

Nationality and Borders Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Home Office, are published separately as Bill 141-EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

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

In my view the provisions of the Nationality and Borders Bill are compatible with the Convention rights.

Nationality and Borders Bill

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B I L L
TO

Make provision about nationality, asylum and immigration; to make provision about victims of slavery or human trafficking; to provide a power for Tribunals to charge participants where their behaviour has wasted the Tribunal's resources; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament

assembled, and by the authority of the same, as follows:—

PART 1

NATIONALITY

British overseas territories citizenship

1 Historical inability of mothers to transmit citizenship

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(1) Part 2 of the British Nationality Act 1981 (British overseas territories citizenship) is amended as follows.

(2) After section 17, insert—

“17A Registration: remedying inability of mothers to transmit citizenship

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(1) On an application for registration under this section, a person (“P”) is entitled to be registered as a British overseas territories citizen if the following three conditions are met.

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(2) The first condition is that—

(a) P would have become a citizen of the United Kingdom and Colonies under any of the following provisions of the British Nationality Act 1948—

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- (i) section 5 (person born on or after 1 January 1949: citizenship by descent);
- (ii) section 12(2) (person born before 1 January 1949: citizenship by descent); 5
- (iii) section 12(3) (person born before 1 January 1949 in British protectorate etc);
- (iv) section 12(4) (person born before January 1949 not becoming citizen of other country); 10
- (v) section 12(5) (woman married before 1 January 1949 to a man who became or would have become a citizen of the United Kingdom and Colonies); 15
- (vi) paragraph 3 of Schedule 3 (person born on or after 1 January 1949 to a British subject without citizenship); 20
had P's parents been treated equally, by that Act or by any relevant previous provision, for the purposes of determining P's nationality status; or 25
- (b) P would have been a citizen of the United Kingdom and Colonies immediately before 30

commencement had P's parents been treated equally, for the purposes of determining P's nationality status, by any independence legislation that caused P to lose that citizenship.

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(3) In subsection (2)—

“relevant previous provision” means a provision of the law that was in force at some time before 1 January 1949 which provided for a nationality status to be transmitted from a parent to a child without the need for an application to be made for the child to be registered as a person with that nationality status;

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“independence legislation” means an Act of Parliament or any subordinate legislation (within the meaning of the Interpretation Act 1978) forming part of the law in the United Kingdom (whenever passed or made, and whether or not still in force)—

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(a) providing for a country or territory to become independent from the United Kingdom, or

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(b) dealing with nationality, or any other ancillary matters, in

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connection with a country or territory becoming independent from the United Kingdom.

- (4) In determining for the purposes of subsection (2) whether a person would have become a citizen of the United Kingdom and Colonies under section 5 of the British Nationality Act 1948, the requirement that a person's birth was registered at a United Kingdom consulate, as set out in subsection (1)(b) of that section, is to be ignored. 5 10
- (5) The second condition is that, if P had become or been a citizen of the United Kingdom and Colonies as mentioned in subsection (2), P would at commencement have become a British Dependent Territories citizen under section 23(1)(b) or (c). 15 20
- (6) The third condition is that, if P had become a British Dependent Territories citizen as mentioned in subsection (5), P would have become a British overseas territories citizen on the commencement of section 2 of the British Overseas Territories Act 2002." 25
- (3) In section 25 (meaning of British overseas territories citizen "by descent"), in subsection (1), after paragraph (c) insert— 30

“(ca) the person is a British overseas territories citizen by virtue of registration under section 17A; or”.

2 Historical inability of unmarried fathers to transmit citizenship 5

(1) Part 2 of the British Nationality Act 1981 (British overseas territories citizenship) is amended as follows.

(2) After section 17A (as inserted by section 1), insert— 10

“17B Registration: unmarried fathers; the general conditions

For the purposes of sections 17C to 17F, a person (“P”) meets the general conditions if— 15

(a) at the time of P’s birth, P’s mother—

(i) was not married, or

(ii) was married to a person other than P’s natural father; 20

(b) no person is treated as the father of P under—

(i) section 28 of the Human Fertilisation and Embryology Act 1990, or 25

(ii) section 35 or 36 of the Human Fertilisation and Embryology Act 2008;

- (c) no person is treated as a parent of P under section 42 or 43 of the Human Fertilisation and Embryology Act 2008; and
- (d) P has never been a British overseas territories citizen or a British Dependent Territories citizen.

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17C Person unable to be registered under other provisions of this Act

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(1) A person (“P”) is entitled to be registered as a British overseas territories citizen on an application made under this section if—

(a) P meets the general conditions; and

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(b) P would be entitled to be registered as a British overseas territories citizen under—

(i) section 15(3),

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(ii) section 17(2),

(iii) section 17(5),

(iv) paragraph 4 of Schedule 2, or

(v) paragraph 5 of Schedule 2,

had P’s mother been married to P’s natural father at the time of P’s birth.

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(2) In the following provisions of this section, “relevant registration

- provision” means the provision under which P would be entitled to be registered as a British overseas territories citizen (as mentioned in subsection (1)(b)). 5
- (3) If the relevant registration provision is section 17(2), a person who is registered as a British overseas territories citizen under this section is a British overseas territories citizen by descent. 10
- (4) If the relevant registration provision is section 17(5), the Secretary of State may, in the special circumstances of the particular case, waive the need for any or all of the parental consents to be given. 15
- (5) For that purpose, the “parental consents” are—
- (a) the consent of P’s natural father, 20
and
- (b) the consent of P’s mother, insofar as they would be required by section 17(5)(c) (as read with section 17(6)(b)), had P’s mother been married to P’s natural father at the time of P’s birth. 25

**17D Person unable to become citizen
automatically after commencement**

- (1) A person (“P”) is entitled to be registered as a British overseas territories citizen on an application made under this section if—
- 5
- (a) P meets the general conditions;
- (b) at any time in the period after commencement, P would have automatically become a British Dependent Territories citizen or a British overseas territories citizen at birth by the operation of—
- 10
- (i) section 15(1),
- (ii) section 16, or
- 15
- (iii) paragraph 1 of Schedule 2, had P’s mother been married to P’s natural father at the time of P’s birth; and
- (c) in a case where P would have become a British Dependent Territories citizen as mentioned in paragraph (b), P would then have automatically become a British overseas territories citizen by the operation of section 2 of the British Overseas Territories Act 2002.
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- (2) A person who is registered as a British overseas territories citizen under this section is a British overseas territories
- 30

- citizen by descent if the citizenship which the person would have acquired at birth (as mentioned in subsection (1)(b)) would (by virtue of section 25) have been citizenship by descent. 5
- (3) If P is under the age of 18, no application may be made unless the consent of P's natural father and mother to the registration has been signified in the prescribed manner. 10
- (4) But if P's natural father or mother has died on or before the date of the application, the reference in subsection (3) to P's natural father and mother is to be read as a reference to either of them. 15
- (5) The Secretary of State may, in the special circumstances of a particular case, waive the need for any or all of the consents required by subsection (3) (as read with subsection (4)) to be given. 20
- (6) The reference in this section to the period after commencement does not include the time of commencement (and, accordingly, this section does not apply to any case in which a person was unable to become a British Dependent Territories citizen at commencement). 25 30

17E Citizen of UK and Colonies unable to become citizen at commencement

- (1) A person (“P”) is entitled to be registered as a British overseas territories citizen on an application made under this section if—
- (a) P meets the general conditions;
 - (b) P—
 - (i) was a citizen of the United Kingdom and Colonies immediately before commencement, or
 - (ii) would have become such a citizen as mentioned in section 17A(2)(a), or
 - (iii) would have been such a citizen immediately before commencement as mentioned in section 17A(2)(b);
 - (c) P would then have automatically become a British Dependent Territories citizen at commencement by the operation of section 23, had P’s mother been married to P’s natural father at the time of P’s birth; and
 - (d) P would then have automatically become a British overseas territories citizen by the operation

of section 2 of the British Overseas
Territories Act 2002.

- (2) A person who is registered as a British overseas territories citizen under this section is a British overseas territories citizen by descent if the citizenship which the person would have acquired at commencement (as mentioned in subsection (1)(c)) would (by virtue of section 25) have been citizenship by descent. 5

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17F Other person unable to become citizen at commencement

- (1) A person (“P”) is entitled to be registered as a British overseas territories citizen on an application made under this section if— 15
- (a) P meets the general conditions;
 - (b) P is either— 20
 - (i) an eligible former British national, or
 - (ii) an eligible non-British national; and
 - (c) had P’s mother been married to P’s natural father at the time of P’s birth, P— 25
 - (i) would have been a citizen of the United Kingdom and Colonies immediately before commencement, 30

- (ii) would have automatically become a British Dependent Territories citizen at commencement by the operation of section 23, and 5
 - (iii) would have automatically become a British overseas territories citizen by the operation of section 2 of the British Overseas Territories Act 2002. 10
- (2) In determining for the purposes of subsection (1)(c)(i) whether a person would have been a citizen of the United Kingdom and Colonies, the requirement that a person’s birth was registered at a United Kingdom consulate, as set out in section 5(1)(b) of the British Nationality Act 1948, is to be ignored. 15
20
- (3) P is an “eligible former British national” if P was not a citizen of the United Kingdom and Colonies immediately before commencement and either—
 - (a) P ceased to be a British subject or a citizen of the United Kingdom and Colonies by virtue of the commencement of any independence legislation, but would not have done so had P’s 25
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- mother been married to P’s natural father at the time of P’s birth, or
- (b) P was a British subject who did not automatically become a citizen of the United Kingdom and Colonies at commencement of the British Nationality Act 1948 by the operation of any provision of it, but would have done so had P’s mother been married to P’s natural father at the time of P’s birth. 5
- (4) P is an “eligible non-British national” if— 10
- (a) P was never a British subject or citizen of the United Kingdom and Colonies; and 15
- (b) had P’s mother been married to P’s natural father at the time of P’s birth, P would have automatically become a British subject or citizen of the United Kingdom and Colonies— 20
- (i) at birth, or
- (ii) by virtue of paragraph 3 of Schedule 3 to the British Nationality Act 1948 (child of male British subject to become citizen of the United Kingdom and Colonies if father becomes such a citizen). 25
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- (5) A person who is registered as a British overseas territories citizen under this section is a British overseas territories citizen by descent if the citizenship which the person would have acquired at commencement (as mentioned in subsection (1)(c)(ii)) would (by virtue of section 25) have been citizenship by descent. 5
- (6) In determining for the purposes of subsection (1)(c)(i) whether P would have been a citizen of the United Kingdom and Colonies immediately before commencement, it must be assumed that P would not have— 10
- (a) renounced or been deprived of any notional British nationality, or 15
- (b) lost any notional British nationality by virtue of P acquiring the nationality of a country or territory outside the United Kingdom. 20
- (7) A “notional British nationality” is— 25
- (a) in a case where P is an eligible former British national, any status as a British subject or a citizen of the United Kingdom and Colonies which P would have held at any time after P’s nationality loss (had that loss not occurred and had P’s

- mother been married to P’s natural father at the time of P’s birth);
- (b) in a case where P is an eligible non-British national—
- (i) P’s status as a British subject or citizen of the United Kingdom and Colonies as mentioned in subsection (4)(b), and 5
- (ii) any other status as a British subject or citizen of the United Kingdom and Colonies which P would have held at any time afterwards (had P’s mother been married to P’s natural father at the time of P’s birth). 10
- (ii) any other status as a British subject or citizen of the United Kingdom and Colonies which P would have held at any time afterwards (had P’s mother been married to P’s natural father at the time of P’s birth). 15
- (8) In this section—
- “British subject” has any meaning which it had for the purposes of the British Nationality and Status of Aliens Act 1914; 20
- “independence legislation” means an Act of Parliament or any subordinate legislation (within the meaning of the Interpretation Act 1978) forming part of the law in the United Kingdom (whenever passed or made, and whether or not still in force)— 25

- (a) providing for a country or territory to become independent from the United Kingdom, or
 - (b) dealing with nationality, or any other ancillary matters, in connection with a country or territory becoming independent from the United Kingdom; 5 10
- “P’s nationality loss” means P’s—
- (a) ceasing to be a British subject or citizen of the United Kingdom and Colonies (as mentioned in subsection (3)(a)), or 15
 - (b) not becoming a citizen of the United Kingdom and Colonies (as mentioned in subsection (3)(b)). 20

17G Sections 17B to 17F: supplementary provision

- (1) In sections 17B to 17F and this section, a person’s “natural father” is a person who satisfies the requirements as to proof of paternity that are prescribed in regulations under section 50(9B). 25
- (2) The power under section 50(9B) to make different provision for different circumstances includes power to make 30

provision for the purposes of any provision of sections 17B to 17F which is different from other provision made under section 50(9B).

- | | |
|--|----|
| (3) The following provisions apply for the purposes of sections 17B to 17F. | 5 |
| (4) A reference to a person automatically becoming a citizen of a certain type is a reference to the person becoming a citizen of that type without the need for— | 10 |
| (a) the person to be registered as such a citizen by the Secretary of State or any other minister of the Crown; | 15 |
| (b) the birth of the person to be registered by a diplomatic or consular representative of the United Kingdom; or | 15 |
| (c) the person to be naturalised as such a citizen. | 20 |
| (5) If the mother of a person could not actually have been married to the person's natural father at the time of the person's birth (for whatever reason), that fact does not prevent an assumption being made that the couple were married at the time of the birth." | 25 |
| (3) In section 25 (meaning of British overseas territories citizen "by descent"), in | |

subsection (1), after paragraph (ca) (as inserted by section 1), insert—

“(cb) the person is a British overseas territories citizen by descent by virtue of section 17C(3), 17D(2), 17E(2) or 17F(5); or”.

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(4) In Part 5 of that Act (miscellaneous and supplementary), in section 41A (registration: requirement to be of good character), after subsection (2) insert—

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“(2A) An application for registration of an adult or young person as a British overseas territories citizen under section 17C, so far as the relevant registration provision (as defined in section 17C(2)) is section 15(3), 17(2) or 17(5), must not be granted unless the Secretary of State is satisfied that the adult or young person is of good character.”

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3 Sections 1 and 2: related British citizenship

(1) Part 1 of the British Nationality Act 1981 (British citizenship) is amended as follows.

(2) After section 4J, insert—

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**“4KAcquisition by registration: certain
British overseas territories citizens**

- (1) A person is entitled to be registered as a British citizen on an application made under this section if— 5
- (a) they are entitled to be registered as a British overseas territories citizen under section 17A, 17C, 17D, 17E or 17F, or
- (b) they would be entitled to be registered as a British overseas territories citizen under any of those sections but for the fact that they have already become a British overseas territories citizen under a different provision. 10
15
- (2) Subsection (1) does not apply in the case of a person—
- (a) who is or would be entitled to be registered as a British overseas territories citizen by virtue only of a connection with the Sovereign Base Areas of Akrotiri and Dhekelia, or 20
- (b) who has previously been a British citizen. 25
- (3) The Secretary of State may not register a person as a British citizen under this section unless the person is also

registered as a British overseas territories citizen.”

- (3) In section 14 (meaning of British citizen “by descent”), in subsection (1), after paragraph (da) insert—

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“(db) the person is a British citizen by virtue of registration under section 4K and is—

(i) a British overseas territories citizen by virtue of registration under section 17A, or

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(ii) a British overseas territories citizen by descent by virtue of section 17C(3), 17D(2), 17E(2) or 17F(5); or”.

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- (4) In Part 5 of that Act (miscellaneous and supplementary), in section 41A (registration: requirement to be of good character), after subsection (2A) (inserted by section 2) insert—

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“(2B) Subsection (2C) applies to an application for registration of an adult or young person as a British citizen under section 4K who is, or would have been, entitled to be registered as a British overseas territories citizen under section 17C, so far as the relevant registration provision (as defined in section 17C(2)) is section 15(3), 17(2) or 17(5).

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(2C) The application must not be granted unless the Secretary of State is satisfied that the adult or young person is of good character.”

4 Period for registration of person born outside the British overseas territories 5

(1) In section 17 of the British Nationality Act 1981 (acquisition of British overseas territories citizenship by registration: minors)— 10

(a) in subsection (2), for “within the period of twelve months from the date of the birth” substitute “while the person is a minor”;

(b) omit subsection (4). 15

(2) In section 41A of that Act (registration: good character requirement), in subsection (2), after “17(1)” insert “, (2)”.

British citizenship

5 Disapplication of historical registration requirements 20

(1) The British Nationality Act 1981 is amended as follows.

(2) In section 4C (acquisition by registration: certain persons born before 1983), for subsection (3D) substitute— 25

- “(3D) In determining for the purposes of subsection (3) whether a person would have been a citizen of the United Kingdom and Colonies, the requirement that a person’s birth was registered at a United Kingdom consulate, as set out in section 5(1)(b) of the British Nationality Act 1948, is to be ignored.” 5
- (3) In section 4I (other person unable to become citizen at commencement), after subsection (1) insert— 10
- “(1A) In determining for the purposes of subsection (1)(c)(i) whether a person would have been a citizen of the United Kingdom and Colonies, the requirement that a person’s birth was registered at a United Kingdom consulate, as set out in section 5(1)(b) of the British Nationality Act 1948, is to be ignored.” 15 20

6 Citizenship where mother married to someone other than natural father

- (1) The British Nationality Act 1981 is amended as follows. 25
- (2) In section 4E (the general conditions)—
- (a) omit paragraph (a) (requirement that applicant was born before 1 July 2006);

- (b) in paragraph (c), after “1990” insert “or under section 35 or 36 of the Human Fertilisation and Embryology Act 2008”;
- (c) after paragraph (c) (but before the “and”) insert—
- “(ca) no person is treated as a parent of P under section 42 or 43 of the Human Fertilisation and Embryology Act 2008;”.
- (3) In section 4F (person unable to be registered under other provisions of this Act), in subsection (1)(b), after subparagraph (iii) insert—
- “(iiia) section 4D,”.
- (4) In section 41A (registration: requirement to be of good character), in subsection (1A), for “or 3(5)” substitute “, 3(5) or 4D”.
- Powers of the Secretary of State relating to citizenship etc*

7 Citizenship: registration in special cases

- (1) The British Nationality Act 1981 is amended as follows.
- (2) After section 4K (as inserted by section 3) insert—

“4L Acquisition by registration: special circumstances

- (1) If an application is made for a person of full age and capacity (“P”) to be registered as a British citizen, the Secretary of State may cause P to be registered as such a citizen if, in the Secretary of State’s opinion, P would have been, or would have been able to become, a British citizen but for—
- (a) historical legislative unfairness,
 - (b) an act or omission of a public authority, or
 - (c) exceptional circumstances relating to P.
- (2) For the purposes of subsection (1)(a), “historical legislative unfairness” includes circumstances where P would have become, or would not have ceased to be, a British subject, a citizen of the United Kingdom and Colonies or a British citizen, if an Act of Parliament or subordinate legislation (within the meaning of the Interpretation Act 1978) had, for the purposes of determining a person’s nationality status—
- (a) treated males and females equally,
 - (b) treated children of unmarried couples in the same way as children of married couples, or

- (c) treated children of couples where the mother was married to someone other than the natural father in the same way as children of couples where the mother was married to the natural father. 5
- (3) In subsection (1)(b), “public authority” means any public authority within the meaning of section 6 of the Human Rights Act 1998, other than a court or tribunal. 10
- (4) In considering whether to grant an application under this section, the Secretary of State may take into account whether the applicant is of good character.” 15
- (3) After section 17G (as inserted by section 2), insert—
- “17H Acquisition by registration: special circumstances 20**
- (1) If an application is made for a person of full age and capacity (“P”) to be registered as a British overseas territories citizen, the Secretary of State may cause P to be registered as such a citizen if, in the Secretary of State’s opinion, P would have been, or would have been able to become, a 25

- British overseas territories citizen but for—
- (a) historical legislative unfairness,
 - (b) an act or omission of a public authority, or
 - (c) exceptional circumstances relating to P.
- (2) For the purposes of subsection (1)(a), “historical legislative unfairness” includes circumstances where P would have become, or would not have ceased to be, a British subject, a citizen of the United Kingdom and Colonies, a British Dependent Territories Citizen or a British overseas territories citizen, if an Act of Parliament or subordinate legislation (within the meaning of the Interpretation Act 1978) had, for the purposes of determining a person’s nationality status—
- (a) treated males and females equally,
 - (b) treated children of unmarried couples in the same way as children of married couples, or
 - (c) treated children of couples where the mother was married to someone other than the natural father in the same way as children of couples where the mother was married to the natural father.

- (3) In subsection (1)(b), “public authority” means any public authority within the meaning of section 6 of the Human Rights Act 1998, other than a court or tribunal. 5
- (4) In considering whether to grant an application under this section, the Secretary of State may take into account whether the applicant is of good character.” 10

8 Requirements for naturalisation etc

- (1) Schedule 1 amends the British Nationality Act 1981 to allow the Secretary of State to waive the requirement that a person must have been in the United Kingdom or a relevant territory at the start of the relevant period, in relation to an application for citizenship under— 15
- (a) section 4 of that Act (acquisition of British citizenship by registration: British overseas territories citizens etc), 20
- (b) section 6 of that Act (acquisition of British citizenship by naturalisation), or
- (c) section 18 of that Act (acquisition of British overseas territories citizenship by naturalisation). 25
- (2) In the Borders, Citizenship and Immigration Act 2009, omit sections 39, 40, 41(1) to (3)

and 49(2) and (3) (uncommenced provisions relating to requirements for naturalisation as a British citizen).

- (3) In the Citizenship (Armed Forces) Act 2014, in section 1, omit subsection (4) (amendments to section 39 of the Borders, Citizenship and Immigration Act 2009). 5

Registration of stateless minors

9 Citizenship: stateless minors

- (1) Schedule 2 to the British Nationality Act 1981 (provisions for reducing statelessness) is amended as follows. 10

(2) In the heading before paragraph 3, after “Persons” insert “aged 18 to 22”.

- (3) In paragraph 3 (persons born in the United Kingdom or a British overseas territory after commencement), in sub-paragraph (1)(b) after “he” insert “had attained the age of eighteen but”. 15

- (4) After paragraph 3 insert— 20

“Minors aged 5 to 17 born in the United Kingdom or a British overseas territory after commencement

3A(1)A person born in the United Kingdom or a British overseas territory after commencement is entitled, on an 25

application for the person to be registered under this paragraph, to be so registered if—

- (a) the person is and always has been stateless, 5
 - (b) on the date of the application, the person was a minor,
 - (c) the person was in the United Kingdom or a British overseas territory (no matter which) at the beginning of the period of five years ending with that date and that (subject to paragraph 6) the number of days on which the person was absent from both the United Kingdom and the British overseas territories in that period does not exceed 450, and 10 15
 - (d) the Secretary of State is satisfied that the person is unable to acquire another nationality in accordance with sub-paragraph (2). 20
- (2) A person is able to acquire a nationality in accordance with this sub-paragraph if— 25
- (a) the nationality is the same as that of one of the person's parents,

- (b) the person has been entitled to acquire the nationality since birth, and
 - (c) in all the circumstances, it is reasonable to expect the person (or someone acting on their behalf) to take the steps which would enable the person to acquire the nationality in question. 5
- (3) For the purposes of sub-paragraph (2)(b), a person is not entitled to acquire a nationality if its acquisition is conditional on the exercise of a discretion on the part of the country or territory in question. 10
- (4) A person entitled to registration under this paragraph—
 - (a) is to be registered as a British citizen if, in the period of five years mentioned in sub-paragraph (1), the number of days wholly or partly spent by the person in the United Kingdom exceeds the number of days wholly or partly spent by the person in the British overseas territory; 15
 - (b) is to be registered as a British citizen if, in the period of five years mentioned in sub-paragraph (1), the number of days wholly or partly spent by the person in the United Kingdom exceeds the number of days wholly or partly spent by the person in the British overseas territory; 20
 - (c) is to be registered as a British citizen if, in the period of five years mentioned in sub-paragraph (1), the number of days wholly or partly spent by the person in the United Kingdom exceeds the number of days wholly or partly spent by the person in the British overseas territory; 25

(b) in any other case, is to be registered as a British overseas territories citizen.”

(5) In paragraph 6 (supplementary), after “paragraph 3” insert “, 3A”.

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PART 2

ASYLUM

Treatment of refugees; support for asylum-seekers

10 Differential treatment of refugees

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(1) For the purposes of this section—

(a) a refugee is a Group 1 refugee if they have complied with both of the requirements set out in subsection (2) and, where applicable, the additional requirement in subsection (3);

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(b) otherwise, a refugee is a Group 2 refugee.

(2) The requirements in this subsection are that—

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(a) they have come to the United Kingdom directly from a country or territory where their life or freedom was threatened (in the sense of Article 1 of the Refugee Convention), and

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(b) they have presented themselves without delay to the authorities.

- Subsections (1) to (3) of section 34 apply in relation to the interpretation of paragraphs (a) and (b) as they apply in relation to the interpretation of those requirements in Article 31(1) of the Refugee Convention. 5
- (3) Where a refugee has entered or is present in the United Kingdom unlawfully, the additional requirement is that they can show good cause for their unlawful entry or presence. 10
- (4) For the purposes of subsection (3), a person's entry into or presence in the United Kingdom is unlawful if they require leave to enter or remain and do not have it.
- (5) The Secretary of State or an immigration officer may treat Group 1 and Group 2 refugees differently, for example in respect of— 15
- (a) the length of any period of limited leave to enter or remain which is given to the refugee; 20
- (b) the requirements that the refugee must meet in order to be given indefinite leave to remain;
- (c) whether a condition under section 3(1)(c)(ii) of the Immigration Act 1971 (no recourse to public funds) is attached to any period of limited leave to enter or remain that is given to the refugee; 25 30

- (d) whether leave to enter or remain is given to members of the refugee's family.
- (6) The Secretary of State or an immigration officer may also treat the family members of Group 1 and Group 2 refugees differently, for example in respect of— 5
- (a) whether to give the person leave to enter or remain;
- (b) the length of any period of limited leave to enter or remain which is given to the person; 10
- (c) the requirements that the person must meet in order to be given indefinite leave to remain; 15
- (d) whether a condition under section 3(1)(c)(ii) of the Immigration Act 1971 (no recourse to public funds) is attached to any period of limited leave to enter or remain that is given to the person. 20
- (7) But subsection (6) does not apply to family members who are refugees themselves.
- (8) Immigration rules may include provision for the differential treatment allowed for by subsections (5) and (6). 25
- (9) In this section—
“limited leave” and “indefinite leave” have the same meaning as in the

Immigration Act 1971 (see section 33 of that Act);

“refugee” has the same meaning as in the Refugee Convention.

11 Accommodation for asylum-seekers etc 5

(1) In section 97 of the Immigration and Asylum Act 1999 (support for asylum-seekers: supplemental matters), after subsection (3) insert—

“(3A) When exercising the power under 10

section 95 or 95A to provide or arrange for the provision of accommodation, the Secretary of State may decide to provide or arrange for the provision of different types of accommodation to supported persons on the basis of either or both of the following matters—

(a) the stage that their protection claim has reached, including whether they have been notified that their claim is being considered for a declaration of inadmissibility (see 15

sections 80A and 80B of the Nationality, Immigration and Asylum Act 2002); 20

(b) their previous compliance with any conditions imposed on them under— 25

- (i) section 95(9) (conditions for support under section 95),
 - (ii) Schedule 10 to the Immigration Act 2016 (conditions of immigration bail), 5
 - (iii) regulations made under section 95A(5) (conditions for support under section 95A), or
 - (iv) regulations made under section 30 of the Nationality, Immigration and Asylum Act 2002 (conditions of residence in accommodation centre).” 10
- (2) In section 98 of that Act (temporary support for asylum-seekers etc), at the end insert— 15
- “(4) Subsection (3A) of section 97 applies to the power to provide, or arrange for the provision of, accommodation under this section as it applies to the power to do so under section 95.” 20
- (3) In section 98A of that Act (temporary support for failed asylum-seekers etc), at the end insert—
- “(5) Subsection (3A) of section 97 applies to the power to provide, or arrange for the provision of, accommodation under this section as it applies to the power to do so under section 95A.” 25

- (4) In section 17 of the Nationality, Immigration and Asylum Act 2002 (support for destitute asylum-seeker), in subsection (1), at the end insert—

“See also section 97(3A) of the Immigration and Asylum Act 1999 (decision on type of accommodation for asylum-seekers etc).”

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- (5) In section 22 of that Act—

(a) after “95” insert “or 98”;

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(b) for “(destitute asylum-seeker)” substitute “(support and temporary support for asylum-seekers)”;

(c) in the heading, for “s. 95” substitute “sections 95 and 98”.

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- (6) After section 22 of that Act, insert—

**“22A Immigration and Asylum Act 1999,
sections 95A and 98A**

The Secretary of State may provide support under section 95A or 98A of the Immigration and Asylum Act 1999 (support and temporary support for failed asylum-seekers) by arranging for the provision of accommodation in an accommodation centre.”

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- (7) In section 24 of that Act (provisional assistance), in subsection (1), at the end insert—

“See also section 98(4) of the Immigration and Asylum Act 1999 (decision on type of accommodation for asylum-seekers etc).”

- (8) In section 25 of that Act (length of stay in accommodation centre), in subsection (4), for “shorter” substitute “different”. 5
- (9) In section 27 of that Act (resident of centre), after paragraph (b) insert— 10
 “(ba) by virtue of section 22A,”.

Place of claim

12 Requirement to make asylum claim at “designated place”

- (1) An asylum claim must be made in person at a designated place. 15
- (2) A “designated place” means any of the following places in the United Kingdom—
- (a) a place identified in a notice published by the Secretary of State as an asylum intake unit; 20
- (b) a removal centre (within the meaning of section 147 of the Immigration and Asylum Act 1999);
- (c) a port (within the meaning of section 33 of the Immigration Act 1971); 25
- (d) a place where there is a person present who, for the purposes of the immigration rules, is authorised to

- accept an asylum claim on behalf of the Secretary of State;
- (e) a place to which the claimant has been directed by the Secretary of State or an immigration officer to make the claim; 5
- (f) such other place, or a place of such other description, as the Secretary of State may by regulations designate.
- (3) The Nationality, Immigration and Asylum Act 2002 is amended in accordance with subsections (4) and (5). 10
- (4) In section 18(1)(c) omit “at a place designated by the Secretary of State”.
- (5) In section 113(1), in the definition of “asylum claim”, omit “at a place designated by the Secretary of State”. 15
- (6) In this section “asylum claim” means a claim made in accordance with the immigration rules by a person to the Secretary of State that to remove the person from, or require the person to leave, the United Kingdom would breach the United Kingdom’s obligations under the Refugee Convention. 20
- (7) The reference to the United Kingdom in subsection (2), so far as it has effect for the purposes of paragraph (d) of that subsection, does not include a reference to the territorial sea of the United Kingdom. 25

- (8) Regulations under subsection (2)(f) are subject to negative resolution procedure.

Inadmissibility

13 Asylum claims by EU nationals: inadmissibility

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- (1) After Part 4 of the Nationality, Immigration and Asylum Act 2002 insert—

“PART 4A

INADMISSIBLE ASYLUM CLAIMS

80A Asylum claims by EU nationals

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- (1) The Secretary of State must declare an asylum claim made by a person who is a national of a member State inadmissible.

- (2) An asylum claim declared inadmissible under subsection (1) cannot be considered under the immigration rules.

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- (3) A declaration under subsection (1) that an asylum claim is inadmissible is not a decision to refuse the claim and, accordingly, no right of appeal under section 82(1)(a) (appeal against refusal of protection claim) arises.

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- (4) Subsection (1) does not apply if there are exceptional circumstances as a

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result of which the Secretary of State considers that the claim ought to be considered.

- (5) For the purposes of subsection (4) exceptional circumstances include where the member State of which the claimant is a national—
- (a) is derogating from any of its obligations under the Human Rights Convention, in accordance with Article 15 of the Convention; 10
 - (b) is the subject of a proposal initiated in accordance with the procedure referred to in Article 7(1) of the Treaty on European Union and— 15
 - (i) the proposal has yet to be determined by the Council of the European Union or (as the case may be) the European Council, 20
 - (ii) the Council of the European Union has determined, in accordance with Article 7(1), that there is a clear risk of a serious breach by the member State of the values referred to in Article 2 of the Treaty, or 25
 - (iii) the European Council has determined, in accordance with Article 7(2), the existence 30

of a serious and persistent breach by the member State of the values referred to in Article 2 of the Treaty.

- (6) In this section— 5
- “asylum claim”, “the Human Rights Convention” and “the Refugee Convention” have the meanings given by section 113;
- “immigration rules” means rules 10
under section 3(2) of the Immigration Act 1971;
- “the Treaty on European Union” means the Treaty on European Union signed at Maastricht on 7 15
February 1992 as it had effect immediately before IP completion day.”
- (2) In consequence of the amendment made 20
by subsection (1), in regulation 4(4)(d) of the Asylum Support Regulations 2000 (S.I. 2000/704) (persons excluded from support), for “under the immigration rules” substitute “(see section 80A of the 25
Nationality, Immigration and Asylum Act 2002)”.

14 Asylum claims by persons with connection to safe third State: inadmissibility

In Part 4A of the Nationality, Immigration and Asylum Act 2002 (as inserted by section 13), after section 80A insert—

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“80B Asylum claims by persons with connection to safe third State

(1) The Secretary of State may declare an asylum claim made by a person (a “claimant”) who has a connection to a safe third State inadmissible.

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(2) Subject to subsection (7), an asylum claim declared inadmissible under subsection (1) cannot be considered under the immigration rules.

15

(3) A declaration under subsection (1) that an asylum claim is inadmissible is not a decision to refuse the claim and, accordingly, no right of appeal under section 82(1)(a) (appeal against refusal of protection claim) arises.

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(4) For the purposes of this section, a State is a “safe third State” in relation to a claimant if—

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(a) the claimant’s life and liberty are not threatened in that State by reason of their race, religion, nationality, membership of a

- particular social group or political opinion,
- (b) the State is one from which a person will not be sent to another State—
- 5
- (i) otherwise than in accordance with the Refugee Convention, or
- (ii) in contravention of their rights under Article 3 of the Human Rights Convention (freedom from torture or inhuman or degrading treatment), and
- 10
- (c) a person may apply to be recognised as a refugee and (if so recognised) receive protection in accordance with the Refugee Convention, in that State.
- 15
- (5) For the purposes of this section a claimant has “a connection” to a safe third State if they meet any of conditions 1 to 5 set out in section 80C in relation to the State.
- 20
- (6) The fact that an asylum claim has been declared inadmissible under subsection (1) by virtue of the claimant’s connection to a particular safe third State does not prevent the Secretary of State from removing the claimant to any other safe third State.
- 25
- 30

- (7) An asylum claim that has been declared inadmissible under subsection (1) may nevertheless be considered under the immigration rules— 5
- (a) if the Secretary of State determines that it is unlikely to be possible to remove the claimant to a safe third State within a reasonable period of the declaration of inadmissibility, 10
- (b) if the Secretary of State determines that there are exceptional circumstances in the particular case that mean the claim should be considered, or 15
- (c) in such other cases as may be provided for in the immigration rules.
- (8) In this section and section 80C— 20
- (a) “asylum claim”, “Human Rights Convention”, “immigration rules” and “the Refugee Convention” have the same meanings as in section 80A; 25
- (b) a reference to anything being done in accordance with the Refugee Convention is a reference to the thing being done in accordance with the principles of the 30

Convention, whether or not by a signatory to it.

80C Meaning of “connection” to a safe third State

- | | |
|---|----|
| (1) Condition 1 is that the claimant— | 5 |
| (a) has been recognised as a refugee in the safe third State, and | |
| (b) remains able to access protection in accordance with the Refugee Convention in that State. | 10 |
| (2) Condition 2 is that the claimant— | |
| (a) has otherwise been granted protection in a safe third State as a result of which the claimant would not be sent from the safe third State to another State— | 15 |
| (i) otherwise than in accordance with the Refugee Convention, or | |
| (ii) in contravention of their rights under Article 3 of the Human Rights Convention, and | 20 |
| (b) remains able to access that protection in that State. | |
| (3) Condition 3 is that the claimant has made a relevant claim to the safe third State and the claim— | 25 |
| (a) has not yet been determined, or | |
| (b) has been refused. | |

- (4) Condition 4 is that—
 - (a) the claimant was previously present in, and eligible to make a relevant claim to, the safe third State, 5
 - (b) it would have been reasonable to expect them to make such a claim, and
 - (c) they failed to do so.
- (5) Condition 5 is that, in the claimant’s particular circumstances, it would have been reasonable to expect them to have made a relevant claim to the safe third State (instead of making a claim in the United Kingdom). 10
15
- (6) For the purposes of this section, a “relevant claim” to a safe third State is a claim—
 - (a) to be recognised as a refugee in the State for the purposes of the Refugee Convention, or 20
 - (b) for protection in the State of the kind mentioned in subsection (2)(a).
- (7) For the purposes of this section “claimant” and “safe third State” have the same meanings as in section 80B; and see subsection (8) of that section.” 25

15 Clarification of basis for support where asylum claim inadmissible

- (1) The Immigration and Asylum Act 1999 is amended in accordance with subsections (2) and (3). 5
- (2) If paragraph 1 of Schedule 11 to the Immigration Act 2016, which repeals section 4 of the 1999 Act, is not yet in force on the day this section comes into force, in subsection (2)(b) of that section, after “was rejected” insert “or declared inadmissible (see sections 80A and 80B of the Nationality, Immigration and Asylum Act 2002)”. 10
- (3) In section 94 (interpretation of Part 6: support for asylum-seekers etc), after subsection (4) insert— 15
- “(4A) For the purposes of the definitions of “asylum-seeker” and “failed asylum-seeker”, the circumstances in which a claim is determined or rejected include where the claim is declared inadmissible under section 80A or 80B of the Nationality, Immigration and Asylum Act 2002. 20
- (4B) But if a claim is— 25
- (a) declared inadmissible under section 80B of that Act, and

- (b) nevertheless considered by the Secretary of State in accordance subsection (7) of that section, the claim ceases to be treated as determined or rejected from the time of the decision to consider the claim. 5
- (4C) For the purposes subsection (3), notification of a declaration of inadmissibility under section 80A or 80B of that Act is to be treated as notification of the Secretary of State’s decision on the claim.” 10
- (4) The Nationality, Immigration and Asylum Act 2002 is amended as follows.
- (5) In section 18 (asylum-seeker: definition), after subsection (1) insert— 15
- “(1ZA) For the purposes of subsection (1), the circumstances in which a claim is determined include where the claim is declared inadmissible under section 80A or 80B. 20
- (1ZB) But if a claim is—
- (a) declared inadmissible under section 80B, and
- (b) nevertheless considered by the Secretary of State in accordance subsection (7) of that section, 25

the claim ceases to be treated as determined from the time of the decision to consider the claim.”

- (6) In section 21 (sections 17 to 20: supplementary), in subsection (3)(a), at the end insert “or (as the case may be) of the declaration of inadmissibility under section 80A or 80B”. 5
- (7) In paragraph 17 of Schedule 3 (withholding and withdrawal of support: interpretation), after sub-paragraph (2) insert— 10
- “(2A) For the purposes of the definition of “asylum-seeker” in sub-paragraph (1), a claim is also determined if the Secretary of State has notified the claimant that it has been declared inadmissible under section 80A or 80B. 15
- (2B) But if a claim is— 20
- (a) declared inadmissible under section 80B, and
- (b) nevertheless considered by the Secretary of State in accordance subsection (7) of that section, 25
- the claim ceases to be treated as determined from the time of the decision to consider the claim.”

Supporting evidence

16 Provision of evidence in support of protection or human rights claim

- (1) The Secretary of State or an immigration officer may serve an evidence notice on a person who has made a protection claim or a human rights claim. 5
- (2) An “evidence notice” is a notice requiring the recipient to provide, before the specified date, any evidence in support of the claim. 10
- (3) Subsection (4) applies if the recipient of an evidence notice provides the Secretary of State or an immigration officer with evidence in support of the claim on or after the specified date. 15
- (4) The recipient must also provide a statement setting out their reasons for not providing the evidence before the specified date (and see section 23 of this Act and section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004). 20
- (5) In this section, “specified date” means the date specified in an evidence notice.

17 Asylum or human rights claim: damage to claimant’s credibility

- (1) Section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (claimant’s credibility) is amended in accordance with subsections (2) to (5). 5
- (2) After subsection (3) insert—
- “(3A) This section also applies to any relevant behaviour by the claimant that the deciding authority thinks is not in good faith. 10
- (3B) In subsection (3A) “relevant behaviour” means behaviour—
- (a) in connection with the asylum claim or human rights claim in question or (in the case of an appeal relating to such a claim) the appeal in question, 15
- (b) in any dealings with a person exercising immigration and nationality functions, or 20
- (c) in connection with—
- (i) a claim made, or civil proceedings brought, under any provision of immigration legislation, or 25
- (ii) judicial review proceedings, or (in Scotland) an application to the supervisory jurisdiction of

the Court of Session, relating to a decision taken by a person in exercise of immigration and nationality functions.”

- (3) After subsection (6) insert— 5
- “(6A) This section also applies to the late provision by the claimant of evidence in relation to the asylum claim or human rights claim in question, unless there are good reasons why the evidence was provided late. 10
- (6B) For the purposes of subsection (6A), evidence is provided “late” by the claimant if—
- (a) it is provided pursuant to an evidence notice served on the claimant under section 16(1) of the Nationality and Borders Act 2021, and 15
- (b) it is provided on or after the date specified in the notice.” 20
- (4) In subsection (7), at the appropriate places insert—
- ““immigration and nationality functions” means functions exercisable by virtue of— 25
- (a) the Immigration Acts (but see subsection (9B)), or
- (b) the Nationality Acts;”;

““immigration legislation” means—
 (a) the Immigration Acts,
 (b) the Nationality Acts, and
 (c) rules under section 3(2) of the
 Immigration Act 1971 (general
 immigration rules);”;

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““Nationality Acts” means—
 (a) the British Nationality Act
 1981,
 (b) the Hong Kong Act 1985,
 (c) the Hong Kong (War Wives
 and Widows) Act 1996, and
 (d) the British Nationality (Hong
 Kong) Act 1997;”.

10

(5) After subsection (9A) insert—

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“(9B) In paragraph (a) of the definition of
 “immigration and nationality functions”
 in subsection (7), the reference to the
 Immigration Acts does not include a
 reference to—

20

(a) sections 28A to 28K of the
 Immigration Act 1971 (powers of
 arrest, entry and search, etc), or
 (b) section 14 of this Act (power of
 arrest).”

25

(6) The amendments made by this section
 apply in relation to a determination
 mentioned in section 8(1) of the Asylum

and Immigration (Treatment of Claimants, etc) Act 2004 only where—

- (a) the asylum claim or human rights claim to which the determination relates was made, or
- (b) if the determination is made in appeal proceedings, the appeal was brought, on or after the day on which this section comes into force.

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Priority removal notices

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18 Priority removal notices

(1) The Secretary of State or an immigration officer may serve a person who is liable to removal or deportation from the United Kingdom with a priority removal notice.

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(2) A person who receives such a notice is referred to in this section as the “PRN recipient”.

(3) A priority removal notice is a notice—

(a) requiring the PRN recipient to provide to the Secretary of State (and any other competent authority specified in the notice)—

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(i) a statement setting out the matters described in section 120(2)(a) to (c) of the Nationality, Immigration and Asylum Act 2002 (reasons and grounds for application etc),

25

- (ii) any relevant status information (within the meaning given by section 46(3)), and
- (iii) any evidence in support of the matters mentioned in paragraphs (i) and (ii), and 5
- (b) setting out the date (the “PRN cut-off date”) before which the PRN recipient must comply with that requirement.
- (4) The requirement in subsection (3)(a) does not apply in relation to anything that the PRN recipient has previously provided to the Secretary of State or any other competent authority. 10
- (5) Subsection (6) applies if the PRN recipient provides the Secretary of State or any other competent authority with any statement, information or evidence mentioned in subsection (3)(a) on or after the PRN cut-off date. 15
- (6) The PRN recipient must also provide a statement setting out their reasons for not providing the statement, information or evidence before the PRN cut-off date (and see sections 20 and 23). 20
- (7) For the purposes of this section, a person is “liable to removal or deportation from the United Kingdom” if they are liable to— 25

- (a) removal under section 10(1) or (2) of the Immigration and Asylum Act 1999 (removal of persons unlawfully in the United Kingdom),
 - (b) removal pursuant to a decision made under—
 - (i) regulation 23(6)(b) of the Immigration (European Economic Area) Regulations 2016 (S.I. 2016/1052) as it continues to have effect following its revocation (removal of EEA nationals), or
 - (ii) regulation 15(1) of the Citizens Rights’ (Frontier Workers) (EU Exit) Regulations 2020 (S.I. 2020/1213) (removal of frontier workers), or
 - (c) deportation under section 3(5) or (6) of the Immigration Act 1971 (deportation of foreign nationals where conducive to the public good or on conviction of offence punishable with imprisonment etc).
- (8) In this section “competent authority” has the same meaning as in Part 4 (see section 57).

19 Priority removal notices: supplementary

- (1) A priority removal notice remains in force until the end of the period of 12 months beginning with—
- (a) in a case where the PRN recipient makes a protection claim or a human rights claim before the PRN cut-off date, the later of the following—
 - (i) the date on which the PRN recipient's appeal rights are exhausted, and 5
 - (ii) the PRN cut-off date; 10
 - (b) in any other case, the PRN cut-off date. See section 82A of the Nationality, Immigration and Asylum Act 2002 (the "2002 Act") for the consequences of a priority removal notice being in force. 15
- (2) For the purposes of subsection (1), the PRN recipient's appeal rights are exhausted at the time when— 20
- (a) the PRN recipient's claim has been determined,
 - (b) the PRN recipient could not bring an appeal in respect of the claim under section 82 of the 2002 Act (ignoring any possibility of an appeal out of time with permission), and 25
 - (c) no appeal brought by the PRN recipient is pending within the meaning of section 104 of that Act. 30

- (3) A priority removal notice may not be served on a person in relation to whom such a notice is already in force (but this does not prevent a further notice from being served once the previous notice ceases to be in force as mentioned in subsection (1)). 5
- (4) Subsection (5) applies if the PRN recipient has previously been served with—
 - (a) an evidence notice under section 16,
 - (b) a slavery or trafficking information notice under section 46, or 10
 - (c) a notice under section 120 of the 2002 Act (requirement to provide reasons and grounds).
- (5) The previous notice ceases to have effect on the service of the priority removal notice. 15
- (6) In this section “priority removal notice”, “PRN recipient” and “PRN cut-off date” have the same meanings as in section 18.

20 Late compliance with priority removal notice: damage to credibility 20

- (1) This section applies where—
 - (a) a PRN recipient provided the statement, any relevant status information or the evidence mentioned in section 18(3)(a) late, and
 - (b) a relevant decision is being made. 25
- (2) A “relevant decision” is being made if—

- (a) a protection claim or a human rights claim made by the PRN recipient is being considered, or
- (b) a competent authority is making a reasonable grounds decision or a conclusive grounds decision in relation to the PRN recipient (decisions concerning status as victim of slavery or human trafficking). 5
- (3) In determining whether to believe a statement made by or on behalf of the PRN recipient, the Secretary of State or (as the case may be) the competent authority must take account, as damaging the PRN recipient’s credibility, of the late provision of anything mentioned in subsection (1)(a), unless there are good reasons why it was provided late. 10
15
- (4) For the purposes of this section, anything mentioned in subsection (1)(a) is provided “late” by the PRN recipient if it is provided on or after the PRN cut-off date. 20
- (5) In this section—
 “competent authority”, “conclusive grounds decision” and “reasonable grounds decision” have the same meanings as in Part 4;
 “PRN recipient”, “PRN cut-off date” and “relevant status information” have the same meanings as in section 18. 25
- (6) Section 23 makes further provision about the effect of a PRN recipient providing evidence late.

21 Priority removal notices: expedited appeals

(1) After section 82 of the Nationality, Immigration and Asylum Act 2002 insert—

“82A Expedited appeal to Upper Tribunal in certain cases

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(1) This section applies where —

(a) a person (“P”) has been served with a priority removal notice,

(b) P has made a protection claim or a human rights claim on or after the PRN cut-off date but while the priority removal notice is still in force, and

10

(c) P has a right under section 82(1) to bring an appeal from within the United Kingdom (see section 92) in relation to the claim.

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(2) The Secretary of State must certify P’s right of appeal under this section, unless satisfied that there were good reasons for P making the claim on or after the PRN cut-off date (and P’s right of appeal may not be certified if the Secretary of State is satisfied that there were good reasons).

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(3) If certified under this section, P’s right of appeal under section 82(1) is to the Upper Tribunal instead of the First-tier Tribunal (and any appeal brought pursuant to such a right is referred to in this section as an “expedited appeal”).

25

- (4) Tribunal Procedure Rules must make provision with a view to securing that expedited appeals are determined more quickly than an appeal under section 82(1) would, in the normal course of events, be determined by the First-tier Tribunal. 5
- (5) Tribunal Procedure Rules must secure that the Upper Tribunal may, if it is satisfied that it is in the interests of justice in the case of a particular expedited appeal to do so, order that the appeal is no longer to be treated as if it were an expedited appeal. 10
- (6) In this section, “priority removal notice” and “PRN cut-off date” have the same meanings as in section 18 of the Nationality and Borders Act 2021.” 15
- (2) In section 13(8) of the Tribunals, Courts and Enforcement Act 2007 (decisions excluded from right to appeal to the Court of Appeal), after paragraph (b) insert— 20
- “(bza) any decision of the Upper Tribunal on an expedited appeal within the meaning given by section 82A(3) of the Nationality, Immigration and Asylum Act 2002 (expedited appeal against refusal of protection claim or human rights claim);” 25
- (3) Schedule 2 makes amendments consequential on this section.

22 Civil legal services for recipients of priority removal notices

- (1) In Part 1 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (civil legal services), after paragraph 31 (immigration: accommodation for asylum-seekers etc) insert— 5

“Immigration: recipients of priority removal notices

“31ZA(1) Civil legal services provided, to an individual who has received a priority removal notice, in relation to— 10

- (a) the priority removal notice;
- (b) the individual’s immigration status;
- (c) the lawfulness of the individual’s removal from the United Kingdom;
- (d) immigration detention of the kinds mentioned in paragraph 25(1). 15

Condition applying to services described in sub-paragraph (1): overall time limit

- (2) Civil legal services described in sub-paragraph (1) may be provided for up to (but no more than) 7 hours. 20

- (3) If a person who has been provided with civil legal services described in sub-paragraph (1) subsequently receives a further priority removal notice, sub-paragraph (2) applies again (so that time spent in providing services following receipt of the earlier notice does not count towards the new limit). 25

General exclusions

(4) Sub-paragraph (1) is subject to the exclusions in Part 2 of this Schedule.

Specific exclusions

(5) The services described in sub-paragraph (1) do not include—

(a) advocacy;

(b) attendance at an interview conducted on behalf of the Secretary of State with a view to reaching a decision on a claim in respect of the rights mentioned in paragraph 30(1), except where regulations provide otherwise;

(c) attendance at an interview conducted by the competent authority under the national referral mechanism for the purposes of making a reasonable grounds decision or a conclusive grounds decision;

(d) services provided in relation to—

(i) any private law rights the individual may have (such as rights under employment law or the law of tort), or

(ii) any claim for damages in relation to unlawful detention.

Definition

(6) In this paragraph “priority removal notice” means a notice under section 18 of the Nationality and Borders Act 2021.”

(2) In section 9 of that Act (civil legal aid: general cases), after subsection (2) insert—

- “(3) The powers conferred by subsection (2)(b) include power to amend paragraph 31ZA of Part 1 of Schedule 1 (immigration: recipients of priority removal notices) so as to alter the time limit applicable to the provision of services described in sub-paragraph (1) of that paragraph (whether generally or in specified cases or circumstances). 5
- (4) The Lord Chancellor may by order make provision as to the operation of any overall time limit applicable to the provision of services described in paragraph 31ZA(1), including in particular— 10
- (a) provision for determining the time available (not exceeding the overall time limit) for the provision of such services in any individual’s case, or 15
- (b) provision as to the use that may, or must, be made of some or all of the time available.” 20
- (3) In regulation 11(9) of the Civil Legal Aid (Merits Criteria) Regulations 2013 (S.I. 2013/104) (qualifying for civil legal services: cases in which merits criteria do not apply), at the end insert “, or (e) in relation to any matter described in paragraph 31ZA of Schedule 1 to the Act (immigration: recipients of priority removal notices).” 25
- (4) In regulation 5(1) of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 (S.I. 2013/480) (exceptions from requirement 30

to make a determination in respect of an individual's financial resources), omit the "and" at the end of paragraph (ka) and, after paragraph (l), insert—

- “(m) civil legal services described in paragraph 31ZA of Part 1 of Schedule 1 to the Act (immigration: recipients of priority removal notices).” 5

Late evidence

23 Late provision of evidence in asylum or human rights claim: weight 10

- (1) This section applies where—
- (a) evidence is provided late by a claimant in relation to an asylum claim or a human rights claim, and 15
 - (b) the evidence falls to be considered by a deciding authority for the purpose of determining—
 - (i) the claim, or
 - (ii) where a decision in respect of the claim is the subject of a relevant appeal, the appeal. 20
- (2) Unless there are good reasons why the evidence was provided late, the deciding authority must, in considering it, have regard to the principle that minimal weight should be given to the evidence. 25
- (3) For the purposes of subsection (1)(a), evidence is provided “late” by a claimant if it is within subsection (4) or (5).

- (4) Evidence is within this subsection if—
- (a) it is provided pursuant to an evidence notice served on the claimant under section 16(1), and
 - (b) it is provided on or after the date specified in the notice. 5
- (5) Evidence is within this subsection if—
- (a) it is provided pursuant to a priority removal notice served on the claimant under section 18 in support of the matters mentioned in subsection (3)(a)(i) of that section (reasons and grounds for application), and 10
 - (b) it is provided on or after the PRN cut-off date.
- (6) The reference in subsection (1)(b)(i) to determining a claim includes a reference to determining— 15
- (a) whether to certify the claim under section 94(1) of the 2002 Act (unfounded claims);
 - (b) whether to accept or reject further submissions made by the claimant for the purposes of the immigration rules. 20
- (7) In this section—
- “the 2002 Act” means the Nationality, Immigration and Asylum Act 2002;
 - “asylum claim” has the meaning given by section 113(1) of the 2002 Act; 25
 - “deciding authority” means—
- (a) an immigration officer,
 - (b) the Secretary of State,
 - (c) the First-tier Tribunal,
 - (d) the Upper Tribunal, or 30

- (e) the Special Immigration Appeals Commission;
- “PRN cut-off date” has the same meaning as in section 18;
- “relevant appeal” means an appeal under— 5
 - (a) section 82 of the 2002 Act, or
 - (b) section 2 of the Special Immigration Appeals Commission Act 1997.

Appeals

24 Accelerated detained appeals 10

- (1) The Nationality, Immigration and Asylum Act 2002 is amended as follows.
- (2) In the heading to section 106, after “Rules” insert “: general”.
- (3) After section 106 insert— 15

“106A Accelerated detained appeals

- (1) In this section, “accelerated detained appeal” means an appeal under section 82 brought—
 - (a) by a person who—
 - (i) was detained under a relevant 20
detention provision (see subsection (5)) at the time at which they were given notice of the decision which is the subject of the appeal, and
 - (ii) remains in detention under a relevant 25
detention provision, and
 - (b) against a decision that—

- (i) is of a prescribed description, and
 - (ii) when made, was certified by the Secretary of State under this section.
- (2) The Secretary of State may only certify a decision under this section if the Secretary of State considers that any appeal brought under section 82 in relation to the decision would likely be disposed of expeditiously. 5
- (3) Tribunal Procedure Rules must secure that the following time limits apply in relation to an accelerated detained appeal— 10
 - (a) any notice of appeal must be given to the Tribunal not later than 5 working days after the date on which the appellant was given notice of the decision against which the appeal is brought; 15
 - (b) the Tribunal must make a decision on the appeal, and give notice of that decision to the parties, not later than 25 working days after the date on which the appellant gave the notice of appeal to the Tribunal; 20
 - (c) any application (whether to the Tribunal or the Upper Tribunal) for permission to appeal to the Upper Tribunal must be determined by the tribunal concerned not later than 20 working days after the date on which the applicant was given notice of the Tribunal's decision. 25
- (4) Tribunal Procedure Rules must also secure that the Tribunal or (as the case may be) the 30

- Upper Tribunal may, if it is satisfied that it is in the interests of justice to do so in the case of a particular accelerated detained appeal, order that the appeal is no longer to be treated as an accelerated detained appeal. 5
- (5) The relevant detention provisions are—
- (a) section 62 (detention of persons liable to examination or removal);
 - (b) paragraph 16(1), (1A) or (2) of Schedule 2 to the Immigration Act 1971 (detention of persons liable to examination or removal); 10
 - (c) paragraph 2(1), (2) or (3) of Schedule 3 to that Act (detention pending deportation);
 - (d) section 36(1) of the UK Borders Act 2007 (detention pending deportation). 15
- (6) In this section “working day” means any day except—
- (a) a Saturday or Sunday, Christmas Day, Good Friday or 26 to 31 December, and
 - (b) any day that is a bank holiday under section 1 of the Banking and Financial Dealings Act 1971 in the part of the United Kingdom where the appellant concerned is detained. 20
- (7) In this section “prescribed” means prescribed by regulations made by the Secretary of State.” 25

25 Claims certified as clearly unfounded: removal of right of appeal

- (1) The Nationality, Immigration and Asylum Act 2002 is amended in accordance with subsections (2) and (3). 5
- (2) In section 92 (place from which an appeal may be brought or continued)—
- (a) in each of subsections (2)(a) and (3)(a), for “94(1) or (7) (claim clearly unfounded or removal to a safe third country)” substitute “94(7) (removal to a safe country)”; 10
- (b) in each of subsections (6) and (8), for “94(1) or (7)” substitute “94(7)”.
- (3) In section 94 (appeal from within the United Kingdom: unfounded human rights or protection claim)— 15
- (a) after subsection (3) insert—
- “(3A) A person may not bring an appeal under section 82 against a decision if the claim to which the decision relates has been certified under subsection (1).”; 20
- (b) in subsection (4), for “Those States” substitute “The States”;
- (c) for the heading substitute “Certification of human rights or protection claims as unfounded or removal to safe country”. 25
- (4) The amendments made by this section do not apply in relation to a protection claim or human rights claim that was certified by the Secretary of

State under section 94(1) before the coming into force of this section.

Removal to safe third country

26 Removal of asylum seeker to safe country

- Schedule 3 makes amendments to— 5
- (a) section 77 of the Nationality, Immigration and Asylum Act 2002 (no removal while claim for asylum pending), and
 - (b) Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 10
(removal of asylum seeker to safe country).

Interpretation of Refugee Convention

27 Refugee Convention: general

- (1) The following sections apply for the purposes of the determination by any person, court or tribunal whether a person (referred to in those sections as an “asylum seeker”) is a refugee within the meaning of Article 1(A)(2) of the Refugee Convention— 15
 - (a) section 28 (persecution); 20
 - (b) section 29 (well-founded fear);
 - (c) section 30 (reasons for persecution);
 - (d) section 31 (protection from persecution);
 - (e) section 32 (internal relocation).
- (2) Section 33 applies for the purposes of the determination by any person, court or tribunal whether the provisions of the Refugee Convention 25

do not apply to a person as a result of Article 1(F) of that Convention (disapplication of Convention to serious criminals etc).

- (3) Section 34 applies for the purposes of the determination by any person, court or tribunal whether Article 31(1) of the Refugee Convention (immunity from certain penalties) applies in relation to a person who is a refugee within the meaning of Article 1(A)(2) of the Refugee Convention. 5
- (4) The Refugee or Person in Need of International Protection (Qualification) Regulations 2006 (S.I. 2006/2525) are revoked. 10
- (5) Subsections (1) and (2), and sections 28 to 33, apply only in relation to a determination relating to a claim for asylum where the claim was made on or after the day on which this section comes into force. 15
- (6) For the purposes of subsection (5), a claim for asylum includes a claim, in any form or to any person, which falls to be determined as mentioned in subsection (1). 20

28 Article 1(A)(2): persecution

- (1) For the purposes of Article 1(A)(2) of the Refugee Convention, persecution can be committed by any of the following (referred to in this Part as “actors of persecution”)— 25
- (a) the State,

- (b) any party or organisation controlling the State or a substantial part of the territory of the State, or
 - (c) any non-State actor, if it can be demonstrated that the actors mentioned in paragraphs (a) and (b), including any international organisation, are unable or unwilling to provide reasonable protection against persecution. 5
- (2) For the purposes of that Article, the persecution must be— 10
- (a) sufficiently serious by its nature or repetition as to constitute a severe violation of a basic human right, in particular a right from which derogation cannot be made under Article 15 of the Human Rights Convention, or 15
 - (b) an accumulation of various measures, including a violation of a human right, which is sufficiently severe as to affect an individual in a similar manner as specified in paragraph (a).
- (3) The persecution may, for example, take the form of— 20
- (a) an act of physical or mental violence, including an act of sexual violence;
 - (b) a legal, administrative, police or judicial measure which in itself is discriminatory or which is implemented in a discriminatory manner; 25
 - (c) prosecution or punishment which is disproportionate or discriminatory;
 - (d) denial of judicial redress resulting in a disproportionate or discriminatory punishment; 30

- (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts as described in Article 1(F) of the Refugee Convention (on which, see section 33). 5

29 Article 1(A)(2): well-founded fear

- (1) In deciding for the purposes of Article 1(A)(2) of the Refugee Convention whether an asylum seeker's fear of persecution is well-founded, the following approach is to be taken. 10
 - (2) The decision-maker must first determine, on the balance of probabilities—
 - (a) whether the asylum seeker has a characteristic which could cause them to fear persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion (or has such a characteristic attributed to them by an actor of persecution), and 15
 - (b) whether the asylum seeker does in fact fear such persecution in their country of nationality (or in a case where they do not have a nationality, the country of their former habitual residence) as a result of that characteristic. 20
- (See also section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (asylum claims etc: behaviour damaging to claimant's credibility).) 25

-
- (3) Subsection (4) applies if the decision-maker finds that—
- (a) the asylum seeker has a characteristic mentioned in subsection (2)(a) (or has such a characteristic attributed to them), and 5
 - (b) the asylum seeker fears persecution as mentioned in subsection (2)(b).
- (4) The decision-maker must determine whether there is a reasonable likelihood that, if the asylum seeker were returned to their country of nationality (or in a case where they do not have a nationality, the country of their former habitual residence)— 10
- (a) they would be persecuted as a result of the characteristic mentioned in subsection (2)(a), and 15
 - (b) they would not be protected as mentioned in section 31.
- (5) The determination under subsection (4) must also include a consideration of the matter mentioned in section 32 (internal relocation). 20

30 Article 1(A)(2): reasons for persecution

- (1) For the purposes of Article 1(A)(2) of the Refugee Convention—
- (a) the concept of race may include consideration of matters such as a person's colour, descent or membership of a particular ethnic group; 25
 - (b) the concept of religion may include consideration of matters such as—

- (i) the holding of theistic, non-theistic or atheistic beliefs,
 - (ii) the participation in formal worship in private or public, either alone or in community with others, or the abstention from such worship, 5
 - (iii) other religious acts or expressions of view, or
 - (iv) forms of personal or communal conduct based on or mandated by any religious belief; 10
 - (c) the concept of nationality is not confined to citizenship (or lack of citizenship) but may include consideration of matters such as membership of a group determined by its cultural, ethnic or linguistic identity, common geographical or political origins or its relationship with the population of another State; 15
 - (d) the concept of political opinion includes the holding of an opinion, thought or belief on a matter related to a potential actor of persecution and to its policies or methods, whether or not the person holding that opinion, thought or belief has acted upon it. 20
25
- (2) A group forms a particular social group for the purposes of Article 1(A)(2) of the Refugee Convention only if it meets both of the following conditions.
- (3) The first condition is that members of the group share— 30

- (a) an innate characteristic,
 - (b) a common background that cannot be changed, or
 - (c) a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it. 5
- (4) The second condition is that the group has a distinct identity in the relevant country because it is perceived as being different by the surrounding society. 10
- (5) A particular social group may include a group based on a common characteristic of sexual orientation, but for these purposes sexual orientation does not include acts that are criminal in any part of the United Kingdom. 15

31 Article 1(A)(2): protection from persecution

- (1) For the purposes of Article 1(A)(2) of the Refugee Convention, protection from persecution can be provided by— 20
- (a) the State, or
 - (b) any party or organisation, including any international organisation, controlling the State or a substantial part of the territory of the State.
- (2) An asylum seeker is to be taken to be able to avail themselves of protection from persecution if— 25
- (a) the State, party or organisation mentioned in subsection (1) takes reasonable steps to prevent the persecution by operating an effective legal system for the detection,

- prosecution and punishment of acts constituting persecution, and
- (b) the asylum seeker is able to access the protection.

32 Article 1(A)(2): internal relocation

5

(1) An asylum seeker is not to be taken to be a refugee for the purposes of Article 1(A)(2) of the Refugee Convention if—

(a) they would not have a well-founded fear of being persecuted in a part of their country of nationality (or in a case where they do not have a nationality, the country of their former habitual residence), and

10

(b) they can reasonably be expected to return to and remain in that part of the country.

15

(2) In considering whether an asylum seeker can reasonably be expected to return to and remain in a part of a country, a decision-maker—

(a) must have regard to—

(i) the general circumstances prevailing in that part of the country, and

20

(ii) the personal circumstances of the asylum seeker;

(b) must disregard any technical obstacles relating to return to that part of that country.

25

33 Article 1(F): disapplication of Convention in case of serious crime etc

- (1) A person has committed a crime for the purposes of Article 1(F)(a) or (b) of the Refugee Convention if they have instigated or otherwise participated in the commission of the crimes specified in those provisions. 5
- (2) In Article 1(F)(b), the reference to a serious non-political crime includes a particularly cruel action, even if it is committed with an allegedly political objective. 10
- (3) In that Article, the reference to a crime being committed by a person outside the country of refuge prior to their admission to that country as a refugee includes a crime committed by that person at any time up to and including the day on which they are issued with a relevant biometric immigration document by the Secretary of State. 15
- (4) For the purposes of subsection (3), a relevant biometric immigration document is a document that— 20
- (a) records biometric information (as defined in section 15(1A) of the UK Borders Act 2007), and
 - (b) is evidence of leave to remain in the United Kingdom granted to a person as a result of their refugee status. 25

34 Article 31(1): immunity from penalties

- (1) A refugee is not to be taken to have come to the United Kingdom directly from a country where their life or freedom was threatened if, in coming from that country, they stopped in another country outside the United Kingdom, unless they can show that they could not reasonably be expected to have sought protection under the Refugee Convention in that country. 5
- (2) A refugee is not to be taken to have presented themselves without delay to the authorities unless— 10
- (a) in the case of a person who became a refugee while they were outside the United Kingdom, they made a claim for asylum as soon as reasonably practicable after their arrival in the United Kingdom; 15
- (b) in the case of a person who became a refugee while they were in the United Kingdom— 20
- (i) if their presence in the United Kingdom was lawful at that time, they made a claim for asylum before the time when their presence in the United Kingdom became unlawful; 25
- (ii) if their presence in the United Kingdom was unlawful at that time, they made a claim for asylum as soon as reasonably practicable after they became aware of their need for protection under the Refugee Convention. 30

- (3) For the purposes of subsection (2)(b), a person’s presence in the United Kingdom is unlawful if they require leave to enter or remain and do not have it.
- (4) A penalty is not to be taken as having been imposed on account of a refugee’s illegal entry or presence in the United Kingdom where the penalty relates to anything done by the refugee in the course of an attempt to leave the United Kingdom. 5
- (5) In section 31 of the Immigration and Asylum Act 1999 (defences based on Art.31(1) of the Refugee Convention)— 10
- (a) in subsection (2), for “have expected to be given” substitute “be expected to have sought”;
- (b) after subsection (4) insert—
- “(4A) But this section does not apply to an offence committed by a refugee in the course of an attempt to leave the United Kingdom.” 15
- (6) In this section—
- “claim for asylum” means a claim that it would be contrary to the United Kingdom’s obligations under the Refugee Convention for the claimant to be removed from, or required to leave, the United Kingdom; 20
- “country” includes any territory; 25
- “refugee” has the same meaning as in the Refugee Convention.

35 Article 33(2): particularly serious crime

- (1) Section 72 of the Nationality, Immigration and Asylum Act 2002 (serious criminal) is amended as follows.
- (2) In subsection (1), for “protection” substitute “prohibition of expulsion or return”. 5
- (3) In subsection (2)—
- (a) in the words before paragraph (a)—
- (i) for “shall be presumed to have been” substitute “is”; 10
- (ii) omit “and to constitute a danger to the community of the United Kingdom”;
- (b) in paragraph (b), for “two years” substitute “12 months”.
- (4) In subsection (3)— 15
- (a) in the words before paragraph (a)—
- (i) for “shall be presumed to have been” substitute “is”;
- (ii) omit “and to constitute a danger to the community of the United Kingdom”; 20
- (b) in paragraph (b), for “two years” substitute “12 months”;
- (c) in paragraph (c), for “two years” substitute “12 months”.
- (5) In subsection (4), in the words before paragraph (a)— 25
- (a) for “shall be presumed to have been” substitute “is”;

(b) omit “and to constitute a danger to the community of the United Kingdom”.

(6) After subsection (5) insert—

“(5A) A person convicted by a final judgment of a particularly serious crime (whether within or outside the United Kingdom) is to be presumed to constitute a danger to the community of the United Kingdom.”

5

(7) In subsection (6), for “(2), (3) or (4)” substitute “(5A)”.

10

(8) In subsection (7), for “(2), (3) or (4)” substitute “(5A)”.

(9) In subsection (8), for “mentioned in subsection (6)” substitute “under subsection (5A)”.

(10) In subsection (9)(b), for “presumptions under subsection (2), (3) or (4) apply” substitute “a presumption under subsection (5A) applies”.

15

(11) In subsection (10)(b), for “presumptions under subsections (2), (3) or (4) apply” substitute “a presumption under subsection (5A) applies”.

20

(12) In subsection (11)(b)—

(a) in the opening words, for “two years” substitute “12 months”;

(b) in sub-paragraph (ia), for “two years”, in both places it occurs, substitute “12 months”;

25

(c) in sub-paragraph (iii), for “two years” substitute “12 months”.

(13) The amendments made by this section apply only in relation to a person convicted on or after the date on which this section comes into force.

Interpretation

36 Interpretation of Part 2

5

In this Part—

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

the “Human Rights Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4 November 1950 as it has effect for the time being in relation to the United Kingdom;

10

15

“immigration officer” means a person appointed by the Secretary of State as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971;

“immigration rules” means rules under section 3(2) of the Immigration Act 1971;

20

the “Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and its Protocol;

25

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

PART 3

IMMIGRATION OFFENCES AND ENFORCEMENT

Immigration offences and penalties

37 Illegal entry and similar offences

- (1) The Immigration Act 1971 is amended in accordance with subsections (2) to (7). 5
- (2) In section 24 (illegal entry and similar offences), before subsection (1) insert—
- “(A1) A person who knowingly enters the United Kingdom in breach of a deportation order commits an offence. 10
- (B1) A person who—
- (a) requires leave to enter the United Kingdom under this Act, and
- (b) knowingly enters the United Kingdom without such leave, commits an offence. 15
- (C1) A person who—
- (a) requires entry clearance under the immigration rules, and 20
- (b) knowingly arrives in the United Kingdom without a valid entry clearance, commits an offence.
- (D1) A person who commits an offence under subsection (A1), (B1) or (C1) is liable— 25

- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or a fine (or both);
- (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both); 5
- (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both); 10
- (d) on conviction on indictment—
 - (i) for an offence under subsection (A1), to imprisonment for a term not exceeding five years or a fine (or both); 15
 - (ii) for an offence under subsection (B1) or (C1), to imprisonment for a term not exceeding four years or a fine (or both). 20
- (E1) In relation to an offence committed before paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 comes into force, the reference in subsection (D1)(a) to 12 months is to be read as a reference to six months.” 25
- (3) In that section—
 - (a) in subsection (1), omit paragraph (a);
 - (b) in subsection (3), for “subsection (1)(a) and (c)” substitute “subsections (A1), (B1), (C1) and (1)(c)”; 30

- (c) in subsection (4)—
- (i) in the words before paragraph (a), for “against subsection (1)(a)” substitute “under subsection (B1)”;
 - (ii) in paragraph (b), omit the words from the first “if” to the end. 5
- (d) after subsection (4) insert—
- “(5) In proceedings for an offence under subsection (C1) above of arriving in the United Kingdom without a valid entry clearance— 10
- (a) any document attached to a passport or other travel document purporting to have been issued by the Secretary of State for the purposes of providing evidence of entry clearance for a particular period is to be presumed to have been duly so issued unless the contrary is proved; 15
 - (b) proof that a person had a valid entry clearance is to lie on the defence.” 20
- (4) In section 25 (assisting unlawful immigration), in subsection (2)(a), after “enter” insert “or arrive in”.
- (5) In section 28B (search and arrest by warrant), in subsection (5), for “24(1)(a), (b)” substitute “24(A1), (B1), (C1) or (1)(b)”. 25
- (6) In section 28D (entry and search of premises), in subsection (4), for “24(1)(a), (b)” substitute “24(A1), (B1), (C1) or (1)(b)”.

- (7) In section 28FA (search for personnel records: warrant unnecessary), in subsection (1)—
(a) in paragraph (a), for “24(1)” substitute “24”;
(b) in paragraph (c), for “24(1)” substitute “24”.
- (8) In the Nationality, Immigration and Asylum Act 2002—
(a) in section 129(1) (duty on local authority to disclose information on suspected immigration offences), in paragraph (a), for “24(1)(a), (b), (c), (e)” substitute “24(A1), (B1), (C1) or (1)(b), (c)”; 10
(b) in section 134(1) (duty on employer to disclose information on suspected immigration offences), in paragraph (a), for “24(1)(a), (b), (c), (e)” substitute “24(A1), (B1), (C1) or (1)(b), (c)”. 15
- (9) In section 133(7) of the Criminal Justice and Immigration Act 2008 (conditions), for “any provision of section 24(1)” substitute “section 24”.

38 Assisting unlawful immigration or asylum seeker 20

- (1) In section 25(6)(a) of the Immigration Act 1971 (assisting unlawful immigration to member State or the United Kingdom: penalties) for “imprisonment for a term not exceeding 14 years” substitute “imprisonment for life”. 25
- (2) In section 25A(1)(a) of the Immigration Act 1971 (helping asylum seeker to enter United Kingdom) omit “and for gain”.

39 Penalty for failure to secure goods vehicle

Schedule 4 amends the Immigration and Asylum Act 1999 to make provision for the imposition of a penalty for failure adequately to secure a goods vehicle against unauthorised access and other related matters. 5

Enforcement

40 Power to search container unloaded from ship or aircraft

- (1) The Immigration Act 1971 is amended as follows. 10
- (2) In sub-paragraph (5) of paragraph 1 of Schedule 2 (powers to search ship or aircraft etc), after “vehicle” insert “or container”.
- (3) After that sub-paragraph insert—
- “(6) For the purposes of searching a container under sub-paragraph (5), an immigration officer may direct any person who has control of the container to deliver the container to a place specified by the immigration officer. 15
- (7) In this paragraph, “container” has the same meaning as in the Customs and Excise Management Act 1979 (see section 1(1) of that Act).” 20
- (4) In section 26(1) (general offences in connection with administration of Act), after paragraph (g) insert— 25

“(h) if, without reasonable excuse, the person fails to comply with a direction under paragraph 1(6) of Schedule 2 (direction to move a container for purposes of a search).”

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41 Maritime enforcement

Schedule 5 contains amendments to Part 3A of the Immigration Act 1971 (maritime enforcement).

42 Authorisation to work in the territorial sea

- (1) The Secretary of State may make regulations about the right to work in the territorial sea of the United Kingdom. 10
- (2) Regulations under subsection (1) may, in particular, make provision—
- (a) prohibiting people who require leave to enter or remain in the United Kingdom from working in the territorial sea without authorisation, 15
 - (b) *setting out the requirements to be met (including provision requiring sums of money to be paid or biometric information to be provided) for the grant of such authorisation,* 20
 - (c) exempting categories of person from the prohibition, and
 - (d) for the purposes of enforcement—
 - (i) imposing civil and criminal penalties; 25
 - (ii) conferring powers on immigration officers.

- (3) Regulations under subsection (1) are subject to affirmative resolution procedure.

Removals

43 Removals: notice requirements

- (1) Section 10 of the Immigration and Asylum Act 1999 (removal of persons unlawfully in the United Kingdom) is amended in accordance with subsections (2) to (7). 5
- (2) In subsection (1)—
- (a) for “may be removed” substitute “is liable to removal”; 10
- (b) omit “under the authority of the Secretary of State or an immigration officer”.
- (3) In subsection (2)—
- (a) for “may also be removed” substitute “is also liable to removal”; 15
- (b) omit “under the authority of the Secretary of State or an immigration officer”;
- (c) for “the intention to remove him or her” substitute “the fact that they are liable to removal”. 20
- (4) After subsection (6) insert—
- “(6A) A person who is liable to removal from the United Kingdom may be removed under the authority of the Secretary of State or an immigration officer only after— 25
- (a) the Secretary of State or an immigration officer has given them a written notice of

intention to remove them and, except where subsection (6C) applies, the requisite notice period has elapsed, and

(b) the Secretary of State or an immigration officer has given them a written notice of departure details specifying— 5

(i) the date on which they are to be removed from the United Kingdom, and

(ii) the destination to which they are to be removed, and any stops that are expected to be made on the way to that destination. 10

The notices under paragraphs (a) and (b) may be combined into a single notice. 15

(6B) The “requisite notice period” is the period of five working days beginning with the day after the day on which the Secretary of State or immigration officer gave the person a notice of intention to remove them. 20

(6C) A person may be removed from the United Kingdom before the requisite notice period has elapsed where—

(a) the person to be removed was refused leave to enter upon their arrival in the United Kingdom, and 25

(b) the date specified in the notice of departure details as the date for the person’s removal is a date which falls before the end of the period of seven days beginning with the 30

day after the day on which the person was refused leave to enter.”

- (5) In subsection (7), for “subsection (1) or (2)” substitute “this section”.
- (6) In subsection (10)— 5
- (a) in paragraph (a), for “subsection (2)” substitute “this section”;
- (b) in paragraph (b), at the end insert “or (6A)”.
- (7) In subsection (11), at the end insert— 10
- ““working day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom where the person is when they are given the notice of intention to remove them.” 15
- (8) After that section insert—
- “10A Failed removals: whether new notice is required**
- (1) This section applies where— 20
- (a) a person has been given a notice of departure details under section 10(6A)(b) (“the first notice”), but
- (b) the person has not been removed on the date specified in that notice as the date for their removal. 25
- (2) The person may be removed under section 10 only if—

- (a) they have been given a new notice of intention to remove them under section 10(6A)(a) and a further requisite notice period (as defined in section 10(6B)) has elapsed, unless this paragraph does not apply by virtue of subsection (3) or (4), and 5
 - (b) they have been given a new notice of departure details under section 10(6A)(b).
- (3) A new notice of intention to remove and a further notice period are not required where— 10
 - (a) the person was not removed on the date specified in the first notice as a result of matters reasonably beyond the control of the Secretary of State, such as— 15
 - (i) adverse weather conditions,
 - (ii) technical faults or other issues causing delays to transport, or
 - (iii) disruption by the person to be removed or others,
 - (b) the person is to be removed before the end of the period of 21 days beginning with the date of removal as specified in the first notice, 20
 - (c) the route by which the person is to be removed satisfies the route requirement set out in subsection (5), and 25
 - (d) the person to be removed is not a person to whom section 10(6C) applied (port cases: exception to notice requirement).

- (4) A new notice of intention to remove and a further notice period are also not required where—
- (a) the person was not removed on the date specified in the first notice as a result of ongoing judicial review proceedings; 5
 - (b) the person is to be removed before the end of the period of 21 days beginning with the day on which the court or tribunal makes a decision the effect of which is that the person may be removed; and 10
 - (c) the route by which the person is to be removed satisfies the route requirement set out in subsection (5).
- (5) The route requirement is that— 15
- (a) the person is to be removed to the destination that was specified in the first notice, and
 - (b) the route to be taken to that destination is not expected to include a stop that was not specified in the first notice, other than a stop in the United Kingdom or in a country that is for the time being specified in Part 2 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants) Act 2004 (safe third countries).” 20 25
- (9) In Schedule 10 to the Immigration Act 2016 (immigration bail), in paragraph 3(4) (bail not to be granted to person subject to removal directions without consent of Secretary of State), in paragraph (b) for “14” substitute “21”. 30

44 Prisoners liable to removal from the United Kingdom

- (1) The Secretary of State may by regulations amend the Criminal Justice Act 2003 so as to—
- (a) enable the removal of a relevant prisoner from the United Kingdom at an earlier point in their sentence; 5
 - (b) enable the removal from the United Kingdom of a relevant prisoner who has been recalled after being released on licence; 10
 - (c) make provision for a relevant prisoner’s sentence to be paused on their removal from the United Kingdom and re-started if they re-enter the United Kingdom.
- (2) “Relevant prisoner” means a fixed-term prisoner, as defined in section 237 of the Criminal Justice Act 2003, who is liable to removal from the United Kingdom for the purposes of Chapter 6 of Part 12 of that Act (see section 259 of that Act). 15
- (3) Regulations under this section are subject to affirmative resolution procedure. 20

Immigration bail

45 Matters relevant to decisions relating to immigration bail

In paragraph 3(2) of Schedule 10 to the Immigration Act 2016 (matters to be taken into account in making decision on immigration bail), for the “and” at the end of paragraph (e) substitute— 25

- “(ea) whether the person has failed without reasonable excuse to cooperate with any process—
- (i) for determining whether the person requires or should be granted leave to enter or remain in the United Kingdom, 5
 - (ii) for determining the period for which the person should be granted such leave and any conditions to which it should be subject, 10
 - (iii) for determining whether the person’s leave to enter or remain the United Kingdom should be varied, curtailed, suspended or cancelled, 15
 - (iv) for determining whether the person should be removed from the United Kingdom, or
 - (v) for removing the person from the United Kingdom, and”. 20

PART 4

MODERN SLAVERY

46 Provision of information relating to being a victim of slavery or human trafficking

- (1) The Secretary of State may serve a slavery or trafficking information notice on a person who has made a protection claim or a human rights claim. 25
- (2) A “slavery or trafficking information notice” is a notice requiring the recipient to provide the

Secretary of State (and any other competent authority specified in the notice), before the specified date, with any relevant status information the recipient has.

- (3) “Relevant status information” is information that may be relevant for the purposes of making a reasonable grounds decision or a conclusive grounds decision in relation to the recipient. 5
- (4) Subsection (5) applies if the recipient of a slavery or trafficking information notice provides the Secretary of State or competent authority with relevant status information on or after the specified date. 10
- (5) The recipient must also provide a statement setting out their reasons for not providing the relevant status information before the specified date (and see section 47). 15
- (6) In this section—
“protection claim” and “human rights claim” have the same meanings as in Part 2; 20
“specified date” means the date specified in a slavery or trafficking information notice.

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

- (1) This section applies where— 25
(a) a person has been served with a slavery or trafficking information notice under section 46,
(b) the person provided relevant status information late, and

- (c) a competent authority is making a reasonable grounds decision or a conclusive grounds decision in relation to the person.
- (2) In determining whether to believe a statement made by or on behalf of the person, the competent authority must take account, as damaging the person’s credibility, of the late provision of the relevant status information, unless there are good reasons why the information was provided late. 5
- (3) For the purposes of this section, relevant status information is provided “late” by the person if it is provided on or after the date specified in the slavery or trafficking information notice. 10
- (4) In this section, “relevant status information” has the same meaning as in section 46 (see subsection (3) of that section). 15

48 Identification of potential victims of slavery or human trafficking

- (1) The Modern Slavery Act 2015 is amended as follows. 20
- (2) Section 49 (guidance about identifying and supporting victims) is amended in accordance with subsections (3) and (4).
- (3) In subsection (1)— 25
- (a) in paragraph (b)—
- (i) for “may be” substitute “are”;
- (ii) at the end insert “or who are such victims”;
- (b) in paragraph (c) for “may be” substitute “is”;

- (c) after paragraph (c) insert—
 - “(d) arrangements for determining whether a person is a victim of slavery or human trafficking.”
- (4) After that subsection insert— 5
 - “(1A) Guidance issued under subsection (1) must, in particular, provide that the determination mentioned in paragraph (d) is to be made on the balance of probabilities.”
- (5) In section 50 (regulations about identifying and supporting victims)— 10
 - (a) in subsection (1)(a) for “may be” substitute “are”;
 - (b) in subsection (2)(a) for “may be” substitute “is”.
 - (c) after subsection (3) insert— 15
 - “(4) If regulations under subsection (2) make provision for determining whether a person is a victim of slavery or human trafficking (as mentioned in paragraph (b) of that subsection), they must provide that the determination is to be made on the balance of probabilities.” 20
- (6) In section 51 (presumption about age)—
 - (a) in subsection (1)(a) for “may be” substitute “is”;
 - (b) in subsection (3), in the opening words, for “may be” substitute “are”. 25
- (7) In section 56 (interpretation)—
 - (a) before subsection (1) insert—

“(A1) For the purposes of sections 48 to 53 (identification and protection of victims), “victim of slavery” and “victim of human trafficking” have the meanings given in regulations made by the Secretary of State under section 57 of the Nationality and Borders Act 2021.”;

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(b) in each of subsections (1) and (2), after “purposes of” insert “any other provision of”.

49 Identified potential victims of slavery or human trafficking: recovery period

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(1) This section applies to a person (an “identified potential victim”) if—

(a) a decision is made by a competent authority that there are reasonable grounds to believe that the person is a victim of slavery or human trafficking (a “positive reasonable grounds decision”), and

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(b) that decision is not a further RG decision (as to which, see section 50).

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(2) A conclusive grounds decision may not be made in relation to the identified potential victim before the end of the period of 30 days beginning with the day on which the positive reasonable grounds decision was made.

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(3) The identified potential victim may not be removed from, or required to leave, the United Kingdom during the recovery period.

- (4) The “recovery period”, in relation to an identified potential victim, is the period—
- (a) beginning with the day on which the positive reasonable grounds decision is made, and
 - (b) subject to section 51(2), ending with the day on which the conclusive grounds decision is made.

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50 No entitlement to additional recovery period etc

- (1) This section applies where—
- (a) a competent authority has previously made a positive reasonable grounds decision in relation to a person (the “first RG decision”),
 - (b) a further positive reasonable grounds decision is made in relation to the person (the “further RG decision”), and
 - (c) as respects the further RG decision, the reasonable grounds for believing that the person is a victim of slavery or human trafficking arise from things done wholly before the first RG decision was made.
- (2) The further RG decision does not result in any requirement to make a conclusive grounds decision in relation to the person.
- (3) But, if the competent authority considers it appropriate in the circumstances of a particular case, the authority may determine that a conclusive grounds decision is required to be made as a result of the further RG decision (whether or not any other

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conclusive grounds decision falls to be made in relation to the person).

(4) If the competent authority makes that determination—

(a) the conclusive grounds decision may not be made before the end of the period of 30 days beginning with the day on which the further RG decision was made, and 5

(b) the competent authority may also determine that the person may not be removed from, or required to leave, the United Kingdom during the period— 10

(i) beginning with the day on which the further RG decision is made, and

(ii) ending with the day on which the conclusive grounds decision in relation to the further RG decision is made. 15

51 Identified potential victims etc: disqualification from protection

(1) A competent authority may determine that subsection (2) is to apply to a person in relation to whom a positive reasonable grounds decision has been made if the authority is satisfied that the person— 20

(a) is a threat to public order, or 25

(b) has claimed to be a victim of slavery or human trafficking in bad faith.

(2) Where this subsection applies to a person the following cease to apply—

- (a) any requirement to make a conclusive grounds decision in relation to the person, and
 - (b) any prohibition on removing the person from, or requiring them to leave, the United Kingdom arising under section 49 or 50. 5
- (3) For the purposes of this section, the circumstances in which a person is a threat to public order include, in particular, where —
- (a) the person has been convicted of a terrorist offence; 10
 - (b) the person has been convicted of any other offence listed in Schedule 4 to the Modern Slavery Act 2015 anywhere in the United Kingdom, or of a corresponding offence;
 - (c) the person is subject to a TPIM notice (within the meaning given by section 2 of the Terrorism Prevention and Investigation Measures Act 2011); 15
 - (d) there are reasonable grounds to suspect that the person is or has been involved in terrorism-related activity within the meaning given by section 4 of that Act (whether or not the terrorism-related activity is attributable to the person being, or having been, a victim of slavery or human trafficking); 20
 - (e) the person is subject to a temporary exclusion order imposed under section 2 of the Counter-Terrorism and Security Act 2015; 25
 - (f) the person is a foreign criminal within the meaning given by section 32(1) of the UK 30

- Borders Act 2007 (automatic deportation for foreign criminals);
- (g) the Secretary of State has made an order in relation to the person under section 40(2) of the British Nationality Act 1981 (order depriving person of citizenship status where to do so is conducive to the public good); 5
- (h) the Refugee Convention does not apply to the person by virtue of Article 1(F) of that Convention (serious criminals etc); 10
- (i) the person otherwise poses a risk to the national security of the United Kingdom.
- (4) In subsection (3)(a), “terrorist offence” means any of the following (whenever committed)—
- (a) an offence listed in— 15
- (i) Schedule A1 to the Sentencing Code (terrorism offences: England and Wales), or
- (ii) Schedule 1A to the Counter-Terrorism Act 2008 (terrorism offences: Scotland and Northern Ireland); 20
- (b) an offence that was determined to have a terrorist connection under—
- (i) section 69 of the Sentencing Code (in the case of an offender sentenced in England and Wales), or 25
- (ii) section 30 of the Counter-Terrorism Act 2008 (in the case of an offender sentenced in Northern Ireland, or an offender sentenced in England and Wales before the Sentencing Code applied); 30

- (c) an offence that has been proved to have been aggravated by reason of having a terrorist connection under section 31 of the Counter-Terrorism Act 2008 (in the case of an offender sentenced in Scotland); 5
- (d) an act constituting an offence under the law in force in a country outside the United Kingdom that—
 - (i) would have constituted an offence within paragraph (a) if it had been committed in any part of the United Kingdom, or 10
 - (ii) was, or took place in the course of, an act of terrorism or was done for the purposes of terrorism.
- (5) In subsection (3)(b) “corresponding offence” means— 15
 - (a) an offence under the law of Scotland or of Northern Ireland which corresponds to an offence listed in Schedule 4 to the Modern Slavery Act 2015; 20
 - (b) an act constituting an offence under the law in force in a country outside the United Kingdom that would have constituted an offence listed in that Schedule if it had been committed in England or Wales. 25
- (6) For the purposes of this section an act punishable under the law in force in a country outside the United Kingdom is regarded as constituting an offence under that law however it is described in that law. 30

(7) In this section—

“act” includes an omission;

“the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and its Protocol;

“terrorism” has the same meaning as in the Terrorism Act 2000 (see section 1 of that Act).

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52 Identified potential victims etc in England and Wales: assistance and support

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After section 50 of the Modern Slavery Act 2015 insert—

“50A Identified potential victims etc: assistance and support

(1) The Secretary of State must secure that any necessary assistance and support is available to an identified potential victim (within the meaning given by section 49 of the Nationality and Borders Act 2021 (the “2021 Act”)) during the recovery period.

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(2) For the purposes of this section, assistance and support is “necessary” if the Secretary of State considers that it is necessary for the purpose of assisting the person receiving it in their recovery from any harm to their physical and mental health and their social well-being arising from the conduct which resulted in the positive reasonable grounds decision in question.

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- (3) Subsection (4) applies where—
 - (a) a further RG decision, within the meaning given by section 50 of the 2021 Act, is made in relation to a person, and
 - (b) the Secretary of State has made a determination under subsection (3) of that section in relation to the case (determination that conclusive grounds decision is required). 5
- (4) If the Secretary of State determines that it is appropriate to do so, the Secretary of State must secure that any necessary assistance and support is available to the person during the period— 10
 - (a) beginning with the day on which the further RG decision is made, and 15
 - (b) ending with the day on which the conclusive grounds decision in relation to the further RG decision is made.
- (5) In a case where— 20
 - (a) a further RG decision has been made in relation to a person, and
 - (b) the duty under subsection (4) does not apply,the Secretary of State may nevertheless secure that necessary assistance and support is available to the person, for such period as the Secretary of State considers appropriate. 25
- (6) Any duty under subsection (1) or (4) ceases to apply in relation to a person in respect of whom 30

a determination is made under section 51(1) of the 2021 Act (disqualification from protection).

(7) In this section, a reference to assistance and support is to assistance and support provided in accordance with—

- (a) arrangements referred to in section 49(1)(b), or
- (b) regulations made under section 50.

(8) In this section—

“conclusive grounds decision” has the same meaning as in Part 4 of the 2021 Act (see section 57 of that Act);

“recovery period” has the same meaning as in section 49 of that Act.”

53 Leave to remain for victims of slavery or human trafficking

(1) This section applies if a positive conclusive grounds decision is made in respect of a person—

- (a) who is not a British citizen, and
- (b) who does not have leave to remain in the United Kingdom.

(2) The Secretary of State must give the person limited leave to remain in the United Kingdom if the Secretary of State considers it is necessary for the purpose of—

- (a) assisting the person in their recovery from any harm arising from the relevant exploitation to their physical and mental health and their social well-being,

- (b) enabling the person to seek compensation in respect of the relevant exploitation, or
 - (c) enabling the person to co-operate with a public authority in connection with an investigation or criminal proceedings in respect of the relevant exploitation. 5
- (3) Leave is not necessary for the purpose mentioned in—
 - (a) subsection (2)(a) if the Secretary of State considers that the person’s need for assistance is capable of being met in a country or territory within paragraph (a) or (b) of subsection (4) (or both); 10
 - (b) subsection (2)(b) if the Secretary of State considers that— 15
 - (i) the person is capable of seeking compensation from outside the United Kingdom, and
 - (ii) it would be reasonable for the person to do so in the circumstances. 20
- (4) A country or territory is within this subsection if—
 - (a) it is a country of which the person is a national or citizen;
 - (b) it is one to which the person may be removed in accordance with an agreement between that country or territory and the United Kingdom (as contemplated by Article 40(2) of the Trafficking Convention). 25
- (5) Subsection (6) applies if the Secretary of State is satisfied that— 30

- (a) the person is a threat to public order, or
 - (b) the person has claimed to be a victim of slavery or human trafficking in bad faith.
- (6) Where this subsection applies—
- (a) the Secretary of State is not required to give the person leave under subsection (2), and
 - (b) if such leave has already been given to the person, it may be revoked.
- (7) Leave given to a person under subsection (2) may be revoked in such other circumstances as may be prescribed in immigration rules.
- (8) Subsections (3) to (7) of section 51 apply for the purposes of this section as they apply for the purposes of that section.
- (9) In this section—
- “positive conclusive grounds decision” means a decision made by a competent authority that a person is a victim of slavery or human trafficking;
 - “public authority” means any public authority within the meaning of section 6 of the Human Rights Act 1998;
 - “the relevant exploitation” means the conduct resulting in the positive reasonable grounds decision.
- (10) This section is to be treated for the purposes of section 3 of the Immigration Act 1971 as if it were provision made by that Act.

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

- (1) Part 1 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (civil legal services qualifying for legal aid) is amended as follows. 5
- (2) In paragraph 19 (judicial review)—
- (a) after sub-paragraph (1) insert— 10
- “Add-on services in relation to referral into the national referral mechanism*
- (1A) Civil legal services provided to an individual in relation to referral into the national referral mechanism, in a case where the Director has determined the individual qualifies for any services described in sub-paragraph (1) that are of a description to which sub-paragraph (1B) applies (and has not withdrawn the determination). 15 20
- (1B) This sub-paragraph applies to services in relation to any immigration or asylum decision (or failure to make a decision) against which there is no right of appeal.”;
- (b) after sub-paragraph (2) insert— 25
- “(2A)Sub-paragraph (1A) is subject to the exclusions in Part 2 of this Schedule.”;
- (c) after sub-paragraph (8) insert—
- “Add-on services described in sub-paragraph (1A): specific exclusions* 30

- (8A) The add-on services described in sub-paragraph (1A) do not include—
- (a) advocacy, or
 - (b) attendance at an interview conducted by the competent authority under the national referral mechanism for the purposes of a reasonable grounds decision or a conclusive grounds decision.” 5
- (3) In each of paragraphs 25, 26, 27 and 27A (various immigration matters)— 10
- (a) after sub-paragraph (1) insert—
“Add-on services in relation to referral into the national referral mechanism
 - (1A) Civil legal services provided to an individual in relation to referral into the national referral mechanism, in a case where the Director has determined the individual qualifies for any services described in sub-paragraph (1) (and has not withdrawn that determination).”; 15 20
 - (b) after sub-paragraph (2) insert—
“(3) Sub-paragraph (1A) is subject to the exclusions in Part 2 of this Schedule.
Add-on services described in sub-paragraph (1A): specific exclusions 25
 - (4) The add-on services described in sub-paragraph (1A) do not include—
 - (a) advocacy, or

- (b) attendance at an interview conducted by the competent authority under the national referral mechanism for the purposes of a reasonable grounds decision or a conclusive grounds decision.” 5
- (4) In paragraph 30 (immigration: rights to enter and remain)—
 - (a) after sub-paragraph (1) insert—
 - “Add-on services in relation to referral into the national referral mechanism 10
 - (1A) Civil legal services provided to an individual in relation to referral into the national referral mechanism, in a case where the Director has determined the individual qualifies for any services described in sub-paragraph (1) (and has not withdrawn the determination).”; 15
 - (b) after sub-paragraph (2) insert—
 - “(2A) Sub-paragraph (1A) is subject to the exclusions in Part 2 of this Schedule.”; 20
 - (c) after sub-paragraph (3) insert—
 - “Add-on services described in sub-paragraph (2A): specific exclusions
 - (3A) The add-on services described in sub-paragraph (2A) do not include— 25
 - (a) advocacy, or
 - (b) attendance at an interview conducted by the competent authority under the national referral mechanism for the 30

purposes of a reasonable grounds decision or a conclusive grounds decision.”

- (5) In paragraph 31A (immigration, citizenship and nationality: separated children)— 5
- (a) after sub-paragraph (2) insert—
- “Add-on services in relation to referral into the national referral mechanism*
- (2A) Civil legal services provided to an individual in relation to referral into the national referral mechanism, in a case where the Director has determined the individual qualifies for any services described in sub-paragraph (1) (and has not withdrawn the determination).”; 10
- not withdrawn the determination).”; 15
- (b) after sub-paragraph (3) insert—
- “(3A)Sub-paragraph (2A) is subject to the exclusions in Part 2 of this Schedule.
- Add-on services described in sub-paragraph (2A): specific exclusions* 20
- (3B) The add-on services described in sub-paragraph (2A) do not include—
- (a) advocacy, or
- (b) attendance at an interview conducted by the competent authority under the national referral mechanism for the purposes of a reasonable grounds decision or a conclusive grounds decision.” 25

(6) In Part 4 of Schedule 1 to that Act (interpretation) after paragraph 7 insert—

“8 In this Schedule—

“civil legal services provided to an individual in relation to referral into the national referral mechanism” means— 5

(a) advice on the national referral mechanism, or

(b) other civil legal services in connection with accessing that mechanism, 10

provided to an individual before a reasonable grounds decision has been made in relation to that individual;

”competent authority” (in relation to the national referral mechanism) means a person who is a competent authority of the United Kingdom for the purposes of the Council of Europe Convention on Action against Trafficking in Human Beings (done at Warsaw on 16 May 2005); 15 20

“national referral mechanism” means the national framework (known as the National Referral Mechanism) for identifying and referring potential victims of modern slavery and ensuring they receive appropriate support; 25

“reasonable grounds decision” and “conclusive grounds decision” have the same meaning as in Part 4 (modern 30

slavery) of the Nationality and Borders Act 2021 (see section 57 of that Act).”

- (7) Any amendment made by this section describing add-on services that may be provided to an individual where the Director of Legal Aid Casework has made a relevant determination does not apply to a determination made before the amendment comes into force. 5

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

In section 10 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (civil legal services in exceptional cases), after subsection (3) insert— 15

- “(3A) Civil legal services provided in relation to referral into the national referral mechanism are to be available to an individual in a case where subsection (2) is satisfied in relation to the individual and to services of a kind to which subsection (3B) applies. 20

- (3B) This subsection applies to services in relation to a claim by the individual made to the Secretary of State that to remove the individual from, or to require the person to leave, the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998. 25

- (3C) The services described in subsection (3A) do not include—

- (a) the services listed in Part 2 of Schedule 1;
 - (b) advocacy;
 - (c) attendance at an interview conducted by the competent authority under the national referral mechanism for the purposes of a reasonable grounds decision. 5
- (3D) In subsection (3A) “civil legal services in relation to referral into the national referral mechanism” means—
- (a) advice on the national referral mechanism, or 10
 - (b) other civil legal services in connection with accessing that mechanism, provided before a reasonable grounds decision has been made in relation to the individual to whom the services are provided. 15
- (3E) In subsections (3C) and (3D)—
- “competent authority” and “national referral mechanism” have the same meaning as in Schedule 1 (see paragraph 8 of Part 4 of that Schedule); 20
 - “reasonable grounds decision” has the same meaning as in Part 4 of the Nationality and Borders Act 2021 (see section 57 of that Act).” 25

56 Disapplication of retained EU law deriving from Trafficking Directive

- (1) Section 4 of the European Union (Withdrawal) Act 2018 (saving for rights etc under section 2(1) of the

European Communities Act 1972) ceases to apply to rights, powers, liabilities, obligations, restrictions, remedies and procedures derived from the Trafficking Directive so far as their continued existence would otherwise be incompatible with provision made by or under this Act. 5

(2) “The Trafficking Directive” means Council Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims. 10

57 Part 4: interpretation

(1) In this Part—

“competent authority” means a person who is a competent authority of the United Kingdom for the purposes of the Trafficking Convention; 15

“conclusive grounds decision” means a decision by a competent authority as to whether a person is a victim of slavery or human trafficking; 20

“positive reasonable grounds decision” has the meaning given by section 49(1);

“reasonable grounds decision” means a decision by a competent authority as to whether there are reasonable grounds to believe that a person is a victim of slavery or human trafficking; 25

the “Trafficking Convention” means the Council of Europe Convention on Action against

Trafficking in Human Beings (done at Warsaw on 16 May 2005);

“victim of slavery” and “victim of human trafficking” have the meanings given in regulations made by the Secretary of State.

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(2) Regulations under subsection (1) are subject to affirmative resolution procedure.

PART 5

MISCELLANEOUS

58 Age assessments

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(1) The Secretary of State may by regulations make provision about the processes for assessing the age of relevant persons.

(2) The regulations may in particular include provision—

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(a) about the test to be applied by immigration officers for determining whether a relevant person may be a child;

(b) conferring functions on the Secretary of State and on local authorities relating to decisions as to whether a relevant person is a child;

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(c) setting out the general principles and procedures to be applied in any case where it is to be decided whether a relevant person is a child;

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(d) about the use of scientific methods in deciding whether a relevant person is a child;

(e) for appeals against a decision about a relevant person's age to be made to the First-tier Tribunal.

- (3) For the purposes of this section, a relevant person is a person who under the Immigration Act 1971 requires leave to enter or remain in the United Kingdom (whether or not such leave has been given). 5
- (4) Regulations under this section are subject to affirmative resolution procedure. 10

59 Processing of visa applications from nationals of certain countries

- (1) The Secretary of State may make regulations about the processing of applications for entry clearance or leave to enter the United Kingdom from nationals of a country falling within subsection (3). 15
- (2) The provision may in particular allow for—
- (a) the processing of such applications to be suspended or delayed; 20
 - (b) such applications to be treated as invalid;
 - (c) *additional financial requirements for such applications.*
- (3) A country falls within this subsection if, in the opinion of the Secretary of State, the government of that country does not co-operate with the United Kingdom government in relation to the removal from the United Kingdom of nationals of that 25

country who require leave to enter or remain in the United Kingdom but do not have it.

- (4) Regulations under this section are subject to affirmative resolution procedure.

60 Electronic travel authorisations

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- (1) The Secretary of State may make regulations about electronic travel authorisations.

- (2) The regulations may in particular make provision—
(a) requiring an individual to have an electronic travel authorisation before travelling to the United Kingdom,

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(b) imposing civil penalties on owners of ships or aircraft which carry individuals in breach of a requirement to have an electronic travel authorisation,

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(c) about biometric information to be provided with an application for an electronic travel authorisation, and

(d) about the recognition of electronic travel authorisations issued in the Channel Islands and the Isle of Man.

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- (3) Regulations under this section are subject to affirmative resolution procedure.

61 Special Immigration Appeals Commission

- (1) The Secretary of State may make regulations specifying the decisions relating to immigration which may be certified for the purpose of allowing an appeal to the Special Immigration Appeals

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Commission established under section 1 of the Special Immigration Appeals Commission Act 1997.

- (2) “Decisions relating to immigration” include any decision under the Immigration Acts which relates to a person’s entitlement to enter, reside or remain in the United Kingdom, or to a person’s removal from the United Kingdom. 5
- (3) Regulations under this section may specify the criteria according to which the decisions may be certified, including in particular— 10
- (a) national security;
 - (b) the interests of the relationship between the United Kingdom and another country;
 - (c) the public interest generally. 15
- (4) Regulations under this section may amend the Special Immigration Appeals Commission (Procedure) Rules 2003 (S.I. 2003/1034).
- (5) Regulations under this section are subject to affirmative resolution procedure. 20

62 Tribunal charging power in respect of wasted resources

- (1) *After section 25 of the Tribunals, Courts and Enforcement Act 2007 insert—*

**“25A First-tier Tribunal and Upper Tribunal:
charging power in respect of wasted
resources**

- (1) *If, in respect of proceedings before the First-tier Tribunal or Upper Tribunal, the Tribunal considers that—* 5
- (a) *a relevant participant has acted improperly, unreasonably or negligently, and*
- (b) *as a result, the Tribunal’s resources have been wasted,* 10
- it may charge the participant an amount under this section.*
- (2) *Subsection (1) is subject to Tribunal Procedure Rules.* 15
- (3) *For the purposes of this section “relevant participant”, in respect of proceedings, means—*
- (a) *any person exercising a right of audience or right to conduct the proceedings on behalf of a party to proceedings,* 20
- (b) *any employee of such a person, or*
- (c) *where the Secretary of State is a party to proceedings and has not instructed a person mentioned in paragraph (a) to act on their behalf in the proceedings, the Secretary of State.* 25
- (4) *A person may be found to have acted improperly, unreasonably or negligently for the*

purposes of subsection (1) by reason of having failed to act in a particular way.

(5) The proceeds of amounts charged under this section must be paid into the Consolidated Fund.”

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(2) In Schedule 5 to that Act (procedure in First-tier Tribunal and Upper Tribunal), after paragraph 11 insert—

“Charges in respect of wasted resources

11A(1) Rules may make provision for regulating matters relating to the charging of amounts under section 25A (First-tier Tribunal and Upper Tribunal: power to charge in respect of wasted resources).

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(2) The provision mentioned in sub-paragraph (1) includes (in particular) provision prescribing scales of amounts that may be charged.”

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63 Tribunal Procedure Rules to be made in respect of costs orders etc

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(1) Tribunal Procedure Rules must prescribe conduct that, in the absence of evidence to the contrary, is to be treated as—

(a) improper, unreasonable or negligent for the purposes of—

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(i) section 25A(1) of the Tribunals, Courts and Enforcement Act 2007 (charge in respect of wasted resources);

(ii) section 29(4) of that Act (wasted costs);

- (b) an unreasonable act for the purposes of section 29(3A) of that Act (unreasonable costs orders).
- (2) Tribunal Procedure Rules must make provision to the effect that the Tribunal, if satisfied that conduct prescribed under subsection (1) has taken place, must consider whether to impose a charge or make an order in accordance with the provisions mentioned in that subsection. 5
- (3) Nothing in Tribunal Procedure Rules may compel the Tribunal to impose a charge, or make an order, mentioned in subsection (1) in relation to conduct (whether or not that conduct is prescribed under that subsection). 10
- (4) In this section “the Tribunal” means the Immigration and Asylum Chamber of the First-Tier Tribunal and of the Upper Tribunal (see Articles 2 and 9 of The First-tier Tribunal and Upper Tribunal (Chambers) Order 2010 (S.I. 2010/2655)). 15
- (5) In this section “conduct” includes acts or omissions. 20
- (6) In section 29 of the Tribunals, Courts and Enforcement Act 2007, after subsection (3) insert—
- “(3A) The relevant Tribunal may, in particular, make an order in respect of costs in any proceedings mentioned in subsection (1), if it considers that a party or its legal or other representative has acted unreasonably in bringing, defending or conducting the proceedings.” 25

64 Good faith requirement

- (1) This section applies in relation to an immigration decision being made by the Secretary of State or an immigration officer (“the deciding authority”).
- (2) The deciding authority must take into account 5
whether the person whose immigration status is at issue has acted in good faith—
- (a) in connection with the matter that is being decided;
- (b) in their dealings, at any time, with a person 10
exercising immigration and nationality functions;
- (c) in connection with—
- (i) a claim made at any time, or civil 15
proceedings brought at any time, under any provision of immigration legislation, or
- (ii) judicial review proceedings brought at any 20
time, or (in Scotland) an application to the supervisory jurisdiction of the Court of Session made at any time, relating to a decision taken by a person in exercise of immigration and nationality functions.
- (3) “Immigration decision” means—
- (a) a decision on a person’s application for leave 25
to enter or remain in the United Kingdom,
- (b) a decision about whether to cancel a person’s leave to enter or remain in the United Kingdom, or
- (c) a decision about whether to revoke a person’s 30
indefinite leave to enter or remain in the United

Kingdom (see section 76 of the Nationality, Immigration and Asylum Act 2002).

- (4) “Immigration and nationality functions” means functions exercisable by virtue of—
- (a) the Immigration Acts, or 5
 - (b) the Nationality Acts.
- (5) The reference in subsection (4)(a) to the Immigration Acts does not include a reference to—
- (a) sections 28A to 28K of the Immigration Act 1971 (powers of arrest, entry and search, etc), 10
 - or
 - (b) section 14 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (power of arrest).
- (6) This section is not to be read as limiting the power of a deciding authority to take account of any other matters it considers relevant to the immigration decision concerned. 15
- (7) A deciding authority is not required by this section to take particular conduct into account if any other provision of immigration legislation provides for that conduct to be a factor that affects, or may affect, the immigration decision concerned. 20
- (8) This section applies in relation to an immigration decision only where the application for leave was made on or after the day on which this section comes into force. 25
- (9) In this section—
“conduct” includes acts and omissions;

“immigration legislation” means—

- (a) the Immigration Acts,
- (b) the Nationality Acts, and
- (c) rules under section 3(2) of the Immigration Act 1971 (general immigration rules);

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“immigration officer” means a person appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971;

“indefinite leave” has the same meaning as in the Immigration Act 1971 (see section 33 of that Act);

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“Nationality Acts” means—

- (a) the British Nationality Act 1981,
- (b) the Hong Kong Act 1985,
- (c) the Hong Kong (War Wives and Widows) Act 1996, and
- (d) the British Nationality (Hong Kong) Act 1997.

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65 Pre-consolidation amendments of immigration legislation

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(1) The Secretary of State may by regulations make such amendments and modifications of the Acts relating to immigration as in the Secretary of State’s opinion facilitate, or are otherwise desirable in connection with, the consolidation of the whole or a substantial part of the Acts relating to immigration.

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(2) The Acts relating to immigration are—

- (a) the Immigration Act 1971;

- (b) the Immigration Act 1988;
- (c) the Asylum and Immigration Appeals Act 1993;
- (d) the Asylum and Immigration Act 1996;
- (e) the Special Immigration Appeals Commission Act 1997; 5
- (f) the Immigration and Asylum Act 1999;
- (g) the Nationality, Immigration and Asylum Act 2002;
- (h) the Asylum and Immigration (Treatment of Claimants, etc) Act 2004; 10
- (i) the Immigration, Asylum and Nationality Act 2006;
- (j) the UK Borders Act 2007;
- (k) Parts 10 and 12 of the Criminal Justice and Immigration Act 2008; 15
- (l) the Borders, Citizenship and Immigration Act 2009;
- (m) section 147 of and Schedule 8 to the Anti-Social Behaviour, Crime and Policing Act 2014; 20
- (n) the Immigration Act 2014;
- (o) the Immigration Act 2016;
- (p) Parts 1 and 3 of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020; 25
- (q) this Act, other than Part 1;
- (r) any other provision of an Act relating to immigration, whenever passed.

- (3) For the purposes of this section, “amend” includes repeal (and similar terms are to be read accordingly).
- (4) Regulations made under this section do not come into force unless an Act is passed consolidating the whole or a substantial part of the Acts relating to immigration. 5
- (5) If such an Act is passed, any regulations made under this section come into force immediately before the Act comes into force. 10
- (6) Regulations under this section are subject to affirmative resolution procedure.

PART 6

GENERAL

66 Financial provision 15

The following are to be paid out of money provided by Parliament—

- (a) *expenditure incurred under or by virtue of this Act by a Minister of the Crown, and*
- (b) *any increase attributable to this Act in the sums payable under any other Act out of money so provided.* 20

67 Transitional and consequential provision

- (1) The Secretary of State may by regulations make such transitional, transitory or saving provision as the Secretary of State considers appropriate in 25

- connection with the coming into force of any provision of this Act.
- (2) The Secretary of State may by regulations make such provision as the Secretary of State considers appropriate in consequence of this Act. 5
- (3) The provision that may be made by regulations under subsection (2) includes provision amending, repealing or revoking any enactment.
- (4) “Enactment” includes— 10
- (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;
 - (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;
 - (c) an enactment contained in, or in an instrument made under, a Measure or Act of Senedd Cymru; 15
 - (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation.
- (5) Regulations under subsection (2) that amend— 20
- (a) an Act of Parliament,
 - (b) retained direct principal EU legislation,
 - (c) an Act of the Scottish Parliament,
 - (d) a Measure or Act of Senedd Cymru, or
 - (e) Northern Ireland legislation, 25
- are subject to affirmative resolution procedure.
- (6) Otherwise, regulations under subsection (2) are subject to negative resolution procedure.

- (7) In section 61(2) of the UK Borders Act 2007 (meaning of “the Immigration Acts”)—
- (a) omit the “and” at the end of paragraph (k), and
 - (b) after paragraph (l) insert “, and
 - (m) the Nationality and Borders Act 2021.” 5

68 Regulations

- (1) A power to make regulations under this Act is exercisable by statutory instrument.
- (2) Regulations under this Act—
 - (a) may make different provision for different purposes; 10
 - (b) may make transitional, transitory or saving provision;
 - (c) may make incidental, supplementary or consequential provision. 15
- (3) Where regulations under this Act are subject to “negative resolution procedure” the statutory instrument containing the regulations is subject to annulment in pursuance of a resolution of either House of Parliament. 20
- (4) Where regulations under this Act are subject to “affirmative resolution procedure” the regulations may not be made unless a draft of the instrument containing them has been laid before and approved by a resolution of each House of Parliament. 25
- (5) Any provision that may be made by regulations under this Act subject to negative resolution procedure may instead be made by regulations

under this Act subject to affirmative resolution procedure.

- (6) Any provision that may be made by regulations under this Act for which no Parliamentary procedure is prescribed may instead be made by regulations subject to negative or affirmative resolution procedure. 5

69 Extent

- (1) This Act extends to England and Wales, Scotland and Northern Ireland, subject as follows. 10
- (2) Any amendment, repeal or revocation made by this Act has the same extent within the United Kingdom as the provision to which it relates.
- (3) Part 1 (nationality) also extends to the Channel Islands and the Isle of Man and the British overseas territories within the meaning of the British Nationality Act 1981 (see section 50(1) of that Act). 15

70 Commencement

- (1) Subject to subsections (3) and (4), this Act comes into force on such day as the Secretary of State appoints by regulations. 20
- (2) Regulations under subsection (1) may appoint different days for different purposes or areas.
- (3) This Part comes into force on the day on which this Act is passed. 25

-
- (4) The following provisions come into force at the end of the period of two months beginning with the day on which this Act is passed—
- (a) sections 16, 17 and 23 (evidence in asylum or human rights claims); 5
 - (b) section 25 (claims certified as clearly unfounded: removal of right of appeal);
 - (c) paragraphs 5 to 19 of Schedule 3, and section 26 so far as it relates to those paragraphs (removal of asylum seeker to safe third country); 10
 - (d) section 27(1), (2) and (4) to (6) (Refugee Convention: general);
 - (e) sections 28 to 33 and 35 (interpretation of Refugee Convention); 15
 - (f) section 36 (interpretation of Part 2);
 - (g) section 40 (power to search container);
 - (h) section 42 (authorisation to work in territorial sea);
 - (i) section 57 (interpretation of Part 4), for the purposes of making regulations under that section; 20
 - (j) sections 58 to 61 (miscellaneous regulation-making powers);
 - (k) section 64 (good faith requirement); 25
 - (l) section 65 (pre-consolidation amendments of immigration legislation).

71 Short title

This Act may be cited as the Nationality and Borders Act 2021.

SCHEDULES

SCHEDULE 1

Section 8

WAIVER OF REQUIREMENT OF PRESENCE IN UK ETC

Amendments to the British Nationality Act 1981

- | | | |
|------|---|----|
| 1 | The British Nationality Act 1981 is amended as follows. | 5 |
| 2 | In section 4 (acquisition by registration: British overseas territories citizens etc), in subsection (4)— | |
| | (a) before paragraph (a) insert— | 10 |
| | “(za) treat the person to whom the application relates as fulfilling the first requirement specified in subsection (2)(a) although the person was not in the United Kingdom at the beginning of the period there mentioned;”; | 15 |
| | (b) in paragraph (a), for “requirement specified in subsection (2)(a) or” substitute “second requirement specified in subsection (2)(a) or the requirement specified in”. | 20 |
| 3(1) | Schedule 1 (requirements for naturalisation) is amended as follows. | |
| | (2) In paragraph 2 (naturalisation as a British citizen under section 6(1): waiver of requirements in special circumstances)— | 25 |
| | (a) in sub-paragraph (1), before paragraph (a) insert— | |

Schedule 1 — Waiver of requirement of presence in UK

- “(za) treat the applicant as fulfilling the first requirement specified in paragraph 1(2)(a) although the applicant was not in the United Kingdom at the beginning of the period there mentioned;”;
 - (b) in that sub-paragraph, in paragraph (a), for “requirement specified in paragraph 1(2)(a) or” substitute “second requirement specified in paragraph 1(2)(a) or the requirement specified in”;
 - (c) omit sub-paragraphs (2) and (3).
- (3) In paragraph 6 (naturalisation as a British overseas territories citizen under section 18(1): waiver of requirements in special circumstances)—
 - (a) before paragraph (a) insert—
 - “(za) treat the applicant as fulfilling the first requirement specified in paragraph 5(2)(a) although the applicant was not in the relevant territory at the beginning of the period there mentioned;”;
 - (b) in paragraph (a), for “requirement specified in paragraph 5(2)(a) or”

Schedule 1 — Waiver of requirement of presence in UK

substitute “second requirement specified in paragraph 5(2)(a) or the requirement specified in”.

Consequential amendment

- 4 In section 1 of the Citizenship (Armed Forces) Act 2014 (applications for citizenship by members or former members of armed forces), omit subsection (3). 5

SCHEDULE 2 Section 21 10

EXPEDITED APPEALS WHERE PRIORITY REMOVAL NOTICE SERVED: CONSEQUENTIAL AMENDMENTS

- 1 The Nationality, Immigration and Asylum Act 2002 is amended as follows.
- 2 In section 85 (matters to be considered on appeal)— 15
- (a) in subsections (1), (2) and (4), after “the Tribunal” insert “or the Upper Tribunal”;
- (b) in subsection (5)— 20
- (i) after “the Tribunal”, in the first place it appears, insert “or the Upper Tribunal”;
- (ii) for “the Tribunal”, in the second place it appears, substitute “the tribunal concerned”. 25

<i>Nationality and Borders Bill</i>	140
<i>Schedule 2 — Expedited appeals where priority</i>	
3 In section 86 (determination of appeal), in subsection (2), after “the Tribunal” insert “or the Upper Tribunal”.	
4 In section 106 (tribunal procedure rules), in subsections (3) and (4), after “the Tribunal” insert “or the Upper Tribunal”.	5
5 In section 107 (practice directions)—	
(a) before subsection (3) insert—	
“(2A) Subsection (3) applies to—	
(a) proceedings under section 82 in the Tribunal or proceedings in the Upper Tribunal arising out of such proceedings;	10
(b) proceedings under section 82 in the Upper Tribunal (see section 82A).”;	15
(b) in subsection (3), for the words from “under section 82” to “such proceedings” substitute “to which this subsection applies”.	20
6 In section 108 (forged document: proceedings in private), in subsection (2), after “The Tribunal” insert “or the Upper Tribunal”.	25

Nationality and Borders Bill
Schedule 2 — Expedited appeals where priority

SCHEDULE 3 Section 26

REMOVAL OF ASYLUM SEEKER TO SAFE COUNTRY

Amendments to section 77 of the Nationality, Immigration and Asylum Act 2002

- | | | |
|---|---|----|
| 1 | In section 77 of the Nationality, Immigration and Asylum Act 2002 (no removal while claim for asylum pending), after subsection (2) insert— | 5 |
| | “(2A) This section does not prevent a person being removed to, or being required to leave to go to, a State falling within subsection (2B). | 10 |
| | (2B) A State falls within this subsection if— | |
| | (a) it is a place where a person’s life and liberty are not threatened by reason of the person’s race, religion, nationality, membership of a particular social group or political opinion, | 15 |
| | (b) it is a place from which a person will not be removed elsewhere other than in accordance with the Refugee Convention, | 20 |
| | (c) it is a place— | |
| | (i) to which a person can be removed without their Convention rights under Article 3 (no torture or | 25 |

Schedule 3 — Removal of asylum seeker to safe

- inhuman or degrading treatment or punishment) being contravened, and
- (ii) from which a person will not be sent to another State in contravention of the person's Convention rights, and 5
- (d) the person is not a national or citizen of the State.
- (2C) For the purposes of this section— 10
 - (a) any State to which Part 2 or 3 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 for the time being applies— 15
 - (i) is to be presumed to be a State falling within subsection (2B)(a) and (b), and
 - (ii) is, unless the contrary is shown by a person to be the case in their particular circumstances, to be presumed to be a State falling within subsection (2B)(c)(i) and (ii); 20
 - (b) any State to which Part 4 of that Schedule for the time being applies is to be presumed to be a 25

Schedule 3 — Removal of asylum seeker to safe

State falling within subsection (2B)(a) and (b);

(c) a reference to anything being done in accordance with the Refugee Convention is a reference to the thing being done in accordance with the principles of the Convention, whether or not by a signatory to it;

(d) “State” includes any territory outside of the United Kingdom.”

2 In subsection (3) of that section, for “subsection (2)” substitute “this section, “Convention rights” means the rights identified as Convention rights by section 1 of the Human Rights Act 1998 (whether or not in relation to a State that is a party to the Convention); and”.

Amendments to Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004: introductory

3 Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (the “2004 Act”) (removal of asylum seeker to safe country) is amended as follows.

Schedule 3 — Removal of asylum seeker to safe

Amendments consequential on amendments to section 77 of the 2002 Act

4 Omit paragraphs 4, 9, 14 and 18.

Rebuttable presumption of safety of specified countries in relation to Convention rights

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5(1) Paragraph 3 (presumptions of safety) is amended as follows.

(2) In sub-paragraph (1), in the opening words, after “human rights claim” insert “(the “claimant”)”.

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(3) After sub-paragraph (1) insert—

“(1A)Unless the contrary is shown by the claimant to be the case in their particular circumstances, a State to which this Part applies is to be treated, in so far as relevant to the question mentioned in sub-paragraph (1), as a place—

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(a) to which a person can be removed without their Convention rights under Article 3 (no torture or inhuman or degrading treatment or punishment) being contravened, and

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(b) from which a person will not be sent to another State in

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Nationality and Borders Bill

*Schedule 3 — Removal of asylum seeker to safe
contravention of their
Convention rights.”*

- (4) In sub-paragraph (2), omit paragraph (b) (but not the final “and”).
- 6 In paragraph 5 (in country appeals in cases of removal to safe country)— 5
- (a) in sub-paragraph (3), omit paragraph (b) (together with the preceding “or”);
- (b) in sub-paragraph (4), in both places they appear, omit the words “to which this sub-paragraph applies”; 10
- (c) omit sub-paragraph (5).

Safe countries

- 7 In paragraph 1(1) (definitions), after the definition of “the Refugee Convention”, insert— 15
- “State” includes any territory outside of the United Kingdom.”
- 8 In paragraph 2 (countries to which presumptions of safety in Part 2 of Schedule 3 apply)— 20
- (a) after paragraph (ba) insert—
- “(bb) Republic of Croatia,”;
- (b) after paragraph (o) insert—
- “(oa) Principality of Liechtenstein,”. 25
- 9 In paragraph 20(1) (powers to amend list of safe countries by order)—

Schedule 3 — Removal of asylum seeker to safe

- (a) the words from “add a State” to the end become paragraph (a);
 - (b) after that paragraph (a) insert “, or
(b) remove a State from that list.” 5
- 10 In paragraph 21 (procedure for orders under paragraph 20)—
- (a) in sub-paragraph (1), in the opening words, for “20(1)” substitute “20(1)(a)”; 10
 - (b) in sub-paragraph (2), in the opening words, for “20(2)(b)” substitute “20(1)(b) or (2)(b)”.

Appeal rights

- 11 In paragraph 5 (appeal rights where person certified for removal to State to which Part 2 applies) in sub-paragraphs (3) and (4), omit “from within the United Kingdom”. 15
- 12 Omit paragraph 6 (no out of country appeal rights). 20
- 13 In paragraph 10 (appeal rights where person certified for removal to State to which Part 3 applies), in sub-paragraphs (3) and (4), omit “from within the United Kingdom”. 25
- 14 Omit paragraph 11 (no out of country appeal rights).

Schedule 3 — Removal of asylum seeker to safe

- 15 In paragraph 15 (appeal rights where person certified for removal to State to which Part 4 applies), in sub-paragraphs (3) and (4), omit “from within the United Kingdom”. 5
- 16 Omit paragraph 16 (no out of country appeal rights).
- 17 In paragraph 19 (appeal rights where person certified for removal to a State safe for that person)— 10
- (a) in sub-paragraphs (b) and (c), omit “from within the United Kingdom”;
- (b) omit sub-paragraph (d).

Consequential amendments

- 18 In section 92 of the Nationality, Immigration and Asylum Act 2002 (place from which an appeal may be brought), omit— 15
- (a) subsection (2)(b) (and the preceding “or”); 20
- (b) subsection (3)(b) (and the preceding “or”).

Transitional provision

- 19(1)The amendments made by paragraph 6 do not apply to a case in which the Secretary of State made the certification under paragraph 5(1) of Schedule 3 to the 25

Schedule 4 — Penalty for failure to secure goods

2004 Act before the coming into force of paragraph 6 of this Schedule.

(2) The amendments made by paragraphs 11, 13, 15 and 17 to the following provisions of Schedule 3 to the 2004 Act do not apply to a case in which the claim was certified as clearly unfounded by the Secretary of State before the coming into force of those paragraphs—

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- (a) paragraph 5(4);
- (b) paragraph 10(4);
- (c) paragraph 15(4);
- (d) paragraph 19(c).

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SCHEDULE 4 Section 39

PENALTY FOR FAILURE TO SECURE GOODS
VEHICLE ETC

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1 Part 2 of the Immigration and Asylum Act 1999 (carriers' liability) is amended as follows.

2 For the italic heading before section 32 substitute "Penalties for failure to secure goods vehicle and for carrying clandestine entrants".

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3 Before section 32 (but after the italic heading before that section) insert—

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*Schedule 4 — Penalty for failure to secure goods***“31A Penalty for failure to secure goods vehicle etc**

- (1) The Secretary of State may impose a penalty on a person responsible for a goods vehicle which has arrived at a place mentioned in subsection (2) if—
- (a) on its arrival at that place, the vehicle is not adequately secured against unauthorised access (see subsection (4)(a)), and
- (b) the person has not taken the actions specified in regulations under subsection (4)(b) as actions to be taken by that person in relation to the securing of the vehicle against unauthorised access before or during its journey to that place.
- (2) Those places are—
- (a) a place where immigration control is operated, and
- (b) in a case where the vehicle previously arrived at a place outside the United Kingdom where immigration control is operated and then journeyed to a place in the United Kingdom, that place in the United Kingdom.
- (3) A penalty may be imposed under subsection (1) regardless of whether

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Schedule 4 — Penalty for failure to secure goods

any person has obtained unauthorised access to the vehicle during its journey to the place mentioned in subsection (2).

- (4) The Secretary of State must specify in regulations for the purposes of subsection (1)—
 - (a) what is meant by a goods vehicle being adequately secured against unauthorised access, and 5
10
 - (b) the actions to be taken by each person responsible for a goods vehicle in relation to the securing of the vehicle against unauthorised access. 15
- (5) The actions that may be specified in regulations under subsection (4)(b) include, in particular—
 - (a) actions in relation to checking a person has not gained unauthorised access to the vehicle, 20
 - (b) actions in relation to the reporting of any unauthorised access to the vehicle, and 25
 - (c) actions in relation to the keeping of records to establish that other actions specified in the regulations have been taken.

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- (6) Before making regulations under subsection (4), the Secretary of State must consult such persons as the Secretary of State considers appropriate. 5
- (7) In imposing a penalty under subsection (1), the Secretary of State—
- (a) must specify an amount which does not exceed the maximum prescribed for the purpose of this paragraph, 10
- (b) may impose separate penalties on more than one of the persons responsible for a goods vehicle, and 15
- (c) may not impose penalties which amount in aggregate to more than the maximum prescribed for the purpose of this paragraph. 20
- (8) A penalty imposed under subsection (1) must be paid to the Secretary of State before the end of the prescribed period.
- (9) A person is not liable to the imposition of a penalty under subsection (1) if that person's failure to take the actions specified in regulations under subsection (4)(b) was as a result of duress. 25 30

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- (10) If a penalty is imposed under subsection (1) in relation to the arrival of a goods vehicle in a place outside the United Kingdom where immigration control is operated, a penalty may not be imposed in relation to the vehicle's arrival in the United Kingdom as part of the same journey. 5
- (11) A penalty may not be imposed on a person under subsection (1) if a penalty is imposed on that person under section 32(2) in respect of the same circumstances. 10
- (12) Where a penalty is imposed under subsection (1) on a person who is the driver of a goods vehicle pursuant to a contract (whether or not a contract of employment) with a person ("P") who is the vehicle's owner or hirer— 15
- (a) the driver and P are jointly and severally liable for the penalty imposed on the driver (whether or not a penalty is also imposed on P), and 20 25
- (b) a provision of this Part about notification, objection or appeal has effect as if the penalty imposed on the driver were also imposed on P (whether or not a 30

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penalty is also imposed on P in P's capacity as the owner or hirer of the vehicle).

- (13) In the case of a detached trailer, subsection (12) has effect as if a reference to the driver were a reference to the operator. 5
- (14) For the purposes of this section the persons responsible for a goods vehicle are— 10
- (a) if the goods vehicle is a detached trailer, the owner, hirer and operator of the trailer, and
- (b) if it is not, the owner, hirer and driver of the vehicle. 15
- (15) Where by virtue of subsection (14) a person is responsible for a goods vehicle in more than one capacity, a separate penalty may be imposed on the person under subsection (1) in respect of each capacity. 20
- (16) In this section “immigration control” means United Kingdom immigration control and includes any United Kingdom immigration control operated in a prescribed control zone outside the United Kingdom.” 25

Schedule 4 — Penalty for failure to secure goods

4(1) Section 32 (penalty for carrying clandestine entrants) is amended as follows.

(2) For subsection (4) substitute—

“(4) Where a penalty is imposed under subsection (2) on a person who is the driver of a vehicle pursuant to a contract (whether or not a contract of employment) with a person (“P”) who is the vehicle’s owner or hirer—

(a) the driver and P are jointly and severally liable for the penalty imposed on the driver (whether or not a penalty is also imposed on P), and

(b) a provision of this Part about notification, objection or appeal has effect as if the penalty imposed on the driver were also imposed on P (whether or not a penalty is also imposed on P in P’s capacity as the owner or hirer of the vehicle).”

(3) After subsection (6A) insert—

“(6B) A penalty may not be imposed on a person under subsection (2) if a penalty is imposed on that person under section 31A(1) in respect of the same circumstances.”

Schedule 4 — Penalty for failure to secure goods

5(1) Section 32A (level of penalty: code of practice) is amended as follows.

(2) Before subsection (1) insert—

“(A1) The Secretary of State must issue a code of practice specifying matters to be considered in determining the amount of a penalty under section 31A. 5

(B1) The Secretary of State must have regard to the code (in addition to any other matters the Secretary of State thinks relevant)— 10

(a) when imposing a penalty under section 31A, and

(b) when considering a notice of objection under section 35(4) in relation to a penalty under section 31A.” 15

(3) In subsection (2)(b), after “35(4)” insert “in relation to a penalty under section 32”. 20

(4) In subsection (3) for “the code” substitute “a code under this section”.

(5) In subsection (4) for “the draft code” substitute “a draft code”.

(6) In subsection (5) for “the code” in the first place it occurs substitute “a code under this section”. 25

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(7) In subsection (6) for “the code” substitute “a code”.

6 Omit section 33 (prevention of clandestine entrants: code of practice).

7(1) Section 34 (defences to claim that penalty is due under section 32) is amended as follows. 5

(2) In subsection (3)—

(a) at the end of paragraph (a) insert “and”, 10

(b) for paragraph (b) substitute—

“(b) the carrier had taken the actions specified in regulations under subsection (3ZA) in relation to the securing of the transporter against unauthorised access.”, and 15

(c) omit paragraph (c).

(3) After subsection (3) insert— 20

“(3ZA) The Secretary of State must specify in regulations the actions to be taken for the purposes of subsection (3)(b) in relation to the securing of a transporter against unauthorised access. 25

(3ZB) The actions that may be specified in regulations under subsection (3ZA) include, in particular—

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- (a) actions in relation to checking a person has not gained unauthorised access to the transporter,
 - (b) actions in relation to the reporting of any unauthorised access to the transporter, and 5
 - (c) actions in relation to the keeping of records to establish that other actions specified in the regulations have been taken. 10
- (3ZC) Before making regulations under subsection (3ZA), the Secretary of State must consult such persons as the Secretary of State considers appropriate.” 15
- (4) Omit subsection (4).
- 8(1) Section 35 (procedure for penalties and objections against penalties) is amended as follows. 20
- (2) In subsection (1) after “section” insert “31A or”.
 - (3) In subsection (2)—
 - (a) omit the “and” at the end of paragraph (c), and 25
 - (b) at the end of paragraph (d) insert “and (e) be issued before the end of such period as may be prescribed.”

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- (4) In subsection (10) after “section” insert “31A or”.
- (5) In subsection (12)—
 - (a) omit the “or” at the end of paragraph (c), and 5
 - (b) after paragraph (c) insert—
 - “(ca) by electronic mail, or”.
- 9(1) Section 35A (appeals) is amended as follows.
- (2) In subsection (1) after “section” insert “31A or” 10
- (3) In subsection (3)—
 - (a) at the end of paragraph (a) insert “and”, and
 - (b) omit paragraph (b) and the “and” at the end of that paragraph. 15
- 10(1) Section 36 (power to detain vehicles etc in connection with penalties under section 32) is amended as follows.
- (2) In the heading, after “section” insert “31A or” 20
- (3) In subsection (2A)(a), for “is an employee of its owner or hirer” substitute “drives the vehicle pursuant to a contract (whether or not a contract of employment) with the owner or hirer of the vehicle” 25
- (4) After subsection (2A) insert—

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“(2AA) In the case of a detached trailer, subsection (2A) has effect as if—

- (a) a reference to the driver were a reference to the operator, and
- (b) the reference to driving the vehicle were a reference to operating it.”

5

(5) After subsection (5) insert—

“(6) A document which is to be issued to or served on a person outside the United Kingdom for the purposes of this section may be issued or served—

10

- (a) in person,
- (b) by post,
- (c) by facsimile transmission,
- (d) by electronic mail, or
- (e) in another prescribed manner.

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(7) The Secretary of State may by regulations provide that a document issued or served in a manner listed in subsection (6) 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.”

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11(1)Section 36A (detention in default of payment) is amended as follows.

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(2) In subsection (4)(b), for “was an employee of” substitute “drove the vehicle pursuant to a contract (whether or not a contract of employment) with”.

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(3) After subsection (4) insert—

“(4A) In the case of a detached trailer, subsection (4)(b) has effect as if the reference to driving the vehicle were a reference to operating it.”

(4) After subsection (6) insert—

5

“(7) If a transporter is detained under this section, the owner, consignor or any other person who has an interest in any freight or other thing carried in or on the transporter may remove it, or arrange for it to be removed, at such time and in such way as is reasonable.

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(8) The detention of a transporter under this section is lawful even though it is subsequently established that the penalty notice on which the detention was based was ill-founded in respect of all or any of the penalties to which it related.

15

(9) But subsection (8) does not apply if the Secretary of State was acting unreasonably in issuing the penalty notice.

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(10) A document which is to be issued to or served on a person outside the United Kingdom for the purposes of this section may be issued or served—

(a) in person,

25

(b) by post,

(c) by facsimile transmission,

(d) by electronic mail, or

(e) in another prescribed manner.

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- (11) The Secretary of State may by regulations provide that a document issued or served in a manner listed in subsection (10) 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.” 5
- 12(1)Section 43 (interpretation of Part 2) is amended as follows.
- (2) In subsection (1)— 10
- (a) at the appropriate place insert—
- ““goods vehicle” means—
- (a) a mechanically propelled vehicle which— 15
- (i) is designed or adapted solely or principally to be used for the carriage or haulage of goods, and
- (ii) at the time in question, is being used for a commercial purpose, or 20
- (b) any trailer, semi-trailer or other thing which—
- (i) is designed or adapted to be towed by a vehicle within paragraph (a)(i), and 25
- (ii) at the time in question, is being used for a commercial purpose;”, and

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(b) in the definition of “transporter” after “vehicle” insert “(including a goods vehicle)”.

(3) After subsection (1) insert—

“(1A) References in this Part to the securing of a goods vehicle against unauthorised access include references to the securing of any container which is being carried by a goods vehicle against unauthorised access. 5

(1B) In subsection (1A) “container” means any container or other thing which is designed or adapted to be carried by a goods vehicle.” 10

SCHEDULE 5

Section 41

MARITIME ENFORCEMENT

1 Part 3A of the Immigration Act 1971 (maritime enforcement) is amended as follows. 15

2 Before section 28M insert—

**“28LA Enforcement powers in relation to ships:
United Kingdom**

(1) An immigration officer or an enforcement officer may exercise the powers set out in Part A1 of Schedule 4A (“Part A1 powers”) in relation to any of the following in United Kingdom waters, foreign waters or international waters— 20

- (a) a United Kingdom ship; 25
- (b) a ship without nationality;
- (c) a foreign ship;

- (d) a ship registered under the law of a relevant territory.
- (2) But Part A1 powers may be exercised only—
- (a) for the purpose of preventing, detecting, investigating or prosecuting a relevant offence, and 5
- (b) in accordance with the rest of this section.
- (3) The authority of the Secretary of State is required before an immigration officer or an enforcement officer may exercise Part A1 powers in relation to— 10
- (a) a United Kingdom ship in foreign waters,
- (b) a ship without nationality,
- (c) a foreign ship, or
- (d) a ship registered under the law of a relevant territory. 15
- (4) Authority for the purposes of subsection (3) may be given only if the Secretary of State considers that the Convention permits the exercise of Part A1 powers in relation to the ship.” 20
- 3 In section 28M (enforcement powers in relation to ships: England and Wales)—
- (a) in subsection (1), for the words from “An immigration officer” to “enforcement officer” substitute “An English and Welsh constable”, and 25
- (b) in subsection (3)—
- (i) omit “an immigration officer,”, and

- (ii) omit “or an enforcement officer”.
- 4 In section 28N (enforcement powers in relation to ships: Scotland)—
 - (a) in subsection (1) for the words from “An immigration officer” to “enforcement officer” substitute “A Scottish constable”, and 5
 - (b) in subsection (3)—
 - (i) omit “an immigration officer,”, and
 - (ii) omit “or an enforcement officer”.
- 5 In section 28O (enforcement powers in relation to ships: Northern Ireland)— 10
 - (a) in subsection (1) for the words from “An immigration officer” to “enforcement officer” substitute “A Northern Ireland constable”, and
 - (b) in subsection (3)— 15
 - (i) omit “an immigration officer,”, and
 - (ii) omit “or an enforcement officer”.
- 6 In section 28P (hot pursuit of ships in United Kingdom waters)—
 - (a) in subsection (1), for the words from “An immigration officer” to “enforcement officer” substitute “An English and Welsh constable”, 20
 - (b) in subsection (3), for the words from “An immigration officer” to “enforcement officer” substitute “A Scottish constable”, 25
 - (c) in subsection (5), for the words from “An immigration officer” to “enforcement officer” substitute “A Northern Ireland constable”, and
 - (d) in subsection (10), omit “or an enforcement officer”. 30

7 After section 28P insert—

“28PA Power to seize and dispose of ships etc.

- (1) This section applies if—
- (a) an immigration officer has reasonable grounds to suspect that a ship has been used in the commission of a relevant offence, and 5
 - (b) the ship is in United Kingdom waters or otherwise in the United Kingdom.
- (2) Subject to subsection (3), the immigration officer may seize the ship and any property relating to the operation or use of the ship. 10
- (3) The authority of the Secretary of State is required before an immigration officer may seize anything under this section. 15
- (4) If an immigration officer seizes a foreign ship or a ship registered under the law of a relevant territory, the Secretary of State must notify the home state or relevant territory in question that the ship has been seized. 20
- (5) In subsection (4) “home state”, in relation to a foreign ship, means—
- (a) the State in which the ship is registered, or
 - (b) the State whose flag the ship is otherwise entitled to fly. 25
- (6) Where a ship without nationality, or property relating to the operation or use of a ship

- without nationality, is seized under this section—
- (a) section 26 of the UK Borders Act 2007 (disposal of property) and any regulations made under that section do not apply in respect of that ship or other property, and 5
 - (b) subsections (7) to (12) apply instead.
- (7) The Secretary of State may—
- (a) return the ship or other property to the person whom the Secretary of State believes to be its owner, or 10
 - (b) after the relevant period,
 - (i) dispose of the ship or other property, or
 - (ii) determine that the ship or other property is to be retained to be used in the course of, or in connection with, a function under the Immigration Acts. 15
- (8) On the making of a determination under subsection (7)(b)(ii), the ship or other property vests in the Secretary of State. 20
- (9) The relevant period is the period of 31 days beginning with the date on which the ship or other property was seized. 25
- (10) Before exercising a power under subsection (7)(b), the Secretary of State must make reasonable efforts to—
- (a) ascertain the identity of the owner of the ship or other property, and 30

- (b) subject to subsection (11), notify that person that the ship or other property has been seized.
- (11) The Secretary of State is not required to notify a person under subsection (10)(b) if to do so may prejudice any criminal investigation or criminal proceedings. 5
- (12) Disposal under this section may be in any manner the Secretary of State thinks fit, including— 10
- (a) by sale;
- (b) by dismantling;
- (c) by destruction;
- (d) by donation of the ship or other property to a charity or other not-for-profit body.” 15
- 8 In section 28Q (interpretation of Part 3A)—
- (a) at the appropriate places insert—
- ““foreign waters” means the sea and other waters within the seaward limits of the territorial sea adjacent to any relevant territory or any State other than the United Kingdom;”, 20
- ““international waters” means waters beyond the territorial sea of the United Kingdom or of any other State or relevant territory;”, 25
- ““Part A1 powers” means the powers set out in Part A1 of Schedule 4A;”,
- ““relevant offence” means—

- (a) an offence under section 24(A1), (B1) or (C1), 25 or 25A,
- (b) an offence under section 25B to the extent that the section continues to apply by virtue of regulation 5(7) of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (S.I. 2020/1309), or 5 10
- (c) an offence under section 1 of the Criminal Attempts Act 1981 or Article 3 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 (S.I. 1983/1120 (N.I. 13)), or in Scotland at common law, of attempting to commit an offence mentioned in paragraph (a) or (b);”, and 15 20
- ““United Kingdom waters” means the sea and other waters within the seaward limits of the United Kingdom’s territorial sea;”, and 25
- (b) for the definition of ship substitute—
 - ““ship” includes—
 - (a) every description of vessel (including a hovercraft), and 30

- (b) any other structure (whether with or without means of propulsion) constructed or used to carry persons, goods, plant or machinery by water;” 5
- 9 Schedule 4A (enforcement powers in relation to ships) is amended as follows.
- 10 Before Part 1, insert—
- “PART A1
UNITED KINGDOM 10
- Introductory*
- A1(1) This Part of this Schedule sets out the powers exercisable by immigration officers and enforcement officers (referred to in this Part of this Schedule as “relevant officers”) under section 28LA. 15
- (2) In this Part of this Schedule—
- “items subject to legal privilege” means items in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings; 20
- “the ship” means the ship in relation to which the powers set out in this Part of this Schedule are exercised. 25

Power to stop, board, divert and detain

B1(1) This paragraph applies if a relevant officer has reasonable grounds to suspect that—

- (a) a relevant offence is being, or has been, committed on the ship, or
- (b) the ship is otherwise being used in connection with the commission of a relevant offence.

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(2) The relevant officer may—

- (a) stop the ship;
- (b) board the ship;
- (c) require the ship to be taken to any place (on land or on water) in the United Kingdom or elsewhere and detained there;
- (d) require the ship to leave United Kingdom waters.

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(3) The relevant officer may require the master of the ship or any member of its crew to take such action as is necessary for the purposes of sub-paragraph (2).

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(4) Where a ship is required to be taken to a place under sub-paragraph (2)(c), the relevant officer may require any person on board the ship to take such action as is reasonably necessary to ensure that person is taken to that place or to any other place determined by the relevant officer.

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- (5) Where a ship is required to leave United Kingdom waters under sub-paragraph (2)(d), the relevant officer may require any person on board the ship to take such action as is reasonably necessary to ensure that person leaves United Kingdom waters. 5
- (6) The authority of the Secretary of State is required before a relevant officer may exercise the power under sub-paragraph (2)(c) to require the ship to be taken to any place— 10
- (a) within a State other than the United Kingdom, or
- (b) within a relevant territory.
- (7) The Secretary of State may give authority for the purposes of sub-paragraph (6) only if the State, or the relevant territory, is willing to receive the ship. 15
- (8) But a relevant officer acting under authority given under section 28LA(3)(c) or (d) in relation to a foreign ship or a ship registered under the law of a relevant territory may require the ship to be taken to a place mentioned in sub-paragraph (9) without authority under sub-paragraph (6). 20 25
- (9) Those places are—
- (a) a place in the home state or relevant territory in question, or
- (b) if the home state or relevant territory requests, a place in any other State or 30

relevant territory willing to receive the ship.

(10) A relevant officer must give notice in writing to the master of any ship detained under this paragraph. 5

(11) The notice must state that the ship is to be detained until the notice is withdrawn by the giving of a further notice in writing signed by a relevant officer.

(12) The requirement to give notice under subparagraph (10) does not apply where it is not reasonably possible to identify who is the master of the ship. 10

(13) In this paragraph “home state”, in relation to a foreign ship, means— 15

(a) the State in which the ship is registered, or

(b) the State whose flag the ship is otherwise entitled to fly.

Power to search and obtain information 20

C1(1) This paragraph applies if a relevant officer has reasonable grounds to suspect that there is evidence on the ship (other than items subject to legal privilege) relating—

(a) to a relevant offence or, 25

(b) to an offence that is connected with a relevant offence.

(2) The relevant officer may search—

- (a) the ship;
 - (b) anyone on the ship;
 - (c) anything on the ship (including cargo).
- (3) The relevant officer may require a person on the ship to give information about themselves or about anything on the ship. 5
- (4) The power to search conferred by sub-paragraph (2)—
- (a) is only a power to search to the extent that it is reasonably required for the purpose of discovering evidence of the kind mentioned in sub-paragraph (1), and 10
 - (b) in the case of a search of a person, does not authorise a relevant officer to require the person to remove any clothing in public other than an outer coat, jacket or gloves. 15
- (5) In exercising a power conferred by sub-paragraph (2) or (3) a relevant officer may— 20
- (a) open any containers;
 - (b) require the production of documents, books or records relating to the ship or anything on it (but not including anything the relevant officer has reasonable grounds to believe is an item subject to legal privilege); 25
 - (c) make photographs or copies of anything the production of which the relevant officer has power to require. 30

- (6) The power in sub-paragraph (5)(b) to require the production of documents, books or records includes, in relation to documents, books or records kept in electronic form, power to require the provision of the documents, books or records in a form in which they are legible and can be taken away. 5
- (7) Sub-paragraph (5) is without prejudice to the generality of the powers conferred by sub-paragraphs (2) and (3). 10
- (8) A power conferred by this paragraph may be exercised on the ship or elsewhere.

Power of arrest and seizure

- D1(1) This paragraph applies if a relevant officer has reasonable grounds to suspect that a relevant offence has been, or is being, committed on the ship. 15
- (2) The relevant officer may arrest without a warrant anyone whom the officer has reasonable grounds for suspecting to be guilty of the offence. 20
- (3) The relevant officer may seize and retain anything found on the ship which appears to the officer to be evidence of the offence (but not including anything that the officer has reasonable grounds to believe to be an item subject to legal privilege). 25

- (4) A power conferred by this paragraph may be exercised on the ship or elsewhere.

Protective searches of persons

- E1(1)A relevant officer may search a person found on the ship for anything which the officer has reasonable grounds to believe the person might use to— 5
- (a) cause physical injury,
(b) cause damage to property, or
(c) endanger the safety of any ship. 10
- (2) The power conferred by sub-paragraph (1) may be exercised—
- (a) only if the officer has reasonable grounds to believe that anything of a kind mentioned in that sub-paragraph is concealed on the person, and 15
(b) only to the extent that it is reasonably required for the purpose of discovering any such thing.
- (3) The relevant officer may seize and retain anything which the officer has grounds to believe might— 20
- (a) cause physical injury,
(b) cause damage to property, or
(c) endanger the safety of any ship. 25
- (4) If the person is detained, nothing seized under sub-paragraph (3) may be retained when the person is released from detention.

- (5) A power conferred by this paragraph to search a person does not authorise a relevant officer to require the person to remove any clothing in public other than an outer coat, jacket or gloves, but it does authorise the search of a person's mouth. 5
- (6) A power conferred by this paragraph may be exercised on the ship or elsewhere.

Search for nationality documents

- F1(1)A relevant officer may require a person found on the ship to produce a nationality document. 10
- (2) The relevant officer may search a person found on the ship where the officer has reasonable grounds to believe that a nationality document is concealed on the person. 15
- (3) The power conferred by sub-paragraph (2) may be exercised—
- (a) only if the officer has reasonable grounds to believe that a nationality document is concealed on the person, and 20
- (b) only to the extent that it is reasonably required for the purpose of discovering any such document. 25
- (4) Subject as follows, the officer may seize and retain a nationality document for as long as the officer believes the person to whom it

relates will arrive in the United Kingdom by virtue of the exercise of the power under paragraph B1.

- (5) The power to retain a nationality document under sub-paragraph (4) does not affect any other power of an immigration officer to retain a document. 5
- (6) Where a nationality document has been seized and retained by a relevant officer who is not an immigration officer, the document must be passed to an immigration officer as soon as is practicable after the ship has arrived in the United Kingdom. 10
- (7) The power conferred by this paragraph to search a person does not authorise a relevant officer to— 15
- (a) require the person to remove any clothing in public other than an outer coat, jacket or gloves, or
- (b) seize and retain any document the officer has reasonable grounds to believe to be an item subject to legal privilege. 20
- (8) In this paragraph a “nationality document”, in relation to a person, means any document which might— 25
- (a) establish the person’s identity, nationality or citizenship, or

(b) indicate the place from which the person has travelled to the United Kingdom or to which the person is proposing to go.

(9) A power conferred by this paragraph may be exercised on the ship or elsewhere.

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Assistants

G1(1)A relevant officer may—

(a) be accompanied by other persons, and
(b) take equipment or materials,
to assist the officer in the exercise of powers
under this Part of this Schedule.

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(2) A person accompanying a relevant officer under sub-paragraph (1) may perform any of the officer's functions under this Part of this Schedule, but only under the officer's supervision.

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Reasonable force

H1 A relevant officer may use reasonable force, if necessary, in the performance of functions under this Part of this Schedule.

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Evidence of authority

I1 A relevant officer must produce evidence of the relevant officer's authority if asked to do so.

Protection of relevant officers

- J1 A relevant officer is not liable in any criminal or civil proceedings for anything done in the purported performance of functions under this Part of this Schedule if the court is satisfied that— 5
- (a) the act was done in good faith, and
 - (b) there were reasonable grounds for doing it.

Offences under the law of England and Wales 10

- K1(1) A person commits an offence under the law of England and Wales if the person—
- (a) intentionally obstructs a relevant officer in the performance of functions under this Part of this Schedule in England and Wales, England and Wales waters, foreign waters or international waters, or 15
 - (b) fails without reasonable excuse to comply with a requirement made by a relevant officer in the performance of such functions. 20
- (2) A person who provides information in response to a requirement made by a relevant officer in the performance of functions under this Part of this Schedule in England and Wales, England and Wales waters, foreign waters or international waters commits an offence under the law of England and Wales if— 25

- (a) the information is false in a material particular, and the person either knows it is, or is reckless as to whether it is, or
- (b) the person intentionally fails to disclose any material particular.

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(3) A relevant officer may arrest without warrant anyone whom the officer has reasonable grounds for suspecting to be guilty of an offence under this paragraph.

(4) A person guilty of an offence under this paragraph is liable on summary conviction to imprisonment for a term not exceeding 51 weeks, to a fine or to both.

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(5) In the application of sub-paragraph (4) in relation to an offence committed before the coming into force of section 281(5) of the Criminal Justice Act 2003 the reference to 51 weeks is to be read as a reference to 6 months.

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Offences under the law of Scotland

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L1(1) A person commits an offence under the law of Scotland if the person—

- (a) intentionally obstructs a relevant officer in the performance of functions under this Part of this Schedule in Scotland, Scotland waters, foreign waters or international waters, or
- (b) fails without reasonable excuse to comply with a requirement made by a

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relevant officer in the performance of such functions.

- (2) A person who provides information in response to a requirement made by a relevant officer in the performance of functions under this Part of this Schedule in Scotland, Scotland waters, foreign waters or international waters commits an offence under the law of Scotland if— 5
- (a) the information is false in a material particular, and the person either knows it is, or is reckless as to whether it is, or 10
- (b) the person intentionally fails to disclose any material particular.
- (3) A relevant officer may arrest without warrant anyone whom the officer has reasonable grounds for suspecting to be guilty of an offence under this paragraph. 15
- (4) A person guilty of an offence under this paragraph is liable on summary conviction to imprisonment for a term not exceeding 12 months, to a fine not exceeding level 5 on the standard scale or to both. 20

Offences under the law of Northern Ireland

- M1(1) A person commits an offence under the law of Northern Ireland if the person— 25
- (a) intentionally obstructs a relevant officer in the performance of functions under this Part of this Schedule in Northern

- Ireland, Northern Ireland waters, foreign waters or international waters, or
- (b) fails without reasonable excuse to comply with a requirement made by a relevant officer in the performance of such functions. 5
- (2) A person who provides information in response to a requirement made by a relevant officer in the performance of functions under this Part of this Schedule in Northern Ireland, Northern Ireland waters, foreign waters or international waters commits an offence under the law of Northern Ireland if— 10
- (a) the information is false in a material particular, and the person either knows it is, or is reckless as to whether it is, or 15
- (b) the person intentionally fails to disclose any material particular.
- (3) A relevant officer may arrest without warrant anyone whom the officer has reasonable grounds for suspecting to be guilty of an offence under this paragraph. 20
- (4) A person guilty of an offence under this paragraph is liable on summary conviction to a term not exceeding 6 months, to a fine not exceeding level 5 on the standard scale or to both.” 25
- 11 In paragraph 1(1)—
- (a) omit “immigration officers,” and 30

- (b) omit “and enforcement officers”.
- 12 In paragraph 4—
- (a) in sub-paragraph (2) omit “constable or”, and
- (b) in sub-paragraph (3) omit “constable or”.
- 13 In paragraph 6— 5
- (a) omit sub-paragraph (5), and
- (b) in sub-paragraph (6), for the words from
“Where” to “the document” substitute “A
nationality document that has been seized
and retained by a relevant officer”. 10
- 14 In paragraph 12(1)—
- (a) omit “immigration officers,”, and
- (b) omit “and enforcement officers”.
- 15 In paragraph 17— 15
- (a) omit sub-paragraph (5), and
- (b) in sub-paragraph (6), for the words from
“Where” to “the document” substitute “A
nationality document that has been seized
and retained by a relevant officer”.
- 16 In paragraph 23— 20
- (a) omit “immigration officers,” and
- (b) omit “and enforcement officers”.
- 17 In paragraph 26(3) omit “constable or”.
- 18 In paragraph 28— 25
- (a) omit sub-paragraph (5), and
- (b) in sub-paragraph (6), for the words from
“Where” to “the document” substitute “A

nationality document that has been seized and retained by a relevant officer”.

Nationality and Borders Bill

A

B I L L

To make provision about nationality, asylum and immigration; to make provision about victims of slavery or human trafficking; to provide a power for Tribunals to charge participants where their behaviour has wasted the Tribunal's resources; and for connected purposes.

*Presented by Secretary
Priti Patel
supported by the Prime
Minister, the Chancellor
of the Exchequer,
Secretary Dominic Raab,
Secretary Robert
Buckland and Chris Philp*

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