed civil partnership who is not a relevant national, the notice must include whichever of statements A, B or C is applicable to that person.  | 10 |
| (3) Statement A is a statement that the person has the appropriate immigration status.  |    |
| (4) Statement B is a statement that the person holds a relevant visa in respect of the proposed civil partnership.  | 15 |
| (5) Statement C is a statement that the person neither –<br>(a) has the appropriate immigration status, nor<br>(b) holds a relevant visa in respect of the proposed civil partnership.  |    |
| (6) The notice must be accompanied by the details, photographs or addresses referred to in an entry in the first column of this table if the notice contains the statement, or one of the statements, referred to in the corresponding entry in the second column – | 20 |

<i>The notice must be accompanied by...</i>	<i>...if the notice includes this statement or one of these statements...</i>	
Details of the particular immigration status which a party to the proposed civil partnership has	Statement A (for that party)	25
Details of the relevant visa which a party to the proposed civil partnership has	Statement B (for that party)	30
Specified photographs of each of the parties to the proposed civil partnership	Statement B (for either or both of the parties) Statement C (for either or both of the parties)	35



“stated place of residence” means the place of residence of a person stated in a notice of proposed civil partnership in accordance with regulations under section 8(2).”

19 For section 9 substitute –

- “9 Evidence** 5
- (1) A notice of proposed civil partnership under section 8 must, in relation to each of the parties to the civil partnership, be accompanied by specified evidence of the following matters –
- (a) the person’s name and surname;
  - (b) the person’s date of birth; 10
  - (c) the person’s place of residence;
  - (d) the person’s nationality.
- (2) A person giving a notice of proposed civil partnership under section 8 must provide the registration authority to which the notice is given with specified evidence – 15
- (a) as to whether the person has previously been married or formed a civil partnership; and
  - (b) if so, as to the ending of the marriage or civil partnership.
- (3) In this section “specified evidence” means evidence that is in accordance with regulations made under section 9E. 20
- 9A Additional evidence if party not relevant national**
- (1) This section applies to notice of proposed civil partnership given to a registration authority in accordance with section 8 if one, or each, of the parties to the proposed civil partnership is not a relevant national. 25
- (2) If the notice includes statement A (referred to in section 8A(3)), and accordingly is accompanied by details of the particular immigration status which a party to the proposed civil partnership has, the notice must be accompanied by specified evidence of that status.
- (3) If the notice includes statement B (referred to in section 8A(4)), the notice must be accompanied by specified evidence of the holding of the relevant visa by the party to the proposed civil partnership. 30
- (4) If, in accordance with section 8A(6), the notice is accompanied by the usual address of a party to the proposed civil partnership, the notice must also be accompanied by specified evidence that it is that party’s usual address. 35
- (5) If the notice includes statement D (referred to in section 8A(7)), the notice may be accompanied by evidence of the person’s immigration position in the United Kingdom.
- (6) In this section “specified evidence” means evidence that is in accordance with regulations made under section 9E. 40
- 9B Change of usual address or UK contact address**
- (1) The Secretary of State may, by regulations, make provision about the giving to the Secretary of State of –

- 
- (a) notice of a person’s usual address, if the person’s notified usual address changes;
- (b) notice of a UK contact address, if the person’s notified usual address is not in the United Kingdom;
- (c) notice of a person’s UK contact address, if the person’s notified UK contact address changes; 5
- (d) evidence of any address notified in accordance with regulations under paragraph (a), (b) or (c).
- (2) The provision that may be made in regulations under this section includes – 10
- (a) provision imposing a requirement on a person;
- (b) provision about the rejection of information or evidence which there are reasonable grounds to suspect to be false.
- (3) Regulations under subsection (1)(d) may, in particular, make any provision of the kind that may be made under section 9E(3). 15
- (4) In this section –
- “notified UK contact address” means an address in the United Kingdom, at which a person can be contacted by post, that has been notified in accordance with –
- (a) section 8A(6), or 20
- (b) regulations under this section;
- “notified usual address” means the usual address of a person that has been notified in accordance with –
- (a) section 8A(6), or
- (b) regulations under this section. 25
- 9C Rejection of false information or evidence**
- (1) A registration authority may reject –
- (a) any information or photograph provided under section 8 or 8A, or
- (b) any evidence provided under section 9 or 9A, 30
- if (in particular) the registration authority has reasonable grounds for suspecting that the information, photograph or evidence is false.
- (2) If the registration authority rejects any information, photograph or evidence, the registration authority may proceed under this Act as if the rejected information, photograph or evidence had not been provided. 35
- (3) This section does not limit the powers of registration authorities to reject anything provided under any other enactment.
- 9D Amendment of notice and evidence provisions**
- (1) The Secretary of State may by order – 40
- (a) amend section 8 or 8A so as to vary the information that must or may be given in cases where that section applies;
- (b) amend section 9 or 9A so as to vary the matters in respect of which specified evidence must or may be given in cases where that section applies; 45

- (c) make such provision (including provision amending section 9B or 9E or any other enactment) as the Secretary of State considers appropriate in consequence of provision made under paragraph (a) or (b).
- (2) The Secretary of State must consult the Registrar General before making an order under this section. 5
- 9E Specified evidence**
- (1) The Registrar General may make regulations about the evidence that is required to be given for the purposes of section 9.
- (2) The Secretary of State may make regulations about the evidence that is required to be given for the purposes of section 9A. 10
- (3) Regulations under this section may, in particular, make provision about—
- (a) the kind of evidence which is to be supplied;
  - (b) the form in which evidence is to be supplied; 15
  - (c) the manner in which evidence is to be supplied;
  - (d) the period within which evidence is to be supplied;
  - (e) the supply of further evidence;
  - (f) the sufficiency of evidence supplied;
  - (g) the consequences of failing to supply sufficient evidence in accordance with the regulations (including provision to secure that, in such a case, a particular decision is made or is to be treated as having been made); 20
  - (h) the retention or copying of evidence supplied.
- (4) In this section “evidence” includes a photograph or other image. 25
- (5) The Registrar General must obtain the approval of the Secretary of State before making regulations under this section.
- (6) The Secretary of State must consult the Registrar General before making regulations under this section.
- 9F Recording of information in the register: compliance with requirements** 30
- The registration authority must not enter in the register the information relating to a proposed civil partnership mentioned in section 8(5) in a case where any of the requirements imposed by or under any of the following provisions of this Act is applicable but is not complied with—
- section 8A(2) to (6);
  - section 8A(8);
  - section 9(1);
  - section 9A(2) to (4); 40
  - section 18(3);
  - section 19(3);
  - paragraph 5(1) of Schedule 1;
  - paragraph 4 of Schedule 23.”.

*Notice period*

- 20 In section 11 (meaning of “the waiting period”), for “15” substitute “28”.
- 21 (1) Section 12 (power to shorten the waiting period) is amended in accordance with this paragraph.
- (2) In subsection (1), for “15” substitute “28”. 5
- (3) After subsection (3) insert –
- “(4) If a proposed civil partnership is referred to the Secretary of State under section 12A –
- (a) any application under subsection (1) is to be made to the Secretary of State; and 10
- (b) the power conferred by subsection (1) is exercisable by the Secretary of State.
- (5) If the Secretary of State grants an application made under subsection (1), the Secretary of State must give notice of the grant of the application to – 15
- (a) the registration authority to which notice of the proposed civil partnership was given, and
- (b) if different, the registration authority responsible for issuing the civil partnership schedule under section 14(1) in relation to the proposed civil partnership. 20
- (6) Regulations under subsection (2) do not apply to applications made to the Secretary of State in accordance with subsection (4).
- (7) The Secretary of State may by regulations make provision with respect to the making, and granting, of applications made in accordance with subsection (4). 25
- (8) The Secretary of State must consult the Registrar General before making regulations under subsection (7).”.

*Referral to Secretary of State*

- 22 After section 12 insert –
- “12A Referral of proposed civil partnership to Secretary of State 30**
- (1) On every occasion when notice of proposed civil partnership is given under section 8, the registration authority must decide whether or not each of the parties to the proposed civil partnership is an exempt person.
- (2) But this section does not apply if Schedule 3 applies to the proposed civil partnership. 35
- (3) In making a decision under subsection (1) about a party to a proposed civil partnership, a registration authority may rely on any advice given in relation to that decision by the Secretary of State.
- (4) In a case where – 40
- (a) section 8A applies to the notice of proposed civil partnership, and



- (b) specified evidence required by section 9A(2) or (3) is not produced in accordance with that section, the registration authority must decide that any party to the proposed civil partnership who is not a relevant national is not an exempt person. 5
- (5) If the registration authority decides that either of the parties is not an exempt person, or that both of the parties are not exempt persons, the registration authority must –
- (a) refer the proposed civil partnership to the Secretary of State; 10
- (b) notify the parties to the proposed civil partnership that the proposed civil partnership must be referred to the Secretary of State;
- (c) give the parties to the proposed civil partnership prescribed information about – 15
- (i) the effects of the referral;
- (ii) the requirement under regulations under section 9B to notify the Secretary of State of changes of address.
- (6) The registration authority must act in accordance with regulations when complying with the duty in subsection (5)(a) to refer a proposed civil partnership to the Secretary of State. 20
- (7) Regulations may, in particular, make provision about –
- (a) the form, manner or timing of the referral of a proposed civil partnership;
- (b) information, photographs or evidence – or copies of any of those things – to be included with the referral of a proposed civil partnership. 25
- (8) If the registration authority refers the proposed civil partnership to the Secretary of State, this Act has effect in relation to the proposed civil partnership subject to the modifications in Schedule 3A.
- (9) In this section – 30
- (a) a reference to a person being an exempt person has the same meaning as in section 44 of the Immigration Act 2014;
- (b) “prescribed information” means information prescribed in regulations;
- (c) “regulations” means regulations made by the Secretary of State after consulting the Registrar General.”. 35
- 23 After Schedule 3 insert –

“SCHEDULE 3A

MODIFICATIONS IF PROPOSED CIVIL PARTNERSHIP REFERRED UNDER SECTION 12A

*Introduction*

40

- 1 (1) These are the modifications subject to which this Act has effect if the registration authority refers a proposed civil partnership to the Secretary of State.
- (2) In this Schedule –

“2014 Act” means the Immigration Act 2014;  
“referred civil partnership” means the proposed civil partnership referred to the Secretary of State.

*No civil partnership schedule to be issued until decision about investigation etc*

- 2 (1) The duty under section 14(1) to issue a civil partnership schedule in respect of the proposed civil partnership does not apply until the Secretary of State gives the registration authority or authorities notice under section 43(8) of the 2014 Act (notice of whether the Secretary of State has decided to investigate whether the referred civil partnership is a sham). 5
- (2) In a case where that notice is of a decision to investigate whether the referred civil partnership is a sham, the duty under section 14(1) does not apply unless (additionally) the Secretary of State gives the registration authority or authorities notice under section 45(6) of the 2014 Act that both of the parties to the referred civil partnership have complied with that investigation. 10
- (3) This paragraph applies in addition to any other requirements applicable to the issue of the civil partnership schedule. 15
- (4) This paragraph is subject to paragraph 4.

*Civil partnership to be investigated: extension of waiting period to 70 days* 20

- 3 (1) The modifications in this paragraph have effect if the Secretary of State gives the registration authority notice under section 43(8) of the 2014 Act of a decision to investigate whether the referred civil partnership is a sham.
- (2) Section 11(b): the reference to the period of 28 days has effect as a reference to the relevant 70 day period. 25
- (3) But, for the purposes of section 10, the waiting period is not extended by sub-paragraph (2).
- (4) In this paragraph “relevant 70 day period” means the period – 30
- (a) beginning the day after notice of the proposed civil partnership is recorded in the register in accordance with section 8(5), and
  - (b) ending at the end of the period of 70 days beginning with that day.

*Effect of shortening waiting period* 35

- 4 (1) This paragraph applies if – 40
- (a) the Secretary of State gives notice under section 12(5) of the grant of an application made under section 12(1) (power to shorten the waiting period) in relation to the referred civil partnership, and
  - (b) that notice is given at a time when the duty under section 14(1) to issue a civil partnership schedule in respect of the referred civil partnership has not arisen in accordance with paragraph 2.

- (2) The duty under section 14(1) to issue a civil partnership schedule in respect of the referred civil partnership arises on the giving of the notice under section 12(5), subject to any other requirements applicable to the issue of the schedule being met.
- (3) But the requirements of paragraph 2 are not applicable in such a case. 5
- (4) The Secretary of State is not prevented from deciding to conduct, conducting, or continuing, an investigation if a schedule in respect of the referred civil partnership is issued as mentioned in subparagraph (2). 10
- (5) But in such a case, nothing in the 2014 Act requires the Secretary of State to decide whether to conduct, or to continue, an investigation.
- (6) In this paragraph “investigation” means an investigation, conducted following a decision by the Secretary of State under section 43 of the 2014 Act, whether a proposed civil partnership is a sham.”. 15

*Civil partnership referred to Secretary of State: issue of civil partnership schedule*

- 24 (1) In section 14 (issue of civil partnership schedule), at the end insert—
- “(6) This section has effect subject to section 14A.”. 20
- (2) After section 14 insert—
- “14A Notice of proposed civil partnership: false information or evidence**
- (1) A registration authority may refuse to issue a civil partnership schedule under section 14(1) in a case where—
- (a) notice of a proposed civil partnership has been given under section 8, and 25
- (b) a registration authority has reasonable grounds for suspecting that a relevant decision was made incorrectly because of the provision of false information or evidence.
- (2) If a registration authority refuses to issue the schedule, the parties to the proposed civil partnership are to be taken not to have given notice under section 8; but that does not prevent criminal proceedings from being brought against either party, or any other person, in relation to the giving of the notice. 30
- (3) This section does not limit the powers of registration authorities to refuse to issue civil partnership schedules. 35
- (4) In this section—
- “evidence” includes a photograph or other image;
- “exempt person” has the same meaning as in section 12A;
- “relevant decision” means a decision of a registration authority that a party to the proposed civil partnership is an exempt person.”. 40
- (3) In section 15 (appeal against refusal to issue civil partnership schedule)—
- (a) in subsection (1)(b), after “14(3)” insert “or 14A”;

- (b) after subsection (2) insert –
- “(3) In a case where –
- (a) in reliance on section 14A, a registration authority refuses to issue a civil partnership schedule, and
  - (b) on an appeal against the refusal, the Registrar General directs that a civil partnership schedule be issued, section 14A(2) is of no effect – and is to be taken to have never had any effect – in relation to the parties’ giving of notice under section 8.”. 5
- (4) In section 16 (frivolous objections and representations: liability for costs etc) – 10
- (a) in the title, after “**representations**” insert “**and appeals**”;
  - (b) after subsection (3) insert –
- “(3A) If –
- (a) in reliance on section 14A, a registration authority refuses to issue a civil partnership schedule, and 15
  - (b) on an appeal against the refusal, the Registrar General declares that the appeal is frivolous, the person making the appeal is liable for the costs of the proceedings before the Registrar General.”; 20
  - (c) in subsection (4), for “such costs and damages” substitute “costs and damages in accordance with subsection (3) or (3A)”.

*Relevant nationals*

- 25 After section 30 insert –
- “**30A Relevant nationals** 25
- In this Chapter “relevant national” means –
- (a) a British citizen,
  - (b) a national of an EEA State other than the United Kingdom, or
  - (c) a national of Switzerland.”.

*Regulations and orders* 30

- 26 (1) Section 36 (regulations and orders) is amended in accordance with this paragraph.
- (2) In subsection (3), after “6A” insert “9B, 9E(2), 12(7) or 12A”.
- (3) In subsection (5), after “6A” insert “9B, 9E(2) or 12A”.
- (4) In subsection (6), after “section” insert “9D or”. 35

## SCHEDULE 5

Section 53

## INFORMATION

## PART 1

DISCLOSURE OF INFORMATION ETC WHERE PROPOSED MARRIAGE OR CIVIL PARTNERSHIP REFERRED TO SECRETARY OF STATE	5
1 (1) This paragraph applies if –	
(a) a superintendent registrar refers a proposed marriage to the Secretary of State under section 28H of the Marriage Act 1949, or	
(b) a registration authority refers a proposed civil partnership to the Secretary of State under section 12A of the Civil Partnership Act 2004.	10
(2) The Secretary of State may –	
(a) disclose relevant information to a registration official, or	
(b) supply a document containing relevant information to a registration official.	15
(3) In this paragraph “relevant information” means any of the following information –	
(a) the fact that the proposed marriage or civil partnership has been referred to the Secretary of State;	
(b) the names of the parties to the proposed marriage or civil partnership;	20
(c) in the case of a proposed marriage –	
(i) any information included with the referral in accordance with regulations under section 28H of the Marriage Act 1949;	
(ii) any address of a party to the proposed marriage notified to the Secretary of State in accordance with such regulations or regulations under section 28D of the Marriage Act 1949;	25
(d) in the case of a proposed civil partnership –	
(i) any information included with the referral in accordance with regulations under section 12A of the Civil Partnership Act 2004;	30
(ii) any address of a party to the proposed civil partnership notified to the Secretary of State in accordance with such regulations or regulations under section 9B of the Civil Partnership Act 2004;	35
(e) details of any immigration enforcement action taken by the Secretary of State in respect of a party to the proposed marriage or civil partnership (including any action taken after solemnization of the marriage or formation of the civil partnership);	
(f) details of any immigration decision taken wholly or partly by reference to the marriage or civil partnership (whether while it was proposed or after it was solemnized or formed).	40

PART 2

DISCLOSURE OF INFORMATION ETC FOR IMMIGRATION PURPOSES ETC

*Disclosures by registration officials*

- 2 (1) A registration official may –
- (a) disclose any information held by the registration official, or 5
  - (b) supply any document held by the registration official,  
to the Secretary of State, or to another registration official, for use for either  
of the following purposes.
- (2) Those purposes are –
- (a) immigration purposes; 10
  - (b) purposes connected with the exercise of functions relating to –
    - (i) the referral of proposed marriages to the Secretary of State  
under section 28H of the Marriage Act 1949, or
    - (ii) the referral of proposed civil partnerships to the Secretary of  
State under section 12A of the Civil Partnership Act 2004. 15
- (3) In this paragraph “immigration purposes” means –
- (a) the administration of immigration control under the Immigration  
Acts;
  - (b) the prevention, detection, investigation or prosecution of criminal  
offences relating to immigration; 20
  - (c) the imposition of penalties or charges under Part 3 of the  
Immigration and Asylum Act 1999;
  - (d) the provision of support for asylum-seekers and their dependants  
under Part 6 of that Act;
  - (e) such other purposes as may be specified by the Secretary of State by  
order. 25
- 3 (1) A registration official may disclose to another registration official –
- (a) the fact that a suspicion about a marriage or civil partnership has  
been reported to the Secretary of State under section 24 or 24A of the  
Immigration and Asylum Act 1999, and 30
  - (b) the content of any such report,  
(whether or not the suspicion was reported by the registration official  
making the disclosure).
- (2) In this paragraph “registration official” does not include the Registrar  
General. 35

*Disclosures by the Secretary of State*

- 4 (1) The Secretary of State may –
- (a) disclose any information held by the Secretary of State, or
  - (b) supply any document held by the Secretary of State,  
to a registration official for use for verification purposes. 40
- (2) In this paragraph “verification purposes” means –
- (a) assisting in the verification of information provided to a relevant  
official by a person giving –

- 
- (i) notice of marriage under section 27 of the Marriage Act 1949,  
or
  - (ii) notice under section 8 of the Civil Partnership Act 2004;
  - (b) assisting in the verification of the immigration status of a person who contacts a relevant official in connection with the exercise of a function by a registration official; 5
  - (c) assisting in the verification of whether a person who contacts a relevant official in connection with the exercise of a function by a registration official –
    - (i) is suspected of involvement in crime relating to immigration,  
or
    - (ii) has been convicted of an offence relating to immigration. 10
  - (3) In this paragraph “relevant official” means –
    - (a) a registration official, or
    - (b) any other person employed to assist the exercise of functions by registration officials. 15

## PART 3

## DISCLOSURE OF INFORMATION ETC FOR PREVENTION OF CRIME ETC

- 5 (1) A registration official may –
  - (a) disclose any information held by the registration official, or 20
  - (b) supply any document held by the registration official,  
to an eligible person, or to another registration official in England and Wales, for use for crime-fighting purposes.
- (2) Information is disclosed, or a document is supplied, for use for crime-fighting purposes if condition A and condition B are met. 25
- (3) Condition A is met if the registration official disclosing the information or supplying the document has reasonable grounds for suspecting that a criminal offence has been, is being, or is going to be committed.
- (4) Condition B is met if the registration official discloses the information or supplies the document for use for one or both of these purposes – 30
  - (a) assisting in the verification of information supplied to that or any other registration official;
  - (b) assisting in the prevention, detection, investigation or prosecution of a criminal offence.
- (5) In this section “eligible person” means – 35
  - (a) the Secretary of State;
  - (b) the Commissioners for Her Majesty’s Revenue and Customs;
  - (c) a member of a police force operating in England and Wales or any part of it;
  - (d) a county council, a district council or a county borough council; 40
  - (e) the Greater London Authority, a London borough council or the Common Council of the City of London.



PART 4

GENERAL PROVISIONS

*Limitations on powers*

- 6 This Schedule does not authorise –
- (a) a disclosure, in contravention of any provisions of the Data Protection Act 1998, of personal data which are not exempt from those provisions, or
  - (b) a disclosure which is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000.
- 5

*No breach of confidentiality etc* 10

- 7 A disclosure of information which is authorised by this Schedule does not breach –
- (a) an obligation of confidence owed by the person making the disclosure, or
  - (b) any other restriction on the disclosure of information (however imposed).
- 15

*Retention, copying and disposal of documents*

- 8 A person to whom a document is supplied under any provision of this Schedule may –
- (a) retain the document;
  - (b) copy the document;
  - (c) dispose of the document in such manner as the person thinks appropriate.
- 20

*Saving for existing powers*

- 9 This Schedule does not limit any other power under which –
- (a) information may be disclosed, or
  - (b) documents may be supplied.
- 25

*Meaning of “registration official”*

- 10 A “registration official” is any of the following –
- (a) the Registrar General;
  - (b) a superintendent registrar;
  - (c) a registrar;
  - (d) a registration authority or a person exercising the functions of a registration authority;
  - (e) a civil partnership registrar (within the meaning of Chapter 1 of Part 2 of the Civil Partnership Act 2004 – see section 29 of that Act).
- 30  
35

## SCHEDULE 6

Section 57

## IMMIGRATION ADVISERS AND IMMIGRATION SERVICE PROVIDERS

*Introductory*

- 1 Part 5 of the Immigration and Asylum Act 1999 (which makes provision for the regulation of immigration advisers and immigration service providers) is amended in accordance with this Schedule. 5

*Removal of Commissioner’s power of exemption from registration*

- 2 (1) In section 84(4) (persons exempt from prohibition on provision of immigration advice and services by unqualified persons) –
- (a) omit paragraphs (a), (b) and (c) (and the word “or” which follows paragraph (c)); 10
  - (b) in paragraph (d) omit “who”.
- (2) Omit the following provisions –
- (a) section 84(5) and (7);
  - (b) section 85(2); 15
  - (c) section 87(3)(b);
  - (d) section 88(2)(c);
  - (e) section 89(4);
  - (f) paragraph 6(3)(b) and 9(1)(d) of Schedule 5;
  - (g) paragraph 6(3)(a) of Schedule 6. 20

*Waiver of fees for registration*

- 3 (1) Paragraph 5 of Schedule 6 (fees for registration) is amended as follows.
- (2) In sub-paragraph (1) –
- (a) after “order” insert “(a)”; 25
  - (b) at the end insert –
    - “(b) make provision for, and in connection with, requiring or authorising the Commissioner to waive all or part of the specified fee in particular cases.”
- (3) In sub-paragraph (2) at the end insert “(but this is subject to any waiver in accordance with provision under sub-paragraph (1)(b))”. 30

*Cancellation of registration by Commissioner*

- 4 (1) In section 87(3) (decisions of Commissioner which may be appealed to First-tier Tribunal) after paragraph (ea) insert –
- “(eb) to cancel a registration under paragraph 4A(e) of that Schedule.” 35
- (2) In paragraph 9 of Schedule 5 (powers of Commissioner on determining a complaint) –
- (a) omit sub-paragraph (1)(b);
  - (b) after sub-paragraph (1A) (inserted by paragraph 7(4) of this 40

Schedule) insert –

“(1B) Sub-paragraph (1)(a) is subject to paragraph 4A(e) of Schedule 6 (duty of Commissioner to cancel registration of a person who is no longer competent or is otherwise unfit).”

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(3) In paragraph 3 of Schedule 6 (applications for continued registration) –

- (a) omit sub-paragraph (5);
- (b) in sub-paragraph (6) for “Otherwise,” substitute “Unless the Commissioner is required by paragraph 4A to cancel the applicant’s registration”;
- (c) in sub-paragraph (7)(a) omit “or by a direction given by the First-tier Tribunal under section 89(2)(b)”.

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(4) In Schedule 6 (registration) after paragraph 4 insert –

*“Further provision for the cancellation of registration*

- 4A The Commissioner must cancel a person’s registration if –
- (a) the person asks for it to be cancelled;
  - (b) the person dies (in a case where the person is an individual) or is dissolved or wound up (in any other case);
  - (c) the person is convicted of an offence under section 25 or 26(1)(d) or (g) of the 1971 Act;
  - (d) under section 89(2A)(b) the First-tier Tribunal directs the Commissioner to cancel the person’s registration; or
  - (e) the Commissioner considers that the person is no longer competent or is otherwise unfit to provide immigration advice or immigration services.”

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*Suspension of registration*

5 (1) In section 84(3) (limitations on effect of registration) –

- (a) after “subject to” insert “(a)”;
- (b) at the end insert –
  - “(b) paragraph 4B(5) of that Schedule (effect of suspension of registration).”

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(2) In section 87(4) (further functions of First-tier Tribunal) –

- (a) for “a further function” substitute “further functions”;
- (b) at the end insert “and paragraph 4B of Schedule 6 (suspension of registration by First-tier Tribunal)”.

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(3) After paragraph 4A of Schedule 6 (inserted by paragraph 4(4) of this Schedule) insert –

*“Suspension of registration*

- 4B (1) The First-tier Tribunal may, on an application made to it by the Commissioner, suspend a person’s registration if the person is for the time being charged with –
- (a) an offence involving dishonesty or deception;
  - (b) an indictable offence; or

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- (c) an offence under section 25 or 26(1)(d) or (g) of the 1971 Act.
- (2) The suspension of the person’s registration ceases to have effect if one of these occurs –
- (a) the person is acquitted of the offence; 5
  - (b) the charge is withdrawn;
  - (c) proceedings in respect of the charge are discontinued;
  - (d) an order is made for the charge to lie on the file, or in relation to Scotland, the diet is deserted *pro loco et tempore*.
- (3) If the person is convicted of an offence under section 25 or 26(1)(d) or (g) of the 1971 Act, the suspension of the person’s registration continues to have effect until the Commissioner cancels the person’s registration (as required by paragraph 4A(c)). 10
- (4) If the person is convicted of any other offence within subparagraph (1) – 15
- (a) the Commissioner must as soon as reasonably practicable consider whether the person is no longer competent or is otherwise unfit to provide immigration advice or immigration services (so that the person’s registration must be cancelled under paragraph 4A(e)); 20
  - (b) the suspension of the person’s registration continues to have effect until the Commissioner either cancels the person’s registration, or decides that the person is competent and otherwise fit to provide immigration advice and immigration services. 25
- (5) A person whose registration is suspended is not to be treated as a registered person for the purposes of section 84 (but is to be treated as a registered person for the purposes of the other provisions of this Part).
- (6) Where a person’s registration is suspended the Commissioner must as soon as reasonably practicable record the suspension in the register. 30
- (7) Where a suspension ceases to have effect (and the person’s registration is not cancelled) the Commissioner must as soon as reasonably practicable remove the record of the suspension from the register.” 35

*Inspections*

6 After paragraph 4 of Schedule 5 insert –

*“Inspections*

4A The Commissioner may carry out inspections of the activities and businesses of registered persons.” 40

*Complaints and investigations*

7 (1) For section 89(2) (powers of Tribunal on hearing charge against registered

- person) substitute –
- “(2) Subsections (2A) and (2B) apply if the person charged was, at the time to which the charge relates, a registered person or a person acting on behalf of a registered person.
- (2A) If the registered person mentioned in subsection (2) is still registered, the First-tier Tribunal may direct the Commissioner – 5
- (a) to record the charge and the First-tier Tribunal’s decision on it for consideration in connection with that person’s next application for continued registration;
- (b) to cancel that person’s registration. 10
- (2B) If the registered person mentioned in subsection (2) is no longer registered, the First-tier Tribunal may direct the Commissioner to record the charge and the First-tier Tribunal’s decision on it for consideration in connection with any application by that person for registration.” 15
- (2) In paragraph 5(3) of Schedule 5 (complaints which may be investigated by Commissioner) –
- (a) before paragraph (a) insert –
- “(za) the competence or fitness to provide immigration advice or immigration services of a person who, at the time to which the complaint relates, was a registered person;” 20
- (b) in paragraph (a) for “a person” substitute “any other person”;
- (c) after paragraph (a) insert –
- “(aa) the competence or fitness of a person who, at the time to which the complaint relates, was acting on behalf of a registered person;” 25
- (d) in paragraph (b) for the first “a person” substitute “any other person”;
- (e) in paragraph (d) for “a person to whom they apply” substitute “a person who, at the time to which the complaint relates, was a registered person or a person acting on behalf of a registered person”. 30
- (3) For paragraph 9(1)(a) of that Schedule (Commissioner’s powers on determining a complaint) substitute – 35
- “(a) if the person to whom the complaint relates was at the time to which the complaint relates –
- (i) a registered person, or
- (ii) a person acting on behalf of a registered person, record the complaint and the decision on it to be considered in connection with the next relevant application;” 40
- (4) After paragraph 9(1) insert –
- “(1A) In sub-paragraph (1)(a) “relevant application” means –
- (a) if the registered person referred to in that sub-paragraph is still registered, an application by that person for continued registration, and 45
- (b) otherwise, an application by that person for registration.”

(5) For paragraph 9(4) substitute –

“(4) “Relevant person” means –

(a) a person who, at the time to which the charge relates, was providing immigration advice or immigration services and was –

- (i) a registered person, or
- (ii) a person acting on behalf of a registered person;

(b) a person providing immigration advice or immigration services who is –

- (i) a person to whom section 84(4)(d) applies, or
- (ii) a person employed by, or working under the supervision of, such a person.”

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*Power of entry and inspection*

8 (1) Omit paragraph 7 of Schedule 5 (and the cross-heading before it).

(2) After paragraph 10 of that Schedule insert –

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*“Power of entry and inspection*

10A (1) On an application made by the Commissioner a justice of the peace (or in Scotland, the sheriff) may issue a warrant authorising the Commissioner to enter premises.

(2) A justice of the peace or sheriff may issue a warrant in respect of premises if satisfied that there are reasonable grounds for believing that –

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- (a) the premises are being used, or have been used, in connection with the provision of immigration advice or immigration services by a registered person,
- (b) entry to the premises is reasonably required for the exercise of any of the Commissioner’s functions, and
- (c) entry to the premises may be prevented or delayed unless a warrant is produced.

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(3) The Commissioner may enter premises by virtue of this paragraph only at a reasonable hour.

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(4) Where the Commissioner enters premises by virtue of this paragraph the Commissioner may –

- (a) take onto the premises any equipment that appears to the Commissioner to be necessary;
- (b) require any person on the premises to produce any relevant document and, if the document is produced, to provide any explanation of it;
- (c) require any person on the premises to state, to the best of the person’s knowledge and belief, where any relevant document is to be found;
- (d) take copies of, or extracts from, any relevant document on the premises which is produced;

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- (e) require any relevant information which is held in a computer and is accessible from the premises to be produced in a form—
  - (i) in which it can be taken away; and
  - (ii) in which it is visible and legible. 5
- (5) For the purposes of sub-paragraph (4), a document or information is “relevant” if the document or information relates to any matter connected with the provision of immigration advice or immigration services.
- (6) The powers conferred on the Commissioner by sub-paragraphs (1) to (5) may also be exercised by—
  - (a) a member of the Commissioner’s staff authorised by the Commissioner in writing, and 10
  - (b) if the Commissioner so determines, a person appointed by the Commissioner to make a report on the provision of immigration advice or immigration services from the premises in question. 15
- (7) If a registered person fails without reasonable excuse to allow access under this paragraph to any premises under the person’s occupation or control, the Commissioner may cancel the person’s registration. 20
- (8) The Commissioner may also cancel the registration of a registered person who—
  - (a) without reasonable excuse fails to comply with a requirement imposed under sub-paragraph (4); 25
  - (b) intentionally delays or obstructs any person exercising functions under this paragraph; or
  - (c) fails to take reasonable steps to prevent an employee of the registered person from obstructing any person exercising such functions. 30
- (9) In this paragraph “premises” includes premises used wholly or partly as a dwelling.”

SCHEDULE 7

Section 58

EMBARKATION CHECKS

PART 1 35

FUNCTIONS EXERCISABLE BY DESIGNATED PERSONS

*Introduction*

- 1 Schedule 2 to the Immigration Act 1971 (administrative provisions as to control on entry etc) is amended in accordance with this Part of this Schedule. 40



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*Examinations by designated person*

- 2 (1) Paragraph 3 is amended as follows.
- (2) In sub-paragraph (1), after “immigration officer” insert “or designated person”.
- (3) For sub-paragraph (1A) substitute – 5
- “(1A) If a person is examined under sub-paragraph (1) (whether by an immigration officer or designated person), an immigration officer may require the person, by notice in writing, to submit to further examination by the immigration officer for a purpose specified in that sub-paragraph.”. 10

*Information and documents*

- 3 (1) Paragraph 4 is amended as follows.
- (2) In sub-paragraph (1), for “his functions” substitute “that or any other person’s functions”.
- (3) In sub-paragraph (2) – 15
- (a) for “shall, if so required by the immigration officer” substitute “, or on his examination under paragraph 3 above by a designated person, shall, if so required by an immigration officer or designated person”;
- (b) in paragraph (b), for “the immigration officer” substitute “the immigration officer or designated person”; 20
- (c) in the words after paragraph (b), for “the immigration officer” substitute “the immigration officer or designated person”.
- (4) In sub-paragraph (3), for the words from “the immigration officer” to the second “officer” substitute “an immigration officer or a person acting under the directions of an immigration officer”. 25
- (5) In sub-paragraph (4), in the words before paragraph (a) –
- (a) for “produced or found” substitute “produced to or found by an immigration officer”;
- (b) for “an immigration officer” substitute “, the immigration officer”.
- (6) After sub-paragraph (4) insert – 30
- “(4A) Where a passport or other document is produced to a designated person in accordance with this paragraph, the designated person –
- (a) may examine it and detain it; and
- (b) must deliver any detained passport or document to an immigration officer as soon as reasonably practicable. 35
- (4B) If a passport or document is delivered to an immigration officer in accordance with sub-paragraph (4A)(b), sub-paragraph (4) applies as if the immigration officer had detained the document (and, accordingly, the immigration officer may continue to detain it in accordance with sub-paragraph (4)(a), (b) or (c)).”.
- (7) In sub-paragraph (5), after “examination” insert “, or any immigration officer or designated person,”.

*Embarkation cards*

- 4 (1) Paragraph 5 is amended in accordance with sub-paragraphs (2) and (3).
- (2) For “requiring passengers” substitute “requiring –  
(a) passengers”.
- (3) For “cards in such form” substitute “cards, and 5  
(b) passengers embarking in the United Kingdom, or any class  
of such passengers, to produce to a designated person, if so  
required, embarkation cards,  
in such form”.

*Designations* 10

- 5 After paragraph 5 insert –

*“Designated persons*

- 5A (1) In this Schedule “designated person” means a person designated  
by the Secretary of State for the purposes of this Schedule.
- (2) A designation under this paragraph is subject to such limitations 15  
as may be specified in the designation.
- (3) A limitation under sub-paragraph (2) may, in particular, relate to  
the functions that are exercisable by virtue of the designation (and,  
accordingly, the exercise of functions under this Schedule by a  
designated person is subject to any such limitations specified in 20  
the person’s designation).
- (4) A designation under this paragraph –  
(a) may be permanent or for a specified period,  
(b) may (in either case) be withdrawn, and  
(c) may be varied. 25
- (5) The power to designate, or to withdraw or vary a designation, is  
exercised by the Secretary of State giving notice to the person in  
question.
- (6) The Secretary of State may designate a person under this 30  
paragraph only if the Secretary of State is satisfied that the  
person –  
(a) is capable of effectively carrying out the functions that are  
exercisable by virtue of the designation,  
(b) has received adequate training in respect of the exercise of  
those functions, and 35  
(c) is otherwise a suitable person to exercise those functions.”.

*Directions to carriers and operators of ports*

- 6 After paragraph 5A (inserted by paragraph 5 above) insert –
- “Directions to carriers and operators of ports etc*
- 5B (1) The Secretary of State may direct –
- (a) an owner or agent of a ship or aircraft, or 5
  - (b) a person concerned in the management of a port,
- to make arrangements for designated persons to exercise a specified function, or a function of a specified description, in relation to persons of a specified description.
- (2) A direction under this paragraph must specify – 10
- (a) the port where, and
  - (b) the date (or dates) and time (or times) when, a function is to be exercised under the arrangements.
- (3) A direction under this paragraph must be in writing.
- (4) A direction under this paragraph may specify a description of persons by reference, in particular, to – 15
- (a) the destination to which persons are travelling;
  - (b) the route by which persons are travelling;
  - (c) the date and time when the persons are travelling.
- (5) In this paragraph – 20
- “function” means a function under this Schedule;
  - “specified” means specified in a direction under this paragraph.”.

PART 2

OTHER PROVISION 25

*Offences*

- 7 (1) Section 27 of the Immigration Act 1971 (offences by persons connected with ships or aircraft or with ports) is amended as follows.
- (2) In paragraph (b) –
- (a) after sub-paragraph (iii) insert – 30
    - “(iiia) he fails, without reasonable excuse, to comply with a direction under paragraph 5B of Schedule 2; or”;
  - (b) in sub-paragraph (iv) for “a requirement” substitute “any other requirement”. 35
- (3) After paragraph (c) insert –
- “(ca) if as a person concerned in the management of a port he fails, without reasonable excuse, to comply with a direction under paragraph 5B of Schedule 2.”.

SCHEDULE 8

Section 62

TRANSITIONAL AND CONSEQUENTIAL PROVISION

PART 1

PROVISION RELATING TO REMOVAL DIRECTIONS

*Immigration Act 1971 (c. 77)* 5

- 1 In Schedule 2 to the Immigration Act 1971 (administrative provisions as to control on entry etc), in paragraph 11, after “immigration officer” insert “or the Secretary of State”.

*Nationality, Immigration and Asylum Act 2002 (c. 41)*

- 2 (1) The Nationality, Immigration and Asylum Act 2002 is amended as follows. 10  
 (2) In section 62 (detention by Secretary of State) –  
 (a) in subsection (1) –  
 (i) in paragraph (a), after “under” insert “section 10 of the Immigration and Asylum Act 1999 (removal of persons unlawfully in the United Kingdom) or”; 15  
 (ii) in paragraph (b), for “paragraphs” substitute “provisions”;  
 (b) in subsection (2), for “that Act” substitute “the Immigration Act 1971”;  
 (c) omit subsections (5) and (6).  
 (3) In section 76 (revocation of leave to enter or remain) – 20  
 (a) in subsection (2), omit paragraphs (b) and (c);  
 (b) in subsection (4), omit the definition of “removed”.

*Immigration, Asylum and Nationality Act 2006 (c. 13)*

- 3 In the Immigration, Asylum and Nationality Act 2006, section 47 (removal of persons with statutorily extended leave) is repealed. 25

*Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10)*

- 4 In Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (civil legal services), in paragraph 19(10), in the definition of “removal directions”, omit paragraph (e).

*Consequential repeals* 30

- 5 The provisions shown in the table below are repealed in consequence of the amendments made by section 1 and this Part of this Schedule.

<i>Title and reference</i>	<i>extent of repeal</i>	
Nationality, Immigration and Asylum Act 2002	Section 73(2) to (4). Section 74. Section 75(4). Section 76(7).	35

<i>Title and reference</i>	<i>extent of repeal</i>	
Immigration, Asylum and Nationality Act 2006	Section 48.	
Crime and Courts Act 2013	Section 51(3).	
Immigration Act 2014	In Schedule 1, paragraph 2(3) and (4).	5

PART 2

PROVISION RELATING TO BAIL

*Special Immigration Appeals Commission Act 1997 (c. 68)*

- 6 (1) The Special Immigration Appeals Commission Act 1997 is amended as follows. 10
- (2) In section 5 (procedure in relation to SIAC’s jurisdiction on appeals and bail), after subsection (5) insert—
- “(5A) Rules under this section must secure that, where the Commission has decided not to release a person on bail under paragraph 22 or 29 of Schedule 2 to the Immigration Act 1971, the Commission is required to dismiss any further application by the person for release on bail that is made during the period of 28 days starting with the date of the Commission’s decision, unless there has been a material change in circumstances.” 15
- (3) In Schedule 3 (bail: modifications of Schedule 2 to the Immigration Act 1971), in paragraph 4, after sub-paragraph (1) insert— 20
- “(1A) In sub-paragraph (1) after “2002” there shall be inserted “or section 2 of the Special Immigration Appeals Commission Act 1997 or a review pending under section 2E of that Act”.

PART 3

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PROVISION RELATING TO BIOMETRICS

*Immigration and Asylum Act 1999 (c. 33)*

- 7 (1) The Immigration and Asylum Act 1999 is amended as follows.
- (2) Section 143 (destruction of fingerprints) is repealed.
- (3) In section 144(1) (power to make provision about other biometric information) for “, 142 and 143” substitute “and 142”. 30
- (4) Omit section 166(4)(g) (Parliamentary procedure for orders under section 143).

*Anti-terrorism, Crime and Security Act 2001 (c. 24)*

- 8 Section 36 of the Anti-terrorism, Crime and Security Act 2001 (which amends section 143 of the Immigration and Asylum Act 1999) is repealed. 35

*Nationality, Immigration and Asylum Act 2002 (c. 41)*

- 9 In section 126 of the Nationality, Immigration and Asylum Act 2002 (power to require provision of physical data with certain immigration applications) omit –
- (a) the “or” at the end of subsection (2)(b),
  - (b) subsection (4)(g), and
  - (c) subsection (5).

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PART 4

PROVISION RELATING TO APPEALS

*Immigration Act 1971 (c. 77)*

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10 The Immigration Act 1971 is amended as follows.

11 (1) Section 3C (continuation of leave pending variation decision) is amended as follows.

(2) In subsection (2) –

- (a) omit the “or” at the end of paragraph (b);
- (b) after paragraph (c) insert “, or
- (d) an administrative review of the decision on the application for variation –
  - (i) could be sought, or
  - (ii) is pending.”

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(3) After subsection (6) insert –

“(7) In this section –

“administrative review” means a review conducted under the immigration rules;  
the question of whether an administrative review is pending is to be determined in accordance with the immigration rules.”

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12 (1) Section 3D (continuation of leave following revocation) is amended as follows.

(2) In subsection (2) –

- (a) omit the “or” at the end of paragraph (a);
- (b) after paragraph (b) insert, “or
- (c) an administrative review of the variation or revocation –
  - (i) could be sought, or
  - (ii) is pending.”

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(3) After subsection (4) insert –

“(5) In this section –

“administrative review” means a review conducted under the immigration rules;  
the question of whether an administrative review is pending is to be determined in accordance with the immigration rules.”

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*British Nationality Act 1981 (c. 61)*

- 13 In section 40A of the British Nationality Act 1981 (deprivation of citizenship: appeal), in subsection (3) –
- (a) omit “, 83 or 83A”;
  - (b) omit paragraph (a). 5

*Immigration and Asylum Act 1999 (c. 33)*

- 14 In the Immigration and Asylum Act 1999, section 23 (monitoring refusals of entry clearance) is repealed.

*Nationality, Immigration and Asylum Act 2002 (c. 41)*

- 15 The Nationality, Immigration and Asylum Act 2002 is amended as follows. 10
- 16 In section 72 (serious criminal), in subsection (9)(a) –
- (a) omit “, 83, 83A or 101”;
  - (b) for the words from “that to remove him” to the end substitute “mentioned in section 84(1)(a) or (3)(a) of this Act (breach of the United Kingdom’s obligations under the Refugee Convention), and”. 15
- 17 In section 79 (deportation order: appeal), in subsection (1) for “against” substitute “that may be brought or continued from within the United Kingdom relating to”.
- 18 For the heading to Part 5, substitute “Appeals in respect of Protection and Human Rights Claims”. 20
- 19 In section 85 (matters to be considered) –
- (a) in subsection (2), for “84(1)” substitute “84”;
  - (b) in subsection (4) –
    - (i) omit “, 83(2) or 83A(2)”;
    - (ii) omit “evidence about”;
    - (iii) omit “evidence which concerns”. 25
- 20 Section 85A (matters to be considered: new evidence: exceptions) is repealed.
- 21 In section 86 (determination of appeal) – 30
- (a) in subsection (1), omit “, 83 or 83A”;
  - (b) in subsection (2), omit “(whether or not by virtue of section 85(1))”;
  - (c) omit subsections (3) to (6).
- 22 Sections 87 to 91 are repealed.
- 23 (1) Section 94 (appeal from within the United Kingdom) is amended as follows. 35
- (2) In the heading, for “asylum” substitute “protection”.
- (3) For subsections (1) to (2) substitute –
- “(1) The Secretary of State may certify a protection claim or human rights claim as clearly unfounded.”
- (4) In subsection (3) – 40



- (a) for “an asylum claimant or human rights” substitute “a”;
  - (b) for “subsection (2)” substitute “subsection (1)”.
- (5) In subsection (6A) for “an asylum claimant or human rights” substitute “a”.
- (6) In subsection (7), for the words from the beginning to “certifies that” substitute “The Secretary of State may certify a protection claim or human rights claim made by a person if”. 5
- (7) In subsection (8)(b), at the end insert “or with the United Kingdom’s obligations in relation to persons eligible for a grant of humanitarian protection”.
- (8) Omit subsection (9). 10
- 24 In section 94A (European Common List of Safe Countries of Origin) –
  - (a) in subsection (2), for “an asylum claim” substitute “a protection claim”;
  - (b) in subsection (4) for “94(2)” substitute “94(1)”.
- 25 Section 95 (appeal from outside the United Kingdom: removal) is repealed. 15
- 26 (1) Section 96 (earlier right of appeal) is amended as follows.
  - (2) In subsection (1) –
    - (a) in the opening words, for the words from the beginning to “brought” substitute “A person may not bring an appeal under section 82 against a decision (“the new decision”)”; 20
    - (b) in paragraph (a), omit “immigration”;
    - (c) in paragraph (b) for “matter” substitute “ground”;
    - (d) in paragraph (c) for “matter” substitute “ground”.
  - (3) For subsection (2) substitute –
    - “(2) A person may not bring an appeal under section 82 if the Secretary of State or an immigration officer certifies – 25
      - (a) that the person has received a notice under section 120(2),
      - (b) that the appeal relies on a ground that should have been, but has not been, raised in a statement made under section 120(2) or (5), and 30
      - (c) that, in the opinion of the Secretary of State or the immigration officer, there is no satisfactory reason for that ground not having been raised in a statement under section 120(2) or (5).”
- 27 In section 97 (national security etc) – 35
  - (a) in subsection (1), omit “, 83(2) or 83A(2)”;
  - (b) in subsection (3), omit “, 83(2) or 83A(2)”.
- 28 In section 97A (national security: deportation) –
  - (a) in subsection (2B), for the words from “breach” to the end substitute “be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Human Rights Convention)”;
  - (b) omit subsections (2D), (2E) and (3). 40
- 29 Section 97B (variation of leave on grounds of public good: rights of appeal) is repealed.

- 
- 30 Section 98 (other grounds of public good) is repealed.
- 31 In section 99 –
- (a) in the heading, for “Sections 97 and 98” substitute “Section 97”;
  - (b) in subsection (1), omit “or 98”.
- 32 (1) Section 104 (pending appeal) is amended as follows. 5
- (2) Omit subsection (4).
  - (3) In subsection (4A), for “subsections (4B) and (4C)” substitute “subsection (4B)”.
  - (4) In subsection (4B) –
- (a) for “the ground relating to the Refugee Convention specified in section 84(1)(g)” substitute “a ground specified in section 84(1)(a) or (b) or 84(3) (asylum or humanitarian protection)”;
  - (b) omit paragraph (a) (and the “and” immediately following it).
- (5) Omit subsections (4C) and (5).
- 33 (1) Section 105 (notice of immigration decision) is amended as follows. 15
- (2) In subsection (1), for “immigration” substitute “appealable”.
  - (3) In subsection (2) –
- (a) in the opening words, for “a decision against which the person is entitled to appeal under section 82(1)” substitute “an appealable decision”;
  - (b) in paragraph (a) for “that section” substitute “section 82”.
- (4) At the end insert –
- “(4) In this section “appealable decision” means a decision mentioned in section 82(1).”
- 34 In section 106 (rules) – 25
- (a) in subsection (3), omit “, 83 or 83A”;
  - (b) in subsection (4), omit “, 83 or 83A”.
- 35 In section 107 (practice directions), in subsection (3), omit “, 83 or 83A”.
- 36 In section 108 (forged documents: proceedings in private), in subsection (1)(a), omit “, 83 or 83A”. 30
- 37 In section 112 (regulations etc) –
- (a) omit subsection (3A);
  - (b) in subsection (4), omit “or 115(8)”;
  - (c) in subsection (5), omit “or 115(9)”.
- 38 (1) Section 113 (interpretation) is amended as follows. 35
- (2) In subsection (1) –
- (a) at the appropriate places insert –
- ““humanitarian protection” has the meaning given in section 82(2);”
- ““protection claim” has the meaning given in section 82(2);”
- 40

- ““protection status” has the meaning given in section 82(2)”;
- (b) omit the definitions of “entry clearance”, “illegal entrant”, “prescribed”, “visitor” and “work permit”;
  - (c) in the definition of “immigration rules”, for “that Act” substitute “the Immigration Act 1971”. 5
- (3) Omit subsection (2).
- 39 Section 115 (appeal from within United Kingdom: unfounded human rights or asylum claim: transitional provision) is repealed.
- 40 For section 120 (requirement to state additional grounds for application) substitute— 10
- “120 Requirement to state additional grounds for application etc**
- (1) Subsection (2) applies to a person (“P”) if—
    - (a) P has made a protection claim or a human rights claim,
    - (b) P has made an application to enter or remain in the United Kingdom, or 15
    - (c) a decision to deport or remove P has been or may be taken.
  - (2) The Secretary of State or an immigration officer may serve a notice on P requiring P to provide a statement setting out—
    - (a) P’s reasons for wishing to enter or remain in the United Kingdom, 20
    - (b) any grounds on which P should be permitted to enter or remain in the United Kingdom, and
    - (c) any grounds on which P should not be removed from or required to leave the United Kingdom. 25
  - (3) A statement under subsection (2) need not repeat reasons or grounds set out in—
    - (a) P’s protection or human rights claim,
    - (b) the application mentioned in subsection (1)(b), or
    - (c) an application to which the decision mentioned in subsection (1)(c) relates. 30
  - (4) Subsection (5) applies to a person (“P”) if P has previously been served with a notice under subsection (2) and—
    - (a) P requires leave to enter or remain in the United Kingdom but does not have it, or 35
    - (b) P has leave to enter or remain in the United Kingdom only by virtue of section 3C or 3D of the Immigration Act 1971 (continuation of leave pending decision or appeal).
  - (5) Where P’s circumstances have changed since the Secretary of State or an immigration officer was last made aware of them (whether in the application or claim mentioned in subsection (1) or in a statement under subsection (2) or this subsection) so that P has—
    - (a) additional reasons for wishing to enter or remain in the United Kingdom,
    - (b) additional grounds on which P should be permitted to enter or remain in the United Kingdom, or 45
- 40

- (c) additional grounds on which P should not be removed from or required to leave the United Kingdom,  
P must, as soon as reasonably practicable, provide a supplementary statement to the Secretary of State or an immigration officer setting out the new circumstances and the additional reasons or grounds. 5
- (6) In this section –  
“human rights claim” and “protection claim” have the same meanings as in Part 5;  
references to “grounds” are to grounds on which an appeal under Part 5 may be brought (see section 84).” 10

*Immigration, Asylum and Nationality Act 2006 (c. 13)*

- 41 (1) The Immigration, Asylum and Nationality Act 2006 is amended as follows.
- (2) Section 13 (appeal from within the United Kingdom: certification of unfounded claim) is repealed.
- (3) In section 55 (Refugee Convention: certification), in subsection (2)(a) – 15  
(a) in sub-paragraph (i), omit “, 83 or 101”;  
(b) for sub-paragraph (ii) substitute –  
“(ii) which is brought on the ground mentioned in section 84(1)(a) or (3)(a) of that Act (breach of United Kingdom’s obligations under the Refugee Convention);”. 20
- (4) In Schedule 1 (consequential amendments) paragraph 11 (amendment to section 112(5) of the 2002 Act) is repealed.

*Equality Act 2010 (c. 15)*

- 42 In section 115 of the Equality Act 2010 (immigration cases), in subsection (8) after “2D” insert “and 2E”. 25

*Special Immigration Appeals Commission Act 1997 (c. 68)*

- 43 (1) The Special Immigration Appeals Commission Act 1997 is amended as follows.
- (2) In section 2 (jurisdiction: appeals) – 30  
(a) in subsection (1)(a), omit “, 83(2) or 83A(2)”;  
(b) in subsection (1)(b), omit “, 83(2) or 83A(2)”;  
(c) in subsection (2), omit paragraphs (d), (h) and (l);  
(d) omit subsections (3) and (4);  
(e) in subsection (5), omit “against an immigration decision”; 35  
(f) omit subsection (6).
- (3) In section 6A (procedure in relation to review jurisdiction) –  
(a) in the heading, for “and 2D” substitute “to 2E”;  
(b) in subsection (1), for “or 2D” substitute “, 2D or 2E”;  
(c) in subsection (2) – 40  
(i) in paragraph (a), for “or 2D” substitute “, 2D or 2E”;

(ii) in paragraph (b), for “or (as the case may be) 2D(2)” substitute “, 2D(2) or (as the case may be) 2E(2)”.

(4) In section 7 (appeals from the Commission), in subsection (1A), for “or 2D” substitute “, 2D or 2E”.

*Consequential repeals* 5

44 The provisions shown in the table below are repealed in consequence of the amendments made by sections 11 to 13 and this Part of this Schedule.

<i>Title and reference</i>	<i>extent of repeal</i>	
Nationality, Immigration and Asylum Act 2002	In Schedule 7, paragraph 27.	10
Asylum and Immigration (Treatment of Claimants) Act 2004	Section 26(2) and (3). Section 27(2) and (3). Sections 28 and 29. Section 31. In Schedule 2, paragraphs 18(2)(c) and 19.	15
Immigration, Asylum and Nationality Act 2006	Sections 1 to 6. Section 11(6). Section 47(6) to (8). Section 57(2). In Schedule 1, paragraphs 2 to 6, 10, 11, 13, 14(a) and (c)	20
UK Borders Act 2007	Section 19. Section 35(3).	
Crime and Courts Act 2013	Section 51(1). Sections 52 and 53.	25

PART 5

PROVISION RELATING TO EMPLOYMENT

*Immigration, Asylum and Nationality Act 2006 (c. 13)*

45 In section 15 of the Immigration, Asylum and Nationality Act 2006 (penalty), in subsection (6)(e), after “penalty” insert “or make an appeal against it”. 30

PART 6

PROVISION RELATING TO DRIVING LICENCES

*Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/154 (N.I. 1))*

46 In Article 5 of the Road Traffic (Northern Ireland) Order 1981 (tests of competence to drive) – 35

(a) in paragraph (1), omit “meets the relevant residence requirement and”;

(b) omit paragraph (1A);

(c) in paragraph (4)(aa) for “normally resident in Northern Ireland or the United Kingdom” insert “normally and lawfully resident in 40

Northern Ireland or the United Kingdom (within the meaning of Article 13A)”.

*Road Traffic Act 1988 (c. 52)*

- 47 In section 89 of the Road Traffic Act 1988 (tests of competence to drive) –
- (a) in subsection (1), omit “meets the relevant residence requirement and”; 5
  - (b) omit subsection (1A);
  - (c) in subsection (4)(aa) for “normally resident in Great Britain or the United Kingdom” substituted “normally and lawfully resident in Great Britain or the United Kingdom (within the meaning of section 97A)”. 10

*Road Safety Act 2006 (c. 49)*

- 48 In Schedule 3 to the Road Safety Act 2006 (endorsement: all drivers), in paragraph 9 –
- (a) after sub-paragraph (3) insert – 15
    - “(3A) In subsection (3ZA), omit “and its counterpart”.”;
  - (b) in sub-paragraph (6A)(b), at the end insert “in both places”.

*Road Traffic (Northern Ireland) Order 2007 (S.I. 2007/916 (N.I. 10))*

- 49 In Schedule 5 to the Road Traffic (Northern Ireland) Order 2007 (endorsement: all drivers: consequential amendments), in paragraph 6, after sub-paragraph (a) insert – 20
- “(aa) in paragraph (5ZA), omit “and its counterpart”.”

PART 7

PROVISION RELATING TO MARRIAGE AND CIVIL PARTNERSHIP

*Transitional provision* 25

- 50 The provisions of sections 43 to 46, and the amendments made by Schedule 4, apply only to proposed marriages and civil partnerships in respect of which notice under section 27 of the Marriage Act 1949 or under section 8 of the Civil Partnership Act 2004 is given after the day on which the provisions and amendments come into force. 30

PART 8

PROVISION RELATING TO IMMIGRATION ADVISERS AND IMMIGRATION SERVICE PROVIDERS

*Transitional provision*

- 51 (1) On the day on which paragraph 2 of Schedule 6 comes into force the Immigration Services Commissioner must register in the register maintained under section 85(1) of the Immigration and Asylum Act 1999 each person who, immediately before that day, was an exempt person (within the meaning given by section 84(4)(a) of that Act). 35

- (2) The registration of a person by reason of sub-paragraph (1) may be made so as to have effect only in relation to a specified field of advice or services.
- 52 (1) In the provisions listed in sub-paragraph (2) –
- (a) references to a person who, at the time to which a charge or (as the case may be) a complaint relates, was a registered person do not include a person who ceased to be a registered person before the day on which paragraph 7 of Schedule 6 comes into force; 5
  - (b) references to a person who, at the time to which a charge or (as the case may be) a complaint relates, was acting on behalf of a registered person do not include – 10
    - (i) a person who ceased to act on behalf of a registered person before that day;
    - (ii) a person who was acting on behalf of a person who ceased to be a registered person before that day.
- (2) The provisions are – 15
- (a) section 89(2) to (2B) of the Immigration and Asylum Act 1999;
  - (b) paragraph 5(3)(za), (aa) and (d) of Schedule 5 to that Act;
  - (c) paragraph 9(1)(a), (1A) and (4)(a) of Schedule 5 to that Act.
- 53 (1) The provisions listed in paragraph 52(2) apply in relation to a person who –
- (a) was an exempt person immediately before the day on which paragraph 2 of Schedule 6 comes into force, and 20
  - (b) became a registered person on that day by virtue of paragraph 51(1), as if, while the person was an exempt person, the person had been a registered person.
- (2) In paragraph 10A(2)(a) of Schedule 5 to the Immigration and Asylum Act 1999, the reference to premises which have been used in connection with the provision of immigration advice or immigration services by a registered person includes premises which have been so used by an exempt person. 25
- (3) In this paragraph “exempt person” has the meaning given by section 84(4)(a) of the Immigration and Asylum Act 1999. 30

## PART 9

## PROVISION RELATING TO EMBARKATION CHECKS

*Transitional provision*

- 54 (1) Any order or direction under paragraph 5 of Schedule 2 to the Immigration Act 1971 that has effect immediately before commencement has, after commencement, the same effect in relation to the production of embarkation cards to designated persons as it has in relation to the production of such cards to immigration officers. 35
- (2) This paragraph is subject to the exercise, after commencement, of the powers under paragraph 5 of Schedule 2 to the Immigration Act 1971. 40
- (3) In this paragraph “commencement” means the day when the amendments made by Part 1 of Schedule 7 come into force.



PART 10

PROVISION RELATING TO FEES

*Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19)*

- 55 (1) Section 42 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (amount of fees) is amended as follows. 5
- (2) Omit subsections (1) to (2A).
- (3) For subsection (3A) substitute –
- “(3A) The amount of a fee under section 1 of the Consular Fees Act 1980 in respect of a matter specified in subsection (3B) may be set so as to reflect costs referable to the exercise of any function in respect of which the Secretary of State has made an order under section 59 of the Immigration Act 2014. 10
- (3B) The matters are –
- (a) the determination of applications for entry clearances (within the meaning given by section 33(1) of the Immigration Act 1971), 15
- (b) the determination of applications for transit visas under section 41 of the Immigration and Asylum Act 1999, or
- (c) the determination of applications for certificates of entitlement to the right of abode in the United Kingdom under section 10 of the Nationality, Immigration and Asylum Act 2002.” 20
- (4) In subsection (4) omit “(1)(b) or”.
- (5) In subsection (7) omit from “(and any provision” to the end.

*Immigration, Asylum and Nationality Act 2006 (c. 13)* 25

- 56 Sections 51 and 52 of the Immigration, Asylum and Nationality Act 2006 (fees) are repealed.

*UK Borders Act 2007 (c. 30)*

- 57 For section 15(2)(b) of the UK Borders Act 2007 (application of certain provisions to applications for biometric immigration documents) substitute – 30
- “(b) section 59 of the Immigration Act 2014 (fees);”.

*Consequential repeals*

- 58 The following provisions are repealed in consequence of the amendments made by this Part of this Schedule – 35
- (a) paragraph 6 of Schedule 2 to the Immigration, Asylum and Nationality Act 2006;
- (b) section 20 of the UK Borders Act 2007.

*Orders under section 102 of the Finance (No. 2) Act 1987*

- 59 An order made under section 102 of the Finance (No. 2) Act 1987 (government fees and charges) in respect of a power repealed by this Part of this Schedule shall have effect as if it related to the powers under section 59 so far as they relate to the same matters as the repealed power.

# Immigration Bill

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## B I L L

To make provision about immigration law; to limit, or otherwise make provision about, access to services, facilities and employment by reference to immigration status; to make provision about marriage and civil partnership involving certain foreign nationals; and for connected purposes.

*Presented by Secretary Theresa May  
supported by The Prime Minister,  
The Deputy Prime Minister,  
Mr Chancellor of the Exchequer,  
Secretary Chris Grayling,  
Secretary Eric Pickles, Secretary Jeremy Hunt,  
Secretary Patrick McLoughlin, Francis Maude,  
Oliver Letwin, Mr David Laws and  
Mr Mark Harper.*

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*Ordered, by The House of Commons,  
to be Printed, 10th October 2013.*

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