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New Plan for Immigration Overarching Equality Impact Assessment of policies being delivered through the Nationality and Borders Bill

Introduction

1. This is an overarching Equality Impact Assessment (“EIA”) for policies in the Government’s New Plan for Immigration (“the Plan”) which will be delivered through the Nationality and Borders Bill (“the Bill”). This EIA is a live document, which reflects our careful consideration of a wide range of data and evidence, including responses to the public consultation on the Plan, which ran between 24 March and 6 May 2021. In addition to considering the protected characteristics outlined in the Equality Act, we have also considered vulnerability, as recommended in the Windrush Lessons Learned Review. We welcome feedback on this EIA, to support its development, as we move to implement the Plan.

Public Sector Equality Duty (“PSED”)

2. Under section 149 of the Equality Act 2010 (“the 2010 Act”), “decision makers” are obliged to have due regard to specific considerations under PSED:
 - a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the 2010 Act;
 - b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
3. The protected characteristics that are relevant for PSED are: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race (colour; nationality; and ethnic or national origins); religion and belief; sex; and sexual orientation.
4. Section 29 of the 2010 Act, which relates to the provision of services, sets out that a service-provider must not discriminate against a person requiring the service by not providing the person with the service. Some limited exceptions to this section, in respect of immigration, are set out in Schedule 3 to the 2010 Act, with regard to the protected characteristics of age, disability, race (nationality) and race (ethnic or national origins) and religion and belief. The effect of these exceptions is that if certain conditions are met, a service-provider will not be discriminating contrary to section 29.
5. Marriage and civil partnership as a protected characteristic is only relevant for Limb A of PSED. It is not relevant for Limb B or Limb C.

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6. Limb B of PSED does not apply, in relation to the exercise of immigration and nationality functions, to the protected characteristics of age and religion or belief. It applies in a limited way to the protected characteristic of race. Race includes: colour; nationality; and ethnic or national origins. In the exercise of immigration and nationality functions, Limb B does not apply to nationality and ethnic or national origins. It does however apply to colour. Colour must therefore be included, including where these functions are being considered, as part of each Limb, including Limb B.
7. All “decision makers” are required to comply with PSED:
 - a. decision makers must be made aware of their duty to have “due regard” and to the aims of the duty;
 - b. due regard is fulfilled before and at the time a particular policy or operational activity, that will or might affect people with protected characteristics is under consideration, as well as at the time a decision is taken. It is not a box ticking exercise;
 - c. due regard involves a conscious approach and state of mind. The duty must be exercised with rigour and an open mind;
 - d. the duty cannot be delegated to another body and will always remain on the body subject to it;
 - e. the duty is a continuing one; and
 - f. it is good practice for the public body to keep an adequate record showing that they have considered their equality duties and considered relevant questions.

Rationale for the Plan

8. The asylum system is broken and needs reform. Small boat arrivals reached record levels this year, with over 3,700 people arriving in the UK by small boats in the first five months of 2021. This is more than double the comparable figure for 2020. UK asylum claims also increased by 21 per cent, to almost 36,000 in 2019, prior to the onset of the pandemic – the highest number since the 2015/16 European “migration crisis”. At the same time, our ability to remove individuals with no right to remain is declining. In 2019, there were 7,000 enforced returns. At the end of 2020, there were approximately 41,600 cases subject to removal action. This can be partly attributed to repeated legal protection claims (often without merit and made at the last minute), despite the individual having plenty of opportunities to raise these claims earlier. The increasing challenges of illegal migration, asylum claims and falling returns has led to the annual cost of the asylum system rising to more than £1bn.

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Objectives of the Plan

9. The Plan will tackle illegal migration, control our borders and deliver a fair but firm asylum system. It has three main objectives:
 - a. to increase the fairness and efficiency of our system so that we can better protect and support those in genuine need of asylum;
 - b. to deter illegal entry into the UK, thereby breaking the business model of people smuggling networks and protecting the lives of those that they endanger; and
 - c. to remove more easily from the UK those with no right to be here.

Overview of the Plan

10. At the heart of this Plan is a differentiated approach – for the first time, how someone enters the UK will impact on how an asylum claim progresses and status in the UK if that claim is successful. As we secure the border, prevent illegal migration and misuse of the asylum and protection system, we will ensure cases and appeals are dealt with more effectively, while improving our ability to remove those with no right to remain, including foreign national offenders.
11. We will strengthen penalties for illegally entering the UK, introduce a maximum life sentence for facilitation, including of illegal entry and of assisting an asylum seeker to arrive in or enter the UK, and reform the legal processes, to ensure repeat meritless claims can no longer frustrate removal.
12. At the same time, we will enhance our reputation as Global Britain, fixing historical anomalies in British nationality law and strengthening our safe and legal routes, offering a safe haven for refugees fleeing persecution, supporting them to integrate and become self-sufficient in the UK.

Scope of this EIA

13. This EIA is a live document. It ensures that equalities are considered at an early stage, to inform decision making in relation to policies and operations which are necessary to support the Bill (noting that PSED does not apply to primary legislation itself). This EIA therefore does not consider those elements of the Plan it is proposed to deliver through secondary legislation, changes to the Immigration Rules or via non-legislative measures alone, such as via the provision of new guidance. Where necessary, these elements – which include the provision of safe and legal routes to the UK – will instead be assessed separately.

Objective

14. This is an overarching EIA, which is designed to provide a high-level overview of the individual and cumulative possible impacts of the policies which are

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being taken forward with Bill. Its objective is to identify potential equalities impacts, mitigations and justifications.

Data and evidence

15. The data and evidence that supports this EIA has been obtained as follows:

- a. seeking the views of subject matter experts within the Home Office and Ministry of Justice;
- b. reviewing data published by the Home Office, the Ministry of Justice and the Office for National Statistics;
- c. reviewing management information collected by the Home Office and the Ministry of Justice; and
- d. reviewing responses to the public consultation on the Plan, which took place between 24 March – 6 May 2021, including the outcomes of targeted engagement events with stakeholders, public focus groups and meetings with individuals who have experience of the asylum, broader illegal migration and modern slavery systems.

16. This EIA should be read alongside the Government's response to the consultation on the New Plan for Immigration.¹

Caveats

17. There are a number of important caveats that should be borne in mind when reviewing this EIA:

- a. The EIA is a live document. Its assessments are ongoing, including in responding to changing international and dynamic situations. For example, the emerging situation in Afghanistan. The assessments in this EIA should therefore not be regarded as final, and will be subject to further review and scrutiny;
- b. There are gaps in our data and limitations to our understanding. We have reviewed a wide range of sources and have carefully considered consultation responses. There are however gaps. For example, we do not know at present how future migration flows will be affected by COVID-19;
- c. Where we do not have data, we have made assumptions. These have in many areas been guided by stakeholder feedback to the consultation, supporting us to make such assumptions about where there could be impacts and what those impacts could be. For example, although we lack data about gender reassignment and sexual orientation, stakeholder feedback has helped us to make assumptions and to develop assessments of potential impacts on these protected characteristics;

¹ [New Plan for Immigration - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

- d. Much will depend on how the plans are operationalised. Operationalisation will provide opportunities to devise checks, balances and safeguards where there is a risk of adverse impact. We will continue to assess operationalisation plans as they are developed, in particular to support analyses of potential impacts against mitigations and overall justifications.

Emerging findings – risk of indirect discrimination

18. There is a risk that our policies could indirectly disadvantage protected groups. However, our analysis is that with appropriate mitigation and justification, such impacts would not amount to unlawful indirect discrimination within the meaning of the 2010 Act.

19. Of particular note are the following groups:

- a. Illegal entrants and arrivals from safe third countries. Evidence indicates that 74% of those arriving in the UK by small boat 2020 were aged between 18-39 and 87% of all arrivals were male.² The top five nationalities arriving by small boat – both male and female – are people from Iran, Iraq, Sudan, Syria and Afghanistan.³ Evidence suggests the measures to strengthen border controls and the differentiated approach to asylum claims are more likely to disadvantage this group, although the measures do not seek to actively target any specific group of persons protected under equalities legislation. However, our analysis is that such disadvantages would be justified and proportionate, in order to support the overarching policy objectives of the Plan, in particular to deter illegal entry into the UK. There would therefore not be any unlawful discrimination.
- b. Vulnerable people. This cohort may include children, disabled people and people who are vulnerable for reasons linked to other protected characteristics – including but not limited to gender reassignment, pregnancy and maternity, sexual orientation and sex. Members of this cohort might find it more difficult than others: to disclose what has happened to them; to participate in proceedings; and to understand the consequences of non-compliance with legal requirements. There may also be trauma-related considerations, in terms of how any vulnerable groups adduce evidence.

We will continue to consider ways in which to mitigate adverse impacts on vulnerable people. For example, we will mitigate the risk of adverse impacts on unaccompanied asylum-seeking children by exempting them from the inadmissibility process. We will provide guidance to operational teams on interviewing and supporting vulnerable people and when determining the type of accommodation that would be appropriate for their needs. We will also provide increased access to legal aid.

² New Plan for Immigration, Chapter 1. [New Plan for Immigration - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/92122/new-plan-for-immigration-chapter-1.pdf)

³ Home Office Internal Management Information [unpublished].

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Beyond these and other measures, it will be important to monitor and evaluate implementation. With adequate mitigation, we anticipate that many potentially adverse impacts will be removed, and that any remaining would be justified and proportionate, as they support the overarching legitimate policy objectives of the Plan, in particular, to increase the fairness and efficiency of our system so that we can better protect and support those in need of asylum through safe and legal routes and to deter illegal entry into the UK. This would ensure that there is no unlawful indirect discrimination.

Review of Limbs of PSED

Limb A. Have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the 2010 Act.

20. Direct discrimination. Direct discrimination occurs where someone is treated less favourably because of their particular protected characteristic.

The risk of direct discrimination for the Plan is likely to be limited to measures that would treat people less favourably because of their age or race (nationality).

- a. Age. In our assessment, there are only two proposals that present a risk of direct discrimination on the basis of age, although in both cases, we consider that the proposals would be lawful due to the limited exceptions that exist in the 2010 Act:
 - i. Stateless minors. This measure introduces a new requirement for the registration of a stateless child, born in the UK, as a British citizen. It will only apply to children aged 5 – 17. This ensures that parents who could reasonably acquire their own nationality for their child, such as by registering the birth with the authorities of their own country, are unable to take advantage of statelessness provisions. We think that it is right that genuinely stateless children should be able to register, but not that parents can effectively choose statelessness for their child, which can in turn can impact on their own immigration status. This measure will help achieve the Government's strategic objective of creating a fair but firm immigration system.
 - ii. Age assessment. These proposals will only apply to people whose claimed age is doubted. The proposals could be said to amount to less favourable treatment for these people, because of their apparent or assessed age. However, if there is any such impact, this will be mitigated, by enabling individuals who believe their age has been incorrectly assessed to challenge the decision, including by a statutory appeal to the First-tier Tribunal. These measures are designed to improve the quality and consistency of the age assessment process. We consider them to be justified as a proportionate means of safeguarding and protecting children, by

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ensuring that children's services are reserved for those who are entitled to them, and helping to maintain effective immigration control.

- b. Race (nationality). We do not identify any potential direct discrimination on the grounds of colour or ethnic or national origins. We do however identify limited potential for direct discrimination on the basis of race (nationality). We will be relying on the limited exceptions that exist in the 2010 Act, which permit direct discrimination on grounds of race (nationality ethnic or national origins), where that is authorised by a Minister or by legislation.
- i. Inadmissibility of asylum claims by EU nationals. These proposals mean that EU nationals will be unable to avail themselves of our protection system. This could be said to amount to less favourable treatment on the basis of the nationality of a claimant. However, this will not be unlawful direct discrimination because the provision will be authorised by primary legislation. We are confident that it is appropriate to rely on the exception here, as EU countries are fundamentally safe, with sufficiency of protection, rule of law and a wider EU framework requiring compliance with the European Convention on Human Rights. In addition, there will likely be mitigation of any impacts, as in exceptional circumstances, a claim would be admitted for consideration.
- ii. Electronic Travel Authorisations ("ETAs"). The requirement to apply for and obtain an ETA prior to travelling to the UK will broadly be compulsory for non-visa nationals who do not already possess a visa, entry clearance or immigration status, and who are intending to come here for short periods of time (up to six months) or transit through the UK. The policy could be said to amount to the less favourable treatment of visa nationals in comparison to non-visa nationals, and less favourable treatment of non-visa nationals in comparison to British and Irish citizens (except in very limited circumstances).⁴ However, this will not be unlawful direct discrimination, because it is being done in the exercise of immigration functions and will be set out in appropriate legislation, namely the Immigration Rules. We are confident that it is proportionate to rely on the exception here because of the policy need to maintain effective immigration control.
- iii. Visa Penalties. This provision will enable the Secretary of State to apply measures to nationals of countries who do not co-operate with removal from the UK of their own nationals. This could be said

⁴ Irish citizens do not require permission to enter or remain in the UK, as set out in section 3ZA of the Immigration Act 1971, unless subject to a deportation order, exclusion decision or travel ban. Unless they require permission in one of those very limited circumstances, they will not require an ETA. This differential treatment of Irish citizens is justified on the basis of this unique relationship whereby citizens of the UK and Ireland have a status in each other's State, which existed long before the UK or Ireland were members of the EU, and which supports provisions in the Belfast (Good Friday) Agreement that the "people of Northern Ireland" can identify as British or Irish or both.

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to amount to the less favourable treatment of those nationals. Mitigations are being considered as part of ongoing policy development. We consider that it is appropriate to rely on the limited exceptions in the 2010 Act, due to the legitimate aim of encouraging improved cooperation on removals.

- iv. Migrants working in UK waters. This provision will clarify the existing policy that the points-based system applies in UK territorial waters in the same way as it applies on land and that migrants are therefore required to obtain authorisation to work in UK waters. The provision will enable the Secretary of State to provide a clearer framework for obtaining authorisation and clarifying the application of illegal working provisions to those who do not comply. This requirement will only apply to those who require leave and will not therefore apply to British citizens, or in most circumstances to Irish citizens or those with a right to abode. As there is no change to policy or practice, the Equality Impact Assessment on the Points-Based system continues to be an accurate assessment of PSED in respect of this policy.⁵

21. Indirect discrimination. Indirect discrimination occurs where a criterion, policy or practice applies across protected groups, but a particular protected group is put at a disadvantage and that disadvantage is not a proportionate means of achieving a legitimate aim.

There is significant scope for indirect discrimination, each of the nine protected characteristics being engaged – albeit to different degrees. The fact that we have more data about age, race (nationality) and sex makes it easier for us to identify potential disadvantage on these grounds and for us to seek to mitigate those impacts. However, the corollary of this is that it is harder to identify potential impacts on people who share other protected characteristics – for example, a lack of data about pregnancy and maternity makes it hard for us to identify potential impacts or any potential mitigations for this group.

There are some areas of particular note where we have identified that protected groups may be put at a disadvantage. Much will depend on how measures are implemented and operationalised in practice. Further work will be necessary as part of systems design, in order to ensure that options are created with due regard to the need to eliminate discrimination. However, in light of the steps we will be taking to ensure appropriate mitigation in implementation and operationalisation – and balancing any remaining disadvantage with the legitimate aims of the Plan – we do not think that any such treatment would amount to indirect discrimination.

- a. Illegal entrants and arrivals from safe third countries. There are two separate but related sets of measures: (i) measures that will impact on people who have not come to the UK directly, but via a safe third country, and (ii) measures which will impact on people who attempt to enter the UK

⁵ [Equality Impact Assessment - UK points-based system \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

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illegally. For the year ending September 2019, 62% of UK asylum claims were from people who are thought to have entered the UK illegally, many of whom passed through safe European countries before making unnecessary and dangerous journeys – including by small boat – to reach the UK.⁶ Around 1 in 6 asylum seekers to the UK in 2019 were matched to an asylum claim in another European country.⁷ Some will be attempting illegal entry by road vehicle or small boat from mainland Europe and so will be impacted by both sets of measures. It is therefore appropriate to consider these two sets of measures together. These include measures: to increase the powers of Border Force; the introduction of new or amended criminal offences relating to illegal entry to the UK; and perhaps most significantly, removals to safe third countries and the introduction of the differentiated system.

Younger people and males are more likely to be impacted by these proposals, for the simple reason that they are more likely to attempt to enter the UK via illegal routes. In 2020, there were around 15,600 recorded attempted crossings in small boats, resulting in around 8,500 arrivals to the UK, all of whom had travelled through France and other EU countries – manifestly safe countries with well-functioning asylum systems.⁸ 74% of those arriving in the UK by small boat 2020 were aged between 18-39 and 87% of all arrivals were male. Other routes declined in 2020 due to the COVID-19 pandemic.⁹ We also know that members of this cohort are much more likely to come from certain nationalities. Between January 2018 and April 2021, the top 5 nationalities encountered arriving by small boat accounted for around three quarters of such arrivals: Iran (34.1%), Iraq (19.5%), Sudan (8.6%), Syria (8.3%) and Afghanistan (5.2%).¹⁰ It is therefore likely that these measures will disadvantage younger males, with a notable likely impact on Iranians and Iraqis.

There is a risk that increased security and deterrence could encourage these cohorts to attempt riskier means of entering the UK. However, deploying these measures does advance the legitimate aim of encouraging asylum seekers to claim in the first safe country they reach and not undertaking dangerous journeys facilitated by smugglers to get to the UK, though evidence supporting the effectiveness of this approach is limited. This is consistent with the overarching policy objectives of the Plan to deter illegal entry into the UK, to break the business model of people smuggling networks and to protect the lives of those they endanger.

- b. Vulnerabilities, protected characteristics and the duty to safeguard children. PSED is concerned with the protected characteristics set out in the 2010 Act, rather than with “vulnerable” groups in general, but there are clearly personal circumstances arising from protected characteristics that

⁶ New Plan for Immigration, Chapter 1. [New Plan for Immigration - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/824222/new-plan-for-immigration-chapter-1.pdf)

⁷ New Plan for Immigration, Chapter 1. [New Plan for Immigration - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/824222/new-plan-for-immigration-chapter-1.pdf)

⁸ New Plan for Immigration, Chapter 1. [New Plan for Immigration - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/824222/new-plan-for-immigration-chapter-1.pdf)

⁹ New Plan for Immigration, Chapter 1. [New Plan for Immigration - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/824222/new-plan-for-immigration-chapter-1.pdf)

¹⁰ Home Office Internal Management Information [unpublished].

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could lead to a person being vulnerable. For example, a person who has a disability could be vulnerable because of their physical or mental health needs. Similarly, women and girls may be vulnerable in contexts where there is a risk of sexual abuse and exploitation and sex-based violence.

Section 55 of the Borders, Citizenship and Immigration Act 2009 creates a duty regarding the welfare of children in the UK, in the discharge of immigration, asylum or nationality functions by the Secretary of State. The Secretary of State must make arrangements for ensuring that in discharging these functions, regard is had to the need to safeguard and promote the welfare of children who are in the United Kingdom, and that any services provided by another person pursuant to arrangements which are made by the Secretary of State and relate to the discharge of these functions are provided having regard to that need. Children are defined as people aged under 18 years.

This duty is separate from the PSED, but child safeguarding considerations may arise in consideration of possible equalities impacts on children, in the context of an analysis of the protected characteristic of age. It is important to note that – much as with PSED – the duty here is one of “having regard” to the need to safeguard and promote the welfare of children who are in the United Kingdom. Other factors may also be relevant in the formulation and implementation of policy.

These are then distinct considerations, but there is nevertheless a degree of overlap when looking at the needs of an individual in a holistic fashion.

There is some evidence to support an analysis of impacts on vulnerability related to protected characteristics in the form of experimental data on asylum claims on the basis of sexual orientation that was published by Home Office in 2020.¹¹ These data suggested that in 2019, the success rate for claims which include a sexual orientation element did not differ greatly from the overall grant rate, and similarly, the number of successful appeals was the same as the rate for all asylum appeals. Nationality was found to be a more influential factor in both grants and appeals. It should however be noted that these data are caveated. For example, they do not show whether sexual orientation was raised as the basis of asylum claim at the time the claim was initiated or whether it was raised at a later stage (such as at appeal). The data also by definition depend on a claimant feeling able to be open about their sexual orientation. We also know from responses to our consultation that potential claimants may not know that they may be able to raise a claim on the basis of their sexual orientation. Stakeholders who took part in our public consultation also expressed broader concerns that vulnerable people in general are more likely to be adversely impacted by the Plan. Particular questions were asked about: protecting those fleeing persecution, oppression and tyranny, and streamlining asylum claims and appeals to make the system fairer and

¹¹ [EXPERIMENTAL STATISTICS Asylum claims on the basis of sexual orientation - GOV.UK \(www.gov.uk\)](https://www.gov.uk/experimental-statistics/asylum-claims-on-the-basis-of-sexual-orientation)

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faster. Stakeholders also raised concerns about how accessible safe and legal routes would be – in particular where the protected characteristics of sexual orientation or gender reassignment are engaged or where a person is a child or a woman who is in need of protection. Stakeholders said that if safe and legal routes are focussed on migrants from war zones, then there may not be routes for people to come to the UK from countries that are at peace, but in which they may nevertheless experience persecution because of their sexual orientation or gender reassignment. The same could be said of people who experience persecution because of other protected characteristics, such as race, religion or belief or sex. Stakeholders that this will make it harder for them to access safe and legal routes into the UK, potentially displacing them into more dangerous routes. Similar concerns were highlighted in relation to the overall differentiated approach to asylum and admissibility.

Other impacts on the basis of protected characteristics could arise because a person is a child and has inherent needs and vulnerabilities – or indeed because a person has vulnerabilities linked to being an older person. It could be that an individual has a disability, such as a mental illness, including where a person has experienced trauma. Such impacts could also arise where a person has experienced discrimination, serious ill-treatment, torture or imprisonment as a result of their gender reassignment, sexual orientation or religion or belief. Women and girls may also experience particular difficulties if they have been subject to sexual violence, sex-based violence or exploitation or trafficking for a sexual purpose – noting that most victims / survivors of these crimes are female.

These impacts might make it more difficult for a person: to disclose what has happened to them; to participate in proceedings; and to understand the consequences of non-compliance with legal requirements, such as: the consequences of not using a safe and legal route to come to the UK; the requirements of the one stop notice; and the appeals process. They might also mean that a person would be more vulnerable if they were detained, in particular if they have health needs, such as mental health needs, which may become worse if not supported by appropriate care.

Groups with vulnerability related protected characteristics could therefore experience indirect discrimination on the basis of the underlying protected characteristic. This is unless any disadvantage is appropriately mitigated and any remaining disadvantages can be objectively justified as a proportionate means of achieving a legitimate aim.

There are in consequence a number of measures we will consider in order to deliver appropriate mitigation. The Government will continue to work with the United Nations High Commissioner for Refugees (UNHCR) to ensure our resettlement schemes are accessible and fair, resettling vulnerable refugees where the need is greatest as referred by UNHCR. Further, we recognise there may be circumstances where someone faces immediate danger in their country of origin but is not eligible for our

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refugee resettlement programmes. The Home Secretary may consider such cases, by virtue of their challenging circumstances, to merit the use of discretion to allow individuals to come to the UK.

Training of relevant staff, including first responders, social workers and carers, will assist in the identification of vulnerable individuals and guide decisions on the appropriate type of support. We will provide guidance to operational teams on interviewing and supporting vulnerable people. Interpreters will be available, and individuals will be able to request their preferred sex of interpreter and interviewer. The condition of “No Recourse to Public Funds” in relation to temporary protection status will not apply to former unaccompanied asylum-seeking children care leavers. We will further mitigate the risk of adverse impacts on unaccompanied asylum-seeking children by exempting them from the inadmissibility process. Where adults are being considered for inadmissibility, there will be sufficient flexibility for caseworkers to take into account protected characteristics and provide suitable exceptions where appropriate. We will provide increased access to legal aid in specific circumstances. Potential victims of modern slavery will continue to have access to support workers. Decision makers will be able to consider whether in all the relevant circumstances, there are good reasons why evidence has been provided late by a claimant. Judges will be able to intervene where more time is necessary to decide a case that has reached the courts. Individuals will have an opportunity to rebut a presumption of return to a country in the European Economic Area. Individuals will also be able to challenge age assessment decisions. Detention of vulnerable people will be in line with existing guidelines on ‘Adults at risk in immigration detention.’¹² This list is not exhaustive.

It will again be important to monitor and evaluate implementation. But with adequate mitigation, we anticipate that any remaining impacts would be justified and proportionate. This is to support the overarching legitimate policy objectives of the Plan, in particular, to increase the fairness and efficiency of our system so that we can better protect and support those in need of asylum and protection through safe and legal routes and to deter illegal entry into the UK. This would ensure that there is no unlawful indirect discrimination.

Limb B. Have due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.

22. Work to identify measures that will have a positive impact on fostering good relations is at an early stage, as much depends on the detail of how these measures will be operationalised. However, as an early assessment, we identify a number of areas in which we may be able to advance equality of opportunity. It should be recalled that only a limited number of protected

¹² [Adults at risk in immigration detention - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/adults-at-risk-in-immigration-detention)

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characteristics are relevant for Limb B: disability, gender reassignment, pregnancy and maternity, race (colour), sex and sexual orientation.

- a. Differential treatment of refugees. A key objective of this measure to encourage individuals to claim asylum in the first safe country they reach, to get help and protection sooner and therefore to reduce the risk of them making risky journeys and potentially falling into the hands of people smugglers. If these measures work as intended, cohorts that may benefit are those that are most likely to travel via safe third countries – males, those aged 18-39 and nationals of Iran, Iraq, Sudan, Syria and Afghanistan. In that age and race (nationality) are not relevant for Limb B, we therefore identify an opportunity to advance equality of opportunity for males in terms of enabling them to not put themselves at risk. We can also advance equality of opportunity in the same respect when we consider groups who have a vulnerability linked to a protected characteristic. In particular, and again, noting the limitations of Limb B, we identify disabled people and pregnant women and new mothers who have the protected characteristic of pregnancy and maternity as cohorts who may be particularly vulnerable if they attempt a risky journey. We also identify a cohort of females who may be particularly vulnerable to people smugglers. To the extent that this policy encourages these cohorts to claim asylum in the first safe country they reach, it will also advance their equality of opportunity.
- b. Place of claim. This measure does not make any substantive changes to the position provided for under the Immigration Rules. These measures are in part intended to dissuade individuals from attempting to raise a claim at a potentially hazardous non-designated place – for example, at sea. They will therefore advance equality of opportunity for cohorts who may be more likely to seek to raise a claim at a non-designated place, in that they may be persuaded not to take these risks – again we identify males in this context. At the same time, these measures may also advance equality of opportunity for cohorts who may be particularly vulnerable, who likewise are persuaded not to take such risks – and again, we identify here disabled people and pregnant women and new mothers who have the protected characteristic of pregnancy and maternity. And again, these measures may also advance equality of opportunity for a cohort of females who may be particularly vulnerable to people smugglers.
- c. Inadmissibility. This is a separate measure from the differential treatment of refugees, but it likewise has a key objective of seeking to encourage individuals to claim asylum in the first safe country they reach. For the same reasons as above, we anticipate that it may therefore advance equality of opportunity for males, disabled people, pregnant women and new mothers who have the protected characteristic of pregnancy and maternity, and a cohort of females who may be particularly vulnerable to people smugglers.

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- d. Immigration offences and penalties. These measures are intended to promote the integrity of our borders and to have a deterrent effect, so that individuals do not attempt risky journeys, including those made by small boat and lorry. They will also disrupt organised criminal networks business models. This benefit is further enhanced because the same criminal networks responsible for people smuggling are also responsible for other illicit activity ranging from drug and firearms trading to serious violent crimes. Therefore, disrupting profitability from small boats may reduce their ability to conduct other illicit activity. It should be noted that to achieve this, it is likely that a high level of action to prohibit small boats from crossing the channel will be required to disrupt organised criminal networks, To the extent that these policies encourage individuals not to attempt risky journeys that may give rise to new or amended criminal offences, we once again identify in this context an opportunity to advance equality of opportunity for males, disabled people, pregnant women and new mothers who have the protected characteristic of pregnancy and maternity, and a cohort of females who may be particularly vulnerable to people smugglers.
- e. Enforcement. The purpose of new maritime enforcement measures is to deter people from attempting to enter the UK irregularly by small boats and to disrupt the business model of organised criminal networks facilitating illegal migration. By strengthening powers to search containers for persons we will not only enhance Border Force capabilities but also contribute to reducing threat to life for anyone tempted to use sealed containers to enter the UK illegally. Other benefits are as set out above in respect of immigration offences and penalties, and again, we identify in this context an opportunity to advance equality of opportunity males, disabled people, pregnant women and new mothers who have the protected characteristic of pregnancy and maternity, and a cohort of females who may be particularly vulnerable to people smugglers.

Limb C. Have due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

23. Work to identify measures that will have a positive impact on fostering good relations is at an early stage, as much depends on the detail of how these measures will be operationalised. However, as an early analysis, we anticipate positive impacts in a number of areas. For example, changes to nationality law may help to foster good relations on the basis of race (nationality) between people who have long been entitled to British Overseas Territories Citizenship and British citizenship and to those who will acquire these rights under the Bill. Age assessment proposals are designed to increase confidence in the age assessment process, so that children's services are reserved for children. Other children and the adults supporting looked after children will have greater confidence that those being treated as children are children, which will see greater confidence in the age assessment system. This will boost confidence in the system and foster good relations between unaccompanied asylum-seeking children and other groups. More broadly, by reforming the asylum system and supporting the integration of

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those who claims are granted, we will increase public trust and confidence and, to foster good relations between all parts of our communities.

How to give feedback on this EIA

24. We welcome feedback on this EIA. Please send comments to:

NPIEqualities@homeoffice.gov.uk