

IMMIGRATION BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Immigration Bill as introduced in the House of Commons on 17 September 2015 (Bill 74).

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

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Overview of the Bill

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

Policy background

Labour Market and Illegal Working

- 3 Migrant workers are particularly vulnerable to labour market exploitation and may find themselves living and working in dangerous and degrading conditions. Protections are already in place to ensure that those entitled to work in the UK are paid at least the national minimum wage and benefit from other employment rights. This includes enforcement of the national minimum wage by HMRC, the regulation of employment agencies and businesses by the Employment Agency Standards Inspectorate and the licensing of legitimate labour providers by the Gangmasters Licensing Authority. The Modern Slavery Act 2015 ("the 2015 Act") provides further protections.
- 4 The government believes that labour market exploitation is an increasingly organised criminal activity and that government regulators that enforce workers' rights need reform and better coordination. The Conservative Party Manifesto also committed to introduce tougher labour market regulation to tackle illegal working and exploitation. The Bill establishes a new statutory Director of Labour Market Enforcement, responsible for providing a central hub of intelligence and facilitating the flexible allocation of resources across the different regulators.
- 5 Illegal working represents one of the principal pull factors for illegal immigration and is often associated with the exploitation of workers, unfair competition and revenue evasion. Section 15 of the Immigration, Asylum and Nationality Act 2006 ("the 2006 Act") prohibits the employment of adults who are subject to immigration control and do not have leave to enter or remain in the UK, or who are subject to a condition preventing them from undertaking employment. The prohibition is supported through both a civil penalty regime and a criminal sanction for employers of illegal workers.
- 6 The 2006 Act regime replaced the former scheme under section 8 of the Asylum and Immigration Act 1996 which first made it a criminal offence to employ illegal workers. The civil penalty scheme in the 2006 Act, which was implemented in February 2008, is the principal means of dealing with cases of non-compliance by negligent businesses employing illegal workers. In 2013/2014 there were 2,150 civil penalties issued to employers. However, the 2006 Act resulted in a significant decline in criminal prosecutions as civil penalties became a simpler, more cost effective, way to enforce the law in routine cases. In 2008 there were 69 criminal prosecutions against employers, compared to just nine in 2013.
- 7 The government believes that some employers are deliberately not checking whether their employees have the right to work. These employers are not knowingly employing illegal workers because they choose not to know. This means that they can only be liable for a civil

penalty and not be subject to a successful criminal prosecution. Civil penalties are served on businesses not individuals. However, the 2006 Act allows individuals to be prosecuted for knowingly employing an illegal worker when the individual has been indirectly involved in the offence. This enforces individual accountability and discourages employers from continuously using illegal workers by creating new businesses. This Bill amends the criminal sanction in the 2006 Act to make it easier to bring prosecutions in these cases. The most serious cases involving the exploitation of illegal labour will continue to be dealt with under legislation prohibiting facilitation and trafficking.

- 8 A person with limited leave to enter or remain may be restricted from entering into employment under section 3(1)(c)(i) of the Immigration Act 1971 (“the 1971 Act”). A failure to observe this condition is an offence under section 24(1)(b)(ii) of the 1971 Act. While persons who require, but do not have, leave to enter or remain may be committing an offence under another limb of section 24, they do not commit a separate offence of working illegally if they engage in paid work, including employment or self-employment. The Bill creates a new offence of illegal working to ensure that the act of illegal working is always an offence. The new offence will enable the earnings of illegal workers to be seized under the Proceeds of Crime Act 2002, as announced by the Prime Minister in his immigration speech on 21 May 2015.
- 9 When immigration officers conduct an enforcement visit at an employer’s premises, under existing powers any illegal workers identified may be arrested and detained and the employer may be liable for a civil penalty or prosecution for an offence. Despite this, the employer may continue to operate their business and there is a risk that they may be continuing to use illegal workers, possibly not detected by immigration officers as they were not present at the time of the visit. The Bill provides the power for immigration officers to close the premises for up to 48 hours in certain cases where the employer has previously been given a civil penalty or has been prosecuted for employing illegal workers. Unless the closure notice is cancelled an application must be made to a court for an illegal working compliance order. The compliance order may extend the closure of the premises or otherwise direct the employer to perform certain steps to ensure that illegal workers are not employed. The scheme is designed to be similar to the power to give closure notices to premises associated with nuisance or disorder in Part 4 of the Anti-social Behaviour, Crime and Policing Act 2014.
- 10 The government believes that a significant proportion of illegal working happens on licensed premises, where there is the sale of alcohol, late night refreshment (hot food or drink sold between 11pm and 5am) or the provision of entertainment. The Bill tackles illegal working in these sectors by amending licensing legislation such that a licence cannot be issued to an illegal worker and to make the employment of illegal workers a factor that may be taken into consideration when issuing or revoking licences. Immigration officers will be provided with powers to enter premises to check compliance with these new conditions.

Access to Services

- 11 Access to private rented accommodation is restricted by the residential tenancies provisions at Chapter 1 of Part 3 of the Immigration Act 2014 (“the 2014 Act”). These provisions are referred to as the ‘right to rent scheme’. The scheme provides that landlords in the private rented sector should take steps to confirm the lawful immigration status of an individual before entering an agreement to rent private accommodation to them and makes provision for a civil penalty regime to penalise non-compliance. The scheme was brought into force on 1 December 2014 in parts of the West Midlands and the intention is to extend it to the rest of the United Kingdom.
- 12 Despite the requirement to check immigration status before entering into a tenancy agreement a landlord may subsequently discover that their tenant no longer has lawful immigration status. This could be because the tenant’s leave to enter or remain has expired or been curtailed. The existing legislative scheme requires landlords to perform repeat checks on existing tenants and where they discover such a tenant they may obtain a statutory excuse from a civil penalty under section 24 of the 2014 Act by notifying the Secretary of State that the tenant's leave has expired. The landlord may be able to evict the tenant under existing housing legislation but the immigration status of a tenant is not a ground for gaining possession of a property. The Bill will enable landlords to obtain possession of their property where their tenant no longer has a right to rent under the 2014 Act scheme.
- 13 The main sanction for landlords who fail to perform adequate checks on their tenants will remain the civil penalty in the 2014 Act scheme. The Bill additionally creates four new offences to target those rogue landlords and agents who deliberately and repeatedly fail to comply with the right to rent scheme or fail to evict individuals who they know or have reasonable cause to believe are disqualified from renting as a result of their immigration status.
- 14 Historically, it has been easy for illegal migrants to secure UK driving licences and enjoy the privileges of being able to drive and the advantages this brings in securing a settled lifestyle. The published policy in relation to the granting of licences was amended in March 2010 so as to require all applicants to demonstrate that they are in the UK lawfully. The 2014 Act extended this policy to provide powers to revoke a UK driving licence held by an illegal migrant. Where a licence is revoked it is an offence to fail to surrender the licence without a reasonable excuse. In its first year in force, the new legislation has been used to revoke over 9,000 licences. Revoked driving licences nonetheless remain in circulation. Accordingly, the government wishes to build on the 2014 Act provisions by ensuring a consequence for illegal migrants using revoked licences. Therefore, the Bill provides the police and immigration officers with a new power to search for and seize UK driving licences which are in the possession of a person who is not lawfully resident in the UK.
- 15 The Bill also introduces a new criminal offence of driving in the UK whilst an illegal migrant. This fits within the wider agenda of making it difficult for those seeking to establish themselves in the UK unlawfully, and operates in parallel with other new measures with the same aim, including the new offence of illegal working. The new driving offence will apply to those illegally present in the UK, whether they have a driving licence (including a foreign licence) or are driving unlicensed. Upon summary conviction, the court could order a custodial sentence of up to six months and a fine. The court would also have the power to order the forfeiture of the vehicle. In practice, we anticipate that this new offence will be mainly used by the police who, in the course of their work, may encounter illegal migrants driving on UK roads. Vehicles driven by illegal migrants may be detained, pending a decision by the court on forfeiture. The police already hold similar powers in respect of vehicles that are uninsured or driven by an unlicensed driver.

- 16 The 2014 Act created a provision to ensure that illegal migrants are prevented from opening a current account. This provision was brought into force on 12 December 2014. The Home Office provides data on individuals who are known to be in the UK unlawfully to Cifas, an organisation through which information is exchanged to prevent fraud. Banks and building societies then check their prospective account holders against this data. While the 2014 Act measures only apply to new accounts, in his immigration speech on 21 May 2015, the Prime Minister committed to requiring banks and building societies to take action in respect of existing accounts held by illegal migrants.
- 17 The Bill places a duty on banks and building societies to perform periodic checks and to notify the Home Office where a person disqualified from holding a current account by reason of their immigration status is identified. The Bill specifies that secondary legislation may require the bank or building society to inform the Home Office of all accounts held by the individual concerned, not just current accounts. The Home Office may then either apply to a court to freeze the individual's accounts, except for essential living needs, or may notify the bank or building society that it is under a duty to close the account as soon as reasonably practicable. Depending on the circumstances of the case, the bank or building society may delay closure for a reasonable period, for example to allow it to seek repayment of an overdraft or to mitigate the effect of closure on other bodies or persons by or for whom the account is operated. They may alternatively remove a disqualified person from a jointly operated account without closing the account. The bank or building society must provide the Home Office with information about the steps it has taken to comply with this duty.

Enforcement

- 18 Immigration officers have various powers of entry, search and seizure for the purpose of removal or deportation. Immigration officers also seek to disrupt illegal immigration by enforcing the illegal working civil penalty scheme in the 2006 Act and the right to rent scheme in the 2014 Act. The Bill provides immigration officers with additional search and seizure powers in connection with the imposition of civil penalties under these schemes. Typically this may involve searching for evidence of illegal working such as pay slips or time sheets, and evidence of illegal renting such as tenancy agreements and letting paperwork.
- 19 While using existing powers, immigration officers may find other evidence in relation to non-immigration offences. The Bill will give officers powers to seize items where there are reasonable grounds to believe that they have been obtained in the commission of a criminal offence and where it is necessary to prevent them being concealed, damaged, or destroyed.
- 20 The Conservative Party Manifesto commits the government to satellite tracking for every foreign national offender subject to an outstanding deportation order or deportation proceedings. Section 36 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 created the ability to impose electronic monitoring arrangements for certain migrants. Over 80% of foreign national offenders living in the community have been released on bail by the First-tier Tribunal ("the Tribunal") and while the Tribunal has the power to apply an electronic monitoring condition, the Secretary of State cannot require it as a condition of bail. The Bill gives the Secretary of State the ability to impose an electronic monitoring condition when the Tribunal grants bail but does not impose such a condition.
- 21 Illegal migrants, including foreign national offenders, who are awaiting deportation or removal, exist within a complex legal framework where there are six different legal statuses including immigration bail and temporary admission. In implementing the above change to electronic monitoring, the Bill takes the opportunity to simplify the legislative framework so that just one status is available to illegal migrants who are not detained.

Appeals

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

Support for certain categories of migrant

- 24 Support is provided to asylum seekers under section 95 of the 1999 Act. Support is usually provided in the form of accommodation and a weekly cash allowance to cover the asylum seeker’s essential living needs. Section 94(5) allows section 95 support to continue after the asylum claim has been finally determined if the failed asylum seeker has with them a dependent child. Section 4(2) of the 1999 Act provides the basis for supporting other categories of failed asylum seeker.
- 25 The government believes that support should be provided to asylum seekers, as required by our international obligations, but it should not be provided to failed asylum seekers who have had their claim refused, who have exhausted any right of appeal they may have and who could and should leave the UK. On 4 August 2015 a consultation, [Reforming support for failed asylum seekers and other illegal migrants](#), sought the views of interested parties. The Bill amends the asylum support system as proposed in the consultation paper.

Border Security

- 26 Paragraph 26(2) and (3) of Schedule 2 to the 1971 Act enables the Secretary of State, by written notice to the owners or agents of a ship or aircraft, or persons concerned with the management of a port, to designate a control area “for the embarkation or disembarkation of passengers in any port in the United Kingdom”. Where a control area is so designated, the owner or agent shall take all reasonable steps to ensure that passengers “do not embark or disembark . . . at the port outside the control area.” Where an owner or agent fails to comply with this an offence is committed.

- 27 Despite this legislation, sometimes airlines and port operators have allowed passengers to disembark without being presented to the immigration control. The Bill will make this legislation simpler to enforce by providing a civil penalty regime that can be applied to airlines and port operators who disembark passengers outside the control area.
- 28 At present, immigration officers have no maritime enforcement powers – their powers do not have extra-territorial effect. This prevents Border Force from tackling illegal immigration until a vessel has reached the UK and those on board have disembarked. The Bill extends some immigration officer powers into UK territorial waters so that facilitation of illegal migration can be disrupted while it is occurring. The Bill also gives these powers to constables and the Armed Services.
- 29 Travel bans restrict the movement of named individuals associated with regimes or groups, including terrorist groups, whose behaviour is considered unacceptable by the international community. The decision to impose a travel ban is made either by the United Nations' Security Council or by the Council of the European Union. To implement travel bans in the UK, secondary legislation is put before Parliament to amend the Immigration (Designation of Travel Bans) Order 2000. The Bill will remove the need to update secondary legislation. Instead international travel bans will take effect in the UK automatically.

Language Requirement for public sector workers

- 30 The Conservative Party Manifesto commits the government to legislate to ensure that every public sector worker operating in a customer-facing role must speak fluent English. The Rt Hon Matthew Hancock, Minister for the Cabinet Office, announced on 2 August 2015 that the Immigration Bill would implement this commitment. The Bill will require public sector bodies to comply with a statutory duty and guidance will be provided in a code of practice. A consultation will be launched in parallel with the passage of the Bill through Parliament on the content of the code of practice.

Fees

- 31 The Prime Minister announced in his 21 May 2015 immigration speech that the government will reform immigration and labour market rules to reduce the demand for skilled workers from overseas. The Migration Advisory Committee ("the MAC") has been asked to advise on applying a skills levy to businesses recruiting from outside the EEA, the proceeds from which would fund apprenticeships in the UK. On 2 July 2015 the MAC launched a [call for evidence](#) on this subject and will report back to the government by December 2015. The Bill contains provision to collect an immigration skills charge from employers who sponsor non EEA migrants and to make regulations setting the scope and rate charged.
- 32 The Bill amends the legislative framework for passport fees. The Home Office has been lowering the price of passports for a number of years. For example, in April 2014 fees for UK passports for British citizens applying from overseas were reduced by 35%. The Home Office intends to continue to reduce the cost of postal applications for standard passports by delivering further operational improvements. The intention is also to improve premium services, which are currently charged at less than the operational cost. The Bill will allow a fee to be introduced which will exceed the operational costs of premium services, to subsidise the basic service.
- 33 Finally, the Bill amends the legislative framework for civil registration fees. Existing legislation governing the registration of births, deaths and marriages is restrictive in terms of the products and services for which fees may be charged. The Registration Service Act 1953 establishes the office of the Registrar General and the General Register Office (GRO). The GRO charges fees on a cost recovery basis for many, but not all, of its services. Free services include

corrections of birth or death entries, the re-registration of births and registrations outside the statutory time limit.

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

Legal background

- 35 The new Director of Labour Market Enforcement will prepare an enforcement strategy that concerns the enforcement of several legal schemes. These include enforcement of breaches of the Employment Agencies Act 1973, the National Minimum Wage Act 1998, the Gangmasters (Licensing) Act 2004 so far as it relates to England, Wales and Scotland, and sections 1, 2 and 4 of the 2015 Act.
- 36 The new illegal working offence criminalises those who work and who are subject to immigration control and have no right to work in the United Kingdom. It builds on existing immigration offences that are found in section 24 of the 1971 Act. The offence of employing an illegal worker in section 21 of the 2006 Act is also amended. The illegal working measures also amend the Licensing Act 2003 ("the 2003 Act").
- 37 The Bill measures on access to services within Part 2 are mainly an extension of previous provision made in 2014 Act. Chapter 1 of Part 3 of the 2014 Act created the right to rent scheme and the new measures in the Bill on tenancies build on this. The driving measures build on sections 46 and 47 of the 2014 Act which ensure that people who are not lawfully resident in the United Kingdom are not entitled to United Kingdom driving licences. The bank accounts measure builds on section 40 of the 2014 Act which prohibits disqualified persons from opening accounts.
- 38 The amendments and expansion to the enforcement powers of immigration officers in the Bill principally concern the search for and transfer of evidence. Immigration officer powers are largely found within Schedule 2 to the 1971 Act. The bail and tagging measures in the Bill will also consolidate the parts of Schedules 2 and 3 of the 1971 Act that relate to temporary admission, temporary release and bail.
- 39 The immigration appeals system is found within Part 5 of the 2002 Act, which has been amended several times, most recently by the 2014 Act. The Bill further amends this legislation.
- 40 The asylum support system is found within the 1999 Act, as amended. The Bill amends this legislation.
- 41 The measure creating a civil penalty regime relating to airport control areas is concerned with enforcement of section 26 of the 1971 Act where there is already a criminal sanction under section 27(b)(iv). The maritime powers measure, extending the powers of immigration officers to UK territorial waters is based on similar powers in Part 3 of the 2015 Act that are aimed at tackling modern slavery at sea.
- 42 The current immigration fees framework is contained in Part 6 of the 2014 Act. The immigration skills charge builds on the existing fees powers in the 2014 Act. The civil registration fees measures amend the following existing legislation: the Births and Deaths Act 1953; the Marriage Act 1949; the Civil Partnership Act 2004; the Marriage (Same Sex Couples)

Act 2013; the Registration Service Act 1953 and makes a number of consequential and related amendments to other legislation. The passport fees measures will add to the framework set out under the Consular Fees Act 1980.

Territorial extent and application

- 43 Clauses 1 to 7 of the Bill concern the Director of Labour Market Enforcement. The Director's remit covers certain functions where legislative competence has been transferred to the Northern Ireland Assembly and Scotland. Legislative competence on this matter has not been devolved to the National Assembly for Wales. These clauses extend to the whole of the United Kingdom but in Northern Ireland the Director's functions will be limited because firstly, the Employment Agencies Act 1973 and sections 1, 2 and 4 of the 2015 Act do not extend there, and secondly because the Director's remit in respect of Gangmaster Licensing is limited by clause 3(7). In Scotland the Director's functions will be limited because sections 1, 2 and 4 of the 2015 Act do not extend there.
- 44 Part 7 of the Bill concerns the new English language requirements for public sector workers. This measure will extend to England, Wales and Scotland. It will affect some reserved matters under the terms of the Government of Wales Act 2006 (including public sector bodies in the education sector, the environment sector and the health and health services sector). The legislative consent of the National Assembly for Wales will be sought. Clause 39(3) limits the extent of the measure in relation to Scotland so that it only relates to reserved matters.
- 45 Clause 50 and Schedule 9 relate to civil registration, legislative competence in respect of which has been devolved to the Scottish Parliament and the Northern Ireland Assembly, but not under the Government of Wales Act 2006. Accordingly the amendments for the large part are to legislation which extends to England and Wales only. Schedule 9 does, however, contain some consequential amendments to legislation with UK-wide extent, but they do not make any change to the law in Scotland or Northern Ireland.
- 46 All remaining clauses of the Bill will extend to the whole of the United Kingdom. In the view of the UK Government, the matters to which the provisions of the Bill relate are not within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly.

Commentary on provisions of Bill

Part 1: Labour Market and Illegal Working

Clause 1: Director of Labour Market Enforcement

- 47 This clause establishes the Director of Labour Market Enforcement.
- 48 *Subsections (1) and (2)* require the Secretary of State to appoint a Director of Labour Market Enforcement, who will hold office in accordance with their terms of appointment.

Clause 2: Labour Market Enforcement Strategy

- 49 This clause sets out the requirement for the Director to produce a Labour Market Enforcement Strategy.
- 50 *Subsection (1)* states that the Director must prepare a strategy before the beginning of each financial year and submit it to the Secretary of State for approval.

- 51 *Subsections (2) and (3)* prescribe the contents of the strategy. These include: an assessment of the scale and nature of non-compliance in the labour market; how labour market enforcement functions should be exercised (including education, training and research carried out by the relevant enforcers) and how the funding should be allocated; the activities the Director proposes to undertake during the year in relation to his or her intelligence hub and other matters the Director considers appropriate.
- 52 *Subsection (4)* permits the Director to prepare a revised strategy and submit it for approval at any point during the year.
- 53 *Subsection (5)* allows the Secretary of State to approve the strategy with or without modifications; but prevents modification of the Director's assessment of the scale and nature of non-compliance in the labour market.
- 54 *Subsection (6)* requires those exercising labour market enforcement functions to have regard to the strategy once made.

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

- 55 *Subsections (1), (3) and (4)* define non-compliance in the labour market by reference to a breach of labour market legislation or the commission of a labour market offence.
- 56 *Subsection (2)* defines labour market enforcement functions.

Clause 4: Annual and other reports

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

Clause 5: Publication of strategy and reports

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

Clause 6: Information hub

- 64 This clause requires the Director to establish an intelligence hub in relation to non-compliance in the labour market.

Clause 7: Restriction on exercising functions in relation to individual cases

- 65 *Subsection (1)* of this clause prevents the Director from making recommendations in relation to

individual cases.

- 66 *Subsection (2)* of this clause, however, allows the Director to consider individual cases and draw conclusions about them in relation to general issues within his remit.

Clause 8: Offence of illegal working

- 67 This clause amends the 1971 Act to make it a criminal offence for a person subject to immigration control to work if they have not been granted leave to enter or remain, have overstayed that leave, or are in breach of a condition on that leave that prohibits work.
- 68 Section 3(c)(i) of the 1971 Act allows persons given limited leave to enter or remain in the United Kingdom to be made subject to a condition restricting employment. *Subsection (2)* amends the condition to directly link it to the new offence.
- 69 *Subsection (3)* inserts new section 24B into the 1971 Act creating a new illegal working offence.
- 70 *Subsection (2)* and *(3)* of the new section 24B detail the maximum penalty. In England and Wales the maximum penalty is 51 weeks' imprisonment or a fine or both. In Scotland and Northern Ireland the maximum penalty is 6 months' imprisonment or a fine or both (or 6 weeks' imprisonment before the coming into force of section 281(5) of the Criminal Justice Act 2003).
- 71 *Subsection (4)* and *(6)* of the new section 24B require a prosecutor to consider whether to ask the Magistrates' Court to commit a person to the Crown Court with a view to a confiscation order being considered under the Proceeds of Crime Act 2002 if a person is convicted of the new illegal working offence in England and Wales or Northern Ireland.
- 72 *Subsection (5)* of the new Section 24B requires a prosecutor to consider whether to ask the court to make a confiscation order under the Proceeds of Crime Act 2002 if a person is convicted of the new illegal working offence in Scotland.
- 73 *Subsection (7)* clarifies that the offence does not apply to British Citizens or others who do not need leave to enter or remain.
- 74 *Subsection (8)* of the new section 24B makes it clear that the offence can apply to those on immigration bail who have no right to work.
- 75 *Subsection (9), (10), and (12)* of the new section 24B make it clear that the offence applies to all categories of work, including apprenticeships, under contracts for services, and informal arrangements that have no paperwork or contract.
- 76 *Subsection (11)* of the new section 24B makes an exception from the offence for members of the armed forces.

Clause 9: Offence of employing an illegal worker

- 77 Sections 15 to 25 of the 2006 Act set out the constraints on whether a person subject to immigration control may be employed. The prohibition is supported through both a civil penalty and criminal sanction.
- 78 *Subsection (1)* amends section 21(1) of the 2006 Act by inserting after 'knowing' the words 'or having reasonable cause to believe'. The effect is to amend the mens rea or intention needed to make out the offence in order to make the test more objective and the offence easier to prove.
- 79 *Subsection (2)* amends section 21(2)(a) of the Act by substituting 'five' for 'two'. The effect is to increase the maximum term of imprisonment for conviction of the offence on indictment from two years to five years.

80 *Subsection (3)* inserts a new subsection 9(B) into section 28A of the 1971 Act. The effect is that a person committing or attempting to commit the section 21 offence may be arrested without a warrant.

81 *Subsection (4)* removes the reference to the section 21 offence from section 28AA of the 1971 Act. Section 28AA provides for arrest with a warrant.

Clause 10: Licensing Act 2003: amendments relating to illegal working

82 The purpose of this clause is to tackle illegal working in licensed premises by making it a requirement for a license to sell alcohol that the licensee has the right to work in the UK. *Subsection (1)* gives effect to Schedule 1, where the changes to the licensing framework are set out.

83 The 2003 Act only extends to England and Wales. *Subsection (2)* provides a power to extend the effect of the licensing measure to Scotland and Northern Ireland by regulations.

Clause 11: Illegal working closure notices and illegal working compliance orders

84 This clause introduces Schedule 2 which provides immigration officers with a new power to issue a notice to close business premises or a place of work for a specified period if certain conditions are met, and compliance notices that set out the conditions the business must meet before it can be reopened.

Part 2: Access to Services

Clause 12: Offence of leasing premises

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

86 New subsection 33A(6) provides that subsection 22(9) of the 2014 Act applies to this new offence. Subsection (9) provides that the commission of an offence will not impact on a landlord or tenant's ability to enforce any provision of the residential tenancy agreement they have entered into.

87 The second offence (new subsections 33A(7)-(8) is committed only if a tenant's leave to remain

in the UK expires during the course of a tenancy (having been valid when the tenancy was entered into), the tenant's eligibility period (as defined at section 27 of the 2014 Act) has expired, the tenant continues to occupy the property and the landlord knows or has reasonable cause to believe this has happened but does not notify the Secretary of State as soon as reasonably practicable. New subsection 33A(8) makes it clear that the offence applies whether or not the landlord has been issued with a civil penalty notice under section 23 of the 2014 Act.

- 88 New section 33B is concerned with two new offences relating to agents.
- 89 New sections 33B(1) and (2) provide that an agent is guilty of an offence if the agent carries out the right to rent checks on behalf of the landlord (under section 25 of the 2014 Act), knows or has reasonable cause to believe that the landlord will be authorising someone disqualified from renting to occupy the property if he enters into the tenancy agreement and has sufficient opportunity to notify the landlord beforehand, but does not do so.
- 90 New sections 33B(3) and (4) provide that an agent commits an offence if the agent carries out the right to rent checks on behalf of the landlord (under section 25 of the 2014 Act), a tenant's leave to remain in the UK expires during the course of the tenancy, having been valid at the time the tenancy was entered into, the tenant's eligibility period (as defined at section 27 of the 2014 Act) has expired, the tenant continues to occupy the property and the agent knows or has reasonable cause to believe this has happened but does not notify the landlord and Secretary of State as soon as reasonably practicable.
- 91 New section 33B(5) specifies that the agent is guilty of an offence regardless of whether the agent has been issued with a civil penalty notice under section 25 of the 2014 Act.
- 92 New section 33C is concerned with the penalties available where an offence has been committed under section 33A or section 33B.
- 93 New section 33C(1) specifies that a landlord or agent who is guilty of an offence under section 33A or section 33B is liable to imprisonment for up to twelve months or to a fine (or both) on summary conviction or up to five years imprisonment or to a fine (or both) if they are convicted on indictment.
- 94 New section 33C(2) provides that if the offence is committed before section 154(1) of the Criminal Justice Act 2003 comes into force a landlord or an agent who is summarily convicted will be liable to imprisonment for up to six rather than twelve months.
- 95 New sections 33C(3) to (5) provide that the offences are committed by officers of a body corporate where they have consented to or been complicit in the act, where a corporate body has also committed the offence, and by individuals who are or purport to act as partners or members where the offence has been committed by a partnership. The reference to an officer of a body includes a director, manager or secretary, or person purporting to act as such or, if the affairs of a body are managed by its members, a member.
- 96 New section 33C(6) permits immigration officers to use powers provided in the 1971 Act such as entering and searching premises and searching persons in relation to these offences.
- 97 *Subsection (3)* makes it clear that the offence at section 33A and 33C (the offence committed by a landlord who rents to someone disqualified from renting) applies if the tenancy was entered into before or after these provisions come into force. However, the offences applying to agents, and the offence contained in new section 33A(7) and (8) and section 33B, will only apply in relation to a contravention of the right to rent scheme which occurs after these measures come into force.

- 98 *Subsection (5)* provides that where two or more persons jointly constitute the landlord, any references to the landlord in Section 33A are to be taken as references to any of those persons.
- 99 *Subsection (6)* amends section 28A of Part III of the 1971 Act by inserting a subsection (9C) which provides that an immigration officer may arrest without warrant a person who, or whom the immigration officer has reasonable grounds for suspecting, has committed or attempted to commit an offence under sections 33A or 33B.

Clause 13: Eviction

- 100 This clause amends Chapter 1 of Part 3 of the 2014 Act by inserting new sections 33D and 33E, providing new powers for landlords to evict illegal migrants from private rented accommodation.
- 101 Subsections (1) - (5) of new section 33D empower a landlord to serve a notice terminating a tenancy agreement if they have been notified by the Secretary of State that a person or persons who are occupying their premises are disqualified from renting under the 2014 Act. There is a specified notice period of 28 days.
- 102 This applies where all of the occupants are disqualified from renting under a residential tenancy agreement. A notice from the landlord is to be treated as a notice to quit where such notice is required to end a tenancy.
- 103 Subsection (6) of new section 33D provides that the landlord's notice is enforceable as if it were an order of the High Court and so will allow a landlord to seek enforcement of the notice through the courts as such an order.
- 104 Subsection (7) of new section 33D defines an occupier as a tenant, an adult who otherwise is named in the tenancy agreement, and a person who is otherwise occupying the premises and of whom the landlord is aware or would be aware if the landlord made reasonable enquiries.
- 105 Subsections (1) and (2) of new section 33E make provisions for landlords (in England) to evict in other circumstances where an occupant is a disqualified person. Subsection (1) provides that there shall be an implied term of any residential tenancy agreement that allows for the termination of the agreement where an adult occupant is disqualified from renting. Subsections (3) and (4) set out the position of tenancies that are statutory, protected or assured tenancies within the meanings of the Rent Act 1977 or Housing Act 1988.
- 106 *Subsection (3)* amends the 2014 Act by inserting new subsection (7) into section 35 which provides that an eviction under sections 33D and 33E can take place in respect of a tenancy that was entered into before or after these provisions came into force.
- 107 *Subsection (4)* amends section 3A of the Protection from Eviction Act 1977 to exclude from protection tenancies to which these provisions apply.
- 108 New *subsection (5)* amends section 5 of the Housing Act 1988 (security of tenure) to allow an assured tenancy to be brought to an end where these provisions apply and a landlord has served a notice in compliance with section 33D.

Clause 14: Order for possession of dwelling-house

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

Landlords may rely on this mandatory ground of possession where the Secretary of State has given notice in writing to a landlord that a tenant, tenants or adult occupiers who are occupying the property under the tenancy are disqualified from occupying the property as a result of their immigration status. The landlord may serve a notice seeking possession. Where the tenants do not wish to vacate the property, the landlord will be able to rely upon this new ground in seeking a possession order from the courts, and upon the Secretary of State's notice evidencing the ground.

111 *Subsections (3) and (4)* make other consequential amendments.

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

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

114 *Subsection (7)* provides that these amendments shall apply to those tenancies in existence prior to or subsequent to their coming into force.

Clause 15: Extension to Wales, Scotland and Northern Ireland

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

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

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

Clause 16: Powers to carry out searches relating to driving licences

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

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

120 New paragraph 25CB creates a power for an authorised officer to search a person where there are reasonable grounds for believing that the person is not lawfully present in the UK and may have a driving licence concealed on their person. New paragraph 25CC allows a driving

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

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

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

Clause 17: Offence of driving when unlawfully in the United Kingdom

123 *Subsection (2)* inserts new sections 24C to 24E into the 1971 Act. New section 24C creates a new offence of driving a vehicle on a road or other public place when the driver of the vehicle is not lawfully in the UK. A person guilty of this offence will be liable on summary conviction to imprisonment of up to six months and/or a fine of up to the statutory maximum, or an unlimited fine in England and Wales.

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

125 The person who has been arrested might not be the owner or registered keeper of the vehicle used in the commission of the offence. Section 24D(7) provides the Secretary of State with the power to make provision, by regulations, about the circumstances in which a vehicle may be released from detention. Forfeiture orders cannot be made unless persons with an interest in the vehicle have been allowed to present the court with their reasons why the vehicle should not be forfeited (section 24E(2)).

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

127 *Subsection (4)* amends section 28B(5) of the 1971 Act so that a justice of the peace (or a sheriff or justice of the peace in Scotland) may issue a warrant permitting an immigration officer or constable to enter premises to search for and arrest a person suspected of committing the new driving offence.

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

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

Clause 18: Bank accounts

130 This clause introduces measures concerned with bank and building society accounts held by

persons who are known to be unlawfully present in the UK. The purpose is to require banks to check the immigration status of current account holders and to, in the majority of cases, facilitate the closure of accounts held by illegal migrants.

- 131 *Subsection (1)* introduces the provision set out in Schedule 3, which amends the 2014 Act by inserting new sections 40A to 40H. These sections establish requirements on banks and building societies to carry out periodic checks of the immigration status of persons holding current accounts with them. Where such checks identify that a current account holder is a "disqualified person" (i.e. an illegal migrant who the Secretary of State considers should not be provided with a current account) the bank or building society is required to notify the Secretary of State that this is the case. The Secretary of State will then either apply for a court order freezing the disqualified person's account or accounts, or will notify the bank or building society that it is under a duty to close the account as soon as reasonably practicable.
- 132 *Subsections (2) and (3)* place a duty on the Secretary of State to review the measures contained in Schedule 3 and prepare a report to give to Parliament. This duty must be carried out within 5 years from the date that the measures come into force in full.

Part 3: Enforcement

Clause 19: Powers in connection with examination, detention and removal

- 133 *Subsection (2)* amends paragraph 2(1) of Schedule 2 to the 1971 Act so that it is clear that examination by an immigration officer can happen where a person has leave, with regard to whether that leave should or should not be curtailed.
- 134 *Subsection (3)* inserts new paragraph 15A into Schedule 2 of the 1971 Act which gives immigration officers who are already lawfully on premises (new sub-paragraph (1)) a power to search for documents that relate to a person liable to detention and that will assist in removing them from the UK (new sub-paragraph (2)). Exercise of this power is restricted to circumstances in which there are reasonable grounds for believing sub-paragraph (2) applies and where it is necessary to obtain the documents.
- 135 Sub-paragraphs (4) to (10) of the new paragraph 15A provides immigration officers with a power to seize and retain relevant documents (including electronic documents) such as pay slips or tenancy agreements. Documents that benefit from legal privilege, such as solicitor-client correspondence, are excluded (sub-paragraph (8)). Original documents will not be retained if a photograph or copy is sufficient for the purpose of removing a person from the UK (sub-paragraph (10)).
- 136 *Subsections (4) and (5)* amend paragraphs 25A and 25B of Schedule 2 to the 1971 Act to clarify that these search powers also extend to electronic documents.

Clause 20: Search of premises in connection with imposition of civil penalty

- 137 This clause gives immigration officers, who are already lawfully on premises, a power to search for documents which might assist with imposing a civil penalty on a person. Civil penalties can be imposed when a person is employing an illegal migrant or renting premises to them (*subsection (2)*). This power is restricted to circumstances in which there are reasonable grounds for believing *subsection (2)* applies and where it is necessary to obtain the documents (*subsection (3)*).
- 138 *Subsections (4) to (10)* provide immigration officers with a power to seize and retain relevant documents (including electronic documents) that may be used as evidence to impose a civil penalty, although documents subject to legal privilege are excluded (*subsection (8)*). Original documents will not be retained if a photograph or copy is sufficient (*subsection (10)*).

Subsection (11) gives an employer or landlord the right to access documents that have been seized and copy them. However, if there are reasonable grounds to believe that this access would jeopardize an investigation against the employer or landlord, or the functions of an immigration officer, access will be denied.

Clause 21: Seizure and retention in relation to offences

- 139 Currently, when immigration officers in England and Wales search premises for immigration purposes, (e.g. to check the immigration status of a person), they can only seize evidence of a non-immigration crime if they are trained criminal investigators by relying on the Police and Criminal Evidence Act 1984 (Application to immigration officers and designated customs officials in England and Wales) Order 2013. Therefore, often immigration officers must contact the local police and await their response when they encounter non-immigration crime. In the meantime the immigration officer has no specific powers to prevent that potential evidence from being removed or destroyed.
- 140 This clause provides all immigration officers with a power to seize anything that has been acquired through committing a non-immigration offence, and evidence in relation to offences (*subsections (2) and (3)*), including electronic information (*subsections (4) and (5)*). Immigration officers cannot seize anything that is subject to legal privilege (*subsection (6)*).
- 141 *Subsection (7)* allows immigration officers to retain anything they seize under *subsections (2) to (5)* so long as necessary in all the circumstances and, in particular, for one of three purposes; use as evidence at trial; examination or investigation; or to establish the lawful owner of the property. However, *subsection (8)* provides that such items cannot be retained if a photograph or copy is sufficient. *Subsection (9)* gives an employer or landlord the right to access documents that have been seized and copy them. However, if there are reasonable grounds to believe that this access would jeopardize an investigation, access will be denied.

Clause 22: Duty to pass on items seized under section 21

- 142 This clause applies where an item has been seized under clause 21. Under *subsection (2)*, an immigration officer must notify the relevant investigating authority (normally the police or National Crime Agency) as soon as reasonably practicable, that they have seized items during a search. The relevant authority will then tell the immigration officer whether they will accept the item or not (*subsections (4) and (5)*). If the item is accepted, the immigration officer must hand it over to the investigating authority (*subsection (6)*). If the investigating authority does not accept the item for example, because they do not believe it is evidence of an offence, and it is not being passed to another investigating authority (*subsections (8) – (9)*), it must be returned to the person it was taken from, or to the place it was seized (*subsection (10)*).

Clause 23: Retention of things seized under Part 3 of the Immigration Act 1971

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

Clause 24: Search for nationality documents by detainee custody officers etc

- 144 This clause creates new search powers for detainee custody officers, prison officers and prisoner custody officers. The powers enable these officers to search a detained person who is liable to removal or deportation, or their property, when directed to do so by the Secretary of State if there are reasonable grounds to suspect that relevant documents will be found. The purpose of the search is to obtain all documents relating to a person's nationality for example, documents that describe where a person is from and where they have been, in order to support the person's removal. The officers must then pass them to the Secretary of State. If documents are not retained by the Secretary of State, they must be returned to the person they

were taken from or disposed of if return is not appropriate.

Clause 25: Seizure of nationality documents by detainee custody officers etc

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

Clause 26: Amendments relating to sections 24 and 25

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

Clause 27: Amendments to search warrant provisions

147 This clause gives effect to Schedule 4.

Clause 28: Interpretation of Part

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

Clause 29: Immigration bail

149 *Subsections (1) and (2)* give effect to Schedule 5.

150 *Subsection (3)* ensures that the new provisions in sub-paragraph 1(5)(a) of new Schedule 5 - where a person may be on immigration bail where they remain liable to detention, even if they can no longer be detained - apply to persons who were previously released on bail under the "old" provisions.

151 *Subsection (4)* gives *subsection (3)* above retrospective effect. This clause is retrospective in its effect because it is intended to clarify the law following a recent Court of Appeal judgment (*B v The Secretary of State for the Home Department* [2015] EWCA Civ 445) on when immigration bail conditions can be imposed. The Court of Appeal judgment disturbed previously settled case law in this area. If the Court of Appeal's judgment stands (it is under appeal) then it will have a significantly limiting impact on judges' and the Home Office's ability to impose bail conditions and manage individuals, including those who pose a risk to the public where deportation is being pursued.

Clause 30: Power to cancel leave extended under section 3C of the Immigration Act 1971

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

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

Example (1):

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

Example (2):

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

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

155 *Subsection (1)* provides a mechanism to cancel leave to enter or remain extended by the operation of section 3C. New subsection (3A) of section 3C provides a power to cancel leave which is or would otherwise be extended by section 3C, in circumstances in which either:

- (1) Deception has been used by the applicant in seeking leave to enter or remain; or
- (2) A condition attached to the person's leave has not been observed.

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

Part 4: Appeals

Clause 31: Appeals from within the UK: certification of human rights claims

157 Section 94B of the 2002 Act provides the Secretary of State with the power to certify that the temporary removal of a person liable to deportation (usually, a foreign national offender) will not breach the UK's human rights obligations. The Secretary of State can use this power even if there is an appeal outstanding against the decision to refuse a person's human rights claim. Where this power is exercised an appeal may only be brought (or continued) from outside the UK.

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

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

160 The Secretary of State must still consider, in each case, whether temporary removal would breach the UK's human rights obligations and, in particular, whether the person concerned would face a real risk of serious irreversible harm if removed pending the outcome of his appeal. Where such a risk arises, or where removal would otherwise breach the person's human rights, his claim will not be certified. Where the appellant succeeds in his appeal, and no other matters come to light in the interim, he will be allowed to return to the UK.

Clause 32: Continuation of leave: repeals

161 This clause removes section 3D of the 1971 Act.

162 The latter currently operates to extend a migrant's leave in circumstances in which:

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

163 This clause has no continuing purpose in light of the substantial changes made to the immigration appeals regime by the 2014 Act.

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

Clause 33: Deemed refusal of leave to enter: repeals

165 This clause removes paragraph 2A(9) of Schedule 2 to the 1971 Act.

166 Paragraph 2A(9) applies where a person arrives at port with leave to enter that was given to him before his arrival. It provides that where such a person's leave is cancelled at port, he is to be treated as if he had been refused leave to enter at a time when he had current entry clearance under Part 5 of the 2002 Act. However, following the substantial changes made to

the appeals regime by the 2014 Act, neither refusal of leave to enter, nor cancellation of entry clearance at port, gives rise to a right of appeal. Accordingly, the provision has no continuing purpose.

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

Part 5: Support for certain categories of migrant

Clause 34: Support for certain categories of migrant

168 This clause gives effect to Schedule 6.

Part 6: Border Security

Clause 35: Penalties relating to airport control areas

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

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

171 *Subsection (2)* gives effect to Schedule 7.

Clause 36: Maritime enforcement

172 This clause gives effect to Schedule 8.

Clause 37: Persons excluded from the United Kingdom under international obligations

173 Section 8B of the 1971 Act provides for certain persons' exclusion from the UK pursuant to the UK's international obligations under UN Security Council resolutions and EU Council decisions.

174 This clause amends section 8B of the 1971 Act to consolidate UK legislation relating to international travel bans and provide that once a person is listed by the UN or EU as being subject to a travel ban he or she becomes an "excluded person" within the meaning of subsection (4) of section 8B.

175 *Subsection (4)* provides that where an excluded person is given leave, that leave is invalid.

176 *Subsection (5)* provides that seamen, aircrews and other special cases entitlement to be exempt from immigration control under the 1971 Act, does not apply whilst the person continues to be an excluded person.

177 *Subsections (7) and (8)* explain that a person named in, or described by, a UN Security Council Resolution or instrument of the Council of the European Union relating to travel bans, is an excluded person. Previously an individual was not an excluded person until the relevant UN

or EU travel ban instrument was incorporated into UK law which required amendment to the Schedule to the Immigration (Designation of Travel Bans) Order 2000 for each travel ban implemented.

178 *Subsection (8)* inserts a new subsection (5A) into section 8B of the 1971 Act. This means that the exclusion will not apply if it would be contrary to the UK's Human Rights or Refugee Convention obligations, or if the EU or UN has allowed an exemption to apply.

179 *Subsection (9)* removes subsections (6) to (8) of section 8B from the 1971 Act as a consequence of the changes in subsections (4) and (5). This means that secondary legislation is no longer required to give effect to a UN Security Council Resolution or instrument of the Council of the European Union. They will have automatic effect in the UK.

Part 7: Language Requirements for Public Sector Workers

Clause 38: English language requirements for public sector workers

180 In order to improve the quality of service provided by public authorities, such as the NHS and the Police, workers who regularly speak to the public as part of their role must be required to speak fluent English. Fluent English is defined in this clause as a command of spoken English that enables workers, employed when or after this duty comes into effect, to perform their role effectively. The duty will only apply to public authorities defined in clause 39, and such authorities should consider a code of practice under clause 41 when deciding how to comply with the duty. The clause also requires such public authorities to operate procedures for handling complaints about breaches of the duty, and to have regard to a code of practice under clause 41 when deciding whether those procedures are adequate.

Clause 39: Meaning of “public authority”

181 This clause defines what is meant by a public authority for the purposes of this Part. The clause excludes specified public authorities, and enables the Secretary of State or Chancellor of the Duchy of Lancaster (“the relevant Minister”) to make regulations to modify the exclusions. Modifications may include adding a new body with public functions or removing an existing body.

Clause 40: Power to expand meaning of person working for public authority

182 This clause enables the relevant Minister to make regulations to extend the duty in clause 38 to specified categories of workers employed by private or voluntary sector providers of contracted-out public services.

Clause 41: Duty to issue codes of practice

183 This clause requires the relevant Minister to issue and keep in force one or more codes of practice for the purposes of the duty in clause 38. *Subsection (2)* lists the information that a code of practice must address including – the requisite standard of spoken English; how any failures to meet that standard can be dealt with; procedures for dealing with complaints for a breach of the duty in clause 38; and how public authorities are to comply with that duty and their other legal obligations. The clause also gives the relevant Minister discretion to make appropriate provision in the code to ensure the duty is complied with. The code's provisions may relate to all, or specific public authorities, and may be different for different public authorities.

Clause 42: Procedure for codes of practice

184 This clause sets out the steps that the relevant Minister must take when preparing a code of practice under clause 41. The clause also allows the relevant Minister to review the code and

then revise and re-issue it, so long as he has completed the steps he is required to take in relation to the original code.

Clause 43: Application of Part to Wales

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

Clause 44: Interpretation of Part

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

Clause 45: Crown application

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

Part 8: Fees

Clause 46: Immigration skills charge

188 *Subsection (2)* inserts new section 70A into the 2014 Act. Subsection (1) and (2) of new section 70A provide the Secretary of State with the power, through regulations, to require certain employers to pay an immigration skills charge for each skilled worker from outside the European Economic Area, which they sponsor.

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

190 The primary purpose of this clause is to increase funding available for apprenticeships in the UK and address the current skills gap in the UK workforce. Therefore, any funds collected under this power must be paid to either the Consolidated Fund or applied as specified in the regulations (new subsection (4)). All regulations must be approved by the Treasury (new subsection (5)).

Clause 47: Power to make passport fees regulations

191 This clause provides a power to the Secretary of State to make regulations setting out the fees to be charged in respect of applications for the issue of passports or other travel documents.

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

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

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

for payment and enforcement.

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

Clause 48: Passport fees regulations: supplemental

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

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

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

Clause 49: Power to charge fees for passport validation services

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

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

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

202 *Subsection (6)* provides that regulations under *subsection (5)* can only be made with Treasury consent and *subsection (7)* provides that this power, like that in Clause 48, is without prejudice to existing powers to charge fees.

Clause 50: Civil registration fees

203 This clause gives effect to Schedule 9.

Part 9: Final Provisions

204 This Part provides powers to make transitional and consequential provision. It also makes provision for commencement by order and about the extent of the Act, as set out in paragraphs 43 to 46 of this document.

Schedules

Schedule 1: Licensing Act 2003: amendments relating to illegal working

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

206 Part 2 amends Part 3 of the 2003 Act (premises licences) with *paragraph 4* providing that a person without the entitlement to work in the UK may not apply for a licence to sell alcohol from particular premises, for example a public house, or to provide late night refreshment.

207 *Paragraph 3* provides for the Secretary of State to be added to the list of responsible authorities notified when an application for a premises licence is submitted. This will enable the Secretary of State to make relevant representations in respect of such an application if she is satisfied

that issuing the licence would undermine the objective of preventing illegal working on licensed premises.

- 208 *Paragraph 5* inserts a new subsection (1A) into section 27 of the 2003 Act with the effect that an existing premises licence lapses if the licence holder ceases to be entitled to work in the UK. *Paragraphs 6 to 11* provide that these arrangements also apply to applications to transfer a licence and to interim authority notices.
- 209 Part 3 amends Part 6 of the 2003 Act (personal licences) with the effect that an applicant for a personal licence must have an entitlement to work in the UK and provides that the commission of immigration offences and requirements to pay civil penalties under immigration law on employers and landlords of illegal migrants may be considered by licensing authorities when considering whether to grant a licence or by courts when considering forfeiture. Part 3 prescribes the circumstances in which a person has been required to pay a civil penalty, with reference to periods for objecting and appealing and the arrangements for establishing an excuse by conducting specified checks on workers and tenants.
- 210 *Paragraph 13* amends section 113 of the 2003 Act. *Paragraph 13(3)*, together with *paragraph 21*, inserts a new subsection (2A) into section 113 and amends Schedule 4 of the 2003 Act, to define 'immigration offence'; and subparagraph (4) inserts provision defining 'immigration penalty' and provides when a person is treated as being subject to such a notice.
- 211 *Paragraph 14* amends section 115 of the 2003 Act (period of validity of personal licence) to provide that a personal licence ceases to have effect if the holder ceases to be entitled to work in the UK.
- 212 *Paragraph 15* amends section 120 of the 2003 Act (determination of application for grant) to provide that if the applicant for a personal licence has been convicted of an immigration offence or been issued with an immigration penalty the chief officer of police and the Secretary of State must be notified of the application. New subsection (5B) of the 2003 Act provides that if, having regard to the applicant's commission of an immigration offence (or foreign comparable offence) or requirement to pay an immigration offence, the Secretary of State is satisfied that granting the licence would be prejudicial to the prevention of illegal working in licensed premises, the Secretary of State must issue an immigration objection notice within 14 days. *Paragraph 16* amends section 122 of the 2003 Act and inserts a new subsection (2A) into that section to provide for notification by the licensing authority of its decision after the Secretary of State has given an immigration objection notice. *Paragraph 17* amends section 123 of the 2003 Act to deal with convictions for an immigration offence or requirement to pay an immigration penalty during the application period and *paragraph 18* amends section 124 of the 2003 Act to make provision for convictions for an immigration offence or requirement to pay an immigration penalty which come to light after the grant of a personal licence. New section 3(B) sets out the steps the Secretary of State may take on being notified of a previous immigration offence or requirement to pay an immigration penalty.
- 213 *Paragraph 19* amends section 125(3) of the 2003 Act to require details of immigration penalties to be included in a personal licence and *paragraph 20* amends section 132 of the 2003 Act to require a licence holder to notify a licensing authority if required to pay an immigration penalty.
- 214 *Paragraph 22* amends section 179 of the 2003 Act to provide power for an immigration officer to enter premises which he has reason to believe are being used for a licensable activity with a view to seeing whether immigration offences are being committed in connection with that activity.

- 215 Part 5 amends Schedule 5 to the 2003 Act to enable the Secretary of State to appeal against a decision of a licensing authority where the Secretary of State has given notice opposing a transfer of a premises licence (*paragraph 24*), an interim authority notice (*paragraph 25*) or grant of a personal licence (*paragraph 27*). *Paragraph 28* inserts into Schedule 5 to the 2003 Act provision that on any appeal against a decision not to issue a licence, a magistrates' court may not consider whether or not the individual should have been granted leave to enter or remain in the UK.
- 216 Part 6 amends the interpretation section of the Licensing Act 2013 (sections 193 and 194) to include a definition of the objective of preventing illegal working in licensed premises for the purpose of Part 2 of this Schedule, and includes immigration offences and penalties in the Act's index of defined expressions.
- 217 Part 7 makes provision for transitional arrangements. *Paragraph 32* provides that a premises licence issued before these measures come into force will not lapse if the holder's entitlement to work in the UK ceases. *Paragraph 33* makes the same provision in respect of personal licences. *Paragraph 34* relates to personal licences granted before or after the measures come into force and has the effect of providing that a licensing authority may take account of immigration offences which were committed before or after the commencement of these measures when considering applications for personal licences.

Schedule 2: Illegal working notices and illegal working compliance orders

Paragraph 1: Illegal working closure notices

- 218 Sub-paragraphs (1) and (2) provide that a chief immigration officer or above can issue a notice to close business premises or a place of work for a specified period if two conditions are met (see below). The closure notice does not apply to a person who lives on the premises or who is authorised in writing by an immigration officer, to access the premises. The closure notice prohibits paid or voluntary work on the premises unless authorised in writing by an immigration officer.
- 219 Sub-paragraphs (3) and (4) set out the first condition, which is that there is an illegal worker employed by an employer operating at the premises. This is an employee who is subject to immigration control and does not have valid leave or whose leave prohibits employment.
- 220 Sub-paragraph (5) sets out the second condition, which is that the employer of the illegal worker, or a person connected with that employer, has previously breached illegal working legislation. This includes being convicted for an illegal working offence, receiving a valid civil penalty within the last three years or a valid civil penalty at any time which has not been paid. Sub-paragraph (8) describes people connected to the employer who may also fulfill the second condition.
- 221 Sub-paragraph (6) ensures that a conviction which is deemed spent is not relevant when determining whether the first condition for issuing the notice is satisfied.
- 222 Sub-paragraph (7) defines a valid civil penalty.
- 223 Sub-paragraph (9) prevents a notice being issued where the employer can show that he has conducted right to work checks in respect of each illegal worker.
- 224 Sub-paragraphs (10) and (11) require an immigration officer to make reasonable efforts to inform people who live on the premises and consult others as appropriate before issuing a notice.

225 Sub-paragraph (12) permits the Secretary of State to amend the minimum rank of immigration officer able to issue to the closure notice. These regulations are subject to the affirmative procedure.

Paragraph 2: Illegal working closure notices: further provision

226 Sub-paragraph (1) lists the information to be provided in an illegal working closure notice.

227 Sub-paragraphs (2), (3) and (4) provide that the closure cannot exceed 24 hours; or 48 hours (excluding Christmas day) if the notice is issued by an immigration officer of at least the rank of immigration inspector.

228 Sub-paragraphs (5) and (6) provide that an immigration inspector can extend the period of closure by 24 hours for up to a maximum of 48 hours.

229 Sub-paragraph (7) permits the Secretary of State to amend the minimum rank of immigration officer able to issue or extend the period of the closure notice beyond 24 hours. These regulations are subject to the affirmative procedure.

Paragraph 3: Cancellation of closure notices

230 Sub-paragraph (1) permits an immigration officer to issue a cancellation notice where the employer has shown that, if he were issued a civil penalty, he would be excused from paying it in relation to the employment of each illegal worker.

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

Paragraph 4: Service of notices

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

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

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

Paragraph 5: Illegal working compliance orders

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

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

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

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

working legislation. The provision also makes clear that the court may also make any other provision it considers appropriate.

239 Sub-paragraph (7) is self explanatory.

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

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

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

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

Paragraph 6: Compliance orders: adjournment of hearing

244 Sub-paragraphs (1) and (2) allow the court to adjourn the hearing of the application for an order for 14 days to allow a person who occupies, controls or has an interest in the premises to show why the order should not be made.

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

Paragraph 7: Extension of illegal working compliance orders

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

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

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

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

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

Paragraph 8: Variation or discharge of illegal working compliance orders

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

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

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

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

Paragraph 9: Notice and orders: appeals

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

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

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

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

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

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

Paragraph 10: Notice and orders: enforcement

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

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

Paragraph 11: Notices and orders: offences

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

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

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

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

Paragraph 12: Access to other premises

- 267 Sub-paragraph (1) allows the owner of premises which are in another part of the building or structure in which the closed premises are situated to apply for access where it is prohibited by an illegal working compliance order.
- 268 Sub-paragraph (2) requires notice of such an application to be served on an immigration officer, each person on whom the closure notice was served and any other person with an interest in the premises.
- 269 Sub-paragraphs (3) and (4) permit the court to make whatever order it thinks appropriate in relation to access to another part of the building or structure in which the closed premises is situated.

Paragraph 13: Reimbursement of costs

- 270 Sub-paragraph (1) allows the Secretary of State to apply to the court for an order requiring the owner or occupier of the premises to reimburse her for the costs of clearing, securing or maintaining the premises in respect of which an illegal working compliance order is in force.
- 271 Sub-paragraph (2) allows the court to make an order requiring the owner or occupier of the premises to reimburse the Secretary of State in full or in part.
- 272 Sub-paragraph (3) requires an application for reimbursement of costs to be made within 3 months of the illegal working compliance order ceasing to have effect.
- 273 Sub-paragraph (4) provides that an order for reimbursement of costs may only be made against a person who has been served with an application for the order.

Paragraph 14: Exemption from liability

- 274 Sub-paragraph (1) lists the persons who are exempt from liability for damages in certain categories of proceedings arising from acts or omissions in the exercise of a power under this Schedule.
- 275 Sub-paragraph (2) disapplies the exemption if the act or omission was in bad faith.
- 276 Sub-paragraph (3) clarifies that the exemption does not prevent the award of damages if the act or omission was unlawful under section 6(1) of the Human Rights Act 1998.
- 277 Sub-paragraph (4) clarifies that this exemption does not affect any other exemption under common law or otherwise.

Paragraph 15: Compensation

- 278 Sub-paragraphs (1) and (2) allow a person who claims to have suffered financial loss as a consequence of an illegal working closure notice or compliance order to apply to the court for compensation within 3 months of the notice or order ceasing to have effect.
- 279 Sub-paragraph (3) permits the court to order payment of compensation out of money provided by Parliament and lists the conditions which are to be met.
- 280 Sub-paragraph (4) prevents a person from claiming compensation for financial loss relating to their work.

Paragraph 16: Guidance

- 281 Sub-paragraphs (1) and (2) permit the Secretary of State to issue and revise guidance in relation to illegal working closure notices and compliance orders.
- 282 Sub-paragraph (3) requires the Secretary of State to consult certain persons before issuing or

revising such guidance.

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

Paragraph 17: Interpretation

284 This paragraph defines the terms used in the Schedule.

Schedule 3: Bank accounts

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

286 New section 40A creates a duty for banks and building societies to carry out periodic checks on the immigration status of holders, signatories and beneficiaries of existing current accounts ("immigration check"), to identify whether they are disqualified persons. Subsection (3) of new section 40A defines a disqualified person as someone known to be unlawfully present in the UK, and for whom the Secretary of State considers that a current account should not be provided by a bank or building society. The frequency of these checks will be specified in regulations made by HM Treasury (subsection (1) of new section 40A)

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

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

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

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

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

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

293 New section 40D (freezing orders) provides for courts (as defined in subsection (9) of new section 40D) to be able to make an order to freeze accounts held by a disqualified person on application by the Secretary of State. A person whose account is frozen will not be able to make withdrawals or payment transfers from the account, subject to exceptions outlined

below. A person other than the disqualified person may also be prevented from making withdrawals or payments from an account if it is jointly controlled with the disqualified person and the Secretary of State and the court consider it appropriate.

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

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

296 New section 40E makes statutory provision for appeals against freezing orders.

297 New section 40G establishes duties that will apply where a bank or building society has been notified that the Secretary of State does not intend to seek a freezing order. Subsection (2) requires that the bank or building society must close the accounts in question as soon as is reasonably practicable. This will allow notice to be given in line with the terms and conditions of an account. In the case of accounts that are overdrawn, or where the bank or building society believes that closure would significantly adversely affect other persons or bodies who operate or hold the accounts, the bank or building society may further delay closure for a reasonable period, but not indefinitely. This will enable the bank or building society to take necessary action to resolve the situation, including action to recover debt or open new accounts for third parties if that is appropriate.

298 Subsection (5) of new section 40G also provides that a bank or building society can comply with the duty in subsection (2) without closing an account. This will be the case where the account is also operated by others who are not disqualified persons and the bank or building society can prevent the disqualified person from continuing as a holder, beneficiary or signatory of the account while leaving the account open.

299 Where an account is closed under subsection (2) of new section 40G, the account holders must be informed that the closure is due to the fact that the account is operated by or for a disqualified person. If a disqualified person is prevented from continuing to operate an account under subsection (5), account holders must also be informed.

300 The bank or building society will be under a further duty to notify the Secretary of State of the action it has taken to comply with the duty, in a manner to be prescribed in subsequent regulations made by the Treasury.

301 *Paragraph 3* amends section 41 of the 2014 Act to enable the Treasury to make regulations to enable the Financial Conduct Authority to regulate banks and building societies' compliance with these new requirements.

302 *Paragraph 4* of Schedule 3 amends section 42 of the 2014 Act with the effect that the definitions of 'bank' and 'building society' which it contains also apply in the case of these new sections inserted into the 2014 Act by paragraph 2 of Schedule 3 to the Bill.

303 *Paragraph 5* extends to the new clauses the power to amend the categories of institution, account and person to which the provisions apply. This power is contained in section 43 of the 2014 Act.

304 *Paragraph 6* is a consequential amendment to section 74 of the 2014 Act, which governs the making of orders and regulations under the Act.

305 *Paragraph 7* amends the Civil Jurisdiction and Judgments Act 1982, to ensure that a freezing

order made under new section 40D is in the category of judgments which can be enforced across the UK.

Schedule 4: Amendments to search warrant provisions

- 306 When immigration warrants to enter premises were first added to the 1971 Act they closely reflected those available to the police in England and Wales, but over time amendments have been made to the Police and Criminal Evidence Act 1984 (PACE) so that the provisions are no longer aligned. This hampers efficient joint-working between immigration and police officers, as well as other agencies that are used to working alongside the police. The new measures amend current laws to resolve the discrepancies between police and immigration warrants.
- 307 *Paragraph 2(3)* inserts new subsections (1A) to (1D) into section 28D of the 1971 Act. Under these new sections, one warrant can be used to enter multiple premises on a number of different occasions where necessary. Likewise, paragraph 3 (3) does the same for warrants obtained under section 28FB of the 1971 Act, paragraph 6 (3) for warrants obtained under paragraph 25A of Schedule 2 to the 1971 Act and paragraph 7 (3) for a warrant obtained under section 45 of the UK Borders Act 2007.
- 308 *Paragraph 4* amends section 28J (search warrants: safeguards) of the 1971 Act to clarify the matters which must be specified in the application for an entry warrant which authorises multiple entries or entry to multiple premises.
- 309 *Paragraph 5* amends section 28K (execution of warrants) of the 1971 Act. Sub-paragraph (2) inserts new subsections (2A) and (2B) which provide that any person who accompanies an immigration officer has the same power as the immigration officer in executing a warrant and seizing items to which the warrant relates, but only where supervised. Sub-paragraph (3) extends the validity of an immigration warrant from 1 to 3 months. Sub-paragraph (4) inserts new subsections (3A) and (3B) which give detail on the authorisation required for entry to those premises not specified on an all premises warrant and for entry a second or subsequent time on multiple entry warrants respectively.

Schedule 5: Immigration bail

Part 1 - Main provisions

- 310 Prior to the amendments made by this Schedule, there were a number of provisions under which a person who would otherwise have been held in immigration detention, could be released or have avoided being detained altogether. These were generally known as: temporary admission; temporary release; release on restrictions; and immigration bail. The Schedule replaces these with a new consolidated framework.
- 311 Sub-paragraphs (1) to (3) of *paragraph 1* set out all the categories of persons being detained or liable to be detained who may be given immigration bail by the Secretary of State or the Tribunal. The paragraph also clarifies that a person can be granted immigration bail even if they are still liable to immigration detention, but cannot currently be detained, and the point at which immigration bail will end.
- 312 *Paragraph 2* sets out the different conditions which may be applied to a person on immigration bail. A person cannot be given bail without being subject to at least one of these conditions. Sub-paragraph (3) and (4) provides the Secretary of State with the power to specify that a person's immigration bail includes a condition on electronic monitoring and/or residence. Prior to the amendments made by sub-paragraph (3) and (4), the Tribunal could decide not to apply an electronic monitoring or residence request made by the Secretary of State, (although in practice the Tribunal often granted the request). It is in the event of such a refusal by the Tribunal that the Secretary of State would, if she considered it appropriate, use her power to

require that bail is subject to such a condition.

313 Sub-paragraph (2) of *paragraph 3* sets out the factors which must be taken into account when deciding whether to grant immigration bail and what conditions should be imposed. Sub-paragraphs (3) and (4) prevent the Tribunal from granting bail in certain circumstances, where removal of the person from the United Kingdom is imminent. Sub-paragraphs (5) to (8) require the decision to give bail to be set out in a notice.

314 Sub-paragraph (8) explains that immigration bail can be conditional upon specific requirements being met. For example, if electronic monitoring is a condition for bail, bail will not begin until the equipment has been installed to allow monitoring.

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

316 *Paragraph 5* provides for the ability to insist on a financial condition being required as a condition of bail, and sets out how monies owed can be collected if a bail conditions are not adhered to and a financial condition is in place.

317 *Paragraph 6* sets out when a person's conditions of bail may be amended or removed, or new conditions may be added, (as already set out in paragraph 3), by the Secretary of State or the Tribunal (whoever is managing that bail). The Tribunal may also choose to direct that the Secretary of State takes over management of the conditions where it has initially granted bail. Notice of a decision to vary bail must be given to the person on immigration bail.

318 The Secretary of State's ability to require a person to live at a particular address could be undone by that person's inability (for example, in having insufficient finances) to live at that address. *Paragraph 7* provides a power for the Secretary of State to provide accommodation. However, it may only be used where the Secretary of State requires residence at a particular address that she has specified as part of the imposition/mandating of the residence condition; it is not intended that the power is available where, for example, a person proposes a bail address which the Secretary of State accepts (even if the Secretary of State accepts the bail address and imposes/mandates a residence condition for that address).

319 *Paragraph 8* provides a specific power of arrest for failing to comply, or being likely to fail, with a condition of immigration bail. This is a civil (sometimes known as "administrative") arrest power, which may be exercised by a constable as well as an immigration officer. The intention is to bring the arrested person before the Secretary of State or the Tribunal with the consequence that they may be detained or released on immigration bail on the same or different conditions. It replaces the current powers of arrest for breaches of bail in Schedules 2 and 3 of the 1971 Act. This is separate to the arrest power immigration officers have under section 28A of the 1971 Act for the criminal offence in section 24(1) of that Act.

320 *Paragraph 9* sets out a number of requirements of the Tribunal Procedure Rules, providing for the effect of the current provisions to apply to new immigration bail.

321 Transitional provisions will apply so that persons who are subject to temporary admission, temporary release, release on restrictions or bail will transfer automatically to new immigration bail on commencement of these powers (paragraph 10).

Part 2: Consequential amendments

322 *Paragraph 12* amends section 24(1)(e) of the 1971 Act so that it now extends the offence of failing (without reasonable excuse) to observe restrictions imposed under Schedules 2 or 3 to that Act to include all the conditions of new immigration bail.

Schedule 6: Support for certain categories of migrant

Part 1: Amendments of the Immigration Acts

- 323 The 1999 Act contains powers to support destitute asylum seekers and their dependants under section 95 of the Act. Failed asylum seekers and their dependants may also be supported under section 95 (if there were children aged under 18 in their household at the time their asylum claim and any appeal was finally rejected) or under section 4(2) of the 1999 Act. Certain other categories of migrants may be supported under section 4(1) of the 1999 Act.
- 324 Section 95 and section 4 both contain powers to make Regulations by negative resolution procedure to set out the circumstances and ways in which support may be provided.
- 325 This Schedule amends these provisions. Arrangements to support destitute asylum seekers are unchanged, subject to the following exceptions:
- a. Persons who have children in their household at the time their asylum claim and any appeal is finally rejected will no longer be treated as though they were still asylum seekers and so will no longer be eligible for support under section 95;
 - b. Persons who have been refused asylum but made further submissions that they have asked to be treated as a fresh claim for asylum may be eligible for support under section 95 if a decision on the further submissions has not yet been made;
 - c. Persons whose further submissions have been rejected but who have been granted permission to apply for a judicial review of the rejection may be eligible for support under section 95.
- 326 The Schedule repeals the whole of section 4 of the 1999 Act and creates a new power (“section 95A”) to support failed asylum seekers and their dependants who can demonstrate that they are destitute and that they face a genuine obstacle to leaving the UK.
- 327 The precise circumstances that will constitute a genuine obstacle may be set out in regulations. An example of a genuine obstacle may be the inability to access the requisite documentation in order to travel. As is already the case in respect of section 95 support, regulations may also specify how support may be provided. For example, support may be provided in the form of cash or vouchers that enable the persons to meet their daily living needs.

Part 2: Transitional provision

- 328 The Schedule also provides for transitional arrangements for failed asylum seekers who are currently supported under section 4 (mostly single adults but some families with children) and section 95 (all families with children) at the time the new arrangements come into force. Both categories will continue to be supported, but regulations will allow greater flexibility in determining the scope of the support. For example, in all cases support may be provided in the form of vouchers or cash (cash may not currently be provided in section 4 cases) but to continue to access support, persons may be required to show that they are complying with specified steps to facilitate their departure from the United Kingdom.
- 329 There will be no right of appeal against a decision to discontinue support provided to transitional cases or against a decision to refuse or discontinue support provided under section 95A.

Schedule 7: Penalties relating to airport control areas

330 Paragraph 1 inserts new Part 1A into Schedule 2 of the 1971 Act.

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

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

Paragraph 28B - penalty notices

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

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

Paragraph 28C - objections

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

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

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

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

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

Paragraph 28D - appeals

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

- 341 Sub-paragraph (2) provides that an appeal can only be brought if the appellant has objected to the notice.
- 342 Sub-paragraph (3) requires that the appeal must be made within 28 days of the notification of the decision.
- 343 Sub-paragraph (4) provides for the court to allow the appeal and either cancel or reduce the penalty; or dismiss the appeal.
- 344 Sub-paragraph (5) requires the appeal to be a re-hearing of the Secretary of State's decision to impose a penalty and to be determined having regard to: any extant codes of practice under paragraph 28A, and any other matters which the court thinks relevant (which may include matters of which the Secretary of State was unaware).
- 345 Sub-paragraph (6) allows for a full re-hearing under sub-paragraph 3 irrespective of the Civil Procedure Rules (Part 52), or other rules applying to the court in question, that stipulate that an appeal must be on the basis of a point of law.
- 346 Sub-paragraph (7) and (8) stipulates that in this section "the court" means: the county court if the appeal relates to a penalty notice for a failure to comply at an airport in England and Wales; the sheriff, if the appeal relates to a penalty for a failure to comply at an airport in Scotland; and a county court in Northern Ireland if the appeal relates to a penalty for a failure to comply at an airport in Northern Ireland.

Paragraph 28E - enforcement

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

Paragraph 28F - service of documents

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

Paragraph 28G - interpretation of this part of this schedule

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

Paragraph 28H - regulations under this part of this schedule

356 Sub-paragraphs (1) to (3) stipulate that regulations under this Schedule are to be made by statutory instrument subject to the negative procedure, and may make different provision for different purposes; and may make incidental, supplementary, consequential, transitional, transitory or saving provision.

Schedule 8: Maritime enforcement

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

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

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

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

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

New Part 3A to 1971 Act

362 Paragraph 7 of this schedule inserts new Part 3A after Part 3 of the 1971 Act. Part 3A sets out the circumstances in which immigration officers, the police and members of the Armed

Services can use the powers to stop, board, divert and detain a ship set out in new Schedule 4A of the 1971 Act (for which, see notes on paragraph 8 below).

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

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

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

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

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

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

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

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

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

371 Sub-paragraphs (5) and (7) give examples of actions that can be carried out by officers during

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

- 372 Under paragraph 4, sub-paragraphs (1) and (2) permit officers to arrest any person, without warrant, that they reasonably suspect to have committed a facilitation offence on the ship under investigation. Sub-paragraph (3) also permits an officer to seize and detain any suspected evidence of a facilitation offence other than items of legal privilege. Sub-paragraph (4) clarifies that these powers can be exercised on the ship itself or elsewhere.
- 373 Under paragraph 5(1) and (2), officers can search a person on the ship for anything which they reasonably believe might be used to cause physical injury, damage to property or endanger the safety of a ship. Sub-paragraph (2) ensures that the powers can only be exercised where the officer has reasonable grounds to believe that such an item is concealed on a person and only to the extent necessary. Officers may also seize and retain such items (sub-paragraph (3)), but must return the items to the person they were taken from, if that person is released from detention (sub-paragraph (4)). This power does not authorise the removal of any clothing in public other than an outer coat, jacket or gloves, but it does authorise the search of a person's mouth (sub-paragraph (5)).
- 374 Paragraph 6 provides a power for officers to require any person on the ship to produce a nationality document and, if they reasonably believe that person is concealing documents that may establish that person's identity, such as a passport or identity card, search that person (sub-paragraphs 1 and 2). The power of search may only be exercised where there are reasonable grounds to believe that such a document is concealed on a person and only to the extent necessary (sub-paragraph (3)). The officer can seize and retain a document relating to a person's identity for as long as they believe that person will arrive in the United Kingdom, but this does not affect any other power of retention the office may have (sub-paragraphs (4) and (5)). Documents seized and retained by constables or members of the Armed Services must be passed to an immigration officer as soon as possible after the ship has arrived in the United Kingdom (sub-paragraph (6)). The power does not authorise the removal of any clothing in public other than an outer coat, jacket or gloves, or the seizure or retention of any document that the officer reasonably believes is subject to legal privilege (sub-paragraph (7)). Sub-paragraph (8) defines "nationality document" and sub-paragraph (9) clarifies that the power may be used elsewhere than on the ship being boarded.
- 375 To ensure that relevant officers can perform their powers under this Schedule, paragraph 7 allows them to take another person, or relevant equipment and materials, on board a ship. The assistant may perform functions on behalf of the relevant officer under their supervision.
- 376 Paragraph 8 confirms that, where necessary, a relevant officer may use reasonable force to perform their functions set out in this Part of the Schedule.
- 377 Under paragraph 9 a relevant officer must provide evidence of their authority to exercise the powers set out in this Schedule, if requested to do so.
- 378 In order to carry out their functions, relevant officers require some protection from prosecution. Paragraph 10 protects officers from personal liability in any civil or criminal proceedings for anything done in performance of the functions in this Schedule, provided that a court is satisfied that they acted in good faith and had reasonable grounds for their actions.

379 Paragraph 11 creates two offences where a person does not comply with the investigation. The first (sub-paragraph (1)) makes it an offence where a person intentionally obstructs an officer exercising the powers in this Schedule, or fails to comply with a requirement made by an officer, without reasonable excuse. The second (sub-paragraph (2)) makes it an offence where a person knowingly or recklessly provides false information, or intentionally fails to disclose anything material, where an officer requires information when exercising the powers within this Schedule. Sub-paragraph (3) provides officers with a power of arrest without warrant for either of these offences. Both of these offences are summary only and on conviction the defendant is liable to an unlimited fine or 6 months imprisonment or both (sub-paragraph (4)). Sub-paragraph (5) increases the maximum period of imprisonment to 51 weeks after the commencement of section 281(5) of the Criminal Justice Act 2003.

Part 2 of new Schedule 4A

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

Part 3 of new Schedule 4A

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

Schedule 9: Civil registration fees

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

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

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

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

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

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

387 *Paragraph 2* inserts a new section 38A into the Births and Deaths Registration Act 1953 ("the 1953 Act"). Subsection (1) of new section 38A allows the Minister to make regulations to set fees for birth and death registration services. As for marriages, the fees currently specified on the face of the 1953 Act are omitted (see paragraphs 22 to 28 of Schedule 9) and those fees may instead be prescribed under new section 38A. The power also enables the setting of fees for

services which have to date been provided without charge, and, more broadly, for any birth and death registration services (including those performed under other enactments) provided by or on behalf of the Registrar General, superintendent registrars and registrars, or by any other person.

388 Also as for marriage, subsections (3) and (4) of new section 38A enable the regulations to provide for part of the fee that is paid to superintendent registrars and registrars to be passed on by them to the Registrar General, to cover the cost of the Registrar General's contribution to the particular service.

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

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

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

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

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

Part 2: Consequential and related amendments

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

Commencement

395 The immigration skills charge measure in clause 46 comes into force two months after Royal Assent. The remaining provisions of the Bill will come into force by means of commencement regulations made by the Secretary of State. Subject to parliamentary approval of the Bill and any necessary secondary legislation, it is intended to start commencement of the provisions of the Bill from Summer 2016.

Financial implications of the Bill

396 The financial costs and benefits of the Bill have been set out in accompanying impact assessments. The following assessments have been made:

- a. An overarching Bill impact assessment;
- b. An impact assessment of the illegal working measures relating to licensing in the 2003 Act;

- c. An impact assessment of the bank accounts measures; and
- d. An impact assessment on reforms to the support available for asylum seekers.

Parliamentary approval for financial costs or for charges imposed

397 The additional expenditure arising from the Bill is subject to a Money Resolution. On introduction Parliament will be asked to agree that any expenditure arising from this Bill (should it become an Act) incurred by a member of government will be taken out of money supplied by Parliament. The Bill is also subject to a Ways and Means Resolution relating to the immigration skills charge and fees measures, and payments in to the Consolidated Fund.

Compatibility with the European Convention on Human Rights

398 Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement before Second Reading about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). The Home Secretary, the Rt Hon Theresa May MP, has made the following statement:

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

399 The government has published a separate ECHR memorandum with its assessment of compatibility of the Bill's provisions with the Convention rights (see related documents below).

Related documents

400 The following documents are relevant to the Bill and can be read at the stated locations:

- Prime Minister's Speech on Immigration, 21 May 2015, <https://www.gov.uk/government/speeches/pm-speech-on-immigration>
- Government consultation 'Reforming support for failed asylum seekers and other illegal migrants' <https://www.gov.uk/government/consultations/reform-of-support-for-failed-asylum-seekers-and-other-illegal-migrants>
- Migration Advisory Committee 'Call for evidence: Review of Tier 2' <https://www.gov.uk/government/consultations/call-for-evidence-review-tier-2-route>

Annex A - Glossary

| Term | Reference |
|-------------------|------------------------------------------------------------------------------------------------|
| 1949 Act | Marriage Act 1949 |
| 1953 Act | Births and Deaths Registration Act 1953 |
| 1971 Act | Immigration Act 1971 |
| 1999 Act | Immigration and Asylum Act 1999 |
| 2002 Act | Nationality, Immigration and Asylum Act 2002 |
| 2003 Act | Licensing Act 2003 |
| 2006 Act | Immigration, Asylum and Nationality Act 2006 |
| 2014 Act | Immigration Act 2014 |
| 2015 Act | Modern Slavery Act 2015 |
| ECHR | European Convention on Human Rights |
| MAC | Migration Advisory Committee |
| NHS | National Health Service |
| Non-EEA | non-European Economic Area |
| The Tribunal | First-tier Tribunal |
| Immigration Rules | Rules laid down by the Secretary of State pursuant to section 3(2) of the Immigration Act 1971 |

Annex B - Territorial extent and application

| Provision | England | Wales | | Scotland | | Northern Ireland | |
|------------------------------------------|------------------------------------------|----------------------------------------|--------------------------------------|----------------------|--------------------------------------|------------------------------|--------------------------------------|
| | Extends to E & W and applies to England? | Extends to E & W and applies to Wales? | Legislative Consent Motion required? | Extends to Scotland? | Legislative Consent Motion required? | Extends to Northern Ireland? | Legislative Consent Motion required? |
| Part 1 Labour Market and Illegal working | | | | | | | |
| Clause 1 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 2 | Yes | Yes | No | Yes | No | Partial | No |
| Clause 3 | Yes | Yes | No | Yes | No | Partial | No |
| Clause 4 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 5 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 6 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 7 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 8 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 9 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 10 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 11 | Yes | Yes | No | Yes | No | Yes | No |
| Part 2 Access to Services | | | | | | | |
| Clause 12 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 13 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 14 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 15 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 16 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 17 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 18 | Yes | Yes | No | Yes | No | Yes | No |
| Part 3 Enforcement | | | | | | | |
| Clause 19 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 20 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 21 | Yes | Yes | No | Yes | No | Yes | No |

These Explanatory Notes relate to the Immigration Bill as introduced in the House of Commons on 17 September 2015 (Bill 74)

| | | | | | | | |
|--------------------------------------------------------|-----|-----|-----|-----|-----|-----|-----|
| Clause 22 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 23 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 24 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 25 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 26 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 27 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 28 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 29 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 30 | Yes | Yes | No | Yes | No | Yes | No |
| Part 4 Appeals | | | | | | | |
| Clause 31 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 32 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 33 | Yes | Yes | No | Yes | No | Yes | No |
| Part 5 Asylum | | | | | | | |
| Clause 34 | Yes | Yes | No | Yes | No | Yes | No |
| Part 6 Border Security | | | | | | | |
| Clause 35 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 36 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 37 | Yes | Yes | No | Yes | No | Yes | No |
| Part 7 Language Requirements for Public Sector Workers | | | | | | | |
| Clause 38 | Yes | Yes | Yes | No | N/A | No | N/A |
| Clause 39 | Yes | Yes | Yes | No | N/A | No | N/A |
| Clause 40 | Yes | Yes | Yes | No | N/A | No | N/A |
| Clause 41 | Yes | Yes | Yes | No | N/A | No | N/A |
| Clause 42 | Yes | Yes | Yes | No | N/A | No | N/A |
| Clause 43 | Yes | Yes | Yes | No | N/A | No | N/A |
| Clause 44 | Yes | Yes | Yes | No | N/A | No | N/A |
| Clause 45 | Yes | Yes | Yes | No | N/A | No | N/A |
| Part 8 Fees | | | | | | | |
| Clause 46 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 47 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 48 | Yes | Yes | No | Yes | No | Yes | No |

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| | | | | | | | |
|-------------------------|-----|-----|----|-----|-----|-----|-----|
| Clause 49 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 50 | Yes | Yes | No | No | N/A | No | N/A |
| Part 9 Final Provisions | | | | | | | |
| Clause 51 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 52 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 53 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 54 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 55 | Yes | Yes | No | Yes | No | Yes | No |
| Clause 56 | Yes | Yes | No | Yes | No | Yes | No |
| Schedules | | | | | | | |
| Schedule 1 | Yes | Yes | No | No | N/A | No | N/A |
| Schedule 2 | Yes | Yes | No | Yes | No | Yes | No |
| Schedule 3 | Yes | Yes | No | Yes | No | Yes | No |
| Schedule 4 | Yes | Yes | No | Yes | No | Yes | No |
| Schedule 5 | Yes | Yes | No | Yes | No | Yes | No |
| Schedule 6 | Yes | Yes | No | Yes | No | Yes | No |
| Schedule 7 | Yes | Yes | No | Yes | No | Yes | No |
| Schedule 8 | Yes | Yes | No | Yes | No | Yes | No |
| Schedule 9 | Yes | Yes | No | No | N/A | No | N/A |

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IMMIGRATION BILL

EXPLANATORY NOTES

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