NATIONALITY AND BORDERS BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

What these notes do

1. These Explanatory Notes relate to the Lords Amendments to the Nationality and Border (Bill 282) as brought from the House of Lords on 15 March 2022
2. These Explanatory Notes have been prepared by the Home Office in order to assist the reader of the Bill, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
3. These Explanatory Notes, like the Lords amendments themselves, refer to HL 82, the Bill as first printed for the introduction in the Lords.
4. These Explanatory Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Lords amendments.
5. Lords Amendment 1 was tabled in the name of Baroness Lister of Burtersett and was opposed by the Government.
6. Lords Amendment 2 was tabled in the name of Baroness Williams of Trafford.
7. Lords amendment 3 was tabled in the name of Baroness Williams of Trafford.
8. Lords Amendment 4 was tabled in the name of Lord Paddick, Baroness D'Souza and Lord Rosser, and was opposed by the Government.
9. Lords Amendment 5 was tabled in the name of Baroness Chakrabarti, Baroness Hamwee and Lord Paddick, and was opposed by the Government
10. Lords Amendment 6 was tabled in the names of Lord Paddick and was opposed by the Government.
11. Lords Amendment 7 was tabled in the name of Baroness Stroud and was opposed by the Government.
12. Lords Amendment 8 was tabled in the name of Lord Rosser and was opposed by the Government
13. Lords Amendment 9 was tabled in the name of Baroness Stroud and was opposed by the Government
14. Lords Amendment 10 was tabled in the name of Lord Dubs and Lord Bishop of Durham and was opposed by the Government.
15. Lords Amendment 11 was tabled in the name of Lord Kirkhope of Alton and was opposed by the Government.
16. Lords Amendment 12 was tabled in the name of Lord Alton of Liverpool and was opposed by the Government.
17. Lords Amendment 13 was tabled in the name of Lord Coaker, Lord Blunkett and Lord Paddick and was opposed by the Government
18. Lords Amendment 14-19 was tabled in the name of Lord Coaker and was opposed by the Government
19. Lords Amendment 20 was tabled in the name of Lord Rosser, Lord Paddick and Baroness Mcintosh of Pickering, and was opposed by the Government
20. Lords Amendment 21 was tabled in the name of in the name of Baroness Williams of Trafford.

21. Lords Amendment 22 was tabled in the name of Baroness Neuberger, Baroness Hamwee and Baroness Lister of Burtersett and was opposed by the Government.
22. Lords Amendment 23 was tabled in the name of Lord Coaker and was opposed by the Government
23. Lords Amendment 24 was tabled in the name of Lord Coaker, Baroness Hamwee and Lord Bishop of Bristol and was opposed by the Government
24. Lords Amendment 25 was tabled in the name of Lord Coaker and Lord Randall of Uxbridge and was opposed by the Government
25. Lords Amendment 26 was tabled in the name of abled in the name of Lord McColl of Dulwich, Lord Alton of Liverpool, Lord Paddick and Lord Coaker was opposed by the Government.
26. Lords Amendment 27 was tabled in the name of Lord Coaker, Baroness Hamwee and Lord Bishop of Durham, and was opposed by the Government.
27. Lords Amendment 28 –39 was tabled in the name of Baroness Williams of Trafford.
28. Lords Amendment 40 was tabled in the name of Baroness Ritchie of Downpatrick, Baroness Suttie and Lord Coaker and was opposed by the Government.
29. Lords Amendment 41 to 51 was tabled in the name of Baroness Williams of Trafford
30. Lords Amendment 52 to 53 was tabled in name of Lord Alton of Liverpool and was opposed by the Government.
31. Lords Amendment 54 was tabled in the name of Lord Rosser and Baroness Jolly and was opposed by the Government
32. In the following Commentary, an asterisk (*) appears in the heading of any paragraph that deals with a non-Government amendment.

Commentary on Lords Amendments

Lords Amendments: After Clause 4 / New Clause: Chagossians

Amendment 1*:

33. **Overview**: This amendment would allow anyone who is directly descended from a person born before 1983 on the British Indian Ocean Territory to register as a British Overseas Territories citizen.
34. **Background:** They may also register as a British citizen at the same time. Both applications would be free of charge. The application must be submitted within 5 years, or in the case of a minor born before the date of coming into force or born within 4 years of that date, before they reach 23 years old.

Lords Amendments: Clause 8 / Lawful Residence

Amendments 2 and 3:

35. **Overview:** This addition to clause 8 will allow the Secretary of State to not need to enquire into lawful residence in citizenship applications where such an assessment has already been undertaken in an earlier application for Indefinite Leave to Enter or Remain

36. **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 before an application can be made (this is the residential qualifying period). The individual must have been present in the UK at the beginning of the residential qualifying period and have been here lawfully throughout that period.

37. 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, and will also be amended.

38. There is currently some discretion to waive the requirement to have been lawfully in the UK throughout the residential qualifying period, but that needs to be considered on a case by case basis. This clause will allow the Secretary of State to not need to look at previous residence where the person has been granted indefinite leave to enter or remain in the UK, meaning that periods of residence in the UK do not need to be reassessed.

39. This change will be introduced in relation to the requirements to naturalise as a 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.

40. **New subsection (1A)** sets out that Schedule 1 amends the 1981 Act to allow the second requirement to be waived for sections 4, 6 and 18.

Lords Amendments: Clause 9: Deprivation of Citizenship

Amendment 4*:

41. Lords voted to removed Clause 9 entirely from the Bill. This clause would amend section 40 of the British Nationality Act 1981 to allow a decision to deprive a person of British

citizenship to be made in the absence of contact with the person and to ensure that the associated deprivation order is valid. The clause also provides those affected by the new provisions with a right of appeal against the decision to deprive them of their citizenship.

Lords Amendments: Before Clause 11 / New Clause: Compliance with the Refugee Convention

Amendment 5*:

42. **Overview:** This new clause would provide that nothing in Part 2 authorises policies or decisions which do not comply with the United Kingdom's obligations under the 1951 Refugee Convention and the 1967 Protocol relating to the Status of Refugees.

43. **Background:** This new Clause reflects the intention of compliance with the 1951 Refugee Convention and its protocol and is intended to ensure all Part 2 provisions are read subject to the United Kingdom's obligations under the same.

Lords Amendments: Clause 11: Differentiation

Amendment 6*:

44. Lords voted to remove Clause 11 entirely from the Bill. The Clause would have provided for a differentiated approach to the treatment of refugees based on the criteria set out in Article 31(1) of the Refugee Convention

Lords Amendments: New Clause: Right to Work.

Amendment 7*:

45. **Overview:** This clause enables asylum seekers and their adult dependents, including failed asylum seekers who have raised further submissions, to work on the same terms as a person with refugee status if a decision on their claim has not been determined within six months of the date on which the application was made.

46. **Background:** Policy on asylum seeker right to work is set out at paragraphs 360-360E in Part 11B of the Immigration Rules. Current policy allows asylum seekers to work in jobs on the Shortage Occupation List ("SOL") if they have been waiting for a decision on their asylum claim for 12 months or more, where the delay is no fault of their own.

47. This clause makes provision to amend the Immigration Rules to enable asylum seekers and their adult dependents to work on the same terms as a person with refugee status if a decision on their claim has not been determined within six months of the date on which the application was made.

48. **Subsection (1)** introduces the changes as being to the Immigration Act 1971 ("the 1971 Act").

49. **Subsection (2)** inserts new section 2A after section 3(2) of the 1971 Act.

50. **Subsection (2A)(a)** states that asylum seekers and their adult dependents will be granted permission to take up employment if a decision on the applicant's claim has not been determined within six months of the date on which the application was made

51. **Subsection (2A)(b)** states that permission to take up employment will also be granted if a person who makes an application or a further application which raises asylum grounds, and a decision on that new application, or a decision on whether to treat such further asylum

grounds as a new application, has not been taken within six months of the date on which the further application was made.

52. **Section 2B** provides that permission to take up employment under section 2A must be on terms no less favourable than the terms granted to recognised refugees in the UK.

53. **Section 2C** provides that permission to work will be valid until the claim is determined and all appeal rights are exhausted. Section 2C also provides that those granted permission to work will be issued physical proof of that right.

Lords Amendments: New Clause: Inadmissibility.

Amendment 8*:

54. **Overview:** This clause would provide conditions on the commencement of the provisions in relation to the inadmissibility of asylum claims from an individual with a connection to a safe third State (Clause 15).

55. **Subsection (1)** stipulates that the Secretary of State may exercise the powers to commence the provisions on inadmissibility of asylum claims from an individual with a connection to a safe third State only where the condition in subsection (2)is met.

56. **Subsection (2)** sets out the condition that must be met under subsection (1). The condition to be met is that the United Kingdom must have agreed formal returns agreements with one or more third states.

57. **Subsection (3)** defines "formal returns agreement" (referenced in Subsection 2) as an agreement that provides for the safe return of an asylum seeker to the State that is party to that return agreement, and to which the person has a connection.

Lords Amendments: Clause 28: Overseas Asylum Processing

Amendment 9*:

58. **Overview**: Amendment 9 would omit paragraph (a) from Clause 28. Section 77 of the Nationality, Immigration and Asylum Act 2002 states that a person cannot be removed from or required to leave the United Kingdom in accordance with a provision of the Immigration Acts while their asylum claim is pending.

Lords Amendments: New Clause: Immigration Rules: entry to seek asylum and join family

Amendment 10*:

59. **Overview:** This clause imposes a duty on the Government to make Immigration Rules to allow unaccompanied children and certain other persons in Europe, to be admitted to the UK so that they can seek asylum in the UK where the unaccompanied child or relevant adult has a close family member in the UK.

60. **Background:** The Dublin III Regulation included a transfer mechanism between EU states for family reunion purposes. This allowed an individual who had already claimed asylum in an EU Member State who had relevant family connections in the UK to transfer to the UK to

have their asylum claim processed here.

61. Having left the EU, the UK no longer accepts new cases under Dublin III. Persons in Europe and globally who wish to join a family member in the UK must do so via the family reunion provisions of the UK Immigration Rules. This includes a range of routes including a free route under the refugee family reunion rules for children under 18 and a partner or spouse who wish to join a refugee in the UK. There are also provisions which allows extended family members including uncles, aunts, adult sibling and grandparents to sponsor a child where there are serious and compelling circumstances.

62. This clause would add a new parallel route to make provision for a person in Europe to be allowed to come to the UK to claim asylum if they have specified family members here including unaccompanied children and persons with UK spouses, civil partner and unmarried partners. This re-creates some aspects of the Dublin III Regulation in UK Immigration Rules.

63. The clause does not require the Secretary of State to grant leave on the basis of family reunion rights. It requires only that a person is admitted to the UK under such new rules so that they can claim asylum in the UK. They would have to make such a claim once they arrive in the UK and await the outcome of that application to see if they are granted protection in the UK. The clause does not require a person to have already claimed asylum in a European country before seeking to make use of these rules and does not require the UK to assess those protection needs before their arrival in the UK. All eligible persons must have a relevant UK family member so that a person such as an unaccompanied minor, other child or adult in Europe, who has no UK family links is not eligible to use these new rules. A person outside Europe is not covered by this clause.

64. **Subsection (1)** sets out that UK Immigration Rules must make provision to admit persons coming for the purpose of seeking asylum.

65. **Subsection (2)** sets out that the beneficiaries of these rules are persons in Europe who have a family member in the UK who is ordinary and lawfully resident in the UK.

66. **Subsection (3)(a)** seeks to define which family member in the UK an unaccompanied minor can join for the purposes of claiming asylum in the UK. These UK based relatives (who must be ordinary and lawful residents as required by subsection (2) are

    i) a parent, including adoptive parent;
    ii) an aunt or uncle;
    iii) a grandparent;
    iv) a sibling, including adoptive siblings;

67. **Subsection (3)(b)** sets out that the family member in the UK can be a spouse, civil partner, or unmarried partner of the person in Europe. This therefore allows a partner to join their partner in the UK for the purposes of claiming asylum in the UK. Their UK based partner must be an ordinary and lawful resident in the UK as required by subsection 2.

68. **Subsection (3)(c)** sets out that the family member in the UK can also be such other persons as the Secretary of State may determine, having regard to

    i) the importance of maintaining family unity;
    ii) any dependency between the family members;
    iii) the best interests of a child; and
    iv) any compelling circumstances."

69. This clause is to be read with subsection (1) and (2) only and the purpose of this subsection is

that in addition to the family circumstances set out in subsection (3)(b) and subsection (3)(c) an individual in Europe who wants to claim asylum in the UK may join a family member in the UK (who again must be an ordinary and lawful resident) whether or not that relative is already mentioned in the clause, if these additional factors set out in the clause were present. However, entry in such cases would be for the Secretary of State to determine at her discretion based on the individual facts of the case.

Lords Amendments: New Clause: Putting a minimum resettlement number in statue.

Amendment 11*:

70. **Overview**: This clause imposes a commitment/duty on the Government to resettle a minimum of 10,000 refugees each year, to plan and build the appropriate infrastructure at the required local community level to support integration and ensure resilience in times of crises.

71. **Background:** This clause would create a legislative commitment to resettle a minimum target of 10,000 refugees a year. There is no specification as to the mechanisms or routes that must be utilised in order to meet the target.

72. The clause does not fetter the legal powers of the Secretary of State to lay Immigration Rules. This clause would not require the creation of secondary legislation; therefore, resettlement schemes could still remain outside of a legislative framework and operate on a discretionary basis.

Lords Amendments: New Clause: Asylum in cases of Genocide.

Amendment 12*:

73. **Overview**: This clause creates a route for people at risk of genocide to claim asylum at British embassies provided they belong to a group which a judge of the High Court of England and Wales adjudicates meets specific requirements, with an annual cap set by the Secretary of State for the Home Department.
74. **Background:** For a person to be considered at risk of genocide, they must meet the criteria set out in Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide made in Paris on 9 December 1948.
75. Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide made in Paris on 9 December 1948 states: *In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.*
76. This clause gives the Secretary of State the power to set an annual statutory cap on the number of people who may be granted asylum under this route.
77. **Subsections (1) to (3)** create a route by which people judged by a High Court judge to be at risk of genocide within the meaning of Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide made in Paris on 9 December 1948 can claim asylum at British embassies.
78. **Subsection (4)** gives the Secretary of State the power to set an annual statutory cap on the number

Lords Amendments: Clause 39: Illegal Entry

Amendment 13*:

79. The Amendment removes the proposed new arrival offence [that was to be inserted at section 24(D1) of the Immigration Act 1971, namely knowingly arriving in the UK without a valid entry clearance where this is required under the Immigration Rules.

Lords Amendments: Clause 39 Illegal Entry.

Amendment 14*

80. This tidying-up amendment is consequential on Amendment 13 which removed an inserted subsection "D1" to s.24 of the Immigration Act 1971 that would have created an offence for 'arriving' in the UK without entry clearance as this removes subsection E1 from the bill.

Amendment 15*

81. This tidying-up amendment is consequential on Amendment 13 which removed an inserted subsection "D1" to s.24 of the Immigration Act 1971 that would have created an offence for 'arriving' in the UK without entry clearance. It removes new subsection (5) from s.24 of the Immigration Act 1971 as this would only apply to the subsection "D1" offence.

Amendment 16*

82. This tidying-up amendment is consequential on Amendment 13 which removed an inserted subsection "D1" to s.24 of the Immigration Act 1971 that would have created an offence for 'arriving' in the UK without entry clearance. Subsequent references to "E1" are removed because of the required renumbering to s.24.

Amendment 17*

83. This tidying-up amendment is consequential on Amendment 13 which removed an inserted subsection "D1" to s.24 of the Immigration Act 1971 that would have created an offence for 'arriving' in the UK without entry clearance. Subsequent references to "E1" are removed because of the required renumbering to s.24.

Amendment 18*

84. This tidying-up amendment is consequential on Amendment 13 which removed an inserted subsection "D1" to s.24 of the Immigration Act 1971 that would have created an offence for 'arriving' in the UK without entry clearance. Subsequent references to "E1" are removed because of the required renumbering to s.24.

Amendment 19*

85. This tidying-up amendment is consequential on Amendment 13 which removed an inserted subsection"D1" to s.24 of the Immigration Act 1971 that would have created an offence for 'arriving' in the UK without entry clearance. Subsequent references to "E1" are removed because of the required renumbering to s.24.

Lords Amendments: Clause 40: Illegal Entry

Amendment 20*

86. The Amendment removes subsection (3) from clause 40, effectively reinserting the requirement to prove that the offence in section 25A of the Immigration Act 1971 of helping an asylum seeker to enter the UK was done for gain.

Lords Amendments: Clause 42:

Amendment 21

87. This is a minor drafting amendment to remove a definition of a term not used in inserted section 11B of the Immigration Act 1971.

Lords Amendments: New Clause (after Clause 56): Age Assessment

Amendment 22*

88. **Overview:** This amendment seeks to set out a range of restrictions on the way an age assessment can be conducted. It envisages the establishment of a new and separate body which would oversee the age assessments undertaken by the National Age Assessment Board, which would be required to be independent of the Home Office and seeks to impose further limits on the ability of the Secretary of State to make regulations on scientific age assessment.

89. **Subsection (1)** This subsection establishes that age assessments carried out under section 49 and 50 must only have the effect of changing the standard of proof for social worker-led age assessments from the 'balance of probabilities' to a 'reasonable degree of likelihood.' conducted when there is significant reason to doubt the age of an age-disputed person.

90. **Subsection (2)** This subsection establishes that age assessments carried out under section 49 and 50 must be conducted by a social worker.

91. **Subsection (3)** This subsection stipulates that age assessments must be conducted in accordance with guidance from the Association of Directors of Children's Services in England and in line with relevant equivalent guidance in Scotland, Northern Ireland and Wales.

92. **Subsection (4)** This subsection states that age assessments must facilitate a multi-agency approach which involves input from a range of individuals/professionals.

93. **Subsection (5)** This subsection requires the Secretary of State to acquire written approval from various professional bodies that a scientific method is accurate beyond reasonable doubt.

94. **Subsection (6)** This subsection states that any organisation that oversees age assessment must be independent to the Home Office.

95. **Subsection (7)** This subsection has the effect of changing the standard of proof for social worker-led age assessments from the 'balance of probabilities' to a 'reasonable degree of likelihood.'

Lords Amendment: Clause 57:

Amendment 23*

96. **Background**: A minor drafting amendment; Clause 57 created a consequence of damaged credibility for information that was brought after the specified date on the Slavery and Trafficking Information Notice within Clause 63 if there were no good reasons for the lateness.

Lords Amendments: Clause 58: Modern Slavery – Removal of One Stop Process

Amendment 24*

97. The Lords voted to remove Clause 58 entirely from the Bill, which would have set out the consequence if an individual who has been served with a slavery or trafficking information notice under Clause 57, provided information relating to being a victim of modern slavery after the specified time period, without good reason

Lords Amendments: Clause 62: Modern Slavery – Child Victims and ECAT

Amendment 25*

98. Amendment 24 replaces the previous Clause 62 and introduces certain conditions, including the determination must only be made in 'exceptional circumstances' and the threat to public order is 'immediate, genuine, present and serious'. This amendment also limits the application of Clause 62 to those age 18 or over at the time of referral, and removes the disqualification on the basis of 'bad faith' and instead introduces one on the basis that the person is claiming to be a victim of modern slavery improperly.

Lords Amendments: Clause 64: Modern Slavery

Amendment 26*

99. Amendment 26 sets out that statutory support is to be provided for a minimum of 12 months from the day the recovery period ends for all those in England and Wales who receive a positive Conclusive Grounds decision and have received support during the recovery period. It also seeks to provide leave to remain for confirmed victims of modern slavery for a minimum of 12 months, under certain circumstances. It also provides that if the Secretary of State is satisfied that the person is a threat to public order then leave under this section is not required to be given, or if already given, can be revoked.

Lords Amendments: New Clause: Modern Slavery

Amendment 27*

100. Lords Amendment 27 inserts creates a new clause to provide specific provisions for persons aged under 18 years. Where a competent authority is making a decision in relation to a person who is aged under 18 years, the best interests of the child must be a primary

consideration.

101. Subsections (2) to (4) limit the scope of Clause 63, 66 and 67 so that a slavery or trafficking information notice may not be served on a person in respect of an incident or incidents which occurred when the person was under 18, and the provisions on no entitlement to additional recovery periods and disqualification from protection do not apply to a person in respect of an incident or incidents which occurred when the person was aged under 18 years.

102. Subsection (5) provides that the Secretary of State must grant a person leave to remain in the United Kingdom where a positive conclusive grounds decision is made in respect of a person who

    i. is under 18 years, or
    ii. was under 18 years at the time of the incident or incidents to which the positive reasonable grounds decision relates.
    iii. If this subsection applies, the person would not be eligible for assistance, support and leave to remain under section 69.

103. Subsection (7) sets out that guidance issued under section 49(1)(c) of the Modern Slavery Act 2015 on determining whether there are reasonable grounds to believe that a person is a victim of slavery or human trafficking must provide that, where the determination relates to an incident or incidents which occurred when the person was aged under 18 years, the determination must be made on the standard of "suspect but not prove"

Lords Amendments: New Clause: Visa penalty provision: general

Lords Amendment 28

104. **Overview:** This clause sets out the general provisions on the application of visa penalties where the Secretary of State has specified a country under amendment 28 and clause 69. A country may be specified where it presents a risk to international peace and security, or its actions lead or are likely to lead to armed conflict or a breach of humanitarian law, or it is not cooperating on the removal of its nationals who do not have a legal right to be in the UK.

105. Visa penalties will be applied as appropriate to exert pressure on Governments to influence their behavior in either of the aforementioned contexts.

106. The clause provides that the powers to impose visa penalties on countries can be exercised under the immigration rules.

107. **Background:** The Government has a limited number of levers at its disposal to respond to certain actions of foreign governments by applying pressure which may disadvantage that state's citizens through the United Kingdom's visa system. This measure provides for increased levers at the punitive end of the spectrum available either in relation to a country specified under clause 70C (countries which are taking certain prescribed hostile actions) or under clause 69 (countries which do not cooperate on the matter of returning their nationals who have no right to be in the UK).

108. The four types of penalty have been designed to create a nuanced and flexible tool which provides an escalatory ladder to move up or down according to the specific situation.

109. Exercising the power through the immigration rules will allow the Government sufficient flexibility to impose and revoke penalties in response to changes in specific situations.

110. **Subsection (1)** allows visa penalty provisions to be made under the immigration rules in

relation to a country specified under amendment 28 (a country which, in the opinion of the Secretary of State, is taking certain prescribed hostile actions) or clause 69 (countries which do not cooperate on the matter of returning their nationals who have no right to be in the UK).

111. **Subsection (2)** sets out types of visa penalty provision that may be made in relation to an application for entry clearance made by a person as a national or citizen of a country specified under amendment 28 or clause 69. They are:

    i. Requiring that entry clearance must not be granted before the end of a specified period;
    ii. Suspending the power to grant entry clearance pursuant to such an application;
    iii. Requiring an application to be treated as invalid for the purposes of the immigration rules;
    iv. Requiring the applicant to pay a surcharge of £190 in connection with the making of such an application, in addition to any fee or other cost (such as the immigration health surcharge) that is payable.

112. **Subsection (3)** allows the Secretary of State to vary the amount payable pursuant to subsection (2)(d).

113. **Subsection (4)** requires the Secretary of State to give the government of any country on which visa penalties may be imposed reasonable notice of the proposal to do so. The period that can be considered reasonable notice will vary depending upon the specific context that penalties are applied.

114. **Subsection (5)** requires that the immigration rules set out that visa penalty provision does not apply in relation to any application made before the day on which the provision comes into force.

115. **Subsection (6)** sets out how the powers to make immigration rules in relation to visa penalty provisions may be used, including to provide for exceptions or exemptions to the application of visa penalties.

116. **Subsection (7)** sets out that the amount payable under subsection (2)(d) may be increased by statutory instrument subject to the affirmative procedure and decreased by statutory instrument subject to the negative resolution procedure.

117. **Subsection (8)** sets out that income generated by virtue of subsection 2(d) must be paid into the Consolidated Fund.

118. **Subsection (9)** sets out definitions of the terms "country", "entry clearance", "immigration rules" and "specified" used in this section.

Lords Amendments: New Clause: Visa penalties for countries posing risk to international peace and security etc.

Amendment 29

119. **Overview:** The visa penalties outlined in Lords amendment 41 may be imposed on a country where, in the opinion of the Secretary of State, the government of the country has taken action that presents a risk to international peace and security, or whose actions lead or are likely to lead to armed conflict or a breach of humanitarian law.

120. In determining whether to apply visa penalties, the Secretary of State must take into account:

i. The extent of the action taken.
ii. The likelihood of further action being taken.
iii. The reasons for the action being taken; and
iv. Any other matters the Secretary of State considers appropriate.

121. **Background:** Disadvantaging a state's citizens through the United Kingdom's visa system is intended to generate domestic dissatisfaction with that state's actions and result in pressure to change its behaviour. These measures could be in isolation or form part of a wider package of measures by the UK Government to influence the behaviour of a foreign government.

122. **Subsection (1)** allows a country to be specified under this section if, in the opinion of the Secretary of State, the government of that country has taken action that gives, or is likely to give, rise to a threat to international peace and security; results, or is likely to result, in armed conflict; gives, or is likely to give, rise to a breach of international humanitarian law.

123. **Subsection (2)** sets out the factors the Secretary of State must take into account when determining whether to specify a country under this clause

124. **Subsection (3)** sets out definitions of the terms "action" and cross-refers to the definitions of "country" and "specified" in Lords amendment 41

Lords Amendments: Clause 69: Removals from the UK: visa penalties for uncooperative countries

Lords Amendments 30 to 35

125. **Overview:** These amendments are technical drafting changes to clause 69 that are consequential on the amendments 41 and 42. They primarily remove provisions of the existing clause 69 which are now provided for in Lords amendment (namely the power to make visa penalty provisions, the types of visa penalty provisions, related provisions on powers and common definitions).

126. **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 a country in receiving back its nationals (for example, by assisting with issuing travel documents if required and giving permission for flights to land) where a person has no right to be in the UK. The majority of countries cooperate with the UK on the matter of removals, however, a small number of countries do not cooperate.

127. The Government has a limited number of levers at its disposal to encourage better cooperation from these countries on the matter of removals. This measure provides for increased levers at the punitive end of the spectrum of levers comparable to those utilised by other countries, including the United States and the European Union.

128. **Amendment 30** removes subsection (1). The power to make immigration rules is now set out in subsection (1) of Lords amendment 41

129. **Amendment 31** substitutes "under" for "for the purposes of".

130. **Amendment 32** removes subsections (5) to (11). The relevant provision is now made in subsections (2) to (8) of Lords amendment 41.

131. **Amendment 33** removes the definitions of the terms "country" and "specified" and instead cross-refers to those definitions now in Lords amendment 41.

132. **Amendment 34** removes the definition of "entry clearance" as these are now defined subsection (9) of Lords amendment 41.

133. **Amendment 35** removes the definitions of "immigration rules" and "specified" as these are now defined in subsection (9) of amendment Lords 41.

Lords Amendments: New Clause: Visa penalties under section (Visa penalties for countries posing risk to international peace and security etc): review and revocation

Amendment 36

134. **Overview:** This clause creates a duty to review visa penalty provisions made pursuant to Lords amendment 42 and a duty to revoke visa penalty provisions as soon as practicable if the Secretary of State concludes penalties are no longer necessary or expedient in connection with the promotion of international peace and security, the resolution or prevention of armed conflict, or the promotion of compliance with international humanitarian law

135. **Background:** For policy background, see explanatory notes for amendment 42

136. **Subsection (1)** establishes that this provision applies where any visa penalty provision is in force in relation to a specified country pursuant to amendment 42

137. **Subsection (2)** requires the Secretary of State to review the actions of the country in question and, in light of that review, whether it is appropriate to amend the visa penalty provision, before the end of a set period.

138. **Subsection (3)** requires that visa penalties must be revoked as soon as practicable if the Secretary of State concludes penalties are no longer necessary or expedient in connection with the promotion of international peace and security, the resolution or prevention of armed conflict, or the promotion of compliance with international humanitarian law.

139. **Subsection (4)** sets the period relevant for this clause at 2 months beginning with the date on which the visa penalty provision came into force and each subsequent period of 2 months.

140. **Subsection (5)** cross-refers to the definition of the term "visa penalty provision" in amendment 41

Lords Amendments: Clause 70: Visa penalty provision: review and revocation

Amendments 37 to 39

141. **Overview:** These amendments are technical drafting changes to clause 70 that are consequential on amendments 41 and 42. They ensure that the clause correctly cross-references clause 69 (visa penalties for uncooperative countries) and other definitions which appear in that clause and amendment 41

142. **Background:** Clause 70 creates a duty to review visa penalty provisions made pursuant to clause 69, and a duty to revoke visa penalty provisions if the relevant country is no longer considered uncooperative on the matter of returning its nationals who do not have a legal right to be in the UK.

143. For additional policy background, see explanatory notes for clause 69.

144. Amendment 37 makes technical changes to make clear that clause 70 only relates to visa penalties made pursuant to clause 69 (visa penalties for uncooperative countries)

145. Amendment 38 removes definitions (and applies cross-references as necessary) to terms defined in amendment 41

146. Amendment 39 cross refers the definition of "cooperation in relation to returns" to the meaning in clause 69(2)(a).

Lords Amendments: Clause 71: Electronic Travel Authorisations (ETAs) and Northern Ireland

Amendment 40:

147. **Overview**: The amendment inserts a new paragraph (c) into the new s.11C(3) of the Immigration Act 1971, stating that the Secretary of State cannot impose an ETA requirement on any person travelling to Northern Ireland from Ireland on a local journey. Accordingly, those who require an ETA would be legally permitted to enter the UK across the land border on the island of Ireland without obtaining an ETA.

148. **Background:** Clause 71 provides for the creation of an Electronic Travel Authorisation scheme to close the current gap in advance permissions and enhance the Government's ability to screen people in advance of arrival and prevent the travel of those who pose a threat to the UK. The UK's longstanding position is those arriving in the UK via the Common Travel Area must continue to enter in line with the UK's immigration framework.

149. This amendment exempts a person travelling to Northern Ireland from Ireland, on a local journey, from the requirement to obtain an ETA.

Lords Amendments: Clause 77: Wasted Cost Orders

Amendment 41:

150. **Overview:** This amendment clarifies that subsection (10 of clause 77 applies to the Immigration and Asylum Chamber only, in line with the rest of clause 77.

151. **Background:** Lords Amendment 41 ensures that the drafting of the clause matches the Government's stated intent for the policy measure. This will prevent any uncertainty arising and give the Tribunal Procedure Committee complete clarity about how to approach drafting the rules to enact these measures.

152. Clause 77(2) and (3) refer to "the Tribunal", defined in 77(4) as the First-tier Tribunal and Upper Tribunal of the Immigration and Asylum Chamber (IAC). Rules required under 77(2), compelling the Tribunal to consider imposing a charge or making an order if the "prescribed conduct" has taken place, are to be made for the IAC only. Equally, 77(3) confirms that the decision whether to make an order remains with the IAC.

153. Clause 77(1) requires Rules which set out "prescribed conduct" which is to be treated as improper, unreasonable etc for the purposes of sections 25A(1) and 29(3A) and (4) of the Tribunals, Courts and Enforcement Act 2007. Clause 77(1), though directly linked to 77(2) and (3), does not specifically refer to "the Tribunal" and accordingly, could be read as imposing a duty on the Tribunal Procedure Committee to make rules under this clause for *all* chambers.

154. **Amendment 41** clarifies that clause 77(1) matches the rest of the clause in only making provision in relation to the IAC.

Lords Amendements : Clause 83: Commencement

Lords Amendement 42

155. **Overview:** This amendment ensures the new visa penalties clauses come into effect on Royal Assent. This is to ensure these powers can be deployed as soon as possible after the Nationality and Borders Bill receives Royal Assent.

156. **Background:** Clause 83 explains when the provisions of the Bill will come into force.

157. **Lords Amendment 42** provides that the clauses introduced by Lords amendments 41, 42 and 50 come into force on the day this Bill becomes an Act of Parliament.

Lords Amendments: Schedule 1: Lawful Residence

Lords Amendments 43 to 51

158. **Overview:** These amendments reflect the changes made to clause 8 which will allow the Secretary of State to not need to enquire into lawful residence in citizenship applications where such an assessment has already been undertaken in an earlier application for Indefinite Leave to Enter or Remain. **Paragraph 2 of Schedule 1** amends section 4 of the 1981 Act so that the Secretary of State can treat the person as meeting the lawful residence requirement without enquiring whether they were in breach of the immigration laws during the residential qualifying period.

159. **Paragraph 3 of Schedule 1** amends Schedule 1 to the 1981 Act so that the Secretary of State can treat the person as meeting the lawful residence requirement without enquiring whether they were in breach of the immigration laws during the residential qualifying period for naturalisation.

Schedule 3 (removal of an Asylum Seeker to a third country)

Amendment 52 to 53

160. Amendments 52 and 53 introduced by paragraph (a) remove paragraphs 1, 2 and 4 of Schedule 3 which amended section 77 of the Nationality, Immigration and Asylum Act 2002 to allow an individual with a pending asylum claims to be removed from or required to leave the United Kingdom if they were being removed to a safe third country (as defined) without having to issue a certificate under Schedule 3 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 in every case.

Lords Amendments: Schedule 6: Small Boats / Illegal Entry / Maritime Powers

Amendment 54:

161. **Overview**: This Amendment ensures that the way enforcement powers are exercised under the legislation is compliant with international maritime law in the context of explicitly referencing obligations on safety of life at sea obligations (SOLAS). The Amendments also ensures that the relevant officials' actions are in accordance with the provisions of the European Convention on Human Rights as they relate to the Human Rights Act 1998 and Immigration Act to protect lives at sea and not to endanger lives.

Financial Effects of Lords Amendments

162. The Home Office estimates that the annual cost of this provision laid out in Amendment 10 is around £10m. This is based on an assumption that 532 persons would be resettled under the scheme annually. The 532 number was used because that was the number of people who were transferred to the UK under the Dublin Regulation in 2019 (which was broadly similar to the provision in the new clause), but the Home Office considers that this is likely to be an underestimate for the new provision. The £10m figure is comprised of casework costs (estimated at £500k in overseas casework costs and £6.3m in UK casework costs), costs to local authorities of providing support to unaccompanied asylum-seeking children (between £2.1 and £2.6m), and costs of asylum support and accommodation to adults using the route (estimated at £610k).

163. The Home Office estimates that the annual cost of Amendment 12 could be around £26m. This is based on an assumption that around 500 persons would be resettled under the scheme annually, although it is of course very difficult to predict, and 500 could be a significant underestimate. The £26m figure is comprised of casework costs (estimated at £5.9m), costs of asylum support and accommodation (estimated at £12m) and costs of providing social security benefits (estimated at £7.7m on the basis of the benefits payable to single adults in London).

164. In regards to amendment 26, The Home Office estimates that the annual cost of this provision is around £15m over and above existing financial commitments to support victims of modern slavery, but this depends upon the scope of the support provided to confirmed victims. The Home Office have found it very difficult to work out exactly what the effect of the new provision would be, but they consider that £15m is a fair estimate, on the basis of the extra accommodation and support costs that will be payable to victims of modern slavery who have received a positive conclusive grounds decision.

NATIONALITY AND BORDERS BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

These Explanatory Notes relate to the Lords Amendments to Nationality and Borders Bill as brought from the House of Lords on 15 March 2022.

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