

IMMIGRATION BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Immigration Bill as brought from the House of Commons on 2 December 2015 (HL Bill 79).

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

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Overview of the Bill

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

Policy background

Labour Market and Illegal Working

- 3 Migrant workers are particularly vulnerable to labour market exploitation and may find themselves living and working in dangerous and degrading conditions. Protections are already in place to ensure that those entitled to work in the UK are paid at least the national minimum wage and benefit from other employment rights. These include enforcement of the national minimum wage by HMRC, the regulation of employment agencies and businesses by the Employment Agency Standards Inspectorate and the licensing of legitimate labour providers by the Gangmasters Licensing Authority. The Modern Slavery Act 2015 ("the 2015 Act") provides further protections.
- 4 The government believes that labour market exploitation is an increasingly organised criminal activity and that government regulators that enforce workers' rights need reform and better coordination. The Conservative Party Manifesto also committed to introduce tougher labour market regulation to tackle illegal working and exploitation. The Bill establishes a new statutory Director of Labour Market Enforcement, responsible for providing a central hub of intelligence and facilitating the flexible allocation of resources across the different regulators.
- 5 Alongside the measures in the Bill, on 13 October 2015 the government published a consultation paper, ['Tackling Exploitation in the Labour Market'](#) to seek views on the functions of the new Director of Labour Market Enforcement as well as proposals to reform the Gangmasters Licensing Authority and to create a new offence of aggravated breach of labour market legislation. This consultation fulfils the statutory requirement under the 2015 Act for government to consult on the future of the Gangmasters Licensing Authority.
- 6 In the government's view, illegal working represents one of the principal pull factors for illegal immigration and is often associated with the exploitation of workers, unfair competition and revenue evasion. Section 15 of the Immigration, Asylum and Nationality Act 2006 ("the 2006 Act") prohibits the employment of adults who are subject to immigration control and do not have leave to enter or remain in the UK, or who are subject to a condition preventing them from undertaking employment. The prohibition is supported through both a civil penalty regime and a criminal sanction for employers of illegal workers.
- 7 The 2006 Act regime replaced the former scheme under section 8 of the Asylum and Immigration Act 1996 which first made it a criminal offence to employ illegal workers. The civil penalty scheme in the 2006 Act, which was implemented in February 2008, is the

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principal means of dealing with cases of non-compliance by negligent businesses employing illegal workers. In 2013/2014 there were 2,150 civil penalties issued to employers. However, government statistics show that the 2006 Act resulted in a significant decline in criminal prosecutions as civil penalties became a simpler, more cost effective, way to enforce the law in routine cases. In 2008 there were 69 criminal prosecutions against employers, compared to nine in 2013.

- 8 The government believes that some employers are deliberately not checking whether their employees have the right to work. The government believes that these employers are not knowingly employing illegal workers because they are choosing not to know. This means that they can only be liable for a civil penalty and not be subject to a successful criminal prosecution. Civil penalties are served on businesses not individuals. However, the 2006 Act allows individuals to be prosecuted for knowingly employing an illegal worker when the individual has been indirectly involved in the offence. This enforces individual accountability and discourages employers from continuously using illegal workers by creating new businesses. This Bill amends the criminal sanction in the 2006 Act to make it easier to bring prosecutions in these cases. The most serious cases involving the exploitation of illegal labour will continue to be dealt with under legislation prohibiting facilitation and trafficking.
- 9 A person with limited leave to enter or remain may be restricted from entering into employment under section 3(1)(c)(i) of the Immigration Act 1971 (“the 1971 Act”). A failure to observe this condition is an offence under section 24(1)(b)(ii) of the 1971 Act. While persons who require, but do not have, leave to enter or remain may be committing an offence under another limb of section 24, they do not commit a separate offence of working illegally if they engage in paid work, including employment or self-employment. The Bill creates a new offence of illegal working with the aim of ensuring that the act of illegal working is always an offence. The new offence will enable the earnings of illegal workers to be seized under the Proceeds of Crime Act 2002, as was announced by the Prime Minister in his immigration speech on 21 May 2015. Statutory defences in the 2015 Act for the victims of trafficking will apply.
- 10 When immigration officers conduct an enforcement visit at an employer’s premises, under existing powers any illegal workers identified may be arrested and detained and the employer may be liable for a civil penalty or prosecution for an offence. Despite this, the employer may continue to operate their business and there is a risk that they may be continuing to use illegal workers, possibly not detected by immigration officers as they were not present at the time of the visit. The Bill provides the power for immigration officers to close the premises for up to 48 hours in certain cases where the employer has previously been given a civil penalty or has been prosecuted for employing illegal workers. Unless the closure notice is cancelled an application must be made to a court for an illegal working compliance order. The compliance order may extend the closure of the premises or otherwise direct the employer to perform certain steps to ensure that illegal workers are not employed. The scheme is designed to be similar to the power to give closure notices to premises associated with nuisance or disorder in Part 4 of the Anti-social Behaviour, Crime and Policing Act 2014.
- 11 The government believes that a significant proportion of illegal working happens on licensed premises, where there is the sale of alcohol or late night refreshments (hot food or drink sold between 11pm and 5am). The Bill aims to tackle illegal working in these sectors by amending licensing legislation such that a licence cannot be issued to an illegal worker and to make the employment of illegal workers a factor that may be taken into consideration when issuing or revoking licences. The Bill provides immigration officers with a power to enter premises that

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are being used for a licensable activity of selling alcohol by retail or providing late night refreshment with a view to assessing whether an offence under any of the Immigration Acts is being committed in connection with the carrying on of the activity.

- 12 The majority of drivers of taxis and private hire vehicles are self employed meaning they are not subject to existing right to work checks undertaken by employers. This leaves scope for this sector to be exploited by those who intend to work illegally. Some licensing authorities conduct immigration checks but these are only advisory, not mandatory, at present. The Bill makes immigration checks mandatory and embeds immigration safeguards into the existing licensing regime.

Access to Services

- 13 Access to private rented accommodation is restricted by the residential tenancies provisions at Chapter 1 of Part 3 of the Immigration Act 2014 (“the 2014 Act”). These provisions are referred to as the ‘right to rent scheme’. The scheme provides that landlords in the private rented sector should take steps to confirm the lawful immigration status of an individual before entering an agreement to rent private accommodation to them and makes provision for a civil penalty regime to penalise non-compliance. The scheme was first brought into force on 1 December 2014 in parts of the West Midlands and on 20 October 2015, the government published the [‘Evaluation of the Right to Rent scheme’](#) considering the impact of the scheme over the first six months of operation. The government has also announced that the scheme will be extended across the rest of England from 1 February 2016 and intends to extend the scheme across the rest of the UK in the future.
- 14 Despite the requirement to check immigration status before entering into a tenancy agreement a landlord may subsequently discover that their tenant no longer has lawful immigration status. This could be because the tenant’s leave to enter or remain has expired or been curtailed. The existing legislative scheme requires landlords to perform repeat checks on existing tenants and where they discover such a tenant they may obtain a statutory excuse from a civil penalty under section 24 of the 2014 Act by notifying the Secretary of State that the tenant's leave has expired. The landlord may be able to evict the tenant under existing housing legislation but the immigration status of a tenant is not a ground for gaining possession of a property. The Bill will enable landlords to obtain possession of their property where their tenant no longer has a right to rent under the 2014 Act scheme.
- 15 The main sanction for landlords who fail to perform adequate checks on their tenants will remain the civil penalty in the 2014 Act scheme. The Bill additionally creates four new offences to target those rogue landlords and agents who deliberately and repeatedly fail to comply with the right to rent scheme or fail to evict individuals who they know or have reasonable cause to believe are disqualified from renting as a result of their immigration status.
- 16 The government believes that, historically, it has been easy for illegal migrants to secure UK driving licences and enjoy the privileges of being able to drive and the advantages this brings in securing a settled lifestyle. A policy change in relation to the granting of licences was announced through a Written Ministerial Statement of 25 March 2010 with the effect that all applicants are required demonstrate that they are lawfully resident in the UK. The 2014 Act extended this policy to provide powers to revoke a UK driving licence held by an illegal migrant. Where a licence is revoked it is an offence to fail to surrender the licence without a reasonable excuse. In its first year in force, the new legislation has been used to revoke over 9,000 licences. Revoked driving licences nonetheless remain in circulation. Accordingly, the

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government wishes to build on the 2014 Act provisions by ensuring a consequence for illegal migrants using revoked licences. Therefore, the Bill provides the police and immigration officers with a new power to search for and seize UK driving licences which are in the possession of a person who is not lawfully resident in the UK.

- 17 The Bill also introduces a new criminal offence of driving in the UK whilst an illegal migrant. This fits within the wider agenda of making it difficult for those seeking to establish themselves in the UK unlawfully, and operates in parallel with other new measures with the same aim, including the new offence of illegal working. The new driving offence will apply to those illegally present in the UK, whether they have a driving licence (including a foreign licence) or are driving unlicensed. Upon summary conviction, the court could order a custodial sentence of up to six months and a fine. The court will also have the power to order the forfeiture of the vehicle. In practice, we anticipate that this new offence will be mainly used by the police who, in the course of their work, may encounter illegal migrants driving on UK roads. Vehicles driven by illegal migrants may be detained, pending a decision by the court on forfeiture. The police already hold similar powers in respect of vehicles that are uninsured or driven by an unlicensed driver.
- 18 The 2014 Act created a provision to ensure that illegal migrants are prevented from opening a current account. This provision was brought into force on 12 December 2014. The Home Office provides data on individuals who are known to be in the UK unlawfully to Cifas, an organisation through which information is exchanged to prevent fraud. Banks and building societies then check their prospective account holders against this data. While the 2014 Act measures only apply to new accounts, in his immigration speech on 21 May 2015, the Prime Minister committed to requiring banks and building societies to take action in respect of existing accounts held by illegal migrants.
- 19 The Bill places a duty on banks and building societies to perform periodic checks and to notify the Home Office where a person disqualified from holding a current account by reason of their immigration status is identified. The Bill specifies that secondary legislation may require the bank or building society to inform the Home Office of all accounts held by the individual concerned, not just current accounts. The Home Office may then either apply to a court to freeze the individual's accounts, with the possibility of exceptions to enable essential living needs to be met, or may notify the bank or building society that it is under a duty to close the accounts as soon as reasonably practicable. Depending on the circumstances of the case, the bank or building society may delay closure for a reasonable period, for example to allow it to seek repayment of an overdraft or to mitigate the effect of closure on other bodies or persons by or for whom the account is operated. They may alternatively remove a disqualified person from a jointly operated account without closing the account. The bank or building society must provide the Home Office with information about the steps it has taken to comply with this duty.

Enforcement

- 20 Immigration officers have various powers of entry, search and seizure for the purpose of removal or deportation. Immigration officers also seek to disrupt illegal immigration by enforcing the illegal working civil penalty scheme in the 2006 Act and the right to rent scheme in the 2014 Act. The Bill provides immigration officers with additional search and seizure powers in connection with curtailment decisions and the imposition of civil penalties under these schemes. Typically this may involve searching for evidence of illegal working such as pay slips or time sheets, and evidence of illegal renting such as tenancy agreements and

letting paperwork.

- 21 While using existing powers, immigration officers may find other evidence in relation to non-immigration offences. The Bill will give officers powers to seize items where there are reasonable grounds to believe that they have been obtained in the commission of a criminal offence and where it is necessary to prevent them being concealed, damaged, or destroyed.
- 22 The government believes that it is important that the public sector works together to achieve effective immigration control. The Bill provides immigration detainee custody officers, prison officers and prisoner custody officers with powers to search for and seize nationality documents for persons in their custody, expands an existing information gateway to enable public authorities to supply information for immigration purposes and places a duty on specified persons to supply nationality documents when directed to do so.
- 23 The Conservative Party Manifesto commits the government to satellite tracking for every foreign national offender subject to an outstanding deportation order or deportation proceedings. Section 36 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 created the ability to impose electronic monitoring arrangements for certain migrants. Over 80% of foreign national offenders living in the community have been released on bail by the First-tier Tribunal (“the Tribunal”) and while the Tribunal has the power to apply an electronic monitoring condition, the Secretary of State cannot require it as a condition of bail. The Bill gives the Secretary of State the ability to impose an electronic monitoring condition when the Tribunal grants bail but does not impose such a condition.
- 24 Illegal migrants, including foreign national offenders, who are awaiting deportation or removal, exist within a complex legal framework where there are six different legal statuses including immigration bail and temporary admission. In implementing the above change to electronic monitoring, the Bill takes the opportunity to simplify the legislative framework so that just one status is available to illegal migrants who are not detained.

Appeals

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

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first, appeal later” rule. The Conservative Party Manifesto commits the government to extending this power beyond cases where persons are liable to deportation, who are principally foreign national offenders, to all human rights appeals. The Bill implements this commitment by amending section 94B to remove the limitation that the power can only be applied in deportation cases.

Support for certain categories of migrant

- 27 Support is provided to asylum seekers under section 95 of the 1999 Act. Support is usually provided in the form of accommodation and a weekly cash allowance to cover the asylum seeker’s essential living needs. Section 94(5) allows section 95 support to continue after the asylum claim has been finally determined if the failed asylum seeker has with them a dependent child. Section 4(2) of the 1999 Act provides the basis for supporting other categories of failed asylum seeker.
- 28 The government believes that support should be provided to asylum seekers, as required by our international obligations, but it should not be provided to failed asylum seekers who have had their claim refused, who have exhausted any right of appeal they may have and who could and should leave the UK. On 4 August 2015 a consultation, '[Reforming support for failed asylum seekers and other illegal migrants](#)', sought the views of interested parties. On 3 November, the government published their response to the [consultation](#). The Bill amends the asylum support system, taking into consideration the responses submitted.
- 29 The Bill simplifies the basis on which local authorities assess and provide accommodation and subsistence support for destitute families without immigration status, while continuing to enable any other social care needs of a child of such a family to be met by the local authority. The Bill also prevents local authorities from providing care leaver support to adult migrants without immigration status, including failed asylum seekers who have exhausted their appeal rights. It makes alternative arrangements for their support prior to their departure from the UK.
- 30 When unaccompanied children are identified by immigration officers they are referred to local authority care. This means that certain local authorities have significant responsibility for the care of migrant children because of the presence of large ports of arrival in their locality. For example, Kent County Council is responsible for unaccompanied children referred from the Port of Dover and the London Borough of Hillingdon is responsible for unaccompanied children referred from Heathrow Airport. The Bill contains measures to enable the transfer of these children between authorities to achieve a more even distribution. .

Border Security

- 31 Paragraph 26(2) and (3) of Schedule 2 to the 1971 Act enables the Secretary of State, by written notice to the owners or agents of a ship or aircraft, or persons concerned with the management of a port, to designate a control area “for the embarkation or disembarkation of passengers in any port in the United Kingdom”. Where a control area is so designated, the owner or agent shall take all reasonable steps to ensure that passengers “do not embark or disembark . . . at the port outside the control area.” Where an owner or agent fails to comply with this an offence is committed.
- 32 Despite this legislation, sometimes airlines and port operators have allowed passengers to disembark without being presented to the immigration control. The Bill aims to make this legislation simpler to enforce by providing a civil penalty regime that can be applied to airlines and port operators who disembark passengers outside the control area.

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- 33 At present, immigration officers have no maritime enforcement powers – their powers do not have extra-territorial effect. This prevents Border Force from tackling illegal immigration until a vessel has reached the UK and those on board have disembarked. The Bill extends some immigration officer powers into UK territorial waters so that facilitation of illegal migration can be disrupted while it is occurring. The Bill also gives these powers to constables and the Armed Services.
- 34 Travel bans restrict the movement of named individuals associated with regimes or groups, including terrorist groups, whose behaviour is considered unacceptable by the international community. The decision to impose a travel ban is made either by the United Nations' Security Council or by the Council of the European Union. To implement travel bans in the UK, secondary legislation is put before Parliament to amend the Immigration (Designation of Travel Bans) Order 2000. The Bill will remove the need to update secondary legislation. Instead international travel bans will take effect in the UK automatically.

Language Requirement for public sector workers

- 35 The Conservative Party Manifesto commits the government to legislate to ensure that every public sector worker operating in a customer-facing role must speak fluent English. The Rt Hon Matthew Hancock, Minister for the Cabinet Office, announced on 2 August 2015 that the Immigration Bill would implement this commitment. The Bill will require public sector bodies to comply with a statutory duty and guidance will be provided in a code of practice. A [consultation](#) on the content of the code of practice was published on 13 October 2015.

Fees

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

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

Legal background

- 40 The new Director of Labour Market Enforcement will prepare an enforcement strategy that concerns the enforcement of several legal schemes. These include enforcement of breaches of the Employment Agencies Act 1973, the National Minimum Wage Act 1998, the Gangmasters (Licensing) Act 2004 so far as it relates to England, Wales and Scotland, and sections 1, 2 and 4 of the 2015 Act.
- 41 The new illegal working offence criminalises those who work and who are subject to immigration control and have no right to work in the UK. It builds on existing immigration offences that are found in section 24 of the 1971 Act. The offence of employing an illegal worker in section 21 of the 2006 Act is also amended. The illegal working measures also amend the Licensing Act 2003 ("the 2003 Act").
- 42 The Bill measures on access to services within Part 2 are mainly an extension of previous provision made in 2014 Act. Chapter 1 of Part 3 of the 2014 Act created the right to rent scheme and the new measures in the Bill on tenancies build on this. The driving measures build on sections 46 and 47 of the 2014 Act which ensure that people who are not lawfully resident in the UK are not entitled to UK driving licences. The bank accounts measure builds on section 40 of the 2014 Act which prohibits disqualified persons from opening accounts.
- 43 The amendments and expansion to the enforcement powers of immigration officers in the Bill principally concern the search for and transfer of evidence. Immigration officer powers are largely found within Schedule 2 to the 1971 Act. The bail and tagging measures in the Bill will also consolidate the parts of Schedules 2 and 3 to the 1971 Act that relate to temporary admission, temporary release and bail.
- 44 The immigration appeals system is found within Part 5 of the 2002 Act, which has been amended several times, most recently by the 2014 Act. The Bill further amends this legislation.
- 45 The asylum support system is found within the 1999 Act, as amended. Existing limitations on local authority support for certain migrants is found in Schedule 3 to the 2002 Act. The Bill amends this legislation.
- 46 The measure creating a civil penalty regime relating to airport control areas is concerned with enforcement of section 26 of the 1971 Act where there is already a criminal sanction under section 27(b)(iv). The maritime powers measure, extending the powers of immigration officers to UK territorial waters is based on similar powers in Part 3 of the 2015 Act that are aimed at tackling modern slavery at sea.
- 47 The current immigration fees framework is contained in Part 6 of the 2014 Act. The immigration skills charge builds on the existing fees powers in the 2014 Act. The civil registration fees measures amend the following existing legislation: the Births and Deaths Act 1953; the Marriage Act 1949; the Civil Partnership Act 2004; the Marriage (Same Sex Couples) Act 2013; the Registration Service Act 1953 and makes a number of consequential and related

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amendments to other legislation. The passport fees measures will add to the framework set out under the Consular Fees Act 1980.

Territorial extent and application

- 48 Clauses 1 to 7 of the Bill concern the Director of Labour Market Enforcement. The Director's remit covers certain functions where legislative competence has been transferred to the Northern Ireland Assembly and Scotland. Legislative competence on this matter has not been devolved to the National Assembly for Wales. These clauses extend to the whole of the UK but in Northern Ireland the Director's functions will be limited because firstly, the Employment Agencies Act 1973 and sections 1, 2 and 4 of the 2015 Act do not extend there, and secondly because the Director's remit in respect of Gangmaster Licensing is limited by clause 3(7). In Scotland the Director's functions will be limited because sections 1, 2 and 4 of the 2015 Act do not extend there.
- 49 Clauses 39 to 42 of the Bill concern the transfer of unaccompanied asylum seeking children between local authorities. These clauses only relate to England. Directing local authorities to discharge functions on the basis of immigration status is not within the competence of devolved legislatures so clause 43 allows these provisions to be extended to the rest of the UK, although there will be further consultation with the devolved administrations before this is done.
- 50 Part 7 of the Bill concerns the new English language requirements for public sector workers. This measure will extend to England, Wales and Scotland. It will affect some reserved matters under the terms of the Government of Wales Act 2006 (including public sector bodies in the education sector, the environment sector and the health and health services sector). The legislative consent of the National Assembly for Wales will be sought. Clause 48(3) limits the extent of the measure in relation to Scotland so that it only relates to reserved matters.
- 51 Clause 59 and Schedule 12 relate to civil registration, legislative competence in respect of which has been devolved to the Scottish Parliament and the Northern Ireland Assembly, but not under the Government of Wales Act 2006. Accordingly the amendments for the large part are to legislation which extends to England and Wales only. Schedule 12 does, however, contain some consequential amendments to legislation with UK-wide extent, but they do not make any change to the law in Scotland or Northern Ireland.
- 52 All remaining clauses of the Bill will extend to the whole of the UK. In the view of the UK Government, the matters to which the provisions of the Bill relate are not within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly.

Commentary on provisions of Bill

Part 1: Labour Market and Illegal Working

Clause 1: Director of Labour Market Enforcement

53 This clause establishes the Director of Labour Market Enforcement.

54 *Subsections (1) and (2)* require the Secretary of State to appoint a Director of Labour Market

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Enforcement, who will hold office in accordance with their terms of appointment.

Clause 2: Labour Market Enforcement Strategy

- 55 This clause sets out the requirement for the Director to produce a Labour Market Enforcement Strategy.
- 56 *Subsection (1)* states that the Director must prepare a strategy before the beginning of each financial year and submit it to the Secretary of State for approval.
- 57 *Subsections (2) and (3)* prescribe the contents of the strategy. These include: an assessment of the scale and nature of non-compliance in the labour market; how labour market enforcement functions should be exercised (including education, training and research carried out by the relevant enforcers) and how the funding should be allocated; the activities the Director proposes to undertake during the year in relation to his or her intelligence hub and other matters the Director considers appropriate.
- 58 *Subsection (4)* permits the Director to prepare a revised strategy and submit it for approval at any point during the year.
- 59 *Subsection (5)* allows the Secretary of State to approve the strategy with or without modifications; but prevents modification of the Director's assessment of the scale and nature of non-compliance in the labour market.
- 60 *Subsection (6)* requires those exercising labour market enforcement functions to have regard to the strategy once made.

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

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

Clause 4: Annual and other reports

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

Clause 5: Publication of strategy and reports

- 67 This clause sets out conditions relating to the publication of the Director's strategy and reports.
- 68 *Subsection (1)* requires the Secretary of State to lay any strategy which has been approved or any report which has been received before Parliament as soon as reasonably practicable.

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- 69 *Subsections (2) and (3)* allow the Secretary of State to remove before publication any material which would be against the interests of national security, might jeopardise the safety of any person in the UK or might prejudice an investigation or prosecution.

Clause 6: Information hub

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

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

- 71 *Subsection (1)* of this clause prevents the Director from making recommendations in relation to individual cases.
- 72 *Subsection (2)* of this clause, however, allows the Director to consider individual cases and draw conclusions about them in relation to general issues within his remit.

Clause 8: Offence of illegal working

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

Clause 9: Offence of employing an illegal worker

- 83 Sections 15 to 25 of the 2006 Act set out the constraints on whether a person subject to immigration control may be employed. The prohibition is supported through both a civil penalty and criminal sanction.
- 84 *Subsection (1)* amends section 21(1) of the 2006 Act by inserting after ‘knowing’ the words ‘or having reasonable cause to believe’. The effect is to amend the mens rea or intention needed to make out the offence in order to make the test more objective and the offence easier to prove.
- 85 *Subsection (2)* amends section 21(2)(a) of the Act by substituting ‘five’ for ‘two’. The effect is to increase the maximum term of imprisonment for conviction of the offence on indictment from two years to five years.
- 86 *Subsection (3)* inserts a new subsection 9(B) into section 28A of the 1971 Act. The effect is that a person committing or attempting to commit the section 21 offence may be arrested without a warrant.
- 87 *Subsection (4)* removes the reference to the section 21 offence from section 28AA of the 1971 Act. Section 28AA provides for arrest with a warrant.

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

- 88 The purpose of this clause is to prevent illegal working in licensed premises by making it a requirement for a personal or premises licence to sell alcohol that the licensee has the right to work in the UK. Additionally, the Secretary of State will be added to the list of responsible authorities so that she must be consulted before a premises licence is issued or transferred, allowing intervention where there are strong grounds for believing that the issue of a licence would give rise to a serious risk of illegal working. *Subsection (1)* gives effect to Schedule 1, where the changes to the licensing framework are set out.
- 89 The 2003 Act only extends to England and Wales. *Subsection (2)* provides a power to extend the effect of the licensing measure to Scotland and Northern Ireland by regulations.

Clause 11: Private hire vehicles etc.

- 90 The purpose of this clause is to tackle illegal working in the licensed hackney carriage and private hire sector by making it a requirement that the licensee has the right to work in the UK. *Subsection (1)* gives effect to Schedule 2, which amends the licensing regimes for taxis and private hire vehicles in England and Wales. *Subsections (2) to (4)* contain regulation-making powers to amend legislation in Scotland and Northern Ireland to provide for equivalent effect.

Clause 12: Illegal working closure notices and illegal working compliance orders

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

Part 2: Access to Services

Clause 13: Offence of leasing premises

- 92 This clause amends Chapter 1 of Part 3 of the 2014 Act by inserting new sections 33A to 33C, creating four new offences related to letting private residential premises to adults disqualified from renting as a result of their immigration status. Section 22 of the Act 2014 provide that a

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

- 93 New subsection 33A(6) provides that subsection 22(9) of the 2014 Act applies to this new offence. Subsection (9) provides that the commission of an offence will not impact on a landlord or tenant's ability to enforce any provision of the residential tenancy agreement they have entered into.
- 94 The second offence (new subsections 33A(7)-(8) is committed only if a tenant's leave to remain in the UK expires during the course of a tenancy (having been valid when the tenancy was entered into), the tenant's eligibility period (as defined at section 27 of the 2014 Act) has expired, the tenant continues to occupy the property and the landlord knows or has reasonable cause to believe this has happened but does not notify the Secretary of State as soon as reasonably practicable. New subsection 33A(8) makes it clear that the offence applies whether or not the landlord has been issued with a civil penalty notice under section 23 of the 2014 Act.
- 95 New section 33B is concerned with two new offences relating to agents.
- 96 New sections 33B(1) and (2) provide that an agent is guilty of an offence if the agent carries out the right to rent checks on behalf of the landlord (under section 25 of the 2014 Act), knows or has reasonable cause to believe that the landlord will be authorising someone disqualified from renting to occupy the property if he enters into the tenancy agreement and has sufficient opportunity to notify the landlord beforehand, but does not do so.
- 97 New sections 33B(3) and (4) provide that an agent commits an offence if the agent carries out the right to rent checks on behalf of the landlord (under section 25 of the 2014 Act), a tenant's leave to remain in the UK expires during the course of the tenancy, having been valid at the time the tenancy was entered into, the tenant's eligibility period (as defined at section 27 of the 2014 Act) has expired, the tenant continues to occupy the property and the agent knows or has reasonable cause to believe this has happened but does not notify the landlord and Secretary of State as soon as reasonably practicable.
- 98 New section 33B(5) specifies that the agent is guilty of an offence regardless of whether the agent has been issued with a civil penalty notice under section 25 of the 2014 Act.

- 99 New section 33C is concerned with the penalties available where an offence has been committed under section 33A or section 33B.
- 100 New section 33C(1) specifies that a landlord or agent who is guilty of an offence under section 33A or section 33B is liable to imprisonment for up to twelve months or to a fine (or both) on summary conviction or up to five years imprisonment or to a fine (or both) if they are convicted on indictment.
- 101 New section 33C(2) provides that if the offence is committed before section 154(1) of the Criminal Justice Act 2003 comes into force a landlord or an agent who is summarily convicted will be liable to imprisonment for up to six rather than twelve months.
- 102 New sections 33C(3) to (5) provide that the offences are committed by officers of a body corporate where they have consented to or been complicit in the act, where a corporate body has also committed the offence, and by individuals who are or purport to act as partners or members where the offence has been committed by a partnership. The reference to an officer of a body includes a director, manager or secretary, or person purporting to act as such or, if the affairs of a body are managed by its members, a member.
- 103 New section 33C(6) permits immigration officers to use powers provided in the 1971 Act such as entering and searching premises and searching persons in relation to these offences.
- 104 *Subsection (3)* makes it clear that the offence under new section 33A(1) to (6), and the new routes to eviction under new sections 33D and 33E, apply whether the tenancy was entered into before or after these provisions come into force. However, the offences contained in new section 33A(7) and (8), which apply to landlords, and section 33B, which applies to agents, will only apply in relation to a contravention of the right to rent scheme which occurs after these measures come into force.
- 105 *Subsection (5)* provides that where two or more persons jointly constitute the landlord, any references to the landlord in Section 33A are to be taken as references to any of those persons.
- 106 *Subsection (6)* amends section 28A of Part III of the 1971 Act by inserting a subsection (9C) which provides that an immigration officer may arrest without warrant a person who, or whom the immigration officer has reasonable grounds for suspecting, has committed or attempted to commit an offence under sections 33A or 33B.

Clause 14: Eviction

- 107 This clause amends Chapter 1 of Part 3 of the 2014 Act. *Subsection (2)* inserts new sections 33D and 33E, providing new powers for landlords to evict illegal migrants from private rented accommodation.
- 108 New section 33D empowers a landlord to serve a notice terminating a tenancy agreement if they have been notified by the Secretary of State that a person or persons who are occupying their premises are disqualified from renting under the 2014 Act. There is a specified notice period of 28 days. The notice may be given by delivering it to the tenant(s); leaving it at the premises; sending it by post to the tenant(s) at the address of the premises; or in any other prescribed manner.
- 109 This applies where all of the occupants are disqualified from renting under a residential tenancy agreement. A notice from the landlord is to be treated as a notice to quit where such notice is required to end a tenancy.

- 110 Subsection (6) of new section 33D provides that the landlord's notice is enforceable as if it were an order of the High Court and so will allow a landlord to seek enforcement of the notice through the courts as such an order.
- 111 Subsection (7) of new section 33D defines an occupier as a tenant, a person who is named in the tenancy agreement, or any other person who the landlord knows is occupying the premises. Subsections (1) and (2) of new section 33E make provisions for landlords (in England) to evict in other circumstances where an occupant is a disqualified person. Subsection (1) provides that there shall be an implied term of any residential tenancy agreement that allows for the termination of the agreement where an adult occupant is disqualified from renting. Subsections (3) and (4) set out the position of tenancies that are statutory, protected or assured tenancies within the meanings of the Rent Act 1977 or Housing Act 1988.
- 112 *Subsection (3)* amends the 2014 Act by inserting new subsection (7) into section 35 which provides that an eviction under sections 33D and 33E can take place in respect of a tenancy that was entered into before or after these provisions came into force.
- 113 *Subsection (4)* amends the 2014 Act by inserting new subsections (v) and (vi) into section 37 (4)(a) to provide that references to the landlord in new sections 33D and 33E, are to be taken as references to any of the landlords where two or more persons jointly constitute the landlord.
- 114 *Subsection (5)* amends section 3A of the Protection from Eviction Act 1977 to exclude from protection tenancies to which these provisions apply.
- 115 *Subsection (6)* amends section 5 of the Housing Act 1988 (security of tenure) to allow an assured tenancy to be brought to an end where these provisions apply and a landlord has served a notice in compliance with section 33D.
- 116 *Subsection (7)* makes it clear that the amendments made under subsections (5) and (6) apply in relation to a tenancy or a licence entered into before or after the coming into force of this clause.

Clause 15: Order for possession of dwelling-house

- 117 This clause provides for amendments to be made to Part 1 of Schedule 2 to the Housing Act 1988 (assured tenancies: grounds on which court must order possession). The amendments provide for a new mandatory ground for a landlord to obtain possession of a property following receipt of notification that an occupant is a disqualified person from the Secretary of State.
- 118 *Subsection (2)* inserts a new Ground 7B into Part 1 of Schedule 2 to the Housing Act 1988. Landlords may rely on this mandatory ground of possession where the Secretary of State has given notice in writing to a landlord that a tenant, tenants or adult occupiers who are occupying the property under the tenancy are disqualified from occupying the property as a result of their immigration status. The landlord may serve a notice seeking possession. Where the tenants do not wish to vacate the property, the landlord will be able to rely upon this new ground in seeking a possession order from the courts, and upon the Secretary of State's notice evidencing the ground. In the case of joint landlords, a written notice may be given to one or more of them.
- 119 *Subsections (3) and (4)* make other consequential amendments.
- 120 *Subsection (5)* inserts a new section 10A into the Housing Act 1988 which provides that where

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one or more tenants who are occupying a property are disqualified persons a court in possession proceedings may order that the interest in the property of the tenants who are disqualified be transferred to joint tenants who are not disqualified, instead of making an order for possession.

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

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

Clause 16: Extension to Wales, Scotland and Northern Ireland

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

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

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

Clause 17: Powers to carry out searches relating to driving licences

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

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

128 New paragraph 25CB creates a power for an authorised officer to search a person where there are reasonable grounds for believing that the person is not lawfully present in the UK and may have a driving licence concealed on their person. New paragraph 25CC allows a driving licence found by an authorised officer, under either of these new search powers or under existing search powers, to be seized and retained if it belongs to, or was found in the possession of, an illegal migrant. Once a licence has been seized it must be given either to the Secretary of State (in practice this will be passed to the Driver and Vehicle Licensing Agency, an executive agency of the Department for Transport), or to the Department of the Environment for Northern Ireland, depending upon who granted the licence. Provision is made to ensure that a driving licence is returned to the holder should the holder successfully appeal against revocation.

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

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

Clause 18: Offence of driving when unlawfully in the United Kingdom

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

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

133 The person who has been arrested might not be the owner or registered keeper of the vehicle used in the commission of the offence. Section 24D(8) provides the Secretary of State with the power to make provision, by regulations, about the circumstances in which a vehicle may be released from detention.

134 Section 24E provides the police and immigration officers with the power to enter premises in order to detain a relevant vehicle. This power can only be exercised without a warrant if the relevant officer knows the vehicle is on the premises (for example, the officer can see it on the drive), or with a warrant if a justice of the peace is satisfied that there are reasonable grounds for suspecting that the vehicle is on the premises.

135 Section 24F provides that if a person is convicted of an offence under section 24C, the court may order forfeiture of the relevant vehicle. Forfeiture orders cannot be made unless any person with an interest in the vehicle, who has applied to the court to make representations against forfeiture, has been allowed to present these to the court (section 24F(2)). The Secretary of State may make provision, by regulations, about the disposal of forfeited vehicles and the destination of proceeds arising from disposal.

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

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

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

139 *Subsection (6)* amends section 28D(4) of the 1971 Act to provide that a justice of the peace (or a sheriff or justice of the peace in Scotland) may issue a warrant permitting an immigration

officer to enter and search premises, where there are reasonable grounds for believing that material may be found on those premises that relate to the offence.

140 *Subsection (7)* amends section 16(2A)(b) of the Police and Criminal Evidence Act 1984, and *subsection (8)* amends Article 18(2A)(b) of the Police and Criminal Evidence (Northern Ireland) Order 1989, in order to provide that a person accompanying a constable in the execution of a warrant, may detain a vehicle.

141 *Subsection (9)* amends section 146 (2) of the Immigration and Asylum Act 1999, so that a constable may use reasonable force in order to detain a vehicle.

Clause 19: Bank accounts

142 This clause introduces measures concerned with bank and building society accounts held by persons who are known to be unlawfully present in the UK. The purpose is to require banks and building societies to check the immigration status of current account holders and to, in the majority of cases, facilitate the closure of accounts held by illegal migrants.

143 *Subsection (1)* introduces the provision set out in Schedule 4, which amends the 2014 Act by inserting new sections 40A to 40H. These sections establish requirements on banks and building societies to carry out periodic checks of the immigration status of persons holding current accounts with them. Where such checks identify that a current account holder is a "disqualified person" (i.e. an illegal migrant who the Secretary of State considers should not be provided with a current account) the bank or building society is required to notify the Secretary of State that this is the case. The Secretary of State will then either apply for a court order freezing the disqualified person's account or accounts, or will notify the bank or building society that it is under a duty to close the account as soon as reasonably practicable.

144 *Subsections (2) and (3)* place a duty on the Secretary of State to review the measures contained in Schedule 4 and prepare a report to give to Parliament. This duty must be carried out within 5 years from the date that the measures come into force in full.

Part 3: Enforcement

Clause 20: Powers in connection with examination, detention and removal

145 *Subsection (2)* amends paragraph 2(1) of Schedule 2 to the 1971 Act so that it is clear that examination by an immigration officer can happen where a person has leave, with regard to whether that leave should or should not be curtailed.

146 *Subsection (3)* inserts new paragraph 15A into Schedule 2 to the 1971 Act which gives immigration officers who are already lawfully on premises (new sub-paragraph (1)) a power to search for documents that relate to a person liable to detention and that will assist in removing them from the UK (new sub-paragraph (2)). Exercise of this power is restricted to circumstances in which there are reasonable grounds for believing sub-paragraph (2) applies and where it is necessary to obtain the documents.

147 Sub-paragraphs (4) to (10) of the new paragraph 15A provides immigration officers with a power to seize and retain relevant documents (including electronic documents) which may be evidence of grounds for curtailing a person's leave. Documents that benefit from legal privilege, such as solicitor-client correspondence, are excluded (sub-paragraph (8)). Original documents will not be retained if a photograph or copy is sufficient for the purpose of removing a person from the UK (sub-paragraph (10)).

148 *Subsections (4) and (5)* amend paragraphs 25A and 25B of Schedule 2 to the 1971 Act to clarify that these search powers also extend to electronic documents.

Clause 21: Search of premises in connection with imposition of civil penalty

149 This clause gives immigration officers, who are already lawfully on premises, a power to search for documents which might assist with imposing a civil penalty on a person. Civil penalties can be imposed when a person is employing an illegal migrant or renting premises to them (*subsection (2)*). This power is restricted to circumstances in which there are reasonable grounds for believing *subsection (2)* applies and where it is necessary to obtain the documents (*subsection (3)*).

150 *Subsections (4) to (10)* provide immigration officers with a power to seize and retain relevant documents (including electronic documents) that may be used as evidence to impose a civil penalty, such as pay slips or tenancy agreements, although documents subject to legal privilege are excluded (*subsection (8)*). Original documents will not be retained if a photograph or copy is sufficient (*subsection (10)*). *Subsection (11)* gives an employer or landlord the right to access documents that have been seized and copy them. However, if there are reasonable grounds to believe that this access would jeopardize an investigation against the employer or landlord, or the functions of an immigration officer, access will be denied.

Clause 22: Seizure and retention in relation to offences

151 Currently, when immigration officers in England and Wales search premises for immigration purposes, (e.g. to check the immigration status of a person), they can only seize evidence of a non-immigration crime if they are trained criminal investigators by relying on the Police and Criminal Evidence Act 1984 (Application to immigration officers and designated customs officials in England and Wales) Order 2013. Therefore, often immigration officers must contact the local police and await their response when they encounter non-immigration crime. In the meantime the immigration officer has no specific powers to prevent that potential evidence from being removed or destroyed.

152 This clause provides all immigration officers with a power to seize anything that has been acquired through committing a non-immigration offence, and evidence in relation to offences (*subsections (2) and (3)*), including electronic information (*subsections (4) and (5)*). Immigration officers cannot seize anything that is subject to legal privilege (*subsection (6)*).

153 *Subsection (7)* allows immigration officers to retain anything they seize under *subsections (2) to (5)* so long as necessary in all the circumstances and, in particular, for one of three purposes; use as evidence at trial; examination or investigation; or to establish the lawful owner of the property. However, *subsection (8)* provides that such items cannot be retained if a photograph or copy is sufficient. *Subsection (9)* gives an employer or landlord the right to access documents that have been seized and copy them. However, if there are reasonable grounds to believe that this access would jeopardize an investigation, access will be denied.

Clause 23: Duty to pass on items seized under section 22

154 This clause applies where an item has been seized under clause 22. Under *subsection (2)*, an immigration officer must notify the relevant investigating authority (normally the police or National Crime Agency) as soon as reasonably practicable, that they have seized items during a search.

155 *Subsection (3)* gives immigration officers the discretion to retain evidence where they have reasonable grounds for believing that it may be related to an immigration offence, as with

some offences this may not be clear at the outset. Where an immigration officer makes a notification to another public authority under subsections (2) or (3), the relevant authority will tell the immigration officer whether they will accept the item or not (*subsections (4) and (5)*). If the item is accepted, the immigration officer must hand it over to the investigating authority (*subsection (6)*). If the investigating authority does not accept the item for example, because they do not believe it is evidence of an offence, and it is not being passed to another investigating authority (*subsections (8) – (9)*), it must be returned to the person it was taken from, or to the place it was seized (*subsection (10)*).

Clause 24: Retention of things seized under Part 3 of the Immigration Act 1971

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

Clause 25: Search for nationality documents by detainee custody officers etc

157 This clause creates new search powers for detainee custody officers, prison officers and prisoner custody officers. The powers enable these officers to search a detained person who is liable to removal or deportation, or their property, when directed to do so by the Secretary of State if there are reasonable grounds to suspect that relevant documents will be found. A full search may be carried out but not in the presence of another detained person or a person of the opposite sex, including the persons conducting the search (*subsection (8)*). It does not permit an intimate search (*subsection (9)*). The purpose of the search is to obtain all documents relating to a person's nationality for example, documents that describe where a person is from and where they have been, in order to support the person's removal. The officers must then pass them to the Secretary of State. If documents are not retained by the Secretary of State, they must be returned to the person they were taken from or disposed of if return is not appropriate.

Clause 26: Seizure of nationality documents by detainee custody officers etc

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

Clause 27: Amendments relating to sections 25 and 26

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

Clause 28: Amendments to search warrant provisions

160 This clause gives effect to Schedule 5.

Clause 29: Supply of information to Secretary of State

161 This clause expands the existing information gateway in section 20 of the 1999 Act which enables the supply of information to the Secretary of State for immigration purposes so that it includes all public authorities, or a person acting on behalf of one, other than some named

exceptions. Currently, in addition to common law data sharing powers, section 20 only provides for the sharing of information, documents and articles from specified public authorities (e.g. the police and the National Crime Agency). This gives other public authorities who hold information that they are willing to share for immigration purposes, a clear statutory authority to do so.

162 *Subsection (11)* inserts a new section 20A into the 1999 Act which makes it a duty for specified persons (listed in new Schedule A1 to the 1999 Act, inserted by Schedule 6 of this Bill) to provide the Secretary of State, when directed to do so, with a nationality document which may facilitate an illegal immigrant's removal from the UK. This clause does not require the specified persons to collect data or information on behalf of the Secretary of State, or to seize documents from people, as it makes it clear that it only applies where the Secretary of State has reasonable grounds for believing that a document is already lawfully in their possession, i.e. that they hold the documents for the purposes of their own functions.

Example (1): Duty to supply information

Mr X is arrested for overstaying his leave in the UK. Immigration officers search his home for a passport or other nationality document which will assist with obtaining an emergency travel document from his embassy. They do not find one but they do discover a letter to him from his local authority. An immigration officer contacts the local authority and asks if they have taken a copy of Mr X's passport, ID card, or a record of the number. If the local authority confirms it has such a document, the immigration officer may direct that it is sent to the relevant immigration team. If the council confirms they do not have such a document, then there is no further action for them to take.

163 The Schedule of listed persons may be amended by regulations, which will be subject to affirmative procedure when adding an entry to the list and negative procedure when removing a reference or modifying an entry in consequence of a change of name or transfer of functions.

Clause 30: Detention etc. by immigration officers in Scotland

164 This clause amends the definition of "immigration offence" in the Criminal Law (Consolidation) (Scotland) Act 1995 to ensure that the Scottish powers of detention prior to arrest, and of arrest without warrant, apply to all immigration offences contained in, or for which an immigration officer has a power of arrest under, the Immigration Acts. This includes those offences listed in section 14 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 which immigration officers often encounter in the course of exercising a function under the Immigration Acts. It allows immigration officers to work effectively within the Scottish criminal justice system and ensures consistency in the immigration-related criminal investigation powers of immigration officers across the UK.

Clause 31: Interpretation of Part

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

Clause 32: Immigration bail

166 *Subsections (1) and (2)* give effect to Schedule 7.

167 *Subsection (3)* ensures that the new provisions in sub-paragraph 1(5)(a) of new Schedule 7 - where a person may be on immigration bail where they remain liable to detention, even if they can no longer be detained - apply to persons who were previously released on bail under the "old" provisions.

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

Clause 33: Power to cancel leave extended under section 3C of the Immigration Act 1971

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

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

Example (1):

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

Example (2):

These Explanatory Notes relate to the Immigration Bill as brought from the House of Commons on 2 December 2015 (HL Bill 79)

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

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

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

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

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

Part 4: Appeals

Clause 34: Appeals from within the UK: certification of human rights claims

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

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

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

177 The Secretary of State must still consider, in each case, whether temporary removal would

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

Clause 35: Continuation of leave: repeals

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

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

(i) the migrant's leave to enter or remain is revoked, or is varied with the result that he or she has no leave to enter or remain in the UK; and

(ii) an appeal against, or administrative review of, such variation or revocation decision could be brought, or is pending.

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

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

Clause 36: Deemed refusal of leave to enter: repeals

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

183 Paragraph 2A(9) applies where a person arrives at port with leave to enter that was given to him before his arrival. It provides that where such a person's leave is cancelled at port, he is to be treated as if he had been refused leave to enter at a time when he had current entry clearance under Part 5 of the 2002 Act. However, following the substantial changes made to the appeals regime by the 2014 Act, neither refusal of leave to enter, nor cancellation of entry clearance at port, gives rise to a right of appeal. Accordingly, the provision has no continuing purpose.

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

Part 5: Support for certain categories of migrant

Clause 37: Support for certain categories of migrant

185 This clause gives effect to Schedule 8.

Clause 38: Availability of local authority support

186 This clause gives effect to Schedule 9.

Clause 39: Transfer of responsibility for relevant children

187 This clause facilitates the transfer of responsibility for caring for particular categories of unaccompanied migrant children, including unaccompanied asylum seeking children, from one local authority in England, to another.

Clause 40: Duty to provide information for the purposes of transfers of responsibility

188 This clause enables the Secretary of State to direct local authorities in England to provide information about the support and accommodation provided to children in their care. This will inform arrangements made for the transfer of particular categories of unaccompanied migrant children from one local authority to another.

Clause 41: Request for transfer of responsibility for relevant children

189 This clause enables the Secretary of State to direct the provision of written reasons as to why a local authority in England refuses to comply with a request to accept responsibility for an unaccompanied migrant child from another local authority.

Clause 42: Scheme for transfer of responsibility for relevant children

190 This clause creates a mechanism for the Secretary of State to require local authorities in England to co-operate in the transfer of particular categories of unaccompanied migrant children from one local authority to another.

Clause 43: Extension to Wales, Scotland and Northern Ireland

191 This clause enables the Secretary of State to make regulations to extend any of the provisions made by clauses 39 to 42 to Wales, Scotland and Northern Ireland or make similar provision applying to Wales, Scotland or Northern Ireland.

Part 6: Border Security

Clause 44: Penalties relating to airport control areas

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

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

194 *Subsection (2)* gives effect to Schedule 10.

Clause 45: Maritime enforcement

195 This clause gives effect to Schedule 11.

Clause 46: Persons excluded from the United Kingdom under international obligations

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

197 This clause amends section 8B of the 1971 Act to consolidate UK legislation relating to

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international travel bans and provide that once a person is listed by the UN or EU as being subject to a travel ban he or she becomes an “excluded person” within the meaning of subsection (4) of section 8B.

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

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

200 *Subsections (7) and (8)* explain that a person named in, or described by, a UN Security Council Resolution or instrument of the Council of the European Union relating to travel bans, is an excluded person. Previously an individual was not an excluded person until the relevant UN or EU travel ban instrument was incorporated into UK law which required amendment to the Schedule to the Immigration (Designation of Travel Bans) Order 2000 for each travel ban implemented.

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

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

Part 7: Language Requirements for Public Sector Workers

Clause 47: English language requirements for public sector workers

203 In order to improve the quality of service provided by public authorities, such as the NHS and the Police, the government believe that workers who regularly speak to the public as part of their role must be required to speak fluent English. Fluent English is defined in this clause as a command of spoken English that enables workers, employed when or after this duty comes into effect, to perform their role effectively. The duty will only apply to public authorities defined in clause 48, and such authorities should consider a code of practice under clause 50 when deciding how to comply with the duty. The clause also requires such public authorities to operate procedures for handling complaints about breaches of the duty, and to have regard to a code of practice under clause 50 when deciding whether those procedures are adequate.

Clause 48: Meaning of “public authority”

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

Clause 49: Power to expand meaning of person working for public authority

205 This clause enables the relevant Minister to make regulations to extend the duty in clause 47 to specified categories of workers employed by private or voluntary sector providers of contracted-out public services.

Clause 50: Duty to issue codes of practice

206 This clause requires the relevant Minister to issue and keep in force one or more codes of practice for the purposes of the duty in clause 47. *Subsection (2)* lists the information that a code of practice must address including – the requisite standard of spoken English; how any failures to meet that standard can be dealt with; procedures for dealing with complaints for a breach of the duty in clause 47; and how public authorities are to comply with that duty and their other legal obligations. The clause also gives the relevant Minister discretion to make appropriate provision in the code to ensure the duty is complied with. The code’s provisions may relate to all, or specific public authorities, and may be different for different public authorities.

Clause 51: Procedure for codes of practice

207 This clause sets out the steps that the relevant Minister must take when preparing a code of practice under clause 50. The clause also allows the relevant Minister to review the code and then revise and re-issue it, so long as he has completed the steps he is required to take in relation to the original code.

Clause 52: Application of Part to Wales

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

Clause 53: Interpretation of Part

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

Clause 54: Crown application

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

Part 8: Fees

Clause 55: Immigration skills charge

211 *Subsection (2)* inserts new section 70A into the 2014 Act.

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

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

214 The primary purpose of this clause is to increase funding available for apprenticeships in the UK and address the current skills gap in the UK workforce. Therefore, any funds collected under this power must be paid to either the Consolidated Fund or applied as specified in the

regulations (new subsection (4)). All regulations must be approved by the Treasury (new subsection (5)).

Clause 56: Power to make passport fees regulations

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

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

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

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

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

Clause 57: Passport fees regulations: supplemental

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

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

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

Clause 58: Power to charge fees for passport validation services

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

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

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

226 *Subsection (6)* provides that regulations under *subsection (5)* can only be made with Treasury consent and *subsection (7)* provides that this power, like that in Clause 57, is without prejudice to existing powers to charge fees.

Clause 59: Civil registration fees

227 This clause gives effect to Schedule 12.

Part 9: Final Provisions

228 This Part provides powers to make transitional and consequential provision. It also makes provision for commencement by order and about the extent of the Act, as set out in paragraphs 48 to 52 of this document.

Schedules

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

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

230 Part 2 amends Part 3 of the 2003 Act (premises licences) with *paragraph 4* providing that a person without the entitlement to work in the UK may not apply for a licence to sell alcohol from particular premises, for example a public house, or to provide late night refreshment. The scheme only applies to licensees who are resident in the UK. Non-resident licensees are not subject to immigration controls.

231 *Paragraph 3* provides for the Secretary of State to be added to the list of responsible authorities notified when an application for a premises licence is submitted. This will enable the Secretary of State to make relevant representations in respect of such an application if she is satisfied that issuing the licence would undermine the licensing objective of the prevention of crime and disorder. Illegal working is a crime under the new offence created by clause 8 of this Bill and employing an illegal worker may also be an offence if the mens rea is satisfied under the offence amended by clause 9 of this Bill.

232 *Paragraph 5* inserts a new subsection (1A) into section 27 of the 2003 Act with the effect that an existing premises licence lapses if the licence holder ceases to be entitled to work in the UK. *Paragraphs 6 to 11* provide that this provision also applies to applications to transfer a licence and to interim authority notices.

233 Part 3 amends Part 6 of the 2003 Act (personal licences) with the effect that an applicant for a personal licence must have an entitlement to work in the UK and provides that the commission of immigration offences and requirements to pay civil penalties under immigration law on employers and landlords of illegal migrants may be considered by licensing authorities when considering whether to grant a licence. The commission of immigration offences may be considered by courts when considering forfeiture. Part 3 prescribes the circumstances in which a person has been required to pay a civil penalty, with reference to periods for objecting and appealing and the arrangements for establishing an excuse by conducting specified checks on workers and tenants.

234 *Paragraph 13* amends section 113 of the 2003 Act. *Paragraph 13(3)*, together with *paragraph 21*, inserts a new subsection (2A) into section 113 and amends Schedule 4 to the 2003 Act, to make an immigration offence a relevant offence for the purposes of Part 6 of the 2002 Act; and subparagraph (4) inserts provision defining 'immigration penalty' and provides when a person is treated as being subject to such a notice.

235 *Paragraph 14* amends section 115 of the 2003 Act (period of validity of personal licence) to provide that a personal licence ceases to have effect if the holder ceases to be entitled to work in the UK.

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- 236 *Paragraph 15* amends section 120 of the 2003 Act (determination of application for grant) to provide that if the applicant for a personal licence has been convicted of an immigration offence or been issued with an immigration penalty the chief officer of police and the Secretary of State must be notified of the application. New subsection (5B) of the 2003 Act provides that if, having regard to the applicant's commission of an immigration offence (or foreign comparable offence) or requirement to pay an immigration penalty, the Secretary of State is satisfied that granting the licence would be prejudicial to the prevention of illegal working in licensed premises, the Secretary of State must issue an immigration objection notice within 14 days. *Paragraph 16* amends section 122 of the 2003 Act and inserts a new subsection (2A) into that section to provide for notification by the licensing authority of its decision after the Secretary of State has given an immigration objection notice. *Paragraph 17* amends section 123 of the 2003 Act to deal with convictions for an immigration offence or requirement to pay an immigration penalty during the application period and *paragraph 18* amends section 124 of the 2003 Act to make provision for convictions for an immigration offence or requirement to pay an immigration penalty which come to light after the grant of a personal licence. New subsection (3B) sets out the steps the Secretary of State may take on being notified of a previous immigration offence or requirement to pay an immigration penalty.
- 237 *Paragraph 19* amends section 125(3) of the 2003 Act to require details of immigration penalties to be included in a personal licence and *paragraph 20* amends section 132 of the 2003 Act to require a licence holder to notify a licensing authority if required to pay an immigration penalty.
- 238 *Paragraph 22* amends section 179 of the 2003 Act to provide power for an immigration officer to enter premises which he has reason to believe are being used for certain licensable activities with a view to seeing whether immigration offences are being committed in connection with that activity.
- 239 Part 5 amends Schedule 5 to the 2003 Act to enable the Secretary of State to appeal against a decision of a licensing authority where the Secretary of State has given notice opposing a transfer of a premises licence (*paragraph 24*), an interim authority notice (*paragraph 25*) or grant of a personal licence (*paragraph 27*). *Paragraph 28* inserts into Schedule 5 to the 2003 Act provision that on any appeal, a magistrates' court may not consider whether or not the individual should have been granted leave to enter or remain in the UK.
- 240 Part 6 amends the interpretation section of the 2003 Act (sections 193 and 194) to include a definition of the prevention of illegal working in licensed premises for the purpose of Parts 2 and 3 of this Schedule, and includes immigration offences and penalties in the Act's index of defined expressions.
- 241 Part 7 makes provision for transitional arrangements. *Paragraph 34* provides that a premises licence issued before these measures come into force will not lapse if the holder's entitlement to work in the UK ceases. *Paragraph 35* makes the same provision in respect of personal licences. *Paragraph 36* relates to personal licences granted before or after the measures comes into force and has the effect of providing that a licensing authority may take account of immigration offences which were committed before or after the commencement of these measures when considering applications for personal licences.

Schedule 2: Private hire vehicles etc.

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Metropolitan Public Carriage Act 1869 (c.115)

242 *Paragraph 1* states that the following paragraphs make changes to the taxi licensing regime for London by amending the Metropolitan Public Carriage Act 1869 ('the 1869 Act'). The changes made to the 1869 Act are slightly different to those made to the Local Government (Miscellaneous Provisions) Act 1976 and the Private Hire Vehicles (London) Act 1998. This is because part of the taxi licensing regime in London is governed by secondary legislation rather than primary legislation (the London Cab Order 1934). The intention is that this order will be amended in line with these provisions.

243 *Paragraph 3* inserts a new section 8A into the 1869 Act which ensures that where someone's immigration leave is time-limited to less than the statutory length for a driver licence, the licence will be issued for a duration which does not exceed the applicant's period of leave. Where an applicant's leave has been extended by virtue of section 3C of the Immigration Act 1971 any licence granted will be limited to a period not exceeding six months.

244 Where a licence holder's leave comes to an end (for example, through curtailment) their licence automatically lapses. When this happens the holder must return their licence, any copy, and their driver's badge to the licensing authority. A person who fails to do so within seven days, without reasonable cause, will be committing an offence and, on summary conviction, is liable to a fine not exceeding level 3 on the standard scale, and in the case of a continuing offence, a daily fine for each day they fail to return the documents after conviction.

The Local Government (Miscellaneous Provisions) Act 1976

245 *Paragraph 4* states that the following paragraphs make changes to the taxi and private hire vehicle licensing regime in England and Wales (except London) by amending the Local Government (Miscellaneous Provisions) Act 1976 ('the 1976 Act').

246 *Paragraphs 5, 8 and 10* amend the 1976 Act to provide that driver and operator licences shall not be issued to applicants who are disqualified by their immigration status (*paragraph 5* deals with private hire vehicle drivers, *paragraph 8* with operators and *paragraph 10* with taxi drivers). The licensing authority must have regard to any guidance issued by the Secretary of State in making a decision about someone's immigration status.

247 *Paragraph 7* inserts a new section 53A into the 1976 Act which ensures that where someone's immigration leave is time-limited to less than the statutory length for a driver's licence, the licence will be issued for a duration which does not exceed the applicant's period of leave. Where an applicant's leave has been extended by virtue of section 3C of the Immigration Act 1971 any licence granted will be limited to a period not exceeding six months.

248 Where a licence holder's leave comes to an end (for example, through curtailment) their licence automatically lapses. When this happens the holder must return their licence, any copy, and their driver's badge to the licensing authority. A person who fails to do so within seven days, without reasonable cause, will be committing an offence and on summary conviction, is liable to a fine not exceeding level 3 on the standard scale, and in the case of a continuing offence, a daily fine for each day they fail to return the documents after conviction.

249 *Paragraph 9* inserts a new section 55ZA which makes similar amendments as new section 53A in respect of operator licences.

250 *Paragraphs 11 and 12* make amendments to the 1976 Act to specify that grounds for suspension and revocation of driver and operator licences include where the holder has been convicted of an immigration offence or required to pay an immigration penalty.

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251 *Paragraph 13* clarifies that on any appeal against the refusal or revocation of a licence under part II of the 1976 Act, the court is not entitled to consider whether the appellant should be granted leave, or has been granted leave subsequent to the decision being appealed.

252 *Paragraph 14* inserts new section 79A into the 1976 Act which defines persons ‘disqualified by reason of immigration status’, which is used in the rest of the new provisions, as meaning someone who is subject to immigration control and has no valid and extant leave in the UK, or no right to undertake the work in question. It also specifies that these provisions apply to those who are on immigration bail who have no right to work, and defines a licensable activity.

253 *Paragraph 14* also inserts new section 79B which details what are relevant immigration offences and immigration penalties for the purposes of these provisions.

Private Hire Vehicles (London) Act 1998

254 *Paragraph 15* states that the following paragraphs make changes to the private hire licensing regime in London by amending the Private Hire Vehicles (London) Act 1998 (‘the 1998 Act’).

255 *Paragraph 16* adds a definition of ‘operate’ to the 1998 Act because this term is subsequently used in other amendments made to the 1998 Act.

256 *Paragraphs 17 and 19* amend the 1998 Act to provide that driver and operator licences shall not be issued to applicants who are disqualified by their immigration status. The licensing authority must have regard to any guidance issued by the Secretary of State in making a decision about someone’s immigration status.

257 *Paragraph 18* inserts a new section 3A into the 1998 Act which ensures that where someone’s immigration leave is time-limited to less than the statutory length for an operator’s licence, the licence will be issued for a duration which does not exceed the applicant’s period of leave. Where an applicant’s leave has been extended by virtue of section 3C of the Immigration Act 1971, any licence granted will be limited to a period not exceeding six months.

258 Where a licence holder’s leave comes to an end (for example, through curtailment) their licence automatically lapses. When this happens the holder must return their licence and driver’s badge to the licensing authority. A person who fails to do so within seven days, without reasonable cause, will be committing an offence and on summary conviction, is liable to a fine not exceeding level 3 on the standard scale, and in the case of a continuing offence, a daily fine for each day they fail to return the documents after conviction.

259 *Paragraph 20* inserts a new section 13A which make similar amendments as new section 3A in respect of driver licences.

260 *Paragraph 21* makes amendments to the 1998 Act to specify that grounds for suspension and revocation of driver and operator licences include where the holder has been convicted of an immigration offence or required to pay an immigration penalty

261 *Paragraph 22* clarifies that on any appeal against the refusal or revocation of a licence under the 1998 Act the court is not entitled to consider whether the appellant should be granted leave, or has been granted leave subsequent to the decision being appealed.

262 *Paragraph 23* inserts new section 35A into the 1976 Act which defines ‘persons disqualified by reason of immigration status’, which is used in the rest of the new provisions, as meaning someone who is subject to immigration control and has no valid and extant leave in the UK, or

no right to undertake the work in question. It also specifies that these provisions apply to those who are on immigration bail who have no right to work, and defines a licensable activity.

263 *Paragraph 23* also inserts new section 35B which details what are relevant immigration offences and immigration penalties for the purposes of these provisions.

Schedule 3: Illegal working closure notices and compliance orders

Paragraph 1: Illegal working closure notices

264 Sub-paragraphs (1) and (2) provide that a chief immigration officer or above can issue a notice to close business premises or a place of work for a specified period if two conditions are met (see below). The closure notice does not apply to a person who lives on the premises or who is authorised in writing by an immigration officer, to access the premises. The closure notice prohibits paid or voluntary work on the premises unless authorised in writing by an immigration officer.

265 Sub-paragraphs (3) and (4) set out the first condition, which is that there is an illegal worker employed by an employer operating at the premises. This is an employee who is subject to immigration control and does not have valid leave or whose leave prohibits employment.

266 Sub-paragraph (5) sets out the second condition, which is that the employer of the illegal worker, or a person connected with that employer, has previously breached illegal working legislation. This includes being convicted for an illegal working offence, receiving a valid civil penalty within the last three years or a valid civil penalty at any time which has not been paid. Sub-paragraph (8) describes people connected to the employer who may also fulfill the second condition.

267 Sub-paragraph (6) ensures that a conviction which is deemed spent is not relevant when determining whether the first condition for issuing the notice is satisfied.

268 Sub-paragraph (7) defines a valid civil penalty.

269 Sub-paragraph (9) prevents a notice being issued where the employer can show that he has conducted right to work checks in respect of each illegal worker.

270 Sub-paragraphs (10) and (11) require an immigration officer to make reasonable efforts to inform people who live on the premises and consult others as appropriate before issuing a notice.

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

Paragraph 2: Illegal working closure notices: further provision

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

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

274 Sub-paragraphs (5) and (6) provide that an immigration inspector can extend the period of

closure by 24 hours for up to a maximum of 48 hours.

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

Paragraph 3: Cancellation of closure notices

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

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

Paragraph 4: Service of notices

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

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

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

Paragraph 5: Illegal working compliance orders

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

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

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

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

285 Sub-paragraph (7) is self explanatory.

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

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

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

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

Paragraph 6: Compliance orders: adjournment of hearing

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

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

Paragraph 7: Extension of illegal working compliance orders

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

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

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

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

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

Paragraph 8: Variation or discharge of illegal working compliance orders

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

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

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

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

Paragraph 9: Notice and orders: appeals

301 Sub-paragraph (1) provides that an appeal can be made against a decision to make, extend,

vary or not discharge an illegal working compliance order, or to continue an illegal working closure notice, by the person on whom the closure notice was served or any other person who has an interest in the premises.

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

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

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

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

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

Paragraph 10: Notice and orders: enforcement

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

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

Paragraph 11: Notices and orders: offences

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

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

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

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

Paragraph 12: Access to other premises

313 Sub-paragraph (1) allows the owner of premises which are in another part of the building or structure in which the closed premises are situated to apply for access where it is prohibited

by an illegal working compliance order.

314 Sub-paragraph (2) requires notice of such an application to be served on an immigration officer, each person on whom the closure notice was served and any other person with an interest in the premises.

315 Sub-paragraphs (3) and (4) permit the court to make whatever order it thinks appropriate in relation to access to another part of the building or structure in which the closed premises is situated.

Paragraph 13: Reimbursement of costs

316 Sub-paragraph (1) allows the Secretary of State to apply to the court for an order requiring the owner or occupier of the premises to reimburse her for the costs of clearing, securing or maintaining the premises in respect of which an illegal working compliance order is in force.

317 Sub-paragraph (2) allows the court to make an order requiring the owner or occupier of the premises to reimburse the Secretary of State in full or in part.

318 Sub-paragraph (3) requires an application for reimbursement of costs to be made within 3 months of the illegal working compliance order ceasing to have effect.

319 Sub-paragraph (4) provides that an order for reimbursement of costs may only be made against a person who has been served with an application for the order.

Paragraph 14: Exemption from liability

320 Sub-paragraph (1) lists the persons who are exempt from liability for damages in certain categories of proceedings arising from acts or omissions in the exercise of a power under this Schedule.

321 Sub-paragraph (2) disapplies the exemption if the act or omission was in bad faith.

322 Sub-paragraph (3) clarifies that the exemption does not prevent the award of damages if the act or omission was unlawful under section 6(1) of the Human Rights Act 1998.

323 Sub-paragraph (4) clarifies that this exemption does not affect any other exemption under common law or otherwise.

Paragraph 15: Compensation

324 Sub-paragraphs (1) and (2) allow a person who claims to have suffered financial loss as a consequence of an illegal working closure notice or compliance order to apply to the court for compensation within 3 months of the notice or order ceasing to have effect.

325 Sub-paragraph (3) permits the court to order payment of compensation out of money provided by Parliament and lists the conditions which are to be met.

326 Sub-paragraph (4) prevents a person from claiming compensation for financial loss relating to their work.

Paragraph 16: Guidance

327 Sub-paragraphs (1) and (2) permit the Secretary of State to issue and revise guidance in relation to illegal working closure notices and compliance orders.

328 Sub-paragraph (3) requires the Secretary of State to consult certain persons before issuing or revising such guidance.

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

Paragraph 17: Interpretation

330 This paragraph defines the terms used in the Schedule.

Schedule 4: Bank accounts

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

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

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

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

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

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

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

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

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

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make withdrawals or payment transfers from the account, subject to exceptions outlined below. A person other than the disqualified person may also be prevented from making withdrawals or payments from an account if it is jointly controlled with the disqualified person and the court consider it appropriate.

- 340 Freezing orders will not be limited to current accounts but may include any account which the disqualified person holds with the bank or building society provided notice has been given to the Secretary of State following an immigration check. The Secretary of State will have discretion as to which accounts are included in the application for a freezing order and the court will have discretion as to which accounts it includes in any order.
- 341 Where an account is frozen the order may make provision to allow payments necessary to meet an individual's basic living needs and legal expenses.
- 342 New section 40E makes statutory provision for appeals against freezing orders.
- 343 New section 40G establishes duties that will apply where a bank or building society has been notified that the Secretary of State does not intend to seek a freezing order (or where an application for a freezing order is unsuccessful, or where a freezing order is made but subsequently discharged). Subsection (2) requires that the bank or building society must close the accounts in question as soon as is reasonably practicable. This will allow notice to be given in line with the terms and conditions of an account. In the case of accounts that are overdrawn, or where the bank or building society believes that closure would significantly adversely affect other persons or bodies who operate or hold the accounts, the bank or building society may further delay closure for a reasonable period, but not indefinitely. This will enable the bank or building society to take necessary action to resolve the situation, including action to recover debt or open new accounts for third parties if that is appropriate.
- 344 Subsection (5) of new section 40G also provides that a bank or building society can comply with the duty in subsection (2) without closing an account. This will be the case where the account is also operated by others who are not disqualified persons and the bank or building society can prevent the disqualified person from continuing as a holder, beneficiary or signatory of the account while leaving the account open.
- 345 Where an account is closed under subsection (2) of new section 40G, the account holders must be informed that the closure is due to the fact that the account is operated by or for a disqualified person, where the bank may lawfully do so (that is, where notifying the person does not conflict with other legal duties). If a disqualified person is prevented from continuing to operate an account under subsection (5), account holders must also be informed.
- 346 The bank or building society will be under a further duty to notify the Secretary of State of the action it has taken to comply with the duty, in a manner to be prescribed in subsequent regulations made by the Treasury.
- 347 *Paragraph 3* amends section 41 of the 2014 Act to enable the Treasury to make regulations to enable the Financial Conduct Authority to regulate banks and building societies' compliance with these new requirements.
- 348 *Paragraph 4* of Schedule 4 amends section 42 of the 2014 Act with the effect that the definitions of 'bank' and 'building society' which it contains also apply in the case of these new sections inserted into the 2014 Act by paragraph 2 of Schedule 4 to the Bill.
- 349 *Paragraph 5* extends to the new clauses the power to amend the categories of institution or

account to which the provisions apply. This power is contained in section 43 of the 2014 Act.

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

351 *Paragraph 7* amends the Civil Jurisdiction and Judgments Act 1982, to ensure that a freezing order made under new section 40D is in the category of judgments which can be enforced across the UK.

Schedule 5: Amendments to search warrant provisions

352 When immigration warrants to enter premises were first added to the 1971 Act they closely reflected those available to the police in England and Wales, but over time amendments have been made to the Police and Criminal Evidence Act 1984 (PACE) so that the provisions are no longer aligned. This hampers efficient joint-working between immigration and police officers, as well as other agencies that are used to working alongside the police. The new measures amend current laws to resolve the discrepancies between police and immigration warrants.

353 *Paragraph 2(3)* inserts new subsections (1A) to (1D) into section 28D of the 1971 Act. Under these new sections, one warrant can be used to enter multiple premises on a number of different occasions where necessary. Likewise, *paragraph 3(3)* does the same for warrants obtained under section 28FB of the 1971 Act, *paragraph 6(3)* for warrants obtained under paragraph 25A of Schedule 2 to the 1971 Act and *paragraph 7(3)* for a warrant obtained under section 45 of the UK Borders Act 2007.

354 *Paragraph 4* amends section 28J (search warrants: safeguards) of the 1971 Act to clarify the matters which must be specified in the application for an entry warrant which authorises multiple entries or entry to multiple premises.

355 *Paragraph 5* amends section 28K (execution of warrants) of the 1971 Act. Sub-paragraph (2) inserts new subsections (2A) and (2B) which provide that any person who accompanies an immigration officer has the same power as the immigration officer in executing a warrant and seizing items to which the warrant relates, but only where supervised. Sub-paragraph (3) extends the validity of an immigration warrant from 1 to 3 months. Sub-paragraph (4) inserts new subsections (3A) and (3B) which give detail on the authorisation required for entry to those premises not specified on an all premises warrant and for entry a second or subsequent time on multiple entry warrants respectively. Sub-paragraph (6) inserts new subsection (8C) which removes the requirement for immigration search warrants obtained in Scotland to be returned after they have been executed. This reflects the treatment of warrants under the Scottish criminal justice system.

Schedule 6: Duty to supply nationality documents to Secretary of State: persons to whom duty applies

356 This is the new Schedule A1 to the 1999 Act which specifies the persons to whom the duty in new section 20A of the 1999 Act applies.

Schedule 7: Immigration bail

Part 1 - Main provisions

357 Prior to the amendments made by this Schedule, there were a number of provisions under which a person who would otherwise have been held in immigration detention, could be released or have avoided being detained altogether. These were generally known as:

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temporary admission; temporary release; release on restrictions; and immigration bail. The Schedule replaces these with a new consolidated framework.

- 358 Sub-paragraphs (1) to (3) of *paragraph 1* set out all the categories of persons being detained or liable to be detained who may be given immigration bail by the Secretary of State or the Tribunal. The paragraph also clarifies that a person can be granted immigration bail even if they are still liable to immigration detention, but cannot currently be detained, and the point at which immigration bail will end.
- 359 *Paragraph 2* sets out the different conditions which may be applied to a person on immigration bail. A person cannot be given bail without being subject to at least one of these conditions. Sub-paragraph (3) and (4) provides the Secretary of State with the power to specify that a person's immigration bail includes a condition on electronic monitoring and/or residence. Prior to the amendments made by sub-paragraph (3) and (4), the Tribunal could decide not to apply an electronic monitoring or residence request made by the Secretary of State, (although in practice the Tribunal often granted the request). It is in the event of such a refusal by the Tribunal that the Secretary of State would, if she considered it appropriate, use her power to require that bail is subject to such a condition.
- 360 Sub-paragraph (2) of *paragraph 3* sets out the factors which must be taken into account when deciding whether to grant immigration bail and what conditions should be imposed. Sub-paragraphs (3) and (4) prevent the Tribunal from granting bail in certain circumstances, where removal of the person from the UK is imminent. Sub-paragraphs (5) to (8) require the decision to give bail to be set out in a notice.
- 361 Sub-paragraph (8) explains that immigration bail can be conditional upon specific requirements being met. For example, if electronic monitoring is a condition for bail, bail will not begin until the equipment has been installed to allow monitoring.
- 362 *Paragraph 4* replaces section 36 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004, which will be repealed, in setting out the electronic monitoring condition.
- 363 *Paragraph 5* provides for the ability to insist on a financial condition being required as a condition of bail, and sets out how monies owed can be collected if a bail conditions are not adhered to and a financial condition is in place.
- 364 *Paragraph 6* sets out when a person's conditions of bail may be amended or removed, or new conditions may be added, (as already set out in *paragraph 3*), by the Secretary of State or the Tribunal (whoever is managing that bail). The Tribunal may also choose to direct that the Secretary of State takes over management of the conditions where it has initially granted bail. Notice of a decision to vary bail must be given to the person on immigration bail.
- 365 The Secretary of State's ability to require a person to live at a particular address could be undone by that person's inability (for example, in having insufficient finances) to live at that address. *Paragraph 7* provides a power for the Secretary of State to provide accommodation. However, it may only be used where the Secretary of State requires residence at a particular address that she has specified as part of the imposition/mandating of the residence condition; it is not intended that the power is available where, for example, a person proposes a bail address which the Secretary of State accepts (even if the Secretary of State accepts the bail address and imposes/mandates a residence condition for that address).
- 366 *Paragraph 8* provides a specific power of arrest for failing to comply, or being likely to fail, with a condition of immigration bail. This is a civil (sometimes known as "administrative")

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

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

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

Part 2: Consequential amendments

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

Schedule 8: Support for certain categories of migrant

Part 1: Amendments of the Immigration Acts

370 The 1999 Act contains powers to support destitute asylum seekers and their dependants under section 95 of the Act. Failed asylum seekers and their dependants may also be supported under section 95 (if there were children aged under 18 in their household at the time their asylum claim and any appeal was finally rejected) or under section 4(2) of the 1999 Act. Certain other categories of migrants may be supported under section 4(1) of the 1999 Act.

371 Section 95 and section 4 both contain powers to make Regulations by negative resolution procedure to set out the circumstances and ways in which support may be provided.

372 This Schedule amends these provisions:

- a. Persons who have children in their household at the time their asylum claim and any appeal is finally rejected will no longer be treated as though they were still asylum seekers and so will no longer be eligible for support under section 95;
- b. Persons who have been refused asylum but made further submissions that they have asked to be treated as a fresh claim for asylum may be eligible for support under section 95 if a decision on the further submissions has not yet been made;
- c. Persons whose further submissions have been rejected but who have been granted permission to apply for a judicial review of the rejection may be eligible for support under section 95.

373 The Schedule repeals the whole of section 4 of the 1999 Act and creates a new power (“section 95A”) to support failed asylum seekers and their dependants who can demonstrate that they are destitute and that they face a genuine obstacle to leaving the UK at the point their appeal rights are exhausted.

374 The precise circumstances that will constitute a genuine obstacle may be set out in regulations. An example of a genuine obstacle may be the inability to access the requisite documentation in order to travel. As is already the case in respect of section 95 support, regulations may also

specify how support may be provided. For example, support may be provided in the form of cash or vouchers that enable the persons to meet their daily living needs.

Part 2: Transitional provision

375 The Schedule also provides for transitional arrangements for failed asylum seekers who are currently supported under section 4 (mostly single adults but some families with children) and section 95 (all families with children) at the time the new arrangements come into force. Both categories will continue to be supported, but regulations will allow greater flexibility in determining the scope of the support. For example, in all cases support may be provided in the form of vouchers or cash (cash may not currently be provided in section 4 cases) but to continue to access support, persons may be required to show that they are complying with specified steps to facilitate their departure from the UK.

376 There will be no right of appeal against a decision to discontinue support provided to transitional cases or against a decision to refuse or discontinue support provided under section 95A.

Schedule 9: Availability of local authority support

377 Schedule 3 to the 2002 Act already restricts the availability of local authority support to migrants without immigration status.

378 *Paragraph 2* of Schedule 9 to the Bill amends paragraph 1(1) of Schedule 3 to the 2002 Act so that, in England, adult migrant care leavers (who are nearly all former asylum seeking children whose asylum and any other human rights claims have failed) who have exhausted their appeal rights and have established no lawful basis to remain here, are prevented from accessing local authority support for care leavers under the Children Act 1989.

379 *Paragraph 3* prevents local authorities in England from paying the higher education tuition fees of adult migrant care leavers deemed to be overseas students because of their immigration status. Instead, to obtain such support, the person will, like other migrants, be required to qualify under the Education (Student Support) Regulations 2011 (SI 2011/1986).

380 *Paragraph 5* of this Schedule inserts a new paragraph 3A in Schedule 3 to the 2002 Act, which means that accommodation and subsistence support will be provided by local authorities in England to destitute families without immigration status under the regulations made under the new paragraph 10A of Schedule 3 to the 2002 Act (*paragraph 8* of this Schedule) rather than under section 17 of the 1989 Act. However, this Schedule will ensure that section 17 of the 1989 Act will remain available to the local authority, together with its other Children Act powers and duties, to deal with any other needs of the child or their family which the local authority considers it is necessary to meet in order to safeguard and promote the child's welfare.

381 *Paragraph 5* also inserts new paragraphs 3B and 3C in Schedule 3 to the 2002 Act, which mean that support will be provided by local authorities in England to adult migrant care leavers under the regulations made under the new paragraph 10B of Schedule 3 to the 2002 Act (*paragraph 8* of this Schedule), or under the new section 95A of the 1999 Act, rather than under the Children Act 1989.

382 *Paragraph 8* of this Schedule inserts a new paragraph 7B in Schedule 3 to the 2002 Act to provide a new simplified definition in England of a person without immigration status, who will generally be ineligible for the forms of local authority support listed in paragraph 1(1) of Schedule 3.

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383 *Paragraph 9* of this Schedule inserts a new paragraph 10A in Schedule 3 to the 2002 Act, under which regulations may be made, subject to Parliamentary approval, to enable local authorities in England to provide for the accommodation and subsistence needs of destitute families without immigration status (according to the definition set out in the new paragraph 7B). The circumstances in which this support may be provided are where:

- a. The family has an outstanding specified immigration application or appeal (destitute asylum seekers and destitute failed asylum seekers who face a genuine obstacle to departure at the point their appeal rights are exhausted will be supported by the Home Office);
- b. The family has exhausted all appeal rights and has not failed to co-operate with arrangements to leave the UK; or
- c. The local authority is satisfied that the provision of support is necessary to safeguard and promote the welfare of a dependent child.

384 *Paragraph 9* also inserts a new paragraph 10B in Schedule 3 to the 2002 Act under which regulations will be made by the Secretary of State, subject to Parliamentary approval, to enable local authorities in England to provide for the support of adult migrant care leavers who have:

- a. Exhausted their appeal rights in respect of their asylum claim but have an outstanding specified immigration application or appeal and are destitute; or
- b. Exhausted their appeal rights and do not qualify for Home Office support under the new section 95A of the 1999 Act inserted by Schedule 8 because there is no genuine obstacle to their departure from the UK, but the local authority is satisfied that support needs to be provided. This will enable the local authority to ensure that support does not end abruptly and there can be a managed process of encouraging and enabling departure from the UK.

385 By virtue of paragraph 11 of Schedule 3 to the 2002 Act, the regulations under paragraph 10B will enable local authorities to provide such other social care support, as well as accommodation and subsistence, as they consider necessary in individual circumstances.

Schedule 10: Penalties relating to airport control areas

386 *Paragraph 1* inserts new Part 1A into Schedule 2 to the 1971 Act.

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

388 Paragraph 28A of new Part 1A requires the Secretary of State to issue a code of practice to be followed by aircraft agents or operators and airport managers who have been issued with designation notices (sub-paragraph (1)). Sub-paragraphs (2) and (4) require the Secretary of State to have regard to the codes and other relevant matters when deciding whether to impose a penalty, when imposing a penalty and when considering a notice of objection. Sub-paragraph (3) requires the Secretary of State to issue a code of practice specifying the matters to be considered in determining the amount of a penalty in individual cases. Sub-paragraphs

(5) and (8) require the Secretary of State to lay the codes (and revised codes) before Parliament in draft. Sub-paragraphs (6) and (8) provide for the codes (and revised codes) to come into force under regulations made by the Secretary of State. Sub-paragraph (7) provides for the Secretary of State to review the codes and revise and re-issue them following such a review.

Paragraph 28B - penalty notices

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

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

Paragraph 28C - objections

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

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

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

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

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

Paragraph 28D - appeals

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

397 Sub-paragraph (2) provides that an appeal can only be brought if the appellant has objected to the notice.

398 Sub-paragraph (3) requires that the appeal must be made within 28 days of the notification of the decision.

399 Sub-paragraph (4) provides for the court to allow the appeal and either cancel or reduce the penalty; or dismiss the appeal.

400 Sub-paragraph (5) requires the appeal to be a re-hearing of the Secretary of State's decision to impose a penalty and to be determined having regard to: any extant codes of practice under paragraph 28A, and any other matters which the court thinks relevant (which may include matters of which the Secretary of State was unaware).

401 Sub-paragraph (6) allows for a full re-hearing under sub-paragraph 3 irrespective of the Civil Procedure Rules (Part 52), or other rules applying to the court in question, that stipulate that

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an appeal must be on the basis of a point of law.

402 Sub-paragraph (7) and (8) stipulates that in this section “the court” means: the county court if the appeal relates to a penalty notice for a failure to comply at an airport in England and Wales; the sheriff, if the appeal relates to a penalty for a failure to comply at an airport in Scotland; and a county court in Northern Ireland if the appeal relates to a penalty for a failure to comply at an airport in Northern Ireland.

Paragraph 28E - enforcement

403 Sub-paragraph (1) stipulates that this paragraph applies where a sum is payable to the Secretary of State as a penalty under paragraph 28.

404 Sub-paragraph (2) stipulates that the penalty is recoverable in England and Wales as if it were payable under an order of the county court in England and Wales.

405 Sub-paragraph (3) states that the penalty may be enforced in Scotland in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

406 Sub-paragraph (4) stipulates that the penalty is recoverable in Northern Ireland as if it were payable under an order of a court in Northern Ireland.

407 Sub-paragraph (5) stipulates that where action is taken for the recovery of a sum payable as a penalty, the penalty is: in relation to England and Wales to be treated for the purposes of section 98 of the Courts Act 2003 as if it were a judgment entered in the county court; and in relation to Northern Ireland to be treated for the purposes of Article 116 of the Judgments Enforcement (Northern Ireland) Order 1981 as if it were a judgment in respect of which an application has been accepted under Article 22 or 23(1) of that Order.

408 Sub-paragraph (6) stipulates that money paid to the Secretary of State as a penalty under *paragraph 28* must be paid into the Consolidated Fund.

Paragraph 28F - service of documents

409 Sub-paragraph (1) stipulates that a document served on a person outside the UK as part of the penalty notice, objections or enforcement provisions of this section can be served: in person; by post; by fax; by email; or by any other prescribed manner.

410 Sub-paragraph (2) provides for the Secretary of State to make regulations stipulating that a document served as above, and in accordance with the regulations, is to be taken to have been received at a time specified by or determined in accordance with the regulations.

Paragraph 28G - interpretation of this part of this schedule

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

Paragraph 28H - regulations under this part of this schedule

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

Schedule 11: Maritime enforcement

- 413 The maritime powers in the Bill are intended to combat three immigration offences in the territorial waters of the UK. Those offences are assisting unlawful immigration, assisting an asylum-seeker to arrive in the UK, and assisting entry to the UK in breach of a deportation or exclusion order (“the facilitation offences”). Prior to the amendments set out in this schedule, immigration officers had no powers to tackle facilitation offences committed beyond UK soil. Therefore immigration officers were powerless to stop ships being used to carry illegal migrants in UK waters until those ships reached port. This schedule changes that.
- 414 *Paragraphs 1 to 4(a) and 4(c)* make technical amendments to the facilitation offences to extend their scope to cover attempted facilitation. *Paragraphs 1 and 2* extend the offence of facilitating a breach of immigration law by a non-EU citizen, to cover a person who facilitates an attempted breach. *Paragraph 3* amends section 25A of the 1971 Act to include facilitating the attempted arrival or entry into the UK by an asylum-seeker. Sub-paragraph 4(a) amends section 25B of the 1971 Act to include facilitating the attempted breach of a deportation order. Sub-paragraph 4(c) amends 25B of the 1971 Act to include facilitating the attempted breach of an exclusion order made on the grounds of public policy, public security or public health.
- 415 Section 25B(2) of the 1971 Act refers to the Secretary of State personally directing the exclusion of an EU citizen from the UK for the public good. This part of the offence is out of alignment with the actual power and legal test to make exclusion orders in regulation 19 of the Immigration (European Economic Area) Regulations 2006 (“the 2006 Regulations”). Sub-paragraph 4(b) aligns section 25B(2) with the 2006 Regulations by removing the reference to the Secretary of State personally making these decisions and allowing them to be made by junior ministers or officials of the Secretary of State. Sub-paragraph 4(b) also aligns the reference to the legal test for an exclusion order in the offence with that in Regulation 21 of the 2006 Regulations to ensure it applies to exclusion orders made on the grounds of public policy, public security or public health. Sub-paragraph 4(d) ensures that the section 25B offence does not overlap with the separate existing offence of breaching a temporary exclusion order in section 10 of the Counter-Terrorism and Security Act 2015.
- 416 *Paragraph 5* disapplies the requirement in Section 3 of the Territorial Waters Jurisdiction Act 1878 to obtain the consent of the Secretary of State to prosecute the facilitation offences committed in UK territorial waters.
- 417 *Paragraph 6* clarifies that the existing powers of arrest without warrant for the facilitation offences are available in respect of attempted facilitation offences.

New Part 3A to 1971 Act

- 418 *Paragraph 7* of this schedule inserts new Part 3A after Part 3 of the 1971 Act. Part 3A sets out the circumstances in which immigration officers, the police and members of the Armed Services can use the powers to stop, board, divert and detain a ship set out in new Schedule 4A of the 1971 Act (for which, see notes on [paragraph 8](#) below).
- 419 New section 28M subsections (1) and (2) set out an immigration officer’s, police officer’s and member of the Armed Services’ powers to combat the facilitation offences in the territorial waters adjoining England and Wales. Those powers are principally to stop, board, divert and detain any ship suspected of involvement in a facilitation offence, regardless of the ship’s nationality. Subsection (3) makes clear that the authority of the Secretary of State is required before these powers can be exercised in relation to a foreign ship or ship registered in the Isle of Man, Channel Islands, or a British Overseas Territory. Subsection (4) stipulates that this

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authority can only be given in respect of a foreign ship where the exercise of the powers would be in accordance with the United Nations Convention on the Law of the Sea.

- 420 New sections 28N and 28O make equivalent provision to section 28M in respect of the territorial waters adjacent to Scotland and Northern Ireland.
- 421 Section 28P provides officers with a power to pursue ships suspected of involvement in the facilitation offences sailing between different parts of UK territorial waters (England and Wales, Scotland and Northern Ireland). The power is available where an audible or visible signal has been given for a ship to stop, which has been ignored, and the pursuit has not been interrupted (subsections (7) to (8)). Subsection (9) makes it clear that a change of ship or mode of transport will not interrupt the pursuit. Subsections (1) and (2) enable an immigration officer, English or Welsh police officer or member of the Armed Services to pursue a ship from the territorial waters adjacent to England and Wales into the waters adjacent to Scotland or Northern Ireland. Subsections (3) and (4) and subsections (5) and (6) make equivalent provision for Scotland and Northern Ireland.
- 422 Subsection (10) ensures that any right an immigration officer, police officer or member of the Armed Services may have to pursue ships into international waters under the common law is unaffected.
- 423 Section 28Q is self explanatory and defines terms used in Part 3A.

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

- 424 *Paragraph 8* inserts a new Schedule 4A after Schedule 4 of the 1971 Act. Schedule 4A sets out the powers an immigration officer, police officer or member of the Armed Services has to stop, board, divert, detain and search a ship to investigate the facilitation offences. Paragraph 1 is self explanatory and introduces Part 1 of Schedule 4A which governs the powers applicable in UK territorial waters adjacent to England and Wales.
- 425 Sub-paragraphs 2(1) and (2) provide a power to stop and board a ship, and require the ship to be taken to a port in the UK, and be detained there. These powers only apply where there are reasonable grounds to suspect that the ship is involved in a facilitation offence. Sub-paragraph 2(3) allows officers to order the ship's crew to help steer the ship to port. If the ship is to be detained, the immigration or police officer must notify the master of the ship in writing (sub-paragraph 2(4)) and the notice must tell the master that it will be detained until a further notice is served (sub-paragraph 2(5)).
- 426 *Paragraph 3*, sub-paragraphs (1) and (2) provides a power to search a ship and any person or object on that ship, where an immigration or police officer has reasonable grounds to suspect that there is evidence on the ship relating to a facilitation offence, or a connected offence. Sub-paragraph 3(3) gives the officer the power to require a person on the ship to give information about themselves or about anything on the ship.
- 427 Sub-paragraphs (5) and (7) give examples of actions that can be carried out by officers during a search including opening containers, requiring documents and making copies. The power of search can only be used to the extent reasonably required to discover evidence of a facilitation or connected offence and does not authorise the removal of any clothing in public other than an outer coat, jacket or gloves (sub-paragraph (4)). Sub-paragraph (6) ensures that officers may require electronic evidence to be produced in a legible form and in a manner which may be taken away. Sub-paragraph (8) clarifies that the powers are exercisable elsewhere than on the ship which has been boarded.

- 428 Under *paragraph 4*, sub-paragraphs (1) and (2) permit officers to arrest any person, without warrant, that they reasonably suspect to have committed a facilitation offence on the ship under investigation. Sub-paragraph (3) also permits an officer to seize and retain any suspected evidence of a facilitation offence other than items of legal privilege. Sub-paragraph (4) clarifies that these powers can be exercised on the ship itself or elsewhere.
- 429 Under *paragraph 5(1)* and *(2)*, officers can search a person on the ship for anything which they reasonably believe might be used to cause physical injury, damage to property or endanger the safety of a ship. Sub-paragraph (2) ensures that the powers can only be exercised where the officer has reasonable grounds to believe that such an item is concealed on a person and only to the extent necessary. Officers may also seize and retain such items (sub-paragraph (3)), but must return the items to the person they were taken from, if that person is released from detention (sub-paragraph (4)). This power does not authorise the removal of any clothing in public other than an outer coat, jacket or gloves, but it does authorise the search of a person's mouth (sub-paragraph (5)).
- 430 *Paragraph 6* provides a power for officers to require any person on the ship to produce a nationality document and, if they reasonably believe that person is concealing documents that may establish that person's identity, such as a passport or identity card, search that person (sub-paragraphs 1 and 2). The power of search may only be exercised where there are reasonable grounds to believe that such a document is concealed on a person and only to the extent necessary (sub-paragraph (3)). The officer can seize and retain a document relating to a person's identity for as long as they believe that person will arrive in the UK, but this does not affect any other power of retention the office may have (sub-paragraphs (4) and (5)). Documents seized and retained by constables or members of the Armed Services must be passed to an immigration officer as soon as possible after the ship has arrived in the UK (sub-paragraph (6)). The power does not authorise the removal of any clothing in public other than an outer coat, jacket or gloves, or the seizure or retention of any document that the officer reasonably believes is subject to legal privilege (sub-paragraph (7)). Sub-paragraph (8) defines "nationality document" and sub-paragraph (9) clarifies that the power may be used elsewhere than on the ship being boarded.
- 431 To ensure that relevant officers can perform their powers under this Schedule, *paragraph 7* allows them to take another person, or relevant equipment and materials, on board a ship. The assistant may perform functions on behalf of the relevant officer under their supervision.
- 432 *Paragraph 8* confirms that, where necessary, a relevant officer may use reasonable force to perform their functions set out in this Part of the Schedule.
- 433 Under *paragraph 9* a relevant officer must provide evidence of their authority to exercise the powers set out in this Schedule, if requested to do so.
- 434 In order to carry out their functions, relevant officers require some protection from prosecution. *Paragraph 10* protects officers from personal liability in any civil or criminal proceedings for anything done in performance of the functions in this Schedule, provided that a court is satisfied that they acted in good faith and had reasonable grounds for their actions.
- 435 *Paragraph 11* creates two offences where a person does not comply with the investigation. The first (sub-paragraph (1)) makes it an offence where a person intentionally obstructs an officer exercising the powers in this Schedule, or fails to comply with a requirement made by an officer, without reasonable excuse. The second (sub-paragraph (2)) makes it an offence where a person knowingly or recklessly provides false information, or intentionally fails to disclose

anything material, where an officer requires information when exercising the powers within this Schedule. Sub-paragraph (3) provides officers with a power of arrest without warrant for either of these offences. Both of these offences are summary only and on conviction the defendant is liable to an unlimited fine or 6 months imprisonment or both (sub-paragraph (4)). Sub-paragraph (5) increases the maximum period of imprisonment to 51 weeks after the commencement of section 281(5) of the Criminal Justice Act 2003.

Part 2 of new Schedule 4A

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

Part 3 of new Schedule 4A

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

Schedule 12: Civil registration fees

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

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

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

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

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

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

443 *Paragraph 2* inserts a new section 38A into the Births and Deaths Registration Act 1953 ("the 1953 Act"). Subsection (1) of new section 38A allows the Minister to make regulations to set fees for birth and death registration services. As for marriages, the fees currently specified on the face of the 1953 Act are omitted (see *paragraphs 22 to 28* of this Schedule) and those fees may instead be prescribed under new section 38A. The power also enables the setting of fees for services which have to date been provided without charge, and, more broadly, for any birth and death registration services (including those performed under other enactments)

provided by or on behalf of the Registrar General, superintendent registrars and registrars, or by any other person.

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

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

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

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

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

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

Part 2: Consequential and related amendments

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

Commencement

451 Subsections (3) to (5) of clause 32 come into force on the day this Bill receives Royal Assent. These subsections confer a power to grant immigration bail while an individual is liable to detention, whether or not the power to detain can be exercised.

452 The immigration skills charge measure in clause 55 comes into force two months after Royal Assent.

453 The remaining provisions of the Bill will come into force by means of commencement regulations made by the Secretary of State. Subject to parliamentary approval of the Bill and any necessary secondary legislation, it is intended to start commencement of the provisions of the Bill from summer 2016.

Financial implications of the Bill

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

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- a. An overarching Bill impact assessment;
- b. An impact assessment of the illegal working measures relating to licensing in the 2003 Act;
- c. An impact assessment of the illegal working measures in relation to private hire vehicles;
- d. An impact assessment of the bank accounts measures;
- e. An impact assessment on reforms to the support available for failed asylum seekers and other illegal migrants; and
- f. An impact assessment on the English language measures.

Parliamentary approval for financial costs or for charges imposed

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

Compatibility with the European Convention on Human Rights

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

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

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

Related documents

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

- Prime Minister's Speech on Immigration, 21 May 2015, <https://www.gov.uk/government/speeches/pm-speech-on-immigration>
- Government consultation 'Tackling Exploitation in the Labour Market' <https://www.gov.uk/government/consultations/labour-market-exploitation-improving-enforcement>

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- Evaluation of the Right to Rent Scheme
<https://www.gov.uk/government/publications/evaluation-of-the-right-to-rent-scheme>
- Government consultation 'Reforming support for failed asylum seekers and other illegal migrants' <https://www.gov.uk/government/consultations/reform-of-support-for-failed-asylum-seekers-and-other-illegal-migrants>
- Government response to the consultation 'Reforming support for failed asylum seekers and other illegal migrants'
[https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/473231/Response to Consultation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/473231/Response_to_Consultation.pdf)
- Government consultation 'Language Requirements for Public Sector Workers'
<https://www.gov.uk/government/consultations/language-requirements-for-public-sector-workers>
- Migration Advisory Committee 'Call for evidence: Review of Tier 2'
<https://www.gov.uk/government/consultations/call-for-evidence-review-tier-2-route>

Additional documents relating to the Immigration Bill may be found on the Bill webpage:
<https://www.gov.uk/government/collections/immigration-bill-2015-16>.

Annex A - Glossary

Term	Reference
1869 Act	Metropolitan Public Carriage Act 1869 (c.115)
1949 Act	Marriage Act 1949
1953 Act	Births and Deaths Registration Act 1953
1971 Act	Immigration Act 1971
1976 Act	Local Government (Miscellaneous Provisions) Act 1976
1998 Act	Private Hire Vehicles (London) Act 1998
1999 Act	Immigration and Asylum Act 1999
2002 Act	Nationality, Immigration and Asylum Act 2002
2003 Act	Licensing Act 2003
2006 Act	Immigration, Asylum and Nationality Act 2006
2014 Act	Immigration Act 2014
2015 Act	Modern Slavery Act 2015
ECHR	European Convention on Human Rights
MAC	Migration Advisory Committee
NHS	National Health Service
Non-EEA	non-European Economic Area
The Tribunal	First-tier Tribunal
Immigration Rules	Rules laid down by the Secretary of State pursuant to section 3(2) of the Immigration Act 1971

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Annex B - Territorial extent and application

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

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Clause 20	Yes	Yes	No	Yes	No	Yes	No
Clause 21	Yes	Yes	No	Yes	No	Yes	No
Clause 22	Yes	Yes	No	Yes	No	Yes	No
Clause 23	Yes	Yes	No	Yes	No	Yes	No
Clause 24	Yes	Yes	No	Yes	No	Yes	No
Clause 25	Yes	Yes	No	Yes	No	Yes	No
Clause 26	Yes	Yes	No	Yes	No	Yes	No
Clause 27	Yes	Yes	No	Yes	No	Yes	No
Clause 28	Yes	Yes	No	Yes	No	Yes	No
Clause 29	Yes	Yes	No	Yes	No	Yes	No
Clause 30	No	No	No	Yes	No	No	No
Clause 31	Yes	Yes	No	Yes	No	Yes	No
Clause 32	Yes	Yes	No	Yes	No	Yes	No
Clause 33	Yes	Yes	No	Yes	No	Yes	No
Part 4 Appeals							
Clause 34	Yes	Yes	No	Yes	No	Yes	No
Clause 35	Yes	Yes	No	Yes	No	Yes	No
Clause 36	Yes	Yes	No	Yes	No	Yes	No
Part 5 Asylum							
Clause 37	Yes	Yes	No	Yes	No	Yes	No
Clause 38	Yes	Yes	No	Yes	No	Yes	No
Clause 39	Yes	Yes	No	No	No	No	No
Clause 40	Yes	Yes	No	No	No	No	No
Clause 41	Yes	Yes	No	No	No	No	No
Clause 42	Yes	Yes	No	No	No	No	No
Clause 43	Yes	Yes	No	Yes	No	Yes	No
Part 6 Border Security							
Clause 44	Yes	Yes	No	Yes	No	Yes	No
Clause 45	Yes	Yes	No	Yes	No	Yes	No
Clause 46	Yes	Yes	No	Yes	No	Yes	No
Part 7 Language Requirements for Public Sector							

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Workers							
Clause 47	Yes	Yes	Yes	Yes	No	No	N/A
Clause 48	Yes	Yes	Yes	Yes	No	No	N/A
Clause 49	Yes	Yes	Yes	Yes	No	No	N/A
Clause 50	Yes	Yes	Yes	Yes	No	No	N/A
Clause 51	Yes	Yes	Yes	Yes	No	No	N/A
Clause 52	Yes	Yes	Yes	Yes	No	No	N/A
Clause 53	Yes	Yes	Yes	Yes	No	No	N/A
Clause 54	Yes	Yes	Yes	Yes	No	No	N/A
Part 8 Fees							
Clause 55	Yes	Yes	No	Yes	No	Yes	No
Clause 56	Yes	Yes	No	Yes	No	Yes	No
Clause 57	Yes	Yes	No	Yes	No	Yes	No
Clause 58	Yes	Yes	No	Yes	No	Yes	No
Clause 59	Yes	Yes	No	No	N/A	No	N/A
Part 9 Final Provisions							
Clause 60	Yes	Yes	No	Yes	No	Yes	No
Clause 61	Yes	Yes	No	Yes	No	Yes	No
Clause 62	Yes	Yes	No	Yes	No	Yes	No
Clause 63	Yes	Yes	No	Yes	No	Yes	No
Clause 64	Yes	Yes	No	Yes	No	Yes	No
Clause 65	Yes	Yes	No	Yes	No	Yes	No
Schedules							
Schedule 1	Yes	Yes	No	No	N/A	No	N/A
Schedule 2	Yes	Yes	No	No	N/A	No	N/A
Schedule 3	Yes	Yes	No	Yes	No	Yes	No
Schedule 4	Yes	Yes	No	Yes	No	Yes	No
Schedule 5	Yes	Yes	No	Yes	No	Yes	No
Schedule 6	Yes	Yes	No	Yes	No	Yes	No
Schedule 7	Yes	Yes	No	Yes	No	Yes	No
Schedule 8	Yes	Yes	No	Yes	No	Yes	No
Schedule 9	Yes	No	No	Yes	No	Yes	No
Schedule 10	Yes	Yes	No	Yes	No	Yes	No

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Schedule 11	Yes	Yes	No	Yes	No	Yes	No
Schedule 12	Yes	Yes	No	No	N/A	No	N/A

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IMMIGRATION BILL

EXPLANATORY NOTES

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Ordered by the House of Lords to be printed, 2 December 2015

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Printed In the United Kingdom by The Stationery Office Limited

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