

NATIONALITY AND BORDERS BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Nationality and Borders Bill as introduced in the House of Commons on 6 July 2021 (Bill 141).

- These Explanatory Notes have been provided by the Home Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The Nationality and Borders Bill has three main objectives:
 - To increase the fairness of the system to better protect and support those in need of asylum;
 - To deter illegal entry into the United Kingdom, thereby breaking the business model of people smuggling networks and protecting the lives of those they endanger; and
 - To remove more easily those with no right to be in the UK.

Policy background

- 2 The UK's legal immigration system has been reformed by the ending of free movement and the introduction of a new points-based immigration system. This Bill is intended to tackle illegal migration, asylum and control the UK borders.
- 3 Under new proposals how someone enters the UK will impact on how a claim progresses through the system and the type of status granted in the UK if that claim is successful. The asylum framework will be streamlined, ensuring cases and appeals are dealt with more effectively, while improving the Home Office's ability to remove those with no right to remain, including Foreign National Offenders (FNOs). At the same time, the Government's aim is to strengthen safe and legal routes, offering protection to refugees fleeing persecution, and fixing historical anomalies in British nationality law.

New Plan for Immigration

- 4 On 24 March the Home Secretary published the [New Plan for Immigration](#) and opened a public consultation which ran from 24 March to 6 May 2021.
- 5 The results of the consultation have been used to inform measures in this Bill and a Government response will be published in due course.
- 6 Concurrently, the Government is seeking to take action on the issue of Channel crossings. In the first six months of 2021, over 5,900 people crossed the English Channel in small boats.¹ This is more than double the comparable figure for 2020. The Government anticipates that a great deal more people will attempt this journey in the future.
- 7 This Bill includes six placeholder clauses, which will be supplemented by further Government amendments ahead of Committee stage in the House of Commons. In the interests of transparency, and to allow full examination of this Bill, all placeholder clauses are included in the Commentary on Provisions section of these Explanatory Notes.

Ending Anomalies in British Nationality Law

- 8 This Bill seeks to address this by introducing new registration provisions for children of BOTCs, as well as provisions for children to acquire their father's citizenship where they were previously unable

¹ Home Office Internal Management Data

to do so.

- 9 A new adult registration route will allow the Secretary of State to grant citizenship where, in the Secretary of State's opinion, a person failed to become a British citizen and/or British overseas territories citizen because of historical legislative unfairness, an act or omission by a public authority; or other exceptional circumstances relating to the person's case.
- 10 This Bill also removes the requirement to have been in the UK at the start of the five (or three) year residential qualifying period for naturalisation in exceptional cases. This will mean that people will not be prevented from qualifying if there are good reasons why they could not have been in the UK at that time.

Illegal Migration and Reforming the Asylum System

- 11 Prior to the COVID-19 pandemic, the numbers of those seeking asylum in the UK was rising. In 2019, the UK received 35,700 new asylum claims, a 21% increase on the previous year.² At the end of 2020, there were 109,000 asylum claims being progressed in the asylum system with 73% of these having been in the system for over one year.³ This includes cases that are being worked towards initial or final decision, as well as cases that have reached a conclusion where the individuals are due to be removed from the UK.
- 12 As a result, the asylum system costs approximately £1 billion per year.⁴
- 13 The Government wants to improve its ability to provide protection to those who would be at risk of persecution on return to their country of nationality. To that end, this Bill consolidates a test against which an asylum claim will be assessed, with a clear framework to set the standard for testing what amounts to a "well-founded fear of persecution". The Bill also clarifies the definition of "persecution" to make clear the requirements for qualifying for protection, in line with the 1951 Refugee Convention.
- 14 This Bill will also reduce the criminality threshold so that those who have been convicted and sentenced to at least 12 months' imprisonment can be considered for removal in line with Article 33(2) of the Refugee Convention.
- 15 In the 12 months ending September 2019, around 62% of asylum applicants to the UK had entered the country irregularly (40% clandestinely, 22% without relevant documentation) with the remainder largely thought to have arrived regularly, (e.g on a visa) before subsequently applying for asylum.⁵
- 16 Methods of irregular entry can be unsafe, dangerous and leave migrants open to exploitation by organised crime groups. One such method of entry is across the English Channel via small boats, which saw a significant increase in 2020.
- 17 This Bill introduces a comprehensive set of measures to discourage irregular entry and improve the Home Office's ability to remove those with no right to remain in the UK. This is aimed at reducing

² [Home Office Immigration Statistics, Year Ending September 2020](#). 26 November 2020.

³ Home Office '[Immigration and Protection Q4 2020](#)'. 26 February 2021.

⁴ Home Office, internal data

⁵ Home Office, internal data.

the rapid intake of cases into the asylum system to improve the speed at which asylum seekers receive a decision, benefitting both the UK taxpayer and the asylum seekers themselves.

- 18 The proposals in this Bill will create a differentiated approach: how someone arrives in the UK will have an impact on the type of status granted in the UK if their asylum claim is successful.
- 19 Under the framework created by this Bill, people who enter the UK and engage the UK's protection obligations under the Refugee Convention may be granted temporary protection status where they do not meet certain conditions (aligned with those set out in Article 31(1) of the Refugee Convention). This includes circumstances where an individual does not come directly from a territory where their life or freedom was threatened, does not claim asylum without delay or, where relevant, does not show good cause for their illegal entry or presence. Temporary protection status will not include a defined route to settlement in the UK, but individuals may be eligible to apply for long residency settlement after 10 years if the necessary requirements are met. It will restrict family reunion rights and may only allow recourse to public funds in cases of destitution. People granted temporary protection status will be expected to leave the UK as soon as they are able to or as soon as they can be returned or removed, once no longer in need of protection.
- 20 The current asylum estate will be expanded to include basic full board accommodation centres. These centres may accommodate particular cohorts of asylum seekers and failed asylum seekers who are in need of support, in order to resolve their immigration status more efficiently and facilitate their removal where their claim has been refused or deemed to be inadmissible. Examples include asylum seekers whose claims are being considered for a declaration of inadmissibility or whose claims are clearly unfounded, and failed asylum seekers who fall to be removed from the UK once the practical arrangements are completed.
- 21 This Bill also contains provisions that allow individuals to be removed to a safe third country before their asylum claim has been considered, providing opportunity for extraterritorial processing models to be developed in the future in line with the UK's international obligations. This is likewise aimed at removing any incentives which may attract economic migrants to the UK and to incentivise people to claim asylum in the first safe country.
- 22 In 2019, around 1 in 6 asylum seekers to the UK had already made an asylum claim in another European country.⁶ Following the end of the Transition period, changes to the Immigration Rules were brought into effect which amended legal powers to treat cases as inadmissible (i.e. the UK does not take responsibility for assessing the asylum claim) where individuals have passed through safe countries or have connections to a safe country where they could have made a claim for asylum.
- 23 Through this Bill, inadmissibility rules will be further clarified and placed into primary legislation. This is aimed at encouraging asylum seekers to claim asylum in the first safe country they reach and to deter onward travel to the UK – often at the hands of criminal facilitators.
- 24 Since 2015, the UK has received, on average, more than 3,000 unaccompanied asylum-seeking children per year. Where age was disputed and resolved from 2016-2020, 54% were found to be adults.⁷ There are safeguarding risks if people over 18 are treated as children and placed in settings,

⁶ Home Office, Eurodac data (internal).

⁷ Home Office '[Age Disputes - Asylum and Resettlement Datasets](#)'. 25 February 2021.

including schools, with children.

- 25 This Bill seeks to clarify the framework for determining the age of people seeking asylum, including through the use of scientific technology.

Streamlining Asylum Claims and Appeals

- 26 Under the current appeals system it can take years to conclude an asylum appeal. As of May 2020, 32% of asylum appeals lodged in 2019 and 9% of appeals lodged in 2018 did not have a known outcome.⁸
- 27 Currently, if a person's asylum claim is refused, they have an automatic right to appeal the decision to the First-tier Tribunal (Immigration and Asylum Chamber). Nearly everyone who has their asylum claim rejected chooses to make this appeal. If the decision is upheld the person claiming asylum has a further route of appeal to the Upper Tribunal. If at that point they are not satisfied with the result, a decision can in some circumstances be appealed again at the Court of Appeal and Supreme Court. It is possible for a person, having exhausted all the above processes, to then make a new claim, in effect, starting the whole appeal process again.
- 28 A judicial review may also be brought against a Home Office decision at various points in the process of someone seeking to prevent their removal from the UK or when refused a right to remain in the UK. In 2019, there were 8,000 judicial reviews against Home Office immigration and asylum decisions.⁹ Judges concluded 6,063 cases on paper, of which 90% were dismissed or refused, with around 17% being deemed by the judge to be "Totally Without Merit".¹⁰ These figures illustrate that a large percentage of cases taken to judicial review are not well-founded, taking up valuable judicial and administrative time and delaying legitimate cases.
- 29 The measures outlined in this Bill will seek to streamline the appeals process by introducing an expanded 'one-stop' process to ensure that asylum and human rights claims, referrals as potential victims of modern slavery and any other protection matters are made and considered together, ahead of any appeal hearing. Improved access to legal advice is intended to help people raise such matters as early as possible and avoid last minute and repeat issues being raised.
- 30 This Bill aims to reduce the volume of sequential claims, appeals or legal action, while ensuring access to justice and upholding the rule of law. The envisioned outcome is to ensure swift access to justice, stop parallel and sequential litigation on different grounds and ensure effective and efficient judicial system. A key part of this is the introduction of a Priority Removal Notice. People who are liable for removal and can be subject to an enforced return within a reasonable timescale will, on receipt of this, be able to access legal advice for a fixed number of hours, funded by legal aid, which is non-means and non-merits tested on any aspect of their immigration status and claim(s) for remaining in the UK, including modern slavery matters. This will require recipients to bring forward any such grounds within a set time period. If a person raises a 'late' claim, without good reason, outside of this period and that claim is refused, any right of appeal will be direct to the Upper Tribunal rather than the First-tier Tribunal. This will ensure that any appeals following a late claim will be dealt with in the

⁸ Home Office '[Asylum and Resettlement Datasets](#)'. 25 February 2021.

⁹ Ministry of Justice (2020) '[Tribunal Statistics Quarterly October to December 2020](#)'. 11 March 2021.

¹⁰ Ibid

most expedient manner possible, whilst maintaining judicial oversight from the Tribunal.

- 31 The introduction of a new accelerated appeal process will ensure that cases which are deemed to be unfounded or new claims which are raised late, are dealt with swiftly.
- 32 A “good faith” requirement will set out principles for individuals when dealing with public authorities and the courts, such as not providing misleading information or bringing evidence late where it was reasonable to do so earlier.

Supporting Victims of Modern Slavery

- 33 The Government remains committed to ensuring the police and the courts have the necessary powers to bring perpetrators of modern slavery to justice, while giving victims the support they need to rebuild their lives. The UK is and will remain a signatory of the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT), which sets out signatory states’ international obligations to identify and support victims of modern slavery.
- 34 When the Single Competent Authority, (which operates the National Referral Mechanism (NRM)), has deemed there are Reasonable Grounds (RG) to believe an individual is a victim of modern slavery, they are protected from removal for the duration of the recovery and reflection period (45 days) and until they have received a Conclusive Grounds (CG) decision regarding whether they are a confirmed victim of modern slavery. While individuals are protected from removal, they are also entitled to support in line with their needs.
- 35 The Government wants to ensure that victims are identified and provided with support, and that any gaps in the system which allow for the NRM to be misused are addressed. This will avoid resources being diverted away from victims who need support and unnecessary impacts on removal actions.
- 36 The measures outlined in this Bill seek to ensure victims are identified as quickly as possible, while enabling decision makers to distinguish more effectively between genuine and non-genuine accounts of modern slavery and enabling the removal of serious criminals and people who pose a threat to UK national security.
- 37 This package of measures is enhanced by non-legislative changes outlined on page 11.

Disrupting Criminal Networks Behind People Smuggling

- 38 Illegal migration causes significant harm and endangers the lives of those undertaking dangerous journeys. In the summer of 2020, a record number of 8,500 people crossed the English Channel in small boats.¹¹ This is a dangerous crossing which the Government aims to make unviable.
- 39 The Government is already working with partners in Europe, especially France and Belgium, to prevent migrants attempting to make their way illegally to the UK. This includes work funded through overseas development aid and activities of law enforcement and intelligence partners including the National Crime Agency (NCA). The Government intends to continue working with these partners and all operational partners and agencies to tackle the upstream causes of illegal immigration.
- 40 This Bill will introduce tougher criminal offences for those attempting to enter the UK illegally or

¹¹ Home Office Internal Management Information [unpublished]

found to be facilitating illegal immigration.

- 41 Border Force powers and capabilities to deal with maritime threats will be expanded through this Bill. Border Force will be given strengthened powers to divert vessels out of UK territorial seas they suspect are being used to facilitate illegal entry to the UK and enable enforcement action to take place outside UK waters. The Bill will set out how and where asylum claims must be made, expressly excluding claims from being made at sea.
- 42 A significant number of people entering the UK illegally arrive through concealment in vehicles travelling into the UK by tourist and freight transport routes. This Bill gives Border Force Officers the power to search unaccompanied containers which have been removed from the ship or aircraft for the purpose of satisfying themselves whether there are any people they want to examine.
- 43 This Bill will introduce a new civil penalty regime alongside the existing Clandestine Entrant Civil Penalty scheme. Under the current scheme, vehicles coming into the UK must be secured in order to stop clandestine entrants. Where a clandestine entrant is found on board on arrival and the responsible person has failed to operate a system that prevented their entry, a civil penalty may be issued. The additional regime will create a new civil offence, whereby a civil penalty may be imposed if there has been a failure to adequately secure a commercial goods vehicle and to take the actions specified in regulations in relation to the securing of the vehicle against unauthorised access, regardless of whether a clandestine entrant is found within it. These actions will include a requirement to check the goods vehicle on an ongoing basis for signs of possible clandestine entry, to report any unauthorised access and to keep records that confirm the actions specified in regulations have been taken. The Immigration and Asylum Act 1999 will be amended to remove section 33 and the Prevention of Clandestine Entrant: Code of Practice. Instead, the Secretary of State will specify in regulations the actions to be taken to secure the vehicle against unauthorised access.
- 44 A deportation order requires the subject to leave the UK and prohibits the subject from entering the UK. It invalidates any leave to enter or remain in the UK given to the subject before the order was made or while it is in force. The majority of those who receive deportation orders are Foreign National Offenders.
- 45 The current maximum sentence for entering in breach of a deportation order under section 24 of the Immigration Act 1971 is 6 months imprisonment which does not reflect the seriousness of this offence.
- 46 Increasing the maximum sentence from six months to five years' imprisonment will disrupt those who are subject to a deportation order who are also involved in organised criminal networks, including those involved in organised immigration crime.
- 47 Broadly, non-visa nationals visiting the UK for up to 6 months currently arrive at the UK border with limited prior checks by the Home Office. This presents a gap in border control and the ability to count people in and out of the UK.
- 48 The introduction of an Electronic Travel Authorisation (ETA) Scheme will assist with the ongoing digitization of the UK's border. This will mean, in the same way as countries like the United States, Canada, Australia and New Zealand, before a person travels to the UK for a visit, they will need to apply for permission where aspects of any criminality must be provided through self-declaration. The Carrier Liability Scheme will be extended to incentivise carriers to check permission to travel before they bring an individual to the UK.

Enforcing Removals

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

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- 50 There has been a gradual long-term reduction in enforced returns from the UK. In 2019, enforced returns fell to 7,192 - 22% lower than the previous year, and continuing a downward trend since 2013, when there were 14,900 enforced returns.¹²
- 51 This Bill creates a power for the Secretary of State to impose visa penalties on nationals of particular countries who do not co-operate with removal of their nationals who have no right to be in the UK.
- 52 As of 2020, there are 10,000 Foreign National Offenders living in the community who are subject to deportation action; around a quarter of whom were released from prison more than 5 years ago.¹³ And around 42,000 failed asylum seekers are still living in the community.¹⁴ Whilst there are various contributing factors to these trends, repeated legal challenges impede the Home Office's ability to enforce immigration laws, contributing to a downward trend in the number of people, including Foreign National Offenders, being removed from the UK.
- 53 In 2019, new claims, legal challenges or other issues were raised by 73% of people who had been detained within the UK following immigration offences, resulting in release from immigration detention in 94% of cases instead of removal from the UK. On full evaluation, very few of these claims amounted to a valid reason to remain in the UK. For all issues raised during immigration detention in 2017, 83% were ultimately unsuccessful.¹⁵
- 54 Foreign National Offenders serving prison sentences in the UK, where deportation is being pursued, become subject to the provisions of the Early Removal Scheme (ERS). This Scheme provides a window at the end of the custodial part of their sentence for offenders who are subject to a determinate sentence (a sentence with a defined length) during which they can be removed from prison for the purpose of immediate deportation.
- 55 This Bill will increase the removal window from 9 months to 12 months, subject to the individual serving at least half of the requisite custodial period in prison. Expanding the removal window increases the opportunity for deportation, thereby reducing the numbers of Foreign National Offenders in prison.
- 56 The introduction of a 'stop the clock' provision will pause a Foreign National Offender's sentence following their removal and reactivate it if the Foreign National Offender returns to the UK. This is aimed at deterring the return of Foreign National Offenders and would be in addition to any sentence for returning in breach of a deportation order, which will be increased from 6 months to a maximum of 5 years in prison.

Non-legislative programme

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

¹² Home Office '[How many people are detained or returned?](#)'. 25 February 2021.

¹³ Home Office '[Immigration Enforcement Transparency Data Q4 2020](#)'. 26 February 2021.

¹⁴ Home Office '[Immigration and Protection: UK Visa & Immigration Transparency Data Q4 2020](#)'.

¹⁵ Home Office '[Issues raised by people facing return in immigration detention](#)'. 16 March 2021.

Resettlement

- 58 Many of the measures contained within the Bill are intended to reduce illegal migration and the criminality associated with it. In parallel, the Government intends to enhance resettlement routes to continue to provide pathways for refugees to be granted protection in the UK.
- 59 Between 2015 and 2019, around 25,000¹⁶ refugees were resettled and a further 29,000¹⁷ close relatives through refugee family reunion. Over the last 5 years, the UK's resettlement efforts have been focused on resettling people from countries hosting large numbers of refugees, such as Lebanon, Jordan and Turkey in response to the Syrian conflict.
- 60 Following the passing of China's National Security Law, which restricts the rights and freedoms of the people of Hong Kong, the UK introduced an immigration route for British Nationals (Overseas) status holders. This route provides the opportunity for such individuals and their family members to live, work and study in the UK. In the first quarter of 2021, approximately 34,300 individuals¹⁸ submitted an application for this route to citizenship.
- 61 Going forward, the Government intends to broaden the scope of the UK's protection offer to encompass persecuted refugees from a broader range of minority groups. Under the New Plan for Immigration, refugees who are resettled into the UK will be granted indefinite leave to remain and receive enhanced integration support.
- 62 The UK's commitment to resettling refugees will continue to be a multi-year commitment with numbers subject to ongoing review guided by circumstances and capacity at any given time.

Modern Slavery

- 63 Alongside the suite of legislative measures relating to modern slavery contained within the Bill, a range of non-legislative provisions were announced in the New Plan for Immigration to provide enhanced support to victims. This includes commitments to ensure that victims' overall support packages are more tailored to individual need from the outset, and that they have ready access to specific mental health provision. The Government also wishes to improve the support given to child victims of modern slavery, including those involved in county lines exploitation.
- 64 The Government intends to provide increased support to First Responders within the immigration system to enable them to identify victims as early as possible. Alongside this, a new way of identifying child victims of modern slavery is being piloted, enabling decisions to be taken within existing safeguarding structures by local authorities, police and health workers, who have a duty to work together to safeguard and promote the welfare of children.
- 65 Further funding will be provided to increase prosecutions and build policing capability to investigate and respond to organised immigration crime. Additionally, new approaches will be piloted to support victims of modern slavery to engage with police and operational partners throughout the criminal justice system, addressing a significant barrier to driving up prosecutions.

¹⁶ Eurostat (2021a) '[Resettled Persons – Annual Data](#)'. Updated 9 March 2021.

¹⁷ Home Office (2021a) 'Asylum and Resettlement Summary Tables – Year ending December 2020'. [Immigration statistics data tables, year ending December 2020](#). 25 February 2021.

¹⁸ How many people come to the UK each year (including visitors)? - GOV.UK (www.gov.uk)

- 66 As well as reforming the current system, a new fund to pilot interventions by non-governmental organisations and stakeholders will aim to prevent modern slavery upstream.
- 67 To ensure the UK's approach continues to meet the threat the 2014 Modern Slavery Strategy will be reviewed. Further legislation will be brought forward to support the wider NRM Transformation Programme and underpin any future changes to the system.

Windrush

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

Legal background

- 69 This Bill amends or repeals the following legislation:
- Section 24 of the Immigration Act 1971, outlining offences of illegal entry into the United Kingdom, including in breach of a deportation order.
 - Section 25 of the Immigration Act 1971, setting out the offence facilitating entry into the United Kingdom.
 - Section 25A of the Immigration Act 1971, setting out the offence of helping an asylum seeker enter the United Kingdom.
 - Sections 28B and 28FA, which relates to searching of premises for the purpose of arrest or seizure of records in relation to immigration offences.
 - Part 3A of the Immigration Act 1971, which concerns maritime enforcement.
 - Schedule 2 to the Immigration Act 1971, which relates to an immigration officer's power to inspect a ship or aircraft.
 - Schedule 4A to the 1971 Act, setting out enforcement powers in relation to ships.
 - Part 1 of the British Nationality Act 1981, outlining means of acquisition of British citizenship, including sections 4, 6, and 18, which set out the residence requirements to be satisfied for naturalisation as a British citizen.
 - Part 2 of the British Nationality Act 1981 relating to British overseas territories citizenship, including section 17 which sets out requirements for minors to acquire British overseas territories citizenship.
 - Section 41A of the British Nationality Act 1981, which sets out the good character requirements to be satisfied for the registration of an adult or young person as a British citizen.
 - Schedule 1 to the British Nationality Act, setting out the requirements for naturalisation.

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- Schedule 2 to the British Nationality Act 1981, outlining the provisions for reducing statelessness.
- Sections 4, 97, 98 and 98A of the Immigration and Asylum Act 1999, relating to the provision of support, including accommodation, for asylum seekers.
- Section 10 of the Immigration and Asylum Act 1999, relating to the removal of persons unlawfully in the United Kingdom.
- Section 31 of the Immigration and Asylum Act 1999, which relates to defences based on Article 31(1) of the Refugee Convention.
- Part 2 of the 1999 Act, which outlines the liability of carriers when failing to prevent clandestine entry or entry of inadequately documented individuals.
- Section 94 of the Immigration and Asylum Act 1999, which provides interpretation of terms used in Part 6 of that Act.
- Regulation 4 of the Asylum Support Regulations 2000 (S.I. 2000/704), setting out circumstances where persons may not be provided with asylum support.
- Section 18 of the Nationality, Immigration and Asylum Act 2002, which provides a definition of "asylum seeker".
- Sections 17, 22, 24 and 27 of the Nationality, Immigration and Asylum Act 2002, which relate to the provision of accommodation for destitute asylum-seekers.
- Section 21 of the Nationality, Immigration and Asylum Act 2002, which contains supplementary provisions to sections 17 to 20 of that Act.
- Section 25 of the Nationality, Immigration and Asylum Act 2002, regarding the limits on length of stay at an asylum accommodation centre.
- Part 4 of the Nationality, Immigration and Asylum Act 2002, relating to detention and removal of persons subject to immigration control.
- Section 72 of the Nationality, Immigration and Asylum Act 2002, which set out the UK's interpretation of a "particularly serious crime" for the purpose of Article 33(2) of the 1951 Refugee Convention.
- Sections 77 of the Nationality Immigration and Asylum Act 2002, which prevents the removal of a person from the United Kingdom while their asylum claim is pending.
- Sections 82, 85 and 86 of the Nationality, Immigration and Asylum Act 2002, concerning rights of appeal to the Tribunal in relation to protection and human rights claims.
- Section 92 of the Nationality, Immigration and Asylum Act 2002, setting out the place from which an appeal may be brought or continued, whether from within or outside the United Kingdom.
- Section 94 of the Nationality, Immigration and Asylum Act 2002, which provides for the Secretary of State to certify protection claims or human rights claims as clearly

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unfounded.

- Sections 106, 107 and 108 of the Nationality, Immigration and Asylum Act 2002, relating to the Tribunal Procedure Rules, practice directions, and which make provision for conducting proceedings relating to forged documents in private.
- Section 113 of the Nationality, Immigration and Asylum Act 2002 and paragraph 17 of Schedule 3 to that Act, which provide interpretations of terms used.
- Sections 129 and 134 of the Nationality, Immigration and Asylum Act 2002, which provide that the Secretary of State may require a local authority or an employer to supply information in relation to a person who is suspected of certain immigration offences.
- Sections 260 and 261 of the Criminal Justice Act 2003, which provide for the Early Removal Scheme that is applicable to all serving determinate sentence foreign national offenders.
- Section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004, which sets out the behaviours which are considered damaging to a claimant's credibility.
- Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004, concerning the removal of asylum seekers from the UK to safe countries.
- The Refugee or Persons in Need of International Protection (Qualification) Regulations 2006 No. 2525, which transpose The Qualification Directive (2004/83/EC) into UK legislation.
- Section 13 of the Tribunals, Courts and Enforcement Act 2007, setting out the right to appeal to Court of Appeal.
- Section 29 of the Tribunals, Courts and Enforcement Act 2007, relating to costs and expenses of and incidental to the First-tier Tribunal and Upper Tribunal.
- Part 1 of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007, relating to the First-tier Tribunal and Upper Tribunal procedure rules.
- Section 61 of the UK Borders Act 2007, relating to the citing of that Act.
- Section 133 of the Criminal Justice and Immigration Act 2008, which makes provision for the Secretary of State to impose conditions on designated persons.
- Sections 39, 40, 41 and 49 of the Borders, Citizenship and Immigration Act 2009, which contain uncommenced provisions relating to requirements for naturalisation as a British citizen.
- Sections 9 and 10 of and Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which set out circumstances and exceptional circumstances in which civil legal services may be available to an individual.
- Regulation 11 of the Civil Legal Aid (Merits Criteria) Regulations 2013 (S.I. 2013/104) set out for the purposes of determining whether an individual or a legal person qualifies for

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civil legal services under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

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

Territorial extent and application

- 70 Clause 69 sets out that the territorial extent of the Bill, that is the jurisdictions in which the Bill forms part of the law. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect.
- 71 Almost all of the provisions in the Bill deal with matters that are reserved to the UK Parliament and therefore extend and apply across the UK. The remainder apply to England and Wales only, either because they amend legislation that itself only applies and extends to England and Wales or because they deal with a policy area that is within the legislative competence of the Scottish Parliament or the Northern Ireland Assembly but not within the legislative competence of Senedd Cymru.
- 72 There are five clauses that extend and apply to England and Wales only:
- Clauses 22, 54 and 55 make provision for civil legal services, by amending legislation that itself only extends and applies to England and Wales (relevant sections of the Legal Aid, Sentencing and Punishment of Offenders Act 2012).
 - Clause 48 makes provision for the identification of potential victims of slavery or human trafficking, by amending legislation that itself only extends and applies to England and Wales (relevant sections of the Modern Slavery Act 2015).
 - Clause 52 makes provision for support and assistance for potential victims of modern slavery in England and Wales. This Clause only extends and applies only to England and Wales. These matters are within the legislative competence of the Scottish Parliament and the Northern Ireland Assembly but not within the legislative competence of Senedd Cymru
- 73 Consequential powers at Clause 67 enable the Secretary of State to make provision by regulations in consequence of the Bill that amend, repeal or revoke any enactment, including Acts of the Scottish Parliament, Measures or Acts of Senedd Cymru and Northern Ireland legislation. These powers would by definition only be exercisable in consequence of provisions in the Bill, which are either reserved to the UK Parliament or which apply and extend only to England and Wales and which are not within the legislative competence of Senedd Cymru.
- 74 There is a convention (“the Sewel Convention”) that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned. In relation to Scotland and Wales, this convention is enshrined in law (see section 28(8) of the Scotland Act 1998 and section 107(6) of the Government of Wales Act 2006).
- 75 None of the provisions in the Bill involve Westminster legislating for a matter that is within the legislative competence of a devolved legislature, and so the consent of devolved legislatures is not required under the Sewell Convention.
- 76 If, following introduction of the Bill, there are amendments relating to matters within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for the amendments.
- 77 See the table at Annex B for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the House of Commons relating to Public Business.

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

Commentary on provisions of Bill

Part 1: Nationality

- 79 Under the current provisions of the British Nationality Act 1981 (“the 1981 Act”), a number of cases arise where an individual who would have qualified for automatic British overseas territories citizenship and/or British citizenship, or the right to register or naturalise as a citizen is unfairly prevented from doing so, through no fault of their own.

British overseas territories citizenship

Clause 1: Historical inability of mothers to transmit citizenship

- 80 **Overview:** This clause creates a registration route for the adult children of British overseas territories citizen (BOTC) mothers to acquire British overseas territories citizenship.
- 81 **Background:** Before 1 January 1983 children could not acquire British nationality through their mother. While registration provisions have since been introduced to rectify this issue for the children of British citizens (section 4C of the British Nationality Act 1981), this was not changed for children of BOTCs.
- 82 **Subsection 2** inserts new section 17A into the British Nationality Act 1981 (“the 1981 Act”). This enables a person to be registered as a BOTC if they meet three conditions. These are that, had women been able to pass on citizenship in the same way as men: they would have been a citizen of the UK and colonies immediately prior to the introduction of the 1981 Act; they would have become a British dependent territories citizen under section 23(1)(b) or (c) of that Act; and they would have become a BOTC under section 2 of the British Overseas Territories Act 2002. The intention of these conditions is that a person who would have become a BOTC automatically, had women been able to pass on citizenship in the same way as men before 1983, will be able to register. Section 17A(4) of this provision removes the need for a person’s birth to have been registered under section 5 of the British Nationality Act 1948 had that provision benefited children of mothers. This change reflects the decision in the case of the Advocate General for Scotland v Romein.
- 83 **Subsection 3** provides that a person registered as a BOTC under new section 17A is a BOTC “by descent”. A BOTC by descent cannot usually pass on their nationality to a person born outside of an overseas territory.

Clause 2: Historical inability of unmarried fathers to transmit citizenship

- 84 **Overview:** This clause creates a registration route for the adult children of unmarried British overseas territories citizen (BOTC) fathers to acquire British overseas territories citizenship.
- 85 **Background:** Before 1 July 2006 children born to British unmarried fathers could not acquire British nationality through their father. While registration provisions have since been introduced to rectify this issue for the children of British citizens (sections 4E to 4I of the British Nationality Act 1981), this was not changed for children of BOTCs.
- 86 **Subsection 2** inserts new sections 17B to 17G into the British Nationality Act 1981 (“the 1981 Act”) to provide for registration as a BOTC for persons born before 1 July 2006 to a BOTC father, where their parents were unmarried at the time of their birth. In particular, the provisions provide an entitlement to be registered for those who would have become a BOTC automatically had their parents been married at the time of their birth and for those who would currently have an entitlement to registration were it not for the fact that their parents were not married at the time of their birth.
- 87 Section 17B stipulates the general conditions to be met: that the person’s parents were not married to each other at the time of their birth; that, in cases of assisted reproduction, no other person was

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treated as the person's father; and that the person has never previously been a BOTC or a British Dependent Territories citizen.

- 88 Section 17C entitles a person to be registered as a BOTC if the person meets the general conditions and would be entitled to be registered as a BOTC under the specified registration provisions of the 1981 Act had the person's mother been married to the person's natural father at the time of his or her birth. Section 17C(4) provides a power for the Secretary of State to waive the need for parental consent if the person would have been able to register under section 17(5) of the 1981 Act, had their parents been married.
- 89 Section 17D entitles a person to be registered as a BOTC if the person meets the general conditions in section 17B and if, at any time after commencement of the 1981 Act, the person would automatically have become a BOTC at birth under the 1981 Act, had the person's mother been married to the person's natural father at the time of the person's birth. Section 17D(3) requires that both parents provide consent for a child under 18 to make an application for registration. Section 17D(4) allows the preceding subsection to be read as a reference to either the person's mother or natural father where the person's father or mother has died on or before the date of the application, and section 17D(5) allows the Home Secretary to waive consent in the circumstances of a particular case.
- 90 Section 17E entitles a person to be registered as a BOTC if the person: meets the general conditions in section 17B; was a citizen of the United Kingdom and Colonies immediately before commencement of the 1981 Act; and would automatically have become a British dependent territories citizen and then a BOTC under the 1981 Act had the person's mother been married to the person's natural father at the time of the person's birth.
- 91 Section 17F entitles a person to be registered as a BOTC if the person: meets the general conditions in 17B; is an eligible former British national (defined at section 17F(3)) or an eligible non-British national (defined at section 17F(4)); and would have automatically become a BOTC under the 1981 Act had the person's mother been married to the person's natural father at the time of the person's birth.
- 92 Section 17G contains supplementary provisions, including to stipulate that a person's "natural father" is someone who satisfies the requirements as to proof of paternity (prescribed in regulations under section 50(9B) of the 1981 Act).
- 93 Section 17G(3) stipulates which people registered as a BOTC under this registration route are BOTCs "by descent" and section 17G(4) stipulates which people applying for BOTC under the section 17C route must meet the good character requirements of section 41A.

Clause 3: Sections 1 and 2: related British citizenship

- 94 **Overview:** This clause creates a registration route as a British citizen for people who have registered as a BOTC under the new routes introduced by Clauses 1 and 2.
- 95 **Background:** In 2002 all those with BOTC status additionally became British citizens by virtue of section 3 of the British Overseas Territories Act 2002 ("the 2002 Act"). Those who were unable to become BOTCs, due to the fact that women could not pass on citizenship, or because their parents were not married, were also unable to become British citizens under the 2002 Act.
- 96 **Subsection 2** inserts new section 4K of the British Nationality Act 1981 ("the 1981 Act"). This enables a person to be registered as a British citizen if they are registered as a BOTC under sections 17A, 17C, 17D, 17E or 17F (introduced by Clauses 1 and 2) or would be entitled to be registered as a BOTC under any of those sections, but for the fact that they have already become a BOTC under a different provision. This provision does not apply to BOTCs who acquired or would have acquired that status solely through the Sovereign Base Areas of Akrotiri and Dhekelia (a British Overseas Territory on the island of Cyprus), as these BOTCs did not benefit from section 3 of the 2002 Act (section 4K(2)). This provision also amends section 14 of the 1981 Act, to specify which persons registered as British

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citizens under this provision hold that status by descent (section 4K(3)). Those who acquire BOTC status on the basis that they would have qualified for registration as a BOTC, rather than automatically, had their parents been married will need to meet a good character requirement if there was one for the relevant registration provision (section 4K(4)).

97 **Subsection 3** stipulates which people registered as a British citizen under this registration route are British citizens “by descent”.

98 **Subsection 4** stipulates which people applying for British citizenship under this provision must meet the good character requirements of section 41A.

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

99 **Overview:** This clause amends section 17(2) of the British Nationality Act 1981 (“the 1981 Act”) to remove the requirement that an application for the registration of a child as a British overseas territories citizen (BOTC) must be made within 12 months of the birth.

100 **Background:** Section 17(2) provides a registration route for a child whose parent is a BOTC “by descent” (see paragraph 83 for meaning of “by descent”) and had been in a territory for a continuous period of three years at some point before the child’s birth. At present, an application under this route must be made within 12 months of the child’s birth. The parallel provision for British citizens (section 3(2)) was amended in 2009, replacing the requirement for the application to be made within 12 months of the child’s birth (or within six years at the Secretary of State’s discretion) with a requirement for the application to be made while the child is a minor. This provision amends the BOTC registration route in the same way.

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

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

British citizenship

Clause 5: Disapplication of historical registration requirements

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

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

105 **Subsection 2** amends section 4C of the 1981 Act so that the requirement in section 5(1)(b) of the 1948

Act, to register a person's birth at a United Kingdom consulate, does not apply.

106 **Subsection 3** amends section 4I so that the requirement in section 5(1)(b) of the 1948 Act, that a person's birth is registered at a United Kingdom consulate, does not apply.

Clause 6: Citizenship where mother married to someone other than natural father

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

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

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

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

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

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

113 **Subsection 2** removes the 1 July 2006 date applicable to the remedial registration routes set out at 4F-4I, thereby providing those born on or after 1 July 2006 with an entitlement to British citizenship. Removing the date brings the later introduced Human Fertilisation and Embryology Act 2008 into scope. This subsection therefore inserts a reference to the 2008 Act.

114 **Subsection 3** adds section 4D to the list of instances where a person may be entitled to be registered as a British citizen (section 4F of the 1981 Act). This enables a child of a member of the British Armed Forces to make an application to register as a British citizen despite their mother being married to someone other than their biological father at the time of their birth.

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

Powers of the Secretary of State relating to citizenship etc.

Clause 7: Citizenship: registration in special cases

- 116 **Overview:** This clause creates new registration provisions which allow the Secretary of State to grant British citizenship and/or British overseas territories citizenship to adult applicants if, in the Secretary of State's opinion, the person would have been or would have become a British citizen and/or a British overseas territories citizen ("BOTC") had it not been for: historical unfairness in the law; an act or omission of a public authority; or other exceptional circumstances relating to the person's case.
- 117 **Background:** The Secretary of State already has a power to register minors as British citizens by discretion under section 3(1) of the 1981 Act. No such power exists to grant citizenship by discretion to adults.
- 118 This clause allows for the grant of British citizenship and/or British overseas territories citizenship to a person who does not meet the existing naturalisation or registration requirements and is intended to benefit those who would have qualified for automatic acquisition of citizenship or who would have met the naturalisation or registration requirements, were it not because of, for example, unintended consequences caused by historical legislation or the result of the act or omission of a public body.
- 119 **Subsections 2 and 3** insert new sections 4L and 17H creating registration provisions which allow certain adults to be registered as British citizens and/or BOTCs. Under these provisions, British citizenship and/or British overseas territories citizenship may be granted where in the Secretary of State's opinion, the person could have been or become a British citizen and/or BOTC but for past unfairness in the law (including where men and women were unable to pass on citizenship equally, and unmarried fathers could not pass on citizenship), an act or failure to act by a public authority, or exceptional circumstances relating to the person's case. Sections 4L(4) and 17H(4) allow the Secretary of State to take into account whether the applicant is of good character where applicable.

Clause 8: Requirements for naturalisation etc

- 120 **Overview:** This clause enables the Secretary of State to waive a requirement for naturalisation as a British citizen under section 6, naturalisation as a British Overseas Territories citizen under section 18 and registration as a British citizen under section 4 of the British Nationality Act 1981 ("the 1981 Act"), namely to have been present in the UK (or British Overseas Territory) at the start of the applicable residential qualifying period.
- 121 **Background:** Section 6 of the 1981 Act gives the Home Secretary the power to grant a certificate of naturalisation to an adult. The requirements for naturalisation are set out at Schedule 1 to the 1981 Act. There is a requirement to complete a period of either three or five years' residence in the UK (or a British Overseas Territory) before an application can be made (this is the residential qualifying period). The individual must have been present in the UK (or British Overseas Territory) at the beginning of the residential qualifying period.
- 122 Section 4 of the 1981 Act, a provision for registration of British nationals as British citizens, has residence requirements which mirror those for naturalisation and so will be amended in line. Similar provisions exist for naturalisation as a British Overseas Territories citizen, at section 18 of the 1981 Act.
- 123 The rationale behind these requirements is that an individual must be able to demonstrate a sustained connection with the UK (or British Overseas Territory), although absences up to a specified number of days are permitted by the legislation.
- 124 The Secretary of State has the power to waive the requirement relating to the maximum number of

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days absence and to treat this requirement as fulfilled in the special circumstances of a particular case (set out at paragraphs 2 and 6 of Schedule 1 to the 1981 Act for British citizenship and BOTC, respectively, and in section 4(4) for registration).

- 125 There is currently no power to waive the requirement to have been present in the UK at the start of the qualifying period (except in relation to applications for naturalisation as British citizens from current or former members of the armed forces). This presents a barrier in otherwise deserving cases.
- 126 This clause amends the 1981 Act to allow the Secretary of State to waive the requirement that the individual must have been present in the UK or relevant territory at the start of the qualifying period in the special circumstances of a particular case. This waiver will be introduced in relation to the requirements to naturalise as British citizen under section 6 of the 1981 Act, naturalise as a British Overseas Territories citizen under section 18 of that Act, or register as a British citizen under section 4 of that Act.
- 127 **Subsection 1** sets out that Schedule 1 amends the 1981 Act to allow this requirement to be waived for sections 4, 6 and 18.
- 128 **Subsection 2** removes provisions in the Borders, Citizenship and Immigration Act 2009, which have never been commenced and are no longer required.
- 129 **Subsection 3** removes the section of the Citizenship (Armed Forces) Act 2014 which amends section 39 of the Borders, Citizenship and Immigration Act 2009, relating to the uncommenced earned citizenship provisions.

Schedule 1: Waiver of requirement of presence in UK etc

- 130 **Paragraph 2** amends section 4 of the 1981 Act providing that the Secretary of State may, in the special circumstances of a particular case, treat a British national registering as a British citizen as fulfilling the first residence requirement set out at section 4(2)(a) of the 1981 Act although they were not present in the UK at the start of the five-year residential qualifying period.
- 131 **Paragraph 3** amends Schedule 1 of the 1981 Act, providing that the Secretary of State may, in the special circumstances of a particular case, treat an individual applying for naturalisation as a British citizen as fulfilling the first residence requirement set out at Schedule 1(2)(a) of the 1981 Act although they were not present in the UK at the start of the residential qualifying period.
- 132 **Paragraph 3** also provides that the Secretary of State may, in the special circumstances of a particular case, treat an individual registering as a British overseas territories citizen as fulfilling the first residence requirement set out at paragraph 5 of Schedule 1 to the 1981 Act despite not being present in the relevant overseas territory at the start of the residential qualifying period.
- 133 **Paragraph 3** also removes paragraphs 2(2) and 2(3) of Schedule 1 to the 1981 Act, which specified that the Secretary of State could waive the requirements to be present in the UK, where an applicant was a member of the armed forces. These are removed because the new clause creates the same discretion to waive this requirement for all applicants, including members of the armed forces.
- 134 **Paragraph 4** makes consequential amendments to the Citizenship (Armed Forces) Act 2014 due to paragraph 3 above.

Registration of stateless minors

Clause 9: Citizenship: stateless minors

- 135 **Overview:** This clause amends Schedule 2 to the British Nationality Act 1981 (“the 1981 Act”) to introduce a new requirement for the registration of a stateless child (aged 5 to 17) as a British citizen or a British overseas territories citizen (BOTC), and maintains the existing requirements in relation to those aged 18 to 22.
- 136 **Background:** Provisions for reducing statelessness within the nationality framework are set out at section 36 and Schedule 2 of the 1981 Act. Specifically, paragraph 3 of Schedule 2 to the 1981 Act provides for a stateless child born in the UK or an overseas territory to be registered as a British citizen or BOTC. The conditions which apply to this provision include, amongst others, a residential requirement and a requirement that the individual has always been stateless.
- 137 There have been cases where parents have chosen not to register their child’s birth, which would have acquired their own nationality for their child, which means that the child can register as a British citizen under the statelessness provisions.
- 138 This clause ensures applicants are unable to take advantage of the statelessness provisions by choosing not to acquire their own nationality for their child. This is achieved by adding a requirement that the Secretary of State be satisfied that the child cannot reasonably acquire another nationality.
- 139 **Subsection 1** notes that the clause amends Schedule 2 to the 1981 Act.
- 140 **Subsections 2 and 3** amend the age requirements at paragraph 3 of Schedule 2 to the 1981 Act, from having to be aged under 22, to having to be aged between 18 and 22.
- 141 **Subsection 4** inserts new paragraph 3A into Schedule 2. This provision applies to those aged between 5 and 17 and mirrors the registration provision at paragraph 3 (as described above), with an additional requirement that the Secretary of State be satisfied that the child cannot reasonably acquire another nationality. Paragraph 3A(2) provides that a person is able to acquire a nationality where: that nationality is the same as one of the parents’; the person has been entitled to acquire that status since birth; and in all the circumstances, it is reasonable to expect them (or someone acting on their behalf) to take steps to acquire that nationality.

Part 2: Asylum

Treatment of refugees; support for asylum-seekers

Clause 10: Differential treatment of refugees

- 142 **Overview:** This clause provides for a differentiated approach to the treatment of refugees based on the criteria set out in Article 31(1) of the Refugee Convention.
- 143 **Background:** In the 12 months ending September 2019, around 62% of asylum applicants to the UK had entered the UK irregularly. At present, all asylum seekers by and large have their claims processed in the same way and receive the same entitlements, if granted refugee status in the UK, irrespective of their route to or actions in the UK.
- 144 This clause provides a power for the UK to treat refugees differently according to whether they satisfy certain criteria under Article 31(1) of the Refugee Convention, in respect of which our interpretation is set out in Clause 34. Article 31(1) sets out that States shall not impose penalties on refugees that come directly from a territory where their life or freedom is threatened, provided they present themselves to the authorities without delay and show good cause for their illegal entry or

presence.

- 145 The purpose of this is to discourage asylum seekers from travelling to the UK other than via safe and legal routes. It aims to influence the choices that migrants may make when leaving their countries of origin - encouraging individuals to seek asylum in the first safe country they reach after fleeing persecution, avoiding dangerous journeys across Europe.
- 146 All individuals recognised as refugees by the UK will continue to be afforded the rights and protections required under international law, specifically those afforded by the 1951 Refugee Convention.
- 147 **Subsection 1** introduces the concept of 'Group 1' and 'Group 2' refugees. This states that a refugee is a Group 1 refugee if they meet the requirements set out in subsection 2. If these are not met then a person will be a Group 2 refugee.
- 148 **Subsection 2** sets out the relevant requirements based on Article 31(1) of the Refugee Convention, as stated in Clause 34: (a) they must have come to the United Kingdom directly from a country or territory where their life or freedom was threatened (in the sense of Article 1 of the Refugee Convention) and (b) they must have presented themselves without delay to the authorities.
- 149 **Subsections 3 and 4** provide that where a refugee has entered or is present in the United Kingdom unlawfully, there is an additional requirement to show good cause for their unlawful entry or presence. A person's unlawful entry into or presence in the United Kingdom is defined as requiring leave to enter or remain but not having it.
- 150 **Subsection 5** provides for a differential treatment of refugees based on their group Differences may, for example, apply in terms of the duration of their permission to remain in the UK, the availability of routes to settlement, the ability to have recourse to public funds, and the ability of family members to join them in the UK.
- 151 **Subsection 6** provides for differential treatment of family members of Group 1 and Group 2 refugees. Differences may, for example, apply in terms of granting family members permission to enter or remain in the UK, the duration of their permission to remain in the UK if granted, the availability of routes to settlement, and the ability to receive public funds.
- 152 **Subsection 7** confirms that subsection 6 would not apply where the family members are refugees in their own right.
- 153 **Subsection 8** provides that the Immigration Rules may set out the differences in how Group 1 and Group 2 refugees are treated.
- 154 **Subsection 9** confirms the meaning of the terms "limited leave", "indefinite leave" and "refugee". "Refugee" takes the meaning set out in the Refugee Convention as a person who, "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it" (Article 1(A)(2)). Clause 27 provides interpretations of the terms used in Article 1(A)(2).

Clause 11: Accommodation for asylum-seekers etc

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

156 **Background:** Section 95, 98 and Section 4(2) of the Immigration and Asylum Act 1999 ("the 1999

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

- 157 There is currently no obligation to provide a specific form of accommodation, although under the present model an asylum seeker usually spends a short period in “initial accommodation” (generally a multi-person full-board facility) before moving to “dispersed” accommodation (generally shared flats and houses), where they remain there until their claim is decided. The accommodation provided to asylum seekers and failed asylum seekers is not linked to the progress of their claim, appeal, or their compliance with the rules. Although a breach of their conditions may result in withdrawal of support, in cases where they would not be left destitute, it does not impact the type of support provided.
- 158 The intention of this clause is to allow for the use certain types of accommodation to house certain cohorts of asylum seekers and failed asylum seekers in order to increase efficiencies within the system and increase compliance.
- 159 **Subsection 1** inserts new subsection 3A into section 97 of the 1999 Act. New subsection 3A allows the Secretary of State, when deciding the type of accommodation an individual may be offered, to take into account the stage their protection claim has reached, as well as their past compliance with conditions of bail and conditions attached to any support they have previously been receiving. In practice, this would mean that the Secretary of State could use different types of accommodation at different stages of an individual’s protection claim.
- 160 **Subsections 2 to 7** contain consequential amendments to sections 98 and 98A of the 1999 Act and sections 17 and 22 of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”) to enable subsection 3A to also apply to asylum seekers supported under section 98 of the 1999 Act (temporary support pending consideration if they are eligible to section 95 support) and to failed asylum seekers receiving support under section 95A or section 98A (temporary support).
- 161 **Subsection 8** amends section 25 of the 2002 Act. Currently, an individual may not be accommodated in an accommodation centre if they have already been a resident of an accommodation centre for a continuous period of 6 months, unless there is an agreement between the Secretary of State and the individual to extend the period, or the Secretary of State deems it appropriate because of the circumstances of the case to extend to 9 months. The Secretary of State has a power under this section to reduce the time limits stipulated in this section. This amendment allows the Secretary of State to reduce or increase, the time period. The purpose of the amendment is provide for wider flexibility to ensure the appropriate form of accommodation is provided to individuals for as long as it is required.
- 162 **Subsection 9** is a consequential amendment to section 27 of the 2002 Act that provides that references in Part 2 of the 2002 Act to a “resident of an accommodation centre” include those supported under sections 95A (support for failed asylum seekers) or 98A (temporary support for failed asylum seekers).

Place of claim

Clause 12: Requirement to make asylum claim at “designated place”

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

place as the Secretary of State may designate by regulations.

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

165 This clause transfers these changes into primary legislation and provides greater clarification.

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

167 **Subsection 2** provides the definition of a "designated place" in the UK as being an asylum intake unit, an immigration removal centre, a port or airport, a location where an officer authorised to accept an asylum application is present and a location to which the person has been directed by the Secretary of State or an immigration officer to make an asylum claim. This section also confers a power on the Secretary of State to designate other places by regulations subject to the negative resolution procedure (**subsection 8**).

168 **Subsection 2(f) and 7** confer a power on Secretary of State to add a designated place by statutory instrument subject to the negative resolution procedure.

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

170 **Subsection 6** provides a definition of "asylum claim".

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

Inadmissibility

Clause 13: Asylum claims by EU nationals: inadmissibility

172 **Overview:** This clause provides that asylum claims from EU nationals can be declared inadmissible to the UK's asylum system.

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

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

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

176 Paragraphs [326E](#) and [326F](#) of the Immigration Rules implemented the Spanish Protocol in the UK, providing that an asylum application from an EU national will only be admissible where the *These Explanatory Notes relate to the Nationality and Borders Bill as introduced in the House of Commons on 6 July 2021 (Bill 141)*

applicant satisfies the Secretary of State that there are exceptional circumstances which require the claim to be admitted.

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

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

179 80A(1) stipulates that the Secretary of State must declare an asylum claim made by a national of a member state inadmissible.

180 80A(2) provides that a person who has been deemed inadmissible to the UK's asylum system will not have their protection claim substantively considered.

181 80A(3) stipulates that a decision to declare an asylum claim inadmissible does not attract a right of appeal under section 82 of the 2002 Act.

182 80A(4) and (5) set out an exhaustive list of exceptions.

183 80A(6) defines terms used in this section.

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

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

185 **Overview:** This clause provides that asylum claims from an individual with a connection to a safe third country can be declared inadmissible to the UK's asylum system.

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

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

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

189 **Subsection 1** inserts new sections 80B and 80C into Part 4A (itself inserted by Clause 13), which relates to inadmissibility of asylum claims by persons with a connection to a safe third state.

190 80B(1) and (2) provide that a person who has a connection to safe third state may be deemed inadmissible to the UK's asylum system and, where declared inadmissible, will not have their asylum claim substantively considered.

191 80B(3) stipulates that a decision to declare a claim inadmissible, will not constitute a decision to refuse a protection claim and will therefore not attract a right of appeal in the way that protection claims do under section 82 of the Nationality, Immigration and Asylum Act 2002.

192 80B(4) defines a "safe third State".

193 80B(5) states that a claimant will be deemed to have a connection to a safe third country if they meet any of the conditions set out in section 80C.

194 80B(6) provides that an individual who is deemed inadmissible to the UK's asylum system under this section may be removed from the UK to any other safe third country. This means that an individual

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does not have to be removed to the country to which they have a connection.

195 80B(7) provides that if the individual whose claim has been declared inadmissible cannot be removed from the UK within a reasonable period from the declaration, or where there are exceptional circumstances or in other such cases which can be provided for in the immigration rules, their claim for asylum may nevertheless be considered.

196 80B(8) defines terms used in this section and in section 80C.

197 80C sets out what is meant by a “connection” to a safe third country. Condition 1 is where the person has been recognised as a refugee and can still access this protection. Condition 2 is whether the claimant has been granted a form of protection that would prevent them from being sent from that safe third country, to another country, and they can still access this protection. Condition 3 is where the claimant has already made a claim for protection in a safe third country but that claim has not yet been determined or has been refused. Condition 4 is where the claimant was previously in a safe third country where they could have made a claim, that it is reasonable to expect them to have made a claim, but they failed to make a claim. Condition 5 is where it would be reasonable to expect them to have made a claim in a safe third country, instead of making a claim in the UK. An example might be where the person has close family members in a safe third country and there was nothing preventing them making a claim there.

198 80C(6) and (7) define terms used in this section.

Clause 15: Clarification of basis for support where asylum claim inadmissible

199 **Overview:** This clause makes consequential amendments to asylum support legislation to align with the provisions relating to inadmissibility (Clauses 13 and 14). Where a claimant is deemed inadmissible, their entitlement to asylum support will be comparable to that of a failed asylum seeker.

200 **Background:** (refer to background sections of Clauses 13 and 14)

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

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

203 **Subsections 4 to 7** amend the relevant sections of the Nationality, Immigration and Asylum Act 2002 to the same effect.

Supporting evidence

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

204 **Overview:** This clause provides for an evidence notice that requires a claimant to provide evidence in support of their protection or human rights claim before a specified date. Otherwise, the provision of evidence will be deemed ‘late’ and the claimant will be required to provide a statement setting out their reasons for providing that evidence ‘late’. The consequences for not complying with the evidence notice without good reason are provided for in Clause 23 and section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (claimant’s credibility) (“the 2004 Act”) as amended by Clause 17.

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- 205 **Background:** It is intended that the new evidence notice will be served on a person under the same circumstances as a notice is served under sections 120(1)(a) and 120(2) of the Nationality, Immigration and Asylum Act 2002 (requirement to state additional grounds for application etc). A notice served on a person under sections 120(1)(a) and 120(2) creates a duty on that person to provide a statement setting out the reasons and grounds in support of that claim.
- 206 Non-compliance with the new evidence notice will create consequences under Clause 23, which sets out that a decision-maker in an asylum or a human rights claim or appeal must have regard to the principle that evidence raised by the claimant late is given minimal weight, unless there are good reasons why the evidence was provided late.
- 207 Further consequences arise in respect of non-compliance under Clause 17, which amends section 8 of the 2004 Act to include the provision of late evidence in support of an asylum or a human rights claim or related appeal without good reason as a behaviour that shall be taken account of as damaging to the claimant's credibility by the decision-maker.
- 208 **Subsections 1 and 2** provide that an evidence notice may be served on an individual who has made a protection claim or a human rights claim. An evidence notice requires individuals to provide any evidence, which has not already been provided, to support their claim by a specified date.
- 209 **Subsections 3 and 4** provide that, where evidence is provided late, the individual must set out in a statement the reasons for providing their evidence late.
- 210 **Subsection 5** outlines what is meant in the provision by "specified date", meaning the date stated in an evidence notice.

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

- 211 **Overview:** This clause inserts new subsections into the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (claimant's credibility) ("the 2004 Act"). It also inserts definitions for "immigration and nationality functions," "immigration legislation," and "Nationality Acts". In doing so, it creates a principle that if a person making an asylum or a human rights claim provides evidence late, or fails to act in good faith, this conduct shall be taken into account as damaging the claimant's credibility by the decision-maker. The same principle will apply to decision-makers considering related appeals. Evidence that is 'late' means evidence that is provided on or after a specified date set out in an evidence notice that requires a claimant to provide evidence in support of their protection or human rights claim before that specified date (as provided for in Clause 16).
- 212 **Background:** The intention behind this clause is to dissuade claimants from producing late evidence without good reason, and to reiterate that those engaging with the immigration authorities should act in good faith, by providing that the consequence for adverse conduct is that such behaviour shall be taken account of as damaging the credibility of the individual. Further measures related to the consequences of not acting in good faith are contained within Clause 64.
- 213 Section 8(1) of the 2004 Act sets out that in determining whether to believe a statement made by or on behalf of a person who makes an asylum claim or a human rights claim, a decision-maker shall take account of, as damaging the claimant's credibility, any behaviour to which the section applies. This clause adds further behaviours to the list that follows in section 8.
- 214 **Subsection 2** inserts new subsections 3A and 3B into section 8 of the 2004 Act. This means that section 8 applies to any 'relevant behaviour' that the deciding authority thinks is not in good faith and also defines in what circumstances such behaviour will be "relevant".
- 215 **Subsection 3** inserts new subsections 6A and 6B into section 8 of the 2004 Act, which sets out that providing evidence late in respect of an asylum or a human rights claim will be considered as a behaviour which is damaging to the claimant's credibility, unless there are good reasons for lateness.

216 **Subsection 4** inserts, at subsection 7 of section 8 of the 2004 Act, definitions of “immigration and nationality functions,” “immigration legislation,” and “Nationality Acts.”

217 **Subsection 5** inserts a subsection 9B within section 8 of the 2004 Act. This excludes from the definition of “immigration and nationality functions” (as inserted by subsection 4) the following: powers of arrest, entry and search as mentioned in sections 28A to 28K of the Immigration Act 1971, and power of arrest as mentioned in section 14 of the 2004 Act.

218 **Subsection 6** provides details regarding commencement.

Priority removal notices

Clause 18: Priority removal notices

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

220 **Background:** This is an entirely new provision. The aim of this clause is to reduce the extent to which people can frustrate removals through sequential or unmeritorious claims, appeals or legal action.

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

222 **Subsection 3** defines a PRN. The notice imposes a duty on the claimant to provide a statement setting out their reasons for wishing to enter or remain in the United Kingdom, any grounds on which they should be permitted to do so and any grounds on which they should not be removed or required to leave the United Kingdom. The notice also requires them to provide any information relating to being a victim of slavery or human trafficking as defined by Clause 46. The notice also requires them to provide any evidence in support of any reasons, grounds or information. The statement, grounds, information and evidence must be provided before the PRN cut-off date included within the notice.

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

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

225 **Subsections 7 and 8** define some of the terms used in this clause.

Clause 19: Priority removal notices: supplementary

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

227 **Background:** This clause is supplementary to Clause 18.

228 **Subsection 1** sets out that a priority removal notice remains in force until 12 months after: (a) where the PRN recipient makes a protection or human rights claim on or 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 (ii) the PRN cut-off date; (b) in any other case, the PRN cut-off date.

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- 229 **Subsection 2** defines appeal rights exhausted as the time when a claimant can no longer bring an appeal and no longer has an appeal pending.
- 230 **Subsection 3** specifies that a PRN may not be served on a claimant when there is an existing PRN in force.
- 231 **Subsections 4 and 5** specifies that if the recipient of a PRN has previously received an evidence notice (Clause 16), slavery or trafficking information notice (Clause 46) or a notice under section 120 of the Nationality, Immigration and Asylum Act 2002, the effects of the previous notice end when the PRN is served.
- 232 **Subsection 6** confirms that the meanings of “priority removal notice”, “PRN recipient” and “PRN cut-off date” all have the same meanings as in Clause 18.

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

- 233 **Overview:** This clause creates a principle that evidence that is not provided in compliance with the priority removal notice (PRN) may be damaging to a claimant’s credibility.
- 234 **Background:** This is a new provision which introduces the concept of a “priority removal notice”.
- 235 **Subsections 1 and 2** set out that this clause applies where a claimant has provided the statement, information or evidence late, as required by Clause 18 and either their claim is being considered or a competent authority is making a reasonable grounds or conclusive grounds decision concerning the claimant’s status as a victim of slavery or human trafficking.
- 236 **Subsection 3** specifies that the Secretary of State or competent authority must consider evidence being brought late as damaging to a claimant’s credibility unless there are good reasons why it was brought late.
- 237 **Subsection 4** defines evidence as having been brought late if it is provided on or after the PRN cut-off date.
- 238 **Subsection 5** provides definitions of terms used in this section.
- 239 **Subsection 6** makes reference to Clause 23, which makes further provisions about relating to PRN recipients providing evidence late.

Clause 21: Priority removal notices: expedited appeals

- 240 **Overview:** This clause creates an expedited appeal route for appellants where they have been served with a priority removal notice (PRN) and made a protection claim or a human rights claim or provided reasons or evidence as to why they should be allowed to remain in the UK after the PRN cut-off date but while the PRN is still in force. Their right of appeal will be to the Upper Tribunal instead of the First-tier Tribunal where certified by the Secretary of State.
- 241 **Background:** This is a new provision for a separate appeals process connected to the “priority removal notice” introduced in Clause 18.
- 242 **Subsection 1** amends the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”) to insert new section 82A providing for an expedited appeal process to the Upper Tribunal where certain conditions are met and the Secretary of State has certified that the appeal be an expedited appeal.
- 243 **82A(1)** sets out the expedited appeal conditions. These are that a person has been served with a PRN, has made a protection claim or a human rights on or after the PRN cut-off date (but while the PRN is still in force), which has been refused with a right of appeal.
- 244 **82A(2)** stipulates that where the conditions in 82A(1) are met the Secretary of State must certify an appeal right as an expedited appeal unless satisfied that there were good reasons for the claimant

raising their claim after the PRN cut-off date.

245 **82A(3)** confirms that a right of appeal under this section is to the Upper Tribunal instead of the First-tier Tribunal.

246 **82A(4)** provides that Tribunal Procedure Rules must make provision to try and ensure that expedited appeals are determined more quickly than an appeal under section 82(1) in the First-tier Tribunal.

247 **82A(5)** states that Tribunal Procedure Rules must allow for the Upper Tribunal to make an order that the expedited appeals process should not apply to a particular case if it is in the interests of justice.

248 **82A(6)** confirms that “priority removal notice” and “PRN cut-off date” have the same meaning as in Clause 18.

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

250 **Subsection 3** introduces Schedule 2 which provides consequential amendments to the 2002 Act necessary by reason of this provision.

Schedule 2: Expedited appeals where priority removal notice served: consequential amendments

251 This Schedule makes a number of consequential amendments to the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”).

252 **Paragraph 2** amends section 85 of the 2002 Act so that the matters to be considered in an appeal to the First-tier Tribunal apply equally in the case of an expedited appeal to the Upper Tribunal.

253 **Paragraph 3** amends section 86 of the 2002 Act to include a reference to the Upper Tribunal. Section 86 describes what judges are required to do in consideration of appeals under sections 82(1) or 83 of the 2002 Act.

254 **Paragraph 4** amends section 106(3) and (4) of the 2002 Act to include references to the Upper Tribunal. The amendment to section 106(3) means that the power derived from the Tribunal Procedure Rules under this section to certify an appeal as being without merit (and to make consequential provision) extends to the Upper Tribunal when determining an expedited appeal. Section 106(4) provides for circumstances in which an offence will be committed if, without reasonable excuse, a person fails to attend before the Tribunal. The amendment to section 106(4) has the effect of extending this to include a failure to attend before the Upper Tribunal on an expedited appeal.

255 **Paragraph 5** inserts a new subsection 107(2A) and substitutes words in section 107(3). Section 107 of the 2002 Act permits the use of practice directions to require the Tribunal or Upper Tribunal to treat a specified decision of either Tribunal as authoritative in respect of a particular matter. The combined effect of these amendments is to extend section 107 so that it applies to expedited appeals in the Upper Tribunal.

256 **Paragraph 6** amends section 108 by inserting a reference to the Upper Tribunal. Section 108 of the 2002 Act makes special provision for the conduct of appeal hearings where it is alleged that a document relied on by a party is a forgery and where it would be contrary to the public interest to disclose matters relating to the detection of the forgery to that party. The effect of this amendment is that the provisions in section 108 extend equally to such circumstances arising in an expedited appeal at the Upper Tribunal.

Clause 22: Civil legal services for recipients of priority removal notices

- 257 **Overview:** this clause amends Part 1 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('LASPO 2012') to enable recipients of a priority removal notice (PRN) to receive advice and assistance in the form of civil legal services.
- 258 **Background:** Each paragraph of Part 1 of Schedule 1 to LASPO 2012 describes the types of civil legal service that may be made available. Services listed in that Part are known colloquially as "in scope". To obtain legal aid, an applicant must have a determination from the Director of Legal Aid Casework that their issue is in scope by virtue of being listed in Schedule 1, and that they qualify for the services in accordance with the statutory means and merits tests which are set out in section 11 LASPO 2012 and in Regulations made under that Act.
- 259 The intention of this clause is to introduce certain types of civil legal service into scope. In particular, by amending Schedule 1 to add the following civil legal services for recipients of a PRN: advice and assistance on, a) the priority removal notice; b) the recipient's immigration status; c) the lawfulness of their removal from the United Kingdom; and d) immigration detention. The advice provided under c might, for example, include advice on the National Referral Mechanism (NRM) insofar as it was relevant to the lawfulness of the individual's removal from the UK.
- 260 The aim of the clause is to help individuals to understand their immigration status, the meaning of the PRN and to determine their next steps (if any), in raising claims that they may have as to why they should not be removed from the country.
- 261 **Subsection 1** amends Part 1 of Schedule 1 by inserting a new paragraph 31ZA which sets out that civil legal services are made available to recipients of a PRN.
- 262 31ZA(1) sets out that advice and assistance can be provided to these individuals on the PRN itself; the individual's immigration status; the lawfulness of the removal of the individual from the UK; and immigration detention.
- 263 31ZA(2) and (3) provide that these civil legal services are available under this paragraph for up to but no more than 7 hours, and that these civil legal services are available to individuals for each PRN issued to them. The intention of the sub-paragraph is that advice will generally be available for no more than 5 hours, but where certain circumstances demand it, no more than 7 hours will be available.
- 264 31ZA(4) to (5) provide for certain services to be excluded from being provided within the time limit. Those services are: attendance at an interview under the NRM, attendance at an interview as part of an individual's application in relation to rights to enter and remain in the UK, advocacy (as this advice is for advice and assistance only), and also private law rights or claims for damages. These exclusions reflect that the intention is for advice and assistance to be provided primarily on an individual's immigration status and potential removal from the country, rather than the exercise of private law rights or anything not directly related to either of those things.
- 265 31ZA(6) provides a definition.
- 266 **Subsection 2** amends the Lord Chancellor's power in section 9 of LASPO 2012 to allow the Lord Chancellor to change the maximum amount of time the civil legal services in subsection 1 may be provided for, and to allow the Lord Chancellor to make an order to show how the time limit could operate in practice, including an order setting out the circumstances where a full 7 hours of advice may be provided.
- 267 **Subsection 3** amends the Civil Legal Aid (Merits Criteria) Regulations 2013 to say that these civil legal services provided to recipients of a PRN are available without the application of the merits criteria (to assess the merits of their case).

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

Late evidence

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

269 **Overview:** This clause creates the principle that a decision-maker in an asylum or human rights claim or appeal must have regard to the principle that evidence raised by the claimant late is given minimal weight, unless there are good reasons why the evidence was provided late. For this purpose, evidence is considered “late” if it is provided in response to an evidence notice and it is provided on or after the date specified by that notice (as provided for by Clause 16); and also if it is provided in response to a priority removal notice (PRN) and is provided on or after the PRN cut-off date (as required by Clause 18).

270 **Background:** The aim of this clause is to strengthen existing credibility provisions in respect of late evidence, namely section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (claimant’s credibility) (“the 2004 Act”) and bolster the credibility consequences for providing a late response to the new PRN. It adds a further consideration for decision-makers when considering how much weight should be applied to evidence provided late without good reason.

271 **Subsection 1** sets out that this clause will apply to evidence that is provided late, as defined in subsections 4 and 5, by a claimant, as part of an asylum or human rights claim. It will apply when a deciding authority, as defined by subsection 7, considers evidence as part of a claim or as part of a decision where such claims are subject to an appeal.

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

273 **Subsections 3 to 5** relate to the definition of late evidence. Subsection 4 provides for evidence that has been provided on or after the specified date in the evidence notice as detailed in Clause 16; and subsection 5 provides for evidence that is provided on or after a PRN cut-off date provided for in Clause 18.

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

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

Appeals

Clause 24: Accelerated detained appeals

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

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

278 While appeals involving detained appellants are administratively prioritised by Her Majesty's Courts

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and Tribunals Service (HMCTS) under the Detained Immigration Appeals (DIA) approach, there is no set timeframe in which these have to be determined under the Rules. In Q1-3 2019/20, it took almost 12 weeks on average for DIA appeals to progress from receipt in the First-tier Tribunal to disposal.

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

280 **Subsections 1 to 3** amend the Nationality, Immigration and Asylum Act 2002, by inserting new section 106A into section 106 which relates to Tribunal procedure rules for asylum appeals under that Act.

281 The new section 106A sets out a definition of an accelerated detained appeal, then imposes a duty on the Tribunal Procedure Committee to introduce procedure rules for such appeals.

282 An accelerated detained appeal is an appeal brought by an appellant who:

- received a refusal of their asylum claim while in detention;
- remains in detention under a relevant detention provision;
- is appealing a decision which was certified by the Secretary of State as suitable for an accelerated detained appeal; and
- meets further criteria which will be set out in regulations.

283 It also sets out the overall timeframes for an accelerated detained appeal to be determined in the First-tier Tribunal (25 working days) and for determining any application for permission to appeal (20 working days) and stipulates that the Tribunal Procedure Rules will also contain provision to transfer cases out of the accelerated route where it is in the interests of justice to do so.

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

284 **Overview:** This clause removes the in-country and out-of-country rights of appeal for human rights and protection claims that are certified as clearly unfounded.

285 **Background:** Currently if an asylum claim is determined as being clearly unfounded and certified under section 94 of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”), the claimant is provided with an out-of-country right of appeal (as opposed to an in-country appeal right). However, for asylum further submissions, which in effect are repeat asylum claims, the test is higher – namely the claimant has to show that their claim has a “realistic prospect of success” in order to be provided with a right of appeal. This creates a perverse situation whereby certain claimants with totally unmeritorious and unfounded claims are given a right of appeal, whereas others who have claims that have a low or unrealistic prospect of success (but are not themselves entirely without merit) are not given such right to appeal. In addition, available evidence shows that where the Secretary of State certifies a decision under section 94, the claimant will very rarely (if ever) exercise their out-of-country appeal right. Far more likely is that the claimant will challenge the section 94 certification decision by way of Judicial Review.

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

287 **Subsection 3** amends section 94 of the 2002 Act, removing the in-country right of appeal for a human rights or protection claim that has been certified as clearly unfounded.

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

Removal to safe third country

Clause 26: Removal of asylum seeker to safe country

- 289 **Overview:** This clause and Schedule make amendments to the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”) and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (the “2004 Act”) in relation to the removal of asylum seekers, and those individuals who have had their asylum claim refused, to safe third countries. This includes provision for the removal of asylum seekers from the UK, provided such removal is in accordance with the UK’s international obligations. It also creates a new rebuttable presumption that certain specified countries are compliant with their obligations under the 1950 European Convention of Human Rights (ECHR) to the extent that an individual’s Convention rights under Article 3 (no torture or inhuman or degrading treatment or punishment) would be respected upon an individual’s return to these specified countries.
- 290 **Background:** Section 77 of the 2002 Act prevents the removal of an asylum seeker from the UK while their asylum claim is pending. While the UK was a member of the EU and until the end of the Transition Period (11pm on 31 December 2020), this operated alongside the Dublin Regulations, which permitted removal of asylum seekers who had already made protection claims or had been granted protection to safe third countries that were EU Member States, and managed the UK’s asylum intake.
- 291 This clause and Schedule, by amending section 77 of the 2002 Act, makes it possible to remove someone to a safe third country whilst their asylum claim is pending without having to issue a certificate under Schedule 3 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. This supports the future object of enabling asylum claims to be processed outside the UK and in another country. The purpose of such a model is to manage the UK’s asylum intake and deter irregular migration and clandestine entry to the UK.
- 292 The UK Government is committed to upholding its international obligations under the Refugee Convention and the ECHR, therefore any such removal of asylum seekers will be considered in line with these obligations. One of the core principles of the Refugee Convention is non-refoulement, which provides that a state must not expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion (see Article 33(1)). Under Article 3 of the ECHR, no one shall be subjected to torture or to inhuman or degrading treatment or punishment. This places an absolute bar on removing an individual from the UK where there are substantial grounds to believe that there is a real risk that the individual would experience such treatment in the country to which they are being removed.
- 293 Schedule 3 of the 2004 Act is amended to include a rebuttable presumption that certain countries specified in Schedule 3 of the 2004 Act are safe. “Safe” in this context means that an individual does not face a risk that their rights under Article 3 of the ECHR will be breached and that they will not be sent onwards to another country in contravention of their ECHR rights. In some instances, individuals who have had their asylum claim refused and are facing removal from the UK, try to frustrate their removal from the UK by claiming that their Article 3 rights may be breached in the country to which they are being removed. This can include where the removal is to countries which the UK considers to be safe. EU member states, for example, are countries which the UK considers, due to the constitutional and administrative structures of the European Union, are highly likely to be compliant with their ECHR obligations and therefore safe for the purpose of returning an individual whose claim for asylum has failed. The presumption will only be overturned where an individual can provide evidence that there is a real risk that their Article 3 rights will be breached upon return to the

safe country.

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

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

Schedule 3: Removal of asylum seeker to safe country

296 **Paragraph 1** inserts new subsections 2A, 2B and 2C into section 77 of the 2002 Act. These new subsections create an exemption to section 77, allowing for the removal of an asylum seeker to a safe country, provided the individual is not a national or citizen of that country. Any such removal is only permitted to states where the individual will not be at risk of persecution for reasons of race, religion, nationality, membership to a particular social group or political opinion, in line with the Article 1A(2) of the Refugee Convention, and from where they will not be returned to the country from which they are seeking protection, in keeping with the principle of "non-refoulement". Additionally, individuals may only be removed to states where their Article 3 rights will not be breached and to states which will not remove them to countries where their Article 3 rights may be breached. It is acknowledged that not all countries are signatories to the Refugee Convention, therefore the references to the Refugee Convention in this section refer to the principles of the Refugee Convention whether or not they are upheld by the relevant country.

297 **Paragraph 2** amends section 77(3) to insert a definition of "Convention rights".

298 **Paragraph 4** makes consequential amendments to Schedule 3 to the 2004 Act, removing the need to certify before a person with a pending asylum claim can be removed.

299 **Paragraph 5(2)** amends paragraph 3(1) of Schedule 3 to the 2004 Act. It provides that a person who has made an asylum claim or a human rights claim will be referred to as "the claimant" for the purpose of the subsequent paragraphs of Schedule 3.

300 **Paragraph 5(3)** inserts new sub-paragraph (1A) into Schedule 3 to the 2004 Act, creating a presumption that a country to which a person may be removed under this section, is considered safe unless proven otherwise by the claimant. "Safe", in this context, means that an individual's rights under Article 3 of ECHR would be respected and that the country would not send the individual on to another country where their rights under the Convention would not be upheld.

301 **Paragraph 5(4)** makes a consequential amendment, removing paragraph (b) from paragraph 3(2), since this is now captured in new paragraph (1A).

302 **Paragraphs 6** amends paragraphs 5(3) of the 2004 Act in order to simplify the current drafting in relation to asylum claim appeals. The effect remains the same: an individual has no right of appeal against the decision that removal to a specified State to which this Part applies would not breach the UK's obligations under the Refugee Convention. It also removes 5(3)(b) and 5(5) so that all human rights claims are treated the same. It amends paragraph 5(4) so there is no right of appeal for human rights claims brought against removal to the safe country with are declared clearly unfounded.

303 **Paragraph 7** inserts a definition of "state" into paragraph 1(1).

304 **Paragraph 8** adds the Republic of Croatia and Liechtenstein to the list of countries considered safe (and listed in the First List of Safe Countries).

305 **Paragraph 9** inserts a new paragraph (b) under 20(1) to confer a power to the Secretary of State to remove countries from the list of countries considered safe to return to under the Refugee Convention and ECHR. This is in addition to the power the Secretary of State already has under this section to add countries to that list.

306 **Paragraph 10** amends paragraph 21 as a result of the changes made by paragraph 7. This is to ensure that any additions to the list of safe countries are made by statutory instrument and subject to the affirmative resolution procedure, and that removals from that list are made by statutory instrument subject to the negative resolution procedure.

307 **Paragraphs 11 to 17** amend paragraphs 5, 10, 15 and 19 and omit paragraphs 6, 11 and 16 of Schedule 3. As currently drafted, these paragraphs allow immigration appeals against the individual's removal to the safe country to be brought from outside the UK. This clause removes all appeal rights in respect of claims that removal to a specified State to which each Part applies would breach the UK's obligations under the Refugee Convention and in respect of human rights claims brought against removal to the safe country, where the claim is deemed to be clearly unfounded.

308 **Paragraph 18** makes consequential amendments to the 2002 Act.

309 **Paragraph 19** sets out transitional provisions: claimants will retain a right to appeal from outside the UK if their claim was certified before the amendments by paragraphs 11, 13, 15 and 17 of this Schedule come into effect.

Interpretation of Refugee Convention

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

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

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

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

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

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

Clause 27: Refugee Convention: general

316 **Overview:** This clause instructs decision makers to use the definitions in the following clauses when considering whether an individual meets the definition of refugee in accordance with the Refugee

Convention.

- 317 **Subsection 1** instructs decision-makers, including immigration officers, the Secretary of State or a court or tribunal, to use the clauses in this section for the interpretation of Article 1(A)(2) of the Refugee Convention.
- 318 Article 1(A)(2) defines “refugee” as a person who, “owing to *well-founded fear* of being *persecuted* for reasons of race, religion, nationality, membership of a *particular social group* or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the *protection* of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”.
- 319 **Subsection 2** instructs the decision-maker to use Clause 33 when deciding whether a person should be excluded from the definition of a refugee on the basis of serious criminal behaviour or behaviour contrary to the principles of the UN.
- 320 **Subsection 3** instructs the decision-maker to use Clause 34 when deciding whether a person should be immune from penalty.
- 321 **Subsection 4** revokes the Refugee or Person in Need of International Protections (Qualification) Regulations 2006. The provisions of the 2006 regulations are added to the statute book via the clauses in this section, such as the definition of persecution (Clause 28).
- 322 **Subsection 5** stipulates that the provisions in this clause and those in Clauses 28 to 33 only apply to claims made on or after the day this clause takes effect.
- 323 **Subsection 6** confirms that a “claim for asylum” in subsection 5, refers to a claim as set out in subsection 1 of this clause.

Clause 28: Article 1(A)(2): persecution

- 324 **Overview:** this clause provides a definition of “persecution” for the purpose of interpreting Article 1(A)(2) of the Refugee Convention.
- 325 **Background:** For an individual to be considered a refugee, they must have a well-founded fear of being “persecuted” for a Convention reason. The UK currently relies on the definition of “persecution” provided in regulation 5 of the 2006 Regulations, which is revoked by Clause 27. The intention of this clause is to create a definition in primary legislation.
- 326 **Subsection 1** specifies that persecution can be carried out by: the state; a party or organisation which controls the state, or a large part of it; or a person or organisation that is not part of the state, but which the state cannot or is unwilling to protect the individual from.
- 327 **Subsection 2** specifies that an act will be considered as persecution if it breaches a basic human right, particularly those rights which cannot be limited: Articles 2 (Right to life), 3 (prohibition of torture), 4 (prohibition of slavery and forced labour) and 7 (No punishment without law). Alternatively, breaches of other human rights in accumulation, resulting in a severe violation, may be defined as persecution.
- 328 **Subsection 3** provides examples of persecution.

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

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

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

- 331 This provision establishes a clear two-limb test for assessing whether an asylum seeker has a well-founded fear of persecution and will raise the standard of proof which an asylum seeker must satisfy for certain elements of the test.
- 332 **Subsection 1** provides that the approach set out by this clause is to be taken when deciding whether a person’s fear of persecution is “well-founded”.
- 333 **Subsection 2** sets out the first limb of a two-limb test. Under the first limb, the decision-maker determines whether the claimant has established that they have a characteristic, as set out in the Refugee Convention, which could cause them to fear persecution in their country of nationality (or the country of their former habitual residence) and whether they do in fact fear such persecution based on that characteristic. This is assessed on the “balance of probabilities” standard.
- 334 **Subsections 3 to 5** set out the second limb of the test. Should the first test be met, the decision maker is instructed to consider whether the claimant may be persecuted if returned to their country of nationality (or the country of their former habitual residence) as a result of the reason established under subsection 2. This is assessed on the basis of whether there is a “reasonable likelihood” that they may face such persecution. This assessment must include an assessment of protection from persecution (see Clause 31) and internal relocation (see Clause 32).

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

- 335 **Overview:** this clause provides a definition of the term “particular social group” as used in Article 1(A)(2) of the Refugee Convention, and provides examples illustrating the meaning of race, religion and other terms used in the Refugee Convention.
- 336 **Background:** For an individual to be considered a refugee, they must have a well-founded fear of being persecuted for a Convention reason, one of which may be membership of a “particular social group”. The UK currently relies on the definition of “particular social group” provided in regulation 6 of the 2006 Regulations, which is revoked by Clause 27. The intention of this clause is to create a definition in primary legislation.
- 337 **Subsection 1** provides examples of matters that are included in concepts from Article 1(A)(2) of the Refugee Convention which can be the basis of persecution. This includes race, religion, and nationality.
- 338 **Subsections 2 to 4** provide two conditions, both of which must be satisfied by a group for it to meet the definition of “particular social group”. Firstly, all members of the group must share an innate characteristic or common background which cannot be changed, or a characteristic or belief which is so central to a person’s identity they should not be forced to renounce it, for example a religious belief. Secondly, the group’s possession of such characteristics must distinguish it from the relevant society at large.
- 339 **Subsection 5** provides a particular social group may be based on a characteristic of sexual orientation, but does not include acts that are criminal in the UK.

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

340 **Overview:** this clause provides a definition of “protection” as used in Article 1(A)(2) of the Refugee Convention. *These Explanatory Notes relate to the Nationality and Borders Bill as introduced in the House of Commons on 6 July 2021 (Bill 141)*

Convention.

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

342 The UK currently relies on the definition of “protection” provided in regulation 4 of the 2006 Regulations, which is revoked by Clause 27. The intention of this clause is to create a definition of protection from persecution in primary legislation.

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

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

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

345 **Overview:** this clause provides that a decision-maker must consider an asylum seeker’s opportunity for internal relocation when determining whether or not they meet the definition of “refugee” found in Article 1(A)(2) of the Refugee Convention.

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

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

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

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

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

350 **Background:** There are circumstances where a person is excluded from the definition of a refugee on the basis of serious criminal behaviour, or behaviour contrary to the principles of the UN (Article 1(F) of the Refugee Convention). The UK currently applies this through regulation 7 of the 2006 Regulations, which is revoked by Clause 27. The intention of this clause is to reflect these exclusions in primary legislation.

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

352 **Subsection 2** provides an interpretation for “serious non-political crime”, which includes a particularly cruel action, even if it is committed with an allegedly political objective, for example

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murder, rape, arson and armed robbery.

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

354 **Subsection 4** provides a definition of “biometric immigration document” for the purpose of subsection 3.

Clause 34: Article 31(1): immunity from penalties

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

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

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

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

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

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

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

362 **Subsection 5** substitutes wording used in subsection 2 of section 31 of the Immigration and Asylum Act 1999 to align it to wording used in Clause 34, and also inserts new subsection 4A into section 31 relating to the defences based on Article 31(1) that an individual may rely upon if charged of an offence. 4A provides an exception, whereby an individual may not use the section 31 defence if they committed an offence in their attempt to leave the UK.

363 **Subsection 6** provides definitions for terms used in this section.

Clause 35: Article 33(2): particularly serious crime

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Interpretation

Clause 36: Interpretation of Part 2

381 This clause provides definitions for terms used in this Part.

Part 3: Immigration offences and enforcement

Immigration offences and penalties

Clause 37: Illegal entry and similar offences

382 **Overview:** This clause creates a new criminal offence of arriving in the UK without a valid entry clearance (with Electronic Travel Authorisation to be added once substantive clauses on this provision are introduced) where required, in addition to entering without leave. This clause increases the maximum penalty for those returning to the UK in breach of a deportation order from 6 months to 5 years, and for entering without leave or arriving without a valid entry clearance from 6 months to 4 years.

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

384 The concept of “entering the UK without leave” has caused difficulties about precisely what

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“entering” means in the context of the current section 24(1)(a) of the 1971 Act.

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

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

387 This clause creates a new offence so that it encompasses arrival, as well as entry into the UK.

388 This will allow prosecutions of individuals who are intercepted in UK territorial seas and brought into the UK who arrive in but don’t technically “enter” the UK.

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

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

391 This clause raises the maximum term of imprisonment to create a stronger deterrent and with the intention of disrupting the activities of organised criminal groups, including those involved in organised immigration crime. Raising the maximum term of imprisonment above 6 months automatically makes the offences triable in the crown court or Magistrates court, and thereby subject to the same maximum as applies on conviction or indictment for the offence attempted.

392 **Subsections 1 and 2** set out that this clause amends the Immigration Act 1971 and inserts new subsections A1 – E1 into section 24, which sets out illegal entry and similar offences. Subsections A1–C1 make it an offence to:

- Knowingly enter the UK in breach of a deportation order (A1)
- Knowingly enter the UK without permission to do so (B1)
- Knowingly arrive in the UK without valid entry clearance (C1), otherwise known as a visa (see the Glossary at Annex A for full definition).

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

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

395 **Subsection 3** removes 24(1)(a), as the offence to enter in breach of a deportation order or without permission is now covered in new paragraphs A1 to C1. This subsection also amends references to the offences under 24(1)(a), substituting them with relevant references to A1, B1 and/or C1.

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396 This subsection also amends subsection 4 and inserts new subsection 5, which provides that, in legal proceedings relating to an offence under C1, a document, such as a vignette, attached to a passport or travel document will be considered evidence of entry clearance if it has been issued by the Secretary of State for the period covering the time of arrival. In both cases (B1 and C1), the burden of proof lies on the defendant to prove that he or she had leave to enter or valid entry clearance as appropriate.

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

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

Clause 38: Assisting unlawful immigration or asylum seeker

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

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

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

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

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

404 **Subsection 1** amends subsection (6)(a) of section 25, increasing the maximum custodial penalty for assisting unlawful immigration from 14 years to life imprisonment. By virtue of section 25A(4), the maximum penalty set out here also applies to the other offence of facilitating the arrival or entry of an asylum seeker to the UK.

405 **Subsection 2** amends section 25A(1)(a) of the 1971 Act, removing the requirements to demonstrate that facilitation has been for gain.

Clause 39: Penalty for failure to secure goods vehicle

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

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

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

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

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

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

¹⁹ Home Office Internal Management Data

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

Schedule 4: Penalty for failure to secure goods vehicle etc

413 **Paragraph 1** confirms that this schedule amends Part 2 of the 1999 Act, which outlines the liability of carriers when failing to prevent clandestine entry or entry of inadequately documented individuals.

414 **Paragraph 2** amends the title of Part 2 of the 1999 Act from “Clandestine entrants” to “Penalties for failure to secure goods vehicle and for carrying clandestine entrants”, so as to encompass new provisions.

415 **Paragraph 3** inserts a new section 31A at the start of Part 2 of the 1999 Act. Section 31A(1) and (2) confer powers on the Secretary of State to impose a civil penalty on a responsible person for failing to adequately secure their goods vehicle against unauthorised access and for failing to take actions required of them by regulations before their arrival in the UK or at a place where immigration control is operated.

416 31A(3) confirms that a civil penalty may be imposed in the event of a failure to adequately secure a goods vehicle, regardless of whether a clandestine entrant has gained access to it.

417 31A(4) directs that the Secretary of State define by regulations what is meant by a goods vehicle being adequately secured against unauthorised access, as well as what actions are expected to be undertaken by a person when securing their goods vehicle.

418 31A(5) creates an obligation on the person responsible for the vehicle to ensure that they check whether a person has gained unauthorised access before and during their journey to a place mentioned in subsection (2)(a) or (2)(b), that they report any suspected unauthorised access to their vehicle, and that they keep records to record the appropriate actions having been taken. Subsection (6) creates a requirement for the Secretary of State to consult with appropriate persons before such Regulations are made.

419 31A(7) sets out that the Secretary of State must specify penalty amounts within a prescribed limit, and allows for penalties to be imposed on more than one responsible person for a vehicle.

420 31A(8) stipulates that civil penalties must be paid before the end of the prescribed period.

421 31A(9) creates a defence for those drivers who failed to comply with actions specified in regulations made under this section as a result of being subjected to threats or violence.

422 31A(10) establishes that a penalty can only be applied to a single journey by a goods vehicle, thus protecting against penalising for more than a single offence if a vehicle is encountered more than once on a single trip.

423 31A(11) provides that a penalty may not be imposed under section 31A if already issued under section 32 in the same circumstances.

424 31A(12) provides for cases where penalties are imposed on drivers of goods vehicles who are retained pursuant to a contract (whether or not an employment contract) by the vehicle’s owner or hirer, and makes the driver and owner/hirer joint and severally liable for the penalty imposed on the driver.

425 31A(13) provides for operators of detached trailers to be treated as if they are drivers for the purposes of subsection 12.

426 31A(14) provides that, for the purposes of section 31A, where the goods vehicle is a detached trailer, the persons responsible for the goods vehicle, are the owner, hirer and operator of the trailer. Where

the goods vehicle is not a detached trailer, the owner, hirer and driver of the vehicle are responsible persons.

427 31A(15) ensures that anybody acting in more than one capacity by virtue of subsection 14 may have more than one penalty applied.

428 31A(16) defines “immigration control” as meaning United Kingdom immigration control and includes any control operated by the UK, be it within the UK or outside the UK, such as the juxtaposed border controls located in France and Belgium.

429 **Paragraph 4** amends section 32 of the 1999 Act to ensure that joint and several liability arises on the basis of a contract between the owner/hirer and the driver, which does not have to be a contract of employment. It also imposes a requirement that a penalty may not be imposed under section 32(2) if a penalty has already been imposed under section 31A(1) for the same circumstances.

430 **Paragraph 5** amends section 32A, regarding the Level of Penalty: Code of Practice, which specifies matters to be considered by the Secretary of State when issuing a penalty. These amendments include the insertion of new subsections A1 and B1 directing the Secretary of State to issue a code of practice to specify matters to be considered when determining the level of penalty payable under section 31A. Further amendments to section 32A ensure that the existing provisions about codes of practice apply to the new penalties issued under section 31A. Section 32A is amended to enable the Secretary of State to issue a single code of practice or two separate codes of practice when determining the level of penalty payable under section 32 and section 31A.

431 **Paragraph 6** removes section 33 (prevention of clandestine entrants: code of practice). Instead, the Secretary of State will specify in regulations made under section 31A(4) what is meant by a goods vehicle being adequately secure against unauthorised access and the actions to be taken by responsible persons in relation to securing their vehicle against unauthorised access.

432 **Paragraph 7** amends section 34(3) and inserts subsections 3ZA-3ZC, relating to the defence which responsible persons may rely on when disputing a penalty. A responsible person may only rely on the defence at section 34(3) where he/she did not know, or could not know, a clandestine entrant was or might be concealed in the transporter and where the responsible person had complied with Regulations made by the Secretary of State prescribing what actions are to be taken to ensure the vehicle is secured against unauthorised access. These actions will include conducting checks to ensure a clandestine entrant has not gained entry, reporting any unauthorised access and keeping records to establish that the other actions specified in the regulations have been taken.

433 **Paragraph 8** amends section 35, which sets out the procedure to be followed when issuing a penalty and disputing a penalty. These amendments extend the procedures contained in section 35 to penalties issued under section 31A and section 32. New subsection 35(12)(ca) provides for service of penalty notices to persons outside the UK via e-mail.

434 **Paragraph 9** amends section 35A, which sets out the procedure to be followed when issuing a statutory appeal. These amendments extend the procedure in section 35A to penalties issued under section 31A and section 32.

435 **Paragraph 10** amends section 36, setting out the power to detain vehicles in connection with penalties issued under section 31A and section 32. This paragraph also amends section 36(2A)(a) to provide that the vehicle may only be detained where the driver of the vehicle is retained pursuant to a contract (whether or not an employment contract) by the vehicle’s owner or hirer. It also adds subsection 2AA to provide that in the case of a detached trailer, subsection 2A is to take effect as if a reference to a driver were a reference to an operator. This paragraph adds new subsections 6 and 7 confirming the position for the service of documents on persons outside the UK.

436 **Paragraph 11** amends section 36A, which provides for detention of a vehicle where a person has
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failed to pay the penalty within the required timeframe. This paragraph amends section 36A(4)(b) to provide that the vehicle may only be detained under this section where the driver of the vehicle is retained pursuant to a contract (whether or not an employment contract) by the vehicle's owner or hirer. It also adds subsection 4A to provide that in the case of a detached trailer, subsection 4A is to take effect as if a reference to a driver were a reference to an operator. It also adds subsections 7 and 9 to mirror the provisions in section 36 and adds subsections 10 and 11 to confirm the position for the service of documents on persons outside of the UK.

437 **Paragraph 12** amends section 43, setting out definitions for terms in Part 2 of the 1999 Act. This paragraph inserts a definition of "goods vehicle" as meaning a mechanically propelled vehicle designed or adapted solely or principally to be used for the carriage or haulage of goods and at the time in question, is being used for commercial purposes. Alternatively, any trailer, semitrailer or other such thing, which is designed or adapted to be towed by a vehicle specified in paragraph (a)(i). This paragraph also amends the definition of "transporter", specifying that a "vehicle" includes a "goods vehicle".

438 **Paragraph 12** also inserts new subsections 43(1A) and 43(1B). These provide a definition of "container" and stipulate that references to the securing of a "goods vehicle" against unauthorised access in Part 2 of the 1999 Act also include the securing of any "container", which is being carried by a goods vehicle against unauthorised access.

Enforcement

Clause 40: Power to search container unloaded from ship or aircraft

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

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

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

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

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

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

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

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

447 **Subsection 3** allows an immigration officer to direct where a container should be delivered for the

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purpose of carrying out an inspection. The definition of “container” is that of the Customs and Excise Management Act 1979, a “bundle or package and any baggage, box, cask or other receptacle whatsoever.”

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

Clause 41: Maritime enforcement

449 **Overview:** This clause and accompanying Schedule expand current maritime enforcement powers enabling maritime enforcement action to take place outside of UK waters in order to detect, prevent, investigate and prosecute the illegal entry of migrants as well as its facilitation. It includes powers to require migrant vessels to leave UK waters as well as wide powers to allow forcible disembarkation of non-compliant passengers in all likely circumstances subject to agreement by relevant receiving states.

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

451 This route has also begun to be targeted by organised crime gangs facilitating illegal migration by larger vessels too, with one vessel in the last year being used to try and smuggle 69 illegal migrants into the UK.

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

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

454 This clause supplements and expands the current maritime enforcement powers so that relevant persons may divert migrant vessels in international waters away from UK shores. It also provides ability to take control of the vessel and those on board and return them to a safe country, such as the country from which they embarked or to another country which has agreed to accept their disembarkation, or to another location which is not another country, so that the offences that have been committed (or are in the process of being committed) on board are prevented and/or detected.

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

456 Additionally, Border Force Immigration Officers have limited powers to seize vessels used in the commission of immigration offences and to dispose of such seizures efficiently once they are no longer of use. This clause therefore also aims to refine powers in this area.

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Schedule 5: Maritime enforcement

457 **Paragraph 1** provides for amendments to Part 3A of the Immigration Act 1971, which concerns maritime enforcement.

458 **Paragraph 2** inserts new section 28LA. This provides that relevant officers may exercise the powers conferred to them by Part A1 (see paragraph 9 of this Schedule) in UK waters, foreign waters or international waters. They may exercise these powers in relation to a UK ship, a ship without nationality, or a ship registered to another country or territory. Such powers detailed in Part A1 are only to be exercised with the purpose of preventing, detecting, investigating, or prosecuting an offence. Relevant officers must have authority from the Secretary of State before exercising any powers under Part A1 in relation to a UK ship in foreign waters or a ship without nationality, a foreign ship or ship registered in a relevant territory in UK waters, foreign waters or international waters. Authority for the purposes of subsection 3 may be given only if the Secretary of State considers the United Nations Convention on the Law of the Sea 1982 permits the exercise of Part A1 powers in relation to the ship and that action will be taken in line with International law.

459 **Paragraphs 3 to 5** remove references to “immigration officer” and “enforcement officer” in sections 28M, 28N and 28O. This means that only constables may exercise the enforcement powers in these sections.

460 “An English and Welsh constable” refers to a member of a police force in England and Wales, a member of the British Transport Police Force, or a port constable (section 28Q of the 1971 Act).

461 “A Scottish constable” refers to a person who is “a chief constable, other senior officers, any special constable, any constable on temporary service outwith the Police Service, and any individual engaged on temporary service as a constable of the Police Service”.

462 “A Northern Ireland constable” refers to a person who is “a member of the Police Service of Northern Ireland, a member of the Police Service of Northern Ireland Reserve, a person appointed as a special constable in Northern Ireland” (section 28Q of the 1971 Act).

463 **Paragraph 6** also serves to remove references to “immigration officer” and “enforcement officer” from section 28P, which allows Immigration Officers to carry out hot pursuit of ships in UK waters.

464 **Paragraph 7** inserts new section 28PA “Power to seize and dispose of ships etc”. The current disposal regime under the UK Borders Act 2007 and the Immigration (Disposal of Property) Regulations 2008 (S.I. 2008/786) allows for the disposal of seized property; however, in practice this requires the property to be held for 12 months before it can be disposed of unless the owner has been found guilty of a criminal offence; a court order has been obtained allowing the property to be disposed of earlier under certain conditions; or the property is perishable or its custody involves unreasonable expense or inconvenience.

465 The section allows an Immigration Officer to seize a ship (or any part of a ship), and property on that ship if an Immigration Officer has reasonable grounds to suspect that the ship has been used in the commission of a relevant offence in UK waters, or foreign waters, as long as the ship is encountered in UK waters and the Secretary of State gives her authority. Where the ship seized is a ship without nationality, it allows the Secretary of State to dispose of that ship and other property or retain it after 31 days from the day of seizure and disapplies Section 26 of the UK Borders Act 2007 and any regulations made under that Act in relation to such ships. This paragraph also grants flexibility in the means of disposal in comparison to the current regime, including sale, dismantling, destruction, or donation.

466 There is provision for Immigration Officers to notify the home state or relevant territory if a foreign ship or ship registered under the law of a relevant territory is seized.

- 467 Prior to disposal or retention, it also introduces obligations on the Secretary of State to make reasonable effort to ascertain ownership of the ship or other property, and to notify owners of the seizure of their ship or property.
- 468 **Paragraph 8** amends the interpretation of section 28Q to insert definitions of “foreign waters”, “international waters”, “Part 1A powers”, “relevant offence” and “United Kingdom waters”. The definition of “ship” is broadened to include any “other structure...constructed or used to carry persons, goods, plant or machinery by water”, which is intended to include anything which may be used to cross the English Channel.
- 469 **Paragraphs 9 and 10** insert new Part A1 into Schedule 4A setting out enforcement powers in relation to ships. Part A1 sets out new powers afforded to Immigration Officers and enforcement officers, collectively referred to as “relevant officers”.
- 470 A1 sets out the powers exercisable by the named officers as a result of section 28LA and explains the meaning of “items subject to legal privilege” and “ship” in doing so. References to “items subject to legal privilege” mean communication between a legal adviser and their client, and any items enclosed with or referred to, in connection with the giving of legal advice or legal proceedings, which are protected from disclosure. References to “the ship” relate only to the ship in relation to which powers are exercised.
- 471 B1 confers powers to the relevant officer to stop, board, divert, detain, or require a ship to leave the UK territorial seas. The current maritime powers allow a ship to be required to be taken only to a port in the UK and detained there. , therefore this paragraph provides the capability to require a vessel to be taken to a place outside of the UK. Any tactics employed to divert a ship will only be used where it was safe to do so, in line with international law, including UNCLOS, and a vessel would only be required to leave UK waters if there were no concerns about the vessel’s ability to reach land or the welfare of those on board.
- 472 The powers conferred under the 1971 Act do not allow for a ship to be taken elsewhere, only to a port in England and Wales. This paragraph permits relevant officers to require the ship to be taken to a foreign port to be detained or to another place on water or land.
- 473 This paragraph also requires that the Secretary of State’s permission is obtained before relevant officers require a ship to be taken to any place outside the UK.
- 474 This paragraph provides that relevant officers may require foreign ships to be taken back to the state they departed from or, at the state’s request, to another state willing to receive it.
- 475 A notice is to be given in writing to the master of any ship which is detained under this paragraph. The ship will be detained until another notice is given to withdraw the first notice. A notice to require detention is not needed if the master of the ship cannot be reasonably identified.
- 476 A “home state” is defined as the state in which a foreign ship is registered or is otherwise entitled to fly the flag of.
- 477 C1 confers power to the relevant officers, where there are reasonable grounds to suspect that there is evidence on the ship relating to a relevant offence or to an offence that is connected to a relevant offence, to require persons on the ship to provide information or produce documents, books or records. Officers are permitted to search the ship, anyone on the ship and anything on the ship, including cargo, for evidence and in so doing open containers and make copies or photographs of anything they have required production of.
- 478 D1 confers a power on a relevant officer to seize any evidence found on the ship (excluding anything they have reasonable grounds to believe is subject to legal privilege), where they have reasonable grounds to believe that a relevant offence has been or is being committed on the ship. This paragraph

also grants relevant officers a power to arrest anyone suspected of being guilty of an offence, without the need for a warrant. These powers may be exercised on the ship or elsewhere and on anything on the ship including cargo.

- 479 E1 confers a power on relevant officers to search anyone on the ship if they have reasonable grounds to believe they may be concealing an implement, or anything which the officer has reasonable grounds may endanger the safety of the ship. Any such items may be seized and retained by the relevant officer. Officers are not authorised to require a person to remove clothing in public, other than an outer coat, jacket or gloves. These powers may be exercised on the ship, on anyone on the ship or elsewhere.
- 480 F1 allows relevant officers to require anyone on board the ship to produce a nationality document. A “nationality document” refers to a document which may confirm a person’s identity, nationality, citizenship, or where a person has travelled from or is travelling to. Where an officer has grounds to believe a nationality document is being concealed on a person, they may search the person only to the extent that it is reasonably required for the purpose of discovering any such document. In carrying out searches, officers are not authorised to require a person to remove clothing in public, other than an outer coat, jacket or gloves. Officers may retain nationality documents until the person whose document it is arrives in the UK, in cases where the ship is being redirected to the UK. These powers may be exercised on the ship or elsewhere.
- 481 G1 provides that relevant officers may be accompanied by assistants and may take equipment or materials to assist in the exercise of any of the powers under Part A1. Assistants may perform any of the officer’s functions set out under Part A1 but only under a relevant officer’s supervision.
- 482 H1 allows relevant officers to use reasonable force, if necessary, in the performance of functions under this Part of this Schedule.
- 483 I1 requires that relevant officers provide evidence of their authority when asked.
- 484 J1 provides that relevant officers, if purporting to exercise the powers conferred to them by this Part are not to be held responsible if legal action is taken against them. As long as the act was done in good faith and there were reasonable grounds for doing it.
- 485 K1 makes it an offence to obstruct a relevant officer while they are carrying out the powers conferred to them by this Part, in relation to a ship in England and Wales, England and Wales waters, international waters or foreign waters or to fail to comply with any requirements made by the officer while exercising their powers. It is also an offence to knowingly provide false information or fail to disclose information when information has been requested by the relevant officer. This paragraph also permits relevant officers to arrest anyone suspected of an offence under this paragraph. Such persons may be imprisoned for up to 51 weeks (or 6 months if the offence is committed before section 281(5) of the Criminal Justice Act 2003 comes into force), or fined, or both. These offences apply under the law of England and Wales.
- 486 L1 makes it an offence to obstruct a relevant officer while they are carrying out the powers conferred to them by this Part, in relation to a ship in Scotland, Scotland waters, international waters or foreign waters or to fail to comply with any requirements made by the officer while exercising their powers. It is also an offence to knowingly provide false information or fail to disclose information when information has been requested by the relevant officer. This paragraph also permits relevant officers to arrest anyone suspected of an offence under this paragraph. Such persons may be imprisoned for up to 12 months, or fined up to £5,000, or both. These offences apply under the law of Scotland.
- 487 M1 makes it an offence to obstruct a relevant officer while they are carrying out the powers conferred to them by this Part, in relation to a ship in Northern Ireland, Northern Ireland waters, international waters or foreign waters or to fail to comply with any requirements made by the officer while

exercising their powers. It is also an offence to knowingly provide false information or fail to disclose information when information has been requested by the relevant officer. This paragraph also permits relevant officers to arrest anyone suspected of an offence under this paragraph. Such persons may be imprisoned for up to 6 months, or fined up to £5,000, or both. These offences apply under the law of Northern Ireland.

Clause 42: Authorisation to work in the territorial sea

- 488 **Overview:** This clause is designed as a placeholder for a substantive clause which will clarify the Secretary of State's powers to require those who require leave to enter or remain in the UK to obtain authorisation to work in the UK territorial seas.
- 489 The placeholder clause will create a power for the Secretary of State to make provision to prohibit those who require leave to enter or remain in the UK from working in the UK territorial seas without permission and to make provisions related to that.
- 490 The placeholder clause allows the Secretary of State to make provisions for:
- setting out the requirements to be met to be granted authorisation to work in the territorial seas, which could include requirements similar to those that must be met by skilled workers who are working on the UK landmass;
 - exempting categories of person from the prohibition, for example, where that is necessary to comply with an international obligation;
 - enforcement, and specifically to impose civil or criminal penalties and to confer powers on immigration officers. This may include bringing these measures within the scope of illegal working offences and the civil penalty regime for employers and workers that apply to those working on the UK landmass, as well as providing immigration officers with the necessary powers to examine and where necessary detain, arrest or remove those working without the necessary authorisation.
- 491 The placeholder provision is subject to an affirmative procedure so that Parliament will be assured of an opportunity to scrutinise any proposals that could, in principle, be brought forward using the power. The Government does not intend to use the power as drafted, but to replace it with a substantive provision once further work has been completed. The substantive provision may mean that it is appropriate to remove the delegated power entirely or to replace it with a delegated power that is subject to a different Parliamentary procedure.
- 492 **Background:** Under the Immigration Act 1971 ("the 1971 Act") a migrant with permission to enter or stay in the UK for a limited period, may be subject to conditions including a condition restricting their work or occupation in the UK. This also applies to those working in the UK territorial seas, but the framework of the 1971 Act can give rise to confusion about the way in which these restrictions operate. This clause will clarify the position.

Removals

Clause 43: Removals: notice requirements

- 493 **Overview:** This clause is intended to provide a statutory minimum period to enable individuals to access justice prior to removal and makes provisions for removing individuals, following a failed departure, without the need for a further notice period. It also includes the provision of written notices of intention to remove and departure details.
- 494 **Background:** The Secretary of State has a power to remove a person who requires leave to enter or

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

- 495 At present, individuals are served a notice, setting out their destination, routing, date, time and airport of their departure (those departing via a charter flight are provided with their destination, routing, and date of departure), but unlike removal directions given to the transport carrier, this is not a statutory requirement.
- 496 The current Home Office guidance on notice periods can be found in the [Judicial Reviews and Injunctions guidance](#). In some cases, individuals are given a minimum of 72 hours' notice of their removal, and in some cases a minimum of 5 working days.
- 497 This clause will amend the current policy, increasing the minimum notice period to 5 working days in all cases (with a limited exception for individuals who have been refused entry upon their arrival in the UK and have arrived in the UK in the last 7 days. The purpose of this is to provide a statutory minimum period and standardise the time to access legal advice.
- 498 Currently, where a person has been given the required notice of removal, but the removal fails or is deferred for certain reasons, it may not be necessary to give a further notice period in the event removal can be implemented within 10 days of the failed or deferred removal. This clause will place this policy on a statutory basis and increase the removal timeframe to 21 days, without the need for a notice to be re-issued.
- 499 Exceptions will apply, such as where the individual will be removed to a different country, or there has been a change of route to include a stop, which is not in the UK or a safe country, of which they have not previously been notified.
- 500 **Subsections 2 and 3** amend sections 10(1) and (2) of the 1999 Act, making it clear that individuals and their family members are liable to removal where the individual has no lawful status in the UK.
- 501 **Subsection 4** inserts new subsections 6A, 6B and 6C. 6A provides that before a person who is liable to removal may be removed, they must be given a written notice of intention to remove setting out a notice period before that removal can occur. They must also be given a written notice of departure details, setting out the date on which the individual will be removed and the destination of their removal, including any stops on their route. These notices can be given separately or can be combined. 6B provides that a notice period of five working days is given to individuals subject to removal. 6C sets out that a notice period is not required for individuals who were refused entry into the UK; they can be removed within 7 days of that decision.
- 502 **Subsection 6** amends a power for the Secretary of State to make Regulations about the time period during which a family member may be removed, and inserts a power to make Regulations about serving removal under subsection 6A.
- 503 **Subsection 7** inserts a new subsection 11 which provides a definition of "working day" to exclude weekends, national and bank holidays where the person is at the time when they are given the notice of intention to remove them.
- 504 **Subsection 8** inserts new section 10A. This sets out potential scenarios where a further notice period is not required when there has been a previous attempt to remove the individual on the date specified in the notice of departure details, but that removal did not go ahead as planned for reasons reasonably beyond the control of the Secretary of State, or following a judicial review.
- 505 In cases where there has been a failed removal, the individual is subject to removal, without the need

for another notice period, for a period of up to 21 days from the date of removal specified on their first notice of departure details. Where the first removal could not take place as a result of ongoing judicial review proceedings, the 21 days will begin once the court deems that the individual may be removed.

- 506 If the person is due to be removed to a different destination, or via a different route to that specified in the first removal directions, then the individual must be given a new notice period, unless a stop is in the UK or a safe third country.
- 507 **Subsection 9** amends Schedule 10 to the Immigration Act 2016. This provides that an individual in detention must not be granted bail by the First-tier Tribunal without the consent of the Secretary of State if their removal is due to take place within 21 days of the bail hearing. This is an increase on the current period which is 14 days. The purpose of the increase is to align with the provisions of new section 10A, which would otherwise be undermined if an individual could successfully be granted bail if their removal was set for the period 15-21 days after their failed removal. Aligning the period reduces the chance for individuals to abscond ahead of their removal.

Clause 44: Prisoners liable to removal from the United Kingdom

- 508 **Overview:** This clause is designed as a placeholder for a substantive clause which will allow the Secretary of State to amend the Early Removal Scheme.
- 509 Firstly, it will extend the period a Foreign National Offender (FNO) can be removed early from their custodial sentence for the purposes of deportation, increasing the early removal window from a maximum of 9 months to 12 months before the earliest point they may be released from custody (either automatically or via Parole Board review). They must still have served half of the requisite custodial period before removal.
- 510 Secondly, it will allow removal to take place at any point in the sentence on, or after, the eligibility date for the scheme. This will bring into scope for removal under the scheme, those FNOs who are not removed before initial automatic release on licence and who are subsequently recalled to custody by the Secretary of State.
- 511 This clause will also introduce a 'stop the clock' provision, that will apply to FNOs removed under ERS on or after commencement. The new provision will, in effect, pause the sentence at the point a person is removed from prison under ERS. Thereafter, the removed FNO would be liable to serve the full balance of the outstanding custodial period of their sentence if they returned to the UK at any point in the future. Once they had served the outstanding custodial period from their original sentence and unless they had been deported again, they would be released in accordance with the release provisions relevant to their sentence like any other domestic prisoner. Such release may require a decision of the Parole Board.
- 512 The placeholder provision is subject to an affirmative procedure so that Parliament will be assured of an opportunity to scrutinise any proposals that could, in principle, be brought forward using this power. The Government does not intend to use the power as drafted, but to replace it with a substantive provision once further work has been completed. The substantive provision may mean that it is appropriate to remove the delegated power entirely or to replace it with a delegated power that is subject to a different parliamentary procedure.
- 513 **Background:** As part of the package for streamlining the removals process, the expansion to the ERS will help to remove as many FNOs from England and Wales as early as possible, minimising the chance they may be released into the community before deportation can take place. The 'stop the clock' provision will maintain confidence in the justice system by ensuring any FNO that returns to England and Wales following removal from custody and deportation will remain liable to serve the remainder of their requisite custodial period in prison. To this effect, this clause will be replaced with

a substantive clause that will amend the ERS in three ways, as outlined above.

Immigration bail

Clause 45: Matters relevant to decisions relating to immigration bail

- 514 **Overview:** This clause inserts a new criterion for consideration when determining whether to grant immigration bail to an individual detained under immigration powers or who is liable to detention under those powers. It requires the decision maker to take into account whether a person has failed without reasonable excuse to cooperate with immigration or removals processes.
- 515 **Background:** The power to detain an individual under immigration powers is exercised in order to effect an examination pending a decision on whether to grant or refuse leave, or to effect removal. Any person detained, or liable to be detained, is eligible to be granted immigration bail by the Secretary of State or the First-tier Tribunal (see paragraph 1(1) and (2) of Schedule 10 to the Immigration Act 2016).
- 516 The Secretary of State or the First-tier Tribunal must have regard to criteria (set out in paragraph 3(2) of Schedule 10 to the Immigration Act 2016) when considering whether to grant immigration bail.
- 517 Previously, the criteria did not explicitly reference acts of non-cooperation with various immigration processes (notably asylum claims) or the removal process as one of the specific mandatory criteria for considering whether to grant immigration bail.
- 518 This means that there is a risk that acts of non-cooperation, which result in a delay to the individual's removal, could create a perverse incentive whereby they make a grant of immigration bail more likely. The risk follows that such a person released on immigration bail may abscond and frustrate removal altogether. Acts of non-cooperation may include refusing to be interviewed in respect to an asylum claim or refusing to provide fingerprints for a travel document.
- 519 Removal becomes much harder to effect once individuals are released from detention, as other complications are more likely to arise when individuals are on immigration bail, such as the ability to abscond, or continued non-cooperation.
- 520 The purpose of this clause is to ensure that appropriate weight is given to evidence that a person has not been cooperative with the immigration or returns processes when making immigration bail decisions.
- 521 **This clause** adds a new criterion, paragraph (ea) to paragraph 3(2) of Schedule 10 to the Immigration Act 2016, requiring the decision maker to consider whether an individual has failed to cooperate with processes (in relation to determining any application for leave to enter or remain or with regards to their removal) when deciding whether to grant bail. The clause ensures the decision maker takes into account any reasonable excuse for a failure to cooperate.

Part 4: Modern Slavery

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

- 522 **Overview:** This clause requires asylum and human rights claimants to provide relevant information relating to being a victim of slavery or human trafficking within a specified period and, if providing information outside of that period, to provide a statement setting out the reasons for doing so.
- 523 **Background:** The purpose of this change is to achieve the following:

- To identify individuals subject to immigration control who may be potential victims of

modern slavery at an early stage. This approach seeks to support the Government's proactive duty to identify potential victims as early as possible and aims to ensure they receive the correct support package from the authorities at the earliest opportunity.

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

524 **Subsections 1 and 2** provide that a "slavery or trafficking information notice" may be served on individuals who have made an asylum claim or human rights claim. An information notice requires individuals to provide the Secretary of State (and any other competent authority specified in the notice) with any relevant status information before a specified time.

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

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

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

527 **Overview:** This clause sets out the consequence if an individual who has been served with a slavery or trafficking information notice under Clause 46, provides information relating to being a victim of modern slavery after the specified time period, without good reason.

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

529 The purpose of this clause is to reduce the potential for misuse of the National Referral Mechanism (NRM) system from referrals requested with the intention of delaying removal action and to ensure that victims are identified as early as possible to receive appropriate support.

530 **Subsection 1** sets out that this clause applies to individuals who have been served an information notice under Clause 46 who have provided information late, and a competent authority is making a reasonable grounds or conclusive grounds decision.

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

532 **Subsections 3 and 4** provide the definition of "late" as being on or after the date specified in the slavery or trafficking information notice and the meaning of "relevant status information", which is

These Explanatory Notes relate to the Nationality and Borders Bill as introduced in the House of Commons on 6 July 2021 (Bill 141)

set out in Clause 46.

Clause 48: Identification of potential victims of slavery or human trafficking

- 533 **Overview:** This clause clarifies the thresholds applied in determining whether a person should be considered a potential victim of trafficking, so that assistance and support are available to someone when there are reasonable grounds to believe the individual “is”, rather than “may be”, a victim of slavery or human trafficking. This clause also confirms in legislation the “balance of probabilities” threshold for the Conclusive Grounds (“CG”) decision.
- 534 **Background:** Under the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT), certain obligations flow if there are “reasonable grounds to believe that a person has been a (sic) victim of trafficking.” (“RG” and the RG Threshold), subject to exemptions. Following a positive RG decision in the UK, individuals receive a Recovery and Reflection Period, currently a minimum of 45 days in policy, during which they are protected from removal. Whereas ECAT uses the terms “is” or “has been” a victim, the Modern Slavery Act 2015 uses the term “may be” a victim in reference to satisfying the Reasonable Grounds threshold.
- 535 The objective of this measure is that sections 49 and 50 of the Modern Slavery Act 2015, which create an obligation to publish guidance and a power to make subordinate legislation, and Section 51 Presumption of age, which makes direct reference to the provisions in Sections 49 and 50, should be changed from referencing “reasonable grounds to believe a person may be a victim of trafficking” to referencing whether “there are reasonable grounds to believe someone is a victim of trafficking” or “are victims of trafficking”. This will bring the Modern Slavery Act in line with the test set out in ECAT. This will also bring England and Wales in closer alignment with the Scottish and Northern Irish definitions, both of which provide support when there are reasonable grounds to believe an individual “is” rather than “may be” a victim.
- 536 A CG decision, regarding whether an individual is a confirmed victim of modern slavery, should be made as soon as possible after the Recovery and Reflection period but only once there is sufficient information to make the decision. The Modern Slavery Statutory Guidance sets out that the CG decision should be based on whether there is sufficient evidence to decide on the “balance of probabilities” that the individual is a confirmed victim of modern slavery by the competent authority.
- 537 Regarding the CG threshold, the intention of this clause is to confirm in primary legislation that the test is to be based on the “balance of probabilities” in line with obligations under ECAT. This is the current test as accepted by the Courts.
- 538 **Subsections 1 to 3 and 5 to 6** amend references to the reasonable grounds threshold in the Modern Slavery Act 2015, specifically in sections 49, 50 and 51, changing these from reasonable grounds to believe a person “may be” a victim of trafficking to reasonable grounds to believe someone “is” a victim of trafficking.
- 539 **Subsection 4** inserts new subsection 1A, requiring that the guidance provide that the determination regarding whether an individual is a confirmed victim of modern slavery be based on the “balance of probabilities”.

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

- 540 **Overview:** This clause implements the UK’s Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) obligations to provide a recovery period to potential victims of modern slavery, during which the victim must not be removed from the UK.
- 541 **Background:** ECAT provides that once there are reasonable grounds to believe a person has been a victim of trafficking, states have obligations to that person (such person being a “potential victim”).

These obligations last until someone is determined to be a confirmed victim or not to be a victim.

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

543 **Subsection 1** provides that this section applies to those identified as potential victims of modern slavery following a Reasonable Grounds (RG) decision, provided this is not a further RG decision as set out in Clause 50.

544 **Subsections 2 to 4** set out that those identified as potential victims of modern slavery are not removed from the UK during the recovery period. This requirement is subject to the exemptions contained in Clause 51. The recovery period is the period following a Reasonable Grounds (RG) decision, until such a time as a Conclusive Grounds (CG) decision is made. This period must be at least 30 days, as stipulated under ECAT.

Clause 50: No entitlement to additional recovery period etc

545 **Overview:** This clause provides that only one period of recovery will be provided to a potential victim, unless the Secretary of State considers it appropriate to provide a further recovery period in the particular circumstances of the case.

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

547 ECAT provides (in Article 13) that states shall provide potential victims with a “recovery and reflection period” of at least 30 days (England and Wales provide 45 days) and until it is determined whether they are a confirmed victim. During this time, states are obliged to authorise persons to stay in their territory and provide potential victims with support to aid their recovery. Clause 49 will bring these obligations into domestic legislation. This clause seeks to set out the exemptions to the recovery period, where additional recovery periods are not needed.

548 In order to prevent the recovery period being misused by those wishing to extend their stay in the UK and to remove unnecessary support and barriers to removal where these are not needed, this clause provides that additional recovery periods will only be granted in certain cases.

549 **Subsections 1 and 2** provide that a person who has previously been identified as a potential victim of modern slavery or human trafficking, and as such benefitted from a recovery period, will not be afforded protection from removal from the UK if they bring forward further grounds to be treated as a potential victim and those matters occurred wholly before the previous decision. In such cases, the competent authority is not required to make a conclusive grounds decision.

550 **Subsections 3 and 4** provide an exception, allowing the competent authority to make a conclusive grounds decision if appropriate in the circumstances of a particular case. If a conclusive grounds decision is made, the competent authority may also apply subsection 2 of Clause 49, protecting the individual from removal from the UK during the recovery period as set out in subsection 4 of that clause.

Clause 51: Identified potential victims etc: disqualification from protection

551 **Overview:** This clause sets out exemptions to providing a recovery period to a potential victim of modern slavery (as set out in Clause 49), based on grounds that the individual is a threat to public order or has claimed to be a victim in bad faith.

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

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

554 **Subsection 2** provides that the individual is no longer protected from removal from the UK by Clause 49 and 50 and there is no longer a requirement for a conclusive grounds decision to be made. This is intended to enable the removal of those who pose a threat to the UK. This is in keeping with the UK's ECAT obligations.

555 **Subsection 3** stipulates that an individual is considered a threat to public order if: they have been convicted of any of the offences listed in Schedule 4 to the Modern Slavery Act 2015, or a corresponding offence under the law of Scotland or of Northern Ireland or under the law of any other country; they are a foreign criminal within the meaning of section 32 of the UK Borders Act 2007; the individual has been convicted of a terrorist offence; they are subject to a TPIM notice, which imposes specified terrorism prevention and investigation measures on an individual who is, or has been, involved in terrorism-related activity; the individual is subject to a temporary exclusion order, which requires an individual not to return to the UK where the Secretary of State reasonably suspects the individual is, or has been, involved in terrorism-related activity outside the UK, or reasonably considers that an exclusion order is necessary to protect members of the public in the UK from a risk of terrorism; the individual has been deprived of citizenship status on grounds that the Secretary of State was satisfied that deprivation was conducive to the public good; or if they are considered a risk to national security.

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

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

558 **Subsection 4** defines a "terrorist offence".

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

560 **Subsection 7** provides definitions of terms used in this section.

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

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

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

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

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564 **Subsection 1** inserts new section 50A into Part 5 of the Modern Slavery Act 2015. This requires that those identified as potential victims of modern slavery are provided with necessary support to aid their recovery from harm to their physical and mental health and their social well-being arising from the conduct which resulted in the positive reasonable grounds decision concerned. The requirement to provide support is subject to exemptions contained in Clauses 50 and 51.

Clause 53: Leave to remain for victims of slavery or human trafficking

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

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

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

568 **Subsection 2** provides that the Secretary of State must grant limited leave to remain if it is considered necessary for the purposes of (a) assisting the person in their recovery from any 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.

569 **Subsection 2(a)** clarifies the obligation in Article 14(1)(a) of ECAT which provides for a grant of leave where it is “necessary owing to their personal situation”. This subsection provides that leave is necessary owing to the individual’s personal situation where, reflecting Article 12(1) of ECAT, it is necessary in order to assist with their physical, psychological or social recovery from the relevant exploitation.

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

571 **Subsection 2(c)** reflects the obligation in Article 14(1)(b) ECAT which provides for a grant of leave where “necessary for the purpose of their cooperation with the competent authorities in investigation or criminal process”.

572 **Subsection 3** provides that, if the Secretary of State considers that the person’s need for assistance is capable of being met in another country or territory, and they are capable of seeking compensation from outside the UK, and it would be reasonable for them to do so, leave is not necessary for the purpose of assisting the individual with their recovery.

573 **Subsection 4** clarifies the meaning of “country” or “territory” for the purpose of subsection 3(a).

574 **Subsections 5 and 6** state that the Secretary of State is not required to give leave under subsection 2 and may revoke any such leave if it has been given where the Secretary of State is satisfied that the individual is a threat to public order (see Clause 51 for further details) or has claimed to be a victim

of modern slavery or human trafficking in bad faith.

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

576 **Subsection 8** sets out that subsections 3 to 7 of Clause 51 apply for the purposes of this section.

577 **Subsection 9** provides definitions of “positive conclusive grounds decision” and “the relevant exploitation”, for the purposes of this section.

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

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

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

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

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

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

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

584 **Subsection 6** provides definitions.

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

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

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

587 **Background:** Section 10 of LASPO 2012 makes civil legal services that are not described in Part 1 of

Schedule 1 to LASPO available in exceptional cases. The determination by the Director of Legal Aid Casework that an applicant can get these services is called an ‘exceptional case determination’, and to get such a determination the Director must determine that the circumstances in subsection 10(3) apply, which is that a failure to provide funding could give rise to a breach of the individual’s ECHR or other retained enforceable EU rights. The Director must also determine that the individual qualifies for the services in accordance with the statutory means and merits tests which are set out in section 11 LASPO 2012 and in Regulations made under LASPO 2012.

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

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

Clause 56: Disapplication of retained EU law deriving from Trafficking Directive

590 **Overview:** This clause states that the Trafficking Directive should be disapplied in so far as it is incompatible with any provisions in this Bill.

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

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

593 **Subsection 2** provides a definition of “The Trafficking Directive” as explained above.

Clause 57: Part 4: interpretation

594 **Overview:** This clause provides definitions of terms used in Part 4 of this Bill and confers a power on the Secretary of State to set out the meaning of “victim of slavery” and “victim of human trafficking” in Regulations.

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

Part 5: Miscellaneous

Clause 58: Age assessments

596 **Overview:** This clause is designed as a placeholder for a substantive clause which will allow the Secretary of State to bring forward provision relating to the use of age assessments of relevant persons where there are doubts as to their claimed age.

597 **Background:** The Government wishes to strengthen and improve processes for assessing the age of those whose claimed age is doubted.

598 The age of a person arriving in the UK is normally established from the documents with which they have travelled. Many who claim to be children do not have any definitive documentary evidence to support their claimed age. Whilst many are clearly children, for some it is unclear and there is a need to assess their age.

- 599 Under the UK's existing framework, there are a number of incentives for adults to claim to be children. Those treated as children benefit in a number of respects, including the accommodation and support to which they may be entitled, the procedural and substantive treatment of their asylum or immigration claim, the arrangements that would need to be made to secure their removal from the UK (where they do not establish a lawful basis to remain) and the safeguards around the use of immigration detention for children.
- 600 A decision on age can have significant implications for the individual concerned, the Secretary of State and local authorities. There are clear safeguarding issues that arise if a child is inadvertently treated as an adult, and equally if an adult is wrongly accepted as a child and placed in accommodation with children to whom they could present a risk. Aside from the safeguarding risks, treating adults as children takes away valuable resource and support from those who are children. Unaccompanied asylum-seeking children (UASC) are entitled to the same support from local authorities as any other looked after child. In recognition of the significant degree of support this requires, the Home Office pays local authorities caring for UASC a daily tariff by way of grant agreement. In addition, difficulties in accurately establishing a claimant's age has implications for the effective operation and administration of the asylum system, and immigration controls more generally.
- 601 The substantive provisions to be brought forward by this clause intend to address the current weaknesses in the age assessment system.
- 602 **Subsection 2(a)** is intended as a placeholder for a substantive provision setting out how immigration officials are to conduct initial age assessments.
- 603 The age of a person arriving in the UK is normally established from the documents with which they have travelled. In the event the individual does not have any definitive documentary evidence to support their claimed age, and if they are not clearly children, there is a need to assess their age. In these circumstances, immigration officials may conduct an initial age assessment. Published Home Office [guidance](#) sets out how these assessments must be conducted.
- 604 The guidance states that a decision should only be made to treat the claimant as an adult "if two officers – one at least of Chief Immigration Officer, Higher Executive Officer or Higher Officer grade – have independently assessed that the claimant is an adult because their physical appearance and demeanour very strongly suggests that they are *25 years of age or over*". If this test is not met but the immigration officials do not accept the claimed age, the individual will be given the benefit of the doubt, provisionally treated as a child and referred to a local authority to conduct a 'Merton compliant' age assessment (explained further at paragraph 611).
- 605 Whilst acknowledging the difficulty in assessing age through a visual assessment of physical appearance and demeanour, the Government remains concerned that this threshold (being 25 years of age or older) presents an unacceptable safeguarding risk. The current position means that even where an immigration official believes that an individual who is claiming to be a child to be as old as 24, they must still treat them as a child, which in practice will mean that individual will be placed alongside children, pending the outcome of a subsequent assessment.
- 606 In order to mitigate against the risk that adults posing as children will be placed alongside vulnerable children, the intention is to replace this placeholder provision with a substantive provision setting a more appropriate threshold for initial age assessments.
- 607 It remains the Government's intention that where the individual's physical appearance and demeanour does not meet that threshold and doubt still remains as to their claim to be a child, it must be assumed that the individual is under 18 unless and until a more comprehensive age assessment is carried out by a local authority or the NAAB (explained further at Subsection 2(b)) finds otherwise, or there is other credible evidence of age that comes to light.

- 608 This legislation will be supplemented by guidance to explain how Home Office staff should apply the legislative test.
- 609 The Government will ensure that the above changes comply with and give effect to the Home Office's duty to regard the welfare of children under Section 55 of the Borders, Citizenship and Immigration Act 2009. The Government will also carefully consider the judgment in the Supreme Court in the case of BF Eritrea.
- 610 **Subsection 2(b)** is intended as a placeholder for a substantive provision which will relate to the establishment of a decision-making function in the Home Office, referred to as the national age assessment board (NAAB).
- 611 Where the initial age assessment conducted by the Home Office does not conclude that the individual is an adult and there remains doubt about their claimed age, the individual is provisionally treated as a child and referred to a local authority. If the local authority considers there is no doubt that the person in question is a child, they will not carry out an age assessment but simply accept them as a child. If the local authority considers that the age of the person is in doubt, it will conduct what is known as a 'Merton compliant' age assessment. This is a social work led age assessment (named after the leading case of *B v London Borough of Merton* [2003] EWHC 1689 (Admin)), which must adhere to procedures set out in that case and developed in subsequent caselaw. These assessments normally include a number of interviews which explore the person's background and also consider information obtained from others who have contact with the individual.
- 612 The NAAB will primarily consist of expert social workers dedicated to conducting age assessments. This seeks to improve the consistency and quality of age assessments, reduce the incentive for claimants to provide incorrect ages and reduce the financial and administrative burden from local authorities.
- 613 **Subsection 2(c)** is designed as a placeholder for a substantive provision which will enable the Secretary of State to make provision in relation to the principles and guidelines on how to conduct age assessments on individuals where there are doubts as to their claimed age in order to improve the consistency of decision-making.
- 614 **Subsection 2(d)** is designed as a placeholder for a substantive provision about the future use of appropriate scientific methods for assessing a person's age.
- 615 The UK is one of very few countries in Europe that does not commission or employ scientific methods of age assessment when seeking to determine age.
- 616 The existing system for determining age in the UK is beset by a number of problems that stem from the inherent difficulty in establishing someone's age with precision in the absence of other definitive evidence. Even those local authorities with significant expertise and experience of conducting age assessments find this a highly challenging task using the current 'Merton compliant' approach. Against this backdrop, the Government believes that decision-makers should be able to rely upon as wide an evidence base as possible before coming to an informed decision about someone's age – this includes evidence derived from scientific methods of establishing age.
- 617 **Subsection 2(e)** is designed as a placeholder for a substantive provision which will allow the Secretary of State to provide for a right of appeal against the age assessment decisions of local authorities or the NAAB.
- 618 Currently, when an individual who has been age assessed by a local authority disagrees with the conclusions of the age assessment, their only means of challenging it is to bring a judicial review against the local authority who authored the report. Although judicial reviews are capable of resolving disputes over age assessments, they are time consuming for the parties involved and are an

expensive mechanism by which to resolve issues of this type. The Government's intention is to create a statutory right of appeal to a chamber of the First-tier Tribunal.

619 **Subsection 3** sets out that for the purposes of this clause, a relevant person is a person who under the Immigration Act 1971 requires leave to enter or remain in the UK (whether or not such leave has been given).

620 **Subsection 4** sets out that the marker clause is drafted as a regulation-making power following the affirmative procedure. This is placeholder drafting and the relevant Parliamentary procedure to be followed will be set out in the substantive clauses when brought forward.

Clause 59: Processing of visa applications from nationals of certain countries

621 **Overview:** This clause is designed as a placeholder for a substantive clause which will allow the Secretary of State to impose visa penalties on any country that does not cooperate on the removal of its nationals who do not have a legal right to be in the UK.

622 This clause will create a power to impose visa penalties where the Secretary of State considers that the government of a country does not cooperate with the UK on the removal of its nationals from the UK.

623 The placeholder clause sets out the types of visa penalties which could be imposed on countries who do not cooperate on the removal of their nationals. This includes:

- Slowing down the processing of visa applications.
- A temporary suspension on processing visa applications.
- Additional financial requirements for visa applications.

624 The visa penalties outlined in this clause may be imposed on a country which, in the opinion of the Secretary of State, does not cooperate with the UK in relation to the removal of its nationals who do not have a legal right to be in the UK.

625 The placeholder provision is subject to an affirmative procedure so that Parliament will be assured of an opportunity to scrutinise any proposals that could, in principle, be brought forward using this power. The Government does not intend to use the power as drafted, but to replace it with a substantive provision once further work has been completed. The substantive provision may mean that it is appropriate to remove the delegated power entirely or to replace it with a delegated power that is subject to a different parliamentary procedure.

626 **Background:** Where individuals do not have a legal right to be in the UK, the Home Office may seek to remove them, usually to their country of nationality. The UK expects cooperation by the country of origin in receiving back its nationals (for example, by assisting with issuing travel documents if needed and giving permission for flights to land) where a person has no right to be in the UK or whose deportation is conducive to the public good (for example is a Foreign National Offender). However, a very small number of countries do not cooperate.

Clause 60: Electronic travel authorisations

627 **Overview:** This clause is designed as a placeholder for a substantive clause which will allow the Secretary of State to require individuals who do not need a visa, entry clearance or other specified immigration status to obtain permission to travel, in the form of an Electronic Travel Authorisation (ETA), in advance of their journey to the UK. This clause will also build on existing legislation to incentivise carriers to check passengers are in possession of an ETA, where so required, or risk a civil penalty.

- 628 This clause will provide for the creation of an ETA scheme, requiring individuals who do not need a visa, entry clearance or other specified immigration status to obtain a valid ETA before travelling to the UK. The intent is to close the current gap in advance permissions and enhance the Government's ability to screen arrivals and prevent the travel of those who pose a threat to the UK.
- 629 This will be accompanied by penalties for carriers who have not adequately checked to ensure that a traveller holds an ETA or another form of digital permission, such as a visa or an immigration status in electronic form. This will form part of the current carriers' liability scheme that penalises carriers who bring other inadequately documented travellers to the UK border.
- 630 This will not apply to British and Irish citizens, who do not require leave to enter or remain in the UK. Their permission to travel will be their nationality, demonstrated by their passports. The only exception is for those Irish citizens who are subject to a deportation order, exclusion decision or travel ban, as set out in section 3ZA of the Immigration Act 1971. They will require permission to travel in the form of an ETA if they have no other immigration status.
- 631 For those coming or returning to the UK, having been granted leave to enter or remain, their permission to travel to the UK will be their immigration status as evidenced by an entry clearance, biometric residence document or other physical document or digital status.
- 632 The placeholder provision is subject to an affirmative procedure so that Parliament will be assured of an opportunity to scrutinise any proposals that could, in principle, be brought forward using this power. The Government does not intend to use the power as drafted, but to replace it with a substantive provision once further work has been completed. The substantive provision may mean that it is appropriate to remove the delegated power entirely or to replace it with a delegated power that is subject to a different parliamentary procedure.
- 633 **Background:** At present, non-visa nationals (including EEA citizens) coming to the UK for up to six months as visitors (and in limited other categories), as well as individuals who would usually be considered visa nationals but who can benefit from travelling to the UK visa free (by meeting certain criteria) can travel to the UK solely on the basis of their nationality, evidenced by their passport or other travel document. This information is sent to the Government by the majority of carriers as Advance Passenger Information shortly before the individual embarks on their journey. This means that UK border control and law enforcement authorities have less information and time to assess the risk posed by most non-visa nationals in advance of their arrival in the UK.

Clause 61: Special Immigration Appeals Commission

- 634 **Overview:** This clause is designed as a placeholder for a substantive clause which will allow the Secretary of State to amend the Special Immigration Appeals Commission (SIAC) Act 1997 to confer the power to certify immigration decisions that relate to a person's entitlement to enter, reside, remain or be removed from the UK under the Immigration Acts.
- 635 Certification is available to the Secretary of State in the event the immigration decision is one that is made wholly or partly in reliance on information which, in the opinion of the Secretary of State, should not be made public (i) in the interests of national security, (ii) in the interests of the relationship between the UK and another country, or (iii) otherwise in the public interest. The effect of certification ensures that any legal challenge to that decision can only be brought before SIAC.
- 636 The intention is to close the "SIAC gap" (see background) via a legislative amendment to the SIAC Act 1997 which will allow immigration decisions to be made and defended on the basis of sensitive material that should not be disclosed in (a) the interests of national security b) the interests of the relationship between the UK; (c) the public interest generally, but without giving individuals rights of appeal which they otherwise would not be entitled to. The purpose of the amendment to the legislation would be to ensure that any decision that could be challenged by judicial review (JR)

could be certified so it is heard by SIAC in the same way that any decision that can be challenged by appeal can be certified.

637 This placeholder clause provides for the Secretary of State to make regulations specifying the decisions relating to immigration which may be certified for the purpose of allowing an appeal to SIAC. These may specify the criteria according to which the decisions may be certified including, in particular:

- national security;
- the interests of the relationship between the UK and another country; and
- the public interest generally.

638 It also provides that the Special Immigration Appeals Commission (Procedure) Rules 2003 (S.I. 2003/1034) can be amended.

639 **Background:** Section 1 of the Special Immigration Appeals Commission Act 1997 established an independent judicial tribunal to hear appeals against immigration decisions which are based upon or supported by sensitive material which is often provided by the Security Services. Immigration reforms between 2007 and 2014 have significantly reduced the number of immigration decisions that attract a right of appeal. Appeal rights are now limited to protection claim/status challenges and human rights refusals, EEA appeals, appeals against decisions under the EU Settlement Scheme, and appeals against deprivation of citizenship. This means that a number of Immigration decisions that could previously have been certified and been heard as an appeal by SIAC can now only be challenged by way of an application for JR.

640 This leaves a gap known as the “SIAC gap” because JRs which relate to immigration decisions where there is no right of appeal cannot be certified to be heard by SIAC. There is some limited mitigation in that while most immigration related JRs are heard by the Upper Tribunal (Immigration and Asylum Chamber), by direction of the Lord Chief Justice, impugned immigration decisions based on national security information can be transferred to the High Court and a Closed Material Procedure (CMP) applied as provided for by the Justice and Security Act (JSA) 2013. This mitigation is limited: firstly, a detailed application from the Secretary of State must be filed, considered and declaration made by the court permitting an application for a CMP (whereas closed material can always be used in SIAC cases); and secondly, under a CMP “sensitive material” covers only that which would be damaging to the interests of national security and so cannot be utilised for cases concerning serious organised crime or sensitive international relations material or cases that rely upon historic security information.

Clause 62: Tribunal charging power in respect of wasted resources

641 **Overview:** This clause amends section 29 of the Tribunals, Courts and Enforcement Act 2007 (TCEA) providing a new power for the First-tier and Upper-Tier Tribunals to order a party to pay a charge in respect of wasted or unnecessary tribunal costs incurred due to a party’s unreasonable actions.

642 **Background:** High levels of poor practice around compliance with tribunal directions, which disrupts or prevents the proper preparation of an appeal, can lead to cases being adjourned at a late stage.

643 This can lead to the parties incurring additional unnecessary costs while allocated tribunal time can be wasted, leading to delays in determining appeals, adding to backlogs of outstanding appeals, and delaying justice for those with genuine claims while valuable judicial resources are wasted.

644 At present the power in Section 29 of the TCEA which gives Tribunals power to make costs orders is limited to the legal costs of the parties.

- 645 **Subsection 1** inserts new section 25A into the TCEA which provides that when a relevant participant has acted ‘improperly, unreasonably or negligently’ and as a result, the Tribunal’s resources have been wasted, then the First-tier or Upper Tier Tribunal may charge the participant.
- 646 A charge may be made against a relevant participant in proceedings which will include legal and other representatives of the parties and where they are a party not having instructed a legal representative, the Secretary of State. The amounts charged under this section must be paid into the Consolidated Fund.
- 647 The power is subject to Tribunal Procedure Rules and amendment is also made to Schedule 5 of the TCEA to specify that rules made by the Tribunal Procedure Committee may include rules under this power.

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

- 648 **Overview:** This clause imposes a duty on the Tribunal Procedure Committee to introduce procedure rules in the Asylum and Immigration Chamber which ensure that judicial consideration will be given to the making of a charge or cost order where specified events have happened.
- 649 The Tribunal Procedure Rules will specify that there is a rebuttable presumption that certain conduct is to be treated as unreasonable and triggers the consideration of a costs order. It will be for the representative to demonstrate why the conduct is not unreasonable and why a charge or cost order should not be made in such circumstances.
- 650 **Background:** A range of conduct on the part of legal and other representatives in the First-tier and Upper Tribunal (Immigration and Asylum Chamber) (“FtT IAC”) in the way proceedings are conducted or pursued, disrupting or preventing the proper preparation and progress of an appeal. This can lead to increased and unnecessary cost being incurred by the parties and is inefficient use of tribunal resources.
- 651 Under powers provided in the Tribunals, Courts and Enforcement Act 2007 (TCEA) (and as amended by Clause 62 and this clause, the tribunal has powers to make a wasted charge, a wasted costs or unreasonable costs order.
- 652 Wasted Costs Orders (WCOs) allow the tribunal to order legal costs incurred by one party to be paid by a legal or other representative where it finds that those were unnecessary costs which arose as a result of “improper, unreasonable or negligent behaviour” of the representative. In addition, an unreasonable costs order may be made where a party, or their legal or other representative has acted “unreasonably in bringing, defending or conducting proceedings”. A litigant can seek a WCO against the legal representative of any party including the litigant’s own representative. In addition, the tribunal can make a WCO on its own motion.
- 653 An unreasonable costs order may be made against a party to the appeal, including the Secretary of State for the Home Department.
- 654 **Subsection 1** imposes a duty on the Tribunal Procedure Committee to introduce procedural rules which specify conduct which in the absence of explanation or evidence to the contrary will be treated as unreasonable, improper or negligent for the purposes of the provisions of the Tribunals, Courts and Enforcement Act powers to impose Wasted Costs Orders, Unreasonable Costs Orders and a Wasted Charge.
- 655 **Subsection 2** provides that procedural rules will require that, where satisfied, the prescribed conduct has taken place the Tribunal will consider the making of a wasted costs order, an unreasonable costs order or a wasted tribunal charge, but subsection 3 makes clear that the Tribunal retains absolute discretion as to whether to make such an order.
- 656 **Subsections 4 and 5** define terms used in this section.

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657 **Subsection 6** amends the TCEA to include an express power to make a costs order where a party their legal or other representative acts unreasonably in bringing or conducting proceedings, the tribunal may make a costs order. Procedure rules in many of the chambers of the tribunal already contain provision for unreasonable costs orders in such circumstances.

Clause 64: Good faith requirement

658 **Overview:** This clause requires that all claimants engaging with the UK authorities on immigration matters, including in protection-based claims, act in good faith.

659 **Background:** This clause addresses the possibility that unfounded claims, false, misleading or incomplete representations, and other disruptive acts can be made tactically to frustrate the efficient functioning of the system of immigration control, in particular to delay a person's removal or deportation.

660 This clause creates a requirement for those engaging with the immigration system to act in "good faith" and provides that Home Office decision-makers must take into account whether a person whose immigration status is at issue has acted in good faith in the matter to be decided, in their dealings with anyone carrying out an immigration function or in connection with immigration proceedings or judicial reviews.

661 This provision aims to reduce the number of unmeritorious claims, appeals and legal challenges and ensure evidence is brought and considered at the earliest opportunity to improve efficiency in the immigration system, decreasing costs to the taxpayer and freeing up judicial and Home Office resources.

662 **Subsections 1 to 3** require that a person's failure to act in good faith should be taken into account by the deciding authority when making decisions to grant permission to enter or remain in the UK, decisions to cancel a person's permission to enter or remain in the UK or a decision to revoke a person's indefinite permission to enter or remain in the UK.

663 **Subsection 4** defines "immigration and nationality functions" for the purpose of subsection 2.

664 **Subsection 5** sets out that this clause does not include reference to sections 28A to 28K of the Immigration Act 1971 or section 14 of the Asylum and Immigration Act (Treatment of Claimants, etc) 2004, which concern immigration officers' powers of arrest.

665 **Subsection 6** stipulates that this section does not limit the power of a deciding authority to consider any other matters relating to the immigration decision which it has the power to treat as relevant.

666 **Subsection 7** provides that this section does not require particular conduct to be taken into account if other immigration legislation already provides for such conduct to be considered as a factor in relevant decision-making.

667 **Subsection 8** stipulates that this clause only applies to applications for leave that are made on or after the day that the clause comes into force.

668 **Subsection 9** provides definitions for terms used in this section.

Clause 65: Pre-consolidation amendments of immigration legislation

669 **Overview:** This clause gives the Secretary of State power by regulation to amend immigration legislation in order to make pre-consolidation changes to facilitate a consolidation bill.

670 **Background:** The Windrush Lessons Learned Review (WLLR), published on 19 July 2018, said that it is widely accepted that immigration and nationality law is very complex.

671 WLLR Recommendation 21 is: "Reduce the complexity of immigration and nationality law, immigration rules and guidance – Building on the Law Commission's review of the Immigration

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Rules the Home Secretary should request that the Law Commission extend the remit of its simplification programme to include work to consolidate statute law. This will make sure the law is much more accessible for the public, enforcement officers, caseworkers, advisers, judges and Home Office policy makers.”

672 At least 16 Acts have been passed that wholly or partly concern immigration or nationality since 1971. This makes it difficult for applicants, legal advisers and caseworkers to navigate the system. This provision relates to the consolidation of immigration laws.

673 **Subsection 1** gives the Secretary of State power by regulations to amend or modify previous Acts which relate to immigration where to do so would facilitate, or be desirable in connection with, the consolidation of immigration laws.

674 **Subsection 2** sets out the existing Acts to which this would apply, and includes immigration provisions in any other Acts, whenever passed.

675 **Subsection 3** provides that “amend” includes repeal (and similar terms are to be read accordingly).

676 **Subsections 4 and 5** set out that the powers are conditional on the passing of a future Act which will consolidate all or a large proportion of the Acts relating to immigration. Any regulations made under this clause will come into effect immediately before that Act comes into effect.

677 **Subsection 6** stipulates that statutory instruments must be the means by which any regulations are made under this section, and that the regulations are subject to the affirmative resolution procedure.

Part 6: General

Clause 66: Financial provision

678 This clause sets out that Parliament is to provide the finances to cover costs incurred by this Act, as well as costs incurred by other Acts as a consequence of this Act.

Clause 67: Transitional and consequential provision

679 This clause provides that the Secretary of State may by regulations make transitional, or temporary provisions in relation to the provisions of this Bill coming into effect.

680 **Subsections 2 and 3** enable the Secretary of State to make provision that is consequential on this Bill by regulations. Such regulations may amend any enactment.

681 **Subsection 4** provides a definition of “enactment”.

682 **Subsections 5 and 6** provide that consequential regulations which amend an Act of Parliament, retained direct principal EU legislation, Act of the Scottish Parliament, a Measure or Act of Senedd Cymru, or Northern Ireland legislation are to be made under the affirmative resolution procedure. Any other consequential regulations under subsection 2 may be made under the negative resolution procedure.

683 **Subsection 7** makes consequential amendments to the UK Borders Act 2007, adding this Act to the list of Immigration Acts contained in section 61 of that Act.

Clause 68: Regulations

684 This clause sets out how the powers to make regulations conferred on the Secretary of State will be used in practice.

685 **Subsection 1** explains that any regulations made using powers granted to the Secretary of State by this Bill must be made by statutory instrument.

686 **Subsection 2** sets out that regulations under this Bill may make different provisions for different purposes.

687 **Subsection 3** explains the meaning of “negative resolution procedure”.

688 **Subsection 4** explains the meaning of “affirmative resolution procedure”.

689 **Subsection 5** stipulates that the use of the negative resolution procedure may be changed to require the affirmative resolution procedure. This increases the level of scrutiny since regulations under the affirmative resolution procedure must be actively approved by both Houses of Parliament.

690 **Subsection 6** provides that, where the type of Parliamentary procedure has not been stipulated, either the negative resolution procedure or the affirmative resolution procedure may be used to make regulations under this Bill.

Clause 69: Extent

691 This clause sets out the territorial extent of each provision in the Bill (see also Annex B).

692 **Subsection 2** provides that where this Bill amends, repeals or revokes other legislation, the changes will have the same extent as the legislation to which those changes are made.

693 **Subsection 3** provides that provisions in Part 1 of this Bill the Channel Islands and the Isle of Man and the British overseas territories.

Clause 70: Commencement

694 This clause explains when the provisions of the Bill will come into force.

695 **Subsections 1 and 2** provide that the Secretary of State may by regulations appoint the day or days on which the provisions in this Bill will come into force, with the exception of those provisions which will come into force two months after the Bill becomes an Act of Parliament (**subsection 4**).

696 **Subsection 3** provides that Part 6 of this Bill will come into force on the day this Bill becomes an Act of Parliament.

Clause 71: Short title

697 This clause establishes the short title of the Bill as the Nationality and Borders Act 2021.

Commencement

698 Clause 70(3) provides for Part 6 (General) to come into force on Royal Assent.

699 Clause 70(4) provides for the following provisions to come into force two months after Royal Assent: Clauses 16, 17 and 23 (evidence in asylum or human rights claims); Clause 25 (claims certified as clearly unfounded: removal of right of appeal); paragraphs 5 to 19 of Schedule 3, and Clause 26 so far as it relates to those paragraphs (removal of asylum seeker to safe third country); Clause 27(1), (2) and (4) to (6) (Refugee Convention: general); Clauses 28 to 33 and 35 (interpretation of Refugee Convention); Clause 36 (interpretation of Part 2); Clause 40 (power to search container); Clause 42 (authorisation to work in territorial sea); Clause 57 (interpretation of Part 4), for the purposes of making regulations under that clause; Clauses 58 to 61 (miscellaneous regulation-making powers); Clause 64 (good faith requirement); Clause 65 (pre-consolidation amendments of immigration legislation).

700 The remaining provisions will be brought into force by means of commencement regulations made by the Secretary of State (Clause 70(1)).

Financial implications of the Bill

701 The main public sector financial implications of the Bill fall to the Home Office, Ministry of Justice and associated criminal and civil justice agencies. The estimated annual cost of the measures in the Bill are not yet finalised. These are being worked through as part of the business case. Further details of the costs and benefits of individual provisions are set out in the impact assessments published alongside the Bill.

Parliamentary approval for financial costs or for charges imposed

702 A money resolution and a ways and means resolution are required for the Bill. (A money resolution is required where a bill authorises new charges on the public revenue – broadly speaking, new public expenditure – and a ways and means resolution is required where a bill authorises new charges on the people – broadly speaking, new taxation or other similar charges).

703 There is potential Government expenditure under various provisions of the Bill. In particular, increased administrative expenditure is expected to arise under Clauses 1 to 3 (remedying historical unfairness in relation to British overseas territories citizenship) and Clause 10 (differential treatment of refugees) as well as Schedule 3, which paves the way for the processing of asylum claims outside the UK. Clauses 22, 54 and 55 extend the availability of legal aid, and will lead to increases in public expenditure under the Legal Aid, Sentencing and Punishment of Offenders Act 2012. And while clause 53 (leave to remain for victims of modern slavery) is expected to result in a decrease in payments to victims under the Modern Slavery Victim Care Contract, it is also expected to give rise to an increase in benefits payments to such victims, especially universal credit, resulting in an increase in expenditure under the Welfare Reform Act 2012. The setting up of the National Age Assessments Body under clause 58 is expected to cost the Home Office around £3m per year. The House of Commons will be asked to agree that all of this expenditure is to be paid out of money provided by Parliament.

704 There are also some provisions in the Bill which require ways and means cover because they may result in new charges on the people. These are clause 42, under which charges may be imposed for authorisations for people to work in the territorial sea; clause 59, under which charges may be

imposed for processing visa applications from countries that do not co-operate on removals; clause 60, under which charges may be imposed for electronic travel authorisations; and clause 62, under which charges may be imposed where a person's behaviour has resulted in wasting the resources of a Tribunal. The House of Commons will be asked to agree a ways and means resolution which will cover all of these.

Compatibility with the European Convention on Human Rights

705 The Home Secretary, the Rt. Hon. Priti Patel MP, has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

706 "In my view, the provisions of the Nationality and Borders Bill are compatible with the Convention rights"

707 The Government has published a separate ECHR memorandum with its assessment of the compatibility of the Bill's provisions with the Convention rights: this memorandum is available on the Government website.

Related documents

708 The following documents are relevant to the Bill:

- Memorandum for the Joint Committee on Human Rights
- Delegated powers memorandum

Annex A – Glossary

Affirmative resolution procedure	Affirmative procedure is a type of parliamentary procedure that applies to statutory instruments (SIs). An SI laid under the affirmative procedure must be actively approved by both Houses of Parliament. Certain SIs on financial matters are only considered by the Commons.
BN(O)	<p>British National (Overseas): Someone who was a British dependent territories citizen by connection with Hong Kong was able to register as a British national (overseas) before 1 July 1997.</p> <p>British dependent territories citizens from Hong Kong who did not register as British nationals (overseas) and had no other nationality or citizenship on 30 June 1997 became British overseas citizens on 1 July 1997.</p>
British national	A person who holds a type of British nationality, of which there are 6, including British citizenship and British overseas territories citizen.
BOTC	<p>British overseas territories citizen:</p> <p>People who were British dependent territories citizens on 26 February 2002 became British Overseas Territories citizens (BOTC) under the British Overseas Territories Act 2002. Those who remained BOTCs on 21 May 2002 also became British citizens under that Act.</p> <p>People born before 1 January 1983 became British dependent territories citizens if they were a citizen of the United Kingdom and Colonies (CUKC) on 31 December 1982 and had connections with a British overseas territory because they, their parents or their grandparents were born, registered or naturalised in that British overseas territory.</p> <p>Women also became British dependent</p>

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	<p>territories citizens if they were married to a man who became a British overseas territories citizen on 1 January 1983.</p> <p>People born in a British overseas territory on or after 1 January 1983, and at the time of their birth, one of their parents is a British overseas territories citizen or legally settled in a British overseas territory.</p> <p>People who were adopted in an overseas territory by a British overseas territories citizen or were born outside the overseas territory to a parent who was able to pass on British overseas territories citizenship.</p>
Conviction on indictment	A conviction resulting from an indictable offence, which may be committed to the crown court for trial before a jury.
Deportation	The process of removing a foreign national from the UK where they are subject to a deportation order.
Deportation Order	A deportation order requires the subject to leave the UK. It invalidates any leave to enter or remain in the UK and also prohibits the individual from re-entering the country for as long as it is in force.
ECAT	Council of Europe Convention on Action against Trafficking in Human Beings.
ECHR	The European Convention on Human Rights.
Enforced return	Where the Home Office makes arrangements to remove immigration offenders from the UK.
Entry clearance	A visa, entry certificate or other document which, in accordance with the immigration rules, is to be taken as evidence or the requisite evidence of a person's eligibility, though not a British citizen, for entry into the United Kingdom (but does not include a work permit).
ERS	Early Removal Scheme
ETA	Electronic Travel Authorisation

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IO	Immigration Officer
Leave to remain/leave to enter	Permission, under the 1971 Act, to enter or remain in the UK. Such leave may be limited in terms of duration, or indefinite.
Merton compliant age assessment	<p>Social work led age assessment named after the leading case of <i>B v London Borough of Merton</i> [2003] EWHC 1689 (Admin), which must adhere to procedures set out in that case and developed in subsequent caselaw.</p> <p>Merton assessments will normally include a number of interviews which explore the person's background and also consider information obtained from others who have contact with the individual.</p>
Naturalisation	A process by which an adult can become a citizen following a period of residence.
Negative resolution procedure	Negative procedure is a type of parliamentary procedure that applies to statutory instruments (SIs). An SI laid under the negative procedure becomes law on the day the Minister signs it and automatically remains law unless a motion – or “prayer” – to reject it is agreed by either House within 40 sitting days.
Non-refoulement	The principle that no signatory to the Refugee Convention shall expel or return (“refouler”) a refugee to a country where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion (Article 33(1) of the 1951 Refugee Convention).
NRM	National Referral Mechanism
Primary legislation	The general term used to describe the main laws passed by the legislative bodies of the UK, including the UK Parliament. For example an Act of Parliament.
PRN	Priority removal notice
Refugee	A person who, “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a

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	particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it" (Article 1(A)(2) of the 1951 Refugee Convention).
1951 Refugee Convention	The Convention Relating to the Status of Refugees done at Geneva on 28 th July 1951 and the Protocol to that Convention.
Secondary legislation	Secondary legislation is law created by ministers (or other bodies) under powers given to them by an Act of Parliament (primary legislation). Secondary legislation is also known as 'delegated' or 'subordinate' legislation and often takes the form of a statutory instrument.
Statutory Instruments	Documents drafted by a government department to make changes to the law. They are the most frequently used type of secondary legislation (law created by ministers or other bodies under powers given to them by an Act of Parliament.)
Summary conviction	A conviction in relation to a summary offence, which is tried in a Magistrate's or Sheriff's Court without a jury.
UNCLOS	UN Convention on the Law of the Sea

Annex B – Territorial extent and application in the United Kingdom

Almost all of the provisions in the Bill deal with matters that are reserved to the UK Parliament and therefore extend and apply across the UK. The remainder apply to England and Wales only, either because they amend legislation that itself only applies and extends to England and Wales or because they deal with a policy area that is within the legislative competence of the Scottish Parliament or the Northern Ireland Assembly but not within the legislative competence of Senedd Cymru.

There are five clauses that extend and apply to England and Wales only:

- Clauses 22, 54 and 55 make provision for civil legal services, by amending legislation that itself only extends and applies to England and Wales (relevant sections of the Legal Aid, Sentencing and Punishment of Offenders Act 2012).
- Clause 48 makes provision for the identification of potential victims of slavery or human trafficking, by amending legislation that itself only extends and applies to England and Wales (relevant sections of the Modern Slavery Act 2015).
- Clause 52 makes provision for support and assistance for potential victims of modern slavery in England and Wales. This Clause only extends and applies only to England and Wales. These matters are within the legislative competence of the Scottish Parliament and the Northern Ireland Assembly but not within the legislative competence of Senedd Cymru.

In the view of the Government of the UK, the provisions of the Bill that apply to England and Wales only are within the legislative competence of the Scottish Parliament or Northern Ireland Assembly.²⁰

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?

²⁰ References in this Annex to a provision being within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
Part 1: Nationality Clauses 1 to 9	Yes	Yes	Yes	Yes	No	No	No	No
Part 2: Asylum Clauses 10 to 21 Clause 22 Clauses 23 to 36	Yes Yes Yes	Yes Yes Yes	Yes No Yes	Yes No Yes	No No No	No Yes No	No Yes No	No No No
Part 3: Immigration Offences and Enforcement Clauses 37 to 45	Yes	Yes	Yes	Yes	No	No	No	No
Part 4: Modern Slavery Clauses 46 to 51 Clause 52 Clause 53 Clauses 54 to 55 Clause 56 to 57	Yes Yes Yes Yes Yes	Yes Yes Yes Yes Yes	Yes No Yes No Yes	Yes No Yes No Yes	No No No No No	No Yes No Yes No	No Yes No Yes No	No No No No No
Part 5: Miscellaneous Clauses 58 to 65	Yes	Yes	Yes	Yes	No	No	No	No
Part 6: General Clauses 66 to 71	Yes	Yes	Yes	Yes	No	No	No	No

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Minor or consequential effects²¹

Consequential powers at Clause 67 enable the Secretary of State to make provision by regulations in consequence of the Bill that amend, repeal or revoke any enactment, including Acts of the Scottish Parliament, Measures or Acts of Senedd Cymru and Northern Ireland legislation. These powers would by definition only be exercisable in consequence of provisions in the Bill, which are either reserved to the UK Parliament or which apply and extend only to England and Wales and which are not within the legislative competence of Senedd Cymru.

Subject matter and legislative competence of devolved legislatures

The provisions of the Bill almost all deal with reserved or excepted matters.

Parts 1 (Nationality), 3 (Immigration Offences and Enforcement, 5 (Miscellaneous) and 6 (General) and Schedules 1 (Waiver of requirement of presence in UK etc), Schedule 2 (Expedited appeals where priority removal notice served: consequential amendments), Schedule 3 (Removal of asylum of seeker to safe country), Schedule 4 (Penalty for failure to secure goods vehicle etc) and Schedule 5 (Maritime Enforcement) deal with nationality; immigration, including asylum and the status and capacity of persons in the United Kingdom who are not British citizens. These matters are reserved under the Scotland Act 1998 and the Government of Wales Act 2006 and excepted under the Northern Ireland Act 1988.

Part 2 (Asylum) has an immigration purpose, and so its Clauses deal with the reserved or excepted matter of immigration, save that provisions regarding civil legal aid in Clause 22 deals with matters that are within the legislative competence of the Scottish Parliament and the Northern Ireland Assembly, but which are not within the legislative competence of Senedd Cymru. These provisions do not extend and apply to Scotland or Northern Ireland.

Part 4 (Modern Slavery) has an immigration purpose, and so its Clauses deal with the reserved or excepted matter of immigration, save that provisions regarding civil legal aid in Clauses 54 and 55 and regarding support and assistance for potential identified victims England and Wales in Clause 51 deal with matters that are within the legislative competence of the Scottish Parliament and the Northern Ireland Assembly, but which are not within the legislative competence of Senedd Cymru. These provisions do not extend and apply to Scotland or Northern Ireland.

²¹ References in this Annex to an effect of a provision being minor or consequential are to its being minor or consequential for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

NATIONALITY AND BORDERS BILL

EXPLANATORY NOTES

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