



Draft Immigration Bill

Presented to Parliament
by the Secretary of State for the Home Department
by Command of Her Majesty

November 2009

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Immigration Bill

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Make provision about immigration and to replace the Immigration Acts; to make provision in relation to the exercise of customs functions within the meaning of Part 1 of the Borders, Citizenship and Immigration Act 2009; to make provision about appeals to the Special Immigration Appeals Commission on deprivation of citizenship; to make provision about the charging of fees in respect of the exercise of functions in connection with nationality; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: –

PART 1

PERMISSION TO ENTER & STAY IN THE UK

General principles

1 British citizens

- (1) A British citizen is free to arrive in, enter, stay in, and leave, the United Kingdom.
- (2) That is subject to any requirements or restrictions imposed by or by virtue of this Act or any other enactment.
- (3) A person who claims for the purposes of this Act that a person is a British citizen must prove it.
- (4) A person who seeks to enter the United Kingdom and claims to be a British citizen must prove it by means of –
 - (a) a valid United Kingdom passport which describes the person as a British citizen, or

- (b) a valid ID card which describes the person as a British citizen.
- (5) In subsection (4), “ID card” means an ID card within the meaning of the Identity Cards Act 2006; (and see sections 337 and 339 for the definition of “valid” and “United Kingdom passport”).

2 Non-British citizens

- (1) A person who is neither a British citizen nor an EEA entrant –
 - (a) may enter or stay in the United Kingdom only if the person has immigration permission, and
 - (b) may pass through the United Kingdom, without entering it, en route to another country only if the person has immigration or transit permission.
- (2) A person “has” immigration or transit permission for the purposes of this Act if the permission –
 - (a) has been granted to the person (see sections 5 and 18), and
 - (b) is current (see section 338).
- (3) A person who claims for the purposes of this Act that a person has immigration or transit permission must prove it.
- (4) See section 27 for when a person who has arrived in the United Kingdom by ship, aircraft or train is treated as entering it.

3 EEA entrants

- (1) For the purposes of this Act, “EEA entrant” means a person in relation to whom condition A or B is met.
- (2) Condition A is met if the person –
 - (a) is not a national of the United Kingdom,
 - (b) is a national of another EEA state or a national of Switzerland, and
 - (c) is entitled to enter and stay in the United Kingdom by virtue of any provision made under section 2(2) of the European Communities Act 1972 (“the 1972 Act”).
- (3) Condition B is met if the person –
 - (a) is not a national of an EEA state or of Switzerland, and
 - (b) by virtue of the person’s relationship with a national of an EEA state or of Switzerland, is entitled to enter and stay in the United Kingdom by virtue of any provision made under section 2(2) of the 1972 Act.
- (4) For the purposes of subsections (2) and (3), a person is a national of the United Kingdom if the person falls to be treated as a national of the United Kingdom for the purposes of the Community Treaties.
- (5) A person who claims for the purposes of this Act that a person is an EEA entrant must prove it in accordance with any provision made under section 2(2) of the 1972 Act for proving the entitlement referred to in subsection (2)(c) or (3)(b).

Immigration permission

4 Immigration permission

- (1) There are two types of immigration permission –
 - (a) temporary permission, and
 - (b) permanent permission.
- (2) “Temporary permission” is immigration permission which is granted for a limited period.
- (3) Temporary permission –
 - (a) may be granted for a particular purpose (for example, to visit, study or work), and
 - (b) may be granted subject to conditions in accordance with section 11.
- (4) “Permanent permission” is immigration permission which is granted for an unlimited period.
- (5) The period for which immigration permission is granted may, in particular, be expressed –
 - (a) as a period which commences on the person’s arrival in the United Kingdom, and
 - (b) as a period which commences only if that event occurs within a particular period.

5 Methods of grant

- (1) Immigration permission is granted by the Secretary of State.
- (2) It may be granted to a person –
 - (a) by an individual grant under section 6, or
 - (b) by an order under section 9.
- (3) The powers under those sections to grant, or to refuse to grant, immigration permission to a person may be exercised at any time regardless of whether or not the person has arrived in or entered the United Kingdom.

6 Individual grant

- (1) The Secretary of State may grant immigration permission to a person (“an individual grant”).
- (2) That power to grant, or to refuse to grant, immigration permission to a person is exercised by the Secretary of State giving notice to that person.
- (3) If temporary permission is granted subject to conditions, the notice must state the conditions.

7 Duty to apply

- (1) A person who is neither a British citizen nor an EEA entrant must apply to the Secretary of State for an individual grant of immigration permission if –
 - (a) the person arrives in the United Kingdom, does not have immigration permission and seeks to enter the United Kingdom, or

- (b) the person is in the United Kingdom, having entered it, and does not have immigration permission.
- (2) See section 65 (power to make an expulsion order in relation to persons who do not have immigration permission) and section 301 (offence where illegally present in the UK).

8 Requirement to state grounds

- (1) This section applies to a person (“P”) if—
 - (a) an application is made for an individual grant of immigration permission to P, or
 - (b) an immigration decision (see section 173(2)) has been made or may be made in respect of P.
- (2) The Secretary of State may, by notice given to P, require P to state—
 - (a) the grounds on which P wishes to, or thinks P should be permitted to, enter or stay in the United Kingdom, and
 - (b) the grounds on which P thinks that P should not be removed from, or required to leave, the United Kingdom under Part 5 (expulsion orders & removal etc. from the UK).
- (3) The statement need not repeat grounds set out in—
 - (a) the application mentioned in subsection (1)(a), or
 - (b) an application to which the immigration decision mentioned in subsection (1)(b) relates.
- (4) The notice under subsection (2) must state the consequences under section 190 (no right to an in-country appeal under section 173 in certain cases) of failing to state the grounds required.

9 Grant by order

- (1) The Secretary of State may by order grant immigration permission to persons who are neither British citizens nor EEA entrants and fall within such descriptions of persons as are specified in the order.
- (2) Those descriptions may, in particular, include—
 - (a) members of the crew of a ship, aircraft or train;
 - (b) members of a mission within the meaning of the Diplomatic Privileges Act 1964;
 - (c) persons who are entitled to the same immunity from jurisdiction as is conferred by that Act on a diplomatic agent.
- (3) The Secretary of State must by order grant immigration permission to those persons who are neither British citizens nor EEA entrants and fall within a description of persons mentioned in subsection (4).
- (4) Those descriptions of persons are—
 - (a) members of the armed forces;
 - (b) members of a Commonwealth force, British overseas territory force or visiting force who are undergoing, or about to undergo, in the United Kingdom any duty or training as members of a Commonwealth force, British overseas territory force or visiting force;

- (c) persons who are serving or posted for service in the United Kingdom as members of an international headquarters or defence organisation designated for the time being by an Order in Council under section 1 of the International Headquarters and Defence Organisations Act 1964;
 - (d) Commonwealth citizens with a right of abode.
- (5) The period for which temporary permission may be granted to a person by an order under this section may, in particular, be limited to the period during which the person falls within a description of persons specified in the order.
- (6) An order under this section may make—
 - (a) provision modifying or disapplying any provisions of this Act (other than this section), either conditionally or unconditionally, in relation to a description of persons specified in the order who are persons granted immigration permission by an order under this section;
 - (b) provision about cases where the period for which temporary permission is granted is limited as mentioned in subsection (5) and a person ceases to fall within the description of persons to whom it is granted;
 - (c) provision about cases where a person to whom immigration permission is granted by an order under this section is granted immigration permission by an individual grant (whether before or after the grant by order);
 - (d) provision about cases where a person falls within more than one description of persons to whom immigration permission is granted by an order under this section;
 - (e) provision for a description of persons specified in the order, who are persons granted immigration permission by an order under this section, to be regarded in specified circumstances as settled in the United Kingdom for the purposes of section 1(1) or (3) of the British Nationality Act 1981.
- (7) The provision made by order under this section in the case of Commonwealth citizens with a right of abode must not provide them with less than the freedom to enter and leave, and to stay in, the United Kingdom which they have immediately before the commencement of this section.
- (8) For the purposes of subsection (4)(a), a person is a member of the armed forces if the person is—
 - (a) a member of the regular forces within the meaning of the Armed Forces Act 2006, or
 - (b) a member of the reserve forces within the meaning of that Act subject to service law by virtue of section 367(2) of that Act.
- (9) But a person is not to be regarded as a member of the armed forces by virtue of subsection (8) if the person is treated as a member of a regular or reserve force by virtue of—
 - (a) section 4(3) of the Visiting Forces (British Commonwealth) Act 1933, or
 - (b) section 369 of the Armed Forces Act 2006.
- (10) For the purposes of subsection (4)(b)—
 - “British overseas territory force” has the same meaning as in section 369 of that Act;
 - “Commonwealth force” has the same meaning as in that Act;

“visiting force” means a body, contingent or detachment of the forces of a country which is a visiting force for the purposes of any of the provisions of the Visiting Forces Act 1952.

- (11) For the purposes of this section “Commonwealth citizens with a right of abode” means Commonwealth citizens who, immediately before the commencement of this section, have the right of abode in the United Kingdom by virtue of section 2(1)(b) of the Immigration Act 1971 (right of abode for certain Commonwealth citizens).

10 Effect of grant

- (1) While a person has immigration permission, it confers on that person permission to—
- (a) enter (and re-enter) the United Kingdom,
 - (b) stay in the United Kingdom, and
 - (c) pass through the United Kingdom, without entering it, en route to another country.
- (2) But that is subject—
- (a) in the case of temporary permission, to any conditions subject to which it is granted, and
 - (b) in any case, to any requirements or restrictions imposed by or by virtue of this Act or any other enactment.

11 Conditions of temporary permission

- (1) Temporary permission may be granted to a person (“P”) subject to one or more of the following conditions—
- (a) a condition restricting P’s work, occupation or studies, in the United Kingdom;
 - (b) a condition requiring P to maintain and accommodate P, and any of P’s dependants, without the assistance of public funds;
 - (c) a condition requiring P to register with the police (“a police registration condition”);
 - (d) a condition requiring P to report to the Secretary of State or such other person as may be specified;
 - (e) a condition about P’s residence.
- (2) The Secretary of State may by regulations make provision about the effect of a police registration condition and the keeping of the related registers.
- (3) The regulations may, in particular, include provision about—
- (a) the documents and information to be provided by P whether on registration or on a change of circumstances;
 - (b) the issue of certificates of registration;
 - (c) the payment of fees for certificates of registration.
- (4) The regulations may require P to produce a certificate of registration to such persons, and in such circumstances, as may be prescribed by the regulations.
- (5) The conditions (if any) subject to which temporary permission is granted are suspended during any time when—
- (a) P is outside the United Kingdom,

- (b) P is being detained (whether under Part 6 or otherwise), or
- (c) P is on immigration bail (see Part 6).

12 Variation of conditions

- (1) This section applies where temporary permission is granted to a person by an individual grant (whether or not it is granted subject to conditions).
- (2) The Secretary of State may vary the conditions subject to which the permission is granted by –
 - (a) amending one or more of the existing conditions;
 - (b) cancelling one or more of the existing conditions;
 - (c) imposing one or more of the conditions mentioned in section 11(1) (whether or not there are any existing conditions).
- (3) The power to vary, or to refuse to vary, conditions under subsection (2) is exercised by the Secretary of State giving notice to the person.
- (4) The power may be exercised at any time regardless of whether or not the person has arrived in or entered the United Kingdom.
- (5) But any application for a variation under subsection (2) must be made while the person is in the United Kingdom, having entered it, and has immigration permission.

13 Extension of period of grant pending decision on new application

- (1) This section applies if –
 - (a) an application is made for an individual grant of immigration permission to a person (an “application for new permission”),
 - (b) when the application is made, the person already has temporary permission and is in the United Kingdom, and
 - (c) the period for which it is granted expires without the application for new permission having been decided.
- (2) The period for which the temporary permission is granted is extended during any period when –
 - (a) the application for new permission is neither decided nor withdrawn, or
 - (b) in a case where the grant of immigration permission on the application is refused, an in-country appeal under section 173 or 200 against the refusal could be brought by the person or is pending (see Parts 9 and 10 (appeals & SIAC)).
- (3) If, while the period of grant is extended under subsection (2), the person leaves the United Kingdom, the temporary permission is automatically cancelled.
- (4) If, while the period of grant is extended under subsection (2), a further application is made for an individual grant of immigration permission to the person –
 - (a) that application replaces the previous application for permission, and
 - (b) the references to the application for new permission in subsection (2) are to be read accordingly.
- (5) An application is decided for the purposes of this section when the person is given notice under section 6(2) of the decision on the application.

14 Automatic cancellation

- (1) Immigration permission granted to a person by an individual grant is automatically cancelled if, after the commencement of the period for which it is granted, the person stays outside the United Kingdom for a continuous period of more than 2 years.
- (2) If a person who has temporary permission granted by an individual grant (“the old permission”) is subsequently granted immigration permission by an individual grant (“the new permission”), the old permission is automatically cancelled on the commencement of the period for which the new permission is granted.
- (3) For other provisions under which immigration permission is automatically cancelled, see—
 - (a) section 13(3) (where a period of grant is extended pending a decision on a new application and the person leaves the UK);
 - (b) section 16(3) (where a person who is treated as having permission following cancellation and pending appeal leaves the UK);
 - (c) section 69(1) and (3) (where an expulsion order is made);
 - (d) section 80(2) (where a person becomes subject to an international travel ban).

15 Power to cancel

- (1) The Secretary of State may cancel immigration permission granted to a person.
- (2) That power is exercised by the Secretary of State giving notice to the person.
- (3) It may be exercised at any time regardless of whether or not the person has arrived in or entered the United Kingdom.

16 Person treated as having permission following cancellation & pending appeal

- (1) This section applies if a person’s immigration permission is cancelled under section 15 after the period for which it is granted has commenced.
- (2) The person is to be treated as having the permission during any period when an in-country appeal under section 173 or 200 against the cancellation could be brought by the person or is pending (see Parts 9 and 10 (appeals & SIAC)).
- (3) But that permission is automatically cancelled if the person leaves the United Kingdom.
- (4) While a person is treated under subsection (2) as having immigration permission, an application may not be made for an individual grant of new immigration permission to that person.
- (5) But subsection (4) does not prevent the making of a protection application (see section 21).

*Transit permission***17 Transit permission**

- (1) Transit permission is granted for a limited period.

- (2) The period for which transit permission is granted may, in particular, be expressed –
 - (a) as a period which commences on the person’s arrival in the United Kingdom, and
 - (b) as a period which commences only if that event occurs within a particular period.
- (3) While a person has transit permission it confers on that person permission to pass through the United Kingdom, without entering it, en route to another country.
- (4) But that is subject to any requirements or restrictions imposed by or by virtue of this Act or any other enactment.

18 Methods of grant

- (1) Transit permission is granted by the Secretary of State.
- (2) It may be granted to a person –
 - (a) by an individual grant under subsection (3), or
 - (b) by an order under subsection (5).
- (3) The Secretary of State may grant transit permission to a person (“an individual grant”).
- (4) That power to grant, or to refuse to grant, transit permission to a person is exercised by the Secretary of State giving notice to that person.
- (5) The Secretary of State may by order grant transit permission to such descriptions of persons as are specified in the order.
- (6) The powers under subsections (3) and (5) to grant, or to refuse to grant, transit permission to a person may be exercised at any time regardless of whether or not the person has arrived in or entered the United Kingdom.

19 Cancellation

- (1) The Secretary of State may cancel transit permission granted to a person.
- (2) That power is exercised by the Secretary of State giving notice to the person.
- (3) It may be exercised at any time regardless of whether or not the person has arrived in or entered the United Kingdom.
- (4) For the automatic cancellation of transit permission, see –
 - (a) section 69(1) and (3) (where an expulsion order is made);
 - (b) section 80(2) (where a person becomes subject to an international travel ban).
- (5) The application of those provisions and this section in the case of transit permission granted by order is without prejudice to the power to cancel such permission by revoking or otherwise amending the order.

*Immigration rules***20 Immigration rules**

- (1) The Secretary of State must make rules as to the practice to be followed in the administration of this Act for regulating the arrival in, entry into and stay in the United Kingdom of persons who are not British citizens.
- (2) References in this Act to “Rules” are to rules made under this section.
- (3) The Rules may, in particular, include provision—
 - (a) about the requirements to be met for the grant of immigration or transit permission under this Part;
 - (b) about the period and purposes for which temporary permission may be granted;
 - (c) requiring that a person has immigration or transit permission before arrival in the United Kingdom;
 - (d) about the grounds upon which immigration or transit permission may be cancelled under this Part;
 - (e) about the making and cancellation of expulsion orders under Part 5;
 - (f) about the procedures to be followed, the forms to be used, and the information to be supplied, in making an application in connection with immigration.
- (4) The requirements mentioned in subsection (3)(a) may, in particular, include requirements that a person has a sponsor; and the Rules may include provision about the requirements to be met for a person to be a sponsor.
- (5) A failure to meet a requirement of the Rules does not prevent the grant of immigration or transit permission to a person under this Part.
- (6) The power to make Rules under this section does not prevent the Secretary of State issuing instructions in addition to those Rules; but such instructions must be consistent with the Rules.

*Protection & family life applications***21 Protection applications**

- (1) For the purposes of this Act, a “protection application” is an application for an individual grant of immigration permission to a person (“P”) on the grounds that—
 - (a) to remove P from, or require P to leave, the United Kingdom would contravene the United Kingdom’s obligations under the Refugee Convention,
 - (b) to remove P from, or require P to leave, the United Kingdom would contravene the United Kingdom’s obligations under Council Directive 2004/83/EC (international protection), or
 - (c) to remove P from, or require P to leave, the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998.
- (2) A protection application may be made only while P is in the United Kingdom.
- (3) A reference in this Act to—

- (a) “protection permission” is to immigration permission granted to a person by an individual grant on the grounds that paragraph (a), (b) or (c) of subsection (1) applies to the person;
- (b) “refugee permission” is to immigration permission granted to a person by an individual grant on the grounds that paragraph (a) of subsection (1) applies to the person.

22 Family life applications

- (1) For the purposes of this Act, a “family life application” is an application for an individual grant of immigration permission to a person (“P”) on the grounds that a refusal to grant immigration permission to P would be a breach of a person’s right to respect for private and family life under Article 8 of the Human Rights Convention and so unlawful under section 6 of the Human Rights Act 1998.
- (2) A family life application may be made only while P is outside the United Kingdom.

PART 2

IMMIGRATION CONTROLS

Control areas

23 Ports of entry and stations of entry

- (1) The Secretary of State may by order –
 - (a) designate a port in the United Kingdom as a port of entry;
 - (b) designate an international railway station in the United Kingdom as a station of entry.
- (2) References in this Part –
 - (a) to a “port of entry” are to a port designated under this section;
 - (b) to a “station of entry” are to an international railway station designated under this section.

24 Designated control areas in the UK

- (1) The Secretary of State may give notice to the owner, agent or operator of a ship, aircraft or train –
 - (a) designating control areas for the embarkation or disembarkation of passengers in a port or international railway station in the United Kingdom, and
 - (b) specifying the conditions and restrictions (if any) to be observed in each designated control area.
- (2) The Secretary of State may also give notice to a person concerned with the management of a port or international railway station in the United Kingdom –
 - (a) designating control areas in the port or station, and
 - (b) specifying the conditions and restrictions (if any) to be observed in each designated control area.

- (3) References in this Act to a “designated control area” are to a control area designated under this section.

25 Immigration controls at ports in UK or abroad: juxtaposed controls

- (1) The Secretary of State may by order make provision for the purpose of giving effect to an international agreement which concerns immigration control at a port in the United Kingdom or in another State (whether or not the agreement also concerns other aspects of border control at the port).
- (2) An order under this section may make any provision which appears to the Secretary of State—
 - (a) likely to facilitate implementation of the international agreement (including those aspects of the agreement which relate to border control other than immigration control), or
 - (b) appropriate as a consequence of provision made for the purpose of facilitating implementation of the agreement.
- (3) An order under this section may amend an enactment, including—
 - (a) an enactment contained in this Act, and
 - (b) an enactment passed or made after the passing of this Act.
- (4) An order under this section may not be made unless the Secretary of State has consulted such persons as the Secretary of State thinks appropriate.
- (5) In this section—
 - “border control” means arrangements made in connection with the enforcement of law which relates to, or in so far as it relates to, the movement of persons or goods into or out of the United Kingdom or another State;
 - “immigration control” means arrangements made in connection with the movement of persons into or out of the United Kingdom or another State;
 - “international agreement” means an agreement made between Her Majesty’s Government and the government of another State.

26 Juxtaposed controls: supplementary

- (1) An order under section 25 may, in particular, make any provision mentioned below.
- (2) An order may provide for a law of England and Wales—
 - (a) to have effect, with or without modification, in relation to a person in a specified control area or anything done in a specified control area;
 - (b) not to have effect in relation to a person in a specified control area or anything done in a specified control area;
 - (c) to be modified in its effect in relation to a person in a specified control area or anything done in a specified control area.
- (3) An order may disapply or modify an enactment in relation to a person who has undergone a process in a specified control area.
- (4) An order may disapply or modify an enactment otherwise than under subsection (2) or (3).

- (5) An order may make provision conferring a function, which may include provision conferring—
 - (a) a discretionary function;
 - (b) a function on a servant or agent of the government of a State other than the United Kingdom.
- (6) An order may—
 - (a) create or extend the application of an offence;
 - (b) impose or permit the imposition of a penalty;
 - (c) require the payment of, or enable a person to require the payment of, a charge or fee;
 - (d) confer jurisdiction on a court or tribunal;
 - (e) confer immunity or provide for indemnity;
 - (f) make provision about compensation;
 - (g) make provision about the disclosure of information.
- (7) An order may impose a requirement, or enable a requirement to be imposed, for a person to—
 - (a) co-operate with, or
 - (b) provide facilities for the use of,another person who is performing a function under the order or under the international agreement.
- (8) That requirement may include a requirement to provide facilities without charge.
- (9) An order may make provision about enforcement, which may include—
 - (a) provision conferring a power of arrest, detention or removal from or to any place;
 - (b) provision for the purpose of enforcing the law of a State other than the United Kingdom.
- (10) In this section, “specified control area” means an area (whether of the United Kingdom or of another State) specified in an international agreement (within the meaning of section 25).

Point of entry into the UK

27 Point of entry into the UK

For the purposes of this Act, a person (“P”) who arrives in the United Kingdom by ship, aircraft or train is not to be treated as entering the United Kingdom—

- (a) until P disembarks from the ship, aircraft or train, or
- (b) if such disembarkation is at a port or international railway station where there are one or more designated control areas, until P leaves the designated control area or areas.

Control of disembarkation & embarkation

28 Duties on carriers, port management and captains

- (1) The owner, agent, operator or captain of a ship, aircraft or train employed to carry passengers must not, without the approval of the Secretary of State,

permit any of those passengers to embark or disembark at a port or international railway station in the United Kingdom other than a port of entry or station of entry.

- (2) The owner, agent or operator of a ship, aircraft or train who is given notice under section 24(1) of a designated control area in a port or international railway station must take all reasonable steps to ensure that—
 - (a) in the case of the owner’s, agent’s or operator’s ships, aircraft or trains, passengers do not embark or disembark at the port or international railway station outside the designated control area, and
 - (b) if conditions or restrictions are specified in the notice to be observed in the designated control area, they are observed.
- (3) If a person concerned with the management of a port or international railway station is given notice under section 24(2) of a designated control area which specifies conditions or restrictions to be observed in that area, the person must take all reasonable steps to ensure that they are observed.
- (4) The captain of a ship, aircraft or train arriving in the United Kingdom must take such steps as may be necessary to ensure that the persons on board do not disembark there unless—
 - (a) they disembark in accordance with arrangements approved by the Secretary of State, or
 - (b) they have been examined by the Secretary of State (see Part 3 (powers to examine etc.)).
- (5) Where persons are to be examined on the ship, aircraft or train, the captain must take such steps as may be necessary to ensure that they are presented for examination in an orderly manner.

29 Information in connection with arrival or departure

- (1) This section applies to persons who—
 - (a) are seeking to arrive in or enter the United Kingdom, or
 - (b) are seeking to leave the United Kingdom.
- (2) The Secretary of State may require persons to whom this section applies, or any description of such persons, to supply immigration information to the Secretary of State in such form as the Secretary of State may direct.
- (3) The Secretary of State may require persons to whom this section applies, or any description of such persons, to complete landing or embarkation cards and produce them to the Secretary of State.
- (4) The Secretary of State may direct owners, agents or operators of ships, aircraft or trains to supply landing or embarkation cards to those persons in such form as the Secretary of State may direct.
- (5) In this section “immigration information” means information that is of a kind specified in an order made by the Secretary of State and—
 - (a) in the case of a person seeking to arrive in or enter the United Kingdom, may be required to determine one or more of the matters mentioned in section 42(2) (matters that may be determined in the course of examination on arrival in the UK), or
 - (b) in the case of a person seeking to leave the United Kingdom, may be required to determine one or more of the matters mentioned in section

43(2) (matters that may be determined in the course of examination on leaving the UK).

Provision of facilities for immigration control

30 Provision of facilities for immigration control

- (1) The person responsible for the management of a control port or station (the “manager”) must provide the Secretary of State, free of charge and to such standard as the Secretary of State may direct, with such facilities at the port or station as the Secretary of State may direct as being reasonably necessary for, or in connection with, the administration of immigration control there.
- (2) The owner, agent or operator of a ship or train must provide the Secretary of State, free of charge and to such standard as the Secretary of State may direct, with such facilities on board the ship or train as the Secretary of State may direct as being reasonably necessary for, or in connection with, the administration of immigration control on board the ship or train.
- (3) Before giving a direction under subsection (1) or (2), the Secretary of State must consult such persons likely to be affected by it as the Secretary of State thinks appropriate.
- (4) The Secretary of State must send a copy of a direction –
 - (a) where the direction is given under subsection (1), to the person appearing to the Secretary of State to be the manager of the control port or station;
 - (b) where the direction is given under subsection (2), to the owner, agent or operator of the ship or train.
- (5) A direction under subsection (1) or (2) is enforceable, on an application by the Secretary of State –
 - (a) by injunction granted by a county court, or
 - (b) in Scotland, by an order under section 45(b) of the Court of Session Act 1988.
- (6) If a manager persistently fails to comply with a direction (or part of it), the Secretary of State may –
 - (a) where the control port or station is not a port of entry or station of entry, revoke any approval in relation to the port or station given under section 28(1);
 - (b) where the control port or station is a port of entry or station of entry, by order revoke its designation as a port of entry or station of entry.
- (7) In this section –
 - (a) “control port or station” means a port or international railway station in which there is a designated control area;
 - (b) “facilities” means accommodation, facilities, equipment and services of a description specified in an order made by the Secretary of State.
- (8) The facilities which may be specified under subsection (7)(b) include accommodation for the carrying out of post-arrival medical examinations (within the meaning of Part 3: see section 45(2)).

31 Charges: immigration control

- (1) The Secretary of State may, at the request of any person and in consideration of such charges as the Secretary of State may determine, make arrangements for the provision at any port or international railway station of –
 - (a) officials of the Secretary of State exercising functions under this Act, or
 - (b) facilities,
 needed in addition to those (if any) needed to provide a basic service at the port or station.
- (2) The Secretary of State may, at the request of any person and in consideration of such charges as the Secretary of State may determine, make arrangements for the provision of –
 - (a) officials of the Secretary of State exercising functions under this Act, or
 - (b) facilities,
 for dealing with passengers of a particular description or in particular circumstances.
- (3) In this section –
 - “basic service” has the meaning prescribed by regulations made by the Secretary of State;
 - “facilities” includes equipment.

*Powers to require information from carriers & captains***32 Power by order to require passenger information etc.**

- (1) This section applies to ships or aircraft which –
 - (a) have arrived, or are expected to arrive, in the United Kingdom from a place outside the United Kingdom, or
 - (b) have left, or are expected to leave, the United Kingdom for a place outside the United Kingdom.
- (2) The Secretary of State may by order require, or enable the Secretary of State to require, the owner, agent or operator of a ship or aircraft (“the carrier”) or its captain –
 - (a) to supply passenger, service or crew information to the Secretary of State;
 - (b) to supply to the Secretary of State a copy of all or part of a document which relates to a passenger and contains passenger or service information.
- (3) An order under subsection (2) may relate to –
 - (a) all ships or aircraft arriving or expected to arrive in the United Kingdom;
 - (b) all ships or aircraft leaving or expected to leave the United Kingdom;
 - (c) ships or aircraft arriving or expected to arrive in the United Kingdom from or by way of a specified country;
 - (d) ships or aircraft leaving or expected to leave the United Kingdom to travel to or by way of a specified country;
 - (e) specified ships or aircraft.
- (4) An order under subsection (2) may enable the Secretary of State –

- (a) to impose requirements on all ships or aircraft of the carrier, or only on such one or more ships or aircraft of the carrier as the Secretary of State may determine;
 - (b) to require all passenger, service or crew information in relation to a ship or aircraft or particular passenger, service or crew information in relation to that ship or aircraft.
- (5) An order under subsection (2) may specify –
- (a) the date or time by which or period during which information is to be supplied;
 - (b) the form and manner in which information is to be supplied.
- (6) The period specified under subsection (5)(a) must not exceed 12 months.
- (7) In this section –
- “passenger information” means such information relating to the passengers carried, or expected to be carried, by the ship or aircraft as may be specified in the order;
 - “service information” means such information relating to the voyage or flight of the ship or aircraft as may be specified in the order;
 - “crew information” means such information relating to members of the crew of the ship or aircraft as may be specified in the order.

33 Power of police to require passenger information etc.

- (1) This section applies to ships and aircraft which –
- (a) have arrived, or are expected to arrive, at any place in the United Kingdom (whether from a place in or outside the United Kingdom), or
 - (b) have left, or are expected to leave, from any place in the United Kingdom (whether for a place in or outside the United Kingdom).
- (2) A constable of the rank of superintendent or above may, by notice given to the owner, agent or operator of a ship or aircraft (“the carrier”), require the carrier to supply passenger, service or crew information.
- (3) A passenger or member of the crew must supply to the carrier any information that the carrier requires for the purpose of complying with a requirement imposed under subsection (2).
- (4) A constable may impose a requirement under subsection (2) only if the constable thinks it necessary –
- (a) in the case of a constable in England, Wales or Northern Ireland, for police purposes, or
 - (b) in the case of a constable in Scotland, for police purposes which are, or relate to, reserved matters.
- (5) A requirement imposed under subsection (2) may apply generally or only to one or more specified ships or aircraft.
- (6) The Secretary of State may by order specify the form and manner in which information is to be supplied.
- (7) In this section –
- “passenger information” means such information relating to the passengers carried, or expected to be carried, by the ship or aircraft as may be specified in an order made by the Secretary of State;

“police purposes” has the same meaning as in Part 12 (information: see section 250(3));

“service information” means such information relating to the voyage or flight of the ship or aircraft as may be specified in an order made by the Secretary of State;

“crew information” means such information relating to members of the crew of the ship or aircraft as may be specified in an order made by the Secretary of State.

- (8) The Secretary of State may make an order specifying a kind of information under subsection (7) only if satisfied that the nature of the information is such that there are likely to be circumstances in which it can be required under subsection (2) without breaching Convention rights.

34 Power of police to require freight information

- (1) This section applies to ships, aircraft and vehicles which—
- (a) have arrived, or are expected to arrive, in the United Kingdom from a place outside the United Kingdom, or
 - (b) have left, or are expected to leave, the United Kingdom for a place outside the United Kingdom.
- (2) A constable of the rank of superintendent or above may, by notice given to a person mentioned in subsection (3), require the person to supply freight information.
- (3) The persons referred to in subsection (2) are—
- (a) in the case of a ship or aircraft, the owner, agent or operator,
 - (b) in the case of a vehicle, the owner or hirer, and
 - (c) in any case, persons responsible for the import or export of the freight into or from the United Kingdom.
- (4) A constable may impose a requirement under subsection (2) only if the constable thinks it necessary—
- (a) in the case of a constable in England, Wales or Northern Ireland, for police purposes, or
 - (b) in the case of a constable in Scotland, for police purposes which are, or relate to, reserved matters.
- (5) A requirement imposed under subsection (2) may apply generally or only to one or more specified ships, aircraft or vehicles.
- (6) The Secretary of State may by order specify the form and manner in which information is to be supplied.
- (7) In this section—
- “freight information” means information which is of a kind specified in an order made by the Secretary of State and which relates to freight carried;
- “police purposes” has the same meaning as in Part 12 (information: see section 250(3)).
- (8) The Secretary of State may make an order specifying a kind of information under subsection (7) only if satisfied that the nature of the information is such that there are likely to be circumstances in which it can be required under subsection (2) without breaching Convention rights.

35 Notices under section 33 or 34

- (1) A notice imposing a requirement under section 33(2) or 34(2) must specify –
 - (a) the information required,
 - (b) the date or time by which it is to be supplied, and
 - (c) the period during which it has effect.
- (2) The period specified under subsection (1)(c) –
 - (a) must begin with the date on which the notice is given, and
 - (b) must not exceed 12 months.
- (3) The expiry of that period does not prevent the requirement being imposed again on one or more occasions.

36 Disclosure of information obtained under section 33 or 34

- (1) A chief officer of police may disclose information obtained under section 33 or 34 to –
 - (a) the States of Jersey police force;
 - (b) the salaried police force of the Island of Guernsey;
 - (c) the Isle of Man constabulary;
 - (d) any other foreign law enforcement agency.
- (2) A “foreign law enforcement agency” means a person outside the United Kingdom with functions similar to those of –
 - (a) a police force in the United Kingdom, or
 - (b) the Serious Organised Crime Agency.
- (3) A “chief officer of police” means –
 - (a) in England and Wales, the chief officer of police for a police area specified in section 1 of the Police Act 1996;
 - (b) in Scotland, the chief constable of a police force maintained under the Police (Scotland) Act 1967;
 - (c) in Northern Ireland, the Chief Constable of the Police Service of Northern Ireland.

Related offences

37 Failure to comply with duties imposed by section 28

- (1) A person (“P”) commits an offence if, without reasonable excuse –
 - (a) P permits a passenger to embark or disembark at a port or international railway station in the United Kingdom other than a port of entry or station of entry, contrary to section 28(1),
 - (b) P fails to take steps P is required to take under section 28(2) (requirement to take steps in relation to designated control areas for embarkation or disembarkation),
 - (c) P fails to take steps P is required to take under section 28(3) (requirement to take steps in relation to designated control areas), or
 - (d) P fails to take steps P is required to take under section 28(4) or (5) (requirement to take steps regarding disembarkation and examination).

- (2) A person guilty of an offence under this section is liable on summary conviction—
- (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding level 5 on the standard scale, or to both;
 - (b) in Scotland or Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the standard scale, or to both.

38 Failure to supply information in connection with arrival or departure etc.

- (1) A person commits an offence if, without reasonable excuse, the person fails to comply with—
- (a) a requirement imposed under section 29(2) or (3) (requirement to supply information in connection with arrival or departure), or
 - (b) a requirement imposed by virtue of section 29(4) (requirement to supply landing or embarkation cards).
- (2) If a requirement under section 29(2) is for a person (“P”) to supply information whilst P is outside the United Kingdom, P does not commit an offence under subsection (1) unless P arrives in the United Kingdom without having supplied that information.
- (3) A person guilty of an offence under this section is liable on summary conviction—
- (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding level 5 on the standard scale, or to both;
 - (b) in Scotland or Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the standard scale, or to both.

39 Failure to supply passenger information etc.

- (1) A person commits an offence if, without reasonable excuse, the person fails to comply with a requirement imposed under or by virtue of—
- (a) section 32 (power by order to require passenger information etc.),
 - (b) section 33(2) or 34(2) (power of police to require passenger information etc. or freight information), or
 - (c) section 33(3) (requirement that passengers and crew supply information to the carrier).
- (2) A person who fails without reasonable excuse to comply with a requirement imposed under section 33(2) or 34(2) by a constable in England, Wales or Northern Ireland otherwise than in relation to a reserved matter (“a non-reserved requirement”)—
- (a) is not to be treated as having committed an offence under subsection (1)(b) in Scotland, but
 - (b) has committed the offence in England and Wales or Northern Ireland.
- (3) A person who fails without reasonable excuse to comply with a requirement which is imposed under section 33(3) for the purpose of complying with a non-reserved requirement—

- (a) is not to be treated as having committed an offence under subsection (1)(c) in Scotland, but
 - (b) is to be treated as having committed the offence in England and Wales or Northern Ireland.
- (4) A person guilty of an offence under subsection (1)(a) is liable on summary conviction—
 - (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding level 5 on the standard scale, or to both;
 - (b) in Scotland or Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the standard scale, or to both.
- (5) A person guilty of an offence under subsection (1)(b) or (c) is liable on summary conviction—
 - (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding level 4 on the standard scale, or to both;
 - (b) in Scotland or Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 4 on the standard scale, or to both.

Designated immigration officials

40 Designated immigration officials

- (1) The Secretary of State may designate an official of the Secretary of State as a designated immigration official for the purposes of this Act.
- (2) A function of a designated immigration official under this Act or any other enactment is exercisable by any designated immigration official subject to any limitation specified in the official’s designation under section 41 (designation: supplementary).
- (3) The reference to an enactment in subsection (2) includes an enactment passed or made after the passing of this Act.
- (4) In this Act, “designated immigration official” means an official designated under this section.

41 Designation: supplementary

- (1) A designation under section 40 is subject to such limitations as may be specified in the designation.
- (2) A limitation specified under subsection (1) may, in particular, relate to—
 - (a) the functions which are exercisable by virtue of the designation, or
 - (b) the purposes for which those functions are exercisable.
- (3) A designation under section 40—
 - (a) may be permanent or for a specified period,
 - (b) may (in either case) be withdrawn, and
 - (c) may be varied.

- (4) The power to designate, or to withdraw or vary a designation, is exercised by the Secretary of State giving notice to the official in question.
- (5) The Secretary of State may designate an official under section 40 only if the Secretary of State is satisfied that the official –
 - (a) is capable of effectively carrying out the functions which are exercisable by virtue of the designation,
 - (b) has received adequate training in respect of the exercise of those functions, and
 - (c) is otherwise a suitable person to exercise those functions.

PART 3

POWERS TO EXAMINE ETC.

Powers to examine

42 Persons who arrive in, enter or seek to enter etc. the UK

- (1) The Secretary of State may examine a person (“P”) for the purpose of determining one or more of the matters mentioned in subsection (2) if –
 - (a) P has arrived in but not entered the United Kingdom (whether or not P is seeking to enter it),
 - (b) P has entered the United Kingdom and an application for the individual grant of immigration permission to P is pending,
 - (c) P is outside the United Kingdom and an application for the individual grant of immigration or transit permission to P is pending, or
 - (d) P is outside the United Kingdom, is seeking to arrive in or enter the United Kingdom and does not fall within paragraph (c).
- (2) The matters referred to in subsection (1) are –
 - (a) whether P is or is not a British citizen or an EEA entrant;
 - (b) if P is neither a British citizen nor an EEA entrant, whether P has immigration or transit permission;
 - (c) if P does not have immigration permission, whether such permission should be granted to P (and if so, for what period and subject to what conditions (if any));
 - (d) if P does not have transit permission, whether such permission should be granted to P (and if so, for what period);
 - (e) if P has immigration permission and an application for an individual grant of immigration permission to P has been made, whether such permission should be granted to P (and if so, for what period and subject to what conditions (if any));
 - (f) in any case where P has immigration or transit permission, whether that permission should be cancelled.
- (3) The Secretary of State may require a person examined under subsection (1) –
 - (a) to submit to one or more specified medical examinations;
 - (b) to provide one or more specified medical reports.
- (4) The power in subsection (3) is exercised by the Secretary of State giving notice to the person.

- (5) For the purposes of this section an application for an individual grant of immigration or transit permission is pending if the application has been made and has not been decided or withdrawn.

43 Persons leaving the UK

- (1) The Secretary of State may examine a person (“P”) for the purpose of determining one or more of the matters mentioned in subsection (2) if—
- (a) P is at a port, international railway station or other place in the United Kingdom, and
 - (b) the Secretary of State has reasonable grounds for suspecting that P has gone there to embark on a ship, aircraft or train to leave the United Kingdom.
- (2) The matters referred to in subsection (1) are—
- (a) whether P is or is not a British citizen;
 - (b) if P is not a British citizen—
 - (i) P’s identity;
 - (ii) whether P entered the United Kingdom lawfully;
 - (iii) where P has been granted temporary permission, whether P has failed to comply with a condition subject to which it was granted;
 - (iv) whether P has committed an offence in the United Kingdom or elsewhere;
 - (v) whether an expulsion order should be made in relation to P (see Part 5 (expulsion orders & removal etc. from the UK));
 - (vi) whether P’s return to the United Kingdom is prohibited or restricted.

44 Further examination

- (1) The Secretary of State may require—
- (a) a person who is examined under subsection (1) of section 42 to submit to further examination for the purpose of determining one or more of the matters mentioned in subsection (2) of that section,
 - (b) a person who is examined under subsection (1) of section 43 to submit to further examination for the purpose of determining one or more of the matters mentioned in subsection (2) of that section, or
 - (c) a person who has been subject to a requirement under section 42(3)(a)—
 - (i) to submit to one or more further specified medical examinations;
 - (ii) to provide one or more specified medical reports.
- (2) That power is exercised by the Secretary of State giving notice to the person.
- (3) But a requirement under subsection (1) does not prevent a person who arrives in the United Kingdom—
- (a) as a transit passenger,
 - (b) as a member of the crew of a ship, aircraft or train, or
 - (c) for the purpose of joining a ship, aircraft or train as a member of the crew,
- from leaving by the person’s intended ship, aircraft or train.

- (4) A “transit passenger” is a person who passes through the United Kingdom, without entering it, en route to another country.

45 Further medical examination in interests of public health

- (1) This section applies where –
- (a) a person (“P”) submits to a post-arrival medical examination, and
 - (b) the Secretary of State thinks that a further medical examination may be required in the interests of public health.
- (2) In this Part, a “post-arrival medical examination” means a medical examination required under section 42(3)(a) or 44(1)(c) in respect of a person examined under section 42(1)(a) (examination on arrival and before entry).
- (3) The Secretary of State may require P to –
- (a) report to a specified health body, and
 - (b) attend at such place and time and submit to such examination (if any) as that body may require.
- (4) The power in subsection (3) is exercised by the Secretary of State giving notice to P.
- (5) In reaching a decision under subsection (1)(b), the Secretary of State must act on the advice of the registered medical practitioner who carried out the post-arrival medical examination.
- (6) “Health body” means a body constituted by or under an enactment which has functions relating to human health.

Powers to search for those liable to examination

46 Power to search ships, aircraft & trains etc.

A designated immigration official may, for the purpose of determining whether there are persons whom the Secretary of State has power to examine under this Part, search –

- (a) any ship, aircraft or train;
- (b) anything on board a ship, aircraft or train;
- (c) anything which a designated immigration official has reasonable grounds for believing has been on board a ship, aircraft or train which brought it to the United Kingdom;
- (d) anything which a designated immigration official has reasonable grounds for believing is about to be taken on board a ship, aircraft or train to leave the United Kingdom.

47 Contracting out the section 46 power

- (1) An authorised person may, in accordance with arrangements made under this section, exercise the power of a designated immigration official to search under section 46.
- (2) “Authorised” means authorised for the purpose of this section by the Secretary of State.

- (3) The Secretary of State may authorise a specified class of constable for the purpose of this section.
- (4) A class may be specified by reference to –
 - (a) named persons,
 - (b) the functions being exercised by a person,
 - (c) the location or circumstances in which a person is exercising functions, or
 - (d) any other matter.
- (5) The Secretary of State may –
 - (a) make arrangements for the exercise by authorised constables of the power under subsection (1), and
 - (b) may make arrangements for the exercise by authorised persons other than constables of the power under subsection (1).
- (6) Arrangements under subsection (5)(b) must include provision for the appointment of a Crown servant to –
 - (a) monitor the exercise of the power under subsection (1) and the related provisions by authorised persons (other than constables),
 - (b) inspect from time to time the way in which those powers are being exercised by authorised persons (other than constables), and
 - (c) investigate and report to the Secretary of State about any allegation made against an authorised person (other than a constable) in respect of anything done or not done in the purported exercise of the power under subsection (1) or one of the related provisions.
- (7) The “related provisions” are –
 - (a) section 49 (power to search persons found on a section 47 search);
 - (b) section 84 (power to detain persons liable to examination found on a section 47 search);
 - (c) section 324 (power to board ships, aircraft or trains);
 - (d) section 325(3) (power of an authorised person to use reasonable force).

48 Contracting out: supplementary

- (1) An authorisation of a constable under section 47 –
 - (a) is for a specified period, and
 - (b) may be withdrawn.
- (2) An authorisation of a person other than a constable under section 47 –
 - (a) is subject to such conditions as may be specified in the authorisation,
 - (b) is for a specified period, and
 - (c) may be withdrawn or suspended.
- (3) The power to authorise a person other than a constable under section 47, or to withdraw or suspend such an authorisation, is exercised by the Secretary of State giving notice to the authorised person in question.
- (4) The Secretary of State may authorise a person other than a constable for the purpose of section 47 only if the person applies to be authorised and the Secretary of State is satisfied that the person –
 - (a) is capable of effectively carrying out the functions which are exercisable by virtue of the authorisation,

- (b) has received adequate training in respect of the exercise of those functions, and
- (c) is otherwise a suitable person to exercise those functions.

49 Power to search persons found on a section 47 search

- (1) This section applies where an authorised person –
 - (a) discovers a person (“P”) in the course of a search under section 47, and
 - (b) has reasonable grounds for suspecting that the Secretary of State has power to examine P under section 42(1)(a) or 43(1).
- (2) The authorised person may search P and any baggage or vehicle belonging to P or under P’s control for –
 - (a) anything which P might use to assist P’s escape from detention,
 - (b) anything which P might use to cause physical injury to P or another person, or
 - (c) anything which might be used to establish information about P’s identity or nationality or about P’s journey.
- (3) The authorised person may seize and retain anything found on a search under subsection (2) which the authorised person has reasonable grounds for suspecting falls within paragraph (a), (b) or (c) of that subsection.
- (4) The authorised person must, as soon as is reasonably practicable, deliver anything retained on a search under subsection (2) to the Secretary of State.
- (5) An item subject to legal privilege may not be seized under subsection (3).
- (6) This section –
 - (a) does not authorise an authorised person to require P to remove any of P’s clothing other than outer clothing, but
 - (b) does authorise a search of P’s mouth.
- (7) In this section, “authorised person” means a person authorised for the purpose of section 47.
- (8) See section 168 (retention of documents or other items) for the retention of things that come into the possession of the Secretary of State under this section.

Powers to obtain information and documents etc.

50 Power to require production of identity document etc.

- (1) This section applies where a person (“P”) –
 - (a) is being examined under section 42(1) or 43(1),
 - (b) has been required under section 44(1)(a) or (b) to submit to further examination, or
 - (c) is being further examined under section 44 pursuant to such a requirement.
- (2) P must, if required to do so –
 - (a) supply to the Secretary of State all the information in P’s possession that the Secretary of State requests for the purposes of the examination;
 - (b) produce a valid identity document in relation to P;

- (c) declare whether or not P is carrying or conveying, or has carried or conveyed, a specified document or other item;
 - (d) produce a specified document or other item which P is carrying or conveying.
- (3) A “specified document or other item” means a document or other item of a description specified by the Secretary of State which appears to the Secretary of State to be relevant for the purposes of the examination.

51 Power to search for identity documents etc.

- (1) This section applies where a person (“P”) –
- (a) is being examined under section 42(1)(a) or (b) or 43(1),
 - (b) as a person so examined, has been required under section 44(1)(a) or (b) to submit to further examination, or
 - (c) is being further examined under section 44 pursuant to such a requirement.
- (2) A designated immigration official may search P and any baggage or vehicle belonging to P or under P’s control for –
- (a) anything which P might use to assist P’s escape from detention,
 - (b) anything which P might use to cause physical injury to P or another person, or
 - (c) anything which might be used to establish information about P’s identity or nationality or about P’s journey.
- (3) Subsection (4) applies if P has been required under section 50 –
- (a) to produce a valid identity document or a specified document or other item, or
 - (b) to declare whether or not P is carrying or conveying, or has carried or conveyed, a specified document or other item.
- (4) A designated immigration official may, for the purpose of determining whether P is carrying or conveying, or has carried or conveyed, the document or item, search –
- (a) P;
 - (b) any baggage or vehicle belonging to P or under P’s control;
 - (c) any searchable ship, aircraft, train or vehicle;
 - (d) anything on board a searchable ship, aircraft or train, or in or on a relevant vehicle,
 - (e) anything which the official has reasonable grounds for believing –
 - (i) has been on board a searchable ship, aircraft or train falling within paragraph (a) of subsection (5), or
 - (ii) has been in or on a searchable vehicle falling within that paragraph;
 - (f) anything which the official has reasonable grounds for believing –
 - (i) is about to be taken on board a searchable ship, aircraft or train falling within paragraph (b) of subsection (5), or
 - (ii) is about to be placed in or on a searchable vehicle falling within that paragraph.
- (5) A ship, aircraft, train or vehicle is “searchable” if –

- (a) the official has reasonable grounds for believing that P arrived in the United Kingdom in it, or
 - (b) the official has reasonable grounds for believing that P is to leave the United Kingdom in it.
- (6) A designated immigration official may seize—
- (a) anything found on a search under subsection (2) which the official has reasonable grounds for suspecting falls within paragraph (a), (b) or (c) of that subsection, or
 - (b) anything found on a search under subsection (4) which the official has reasonable grounds for suspecting is relevant for immigration purposes.
- (7) “Immigration purposes” has the same meaning as in Part 12 (see section 250(1)).
- (8) A search under this section may be carried out by a person acting under the authority of a designated immigration official.
- (9) An item subject to legal privilege may not be seized under subsection (6).
- (10) This section—
- (a) does not authorise anyone to require P to remove any of P’s clothing in public other than an outer clothing, but
 - (b) does authorise a search of P’s mouth.
- (11) See section 168 (retention of documents or other items) for the retention of things seized under subsection (6).

Related offences

52 Refusal to be examined or supply information etc.

- (1) A person (“P”) commits an offence if, without reasonable excuse—
- (a) P fails to submit to examination under section 42(1)(a) or (b) or 43(1) or to further examination under section 44(1)(a) or (b),
 - (b) P fails to submit to a medical examination or provide a medical report under section 42(3) or 44(1)(c),
 - (c) P fails to comply with a requirement imposed under section 45(3) to report to a specified health body or to attend, or submit to an examination as required by that body,
 - (d) P fails to supply information in P’s possession which P is required to supply under section 50, or
 - (e) P fails to produce documents or other items which P is carrying or conveying and which P is required to produce under section 50.
- (2) A person guilty of an offence under this section is liable on summary conviction—
- (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding level 5 on the standard scale, or to both;
 - (b) in Scotland or Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the standard scale, or to both.

53 Obtaining authorisation under section 47 by false pretences

- (1) A person (“P”) commits an offence if, with a view to obtaining authorisation under section 47 (contracting out of the section 46 power) for P or another person –
 - (a) P makes a statement which P knows to be false in a material particular, or
 - (b) P recklessly makes a statement which is false in a material particular.
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Further provision on post-arrival medical examinations

54 Provision of post-arrival medical examinations

- (1) The appropriate national authority must provide, or arrange for the provision of –
 - (a) the services required for the carrying out of post-arrival medical examinations in the authority’s area, and
 - (b) the facilities required for the carrying out of those examinations in that area, to the extent that such facilities are not the subject of a direction under section 30 (provision of facilities for immigration control).
- (2) The appropriate national authority may direct a health body (“a designated health body”) to exercise such of the authority’s functions under subsection (1) as are specified in the directions (“the delegated functions”).
- (3) A post-arrival medical examination may be carried out only by a registered medical practitioner acting on behalf of –
 - (a) the appropriate national authority for the area where it is carried out, or
 - (b) where directions under subsection (2) so provide, a designated health body.
- (4) Directions under subsection (2) are given by –
 - (a) regulations made by the appropriate national authority, or
 - (b) an instrument in writing.
- (5) Where directions are given by an instrument in writing, section 334(4) (power to make different provision for different cases etc.) applies as it would have applied if the directions had been given by regulations.
- (6) Where an appropriate national authority gives directions under subsection (2) to a designated health body, that body must have regard to any guidance given by the authority in relation to the exercise of the delegated functions.
- (7) The “appropriate national authority” –
 - (a) for England, is the Secretary of State,
 - (b) for Wales, is the Welsh Ministers,
 - (c) for Scotland, is the Scottish Ministers, and
 - (d) for Northern Ireland, is the Department of Health, Social Services and Public Safety in Northern Ireland;

and references in this section to an appropriate national authority’s “area” are to be construed accordingly.

- (8) In this section—
“facilities” includes accommodation and equipment;
“health body” means a body constituted by or under an enactment which has functions relating to human health.
- (9) References in this Part to the “responsible authority”, in relation to a post-arrival medical examination, are to the appropriate national authority or designated health body on whose behalf the registered medical practitioner who carried out the examination was acting.

55 Supply of information to Secretary of State

- (1) This section applies where—
(a) a person has submitted to a post-arrival medical examination, and
(b) information relating to the person is held by the responsible authority as a result of the examination.
- (2) The responsible authority must disclose the information to the Secretary of State for use for immigration purposes.
- (3) “Immigration purposes” has the same meaning as in Part 12 (information: see section 250(1)).

56 Supply of information to health body

- (1) This section applies where—
(a) a person (“P”) has submitted to a post-arrival medical examination, and
(b) the Secretary of State has given P a notice under section 45 requiring P to report to a specified health body (report for medical examination in interests of public health).
- (2) The responsible authority may disclose to that health body—
(a) P’s name;
(b) P’s place of residence in the United Kingdom;
(c) P’s age;
(d) the language which P speaks;
(e) the nature of any disease or contamination with which the registered medical practitioner who carried out the examination thinks P may be infected or contaminated;
(f) relevant details of P’s medical history;
(g) the grounds for the opinion mentioned in paragraph (e), including the result of any examination which has been carried out;
(h) the opinion of the registered medical practitioner who carried out the examination as to the action which the health body should take.
- (3) Information may be disclosed under subsection (2) only if the responsible authority thinks it necessary for the purpose of—
(a) medical diagnosis,
(b) the provision of care or treatment,
(c) protecting public health, or
(d) the management of health care services.
- (4) “Contamination” includes radiation.

57 Health care professionals

- (1) For the purposes of this Part, a post-arrival medical examination is to be treated as carried out by a registered medical practitioner where it is carried out by a health care professional acting under the direction of that practitioner.
- (2) Where a post-arrival medical examination in respect of a person (“P”) is carried out by a health care professional acting under the direction of a registered medical practitioner, the practitioner may disclose to the professional such information about P as the practitioner thinks necessary for the purpose of enabling the examination to be carried out.
- (3) Information acquired by a health care professional (“H”) as a result of the examination—
 - (a) must be disclosed by H to the registered medical practitioner, and
 - (b) may not be used by H for any other purpose.
- (4) “Health care professional” means a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002.

PART 4

POWER TO OBTAIN BIOMETRIC INFORMATION

Power to obtain biometric information

58 Power to obtain biometric information

- (1) An authorised person may require a person to whom this section applies (“P”) to supply biometric information about P.
- (2) A requirement imposed under subsection (1) may include, in particular—
 - (a) a requirement that P submits to a specified process by means of which the information is obtained or recorded;
 - (b) a requirement that P attends at a specified place and time so that the information may be obtained or recorded;
 - (c) a requirement that the information is obtained, recorded or otherwise supplied in a specified form.
- (3) This section applies to a person if the person falls within one or more of the following categories—
 - (a) a person, whether in or outside the United Kingdom, in relation to whom an application for the individual grant of immigration or transit permission is pending;
 - (b) a person who—
 - (i) is being examined under section 42(1) or 43(1) (persons arriving in or leaving etc. the UK),
 - (ii) has been required under section 44(1)(a) or (b) to submit to a further examination, or
 - (iii) is being further examined under section 44 pursuant to such a requirement;
 - (c) a person who is on immigration bail;

- (d) a person who is being detained under Part 6 (powers to detain & immigration bail);
 - (e) a person in respect of whom an application is made for support under Part 11 or for whom support is being provided under that Part;
 - (f) a person who is required by regulations under section 61 to apply for the issue of a document recording biometric information (a “biometric immigration document”, referred to in this Part as a “BID”);
 - (g) a person who produces a BID by virtue of regulations under section 61(1)(b) (regulations requiring BIDs to be used for certain purposes).
- (4) Biometric information supplied under subsection (1) to an authorised person who is not an official of the Secretary of State is to be treated as held by the Secretary of State.
- (5) For the purposes of this section –
- (a) “authorised person” means a person (whether or not an official of the Secretary of State) authorised by the Secretary of State for the purposes of this section;
 - (b) an application for an individual grant of immigration or transit permission is pending if the application has been made and has not been decided or withdrawn.

59 Safeguards etc. for children

- (1) The supply of biometric information by a child under the age of 16 as part of a process specified under section 58(2)(a) may not take place except in the presence of a responsible adult.
- (2) A “responsible adult”, in relation to a child, means a person aged 18 or over who is –
- (a) the child’s parent or guardian, or
 - (b) any other person who for the time being takes responsibility for the child and does not fall within subsection (3).
- (3) The persons who fall within this subsection are –
- (a) an authorised person;
 - (b) an official of the Secretary of State who is not an authorised person;
 - (c) a person acting on behalf of an authorised person as part of a process specified under section 58(2)(a).
- (4) Subsection (1) does not prevent the supply of biometric information where an authorised person has reasonable grounds for believing that the child is aged 16 or over.
- (5) “Authorised person” has the same meaning as in section 58.

60 Retention of biometric information

- (1) The Secretary of State must make regulations about the retention of biometric information supplied under section 58(1) (“relevant biometric information”).
- (2) The regulations may provide that relevant biometric information may be retained for a prescribed period.
- (3) The regulations must include provision about the destruction of relevant biometric information held by the Secretary of State and must, in particular –

- (a) require the Secretary of State to take all reasonable steps to ensure that relevant biometric information is destroyed if the person to whom it relates proves that the person is a British citizen or an EEA entrant,
 - (b) require that any requirement to destroy relevant biometric information by virtue of the regulations applies also to copies of such information, and
 - (c) require the Secretary of State to take all reasonable steps to ensure –
 - (i) that data held in electronic form which relate to relevant biometric information which has to be destroyed by virtue of the regulations are destroyed or erased, or
 - (ii) that access to such data is blocked.
- (4) But a requirement to destroy relevant biometric information is not to apply if and in so far as the information is retained in accordance with and for the purposes of another enactment.
- (5) The regulations must include provision –
- (a) entitling a person to whom relevant biometric information relates, on request, to a certificate issued by the Secretary of State to the effect that the Secretary of State has taken the steps required by virtue of subsection (3)(c), and
 - (b) for a certificate required by virtue of paragraph (a) to be issued within the period of 3 months beginning with the date on which the request for the certificate is received by the Secretary of State.

Biometric immigration documents

61 Regulations as to issue and use

- (1) The Secretary of State may make regulations –
- (a) requiring a person who is neither a British citizen nor an EEA entrant to apply for the issue of a BID;
 - (b) requiring a BID to be used –
 - (i) for specified immigration purposes,
 - (ii) in connection with specified immigration procedures, or
 - (iii) in specified circumstances, where a question arises about a person’s status in relation to immigration or nationality;
 - (c) requiring a person who produces a BID by virtue of paragraph (b) to supply information (other than biometric information) for comparison with information supplied in connection with the application for that document.
- (2) Regulations under subsection (1)(a) may, in particular –
- (a) specify the period within which an application for a BID must be made;
 - (b) make provision about the issue of BIDs;
 - (c) make provision about the content of BIDs (which may include information other than biometric information);
 - (d) make provision permitting a BID to be combined with another document;
 - (e) make provision for BIDs to begin to have effect, and cease to have effect, in accordance with the regulations;

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- (f) require a person who acquires a BID, without the consent of the person to whom it relates or of the Secretary of State, to surrender it to the Secretary of State as soon as is reasonably practicable;
 - (g) permit the Secretary of State, or a person falling within a specified description, to require the surrender of a BID in other specified circumstances (including a failure to comply with a requirement imposed under section 58(1));
 - (h) permit the Secretary of State on issuing a BID to require the surrender of other documents connected with immigration or nationality.
- (3) Regulations under subsection (1)(a) may require notice to be given to the Secretary of State by the holder of a BID –
- (a) who knows or suspects that the document has been altered or damaged (whether deliberately or not) or has been lost or stolen, or
 - (b) who knows or suspects that the information supplied in connection with the document was or has become false, misleading or incomplete.
- (4) Regulations under subsection (1)(a) may permit the Secretary of State to cancel a BID in such circumstances as the regulations may specify, which may in particular include circumstances where the Secretary of State thinks –
- (a) that an attempt has been made (whether successfully or not) to copy the document or to do anything to enable it to be copied,
 - (b) that a person has failed to surrender the document in accordance with subsection (2)(f) or (g),
 - (c) that the document should be reissued (because the information recorded in it requires alteration or for any other reason),
 - (d) that the holder is to be granted immigration permission or the holder's immigration permission is to be varied or cancelled,
 - (e) that the holder has been removed from the United Kingdom (whether under Part 5 (expulsion orders & removal etc. from the UK) or otherwise),
 - (f) that the holder has left the United Kingdom and does not have immigration permission, or
 - (g) that the holder has failed to comply with a requirement imposed under section 58(1).
- (5) Regulations under subsection (1)(b) –
- (a) may, in particular, require the production or other use of a BID that is combined with another document, and
 - (b) may not make provision the effect of which would be to require a person to carry a BID at all times.
- (6) Section 16 of the Identity Cards Act 2006 (prohibition of requirement to produce ID card) is subject to subsection (5)(a).
- (7) Regulations under this section which amend or replace earlier regulations under this section may require a person who holds a BID under the earlier regulations to apply under the new regulations.

Penalty for non-compliance

62 Penalty for non-compliance

- (1) The Secretary of State may, by notice given to a person, require the person to pay a penalty for failing to comply with a relevant requirement, that is to say –
 - (a) a requirement imposed under subsection (1) of section 58 where the person falls within subsection (3)(f) or (g) of that section (requirement to supply biometric information: person applying for issue of, or producing, a BID), or
 - (b) a requirement imposed by regulations under section 61.
- (2) The Secretary of State may designate a person aged 18 or over as the person responsible for ensuring that a child complies with a relevant requirement.
- (3) Where a person designated under subsection (2) fails to ensure the child's compliance with a relevant requirement, that failure is to be treated for the purposes of this section as a failure to comply with a relevant requirement.
- (4) The amount of a penalty imposed under this section must not exceed the maximum penalty specified in regulations made by the Secretary of State.
- (5) A penalty imposed under this section must be paid to the Secretary of State before the end of the prescribed period unless a notice of objection under section 282 (civil penalty procedure: notice of objection) is given in respect of the penalty.
- (6) If a notice of objection in respect of the penalty is given under section 282 and then withdrawn, the penalty must be paid to the Secretary of State before the end of the prescribed period.
- (7) In this section “prescribed” means prescribed by regulations made by the Secretary of State.
- (8) A person who has been given a notice under this section for failing to comply with a relevant requirement may be given further notices in the case of continued failure.
- (9) But in such a case a further notice may not be given –
 - (a) while a notice of objection in respect of the penalty could be given under section 282,
 - (b) where such a notice has been given, while it is neither withdrawn nor determined,
 - (c) while an appeal could be brought under section 285 in respect of the penalty, or
 - (d) where such an appeal has been brought, while it is neither abandoned nor determined.
- (10) This section is without prejudice to the exercise by the Secretary of State of any other power of the Secretary of State under this Act in relation to a person's failure to comply with a relevant requirement.
- (11) See Part 15 (civil penalty procedure) for provision relating to notices under this section, notices of objection, appeals, enforcement and other procedure.

63 Code of practice

- (1) The Secretary of State must issue a code of practice specifying the matters to be considered in determining—
 - (a) whether to impose a penalty under section 62, and
 - (b) the amount of a penalty.
- (2) The Secretary of State may revise and reissue the code.
- (3) The Secretary of State must have regard to the code when determining—
 - (a) whether to impose a penalty under section 62, and
 - (b) the amount of a penalty.
- (4) Before issuing or reissuing the code, the Secretary of State must lay a draft before Parliament.

PART 5

EXPULSION ORDERS & REMOVAL ETC. FROM THE UK

*Expulsion orders***64 Expulsion orders**

- (1) An “expulsion order” in relation to a person is an order which—
 - (a) requires, if the person is in the United Kingdom, that the person leaves it, and
 - (b) unless otherwise specified in the order, prohibits the person, if the person is outside the United Kingdom, from arriving in or entering it.
- (2) Unless otherwise stated, references in this Act to an expulsion order are to an expulsion order made under—
 - (a) section 65(1) (duty to make an expulsion order in relation to a foreign criminal), or
 - (b) section 65(2) (power to make an expulsion order).
- (3) An expulsion order may be made in relation to a person whether or not that person is in the United Kingdom when the order is made.
- (4) An expulsion order may be made for a limited or an unlimited period.
- (5) An expulsion order is in force from when it is made until it is cancelled (see section 70) or it expires.
- (6) If an expulsion order is made in relation to a person, the Secretary of State must give the person notice that the order has been made.

65 Duty and power to make an expulsion order

- (1) The Secretary of State must make an expulsion order in relation to a foreign criminal (see section 71) unless—
 - (a) one or more of the exceptions mentioned in section 66 apply, or
 - (b) section 67 (limits on the making of an expulsion order) prohibits the making of the order.
- (2) The Secretary of State may make an expulsion order in relation to a person if—

- (a) the person is not a British citizen and falls within subsection (3), or
 - (b) the person is not a British citizen and is a qualifying family member, and section 67 does not prohibit the making of the order.
- (3) A person falls within this subsection if –
- (a) the person has arrived in, but not entered, the United Kingdom and does not have immigration or transit permission,
 - (b) the person has entered the United Kingdom and does not have immigration permission,
 - (c) the person has temporary permission and has failed to comply with a condition subject to which the permission was granted,
 - (d) the person has obtained the grant of immigration permission wholly or partly by means of deception by that person or by another person,
 - (e) the person has attempted, or is attempting, to obtain immigration permission as described in paragraph (d), or
 - (f) the Secretary of State thinks that the person’s expulsion from the United Kingdom would be conducive to the public good (whether the person is, or were to be, in the United Kingdom).
- (4) A person is a “qualifying family member” if –
- (a) the person is a member of the family of a person (“P”) (see section 72) in relation to whom an expulsion order is or has been made under subsection (1) or (2)(a),
 - (b) the expulsion order in relation to P is in force, and
 - (c) where P has left the United Kingdom after the making of that order, not more than 8 weeks have elapsed since P’s departure.

66 Exceptions to the duty to make an expulsion order

- (1) The exceptions referred to in section 65(1)(a) are as follows.
- (2) Exception 1 applies where the Secretary of State thinks that the foreign criminal was under the age of 18 on the date of conviction.
- (3) Exception 2 applies where the foreign criminal –
 - (a) is the subject of a certificate under section 2 or 70 of the Extradition Act 2003,
 - (b) is in custody pursuant to arrest under section 5 of that Act,
 - (c) is the subject of a provisional warrant under section 73 of that Act,
 - (d) is the subject of an authority to proceed under section 7 of the Extradition Act 1989, or
 - (e) is the subject of a provisional warrant under section 8 of that Act.
- (4) Exception 3 applies where one or more of the following has effect in respect of the foreign criminal –
 - (a) a hospital or guardianship order under section 37 of the Mental Health Act 1983;
 - (b) a hospital direction under section 45A of that Act;
 - (c) a transfer direction under section 47 of that Act;
 - (d) a compulsion order under section 57A of the Criminal Procedure (Scotland) Act 1995;
 - (e) a guardianship order under section 58 of that Act;
 - (f) a hospital direction under section 59A of that Act;

- (g) a transfer for treatment direction under section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13);
 - (h) a hospital or guardianship order under Article 44 of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4));
 - (i) a transfer direction under Article 53 of that Order.
- (5) The application of exception 1, 2 or 3 does not prevent the making of an expulsion order under section 65(2) in relation to the foreign criminal.
 - (6) Where exception 2 applies, the foreign criminal's expulsion from the United Kingdom is to be regarded as conducive to the public good for the purposes of section 65(3)(f).

67 Limits on the making of an expulsion order

- (1) The Secretary of State must not make an expulsion order in relation to a person ("P") if the Secretary of State thinks that one or more of the following exceptions apply.
- (2) Exception A applies where the removal of P from the United Kingdom in pursuance of an expulsion order would breach P's rights under the Community Treaties.
- (3) Exception B applies where the removal of P from the United Kingdom in pursuance of an expulsion order would contravene the United Kingdom's obligations under the Refugee Convention.
- (4) Exception C applies where the removal of P from the United Kingdom in pursuance of an expulsion order would contravene the United Kingdom's obligations under Council Directive 2004/83/EC (international protection).
- (5) Exception D applies where the removal of P from the United Kingdom in pursuance of an expulsion order would breach a person's Convention rights.
- (6) See section 194 (presumptions where removal of protection applicant to safe European country).

68 Timing

- (1) This section applies where the Secretary of State is required under section 65(1) to make an expulsion order in relation to a foreign criminal.
- (2) The making of the expulsion order is at a time chosen by the Secretary of State.
- (3) The existence of the duty does not create a private right of action in respect of consequences of non-compliance by the Secretary of State.
- (4) The expulsion order may not be made while an appeal or further appeal against the conviction or sentence by reference to which the order is to be made—
 - (a) could be brought, or
 - (b) has been instituted and neither withdrawn nor determined.
- (5) For the purposes of subsection (4)(a), a person who has given the Secretary of State notice that the person does not intend to appeal is to be treated as being no longer able to appeal.

69 Effect of expulsion order on immigration or transit permission

- (1) When an expulsion order in relation to a person (“P”) is made, any immigration or transit permission previously granted to P (“P’s existing permission”) is automatically cancelled.
- (2) But subsection (1) does not apply if, when the order is made, a relevant in-country appeal could be brought by P.
- (3) Where subsection (1) does not apply as a result of subsection (2), P’s existing permission is automatically cancelled –
 - (a) when a relevant in-country appeal may no longer be brought, or
 - (b) where such an appeal has been brought, when it ceases to be pending.
- (4) But subsection (3) does not apply if the expulsion order in relation to P is cancelled.
- (5) A “relevant in-country appeal” means an in-country appeal under section 173 or 200 against the making of the expulsion order or against another immigration decision which has been made in respect of P (see Parts 9 & 10 (appeals & SIAC)).
- (6) Any immigration or transit permission granted to a person while an expulsion order in relation to that person is in force is to be treated as if it had never been granted.

70 Cancellation of an expulsion order

- (1) The Secretary of State may cancel an expulsion order in relation to a person.
- (2) But an expulsion order made in relation to a person pursuant to the duty under section 65(1) may be cancelled under subsection (1) only if –
 - (a) one or more of the exceptions mentioned in section 66 apply,
 - (b) the Secretary of State thinks that one or more of the exceptions mentioned in section 67 apply, or
 - (c) the application for the cancellation of the order is made while the person is outside the United Kingdom.
- (3) The Secretary of State must cancel an expulsion order in relation to a person if the Secretary of State thinks that –
 - (a) the person is outside the United Kingdom, and
 - (b) prohibiting the person’s entry into the United Kingdom would breach the person’s rights under the Community Treaties or a person’s Convention rights.
- (4) The power to cancel, or to refuse to cancel, under subsection (1) or the duty to cancel under subsection (3) is exercised by the Secretary of State giving notice to the person.
- (5) An expulsion order in relation to a person is automatically cancelled on the person becoming a British citizen.
- (6) An expulsion order made under section 65(2)(b) in relation to a person is automatically cancelled on –
 - (a) the person ceasing to be a member of the family of the person referred to as P in section 65(4), or
 - (b) the cancellation or expiry of the expulsion order made in relation to P.

71 Meaning of “foreign criminal”

- (1) For the purposes of this Act, “foreign criminal” means a person –
 - (a) who is not a British citizen,
 - (b) who is convicted in the United Kingdom of an offence, and
 - (c) in relation to whom condition A or B is met.
- (2) Condition A is met if the person is sentenced to a period of imprisonment of at least 12 months.
- (3) Condition B is met if –
 - (a) the offence is an offence specified in an order made by the Secretary of State for the purposes of this subsection, and
 - (b) the person is sentenced to a period of imprisonment.
- (4) For the purposes of subsection (1)(b) a person subject to an order under section 5 of the Criminal Procedure (Insanity) Act 1964 (insanity etc.) has not been convicted of an offence.
- (5) In subsection (2) the reference to a person who is sentenced to a period of imprisonment of at least 12 months –
 - (a) does not include a reference to a person who receives a suspended sentence (unless a court subsequently orders that the sentence or any part of it (of whatever length) is to take effect),
 - (b) does not include a reference to a person who is sentenced to a period of imprisonment of at least 12 months only by virtue of being sentenced to consecutive sentences amounting in aggregate to at least 12 months,
 - (c) includes a reference to a person who is sentenced to detention, or ordered or directed to be detained, in an institution other than a prison (including, in particular, a hospital or an institution for young offenders) for at least 12 months, and
 - (d) includes a reference to a person who is sentenced to imprisonment or detention, or ordered or directed to be detained, for an indeterminate period (provided that it may last for 12 months).
- (6) In subsection (3) the reference to a person who is sentenced to a period of imprisonment –
 - (a) does not include a reference to a person who receives a suspended sentence (unless a court subsequently orders that the sentence or any part of it is to take effect), and
 - (b) includes a reference to a person who is sentenced to detention, or ordered or directed to be detained, in an institution other than a prison (including, in particular, a hospital or an institution for young offenders).

72 Meaning of member of the family of a person

- (1) For the purposes of this Part (other than section 81), a person (“X”) is a member of the family of a person (“P”) if –
 - (a) X is P’s spouse, civil partner or unmarried partner,
 - (b) X is under the age of 18 and is P’s child, or
 - (c) X is under the age of 18 and is a child of a person who is P’s spouse, civil partner or unmarried partner.
- (2) For the purposes of subsection (1), a person is P’s unmarried partner if –

- (a) the person is living with P in a qualifying relationship,
 - (b) where P is being detained (whether under Part 6 or otherwise), the person is in a qualifying relationship with P and was living with P in that relationship when P was detained, or
 - (c) where P has left the United Kingdom after the making of an expulsion order in relation to P, the person is in a qualifying relationship with P and was living with P in that relationship at the relevant time.
- (3) “A qualifying relationship” means a relationship similar to marriage or civil partnership which has been subsisting for 2 years or more.
- (4) “The relevant time” means –
- (a) where P was detained immediately before P left the United Kingdom, when P was detained, or
 - (b) when P left the United Kingdom.
- (5) For the purposes of subsection (1) –
- (a) an adopted child, whether legally adopted or not, may be treated as the child of the adopter, and
 - (b) a child who is legally adopted is to be regarded as the child only of the adopter.
- (6) “Legally adopted” means adopted –
- (a) in pursuance of an order made by any court in the United Kingdom or the Islands,
 - (b) under a Convention adoption within the meaning of the Adoption Act 1976, the Adoption and Children Act 2002 or the Adoption and Children (Scotland) Act 2007 (asp 4), or
 - (c) by any adoption specified as an overseas adoption –
 - (i) by order of the Secretary of State under section 87 of the Adoption and Children Act 2002, or
 - (ii) by regulations of the Scottish Ministers under section 67 of the Adoption and Children (Scotland) Act 2007 (asp 4).

Removal from the United Kingdom

73 Power to remove those subject to an expulsion order

- (1) This section applies where –
- (a) an expulsion order in relation to a person (“P”) has been made and is in force, and
 - (b) P is in the United Kingdom, whether having arrived or entered before or after the expulsion order was made.
- (2) P may be removed from the United Kingdom under the authority of the Secretary of State to a country specified by the Secretary of State.
- (3) The country specified must be –
- (a) a country in which P embarked for the United Kingdom,
 - (b) a country in which P obtained an identity document in relation to P,
 - (c) a country of which P is a national, or
 - (d) a country to which there is reason to believe that P will be admitted.

- (4) For the purpose of removing P to the country specified, the Secretary of State may –
- (a) give directions to the captain of the ship, aircraft or train by which P arrived in the United Kingdom requiring the captain to remove P from the United Kingdom in that ship, aircraft or train,
 - (b) give directions to the carrier of the ship, aircraft or train by which P arrived in the United Kingdom requiring the carrier –
 - (i) to remove P from the United Kingdom in any ship, aircraft or train which is specified or indicated in the directions, or
 - (ii) to make arrangements for P’s removal from the United Kingdom in any ship, aircraft or train specified or indicated in the directions,
 - (c) give directions to the captain of any ship, aircraft or train which is about to leave the United Kingdom requiring the captain to remove P from the United Kingdom in that ship, aircraft or train, or
 - (d) give directions to the carrier of any ship, aircraft or train (other than a carrier mentioned in paragraph (b)) requiring the carrier –
 - (i) to make arrangements for P’s removal from the United Kingdom in any ship, aircraft or train specified or indicated in the directions, or
 - (ii) to remove P from the United Kingdom in accordance with arrangements to be made by the Secretary of State.
- (5) The “carrier” of a ship or aircraft means the owner or agent of that ship or aircraft.
- (6) The “carrier” of a train means –
- (a) in subsection (4)(b), the person operating the international service by which P arrived in the United Kingdom, and
 - (b) in subsection (4)(d), the person operating the international service on which the train is or is to be engaged.
- (7) Directions under subsection (4) may include provision for P to be accompanied by an escort consisting of one or more persons.
- (8) That provision may, in particular, include –
- (a) provision for the return of the escort to the United Kingdom;
 - (b) provision for the remuneration of the escort.
- (9) P may be placed, under the authority of the Secretary of State, on board a ship, aircraft, train or in a vehicle in which P is to be removed under this section.
- (10) But this section is subject to section 75 (no removal etc. where in-country right of appeal).

74 Costs of removal

- (1) Where directions are given under section 73(4)(a) or (b) (directions to captain or carrier of ship etc. by which a person arrived in the UK) for a person’s removal, the carrier of the ship, aircraft or train by which the person arrived in the United Kingdom must meet the costs of complying with them.
- (2) The Secretary of State must meet the costs of complying with directions given under section 73(4)(c) or (d) (directions given to other captains or carriers).
- (3) Where –

- (a) a person to whom directions are given under section 73(4)(a) or (b) for the removal of a person (“P”) fails to comply with the directions, and
 - (b) P is removed to a country specified under section 73(2) in accordance with arrangements made by the Secretary of State,
- the carrier of the ship, aircraft or train by which P arrived in the United Kingdom must pay the Secretary of State on demand the costs of P’s removal (including costs in relation to any escort) met by the Secretary of State.
- (4) Subsections (1) to (3) do not affect any power of the Secretary of State to recover the costs referred to in those subsections under section 328 (fees).
 - (5) In this section –
 - (a) the “carrier” of the ship or aircraft by which a person arrived in the United Kingdom means the owner or agent of that ship or aircraft, and
 - (b) the “carrier” of the train by which a person arrived in the United Kingdom means the person operating the international service by which the person arrived in the United Kingdom.

75 No removal etc. where in-country right of appeal

- (1) This section applies where an expulsion order in relation to a person (“P”) has been made and is in force.
- (2) While a relevant in-country appeal could be brought by P or such an appeal brought by P is pending –
 - (a) P is not required by the expulsion order to leave the United Kingdom, and
 - (b) P may not be removed from the United Kingdom under this Part.
- (3) But that does not prevent any of the following –
 - (a) the detention of P under Part 6 (powers to detain & immigration bail);
 - (b) the grant of immigration bail to P (see section 98(10));
 - (c) the giving of directions under section 73(4) for P’s removal from the United Kingdom;
 - (d) the Secretary of State requiring P to take specified action under section 76 (power to require specified action to facilitate removal);
 - (e) the taking of any other interim or preparatory action in relation to P’s removal under this Part.
- (4) A “relevant in-country appeal” means an in-country appeal under section 173 or 200 against the making of the expulsion order or against another immigration decision which has been made in respect of P (see Parts 9 & 10 (appeals & SIAC)).
- (5) For the purposes of subsection (2)(a), a person who has given the Secretary of State notice that the person does not intend to appeal is to be treated as being no longer able to appeal.

76 Power to require specified action to facilitate removal

- (1) The Secretary of State may require a person to take specified action if the Secretary of State thinks that –
 - (a) the action will or may enable a travel document to be obtained by or for the person, and

- (b) possession of the travel document will facilitate the person’s removal from the United Kingdom under this Part.
- (2) The Secretary of State may, in particular, require a person to—
- (a) supply information or documents to the Secretary of State or another person;
 - (b) obtain information or documents;
 - (c) make, consent to, or co-operate with the making of, an application to a person acting for the government of a State other than the United Kingdom;
 - (d) co-operate with a process designed to enable the determination of an application;
 - (e) attend an interview and answer questions accurately and completely;
 - (f) complete a form accurately;
 - (g) make an appointment.
- (3) Where a requirement imposed on a person (“P”) under subsection (2)(a) includes a requirement to supply biometric information about P, P may be required to submit to a specified process by means of which the biometric information is obtained or recorded.

Related offences

77 Breach of expulsion order

- (1) A person (“P”) commits an offence if P is present in the United Kingdom in breach of an expulsion order.
- (2) For the purposes of this section, a person is present in the United Kingdom in breach of an expulsion order at a particular time if, at that time—
- (a) P is knowingly in the United Kingdom (whether or not P has entered it), and
 - (b) P knows that P’s presence there is in breach of an expulsion order made in relation to P.
- (3) For the purposes of this section, P’s presence in the United Kingdom at a particular time is not to be regarded as in breach of an expulsion order if, at that time—
- (a) P is on immigration bail,
 - (b) P is being detained (whether under Part 6 or otherwise), or
 - (c) P has immigration permission by virtue of section 69 (permission not automatically cancelled pending appeal).
- (4) An offence under this section—
- (a) is committed on the first day when P is present in the United Kingdom in breach of an expulsion order, and
 - (b) continues to be committed throughout any period after that during which P is present in the United Kingdom in breach of an expulsion order.
- (5) But a person is not to be prosecuted more than once under this section in respect of the same period during which P is present in the United Kingdom in breach of an expulsion order.

- (6) See section 318 (defence for a refugee or person entitled to humanitarian protection) for a defence to an offence under this section.
- (7) A person guilty of an offence under this section is liable on summary conviction—
 - (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding level 5 on the standard scale, or to both;
 - (b) in Scotland or Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the standard scale, or to both.

78 Failure by carriers etc. to comply with removal directions

- (1) A person to whom directions are given under section 73(4) (removal of those subject to an expulsion order) commits an offence if, without reasonable excuse, the person fails to comply with the directions.
- (2) A person guilty of an offence under this section is liable on summary conviction—
 - (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding level 5 on the standard scale, or to both;
 - (b) in Scotland or Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the standard scale, or to both.

79 Failure to comply with a requirement under section 76 to facilitate removal

- (1) A person commits an offence if, without reasonable excuse, the person fails to comply with a requirement imposed under section 76 (power to require specified action to facilitate removal).
- (2) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both;
 - (b) on summary conviction—
 - (i) in England and Wales or in Scotland, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both;
 - (ii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both.

International travel bans

80 Effect of international travel ban on immigration or transit permission

- (1) A person is “subject to an international travel ban” for the purposes of this section if the person is named by or by virtue of a designated instrument, or is of a description specified in a designated instrument.

- (2) When a person becomes subject to an international travel ban, any immigration or transit permission previously granted to the person is automatically cancelled.
- (3) Immigration or transit permission may be granted to a person while the person is subject to an international travel ban only if—
 - (a) in the case of immigration permission, a grant of such permission to the person is necessary to avoid—
 - (i) a breach of a person’s Convention rights,
 - (ii) a contravention of the United Kingdom’s obligations under the Refugee Convention, or
 - (iii) a contravention of the United Kingdom’s obligations under Council Directive 2004/83/EC (international protection), or
 - (b) in the case of immigration or transit permission, the grant of the permission in question would not contravene the United Kingdom’s obligations under the designated instrument.
- (4) “A designated instrument” is an instrument which is designated for the purposes of this section by the Secretary of State in the Rules.
- (5) The Secretary of State may designate an instrument under subsection (4) only if conditions A and B are met in relation to it.
- (6) Condition A is met in relation to an instrument if it is—
 - (a) a resolution of the Security Council of the United Nations, or
 - (b) an instrument made by the Council of the European Union.
- (7) Condition B is met in relation to an instrument if—
 - (a) it requires that a person is not to be admitted to the United Kingdom (however that requirement is expressed), or
 - (b) it recommends that a person should not be admitted to the United Kingdom (however that recommendation is expressed).

Assistance to voluntary leavers and other support

81 Power to provide assistance in relation to voluntary leavers

- (1) The Secretary of State may make arrangements to—
 - (a) assist voluntary leavers;
 - (b) assist persons to decide whether to become voluntary leavers.
- (2) A person (“P”) is a “voluntary leaver” for the purposes of this section if—
 - (a) P falls within subsection (3) or (4),
 - (b) P leaves the United Kingdom for a place where P hopes to take up permanent residence (P’s “new place of residence”), and
 - (c) the Secretary of State thinks that P wishes to leave the United Kingdom.
- (3) P falls within this subsection if P is neither a British citizen nor an EEA entrant.
- (4) P falls within this subsection if—
 - (a) P is an EEA entrant, and
 - (b) the Secretary of State has reasonable grounds for believing that P is or has been a victim within the meaning of the Council of Europe Convention on Trafficking in Human Beings.

- (5) The arrangements under subsection (1) must require that, before assistance may be given, an application for assistance must be made.
- (6) The arrangements under subsection (1) may involve the provision of financial assistance and the Secretary of State may, in particular, make payments (whether to voluntary leavers or to others) which relate to—
 - (a) travelling and other expenses incurred, or to be incurred, by or on behalf of a voluntary leaver or a member of the voluntary leaver's family or household, in leaving the United Kingdom;
 - (b) expenses incurred, or to be incurred, by or on behalf of a voluntary leaver or a member of the voluntary leaver's family or household, on or shortly after arrival in the voluntary leaver's new place of residence;
 - (c) the provision of services designed to assist a voluntary leaver, or a member of the voluntary leaver's family or household, to settle in the voluntary leaver's new place of residence;
 - (d) expenses in connection with a journey undertaken, or to be undertaken, by a person (with or without members of the person's family or household) to prepare for, or to assess the possibility of, the person becoming a voluntary leaver.
- (7) In the case of a voluntary leaver falling within subsection (4), the references in subsection (6) to a member of the voluntary leaver's family or household do not include anyone who is aged 18 or over when the application for assistance is made.
- (8) An expulsion order made in relation to P does not prevent P being a voluntary leaver for the purposes of this section.

82 Projects relating to migration

- (1) The Secretary of State may participate in a project which is designed to—
 - (a) reduce migration,
 - (b) assist or ensure the return of migrants,
 - (c) facilitate co-operation between countries in matters relating to migration,
 - (d) conduct or consider research about migration, or
 - (e) arrange or assist the settlement of migrants (whether in the United Kingdom or elsewhere).
- (2) In particular, the Secretary of State may—
 - (a) provide financial assistance to an international organisation which arranges or participates in a project of a kind described in subsection (1);
 - (b) provide financial assistance to an organisation in the United Kingdom or another country which arranges or participates in a project of that kind;
 - (c) provide or arrange for the provision of financial or other assistance to a migrant who participates in a project of that kind;
 - (d) participate in financial or other arrangements which are agreed between Her Majesty's Government and the government of one or more countries and which are or form part of a project of that kind.
- (3) For the purposes of this section—

- (a) “migrant” means a person who leaves the country where the person usually resides hoping to settle in another country, and
 - (b) “migration” is to be construed accordingly.
- (4) Subsection (1) does not—
- (a) confer a power to remove a person from, or require a person to leave, the United Kingdom, or
 - (b) affect whether a person is entitled or permitted to enter or stay in the United Kingdom.

PART 6

POWERS TO DETAIN & IMMIGRATION BAIL

Powers to detain

83 Persons without immigration permission etc. on board aircraft etc.

- (1) This section applies where—
- (a) a person (“P”) who is neither a British citizen nor an EEA entrant arrives in the United Kingdom by ship, aircraft or train, and
 - (b) on or after arrival, P is refused the grant of immigration or transit permission, or P’s immigration or transit permission is cancelled.
- (2) The captain of the ship, aircraft or train must, if required to do so by the Secretary of State, prevent P from disembarking in the United Kingdom.
- (3) For the purpose of preventing disembarkation under subsection (2), the captain may detain P in custody on board the ship, aircraft or train.

84 Persons liable to examination found on a section 47 search

- (1) An authorised person may detain a person (“P”) if the authorised person—
- (a) discovers P in the course of a search under section 47 (contracting out of power under section 46 to search ships etc. for persons liable to examination), and
 - (b) has reasonable grounds for suspecting that the Secretary of State has power to examine P under Part 3 (powers to examine etc.).
- (2) If P is so detained, the authorised person must deliver P as soon as is reasonably practicable to the Secretary of State.
- (3) For that purpose, the authorised person—
- (a) may take P to a place for the purpose of delivering P to an official of the Secretary of State;
 - (b) may arrange for an official of the Secretary of State to attend at a place.
- (4) P may be detained under this section for not longer than 3 hours.
- (5) “Authorised person” means a person authorised for the purpose of section 47.

85 Persons liable to examination on arrival or after entry

- (1) This section applies to a person (“P”) if—

- (a) the Secretary of State has power to examine P under section 42(1)(a) or (b) (examination of those who have arrived in or entered the UK), or
 - (b) as a person so examined, the Secretary of State has power to further examine P under section 44.
- (2) P may be detained under the authority of the Secretary of State until the completion of the examination.

86 Persons liable to examination on leaving the UK

- (1) This section applies to a person (“P”) if—
- (a) the Secretary of State has power to examine P under section 43(1) (examination of those leaving the UK), or
 - (b) as a person so examined, the Secretary of State has power to further examine P under section 44.
- (2) P may be detained under the authority of the Secretary of State until the completion of the examination.
- (3) P may be detained under this section for not longer than 12 hours.

87 Foreign criminals pending detention under section 88

- (1) This section applies to a person (“P”) if P is a foreign criminal.
- (2) The sentencing court must give the Secretary of State notice of P’s conviction and sentence as soon as is reasonably practicable after passing the sentence.
- (3) The “sentencing court” is the court which sentences P to the period of imprisonment mentioned in condition A or B in section 71 (meaning of “foreign criminal”).
- (4) If, on sentencing, P is not detained in pursuance of the sentence or the order of a court and the Secretary of State or a court do not direct otherwise, P must be detained on the authority of the Secretary of State—
- (a) until the Secretary of State decides whether to detain P under section 88, and
 - (b) where the Secretary of State decides to detain P under that section, until P is so detained.
- (5) P may not be detained under this section after the end of the period of 2 days beginning with the day after the date of notification.
- (6) The “date of notification” is the date on which the Secretary of State is given notice of P’s conviction and sentence under subsection (2).

88 Persons who may be or are subject to an expulsion order

- (1) If the Secretary of State has reasonable grounds for suspecting that a person is someone in relation to whom an expulsion order may or must be made, that person may be detained under the authority of the Secretary of State until—
- (a) an expulsion order is made in relation to the person, or
 - (b) the Secretary of State decides not to make an expulsion order in relation to the person.

- (2) If an expulsion order is made in relation to a person and is in force, that person may be detained under the authority of the Secretary of State until—
 - (a) the person’s removal to a country specified by the Secretary of State under section 73(2) has been carried out, or
 - (b) the person otherwise leaves the United Kingdom.
- (3) But if the expulsion order is made pursuant to the duty under section 65(1) (duty to make an expulsion order in relation to a foreign criminal), the Secretary of State must detain the person under subsection (2) unless, in the circumstances, the Secretary of State thinks it inappropriate.
- (4) A court determining an appeal against conviction or sentence in the case of a person being detained under subsection (1) or (2) may direct the person’s release from that detention.

89 Persons subject to an expulsion order placed on board aircraft etc.

- (1) This section applies where—
 - (a) a person (“P”) is to be removed from the United Kingdom under section 73 (power to remove those subject to an expulsion order), and
 - (b) P is placed on board a ship, aircraft or train under section 73(9) or P is being detained there under section 83.
- (2) The captain of the ship, aircraft or train must, if required to do so by the Secretary of State, prevent P from disembarking in the United Kingdom before P’s removal under section 73.
- (3) For the purpose of preventing disembarkation under subsection (2), the captain may detain P in custody on board the ship, aircraft or train.

90 Persons liable to arrest by a constable

- (1) A designated immigration official at a port or international railway station in England, Wales or Northern Ireland may detain a person if the official has reasonable grounds for suspecting that the person—
 - (a) may be liable to arrest by a constable under section 24(1), (2) or (3) of PACE,
 - (b) may be liable to arrest by a constable under Article 26(1), (2) or (3) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)), or
 - (c) is subject to a warrant for arrest.
- (2) A designated immigration official at a port in Scotland may detain a person if the official has reasonable grounds for suspecting that the person is subject to a warrant for arrest.
- (3) A designated immigration official who detains a person (“P”) under this section—
 - (a) must arrange for a constable to attend as soon as is reasonably practicable,
 - (b) may search P and any baggage belonging to P or under P’s control for—
 - (i) anything which P might use to assist P’s escape, or
 - (ii) anything which P might use to cause physical injury to P or another person,

- (c) may seize and retain anything found on a search under paragraph (b) which the official has reasonable grounds for suspecting falls within sub-paragraph (i) or (ii) of that paragraph,
 - (d) must seize and retain anything found on a search under paragraph (b) which the official has reasonable grounds for suspecting may be evidence of the commission of an offence, and
 - (e) must, when the constable arrives, deliver P to the constable together with anything retained on a search.
- (4) A person may be detained under this section for not longer than 3 hours.
- (5) Where a person whom a designated immigration official has detained or attempted to detain under this section leaves the port or international railway station, a designated immigration official may –
- (a) pursue the person, and
 - (b) return the person to that port or station.
- (6) An item subject to legal privilege may not be seized under this section.
- (7) This section –
- (a) does not authorise a designated immigration official to require a person to remove any of the person’s clothing other than outer clothing, but
 - (b) does authorise a search of a person’s mouth.
- (8) For the purposes of this section, in addition to having the meaning given in section 339(1) (other definitions), a “port” also includes a place, in relation to a person, if a designated immigration official has reasonable grounds for suspecting that the person –
- (a) has gone there for the purpose of embarking on a ship or aircraft, or
 - (b) has arrived there on disembarking from a ship or aircraft.

Related provision

91 Power to remove a person from an aircraft etc. for detention

If a person, whom there is power to detain under this Part, is on board a ship, aircraft or train, that person may be removed from it, under the authority of the Secretary of State, in order to be so detained.

92 Place and effect of detention

- (1) This section applies in relation to the detention of a person (“P”) under this Part.
- (2) P may be detained in such places as the Secretary of State may direct (when not detained in accordance with section 83 or 89 on board a ship, aircraft or train).
- (3) While being detained, P may be taken, in the custody of a constable or of any person acting under the authority of the Secretary of State –
- (a) to a place mentioned in subsection (2) for the purpose of being detained under this Part at that place, or
 - (b) to and from a place where P’s presence is required for a purpose connected with the operation of this Act.

- (4) Section 2(1) (non-British citizens) does not prevent a person entering or staying in the United Kingdom while being detained under this Part; but the person remains subject to any requirement under that provision to have immigration permission.

93 Duty to give reasons and to review detention

- (1) This section applies in relation to the detention of a person (“P”) under this Part.
- (2) The Secretary of State must give P a notice stating the reasons for P’s detention.
- (3) The notice must be given at the time of P’s initial detention or as soon as is reasonably practicable after that.
- (4) If P is detained for a period of 28 days or more (beginning with the day on which P is initially detained), the Secretary of State must –
- (a) review P’s detention as soon as is reasonably practicable after P has been so detained for a period of 28 days, and
 - (b) subsequently review P’s detention as soon as is reasonably practicable after the end of the period of 28 days beginning with the day on which the previous review under this subsection was concluded.
- (5) The Secretary of State must, as soon as is reasonably practicable after the conclusion of each review of P’s detention under subsection (4), give P a notice stating –
- (a) the outcome of the review, and
 - (b) where P continues to be detained, the reasons for P’s continued detention.

94 Recovery of detention & other costs

- (1) This section applies where –
- (a) a person (“P”) arrives in the United Kingdom by ship, aircraft or train and either –
 - (i) P does not have immigration permission on arrival, and on or after arrival, P is refused the grant of such permission, or
 - (ii) P does have immigration permission on arrival, but it is cancelled within 24 hours of P’s arrival, and
 - (b) an expulsion order is made in relation to P.
- (2) The carrier of the ship, aircraft or train by which P arrived in the United Kingdom must pay the Secretary of State on demand the costs incurred by the Secretary of State in respect of the detention, accommodation or maintenance of P after P’s arrival (whether before, or on or after, the expulsion order is made).
- (3) The maximum number of days in respect of which costs may be demanded is 14 days.
- (4) The “carrier of the ship, aircraft or train by which P arrived in the United Kingdom” means –
- (a) the owner or agent of that ship or aircraft, or
 - (b) the person operating the international service by which P arrived by that train.

- (5) If immigration permission is granted to P before P is removed from, or otherwise leaves, the United Kingdom—
- (a) no sum is to be demanded under this section for costs incurred in respect of P, and
 - (b) any sum already so demanded and paid is to be refunded.

Related offences

95 Absconding from detention

- (1) A person commits an offence if the person absconds from detention under this Part.
- (2) A person guilty of an offence under this section is liable on summary conviction—
- (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding level 5 on the standard scale, or to both;
 - (b) in Scotland, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding level 5 on the standard scale, or to both;
 - (c) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the standard scale, or to both.

96 Assisting a person to abscond

- (1) A person commits an offence if the person assists a person being detained under this Part to abscond, or attempt to abscond, from detention.
- (2) A person commits an offence if, intending to facilitate a person being detained under this Part to abscond from detention, the person—
- (a) brings, throws or otherwise conveys anything into a place where the person is being detained,
 - (b) causes another person to bring, throw or otherwise convey anything into such a place,
 - (c) gives anything to a person being detained under this Part, or
 - (d) places anything in any place (whether inside or outside a place where the person being detained under this Part is being detained).
- (3) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment to imprisonment for a term not exceeding 2 years, or to a fine, or to both;
 - (b) on summary conviction—
 - (i) in England and Wales or in Scotland, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both;
 - (ii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both.

97 Failure by captain to prevent disembarkation

- (1) A person (“P”) who is the captain of a ship, aircraft or train commits an offence if, without reasonable excuse, P permits a person to disembark in the United Kingdom when required under section 83 or 89 (those on board aircraft etc. without immigration permission etc. or being removed) to prevent that.
- (2) A person guilty of an offence under this section is liable on summary conviction—
 - (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding level 5 on the standard scale, or to both;
 - (b) in Scotland or Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the standard scale, or to both.

*Immigration bail***98 Power to grant immigration bail**

- (1) The Secretary of State may grant a person immigration bail if—
 - (a) the person is being detained under section 85 (persons liable to examination on arrival or after entry) or section 88 (persons who may be or are subject to an expulsion order),
 - (b) the person is not being detained under either of those sections but there is power to do so,
 - (c) the person is being detained under section 87 (foreign criminals pending detention under section 88), or
 - (d) the person meets the criteria for special immigration status and an expulsion order cannot be made in relation to the person because the Secretary of State thinks that exception D in section 67 (limits on the making of an expulsion order) applies.
- (2) A person meets the criteria for special immigration status if—
 - (a) the person is a foreign criminal or falls within subsection (4),
 - (b) Article 1F of the Refugee Convention (exclusions for criminals etc.) applies to the person, or
 - (c) the person is a member of the family of a person who falls within paragraph (a) or (b).
- (3) Section 72 (meaning of the member of the family of a person) applies for the purposes of subsection (2)(c) as it applies for the purposes of Part 5.
- (4) A person falls within this subsection if—
 - (a) the person is not a British citizen,
 - (b) the person is convicted outside the United Kingdom of an offence, and
 - (c) condition A or B is met.
- (5) Condition A is met if the person—
 - (a) is sentenced to a period of imprisonment of at least 12 months, and
 - (b) could have been sentenced to a period of imprisonment of at least 12 months had the person’s conviction been a conviction in the United Kingdom of a similar offence.

- (6) Condition B is met if –
 - (a) the Secretary of State certifies that the offence is similar to an offence specified in an order made under section 71(3) (meaning of “foreign criminal”), and
 - (b) the person is sentenced to a period of imprisonment.
- (7) In subsections (5) and (6) a reference to a person who is sentenced to a period of imprisonment –
 - (a) does not include a reference to a person who receives a suspended sentence (unless a court subsequently orders that the sentence or any part of it is to take effect), and
 - (b) includes a reference to a person who is sentenced to detention, or ordered or directed to be detained, in an institution other than a prison (including, in particular, a hospital or an institution for young offenders).
- (8) The First-tier Tribunal may, on an application made to that Tribunal for a grant of immigration bail to a person, grant the person immigration bail if –
 - (a) the person is being detained under section 85 or 88,
 - (b) it is not a case where SIAC has power to grant immigration bail (see section 201),
 - (c) at least 7 days have elapsed since the date of that person’s arrival in the United Kingdom, and
 - (d) where the person falls within subsection (9), the Secretary of State consents to the grant.
- (9) A person falls within this subsection if the Secretary of State gives the First-tier Tribunal notice that the Secretary of State intends –
 - (a) to remove the person from the United Kingdom under Part 5 (expulsion orders & removal etc. from the UK), and
 - (b) that the removal is to take place before the end of the period of 14 days beginning with the date on which the application for the grant of immigration bail was made.
- (10) In this Act references to the granting of immigration bail are to the granting of immigration bail under this section or section 201 (power of SIAC to grant immigration bail).

99 Conditions of immigration bail

- (1) If immigration bail is granted to a person, it must be granted subject to one or more of the following conditions (referred to in this Act as the “bail conditions”) –
 - (a) a condition restricting the person’s work, occupation or studies, in the United Kingdom;
 - (b) a condition requiring the person to maintain and accommodate himself or herself, and any of the person’s dependants, without the assistance of public funds;
 - (c) a condition requiring the person to report to the Secretary of State or such other person as may be specified;
 - (d) a condition about the person’s residence;
 - (e) a condition requiring the person to appear before the First-tier Tribunal at a time and place specified;
 - (f) a financial security condition (see section 103);

- (g) an electronic monitoring condition (see sections 104 and 105).
- (2) In deciding whether to grant a person immigration bail and if so, subject to which bail conditions, the Secretary of State or the First-tier Tribunal must have regard to –
- (a) the likelihood of the person failing to comply with a bail condition,
 - (b) whether or not the person has been convicted of an offence,
 - (c) the likelihood of the person committing an offence while on immigration bail,
 - (d) the likelihood of the person’s presence in the United Kingdom, while on immigration bail, causing a danger to public health or being a threat to the maintenance of public order,
 - (e) whether the person’s detention is necessary in that person’s interests or for the protection of any other person, and
 - (f) such other matters as the Secretary of State or the First-tier Tribunal thinks relevant.
- (3) For the purposes of subsection (2)(b), the conviction –
- (a) may have occurred before or after the commencement of this section,
 - (b) may be a conviction outside the United Kingdom, and
 - (c) may not be a conviction which is a spent conviction for the purposes of the Rehabilitation of Offenders Act 1974 or any corresponding enactment for the time being in force in Northern Ireland.

100 Requirement to give notice

- (1) If the Secretary of State or the First-tier Tribunal decides to grant, or to refuse to grant, immigration bail to a person, the Secretary of State or the First-tier Tribunal must give the person notice of the decision.
- (2) Where the First-tier Tribunal is required under subsection (1) to give a person notice of a decision, it must also give the Secretary of State notice of the decision.
- (3) Where the decision is to grant immigration bail a notice under subsection (1) or (2) must state –
 - (a) when the grant of immigration bail commences, and
 - (b) the bail conditions.
- (4) The commencement of a grant of immigration bail may be specified to be conditional –
 - (a) in a case where the grant is subject to a financial security condition, on the deposit of the sum of money required pursuant to the condition, and
 - (b) in any case, on specified arrangements being in place to ensure that the person is able to comply with the bail conditions.

101 When a person is “on immigration bail”

- (1) For the purposes of this Act, a person is “on immigration bail” from when a grant of immigration bail to the person commences until it ends.
- (2) A grant of immigration bail to a person ends when –

- (a) immigration permission is subsequently granted to the person and the period for which the permission is granted commences,
- (b) the person is detained under this Part, or
- (c) the person is removed from, or otherwise leaves, the United Kingdom.

102 Effect of grant of immigration bail

- (1) A person who is being detained under this Part when a grant of immigration bail to the person commences is to be released from detention.
- (2) A grant of immigration bail to a person does not prevent the person's subsequent detention under this Part.
- (3) Section 2(1) (non-British citizens) does not prevent a person entering or staying in the United Kingdom while on immigration bail; but the person remains subject to any requirement under that provision to have immigration permission.

103 Financial security condition

- (1) In this Act “a financial security condition” means a condition requiring the deposit of a sum of money (whether provided by the person to whom immigration bail is granted or another person).
- (2) Immigration bail may be granted to a person subject to a financial security condition only if the Secretary of State or the First-tier Tribunal thinks it appropriate with a view to ensuring that the person complies with the other bail conditions.
- (3) The financial security condition must specify –
 - (a) the sum of money required,
 - (b) when it is to be provided, and
 - (c) the form and manner in which it is to be provided.
- (4) Money provided in pursuance of a financial security condition is to be held by the Secretary of State until –
 - (a) the person ceases to be on immigration bail,
 - (b) the condition is cancelled, or
 - (c) the money is otherwise required to be repaid.
- (5) Where subsection (4)(a), (b) or (c) applies, the money must be repaid to whoever provided it unless the person granted immigration bail has failed to comply with a bail condition; and where that is the case, the money is forfeited and the Secretary of State may keep it.
- (6) But no money may be forfeited unless whoever provided it has been given an opportunity to make representations to the Secretary of State.

104 Electronic monitoring condition

- (1) In this Part “an electronic monitoring condition” in relation to the grant of immigration bail to a person (“P”) means a condition requiring P to co-operate with such arrangements as the Secretary of State or the First-tier Tribunal may specify for detecting and recording by electronic means P's location, or presence in or absence from a location –

- (a) at specified times,
 - (b) during specified periods of time, or
 - (c) while the arrangements are in place.
- (2) Arrangements for the electronic monitoring of P may, in particular –
- (a) require P to wear a device;
 - (b) require P to make specified use of a device;
 - (c) prohibit P from causing or permitting damage to, or interference with, a device;
 - (d) prohibit P from taking or permitting action that would or might prevent the effective operation of a device;
 - (e) require P to communicate in a specified manner and at specified times or during specified periods;
 - (f) involve the performance of functions by persons other than the Secretary of State or the First-tier Tribunal.
- (3) Immigration bail may not be granted subject to an electronic monitoring condition if P is under the age of 18.
- (4) When the Secretary of State thinks that satisfactory arrangements for electronic monitoring are available in respect of an area, the Secretary of State must give the First-tier Tribunal notice to that effect.
- (5) The First-tier Tribunal may not grant immigration bail subject to an electronic monitoring condition if the person is, or is expected to be, in an area in respect of which the Tribunal has not been given a notice under subsection (4).

105 Regulations about arrangements for electronic monitoring

- (1) The Secretary of State may make regulations about arrangements for electronic monitoring for the purposes of section 104.
- (2) Those regulations may, in particular, require that arrangements for electronic monitoring impose on a person of a specified description responsibility for specified aspects of the operation of the arrangements.
- (3) An electronic monitoring condition must comply with regulations under subsection (1).

106 Power to pay travel expenses in relation to reporting condition

Where immigration bail is granted to a person subject to a condition falling within section 99(1)(c) (a reporting condition), the Secretary of State may make a payment to the person in respect of reasonable travelling expenses which the person has incurred or will incur for the purpose of complying with the condition.

107 Power to vary bail conditions

- (1) This section applies where immigration bail is granted to a person.
- (2) The bail conditions may be varied by –
- (a) one or more of the conditions being amended;
 - (b) one or more of the conditions being cancelled;
 - (c) one or more new conditions mentioned in section 99(1) being imposed.

- (3) The power to vary as described in subsection (2)(a) is exercisable—
 - (a) by the Secretary of State where the Secretary of State certifies that the immigration bail is granted on the ground that the person falls within section 98(1)(d) (persons meeting the criteria for special immigration status), and
 - (b) in any other case, by the Secretary of State or the First-tier Tribunal (regardless of which of them granted the immigration bail).
- (4) The power to vary as described in subsection (2)(b) or (c) is exercisable only by whoever granted the immigration bail.
- (5) The power to vary, or to refuse to vary, bail conditions under this section is exercised by the Secretary of State or the First-tier Tribunal giving notice to the person.
- (6) Where the First-tier Tribunal is required under subsection (5) to give notice to a person, it must also give notice to the Secretary of State.

Interpretation

108 Meaning of references to a person whom there is power to detain

References in this Act (however expressed) to a person whom there is power to detain under section 85 or 88 are to be treated as including a person (“P”) if the only reason why P cannot be so detained is that—

- (a) P cannot presently be removed from the United Kingdom because of a legal impediment connected with the United Kingdom’s obligations under an international agreement,
- (b) practical difficulties are impeding or delaying the making of arrangements for P’s removal from the United Kingdom, or
- (c) practical difficulties, or demands on administrative resources, are impeding or delaying the taking of a decision in respect of P.

PART 7

DETAINED PERSONS & REMOVAL CENTRES ETC.

Escort of detained persons

109 Escort arrangements

- (1) The Secretary of State may make arrangements (referred to in this Part as “escort arrangements”) for the exercise of any of the following functions (referred to in this Part as “escort functions”)—
 - (a) the delivery of detained persons to premises in which they may lawfully be detained;
 - (b) the delivery of detained persons from any such premises for the purposes of their removal from the United Kingdom under Part 5 (expulsion orders & removal etc. from the UK);
 - (c) the custody of detained persons who are temporarily outside such premises;
 - (d) the custody of detained persons held on the premises of the First-tier Tribunal, the Upper Tribunal, SIAC or any court.

- (2) Escort arrangements may provide for escort functions to be exercised, in such cases as may be determined by or under the arrangements, by detainee custody officers.
- (3) Escort arrangements may include conferring escort functions on—
 - (a) prison officers, or
 - (b) prisoner custody officers with an escort certification.
- (4) A prison officer acting under such arrangements has all the powers, authority, protection and privileges of a constable.
- (5) Escort arrangements may include entering into contracts with other persons for the provision by them of—
 - (a) detainee custody officers, or
 - (b) prisoner custody officers with an escort certification.

110 Monitoring of escort arrangements

- (1) Escort arrangements must include provision for the appointment of a Crown servant as escort monitor.
- (2) The escort monitor must—
 - (a) keep the escort arrangements under review and report on them to the Secretary of State as required in accordance with the arrangements,
 - (b) from time to time inspect the conditions in which detained persons are transported or held in accordance with the escort arrangements, and
 - (c) make recommendations to the Secretary of State, with a view to improving those conditions, whenever the escort monitor considers it appropriate to do so.

111 Persons acting under escort arrangements

- (1) A detainee custody officer, prison officer or prisoner custody officer acting in accordance with escort arrangements has power—
 - (a) to search any detained person for whose delivery or custody the officer is responsible in accordance with the arrangements and any item in the possession of such a person or under such a person's control, and
 - (b) to search any other person who is in, or is seeking to enter, any place where any such detained person is or is to be held and any item in the possession of such a person or under such a person's control.
- (2) A search under subsection (1)(a)—
 - (a) may be conducted for such purposes as may be specified in regulations made by the Secretary of State;
 - (b) must be conducted in accordance with such regulations.
- (3) The power conferred by subsection (1)(b)—
 - (a) does not authorise the officer to require a person to remove any of the person's clothing other than outer clothing, but
 - (b) does authorise a search of a person's mouth.
- (4) The Secretary of State may by regulations make provision about the seizure and retention of things discovered in the course of a search under subsection (1).

- (5) It is the duty of a detainee custody officer, prison officer or prisoner custody officer acting in accordance with escort arrangements –
 - (a) to prevent the escape from lawful custody of a detained person for whose delivery or custody the officer is responsible in accordance with those arrangements,
 - (b) to prevent, or detect and report on, the commission or attempted commission by such a person of unlawful acts,
 - (c) to ensure good order and discipline on the part of such a person, and
 - (d) to attend to such a person’s well-being.

112 Transfer directions

- (1) This section applies where a person is responsible for exercising an escort function in accordance with a transfer direction.
- (2) The person complies with the direction by doing all that is reasonable to ensure that the function is exercised by a detainee custody officer, prison officer or prisoner custody officer acting in accordance with escort arrangements.
- (3) “Transfer direction” means –
 - (a) in England and Wales, a transfer direction given under section 48 of the Mental Health Act 1983 (removal to hospital of detained persons);
 - (b) in Scotland, a transfer for treatment direction given under section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 3) as applied by Article 13 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078);
 - (c) in Northern Ireland, a transfer direction given under Article 54 of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)) (provision corresponding to section 48 of the 1983 Act).

Contracting out of removal centres etc.

113 Contracting out of removal centres etc.

- (1) The Secretary of State may enter into a contract with another person –
 - (a) for that person to provide or run (or provide and run) a removal centre or short-term holding facility, or
 - (b) for sub-contractors of that person to run a removal centre or short-term holding facility.
- (2) The contract may relate to part only of a removal centre or short-term holding facility; and in such a case that part and the remaining part or parts are to be treated for the purposes of provision made by or under this Part as separate centres or facilities.
- (3) While the contract is in force, the centre or facility must be run subject to and in accordance with provision made by or under this Part.
- (4) If the Secretary of State grants a lease or tenancy of land for the purposes of a contract under this section, none of the following enactments applies to the lease or tenancy –
 - (a) section 14 of the Conveyancing Act 1881;
 - (b) the Conveyancing and Law of Property Act 1892;

- (c) section 146 of the Law of Property Act 1925 (restrictions on and relief against forfeiture);
 - (d) section 19(1), (2) and (3) of the Landlord and Tenant Act 1927 (covenants not to assign etc.);
 - (e) Part 2 of the Landlord and Tenant Act 1954 (security of tenure);
 - (f) sections 4 to 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (irritancy clauses);
 - (g) the Agricultural Holdings Act 1986;
 - (h) the Landlord and Tenant Act 1988;
 - (i) the Agricultural Holdings (Scotland) Act 1991;
 - (j) the Business Tenancies (Northern Ireland) Order 1996 (S.I. 1996/725 (N.I. 5));
 - (k) the Agricultural Holdings (Scotland) Act 2003 (asp 11).
- (5) In subsection (4) “lease or tenancy” includes an underlease, sublease or sub-tenancy.

114 Contract monitors

- (1) The Secretary of State must appoint a contract monitor –
 - (a) for each contracted out removal centre, and
 - (b) for each contracted out short-term holding facility.
- (2) A person may be appointed as the contract monitor for more than one centre or facility.
- (3) A contract monitor appointed for a removal centre or short-term holding facility has such functions as may be conferred on the contract monitor by the appropriate regulations.
- (4) A contract monitor has the status of a Crown servant.
- (5) The contract monitor must keep under review, and report to the Secretary of State on, the running of a removal centre or short-term holding facility for which the contract monitor is appointed.
- (6) The contractor and any sub-contractor must do all that is reasonable (whether by giving directions to the officers of the centre or facility or otherwise) to facilitate the exercise of the contract monitor’s functions.

115 Contracted out functions

- (1) The Secretary of State may enter into a contract with another person –
 - (a) for functions at or connected with a directly managed removal centre or short-term holding facility to be exercised by detainee custody officers provided by that person, or
 - (b) for such functions to be exercised by prisoner custody officers with a custody certification who are provided by that person.
- (2) In this section “directly managed”, in relation to a removal centre or short-term holding facility, means that the centre or facility is not contracted out.

Management of removal centres etc.

116 Management of removal centres

- (1) A manager must be appointed for every removal centre.
- (2) In the case of a contracted out removal centre, the person appointed as manager must be a detainee custody officer whose appointment is approved by the Secretary of State.
- (3) The manager of a removal centre has such functions as are conferred on the manager by removal centre regulations.
- (4) The manager of a contracted out removal centre may not, except in cases of urgency, order—
 - (a) the removal of a detained person from association with other detained persons,
 - (b) the temporary confinement of a detained person in special accommodation, or
 - (c) the application to a detained person of any other special control or restraint (other than handcuffs).

117 Intervention by the Secretary of State

- (1) The Secretary of State may exercise the following powers in relation to a contracted out removal centre or contracted out short-term holding facility where it appears to the Secretary of State that—
 - (a) the manager of the centre or facility has lost, or is likely to lose, effective control of the centre or facility or of any part of it, or
 - (b) it is necessary to do so in the interests of preserving the safety of any person or of preventing serious damage to any property.
- (2) The Secretary of State may appoint a person (“the Controller”) to act as manager of the centre or facility for the period—
 - (a) beginning with the time specified in the appointment, and
 - (b) ending with the time specified in the notice of termination.
- (3) The Secretary of State must, as soon as is reasonably practicable after making the appointment, give notice of the appointment to the contractor, the manager and the contract monitor for the centre or facility.
- (4) During the period of the Controller’s appointment—
 - (a) all the functions that would otherwise be exercisable by the manager or contract monitor are exercisable by the Controller,
 - (b) the contractor and any sub-contractor must do all that is reasonable to facilitate the exercise of the Controller’s functions, and
 - (c) the staff of the centre or facility must comply with any directions given by the Controller in the exercise of the Controller’s functions.
- (5) The Controller has the status of a Crown servant.
- (6) If the Secretary of State is satisfied that a Controller is no longer needed for a particular removal centre or short-term holding facility, the Secretary of State must give notice to the Controller terminating the appointment at the time specified in the notice.

- (7) The Secretary of State must, as soon as is reasonably practicable after terminating the appointment, give a copy of the notice of termination to the contractor, the manager and the contract monitor for the centre or facility.

118 Independent Monitoring Boards and inspections

- (1) The Secretary of State must appoint an Independent Monitoring Board –
- (a) for each removal centre, and
 - (b) for each short-term holding facility.
- (2) The same Independent Monitoring Board may be appointed for more than one removal centre or short-term holding facility.
- (3) The Independent Monitoring Board for a removal centre or short-term holding facility has such functions as may be conferred on it by the appropriate regulations.
- (4) The appropriate regulations must include provision –
- (a) about visits to the centre or facility by members of the Independent Monitoring Board;
 - (b) for the Independent Monitoring Board to hear complaints made by persons detained in the centre or facility;
 - (c) requiring the Independent Monitoring Board to make reports to the Secretary of State.
- (5) Each member of the Independent Monitoring Board for a removal centre or short-term holding facility may –
- (a) enter the centre or facility at any time, and
 - (b) have free access to every part of the centre or facility and to every person detained there.

Custody of detained persons

119 Custodial functions

- (1) Custodial functions may be exercised at a removal centre or short-term holding facility only by –
- (a) a detainee custody officer authorised under section 124 (authorisation of detainee custody officers) to exercise such functions,
 - (b) a prison officer exercising such functions in relation to the centre or facility in accordance with arrangements under this section, or
 - (c) a prisoner custody officer with a custody certification exercising such functions in relation to the centre or facility as a result of a contract entered into under section 115 (contracted out functions) or in accordance with arrangements under this section.
- (2) The Secretary of State may confer custodial functions at a removal centre or short-term holding facility on –
- (a) prison officers, or
 - (b) prisoner custody officers with a custody certification.
- (3) A prison officer acting under such arrangements has all the powers, authority, protection and privileges of a constable.

- (4) This section is subject to section 121 (power of authorised persons to exercise custodial functions).

120 Persons exercising custodial functions

- (1) A detainee custody officer, prison officer or prisoner custody officer exercising custodial functions at a removal centre or short-term holding facility has power –
- (a) to search any person (“P”) detained at the centre or facility in relation to whom the officer is exercising such functions and any item in P’s possession or under P’s control, and
 - (b) to search any other person who is in, or is seeking to enter, any place where P is or is to be detained and any item in the possession of such a person or under such a person’s control.
- (2) A search under subsection (1)(a) –
- (a) may be conducted for such purposes as may be specified in regulations made by the Secretary of State;
 - (b) must be conducted in accordance with such regulations.
- (3) The power conferred by subsection (1)(b) –
- (a) does not authorise the officer to require a person to remove any of the person’s clothing other than outer clothing, but
 - (b) does authorise a search of a person’s mouth.
- (4) The Secretary of State may by regulations make provision about the seizure and retention of things discovered in the course of a search under subsection (1).
- (5) It is the duty of a detainee custody officer, prison officer or prisoner custody officer –
- (a) to prevent the escape from lawful custody of a person detained at a removal centre or short-term holding facility in relation to whom the officer is exercising custodial functions,
 - (b) to prevent, or detect and report on, the commission or attempted commission by such a person of unlawful acts,
 - (c) to ensure good order and discipline on the part of such a person, and
 - (d) to attend to such a person’s well-being.

121 Power of authorised persons to exercise custodial functions

- (1) A worker at a removal centre or short-term holding facility may exercise any function to which this section applies if and to the extent that the worker is authorised to do so by the manager of the centre or facility.
- (2) This section applies to a function which –
- (a) (apart from this section) may, by virtue of section 119, only be exercised by a detainee custody officer, prison officer or prisoner custody officer, and
 - (b) the manager has determined is not a function that can only appropriately be exercised by a detainee custody officer, prison officer or prisoner custody officer.
- (3) A determination under subsection (2)(b) requires the approval of the Secretary of State.

- (4) The manager may give an authorisation under this section –
 - (a) in general or specific terms, subject to any limitations or conditions the manager thinks appropriate, and
 - (b) to one or more particular workers or to any worker who falls within such description of workers at the centre or facility as may be specified in the authorisation.
- (5) Nothing in an authorisation under this section is to be taken as authorising the use of force.
- (6) In this section “worker” means a person who –
 - (a) works at the removal centre or short-term holding facility, and
 - (b) is not a detainee custody officer, prison officer or prisoner custody officer.

Medical examinations & testing for drugs or alcohol

122 Medical examinations

- (1) This section applies in relation to a removal centre if –
 - (a) an authorisation by the manager of the centre for the purposes of this section is in force for the centre, and
 - (b) there are reasonable grounds for believing that a person detained in the centre is suffering from a disease specified in a direction given under this section by the Secretary of State.
- (2) This section applies in relation to a short-term holding facility if –
 - (a) an authorisation by the Secretary of State for the purposes of this section is in force for the facility, and
 - (b) there are reasonable grounds for believing that a person detained in the facility is suffering from a disease specified in a direction given under this section by the Secretary of State.
- (3) A detainee custody officer, prison officer or prisoner custody officer exercising custodial functions at the centre or facility may require the person detained in the centre or facility to submit to a medical examination there.
- (4) The medical examination must be conducted in accordance with the appropriate regulations.

123 Testing for drugs or alcohol

- (1) This section applies if an authorisation by the Secretary of State for drug or alcohol testing is in force for a removal centre or short-term holding facility.
- (2) A detainee custody officer, prison officer or prisoner custody officer exercising custodial functions at the centre or facility may require a person detained there to provide a sample for ascertaining –
 - (a) whether there is a drug in the person’s body, or
 - (b) whether there is alcohol in the person’s body.
- (3) The sample required may be one or more of the following –
 - (a) a sample of urine;
 - (b) a sample of breath;

- (c) a sample of such description as may be specified in the authorisation.
- (4) Subsection (3)(c) does not authorise the taking of an intimate sample.
- (5) The sample must be taken at the centre or facility and in accordance with the appropriate regulations.
- (6) In this section –
 - “drug” means a drug which is a controlled drug for the purposes of the Misuse of Drugs Act 1971, and
 - “intimate sample” –
 - (a) in relation to England and Wales, has the same meaning as in Part 5 of PACE;
 - (b) in relation to Scotland, means –
 - (i) a sample of blood, semen or any other tissue fluid, urine or pubic hair,
 - (ii) a dental impression, or
 - (iii) a swab taken from a person’s body orifice other than the mouth;
 - (c) in relation to Northern Ireland, has the same meaning as in Part 6 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).

Detainee custody officers

124 Authorisation of detainee custody officers

- (1) The Secretary of State may, on an application to the Secretary of State under this section, certify that the applicant –
 - (a) is authorised to exercise escort functions, or
 - (b) is authorised to exercise both escort functions and custodial functions.
- (2) The Secretary of State may issue a certificate of authorisation only if the Secretary of State is satisfied that the applicant –
 - (a) is capable of effectively carrying out the functions to be authorised,
 - (b) has received adequate training in respect of the exercise of those functions, and
 - (c) is otherwise a suitable person to exercise those functions.
- (3) A certificate of authorisation –
 - (a) continues in force until such date, or the occurrence of such event, as may be specified in the certificate, and
 - (b) may, if it authorises the exercise of both escort functions and custodial functions, specify a different date or event for each kind of function.
- (4) If it appears to the Secretary of State that a detainee custody officer is not capable of effectively carrying out escort functions or custodial functions, or is not a suitable person to exercise those functions, the Secretary of State may cancel the officer’s certificate so far as it authorises the exercise of those functions.
- (5) If it appears to the escort monitor that a detainee custody officer is not capable of effectively carrying out escort functions, or is not a suitable person to exercise those functions, the escort monitor may –

- (a) refer the matter to the Secretary of State, or
 - (b) in such circumstances as may be prescribed, suspend the officer's certificate pending a decision by the Secretary of State as to whether to cancel it.
- (6) If it appears to the contract monitor for a removal centre or short-term holding facility that a detainee custody officer is not capable of effectively carrying out custodial functions at that centre or facility, or is not a suitable person to exercise those functions, the contract monitor may –
- (a) refer the matter to the Secretary of State, or
 - (b) in such circumstances as may be prescribed, suspend the officer's certificate pending a decision by the Secretary of State as to whether to cancel it.
- (7) In this section “custodial functions” means custodial functions at a removal centre or a short-term holding facility.

Related offences

125 Failure to submit to medical examination or provide sample

- (1) A person detained in a removal centre or a short-term holding facility commits an offence if, without reasonable excuse –
- (a) the person fails to submit to a medical examination under section 122 (medical examinations at removal centres etc.), or
 - (b) the person fails to comply with a requirement imposed under section 123 (testing for drugs or alcohol at removal centres etc.).
- (2) A person guilty of an offence under this section is liable on summary conviction –
- (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding level 5 on the standard scale, or to both;
 - (b) in Scotland or Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the standard scale, or to both.

126 Introduction of alcohol and other articles into a removal centre etc.

- (1) A person commits an offence if –
- (a) contrary to the appropriate regulations, the person brings or attempts to bring alcohol or any other thing into a removal centre or short-term holding facility or to a person detained in such a centre or facility, or
 - (b) the person places alcohol or any other thing anywhere outside a removal centre or short-term holding facility, intending it to come into the possession of a person detained there.
- (2) A responsible person commits an offence if, contrary to the appropriate regulations, the person allows alcohol to be sold or used in a removal centre or short-term holding facility.
- (3) In subsection (2), “responsible person” means –
- (a) a detainee custody officer,

- (b) a prison officer or prisoner custody officer exercising custodial functions, or
 - (c) any other person on the staff of the centre or facility.
- (4) In this section “alcohol” has the same meaning as in the Licensing Act 2003.
- (5) Anything which would constitute an offence under section 96 (assisting a person to abscond) does not constitute an offence under this section.
- (6) A person guilty of an alcohol-related offence under this section is liable on summary conviction –
- (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding level 5 on the standard scale, or to both;
 - (b) in Scotland or Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the standard scale, or to both.
- (7) A person guilty of any other offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (8) For the purposes of subsection (6), an “alcohol-related offence under this section” means –
- (a) an offence under subsection (1)(a) concerning bringing or attempting to bring alcohol into a removal centre or short-term holding facility or to a person detained in such a centre or facility,
 - (b) an offence under subsection (1)(b) concerning the placement of alcohol outside a removal centre or short-term holding facility, or
 - (c) an offence under subsection (2).

127 Obtaining detainee custody officer authorisation by false pretences

- (1) A person (“P”) commits an offence if, with a view to obtaining a certificate of authorisation under section 124 (authorisation of detainee custody officers) for P or another person –
- (a) P makes a statement which P knows to be false in a material particular, or
 - (b) P recklessly makes a statement which is false in a material particular.
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Notice of penalties for related offences

128 Notice of penalties

- (1) In the case of a contracted out removal centre or short-term holding facility, the contractor must cause a notice to be fixed outside the centre or facility in a conspicuous place which sets out the penalty to which a person is liable if guilty of an offence under –
- (a) section 96 (assisting a person to abscond);
 - (b) section 126 (introduction of alcohol and other articles into removal centre etc.).

- (2) In the case of any other removal centre or short-term holding facility, the Secretary of State must cause a notice of the kind mentioned in subsection (1) to be fixed outside the centre or facility in a conspicuous place.

Supplementary

129 Power of constable to act outside jurisdiction

- (1) For the purpose of taking a person to or from a removal centre under the order of any authority competent to give the order, a constable may act outside the area of the constable's jurisdiction.
- (2) When acting under this section, the constable concerned retains all the powers, authority, protection and privileges of a constable.

130 Removal centre regulations

- (1) The Secretary of State must make regulations for the regulation and management of removal centres.
- (2) Removal centre regulations may, in particular, make provision about the safety, care, activities, discipline and control of detained persons.
- (3) A detained person does not qualify for the national minimum wage in respect of work that the person does in pursuance of removal centre regulations.

131 Short-term holding facility regulations

- (1) The Secretary of State may make regulations for the regulation and management of short-term holding facilities.
- (2) Short-term holding facility regulations may, in particular, make provision about the safety, care, activities, discipline and control of persons detained in such a facility.

Interpretation

132 Interpretation

- (1) In this Act –
- “detainee custody officer” means a person in respect of whom a certificate of authorisation under section 124 (authorisation of detainee custody officers) is in force;
- “prisoner custody officer” –
- (a) in relation to England and Wales, has the meaning given by section 89 of the Criminal Justice Act 1991;
 - (b) in relation to Scotland, has the meaning given by section 114 of the Criminal Justice and Public Order Act 1994;
 - (c) in relation to Northern Ireland, has the meaning given by section 122 of the Criminal Justice and Public Order Act 1994;
- “removal centre” means a place used solely for the detention of detained persons other than –
- (a) a short-term holding facility, or

- (b) a prison or part of a prison;
- “short-term holding facility” means a place used –
- (a) solely for the detention of detained persons for a period of not more than 7 days or for such other period as may be prescribed, or
 - (b) for the detention of –
 - (i) detained persons for a period of not more than 7 days or for such other period as may be prescribed, and
 - (ii) persons other than detained persons for any period.
- (2) In this Part –
- “the appropriate regulations” means –
- (a) in the case of a removal centre, removal centre regulations, and
 - (b) in the case of a short-term holding facility, short-term holding facility regulations;
- “contracted out”, in relation to a removal centre or short-term holding facility, means that a contract under section 113 is in force in relation to the centre or facility;
- “contractor”, in relation to a contracted out removal centre or short-term holding facility, means the person who has contracted to run it;
- “detained person” means –
- (a) a person who is being detained under Part 6 (powers to detain and immigration bail), or
 - (b) a person who has been arrested under this Act and is being delivered to premises in which the person may lawfully be detained;
- “manager”, in relation to a short-term holding facility, includes any person designated as being in charge of the facility;
- “prescribed” means prescribed by regulations made by the Secretary of State;
- “removal centre regulations” means regulations under section 130;
- “short-term holding facility regulations” means regulations under section 131;
- “sub-contractor”, in relation to a contracted out removal centre or short-term holding facility, means a person who has contracted with the contractor to run it.
- (3) For the purposes of this Part, a prisoner custody officer has an escort certification if –
- (a) the officer is certified under section 89 of the Criminal Justice Act 1991 to perform escort functions within the meaning of that section,
 - (b) the officer is certified under section 114 of the Criminal Justice and Public Order Act 1994 to perform escort functions within the meaning of section 117(1) of that Act, or
 - (c) the officer is certified under section 122 of the Criminal Justice and Public Order Act 1994 to perform escort functions within the meaning of that section.
- (4) For the purposes of this Part, a prisoner custody officer has a custody certification if –
- (a) the officer is certified under section 89 of the Criminal Justice Act 1991 to perform custodial duties within the meaning of that section, or

- (b) the officer is certified under section 114 of the Criminal Justice and Public Order Act 1994 to perform custodial duties within the meaning of section 117(1) of that Act.

PART 8

POWERS TO STOP, ARREST, ENTER & SEARCH ETC.

Power to stop & question etc.

133 Power to stop & question etc.

- (1) If the Secretary of State has reasonable grounds for believing that there are immigration offenders in an area, the Secretary of State may give an authorisation that the power conferred by this section is to be exercisable at any public place within that area for a specified period.
- (2) This section confers on a designated immigration official power to stop any person (“P”) for any of the following purposes—
 - (a) to ask P questions for the purpose of determining one or more of the matters mentioned in subsection (3);
 - (b) to ask P to supply all the documents or other information in P’s possession which might be used to establish P’s identity or nationality;
 - (c) to ask P to supply biometric information about P for the purpose of verifying P’s identity.
- (3) The matters referred to in subsection (2)(a) are—
 - (a) P’s identity or nationality;
 - (b) whether P is or is not a British citizen or an EEA entrant;
 - (c) if P is neither a British citizen nor an EEA entrant, whether P has immigration or transit permission;
 - (d) where P has been granted temporary permission, whether P has failed to comply with a condition subject to which it was granted;
 - (e) where P is on immigration bail, whether P has failed to comply with a bail condition.
- (4) Before exercising the power under this section to stop a person, a designated official must take reasonable steps to bring to the person’s attention identification showing that the power is exercisable by the official by virtue of the official’s designation under section 40.
- (5) A failure by a person stopped under this section to answer questions, or to supply information requested, does not amount, for the purposes of section 315(2) (offence of resisting or wilfully obstructing), to resisting or wilfully obstructing a person acting in the exercise of a function under this Act.
- (6) In this section—

“immigration offender” means a person who is committing or has committed an offence under this Act;

“public place” means a place to which members of the public have or are permitted to have access, whether or not for payment.

134 Authorisation

- (1) The power of the Secretary of State to give an authorisation under section 133(1) is exercisable by –
 - (a) the Secretary of State personally, or
 - (b) a senior official designated by the Secretary of State for the purposes of this subsection.
- (2) An authorisation under section 133(1) –
 - (a) must be in writing and signed by the person giving it,
 - (b) must specify the grounds on which it is given,
 - (c) must specify the area in which the power conferred by section 133 is exercisable, and
 - (d) must specify the period during which that power is exercisable.
- (3) That period –
 - (a) must be such period as the person giving the authorisation thinks is reasonably necessary in light of the grounds on which it is given, and
 - (b) must not exceed 24 hours.
- (4) “Senior official” means an official of the Secretary of State of at least the rank designated by the Secretary of State as equivalent to the rank of chief superintendent in a police force.

135 Code of practice

- (1) The Secretary of State must issue a code of practice in connection with the exercise by designated immigration officials of the power to stop persons under section 133.
- (2) The Secretary of State may revise and reissue the code.
- (3) A designated immigration official must have regard to the code when exercising the power to stop persons under section 133 and when asking persons stopped under that section questions or to supply information.
- (4) Before issuing or reissuing the code, the Secretary of State must –
 - (a) consult the Commission for Equality and Human Rights, the Equality Commission for Northern Ireland, and such other persons as the Secretary of State thinks appropriate, and
 - (b) lay a draft before Parliament.
- (5) A breach of the code by a designated immigration official does not make the official liable to civil or criminal proceedings.
- (6) But a breach of the code may be taken into account by a court or tribunal.

Powers of arrest without warrant

136 Persons liable to detention or on immigration bail

- (1) A designated immigration official or a constable may arrest without warrant a person whom there is power to detain under Part 6 (other than under section 90 (persons liable to arrest by a constable)).

- (2) A designated immigration official or a constable may arrest without warrant a person on immigration bail if the official or constable –
 - (a) has reasonable grounds for believing that the person is likely to fail to comply with a bail condition, or
 - (b) has reasonable grounds for suspecting that the person is failing, or has failed, to comply with a bail condition.
- (3) A designated immigration official or a constable may arrest without warrant a person on immigration bail (“P”) if –
 - (a) a financial security condition (see section 103) is a bail condition, and
 - (b) a person who provided all or part of the sum of money required in pursuance of that condition (“the security provider”) gives a notice of concern to the Secretary of State or a constable.
- (4) A “notice of concern” is a notice stating –
 - (a) the security provider’s belief that P is likely to fail to comply with a bail condition,
 - (b) the security provider’s reason for that belief,
 - (c) the security provider’s wish to be relieved from liability under section 103 (forfeiture of security), and
 - (d) if known by the security provider, P’s whereabouts.

137 Persons suspected of committing etc. offences under this Act

- (1) A designated immigration official may arrest without warrant a person (“P”) if the official has reasonable grounds for suspecting –
 - (a) that P is committing, or has committed, an offence under this Act, or
 - (b) that P is about to commit an offence under section 315 (assault or obstruction etc.).
- (2) The power conferred by subsection (1) is exercisable only if the official has reasonable grounds for believing that for one or more of the reasons mentioned in subsection (3) it is necessary to arrest P.
- (3) Those reasons are –
 - (a) to enable P’s name or address to be ascertained;
 - (b) to prevent P causing physical injury to P or another person, suffering physical injury or causing loss of or damage to property;
 - (c) to protect a child or other vulnerable person from P;
 - (d) to allow the prompt and effective investigation of the offence or of P’s conduct;
 - (e) to prevent any prosecution for the offence from being hindered by P’s disappearance.
- (4) Subsection (3)(a) applies only in a case where the official –
 - (a) does not know, and cannot readily ascertain, P’s name or address, or
 - (b) has reasonable grounds for doubting whether a name or address given by P as P’s name or address is P’s real name or address.

138 Persons suspected of having committed etc. listed offences

- (1) A designated immigration official may arrest without warrant a person (“P”) if the official, in the course of exercising a function under this Act, has reasonable

grounds for suspecting that P has committed, or has attempted to commit, a listed offence.

- (2) The power conferred by subsection (1) is exercisable only if the official has reasonable grounds for believing that for one or more of the reasons mentioned in subsection (3) it is necessary to arrest P.
- (3) Those reasons are –
 - (a) to enable P’s name or address to be ascertained;
 - (b) to prevent P causing physical injury to P or another person, suffering physical injury or causing loss of or damage to property;
 - (c) to protect a child or other vulnerable person from P;
 - (d) to allow the prompt and effective investigation of the offence or of P’s conduct;
 - (e) to prevent any prosecution for the offence from being hindered by P’s disappearance.
- (4) Subsection (3)(a) applies only in a case where the official –
 - (a) does not know, and cannot readily ascertain, P’s name or address, or
 - (b) has reasonable grounds for doubting whether a name or address given by P as P’s name or address is P’s real name or address.

139 Non-immigration bail: failure to attend at police station

- (1) A designated immigration official may arrest without warrant a person (“P”) if –
 - (a) P has previously been arrested –
 - (i) for an offence under this Act, or
 - (ii) for a listed offence, where the investigation of the offence was conducted under this Act,
 - (b) P has been released on bail under Part 4 of PACE, in connection with that offence, subject to a duty to attend at a police station, and
 - (c) P fails to attend at the police station at the time appointed for P to do so.
- (2) The reference in subsection (1)(c) to failure by P to attend at a police station at the time appointed for P to do so includes a reference to a case where P –
 - (a) attends at a police station to answer to live link bail, but
 - (b) leaves the police station at any time before the beginning of proceedings in relation to a live link direction in relation to P, without informing a designated immigration official that P does not intend to give P’s consent to the direction.
- (3) A person arrested under this section must be taken as soon as is reasonably practicable to the police station mentioned in subsection (1).
- (4) “Live link bail” means bail granted under Part 4 of PACE subject to the duty mentioned in section 47(3)(b) of PACE (requirement to attend at police station for purposes of live link to court).
- (5) “Live link direction” means a direction under section 57C of the Crime and Disorder Act 1998.
- (6) References in PACE to a person arrested under section 46A of PACE, or to an arrest under that section, are to be read as including references to a person arrested under this section, or to an arrest under this section.

140 Non-immigration bail: failure to surrender to custody of a court

- (1) This section applies to a person (“P”) if –
 - (a) P has previously been arrested –
 - (i) for an offence under this Act, or
 - (ii) for a listed offence, where the investigation of the offence was conducted under this Act, and
 - (b) P has been released on bail in criminal proceedings, in connection with that offence, subject to a duty to surrender into the custody of a court.
- (2) A designated immigration official may arrest without warrant P if –
 - (a) the official has reasonable grounds for believing that P is not likely to surrender to custody,
 - (b) the designated immigration official has –
 - (i) reasonable grounds for believing that P is likely to fail to comply with a condition of P’s bail, or
 - (ii) reasonable grounds for suspecting that P has failed to comply with such a condition, or
 - (c) where P was released on bail with one or more sureties, a surety gives the Secretary of State a notice of concern.
- (3) A “notice of concern” is a notice stating –
 - (a) the surety’s belief that P is unlikely to surrender to custody, and
 - (b) the surety’s wish to be relieved of the surety’s obligations as a surety.
- (4) Where P is arrested under this section –
 - (a) P must be brought as soon as is reasonably practicable before the appropriate judicial officer, or
 - (b) if arrested within 24 hours of the time appointed for P to surrender to custody, P must be brought before the court at which P was to have surrendered to custody.
- (5) If subsection (6) applies, the appropriate judicial officer may –
 - (a) remand P in custody,
 - (b) commit P to custody, or
 - (c) grant P bail subject to the same or different conditions.
- (6) This subsection applies if the appropriate judicial officer thinks that P –
 - (a) is not likely to surrender to custody, or
 - (b) has failed or is likely to fail to comply with a condition of P’s bail.
- (7) If subsection (6) does not apply, the appropriate judicial officer must grant P bail subject to the same conditions (if any) as were originally imposed.
- (8) If P is a child under the age of 17 and the appropriate judicial officer does not grant P bail, subsections (5) and (7) have effect subject to section 23 of the Children and Young Persons Act 1969 (remands to the care of local authorities).
- (9) “Bail”, “bail in criminal proceedings” and “surrender to custody” have the same meaning as in the Bail Act 1976.
- (10) In calculating any period of 24 hours for the purposes of this section, no account is to be taken of Christmas Day, Good Friday or any Sunday.

Powers to enter & search premises for purpose of arrest

141 With a warrant: for purpose of arrest under section 136

- (1) This section applies if an appropriate judicial officer is satisfied that there are reasonable grounds for believing that a person liable to be arrested under section 136 (persons liable to detention or on immigration bail) is to be found on any premises.
- (2) The appropriate judicial officer may issue a warrant authorising any designated immigration official or any constable to enter and search the premises specified in the warrant for the purpose of arresting the person.
- (3) Subsection (4) applies where –
 - (a) a warrant under this section is issued for the purpose of the arrest of a person under section 136, and
 - (b) a designated immigration official or a constable enters premises in reliance on the warrant and detains a person on the premises.
- (4) A detainee custody officer may enter the premises for the purpose of searching the person under section 111(1)(a) (search where officer responsible for person's custody or delivery under escort arrangements).

142 Without a warrant: to arrest for indictable offence under this Act etc.

- (1) A designated immigration official may enter and search premises for the purpose of –
 - (a) arresting a person for an indictable offence under this Act, or
 - (b) arresting a person under section 138 (persons suspected of having committed etc. listed offences).
- (2) The power under this section may be exercised only –
 - (a) to the extent that it is reasonably required for a purpose mentioned in subsection (1),
 - (b) if the official has reasonable grounds for believing that the person is to be found on the premises, and
 - (c) where the premises are occupied, if the official produces identification before, or as soon as is reasonably practicable after, entering the premises showing that the power is exercisable by the official by virtue of the official's designation under section 40.
- (3) Subsection (2)(c) applies whether or not the official is asked to produce identification.
- (4) In relation to premises consisting of two or more separate dwellings, the power is limited to entering and searching –
 - (a) any dwelling in which the official has reasonable grounds for believing that the person sought may be, and
 - (b) any parts of the premises which occupiers of dwellings in the premises use in common with each other.

143 With a warrant: to arrest for summary offence under this Act

- (1) An appropriate judicial officer may issue an entry and search warrant in relation to certain premises if –

- (a) an application is made by a designated immigration official or a constable for such a warrant in relation to the premises, and
 - (b) the appropriate judicial officer is satisfied that there are reasonable grounds for believing that a person liable to be arrested for a summary offence under this Act is to be found on the premises.
- (2) An entry and search warrant issued under subsection (1) in relation to premises authorises any designated immigration official or any constable to enter and search those premises for the purpose of arresting the person.

Powers to enter & search premises to find identifying documents

144 Without a warrant

- (1) The power under this section is a power to enter and search the premises mentioned in subsection (5) for the purpose of finding documents which might be identifying documents in relation to a person (“P”).
- (2) The power may be exercised –
- (a) in case 1, by a designated immigration official;
 - (b) in case 2, by a designated immigration official or a constable.
- (3) Case 1 is where –
- (a) P –
 - (i) is arrested under section 136 (persons liable to detention or on immigration bail), or
 - (ii) was arrested by a constable (other than under section 136) and is detained under Part 6, and
 - (b) the official has reasonable grounds for suspecting that documents which might be identifying documents in relation to P may be found on the premises to be entered.
- (4) Case 2 is where –
- (a) P has been arrested on suspicion of the commission of an offence,
 - (b) P has not been released without being charged with an offence, and
 - (c) the official or constable has reasonable grounds for suspecting –
 - (i) that P may not be a British citizen, and
 - (ii) that identifying documents in relation to P may be found on the premises to be entered.
- (5) The premises referred to in subsection (1) are –
- (a) premises occupied or controlled by P,
 - (b) the premises on which P was arrested, or
 - (c) the premises on which P was, immediately before being arrested.
- (6) The power under this section may be exercised only –
- (a) to the extent that it is reasonably required for the purpose of discovering documents which might be identifying documents in relation to P, and
 - (b) with the written authority of a senior officer.
- (7) Subsection (6)(b) does not apply in case 1 if the premises to be entered are premises within subsection (5)(b) or (c).

- (8) A senior officer who gives authority for the purposes of subsection (6)(b) must arrange for a written record to be made of –
 - (a) the grounds for the search, and
 - (b) the nature of the documents sought.

145 With a warrant

- (1) This section applies where a person (“P”) –
 - (a) is arrested under section 136 (persons liable to detention or on immigration bail),
 - (b) was arrested by a constable (other than under section 136) and is detained under Part 6 (powers to detain & immigration bail), or
 - (c) has been arrested on suspicion of the commission of an offence and has not been released without being charged with an offence.
- (2) An appropriate judicial officer may issue an entry and search warrant in relation to certain premises if –
 - (a) an application is made by a designated immigration official or a constable for such a warrant in relation to the premises, and
 - (b) the appropriate judicial officer is satisfied that there are reasonable grounds for believing the matters mentioned in subsection (3).
- (3) Those matters are –
 - (a) that P may not be a British citizen,
 - (b) that documents which might be identifying documents in relation to P may be found on premises specified in the application, and
 - (c) that at least one of the conditions in subsection (4) is met.
- (4) Those conditions are –
 - (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
 - (b) that it is not practicable to communicate with any person entitled to grant access to the identifying documents;
 - (c) that entry to the premises or access to the documents will not be granted unless a warrant is produced;
 - (d) that the purpose of a search may be frustrated or seriously prejudiced unless a designated immigration official or a constable arriving at the premises can secure immediate entry.
- (5) An entry and search warrant issued under subsection (2) in relation to premises authorises any designated immigration official or any constable to enter and search those premises.

146 Search under section 144 or 145: seizure of identifying documents etc.

- (1) A designated immigration official or a constable searching premises under section 144 or 145 may seize a document which the official or constable has reasonable grounds for believing to be an identifying document in relation to P.
- (2) A document seized by a constable under subsection (1) may be retained by the constable while the constable has reasonable grounds for suspecting that –
 - (a) P may be liable to removal from the United Kingdom under Part 5 (expulsion orders and removal etc. from UK), and

- (b) retention of the document may facilitate P’s removal.
- (3) See section 168 (retention of documents or other items) for the retention of documents seized by a designated immigration official under subsection (1).

Powers to enter & search premises to find evidence etc.

147 Without a warrant: to find evidence relating to offence

- (1) Where a person (“P”) is arrested under section 137 or 138 (persons suspected of committing etc. offences under this Act or listed offences), a designated immigration official may enter and search any of the premises mentioned in subsection (2) for the purpose of finding evidence relating to the offence for which the arrest was made (“relevant evidence”).
- (2) Those premises are –
 - (a) premises occupied or controlled by P,
 - (b) the premises on which P was arrested, or
 - (c) the premises on which P was, immediately before being arrested.
- (3) The power under subsection (1) may be exercised only –
 - (a) if the official has reasonable grounds for suspecting that relevant evidence is on the premises,
 - (b) to the extent that it is reasonably required for the purpose of discovering relevant evidence, and
 - (c) where the premises are premises within subsection (2)(a), with the written authority of a senior officer.
- (4) A senior officer who gives authority for the purposes of subsection (3)(c) must arrange for a written record to be made of –
 - (a) the grounds for the search, and
 - (b) the nature of the evidence sought.
- (5) In relation to premises consisting of two or more separate dwellings, the power under subsection (1) to enter and search premises includes power to enter and search any parts of the premises which occupiers of dwellings in the premises use in common with each other.
- (6) A designated immigration official searching premises under subsection (1) may seize anything which is on the premises if the official has reasonable grounds for believing that it is relevant evidence.
- (7) See section 168 (retention of documents or other items) for the retention of things seized under subsection (6).

148 With a warrant: to find evidence relating to offence

- (1) An appropriate judicial officer may issue an entry and search warrant in relation to relevant premises if –
 - (a) an application is made by a designated immigration official for such a warrant, and
 - (b) the appropriate judicial officer is satisfied that there are reasonable grounds for believing the matters mentioned in subsection (3).
- (2) “Relevant premises” means –

- (a) one or more sets of premises specified in the application, or
 - (b) any premises occupied or controlled by a person who is specified in the application, including any sets of premises so specified (in which case the application is for an “all premises warrant”).
- (3) The matters referred to in subsection (1)(b) are –
 - (a) that an offence under this Act or a listed offence has been committed,
 - (b) that there is material on relevant premises which is likely to be of substantial value (whether by itself or with other material) to the investigation of the offence,
 - (c) that the material is likely to be relevant evidence,
 - (d) that the material does not consist of or include items subject to legal privilege, excluded material or special procedure material, and
 - (e) that at least one of the conditions mentioned in subsection (4) is met in relation to each set of premises specified in the application.
- (4) Those conditions are –
 - (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
 - (b) that it is not practicable to communicate with any person entitled to grant access to the evidence;
 - (c) that entry to the premises will not be granted unless a warrant is produced;
 - (d) that the purpose of a search may be frustrated or seriously prejudiced unless a designated immigration official arriving at the premises can secure immediate entry.
- (5) Where an application specifies more than one set of premises, the reference in subsection (3)(b) to relevant premises is to be read as a reference to at least one of the sets of premises specified.
- (6) If the application is for an all premises warrant, the appropriate judicial officer may issue the warrant only if satisfied –
 - (a) that, because of the particulars of the offence referred to in subsection (3)(a), there are reasonable grounds for believing that it is necessary to search premises occupied or controlled by the person in question which are not premises specified in the application in order to find the material referred to in subsection (3)(b), and
 - (b) that it is not reasonably practicable to specify in the application all the premises occupied or controlled by that person and which might need to be searched.
- (7) An entry and search warrant issued under subsection (1) in relation to relevant premises authorises any designated immigration official to enter and search those premises.
- (8) A designated immigration official may seize anything for which a search has been authorised under this section.
- (9) In this section, “excluded material”, “relevant evidence” and “special procedure material” have the same meaning –
 - (a) in relation to England and Wales, as in PACE, and
 - (b) in relation to Northern Ireland, as in the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).

- (10) In the application of this section to Scotland, the reference in subsection (3)(d) to excluded material and special procedure material is to be ignored.
- (11) See section 168 (retention of documents or other items) for the retention of things seized under subsection (8).

149 Without a warrant: search of business premises for personnel records

- (1) This section applies where—
 - (a) a person has been arrested under section 136 (persons liable to detention or on immigration bail) or for an offence to which this section applies, or
 - (b) a designated immigration official or a constable has reasonable grounds for believing that a person is liable to arrest under section 136 or for an offence to which this section applies.
- (2) This section applies to an offence under—
 - (a) section 77 (breach of expulsion order),
 - (b) section 301 (illegal presence in the UK), or
 - (c) section 313 (failure to comply with conditions of permission or immigration bail).
- (3) A designated immigration official or a constable who is lawfully on business premises where the arrest was made, or where the person liable to arrest is, may search the premises if the official or constable has reasonable grounds for believing—
 - (a) that a person has committed an offence under section 256 (employment of illegal workers) in relation to the person arrested or liable to arrest, and
 - (b) that employee records will be found on the premises and are likely to be of substantial value (whether on their own or with other material) in the investigation of that offence.
- (4) The power under subsection (3) may be exercised only—
 - (a) to the extent that it is reasonably required for the purpose of discovering employee records, and
 - (b) if the official or constable has reasonable grounds for believing that at least one of the conditions mentioned in subsection (5) is met.
- (5) Those conditions are—
 - (a) that it is not practicable to communicate with any person entitled to grant access to the records;
 - (b) that permission to search has been refused;
 - (c) that permission to search would be refused if requested;
 - (d) that the purpose of a search may be frustrated or seriously prejudiced unless it is carried out in reliance on subsection (3).
- (6) A designated immigration official or a constable searching premises under subsection (3) may seize employee records which the official or constable has reasonable grounds for believing are likely to be of substantial value (whether on their own or with other material) in the investigation of an offence under—
 - (a) section 224 (support: dishonest representations), or
 - (b) section 256 (employment of illegal workers).

- (7) Employee records seized by a constable under subsection (6), or seized by a designated immigration official under that subsection and delivered to a constable, may be retained by the constable if the constable has reasonable grounds for believing that they are likely to be of substantial value (whether on their own or with other material) in the investigation of an offence mentioned in subsection (6).
- (8) “Employee records” means records which show an employee’s—
 - (a) name,
 - (b) date of birth,
 - (c) address,
 - (d) length of service,
 - (e) rate of pay, or
 - (f) nationality.
- (9) See section 168 (retention of documents or other items) for the retention of employee records seized by a designated immigration official under subsection (6).

150 With a warrant: search of business premises for personnel records

- (1) An appropriate judicial officer may issue an entry and search warrant in relation to certain business premises if—
 - (a) an application is made by a designated immigration official for such a warrant in relation to the premises, and
 - (b) the appropriate judicial officer is satisfied that there are reasonable grounds for believing the matters mentioned in subsection (2).
- (2) Those matters are—
 - (a) that an employer has provided inaccurate or incomplete information under section 234 (power to require information from employer),
 - (b) that employee records will be found on the premises specified in the application and will enable deduction of some or all of the information which the employer was required to provide, and
 - (c) that at least one of the conditions in subsection (4) is met in relation to the premises.
- (3) Where an application specifies more than one set of premises—
 - (a) the reference in subsection (2)(b) to the premises specified in the application is to be read as a reference to at least one of the sets of premises specified, and
 - (b) subsection (2)(c) applies in relation to each set of premises specified.
- (4) The conditions referred to in subsection (2)(c) are—
 - (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
 - (b) that it is not practicable to communicate with any person entitled to grant access to the records;
 - (c) that entry to the premises or access to the records will not be granted unless a warrant is produced;
 - (d) that the purpose of a search may be frustrated or seriously prejudiced unless a designated immigration official arriving at the premises can secure immediate entry.

- (5) An entry and search warrant issued under subsection (1) in relation to business premises authorises any designated immigration official –
 - (a) to enter and search those premises, and
 - (b) where those premises are part of premises which also include premises used as a dwelling, to enter and search such of the premises used as a dwelling as are specified in the warrant.
- (6) A designated immigration official searching premises under a warrant issued under this section may seize employee records which the official has reasonable grounds for suspecting will be of substantial value (whether on their own or with other material) in the investigation of an offence under –
 - (a) section 224 (support: dishonest representations), or
 - (b) section 238(1)(a) (failure to supply information under section 234).
- (7) “Employee records” has the same meaning as in section 149.
- (8) See section 168 (retention of documents or other items) for the retention of employee records seized under subsection (6).

Multiple entry warrants

151 Multiple entry warrants

A warrant under section 141, 143, 145, 148 or 150 may authorise entry to and search of premises on more than one occasion if the appropriate judicial officer is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose for which the warrant was issued.

Powers to search people

152 Persons arrested under section 136

- (1) This section applies if a person (“P”) is arrested under section 136 (persons liable to detention or on immigration bail).
- (2) A designated immigration official may search P if the official has reasonable grounds for believing that P may present a danger to P or another person.
- (3) A designated immigration official may search P for –
 - (a) anything which P might use to assist P’s escape from lawful custody, or
 - (b) any document which might be an identifying document in relation to P.
- (4) The power under subsection (3) may be exercised only –
 - (a) if the official has reasonable grounds for believing that P may have concealed on P anything of a kind mentioned in that subsection, and
 - (b) to the extent that it is reasonably required for the purpose of discovering anything of that kind.
- (5) This section –
 - (a) does not authorise a designated immigration official to require P to remove any of P’s clothing in public other than outer clothing, but
 - (b) does authorise a search of P’s mouth.

- (6) A designated immigration official carrying out a search under subsection (2) may seize anything the official finds, if the official has reasonable grounds for believing that P might use it to cause physical injury to P or another person.
- (7) A designated immigration official carrying out a search under subsection (3) may seize anything the official finds, if the official has reasonable grounds for believing that—
 - (a) P might use it to assist P’s escape from lawful custody, or
 - (b) it might be an identifying document in relation to P.
- (8) See section 168 (retention of documents or other items) for the retention of things seized under subsection (6) or (7).

153 Persons arrested under section 136 who are in police custody

- (1) This section applies if a person (“P”)—
 - (a) has been arrested under section 136 (persons liable to detention or on immigration bail), and
 - (b) is in custody at a police station.
- (2) A designated immigration official of the same sex as P may, at any time, search P to see whether P has with P—
 - (a) anything which P might use to assist P’s escape,
 - (b) anything which P might use to cause physical injury to P or another person,
 - (c) anything which P might use to damage property or interfere with evidence, or
 - (d) any document which might be an identifying document in relation to P.
- (3) The power may be exercised only to the extent that the designated immigration official thinks it necessary for the purpose of discovering anything of a kind mentioned in subsection (2).
- (4) A designated immigration official carrying out a search under this section may seize anything the official finds, if the official has reasonable grounds for believing that—
 - (a) P might use it for one or more of the purposes mentioned in subsection (2)(a) to (c), or
 - (b) it might be an identifying document in relation to P.
- (5) If something is seized from P under subsection (4), P must be told the reason for the seizure unless P—
 - (a) is violent or appears likely to become violent, or
 - (b) is incapable of understanding what is said to P.
- (6) This section does not authorise an intimate search.
- (7) See section 168 (retention of documents or other items) for the retention of things seized under subsection (4).

154 Persons arrested for an offence under this Act or a listed offence

- (1) This section applies if a person (“P”) is arrested at a place other than a police station—
 - (a) for an offence under this Act, or

- (b) under section 138 (persons suspected of having committed listed offences).
- (2) A designated immigration official may search P if the official has reasonable grounds for believing that P may present a danger to P or another person.
- (3) A designated immigration official may search P for –
 - (a) anything which P might use to assist P’s escape from lawful custody, or
 - (b) anything which might be evidence relating to the offence for which P has been arrested.
- (4) The power under subsection (3) may be exercised only –
 - (a) if the official has reasonable grounds for believing that P may have concealed on P anything of a kind mentioned in that subsection, and
 - (b) to the extent that it is reasonably required for the purpose of discovering anything of that kind.
- (5) This section –
 - (a) does not authorise a designated immigration official to require P to remove any of P’s clothing in public other than outer clothing, but
 - (b) does authorise a search of P’s mouth.
- (6) A designated immigration official carrying out a search under subsection (2) may seize anything the official finds, if the official has reasonable grounds for believing that P might use it to cause physical injury to P or another person.
- (7) A designated immigration official carrying out a search under subsection (3) may seize anything the official finds, if the official has reasonable grounds for believing –
 - (a) that P might use it to assist P’s escape from lawful custody, or
 - (b) that it is evidence which relates to the offence in question.
- (8) See section 168 (retention of documents or other items) for the retention of things seized under subsection (6) or (7).

155 Persons arrested for an offence under this Act or a listed offence who are in police custody

- (1) This section applies if a person (“P”) –
 - (a) has been arrested for an offence under this Act or has been arrested under section 138 (persons suspected of having committed listed offences), and
 - (b) is in custody at a police station or in police detention at a place other than a police station.
- (2) A designated immigration official of the same sex as P may, at any time, search P to see whether P has with P –
 - (a) anything which P might use to assist P’s escape,
 - (b) anything which P might use to cause physical injury to P or another person,
 - (c) anything which P might use to damage property or interfere with evidence, or
 - (d) anything which the official has reasonable grounds for believing is likely to be evidence relating to the offence in question.

- (3) The power may be exercised only to the extent that the custody officer concerned thinks it necessary for the purpose of discovering anything of a kind mentioned in subsection (2).
- (4) An official carrying out a search under this section may seize anything the official finds, if the official has reasonable grounds for believing that –
 - (a) P might use it for one or more of the purposes mentioned in subsection (2)(a) to (c), or
 - (b) it is likely to be evidence relating to the offence in question.
- (5) Anything seized by an official under subsection (4)(a) –
 - (a) must be delivered to a constable as soon as is reasonably practicable, and
 - (b) may be retained by the constable.
- (6) If something is seized from P under subsection (4), P must be told the reason for the seizure unless P –
 - (a) is violent or appears likely to become violent, or
 - (b) is incapable of understanding what is said to P.
- (7) This section does not authorise an intimate search.
- (8) See section 168 (retention of documents or other items) for the retention of things seized under subsection (4).

156 Section 155: meaning of “police detention” etc.

- (1) This section applies for the purposes of the interpretation of section 155.
- (2) A reference to being in police detention is to be construed in accordance with –
 - (a) in relation to England and Wales, section 118(2) of PACE,
 - (b) in relation to Northern Ireland, Article 2 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)), and
 - (c) in relation to Scotland, subsections (3) to (6) of this section.
- (3) In relation to Scotland, a person is in police detention if condition A or B is met.
- (4) Condition A is met if the person –
 - (a) has been taken to a police station after being arrested for an offence, and
 - (b) is detained there or is detained elsewhere in the charge of a constable.
- (5) Condition B is met if the person –
 - (a) is arrested at a police station after attending voluntarily at the station, accompanying a constable to it or being detained under section 14 of the Criminal Procedure (Scotland) Act 1995, and
 - (b) is detained there or is detained elsewhere in the charge of a constable.
- (6) But, in relation to Scotland, a person is not in police detention if in court after being charged.
- (7) “Custody officer” –
 - (a) in relation to England and Wales, has the same meaning as in PACE,
 - (b) in relation to Northern Ireland, has the same meaning as in the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)), and
 - (c) in relation to Scotland, means the officer in charge of a police station.

*Seizure etc.***157 General power of seizure etc.**

- (1) This section applies to a designated immigration official who is in the course of carrying out a search under this Part of premises or a person.
- (2) The official may seize anything which the official finds if the official has reasonable grounds for believing—
 - (a) that it is evidence relating to an offence, and
 - (b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.
- (3) Where the offence mentioned in subsection (2)(a) is not an offence under this Act or a listed offence, the official may seize the thing only if directed to do so by a constable.
- (4) If—
 - (a) anything seized under subsection (2) relates to a listed offence, and
 - (b) the offence is not one in relation to which an investigation is being conducted under this Act,
 the official must deliver it to a constable as soon as is reasonably practicable.
- (5) The official may seize a document which the official has reasonable grounds for believing is an identifying document in relation to P if the official has reasonable grounds for suspecting that P may be liable to removal from the United Kingdom under Part 5 (expulsion orders and removal etc. from UK).
- (6) The powers conferred by this section are in addition to any power otherwise conferred.
- (7) See section 168 (retention of documents or other items) for the retention of things seized under subsection (2) or (5).

158 Items subject to legal privilege

Nothing in this Part authorises the seizure by a designated immigration official of anything which the official has reasonable grounds for believing to be an item subject to legal privilege.

159 Access and copying

- (1) In this section “seized material” means anything—
 - (a) seized under section 146, 147, 148, 149, 150, 152, 153, 154, 155 or 157, and
 - (b) retained under section 168 (retention of documents or other items).
- (2) If an interested person asks the Secretary of State for a record of seized material, the Secretary of State must provide the record to that person within a reasonable time.
- (3) An “interested person” means—
 - (a) a person who shows himself or herself to be the occupier of the premises on which the material was seized, or
 - (b) a person who shows himself or herself to have had custody or control of the material immediately before its seizure.

- (4) If an interested person within subsection (3)(b) (“P”), or a person acting on behalf of P, asks the Secretary of State for permission to have access to seized material, the Secretary of State must arrange for the person who made the request to have access to the material under the supervision of a designated immigration official.
- (5) A designated immigration official may –
 - (a) photograph or copy seized material, or
 - (b) have it photographed or copied.
- (6) If an interested person within subsection (3)(b) (“P”), or a person acting on behalf of P, asks the Secretary of State for a photograph or copy of seized material, the Secretary of State –
 - (a) must arrange for the person who made the request to have access to the material for the purpose of photographing or copying it under the supervision of a designated immigration official, or
 - (b) must arrange for the material to be photographed, or copied, and for the photograph or copy to be supplied within a reasonable time to the person.
- (7) The Secretary of State is not required to comply with subsection (4) or (6)(a) or (b) if there are reasonable grounds for believing that to do so would prejudice –
 - (a) the exercise of a function in connection with which the material was seized, or
 - (b) an investigation being conducted under this Act or criminal proceedings which may be brought as a result.
- (8) Section 21 of PACE or Article 23 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (seized material: access and copying) has effect in relation to anything seized by a designated immigration official, and retained under section 149(7) or 155(5) by a constable in England and Wales or Northern Ireland.

Warrants

160 Entry and search warrants

- (1) The entry or search of premises under a warrant is unlawful unless it complies with sections 161 to 165.
- (2) In this section and sections 161 to 165, references to a warrant are to a warrant to enter and search premises issued to a designated immigration official under section 141, 143, 145, 148 or 150.

161 Safeguards: application for warrant

- (1) A designated immigration official who applies for a warrant must –
 - (a) state the ground on which the application is made,
 - (b) state the provision of this Act under which the application is made,
 - (c) specify the premises which it is desired to enter and search, and
 - (d) identify, so far as is practicable, the persons or articles to be sought.
- (2) If the application is for an all premises warrant under section 148 relating to any premises occupied or controlled by a specified person –

- (a) subsection (1)(c) does not apply, but
 - (b) the official applying for the warrant must specify the matters mentioned in subsection (3).
- (3) Those matters are –
- (a) as many sets of premises which it is desired to enter and search as it is reasonably practicable to specify,
 - (b) the person who occupies or controls those premises and any others which it is desired to enter and search,
 - (c) why it is necessary to search more premises than those specified under paragraph (a), and
 - (d) why it is not reasonably practicable to specify all the premises which it is desired to enter and search.
- (4) If the application is for a warrant authorising entry and search on more than one occasion, the official applying for the warrant must –
- (a) state the ground on which the official applies for such a warrant, and
 - (b) state whether the official seeks a warrant authorising an unlimited number of entries, or (if not) the maximum number of entries desired.
- (5) An application for a warrant must –
- (a) in England and Wales, be made without notice and supported by an information in writing;
 - (b) in Scotland, be made *ex parte* and supported by evidence on oath;
 - (c) in Northern Ireland, be supported by a complaint in writing and substantiated on oath.
- (6) The official must answer on oath any question that the appropriate judicial officer hearing the application asks the official.

162 Safeguards: the warrant

- (1) A warrant authorises an entry on one occasion only, unless it specifies that it authorises multiple entries.
- (2) If a warrant specifies that it authorises multiple entries, it must also specify whether the number of entries authorised is unlimited, or limited to a specified maximum.
- (3) A warrant must –
- (a) specify the name of the person applying for it,
 - (b) specify the date on which it is issued,
 - (c) specify the premises which may be searched,
 - (d) specify the provision of this Act under which it is issued, and
 - (e) identify, so far as is practicable, the persons or articles to be sought.
- (4) In the case of an all premises warrant under section 148 relating to any premises occupied or controlled by a specified person –
- (a) subsection (3)(c) does not apply, but
 - (b) the warrant must specify the person who occupies or controls the premises to be searched, together with any premises occupied or controlled by that person which can be specified and which are to be searched.

- (5) Two copies must be made of a warrant which specifies only one set of premises and does not authorise multiple entries; and as many copies as are reasonably required may be made of any other kind of warrant.
- (6) A copy made for the purposes of subsection (5) must be clearly certified as a copy.

163 Accompanying persons

- (1) A warrant may authorise persons to accompany the designated immigration official executing it.
- (2) A person so authorised (an “accompanying person”) has the same powers as the official whom the person accompanies in respect of –
 - (a) the execution of the warrant, and
 - (b) the seizure of anything to which the warrant relates.
- (3) But an accompanying person may exercise those powers only in the company, and under the supervision, of the official.
- (4) An accompanying person must, as soon as is reasonably practicable, deliver to the official anything seized by the accompanying person in the exercise of the powers under subsection (2).

164 Timing of execution and procedure

- (1) Entry and search under a warrant –
 - (a) must be within the period of 3 months beginning with the date of issue, and
 - (b) must be at a reasonable hour, unless it appears to the official executing the warrant that the purpose of a search might be frustrated.
- (2) If the occupier of premises to be entered and searched is present at the time when a designated immigration official seeks to execute a warrant, the official must –
 - (a) identify himself or herself to the occupier and produce relevant identification,
 - (b) show the occupier the warrant, and
 - (c) supply the occupier with a copy of the warrant.
- (3) If the occupier is not present, but some other person who appears to the official to be in charge of the premises is present, the official must –
 - (a) identify himself or herself to that other person and produce relevant identification,
 - (b) show that other person the warrant, and
 - (c) supply that other person with a copy of the warrant.
- (4) If there is no person present who appears to the official to be in charge of the premises, the official must leave a copy of the warrant in a prominent place on the premises.
- (5) For the purposes of subsection (2)(a) or (3)(a), “relevant identification” means identification showing that the powers authorised by the warrant are exercisable by the official by virtue of the official’s designation under section 40.

- (6) A search under a warrant may be carried out only to the extent required for the purpose for which the warrant was issued.
- (7) A designated immigration official executing a warrant must endorse it with a statement as to –
 - (a) whether the persons or articles sought were found, and
 - (b) whether any articles, other than those sought, were seized.

165 Return and inspection of warrant

- (1) A warrant which has been executed, or has not been executed within the time authorised for its execution, must be returned –
 - (a) if issued by a justice of the peace in England and Wales, to the designated officer for the local justice area in which the justice was acting when issuing the warrant;
 - (b) if issued by a lay magistrate in Northern Ireland, to the clerk of petty sessions for the petty sessions district in which the premises are situated;
 - (c) if issued by a justice of the peace in Scotland, to the clerk of the district court for the commission area for which the justice of the peace was appointed;
 - (d) if issued by the sheriff, to the sheriff clerk.
- (2) For the purposes of subsection (1) –
 - (a) a warrant returned under paragraph (a) must be retained for 12 months by the designated officer;
 - (b) a warrant issued under paragraph (b) or (c) must be retained for 12 months by the clerk;
 - (c) a warrant issued under paragraph (d) must be retained for 12 months by the sheriff clerk.
- (3) An occupier of the premises to which the warrant relates who, during that 12 month period, asks to inspect the warrant must be allowed to do so.

Powers to search for, seize & forfeit cash

166 Powers to search for, seize and forfeit cash

- (1) Chapter 3 of Part 5 of the Proceeds of Crime Act 2002 (recovery of cash) applies in relation to a designated immigration official as it applies in relation to a constable.
- (2) For that purpose –
 - (a) “unlawful conduct”, in or in relation to section 289 of that Act (“the 2002 Act”), means an offence under this Act,
 - (b) “unlawful conduct”, in or in relation to other provisions, means an offence under this Act or a listed offence,
 - (c) “senior officer” in section 290 of the 2002 Act means a designated immigration official of a rank designated by the Secretary of State as equivalent to that of a senior police officer (within the meaning of that section),
 - (d) in section 292 of the 2002 Act the words “(in relation to England and Wales and Northern Ireland)” are disregarded,

- (e) section 293 of the 2002 Act does not apply,
- (f) an application for an order under section 295(2) of the 2002 Act must be made—
 - (i) in relation to England and Wales or Northern Ireland, by a designated immigration official, and
 - (ii) in relation to Scotland, by the Scottish Ministers in connection with their functions under section 298 of the 2002 Act or by a procurator fiscal,
- (g) an application for forfeiture under section 298 of the 2002 Act must be made—
 - (i) in relation to England and Wales or Northern Ireland, by a designated immigration official, and
 - (ii) in relation to Scotland, by the Scottish Ministers, and
- (h) any compensation under section 302 of the 2002 Act is to be paid by the Secretary of State.

Forfeiture of property where person convicted

167 Forfeiture of property where person convicted

- (1) This section applies where a court is making an order about property under—
 - (a) section 143 of the Powers of Criminal Courts (Sentencing) Act 2000 (powers to deprive offender of property used etc. for purposes of crime), or
 - (b) Article 11 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15) (corresponding provision for Northern Ireland)).
- (2) If the court thinks that the offence in connection with which the order is made—
 - (a) related to immigration or nationality, or
 - (b) was committed for a purpose connected with immigration or nationality,the court may order that the property be taken into the possession of the Secretary of State (and not of the police).

General power to examine & retain documents & other items

168 Examination and retention of documents or other items

- (1) This section applies where a document or other item comes into the possession of the Secretary of State in the course of, or in connection with, the exercise of a function under this Act.
- (2) The Secretary of State may examine and retain the item (whether or not it is in the United Kingdom)—
 - (a) for a period not exceeding 7 days for the purpose of examining it,
 - (b) while the Secretary of State has reasonable grounds for suspecting that—
 - (i) the person to whom the item relates may be liable to removal from the United Kingdom under Part 5 (expulsion orders & removal etc. from the UK), and
 - (ii) its retention may facilitate the person's removal,

- (c) while the Secretary of State has reasonable grounds for believing that the item may be required for the purpose of—
 - (i) the investigation of offences, or
 - (ii) legal proceedings (whether or not within the United Kingdom),
 - (d) for other immigration or nationality purposes, or for the purpose of doing anything else in connection with the exercise of immigration and nationality functions,
 - (e) while the Secretary of State has reasonable grounds for suspecting that it is a false travel or immigration document, or
 - (f) if the item is a prohibited item, subject to the limitations in subsection (3).
- (3) A prohibited item may not be retained under any of the paragraphs in subsection (2) —
- (a) for longer than is necessary in all the circumstances, or
 - (b) when the person from whom it was seized is no longer in detention (whether under Part 6 or otherwise), or is in the custody of a court but has been released on bail.
- (4) “Prohibited items” are items seized on the ground that they might be used —
- (a) to assist escape from detention (whether under Part 6 or otherwise),
 - (b) to cause physical injury to a person,
 - (c) to damage property, or
 - (d) to interfere with evidence.
- (5) “Immigration purposes” and “nationality purposes” have the same meaning as in Part 12 (see section 250(1) and (2)).
- (6) For the purposes of this section, an “immigration document” includes a document issued by or on behalf of a country other than the United Kingdom in the exercise of functions in connection with the movement of persons into or out of that country.
- (7) This section does not apply to anything which comes into the possession of the Secretary of State under —
- (a) section 90 (power to detain persons liable to arrest by a constable),
 - (b) section 111 (powers to search of persons acting under escort arrangements),
 - (c) section 120 (powers to search of persons exercising custodial functions),
 - (d) section 227 (power to obtain information from property owners), or
 - (e) Part 12 (information).

Disposal of property

169 Disposal of property: general

- (1) In this section “property” means property which has come into the possession of the Secretary of State in the course of, or in connection with, the exercise of a function under this Act.
- (2) But it does not include —
 - (a) money which has come into the possession of the Secretary of State under section 103 (financial security condition for immigration bail),

- (b) a document being retained under section 168(2)(e) (false travel or immigration documents), or
 - (c) a transporter or container detained under section 316 (detention of transporter where assist illegal immigration etc.).
- (3) A magistrates' court or, in Scotland, the sheriff may on the application of the Secretary of State or a claimant of property –
- (a) order the delivery of property to the person appearing to the court or sheriff to be its owner, or
 - (b) if its owner cannot be ascertained, make any other order about property.
- (4) An order under subsection (3) is not to affect the right of any person to take legal proceedings for the recovery of the property, provided that the proceedings are instituted within the period of 6 months beginning with the date of the order.
- (5) An order under subsection (3) may be made in respect of property forfeited under section 167 or 317 (forfeiture of transporter) only if –
- (a) the application under subsection (3) is made within the period of 6 months beginning with the date of the forfeiture order, and
 - (b) the applicant (if not the Secretary of State) satisfies the court or sheriff –
 - (i) that the applicant did not consent to the offender's possession of the property, or
 - (ii) that the applicant did not know and had no reason to suspect that the property was likely to be used, or was intended to be used, in connection with an offence.
- (6) The Secretary of State may make regulations for the disposal of property –
- (a) where the owner has not been ascertained,
 - (b) where an order under subsection (3) cannot be made because of subsection (5)(a), or
 - (c) where the court or sheriff has declined to make an order under subsection (3) on the grounds that the court or sheriff is not satisfied of the matters specified in subsection (5)(b).
- (7) The regulations may make provision that is the same as or similar to provision that may be made by regulations under section 2 of the Police (Property) Act 1897 (or any other similar enactment applying in relation to Scotland or Northern Ireland).
- (8) The regulations –
- (a) may apply, with or without modifications, regulations under section 2 of the 1897 Act (or any other similar enactment applying in relation to Scotland or Northern Ireland),
 - (b) may, in particular, provide for property to vest in the Secretary of State,
 - (c) may make provision about the timing of disposal (which, in particular, may differ from provision made by or under section 2 of the 1897 Act or any other similar enactment applying in relation to Scotland or Northern Ireland), and
 - (d) are to have effect only in so far as not inconsistent with an order of a court or sheriff (whether or not under subsection (3)).
- (9) For the purposes of subsection (1) it is immaterial whether property is acquired as a result of forfeiture or seizure or in any other way.

170 Disposal of false travel or immigration documents

- (1) This section applies to a document being retained under section 168(2)(e) (false travel or immigration documents).
- (2) The document may, in particular –
 - (a) be returned to the issuing authority, or
 - (b) be destroyed if condition A or B is met.
- (3) Condition A is met if the Secretary of State is satisfied that there is no issuing authority.
- (4) Condition B is met if the issuing authority consents to the destruction of the document.
- (5) “Issuing authority” in relation to a document, means –
 - (a) the authorities of a country,
 - (b) the international organisation, or
 - (c) any other person,
 by whom or on whose behalf the document is, or is purportedly, issued.
- (6) The Secretary of State may endorse the document with a statement to the effect that the document does not enable the person to whom it relates to travel to the United Kingdom.
- (7) Nothing in this section limits the circumstances in which the document may be returned to the issuing authority, destroyed or endorsed apart from this section.

*Interpretation***171 Meaning of “listed offence”**

- (1) In this Part, “listed offence” means an offence listed in Schedule 1.
- (2) The Secretary of State may by order amend Schedule 1 so as to add, vary or omit a reference to an offence.

172 Other definitions

- (1) This section applies for the purposes of the interpretation of this Part.
- (2) “Appropriate judicial officer” means –
 - (a) in England and Wales, a justice of the peace,
 - (b) in Northern Ireland, a lay magistrate, and
 - (c) in Scotland, the sheriff or a justice of the peace.
- (3) “Identifying document”, in relation to a person, means –
 - (a) an identity document in relation to the person,
 - (b) a document showing the place from which the person travelled to the United Kingdom, or
 - (c) a document showing a place to which the person is proposing to go from the United Kingdom.
- (4) “Intimate search” –

- (a) in relation to England and Wales, has the meaning given by section 65 of PACE,
 - (b) in relation to Northern Ireland, has the same meaning as in the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)), and
 - (c) in relation to Scotland, means a search consisting of the physical examination of a person’s body orifices other than the mouth.
- (5) “Premises” has the same meaning –
- (a) in England and Wales, as in PACE,
 - (b) in Northern Ireland, as in the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I.12)), and
 - (c) in Scotland, as in section 412 of the Proceeds of Crime Act 2002.
- (6) “Business premises” means premises, or any part of premises, not used as a dwelling.
- (7) A “senior officer” means –
- (a) in relation to a designated immigration official, an official of at least the rank designated by the Secretary of State as equivalent to the rank of inspector, and
 - (b) in relation to a constable, a constable of at least the rank of inspector.

PART 9

APPEALS AGAINST IMMIGRATION DECISIONS

Right of appeal against an immigration decision

173 Right of appeal

- (1) A person in respect of whom an immigration decision is made may appeal to the First-tier Tribunal against the decision.
- (2) In this Act, an “immigration decision” means –
- (a) a refusal to grant refugee permission on a protection application where the person is granted other immigration permission on the application,
 - (b) a refusal to grant protection permission on a protection application,
 - (c) a refusal to grant immigration permission on a family life application,
 - (d) a refusal to grant immigration permission on an application for an individual grant which is not a protection application or a family life application,
 - (e) the cancellation of refugee permission under section 15 where the person has immigration permission when the refugee permission is cancelled,
 - (f) the cancellation of immigration permission under section 15, other than a cancellation falling within paragraph (e),
 - (g) the making of an expulsion order, or
 - (h) a refusal to cancel an expulsion order under section 70(1).
- (3) For the purposes of this Act –

- (a) an “in-country appeal under section 173” means an appeal under this section which a person brings while the person is in the United Kingdom;
 - (b) an “out-of-country appeal under section 173” means an appeal under this section which a person brings while the person is outside the United Kingdom.
- (4) For the purposes of this section and sections 175 to 180, a person is to be treated as not having immigration permission if the person has immigration permission only by virtue of—
- (a) section 13(2) (extension of period of grant pending decision on new application), or
 - (b) section 16(2) (person to have permission following cancellation and pending appeal).
- (5) The right of appeal under this section is subject to the limitations and exceptions in the rest of this Part.

174 Refusal to grant refugee permission where other permission granted

- (1) This section applies in relation to the immigration decision referred to in section 173(2)(a) (refusal to grant refugee permission on protection application where other permission granted).
- (2) If that decision is made in respect of a person (“P”)—
- (a) P may bring an in-country appeal under section 173 against the decision;
 - (b) P may not bring an out-of-country appeal under section 173 against the decision.

175 Refusal to grant protection permission

- (1) This section applies in relation to the immigration decision referred to in section 173(2)(b) (refusal to grant protection permission on a protection application).
- (2) If that decision is made in respect of a person (“P”)—
- (a) P may bring an in-country appeal under section 173 against the decision only if the result of the decision is that P does not have immigration permission;
 - (b) P may not bring an out-of-country appeal under section 173 against the decision.

176 Refusal to grant immigration permission on family life application

- (1) This section applies in relation to the immigration decision referred to in section 173(2)(c) (refusal to grant immigration permission on family life application).
- (2) If that decision is made in respect of a person (“P”)—
- (a) P may not bring an in-country appeal under section 173 against the decision (see section 22(2));
 - (b) P may bring an out-of-country appeal under section 173 against the decision.

177 Refusal to grant immigration permission on other applications

- (1) This section applies in relation to the immigration decision referred to in section 173(2)(d) (refusal to grant immigration permission on application which is not protection application or family life application).
- (2) If that decision is made in respect of a person (“P”) –
 - (a) P may bring an in-country appeal under section 173 against the decision only if –
 - (i) the application was not made wholly or partly by means of deception by P,
 - (ii) when the application was made, P was in the United Kingdom and had immigration permission the grant of which was not obtained wholly or partly by means of deception by P, and
 - (iii) the result of the decision is that P does not have immigration permission;
 - (b) P may bring an out-of-country appeal under section 173 against the decision only if –
 - (i) when the application was made, P was outside the United Kingdom, and
 - (ii) the application was made for the purpose of visiting a person of a description prescribed by regulations made by the Secretary of State for the purposes of this sub-paragraph.
- (3) Those regulations may, in particular –
 - (a) make provision by reference to whether the applicant is a member of the family (within such meaning as the regulations may specify) of the person whom the applicant seeks to visit;
 - (b) make provision by reference to the circumstances of the applicant, of the person whom the applicant seeks to visit, or of both (including, in particular, provision by reference to whether or not a person is lawfully settled in the United Kingdom (within such meaning as the regulations may specify));
 - (c) confer a discretion.

178 Cancellation of refugee permission where person has permission

- (1) This section applies in relation to the immigration decision referred to in section 173(2)(e) (cancellation of refugee permission where person has immigration permission when refugee permission is cancelled).
- (2) If that decision is made in respect of a person (“P”) –
 - (a) P may bring an in-country appeal under section 173 against the decision only if P is in the United Kingdom when the decision is made;
 - (b) P may not bring an out-of-country appeal under section 173 against the decision.

179 Cancellation of immigration permission in other cases

- (1) This section applies in relation to the immigration decision referred to in section 173(2)(f) (cancellation of immigration permission other than a cancellation falling within section 173(2)(e)).
- (2) If that decision is made in respect of a person (“P”) –

- (a) P may bring an in-country appeal under section 173 against the decision only if—
 - (i) when the permission is cancelled, P is in the United Kingdom,
 - (ii) the grant of the cancelled permission was not obtained wholly or partly by means of deception by P, and
 - (iii) P’s case does not fall within subsection (3);
 - (b) P may bring an out-of-country appeal under section 173 against the decision.
- (3) P’s case falls within this subsection if—
- (a) the cancelled permission is temporary permission,
 - (b) it is cancelled on P’s arrival in the United Kingdom, and
 - (c) P is seeking to enter it for a purpose other than that for which the cancelled permission was granted.

180 Making of an expulsion order

- (1) This section applies in relation to the immigration decision referred to in section 173(2)(g) (making of expulsion order).
- (2) If that decision is made in respect of a person (“P”)—
 - (a) P may bring an in-country appeal under section 173 against the decision only if—
 - (i) when the expulsion order was made, P was in the United Kingdom and had immigration permission the grant of which was not obtained wholly or partly by means of deception by P, and
 - (ii) it is not an excluded expulsion order;
 - (b) P may bring an out-of-country appeal under section 173 against the decision only if—
 - (i) when the expulsion order was made, P was in the United Kingdom, and
 - (ii) P could not bring an in-country appeal under section 173 against the decision as a result of not meeting the requirements of paragraph (a).
- (3) An “excluded expulsion order” means—
 - (a) an expulsion order made under section 65(1) (duty to make an expulsion order in relation to a foreign criminal),
 - (b) an expulsion order made under section 65(2)(a) on the ground that the person falls within section 65(3)(c) (failure to comply with a condition of temporary permission), or
 - (c) an expulsion order made under section 65(2)(b) on the ground that the person is a member of the family of a person (within the meaning of Part 5) in relation to whom an order which falls within paragraph (a) or (b) above is or has been made.

181 Refusal to cancel an expulsion order

- (1) This section applies in relation to the immigration decision referred to in section 173(2)(h) (refusal to cancel expulsion order).
- (2) If that decision is made in respect of a person (“P”)—

- (a) P may not bring an in-country appeal under section 173 against the decision;
- (b) P may bring an out-of-country appeal under section 173 against the decision.

182 Case where person has in-country and out-of-country right of appeal

- (1) The bringing of an in-country appeal under section 173 against a decision prevents the bringing of any out-of-country appeal under that section against the decision.
- (2) The bringing of an out-of-country appeal under section 173 against a decision prevents the bringing of any in-country appeal under that section against the decision.

183 No appeal if permission refused or cancelled on certain grounds

- (1) This section applies if either of the following immigration decisions is made in respect of a person (“P”) –
 - (a) the decision referred to in section 173(2)(d) (refusal to grant immigration permission on application which is not protection application or family life application);
 - (b) the decision referred to in section 173(2)(f) (cancellation of immigration permission other than a cancellation falling within section 173(2)(e)).
- (2) P may not bring an appeal under section 173 against the decision if it is taken on one or more of the grounds mentioned in subsection (3).
- (3) Those grounds are that P or a person (“X”) of whom P is a dependant –
 - (a) does not satisfy a requirement of the Rules as to age or nationality;
 - (b) has failed to comply with a requirement of the Rules to have immigration permission before arriving in the United Kingdom;
 - (c) is seeking to stay in the United Kingdom for a period greater than that permitted by the Rules in P’s or X’s case;
 - (d) is seeking to stay in the United Kingdom for a purpose other than one for which immigration permission may be granted in accordance with the Rules;
 - (e) has failed to produce a valid identity document in relation to P or X in accordance with a requirement of the Rules;
 - (f) has failed to provide such information in relation to sponsorship as may be required by the Rules in P’s or X’s case.

184 Grounds of appeal

- (1) An appeal under section 173 against an immigration decision may be brought only on either or both of the following grounds –
 - (a) that the decision is not in accordance with the Rules;
 - (b) that the decision is otherwise not in accordance with the law.
- (2) The reference in subsection (1) to a decision which is not in accordance with the law includes a decision where removing the appellant under section 73 from, and requiring the appellant to leave, the United Kingdom in consequence of the decision would not be in accordance with the law.

*Determination of appeal***185 Matters to be considered**

- (1) An appeal under section 173 against an immigration decision is to be treated by the First-tier Tribunal as including an appeal against every immigration decision in respect of which the appellant may bring an appeal under that section.
- (2) On an appeal against an immigration decision, the Tribunal may consider any matter (including any matter raised in a statement under section 8 and any matter arising after the date of the decision) which it thinks relevant to the decision.
- (3) But subsection (4) applies to an appeal under section 173 against a decision if—
 - (a) it is an appeal against the decision referred to in section 173(2)(d) (refusal to grant immigration permission on application which is not protection application or family life application), and
 - (b) the decision was made on an application of a kind identified in the Rules as requiring to be considered under a “Points Based System”.
- (4) The Tribunal may consider evidence adduced by the appellant only if—
 - (a) it was submitted in support of, and at the time of making, the application to which the decision related,
 - (b) it is adduced to prove that a document in relation to the appellant is valid or that any other document is genuine, or
 - (c) it is adduced in connection with the Secretary of State’s reliance on, or compliance with, a provision of the Rules to refuse an application on grounds not related to the acquisition of “points” under the “Points Based System”.

186 Decision on appeal

- (1) On an appeal under section 173, the First-tier Tribunal must determine any matter raised as a ground of appeal (whether or not by virtue of section 185(1)).
- (2) The Tribunal must allow the appeal in so far as it thinks that an immigration decision against which the appeal is brought or is treated as being brought—
 - (a) was not in accordance with the Rules, or
 - (b) was otherwise not in accordance with the law.
- (3) In so far as subsection (2) does not apply, the Tribunal must dismiss the appeal.
- (4) For the purposes of subsection (2), the Tribunal is to be regarded as thinking that a decision was not in accordance with the law if it thinks that—
 - (a) removing the appellant from the United Kingdom in consequence of a decision would not be in accordance with the law, and
 - (b) requiring the appellant to leave the United Kingdom in consequence of the decision would not be in accordance with the law.
- (5) For the purposes of subsection (2), an immigration decision is not to be regarded as not in accordance with the law on the ground that there has been a refusal to exercise a discretion to grant immigration permission to a person who does not meet the requirements of the Rules for such a grant.

Certification powers

187 Certification of repetitious or unmeritorious submissions

- (1) This section applies if –
 - (a) a person (“P”) makes submissions to the Secretary of State about P’s case (whether or not purporting to make an application for an individual grant of immigration permission),
 - (b) P has on a previous occasion made a protection application,
 - (c) an immigration decision referred to in section 173(2)(b) (refusal to grant protection permission on a protection application) has been made on the application, and
 - (d) there is no pending appeal against the decision, or the application has been withdrawn.
- (2) The Secretary of State may certify P’s submissions if, having considered them, the Secretary of State thinks that –
 - (a) the submissions are not significantly different from material relating to P’s case that the Secretary of State, a tribunal or a court has already considered, or
 - (b) a protection application based on the submissions would, when taken together with the material relating to P’s case that has already been considered by the Secretary of State, a tribunal or a court, have no realistic prospect of success.
- (3) If the Secretary of State certifies P’s submissions under this section –
 - (a) they are to be treated as not being (and never having been) sufficient to amount to a protection application, and
 - (b) accordingly, an appeal may not be brought under section 173 against any decision made in relation to them.

188 Certification of clearly unfounded protection application

- (1) This section applies if the immigration decision referred to in section 173(2)(b) (refusal to grant protection permission on a protection application) is made in respect of a person (“P”).
- (2) P may not bring an in-country appeal under section 173 against the decision if the Secretary of State certifies that the protection application is clearly unfounded.
- (3) The Secretary of State must certify the protection application on which the decision is made if satisfied of the matters mentioned in subsection (4) (unless satisfied that the application is not clearly unfounded).
- (4) Those matters are –
 - (a) that P is entitled to reside in a country, or part of a country, listed in Schedule 2, and
 - (b) if the country or part is listed in that Schedule by reference to a description (or descriptions) of person, that P comes within that description (or at least one of them).
- (5) Subsection (3) does not apply if P –
 - (a) is the subject of a certificate under section 2 or 70 of the Extradition Act 2003,

- (b) is in custody pursuant to arrest under section 5 of that Act,
- (c) is the subject of a provisional warrant under section 73 of that Act,
- (d) is the subject of an authority to proceed under section 7 of the Extradition Act 1989, or
- (e) is the subject of a provisional warrant under section 8 of that Act.

189 Power to amend list of countries in Schedule 2

- (1) The Secretary of State may by order add a country, or part of a country, to the list in Schedule 2 if satisfied that—
 - (a) there is in general in that country or part no serious risk of persecution of persons entitled to reside in that country or part, and
 - (b) removal to that country or part of persons entitled to reside there will not in general contravene the United Kingdom’s obligations under the Human Rights Convention.
- (2) If the Secretary of State is satisfied that the statements in paragraphs (a) and (b) of subsection (1) are true of a country or part of a country in relation to a description of person, an order under that subsection may add the country or part to the list in Schedule 2 by reference to that description of person.
- (3) A description for the purposes of subsection (2) may refer to—
 - (a) gender,
 - (b) language,
 - (c) race,
 - (d) religion,
 - (e) nationality,
 - (f) membership of a social or other group,
 - (g) political opinion, or
 - (h) any other attribute or circumstance that the Secretary of State thinks appropriate.
- (4) In deciding whether the statements in paragraphs (a) and (b) of subsection (1) are true of a country or part of a country, the Secretary of State must have regard to—
 - (a) all the circumstances of the country or part (including its laws and how they are applied), and
 - (b) information from any appropriate source (including other member States and international organisations).
- (5) The Secretary of State may also by order amend the list in Schedule 2 otherwise than by adding a country or part of a country.

190 Certification of late protection application

- (1) This section applies if the immigration decision referred to in section 173(2)(b) (refusal to grant protection permission on a protection application) is made in respect of a person (“P”).
- (2) P may not bring an in-country appeal under section 173 against the decision if the Secretary of State certifies that—
 - (a) P was given a notice under section 8 (requirement to state grounds for being permitted to be in the UK etc.),

- (b) the application on which the decision was made relied on a ground which should have been (but was not) raised in a statement made under that section in response to the notice, and
 - (c) the Secretary of State thinks that there is no good reason for the ground not having been raised in such a statement.
- (3) P may not bring an in-country appeal under section 173 against the decision (“the new decision”) if the Secretary of State certifies that –
 - (a) P was given notice of a right to an in-country appeal under that section against an immigration decision (“the old decision”),
 - (b) the application on which the new decision was made relied on a ground which could have been (but was not) raised on appeal against the old decision, and
 - (c) the Secretary of State thinks that there is no good reason for the ground not having been raised on an appeal against the old decision.
- (4) It is irrelevant for the purposes of subsection (3) whether or not the appeal against the old decision was brought and (if it was brought) whether or not it has been determined.

191 Certification where decision relied upon classified information

- (1) An appeal under section 173 may not be brought or continued against an immigration decision if the Secretary of State personally certifies that the decision is or was taken wholly or partly in reliance on classified information.
- (2) Information is “classified information” for the purposes of this section if, in the personal opinion of the Secretary of State, it should not be made public –
 - (a) in the interests of national security,
 - (b) in the interests of the relationship between the United Kingdom and another country, or
 - (c) otherwise in the public interest.
- (3) Where a certificate is issued under this section in respect of a pending appeal, the appeal is to be treated as abandoned.
- (4) See Part 10 (the Special Immigration Appeals Commission) as regards an appeal to SIAC where a certificate is issued under this section.

192 Certification that exclusion conducive to public good

- (1) This section applies where a person is outside the United Kingdom when –
 - (a) the immigration decision referred to in section 173(2)(f) (cancellation of immigration permission other than a cancellation falling within section 173(2)(e)) is made in respect of the person, or
 - (b) the immigration decision referred to in section 173(2)(h) (refusal to cancel expulsion order) is made in respect of the person.
- (2) The person may not bring or continue an appeal under section 173 against the decision if the Secretary of State certifies that the decision is or was taken personally by the Secretary of State wholly or partly on the ground that the exclusion of P from the United Kingdom is conducive to the public good.
- (3) Where a certificate is issued under this section in respect of a pending appeal, the appeal is to be treated as abandoned.

193 Certification that removal in the interests of national security

- (1) Where—
- (a) a person is in the United Kingdom when the immigration decision referred to in section 173(2)(g) (making of an expulsion order) is made in respect of the person, and
 - (b) the Secretary of State personally certifies that the decision is or was taken wholly or partly on the grounds that the person's removal from the United Kingdom would be in the interests of national security,
- the person may not bring or continue an appeal under section 173 against the decision.
- (2) Where—
- (a) an immigration decision referred to in section 173(2)(b) (refusal to grant protection permission on a protection application) is made in respect of a person, and
 - (b) the Secretary of State personally certifies that to remove the person from the United Kingdom in consequence of the decision would be in the interests of national security,
- the person may not bring or continue an appeal under section 173 against the decision.
- (3) Where a certificate is issued under this section in respect of a pending appeal, the appeal is to be treated as abandoned.
- (4) See Part 10 (the Special Immigration Appeals Commission) as regards an appeal to SIAC where a certificate is issued under this section.

*Removal of protection applicants to safe countries***194 Presumptions where removal to safe European country**

- (1) This section applies for the purposes of the determination by any person, tribunal or court whether a person who has made a protection application may be removed from the United Kingdom to a country of which the person is not a national.
- (2) A country listed in Schedule 3 is to be treated, in so far as relevant to the question mentioned in subsection (1), as a place—
 - (a) where a person's life and liberty are not threatened by reason of the person's race, religion, nationality, membership of a particular social group or political opinion,
 - (b) where a person will not face a real risk of suffering serious harm (within the meaning of Council Directive 2004/83/EC (international protection)),
 - (c) from which a person will not be sent to another country in contravention of the person's Convention rights, and
 - (d) from which a person will not be sent to another country otherwise than in accordance with the principles of the Refugee Convention.
- (3) The Secretary of State may by order add a country to the list in Schedule 3.

195 No appeal against proposed removal to safe European country

- (1) This section applies to a person (“P”) who has made a protection application if the Secretary of State certifies that –
 - (a) it is proposed to remove P to a country which is a listed country (“the proposed country”), and
 - (b) in the Secretary of State’s opinion, P is not a national of that country.
- (2) A “listed country” is a country listed in Schedule 3.
- (3) If the Secretary of State issues a certificate under subsection (1) –
 - (a) the Secretary of State is not to consider the protection application further if, or in so far as, it is based on a submission of unlawful removal, and
 - (b) the refusal to consider the application further under paragraph (a) is not to be treated as amounting to an immigration decision referred to in section 173(2)(b) (refusal to grant protection permission on a protection application).
- (4) A “submission of unlawful removal” is a submission based –
 - (a) on any of the grounds mentioned in section 21(1)(a), (b) or (c) in respect of removing P from the United Kingdom to, or requiring P to leave the United Kingdom for, a country of which P is a national,
 - (b) on either of the grounds mentioned in section 21(1)(a) or (b) in respect of removing P from the United Kingdom to, or requiring P to leave the United Kingdom for, the proposed country, or
 - (c) on the ground that to remove P from the United Kingdom to, or require P to leave the United Kingdom for, the proposed country would be unlawful under section 6 of the Human Rights Act 1998 because of the possibility of removal from that country to another country.
- (5) If, or in so far as, the protection application is based on anything which is not a submission of unlawful removal, P may not bring an appeal under section 173 against an immigration decision referred to in section 173(2)(b) (refusal to grant protection permission on a protection application) made on the application if the Secretary of State certifies that the application is clearly unfounded.
- (6) The Secretary of State must issue a certificate under subsection (5) unless satisfied that the application is not clearly unfounded.
- (7) P may not bring any other appeal under section 173 against a decision in consequence of which P’s removal is proposed.

196 No appeal against proposed removal to other safe country

- (1) This section applies to a person (“P”) who has made a protection application if the Secretary of State certifies that –
 - (a) it is proposed to remove P to a specified country,
 - (b) in the Secretary of State’s opinion, P is not a national of the country, and
 - (c) in the Secretary of State’s opinion, the country is safe for P.
- (2) A country is “safe” for P if it is a place –
 - (a) where P’s life and liberty will not be threatened by reason of P’s race, religion, nationality, membership of a particular social group or political opinion,

- (b) where P will not face a real risk of suffering serious harm (within the meaning of Council Directive 2004/83/EC (international protection)), and
 - (c) from which P will not be sent to another country otherwise than in accordance with the Refugee Convention.
- (3) If the Secretary of State issues a certificate under subsection (1) –
- (a) the Secretary of State is not to consider the protection application further if, or in so far as, it is based on a submission of unlawful removal, and
 - (b) the refusal to consider the application further under paragraph (a) is not to be treated as amounting to an immigration decision referred to in section 173(2)(b) (refusal to grant protection permission on a protection application).
- (4) A “submission of unlawful removal” is a submission based –
- (a) on either of the grounds mentioned in section 21(1)(a) or (b) in respect of removing P from the United Kingdom to, or requiring P to leave the United Kingdom for, a country of which P is a national, or
 - (b) on either of the grounds mentioned in section 21(1)(a) or (b) in respect of removing P from the United Kingdom to, or requiring P to leave the United Kingdom for, the specified country.
- (5) If, or in so far as, the protection application is based on anything which is not a submission of unlawful removal, P may not bring an appeal under section 173 against a refusal to grant refugee permission or other protection permission to P on the application if the Secretary of State certifies that the application is clearly unfounded.

Supplementary

197 Meaning of “pending appeal”

- (1) This section applies for the purposes of this Act.
- (2) An appeal under section 173 is pending during the period beginning when it is instituted and ending when it is finally determined, withdrawn or abandoned.
- (3) An appeal is not finally determined for the purposes of subsection (2) while –
 - (a) an application for permission to appeal under section 11 or 13 of the Tribunals, Courts and Enforcement Act 2007 could be made or is awaiting determination,
 - (b) permission to appeal under either of those sections has been granted and the appeal is awaiting determination, or
 - (c) an appeal has been remitted under section 12 or 14 of that Act and is awaiting determination.
- (4) An appeal is to be treated as abandoned for the purposes of subsection (2) if –
 - (a) the immigration decision against which the appeal has been brought is withdrawn,
 - (b) immigration permission is granted to the appellant,
 - (c) the appellant leaves the United Kingdom, or

- (d) in the case of an out-of-country appeal under section 173, the appellant enters the United Kingdom.
- (5) Subsection (4)(b) does not apply in relation to an appeal against –
 - (a) the immigration decision referred to in section 173(2)(a) (refusal to grant refugee permission on protection application where other permission granted), or
 - (b) the immigration decision referred to in section 173(2)(e) (cancellation of refugee permission where person has immigration permission when refugee permission is cancelled).
- (6) See also section 339(6) (possibility of an appeal out of time with permission to be ignored).

198 False documents: proceedings in private

- (1) This section applies where it is alleged –
 - (a) that a document relied on by a party to an appeal under section 173 is false, and
 - (b) that disclosure to that party of a matter relating to the detection of its falsity would be contrary to the public interest.
- (2) The First-tier Tribunal –
 - (a) must investigate the allegation in private, and
 - (b) may proceed in private so far as necessary to prevent disclosure of the matter referred to in subsection (1)(b).

PART 10

THE SPECIAL IMMIGRATION APPEALS COMMISSION

The Special Immigration Appeals Commission

199 The Special Immigration Appeals Commission

- (1) There is to continue to be a commission known as the Special Immigration Appeals Commission.
- (2) The Special Immigration Appeals Commission is to continue to be a superior court of record.
- (3) Schedule 4 (which makes provision about the Special Immigration Appeals Commission) has effect.
- (4) A reference in this Act to “SIAC” is a reference to the Special Immigration Appeals Commission.

Right of appeal against an immigration decision

200 Right of appeal

- (1) A person in respect of whom an immigration decision is made may bring an in-country appeal or an out-of-country appeal to SIAC against the decision, if the person would be able to bring an in-country appeal or, as the case may be,

- an out-of-country appeal under section 173 against the decision but for a certificate of the Secretary of State under section 191 (classified information).
- (2) A person in respect of whom an immigration decision referred to in section 173(2)(g) (making of an expulsion order) is made may bring an out-of-country appeal to SIAC against the decision, if the person would be able to bring an in-country or out-of-country appeal under section 173 against the decision but for a certificate of the Secretary of State under section 193(1) (removal in interests of national security).
 - (3) A person in respect of whom an immigration decision referred to in section 173(2)(b) (refusal to grant protection permission on a protection application) is made may bring an in-country appeal to SIAC against the decision, if the person would be able to bring an in-country appeal under section 173 against the decision but for a certificate of the Secretary of State under section 193(2) (removal in interests of national security).
 - (4) The provisions of Part 9 (other than the excepted provisions) apply, with any necessary modifications and subject to subsections (6) and (7), in relation to an appeal under this section as they apply in relation to an appeal under section 173.
 - (5) The excepted provisions are –
 - (a) section 191 (certification when decision relied upon classified information);
 - (b) section 193 (certification that removal in the interests of national security);
 - (c) section 197 (meaning of “pending appeal”) (see section 205).
 - (6) In the case of an in-country appeal under subsection (1) or (3), the appeal is not to be treated by SIAC as including an appeal against an immigration decision referred to in section 173(2)(g) (making of an expulsion order) in respect of which the appellant may bring an out-of-country appeal to SIAC under subsection (2).
 - (7) An appeal under subsection (3) may be brought only on the grounds that to remove the appellant from, or require the appellant to leave, the United Kingdom in consequence of the decision would be unlawful under section 6 of the Human Rights Act 1998.
 - (8) For the purposes of this Act –
 - (a) an “in-country appeal under section 200” means an appeal under this section which a person brings while the person is in the United Kingdom;
 - (b) an “out-of-country appeal under section 200” means an appeal under this section which a person brings while the person is outside the United Kingdom.

Power to grant immigration bail

201 Power to grant immigration bail

- (1) Where an appeal under section 200 against an immigration decision could be brought by a person or such an appeal is pending, SIAC may, on an application made to SIAC for a grant of immigration bail to the person, grant the person immigration bail if –

- (a) the person is being detained under section 85 or 88 and the Secretary of State has not certified that the person’s detention is necessary in the interests of national security,
 - (b) at least 7 days have elapsed since the date of the person’s arrival in the United Kingdom, and
 - (c) where the person falls within subsection (2), the Secretary of State consents to the grant.
- (2) A person falls within this subsection if the Secretary of State gives SIAC notice that the Secretary of State intends –
- (a) to remove the person from the United Kingdom under Part 5 (expulsion orders & removal etc. from the UK), and
 - (b) that the removal is to take place before the end of the period of 14 days beginning with the date on which the application for the grant of immigration bail was made.
- (3) Where a person is being detained under section 85 or 88 and the Secretary of State certifies that the person’s detention is necessary in the interests of national security, SIAC may, on an application made to SIAC for a grant of immigration bail to the person, grant the person immigration bail.
- (4) Sections 99 to 107 (provisions of Part 6 relating to immigration bail) apply, with any necessary modifications, in relation to a grant of immigration bail by SIAC under this section as they apply in relation to a grant of immigration bail by the First-tier Tribunal under section 98.

Appeals from SIAC

202 Appeals from SIAC

- (1) Where SIAC has made a final determination of an appeal, any party to the appeal may bring a further appeal to the appropriate appeal court on any question of law material to that determination.
- (2) An appeal under this section may be brought only –
 - (a) with the permission of SIAC, or
 - (b) if SIAC refuses permission, with the permission of the appropriate appeal court.
- (3) The “appropriate appeal court” means –
 - (a) in relation to a determination made by SIAC in England and Wales, the Court of Appeal;
 - (b) in relation to a determination made by SIAC in Scotland, the Court of Session;
 - (c) in relation to a determination made by SIAC in Northern Ireland, the Court of Appeal in Northern Ireland.
- (4) A decision of SIAC on an appeal may not be questioned in legal proceedings otherwise than in accordance with this section.

*Practice and procedure***203 Procedure rules**

- (1) The Lord Chancellor may make rules (“procedure rules”)—
 - (a) regulating the exercise of the right of appeal to SIAC under section 200 or section 2B of the Special Immigration Appeals Commission Act 1997;
 - (b) prescribing practice and procedure to be followed in connection with proceedings on such an appeal (including the mode and burden of proof and admissibility of evidence);
 - (c) with respect to applications to SIAC relating to its powers to grant immigration bail under section 201 and matters arising out of such applications;
 - (d) prescribing practice and procedure to be followed in connection with proceedings on such an application;
 - (e) for other matters preliminary or incidental to, or arising out of, such an appeal or application (including proof of the decisions of SIAC);
 - (f) regulating applications to SIAC for permission under section 202(2)(a);
 - (g) prescribing the procedure to be followed in connection with proceedings on such an application.
- (2) In making procedure rules, the Lord Chancellor must have regard in particular to—
 - (a) the need to ensure that decisions which are the subject of appeals are properly reviewed, and
 - (b) the need to ensure that information is not disclosed contrary to the public interest.
- (3) Procedure rules may, in particular, do anything which may be done by Tribunal Procedure Rules.
- (4) Procedure rules may, in particular, make provision—
 - (a) enabling proceedings before SIAC to take place without the appellant being given full particulars of the reasons for the decision which is the subject of the appeal;
 - (b) enabling SIAC to hold proceedings in the absence of any person, including the appellant and any legal representative appointed by the appellant;
 - (c) about the functions in proceedings before SIAC of persons appointed under section 204 (appointment of person to represent the appellant’s interests);
 - (d) enabling SIAC to give the appellant a summary of any evidence taken in the appellant’s absence.
- (5) Procedure rules may also include provision—
 - (a) enabling any functions of SIAC which relate to matters preliminary or incidental to an appeal to be performed by a single member of SIAC;
 - (b) enabling any functions of SIAC under section 201 to be performed by a single member of SIAC;
 - (c) enabling an application for permission under section 202(2)(a) to be heard by a single member of SIAC;

- (d) conferring on SIAC such ancillary powers as the Lord Chancellor thinks necessary for the purposes of the exercise of its functions.

204 Appointment of person to represent the appellant’s interests

- (1) The relevant law officer may appoint a person to represent the interests of an appellant in proceedings before SIAC from which the appellant and any legal representative of the appellant are excluded.
- (2) The “relevant law officer” means—
 - (a) in relation to proceedings before SIAC in England and Wales, the Attorney General;
 - (b) in relation to proceedings before SIAC in Scotland, the Lord Advocate;
 - (c) in relation to proceedings before SIAC in Northern Ireland, the Attorney General for Northern Ireland.
- (3) A person appointed under this section for the purposes of proceedings in England and Wales must have a general qualification for the purposes of section 71 of the Courts and Legal Services Act 1990.
- (4) A person appointed under this section for the purposes of proceedings in Northern Ireland must be a member of the Bar of Northern Ireland.
- (5) A person appointed under this section for the purposes of proceedings in Scotland must be—
 - (a) an advocate, or
 - (b) a solicitor who has, by virtue of section 25A of the Solicitors (Scotland) Act 1980, rights of audience in the Court of Session and the High Court of Justiciary.
- (6) A person appointed under this section to represent the interests of a person is not responsible to that person.

Supplementary

205 Meaning of “pending appeal”

- (1) This section applies for the purposes of this Act.
- (2) An appeal under section 200 is pending during the period beginning when it is instituted and ending when it is finally determined, withdrawn or abandoned.
- (3) An appeal is not finally determined for the purposes of subsection (2) while—
 - (a) an application for permission to appeal under section 202 could be made or is awaiting determination, or
 - (b) permission to appeal under that section has been granted and the appeal is awaiting determination.
- (4) An appeal is to be treated as abandoned for the purposes of subsection (2) if—
 - (a) the immigration decision against which the appeal has been brought is withdrawn,
 - (b) immigration permission is granted to the appellant,
 - (c) the appellant leaves the United Kingdom, or

- (d) in the case of an out-of-country appeal under section 200, the appellant enters the United Kingdom.
- (5) Subsection (4)(b) does not apply in relation to an appeal against –
 - (a) the immigration decision referred to in section 173(2)(a) (refusal to grant refugee permission on protection application where other permission granted), or
 - (b) the immigration decision referred to in section 173(2)(e) (cancellation of refugee permission where person has immigration permission when refugee permission cancelled).
- (6) See also section 339(6) (possibility of an appeal out of time with permission to be ignored).

PART 11

SUPPORT

Duties & power to provide support

206 Duty to provide support for eligible protection applicants etc.

- (1) The Secretary of State must provide, or arrange for the provision of, support for a person (“P”) if –
 - (a) P is an eligible protection applicant, or a dependant of an eligible protection applicant,
 - (b) an application for support is made in respect of P which meets such requirements as may be prescribed under section 214(4) (support regulations),
 - (c) it appears to the Secretary of State that P is destitute, or likely to become destitute within such period as may be prescribed, and
 - (d) where support has previously been provided for P, the conditions subject to which that support was provided were complied with.
- (2) The Secretary of State may, for the purposes of subsection (1)(d) and in such cases or circumstances as may be prescribed, disregard a failure to comply with a condition.
- (3) Subsection (1) is subject to –
 - (a) section 211 (late protection applications), and
 - (b) support regulations under section 214(6) (suspension or discontinuance of support).

207 Meaning of “eligible protection applicant” etc.

- (1) In this Part, an “eligible protection applicant” means a protection applicant who is aged 18 or over and in the United Kingdom.
- (2) In this Part, “protection applicant” –
 - (a) means a person who has made a protection application falling within section 21(1)(a) or (b) (application on grounds relating to the Refugee Convention or international protection) which has been recorded by the Secretary of State but which has not been determined or withdrawn;

- (b) does not include a person who has made submissions of a kind mentioned in section 187(1) (certification of repetitious or unmeritorious submissions) which have not been considered by the Secretary of State.
- (3) For the purposes of this Part, a protection application is determined –
 - (a) at the end of a prescribed period beginning with the date on which the applicant is given notice under section 6(2) of the decision on the application, or
 - (b) where the applicant has brought an in-country appeal under section 173 or 200 against that decision, at the end of the period referred to in subsection (5).
- (4) The period prescribed under subsection (3)(a) may not be a period which ends during the period when an in-country appeal under section 173 or 200 could be brought by the applicant against the decision.
- (5) The period mentioned in subsection (3)(b) is –
 - (a) where, as a result of the appeal, immigration permission is granted to the applicant by an individual grant, a prescribed period beginning with the date on which the applicant is given notice under section 6(2) of that decision, or
 - (b) otherwise, a prescribed period beginning with the date on which the appeal ceases to be pending.

208 Meaning of “destitute”

- (1) For the purposes of this Part, a person (“P”) is destitute if –
 - (a) P does not have adequate accommodation or the means of obtaining it (whether or not P’s other essential living needs are met), or
 - (b) P has adequate accommodation or the means of obtaining it, but cannot meet P’s other essential living needs.
- (2) If P has dependants, the references in subsection (1)(a) and (b) to P are to be read as references to P and P’s dependants taken together.
- (3) Support regulations may –
 - (a) prescribe matters to which the Secretary of State must, or must not, have regard in determining whether a person is destitute or likely to become destitute;
 - (b) specify items or expenses which are, or are not, to be treated as an essential living need of a person for the purposes of this Part.

209 Temporary support for eligible protection applicants etc.

- (1) The Secretary of State must provide, or arrange for the provision of, support for a person (“P”) if –
 - (a) P is an eligible protection applicant, or a dependant of an eligible protection applicant,
 - (b) an application for support under section 206 is made in respect of P which meets such requirements as may be prescribed under section 214(4) (support regulations),
 - (c) it appears to the Secretary of State that P may be destitute, and

- (d) where support has previously been provided for P, the conditions subject to which that support was provided were complied with.
- (2) The Secretary of State may, for the purposes of subsection (1)(d) and in such cases or circumstances as may be prescribed, disregard a failure to comply with a condition.
- (3) The duty under subsection (1) continues only until the Secretary of State determines whether support must be provided for P under section 206.
- (4) Subsection (1) is subject to—
 - (a) section 211 (late protection applications), and
 - (b) support regulations under section 214(6) (suspension or discontinuance of support).

210 Power to provide support

- (1) The Secretary of State may provide, or arrange for the provision of, support for a person—
 - (a) who is eligible for support under this section,
 - (b) who is in the United Kingdom, and
 - (c) in respect of whom an application for support is made which meets such requirements as may be prescribed under section 214(4) (support regulations).
- (2) But subsection (1)(c) does not apply in such cases or circumstances as may be prescribed.
- (3) A person (“P”) is eligible for support under this section if P falls within any of cases A to C.
- (4) Case A is where—
 - (a) P is an ex-protection applicant, or a dependant of an ex-protection applicant,
 - (b) P appears to the Secretary of State to be destitute, or likely to become destitute within such period as may be prescribed, and
 - (c) P meets such criteria as may be prescribed (“the case A criteria”).
- (5) In this Part, “ex-protection applicant” means a person aged 18 or over who—
 - (a) was an eligible protection applicant whose protection application has been determined or withdrawn, and
 - (b) where the protection application was determined, was refused an individual grant of immigration permission on that application.
- (6) Case B is where—
 - (a) P is a dependant of a person (“X”) for whom support was provided under section 206 or 209 as an eligible protection applicant, but
 - (b) X is no longer an eligible protection applicant because X is outside the United Kingdom.
- (7) Case C is where—
 - (a) P is on immigration bail or is a dependant of a person on immigration bail, and
 - (b) P meets such criteria as may be prescribed.

- (8) Support regulations may provide for support to be provided under this section for a prescribed period.
- (9) Subsection (1) is subject to—
 - (a) section 211 (late protection applications), and
 - (b) support regulations under section 214(6) (suspension or discontinuance of support).

211 Late protection applications

- (1) The Secretary of State may not provide, or arrange for the provision of—
 - (a) support under section 206 or 209 for an eligible protection applicant (“P”) or a dependant of P, or
 - (b) support under section 210 for an ex-protection applicant (“E”) within case A of that section or a dependant of E within that case,if the Secretary of State is not satisfied that the protection application in question was made as soon as was reasonably practicable after P’s or E’s arrival in the United Kingdom.
- (2) Nothing in this section prevents support from being provided under this Part—
 - (a) to the extent that the provision of support is necessary for the purpose of avoiding a breach of a person’s Convention rights, or
 - (b) where one or more of P’s or E’s dependants are under the age of 18.
- (3) The Secretary of State may by order provide that subsection (1) is not to have effect in specified cases or circumstances.

How support is provided

212 The support which may be provided etc.

- (1) Support provided for a person (“P”) under this Part may consist of the provision of one or more of the following—
 - (a) accommodation that appears to the Secretary of State to be adequate for the needs of P and dependants of P (if any);
 - (b) what appear to the Secretary of State to be essential living needs of P and dependants of P (if any);
 - (c) in such circumstances as may be prescribed, the means to enable P or dependants of P (if any) to attend immigration bail proceedings relating to P or any of P’s dependants;
 - (d) if P is an eligible protection applicant, the means to enable P to meet what appear to the Secretary of State to be expenses (other than legal expenses or other expenses of a prescribed description) incurred in connection with P’s protection application;
 - (e) in such circumstances or for such purposes as may be prescribed, such items or services, or the means to enable P to meet such expenses or other needs, as may be prescribed;
 - (f) if the Secretary of State thinks that the circumstances of P’s case are exceptional, such other kinds of support as the Secretary of State thinks necessary to enable P and P’s dependants (if any) to be supported.

- (2) In deciding the kind of support to be provided under this Part in a particular case, the Secretary of State may decide that support falling within subsection (1)(b) may be provided for P only where support falling within subsection (1)(a) is also being provided for P.
- (3) Support regulations may prescribe matters to which the Secretary of State must, or must not, have regard in deciding the level or kind of support to be provided for P under this Part.
- (4) Support regulations may make provision –
 - (a) as to the circumstances in which the Secretary of State may be expected to provide support for P under this Part in accordance with prescribed levels or of a prescribed kind;
 - (b) as to the circumstances in which the Secretary of State may be expected to provide support for P otherwise than in accordance with the prescribed levels.
- (5) The Secretary of State may, in determining how a particular kind of support is to be provided for P, disregard any preference of P or of P’s dependants (if any) as to the way in which support is to be provided.
- (6) Support regulations may prescribe matters to which the Secretary of State must, or must not, have regard in providing support under this Part.

213 Support provided subject to conditions

- (1) A person for whom support is provided under this Part must, for the period for which the support is provided, reside –
 - (a) in accommodation provided under this Part, or
 - (b) at an address notified to the Secretary of State.
- (2) Support provided for a person under this Part may be provided subject to one or more other conditions.
- (3) The Secretary of State must give the person a notice stating the condition or conditions imposed under subsection (2).

214 Support regulations

- (1) The Secretary of State may by regulations make further provision with respect to the functions of the Secretary of State under this Part.
- (2) Support regulations may provide for the Secretary of State to take into account, when deciding –
 - (a) whether to provide support for a person (“P”) under section 210, or
 - (b) the level or kind of support to be provided for P under this Part,the extent to which any condition subject to which support is being, or has previously been, provided for P under this Part has been complied with.
- (3) Support regulations may require a supported person to make payments to the Secretary of State, in prescribed circumstances, by way of contributions to the costs of the provision of support under this Part.
- (4) Support regulations may make provision about procedural requirements including, in particular, provision about –

- (a) the procedure to be followed in making an application for support under section 206 or 210;
 - (b) the information which must be provided by the applicant;
 - (c) the circumstances in which an application may not be entertained;
 - (d) the making of further enquiries by the Secretary of State;
 - (e) changes of circumstances of which the Secretary of State must be given notice;
 - (f) the person by whom such a notice must be given.
- (5) The circumstances referred to in subsection (4)(c) may, in particular, include where the Secretary of State is not satisfied –
- (a) that the information provided by the applicant is complete or accurate, or
 - (b) that the applicant is co-operating with enquiries made by virtue of subsection (4)(d).
- (6) Support regulations may provide for the suspension or discontinuance of support provided under this Part in prescribed circumstances (which may, in particular, include circumstances where a person for whom support is provided fails to comply with a condition subject to which the support has been provided).
- (7) Support regulations may provide that if –
- (a) as a result of support provided under this Part, a person (“P”) has a tenancy or a licence to occupy accommodation, and
 - (b) P is given such notice to quit as may be prescribed,
- P’s tenancy or licence is to be treated as ending with the period specified in that notice regardless of when it could otherwise be brought to an end.
- (8) A notice to quit by virtue of subsection (7)(b) may only be given –
- (a) if support provided for P is discontinued,
 - (b) if P is to be moved to other accommodation,
 - (c) if P no longer requires accommodation, or
 - (d) in such other circumstances as may be prescribed.

Support & assistance by local authorities etc.

215 Provision of support by local authorities

- (1) A local authority or Northern Ireland authority may provide support for persons in accordance with arrangements made by the Secretary of State under this Part.
- (2) For the purposes of subsection (1), an authority may make arrangements with another person for the provision of support.
- (3) Support may be provided only in one or more of the ways mentioned in section 212(1).
- (4) An authority may incur reasonable expenditure in connection with the preparation of proposals for entering into arrangements under this Part.
- (5) The powers conferred on an authority by this section include power to –
 - (a) provide services outside its area;

- (b) provide services jointly with one or more other bodies;
- (c) form a company for the purpose of providing services;
- (d) tender for contracts (whether alone or with any other person).

216 Local authority and other assistance for Secretary of State

- (1) This section applies if the Secretary of State asks any of the following to assist the Secretary of State in providing accommodation under this Part –
 - (a) a local authority;
 - (b) a registered social landlord;
 - (c) a registered housing association in Scotland or Northern Ireland;
 - (d) the Northern Ireland Housing Executive.
- (2) The person to whom the request is made must co-operate in giving the Secretary of State such assistance as is reasonable in the circumstances.
- (3) Subsection (2) does not require a registered social landlord to act beyond its powers.
- (4) A local authority must supply to the Secretary of State such information about its housing accommodation (whether or not occupied) as the Secretary of State may request.
- (5) The information must be supplied in such form and manner as the Secretary of State may direct.
- (6) In this section –
 - “registered housing association” has the same meaning –
 - (a) in relation to Scotland, as in the Housing Associations Act 1985, and
 - (b) in relation to Northern Ireland, as in Part 2 of the Housing (Northern Ireland) Order 1992 (S.I. 1992/1725 (N.I. 15));
 - “registered social landlord” has the same meaning as in Part 1 of the Housing Act 1996.

217 Reception zones

- (1) The Secretary of State may by order designate as reception zones –
 - (a) areas in England and Wales consisting of the areas of one or more local authorities;
 - (b) areas in Scotland consisting of the areas of one or more local authorities;
 - (c) Northern Ireland.
- (2) Subsection (3) applies if the Secretary of State thinks that –
 - (a) a local authority whose area is within a reception zone has suitable housing accommodation within that zone, or
 - (b) the Northern Ireland Housing Executive has suitable housing accommodation.
- (3) The Secretary of State may direct the local authority or the Executive to make available such of the accommodation as may be specified in the direction for a specified period –
 - (a) to the Secretary of State, for the purpose of providing support under this Part, or

- (b) to a person with whom the Secretary of State has made arrangements under any of those sections.
- (4) A period specified in a direction under subsection (3) –
 - (a) begins on a date so specified, and
 - (b) must not exceed 5 years.
- (5) Housing accommodation is suitable for the purposes of subsection (2) if –
 - (a) it is unoccupied,
 - (b) it would be likely to remain unoccupied for the foreseeable future if not made available, and
 - (c) it is –
 - (i) appropriate for the accommodation of persons supported under this Part, or
 - (ii) capable of being made appropriate for that purpose with minor work.
- (6) If housing accommodation for which a direction under subsection (3) is in force –
 - (a) is not appropriate for the accommodation of persons supported under this Part, but
 - (b) is capable of being made appropriate for that purpose with minor work,the direction may require the body to which it is given to secure that that work is done without delay.
- (7) Before designating a reception zone in Great Britain, the Secretary of State must consult such local authorities, local authority associations and other persons as the Secretary of State thinks appropriate.
- (8) Before designating Northern Ireland as a reception zone, the Secretary of State must consult –
 - (a) the Northern Ireland Housing Executive, and
 - (b) such other persons as the Secretary of State thinks appropriate.

218 Directions under section 217(3)

- (1) The Secretary of State’s power to give a direction under section 217(3) in respect of a reception zone must be exercised by reference to criteria specified in the order under section 217(1) designating that zone.
- (2) The Secretary of State may not give a direction under section 217(3) in respect of a local authority in Scotland unless the Scottish Ministers have confirmed to the Secretary of State that the criteria specified in the relevant order under section 217(1) are in their opinion met in relation to that authority.
- (3) Before determining the criteria to be included in an order under section 217(1) designating a reception zone in Great Britain, the Secretary of State must consult such local authorities, local authority associations and other persons as the Secretary of State thinks appropriate.
- (4) Before determining the criteria to be included in an order under section 217(1) designating Northern Ireland as a reception zone, the Secretary of State must consult –
 - (a) the Northern Ireland Housing Executive, and

- (b) such other persons as the Secretary of State thinks appropriate.
- (5) A direction under section 217(3) is enforceable, on an application made by the Secretary of State—
 - (a) by injunction, or
 - (b) in Scotland, by an order under section 45(b) of the Court of Session Act 1988.

219 Regulations about housing accommodation

- (1) The Secretary of State must by regulations make provision with respect to the general management of any housing accommodation for which a direction under section 217(3) is in force.
- (2) Regulations under subsection (1) must include provision—
 - (a) about the method to be used in determining the amount of rent or other charges to be payable in relation to the accommodation;
 - (b) about the times at which payments of rent or other charges are to be made;
 - (c) about responsibility for maintenance of, and repairs to, the accommodation;
 - (d) enabling the accommodation to be inspected, in such circumstances as may be prescribed by the regulations, by the body to which the direction was given;
 - (e) with respect to the condition in which the accommodation is to be returned when the direction ceases to have effect.
- (3) Regulations under subsection (1) may, in particular, include provision—
 - (a) for the cost, or part of the cost, of minor work required by a direction under section 217(3) to be met by the Secretary of State in circumstances prescribed by the regulations;
 - (b) about the maximum amount of expenditure which a body may be required to incur as a result of a direction under section 217(3).
- (4) Regulations must make provision (the “dispute resolution procedure”) for resolving disputes arising in connection with the operation of regulations made under subsection (1).
- (5) Regulations under subsection (4) must include provision—
 - (a) requiring a dispute to be resolved in accordance with the dispute resolution procedure;
 - (b) requiring the parties to a dispute to comply with obligations imposed on them by the procedure;
 - (c) for the decision of the person resolving a dispute in accordance with the procedure to be final and binding on the parties.
- (6) Before making regulations under subsection (1) which extend to Northern Ireland only, the Secretary of State must consult—
 - (a) the Northern Ireland Housing Executive, and
 - (b) such other persons as the Secretary of State thinks appropriate.
- (7) Before making any other regulations under subsection (1), the Secretary of State must consult—
 - (a) such local authorities, local authority associations and other persons as the Secretary of State thinks appropriate, and

- (b) if the regulations extend to Northern Ireland, the Northern Ireland Housing Executive.
- (8) Before making regulations under subsection (4), the Secretary of State must consult such local authorities, local authority associations and other persons as the Secretary of State thinks appropriate.

220 Payments in respect of directions under section 217(3)

- (1) The Secretary of State must pay to a body to which a direction is given under section 217(3) (a “directed body”) such sums as the Secretary of State thinks represent the reasonable costs to that body of complying with the direction.
- (2) The Secretary of State –
 - (a) must pay to a directed body sums determined to be payable in relation to accommodation made available by that body under section 217(3)(a), and
 - (b) may pay to a directed body sums determined to be payable in relation to accommodation made available by that body under section 217(3)(b).
- (3) “Determined” means determined in accordance with regulations made under section 219(2)(a).

221 Access to other support for children

- (1) A local authority or a Northern Ireland authority may not provide assistance to a dependant under the age of 18 (“D”), or any member of D’s family, if any of the following conditions is met.
- (2) Condition A is met if support is being provided for D under section 206 or 209.
- (3) Condition B is met if the authority has reasonable grounds for believing that, if an application for support under section 206 were made in respect of D, the Secretary of State would be under a duty to provide, or arrange for the provision of, support for D under that section or section 209.
- (4) Condition C is met if support is being provided for D under section 210 as a person within case A (ex-protection applicants and their dependants).
- (5) Condition D is met if –
 - (a) the authority has reasonable grounds for believing that D is eligible for support under section 210 as a person within case A,
 - (b) an application is required for support to be provided for D under that section, but no such application has been made, and
 - (c) the authority has reasonable grounds for believing that, if such an application were made, support would be provided for D under that section.
- (6) “Assistance” means the provision of accommodation or of any essential living needs under –
 - (a) section 17 of the Children Act 1989 (local authority support),
 - (b) section 22 of the Children (Scotland) Act 1995 (similar provision for Scotland), or
 - (c) Article 18 of the Children (Northern Ireland) Order 1995 (S.I. 1995/775 (N.I. 2)) (similar provision for Northern Ireland).

- (7) If subsection (1) ceases to apply because accommodation provided for D under this Part has been withdrawn, only the relevant authority may provide assistance to D.
- (8) “Relevant authority” means—
 - (a) in relation to England and Wales, and Scotland, the local authority within whose area the withdrawn accommodation was provided;
 - (b) in relation to Northern Ireland, the Northern Ireland authority within whose area the withdrawn accommodation was provided.
- (9) Subsection (1) does not apply in such circumstances as may be prescribed by regulations made by the Secretary of State.

Appeals

222 Appeals

- (1) A person (“P”) may appeal to the First-tier Tribunal against any of the following—
 - (a) a determination by the Secretary of State not to provide, or arrange for the provision of, support for P under section 206;
 - (b) a determination by the Secretary of State not to provide, or arrange for the provision of, support for P under section 210;
 - (c) the discontinuance of support provided for P under section 206 or 210.
- (2) But where an application for support is required, only the applicant may bring an appeal under this section.
- (3) P may not bring an appeal under subsection (1) if one or more of the following paragraphs apply in P’s case—
 - (a) the application for support (if any) does not meet such requirements as may be prescribed under section 214(4);
 - (b) as a result of section 211 (late protection applications), support was not provided for P under section 206 or 210;
 - (c) P has failed to move into accommodation provided for P under section 206 or 210;
 - (d) support provided for P under section 206 is replaced immediately by support under section 210 (or vice versa);
 - (e) the provision of support for P under section 210 ceases as a result of the expiry of a period prescribed under subsection (8) of that section;
 - (f) support previously provided for P under section 206 or 210 is discontinued and, on a fresh application by P for support under section 206 or 210, the Secretary of State is satisfied that there has been no material change in P’s circumstances;
 - (g) where support was provided for P under section 206, P has ceased to be an eligible protection applicant or the dependant of an eligible protection applicant;
 - (h) where P was a person within case A in section 210 for whom support was provided under that section, P has ceased to meet such case A criteria (within the meaning of section 210) as may be prescribed.
- (4) P may not bring or continue an appeal under subsection (1) if P is outside the United Kingdom.

- (5) On an appeal under this section, the First-tier Tribunal may –
 - (a) require the Secretary of State to reconsider the matter,
 - (b) substitute its decision for the decision appealed against, or
 - (c) dismiss the appeal.
- (6) The Secretary of State may pay reasonable travelling expenses incurred by P in connection with attendance for the purposes of an appeal under this section.

Recovery of support & overpayments

223 Recovery of support and overpayments

- (1) Subsections (2) and (3) apply if the Secretary of State determines that –
 - (a) a person (“P”) has misrepresented or failed to disclose a material fact (whether fraudulently or otherwise), and
 - (b) as a consequence of that misrepresentation or failure, support has been provided under this Part (whether or not for P).
- (2) If the support was provided by the Secretary of State, the Secretary of State may recover from P an amount representing the monetary value of the support which would not have been provided but for P’s misrepresentation or failure.
- (3) If the support was provided by another person (“Q”) in accordance with arrangements made with the Secretary of State under this Part, the Secretary of State may recover from P an amount representing the payment to Q which the Secretary of State would not have made but for P’s misrepresentation or failure.
- (4) If it appears to the Secretary of State that a relevant supported person (“P”) was not destitute during any period in which support was provided for P under section 206 or 210, the Secretary of State may recover from P an amount representing the monetary value of the support provided for P during that period.
- (5) If it appears to the Secretary of State that –
 - (a) a relevant supported person (“P”) had, at the time when the application for support in respect of P was made under section 206 or 210, assets of any kind in the United Kingdom or elsewhere which were not capable of being realised, and
 - (b) those assets have subsequently become, and remain, capable of being realised,the Secretary of State may recover from P an amount representing the whole or part of the monetary value of support provided for P.
- (6) “Relevant supported person” means a person who is or has been –
 - (a) a person supported under section 206 (eligible protection applicants and their dependants), or
 - (b) a supported person within case A in section 210 (ex-protection applicants and their dependants).
- (7) Subsection (8) applies if, as a result of an error on the part of the Secretary of State, support has been provided for a person (“P”) under this Part.
- (8) The Secretary of State may recover from P an amount representing the monetary value of the support provided for P as a result of the error.

- (9) An amount recoverable under any provision of this section may be recovered as a debt due to the Secretary of State.
- (10) Support regulations may make provision –
- (a) for the recovery in other cases or circumstances of amounts representing the whole or part of the monetary value of support provided for a person;
 - (b) for methods of recovery other than that mentioned in subsection (9), including deductions from support provided under section 206 or 210.

Related offences

224 Dishonest representations

- (1) A person (“P”) commits an offence if, with a view to obtaining for P or another person a benefit or other payment or advantage under this Part, P dishonestly or, in Scotland, knowingly –
- (a) makes a statement or representation which is false,
 - (b) produces or gives to a person exercising functions under this Part a document or information which is false,
 - (c) causes or allows to be produced or given to a person exercising functions under this Part a document or information which is false,
 - (d) fails to give notice of a change of circumstances when required to do so in accordance with provision made by or under this Part, or
 - (e) causes another person to fail to give notice of a change of circumstances of which that other person was required to give notice in accordance with provision made by or under this Part.
- (2) See section 320 (commission of certain offences by director etc.) where an offence under this section is committed by a body corporate or a partnership.
- (3) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment to imprisonment for a term not exceeding 7 years, or to a fine, or to both;
 - (b) on summary conviction –
 - (i) in England and Wales or in Scotland, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both;
 - (ii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both.

225 Delay or obstruction

- (1) A person commits an offence if, without reasonable excuse, the person –
- (a) intentionally delays or obstructs a person exercising functions under this Part, or
 - (b) refuses or fails to answer a question, give information or produce a document when required to do so in accordance with provision made by or under this Part.
- (2) See section 320 (commission of certain offences by director etc.) where an offence under this section is committed by a body corporate or a partnership.

- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Power of entry

226 Entry of premises in which accommodation is provided

- (1) This section applies in relation to premises in which accommodation is provided under this Part for a person (“P”).
- (2) An appropriate judicial officer may issue a warrant to enter the premises if—
- (a) an application is made by a designated immigration official for such a warrant in relation to the premises, and
 - (b) the appropriate judicial officer is satisfied that there are reasonable grounds for believing one or more of the matters mentioned in subsection (3).
- (3) Those matters are—
- (a) that P is not residing in the accommodation;
 - (b) that the accommodation is being used for any purpose other than the accommodation of P or any other person for whom it is provided;
 - (c) any person other than P or any other person for whom it is provided is residing in the accommodation.
- (4) A warrant issued under this section—
- (a) authorises any designated immigration official to enter the premises, and
 - (b) may be executed at any reasonable time.
- (5) “Appropriate judicial officer” means—
- (a) in England and Wales, a justice of the peace;
 - (b) in Northern Ireland, a lay magistrate;
 - (c) in Scotland, the sheriff or a justice of the peace.

Power to obtain information

227 Information to be supplied by property owners etc.

- (1) The powers conferred by this section may only be exercised with a view to obtaining information about premises in which accommodation is or has been provided under this Part for a person (“relevant premises”).
- (2) The Secretary of State may require any person who appears to the Secretary of State—
- (a) to have an interest in relevant premises or in a building which includes relevant premises, or
 - (b) to be involved in any way in the management or control of relevant premises or of a building which includes relevant premises,
- to supply to the Secretary of State such information with respect to the relevant premises and the persons occupying them as the Secretary of State may specify.

- (3) A person who is required to supply information under this section must do so in accordance with such requirements as may be prescribed by regulations made by the Secretary of State.
- (4) Information supplied to the Secretary of State under this section may be used by the Secretary of State—
 - (a) for immigration or nationality purposes, or
 - (b) for the purpose of doing anything else in connection with the exercise of immigration and nationality functions.
- (5) “Immigration purposes” and “nationality purposes” have the same meanings as in Part 12 (see section 250(1) and (2)).

Expenditure

228 Payments to local authorities

- (1) The Secretary of State may pay to any local authority or Northern Ireland authority such sums as the Secretary of State thinks appropriate in respect of expenditure incurred, or to be incurred, by the authority in connection with—
 - (a) persons who are, or have been, protection applicants, and
 - (b) their dependants.
- (2) The Secretary of State may pay to any relevant authority or association such sums as the Secretary of State thinks appropriate in respect of services provided by the authority or association in connection with the discharge of functions under this Part.
- (3) A “relevant authority or association” means—
 - (a) a local authority,
 - (b) a local authority association, or
 - (c) a Northern Ireland authority.
- (4) The Secretary of State may make payments to any local authority towards the discharge of any liability of—
 - (a) persons who are, or have been, protection applicants, and
 - (b) their dependants,in respect of council tax payable to that authority.
- (5) Payments under this section may be made on such terms, and subject to such conditions, as the Secretary of State may determine.

229 Grants to voluntary organisations

- (1) The Secretary of State may pay grants to voluntary organisations in connection with—
 - (a) the provision by them of support (of whatever nature) to persons who are, or have been, protection applicants, and to their dependants, and
 - (b) connected matters.
- (2) Grants may be made on such terms, and subject to such conditions, as the Secretary of State may determine.
- (3) “Voluntary organisations” means bodies (other than public or local authorities) whose activities are not carried on for profit.

Supplementary

230 Secretary of State to be a corporation sole for purposes of this Part

- (1) For the purpose of exercising the Secretary of State’s functions under this Part, the Secretary of State is a corporation sole.
- (2) An instrument in connection with the Secretary of State’s acquisition, management, or disposal of real, personal, heritable, or moveable property under this Part may be executed on behalf of the Secretary of State by a person authorised by the Secretary of State for that purpose.
- (3) An instrument purporting to have been so executed on behalf of the Secretary of State is to be treated, until the contrary is proved, to have been so executed on behalf of the Secretary of State.

231 Accommodation for previously supported persons: local connection

- (1) A local housing authority’s duty to secure that accommodation is available for occupation by a person (“P”) under section 193 of the Housing Act 1996 (homeless persons) does not apply if conditions A and B are met.
- (2) Condition A is met if P was (at any time) provided with accommodation in a place in Scotland under section 206 or 210.
- (3) Condition B is met if P does not have –
 - (a) a local connection with the district of a local housing authority in England and Wales (within the meaning of section 199 of the Housing Act 1996), or
 - (b) a local connection with a district in Scotland (within the meaning of section 27 of the Housing (Scotland) Act 1987).
- (4) If as a result of subsection (1) a local housing authority’s duty under section 193 of the Housing Act 1996 does not apply, the authority –
 - (a) may secure that accommodation is available for occupation by P for a period giving P a reasonable opportunity of securing accommodation for P’s occupation, and
 - (b) may provide P (or secure that P is provided with) advice and assistance in any attempts P may make to secure that accommodation becomes available for P’s occupation.
- (5) “Local housing authority” has the same meaning as in the Housing Act 1985.

Interpretation

232 Interpretation

- (1) In this Part –
 - “dependant”, in relation to a person (“P”), means a person who is in the United Kingdom and –
 - (a) is in a prescribed relationship to P, or
 - (b) falls within such other description of persons as may be prescribed;
 - “housing accommodation” includes flats, lodging houses and hostels;
 - “local authority” means –

- (a) in England and Wales –
 - (i) a county council,
 - (ii) a county borough council,
 - (iii) a district council,
 - (iv) a London borough council,
 - (v) the Common Council of the City of London, or
 - (vi) the Council of the Isles of Scilly;
- (b) in Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;

“Northern Ireland authority” means –

- (a) the Northern Ireland Housing Executive,
- (b) the Regional Health and Social Care Board,
- (c) the Regional Agency for Public Health and Social Well-being, or
- (d) a Health and Social Care trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1));

“prescribed”, unless otherwise stated, means prescribed by support regulations;

“support regulations” means regulations made under section 214(1);

“supported person” means a person for whom support is provided under this Part.

- (2) A reference in this Part to the provision of support under this Part (however expressed) includes a reference to the provision of support under arrangements made by the Secretary of State.
- (3) The Secretary of State may, for the purposes of this Part, inquire into and decide the age of any person.

PART 12

INFORMATION

Powers to require information

233 Power to require information from local authority

- (1) The Secretary of State may require a local authority or the Northern Ireland Housing Executive (“the NIHE”) to supply information for the purpose of establishing where a person is if the Secretary of State has reasonable grounds for believing that the person –
 - (a) has committed a relevant offence, and
 - (b) is or has been resident in the local authority’s area or, in the case of the NIHE, in Northern Ireland.
- (2) A “relevant offence” means an offence under –
 - (a) section 77 (breach of expulsion order),
 - (b) section 301 (illegal presence in the UK),
 - (c) section 309 (deception),
 - (d) section 310 (altering documents etc.), or
 - (e) section 313 (failure to comply with conditions of permission or immigration bail etc.).

- (3) A local authority and the NIHE must comply with a requirement imposed under subsection (1).
- (4) In this section, “local authority” means –
 - (a) a county council, or district council, in England,
 - (b) a London borough council,
 - (c) the Common Council of the City of London,
 - (d) the Council of the Isles of Scilly,
 - (e) a county council, or county borough council, in Wales, or
 - (f) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994.

234 Power to require information from employer

- (1) The Secretary of State may, by notice given to an employer, require the employer to supply information about an employee if –
 - (a) the Secretary of State has reasonable grounds for suspecting that the employee has committed a relevant offence, and
 - (b) the information –
 - (i) is required for the purpose of establishing where the employee is, or
 - (ii) relates to the employee’s earnings or the history of the employee’s employment.
- (2) A “relevant offence” means an offence under –
 - (a) section 77 (breach of expulsion order),
 - (b) section 224(1)(a), (b), (c) or (d) (support: dishonest representations),
 - (c) section 301 (illegal presence in the UK),
 - (d) section 309 (deception),
 - (e) section 310 (altering documents etc.), or
 - (f) section 313 (failure to comply with conditions of permission or immigration bail etc.).
- (3) Information supplied by a person pursuant to a requirement imposed under subsection (1) is not admissible in evidence in criminal proceedings against that person (other than proceedings for an offence under section 238(1)(a) (failure to comply with a requirement imposed under subsection (1))).
- (4) Where –
 - (a) a business (“the employment agency”) arranges for one person (“the worker”) to provide services to another (“the client”), and
 - (b) the worker is not employed by the employment agency or the client,this section is to apply as if the agency were the worker’s employer while the worker provides services to the client.
- (5) In this section –
 - (a) a reference to an employer or employee includes a reference to a former employer or employee, and
 - (b) a reference to employment is to employment under a contract of service or apprenticeship, whether express or implied and whether oral or written.

235 Power to require information from financial institution

- (1) The Secretary of State may, by notice given to a financial institution, require the institution to supply information about a person if the Secretary of State has reasonable grounds for suspecting that –
 - (a) the person has committed an offence under section 224(1)(a), (b), (c) or (d) (support: dishonest representations),
 - (b) the information is relevant to the offence, and
 - (c) the institution has the information.
- (2) Information supplied by a person pursuant to a requirement imposed under subsection (1) is not admissible in evidence in criminal proceedings against that person (other than proceedings for an offence under section 238(1)(b) (failure to comply with a requirement imposed under subsection (1))).
- (3) In this section, “financial institution” means –
 - (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits, and
 - (b) a building society (within the meaning given by the Building Societies Act 1986).

236 Notices under section 234 or 235

- (1) A notice imposing a requirement under section 234(1) or 235(1) must specify –
 - (a) the information required,
 - (b) the date or time by which it is to be supplied, and
 - (c) the form and manner in which it is to be supplied.
- (2) The date or time specified under subsection (1)(b) must be at or after the end of the period of 10 working days beginning with the date on which the notice is given.
- (3) In this section “working day” means a day which is not –
 - (a) Saturday, Sunday, Christmas Day, or Good Friday, or
 - (b) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

237 Power to make provision for registration at hotels etc.

The Secretary of State may by order make such provision as appears to the Secretary of State to be expedient in connection with this Act –

- (a) for records to be made and kept of persons staying at hotels and other premises where lodging or sleeping accommodation is provided, and
- (b) for persons (whether or not they are British citizens) who stay at any such premises to supply the necessary information.

*Related offences***238 Failure to comply with a section 234, 235 or 237 requirement**

- (1) A person commits an offence if, without reasonable excuse, the person fails to comply with a requirement imposed under or by virtue of –
 - (a) section 234 (power to require information from employer),

- (b) section 235 (power to require information from financial institution), or
 - (c) section 237 (power to make provision for registration at hotels etc.).
- (2) See section 320 (commission of certain offences by director etc.) where an offence under subsection (1)(a) or (b) is committed by a body corporate or a partnership.
- (3) A person guilty of an offence under this section is liable on summary conviction –
- (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding level 5 on the standard scale, or to both;
 - (b) in Scotland or Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the standard scale, or to both.

Powers to supply information

239 Supply by police and others to Secretary of State

- (1) This section applies to –
- (a) information held by a relevant person,
 - (b) a document or article which comes into the possession of a relevant person or a person acting on behalf of a relevant person, or
 - (c) a document or article which is discovered by a relevant person or a person acting on behalf of a relevant person.
- (2) A “relevant person” means –
- (a) a chief officer of police,
 - (b) the Serious Organised Crime Agency,
 - (c) any person with whom arrangements have been made for the provision of support under Part 11 (support for protection applicants etc.), or
 - (d) any person specified in an order made by the Secretary of State, for purposes specified in relation to that person by such an order.
- (3) The information, document or article may be supplied to the Secretary of State for use for immigration or nationality purposes.
- (4) The Secretary of State –
- (a) may retain for immigration or nationality purposes a document or article supplied by virtue of subsection (1)(b) or (c), and
 - (b) may dispose of a document or article supplied by virtue of subsection (1)(b) or (c).

240 Supply by HMRC & RCPO for immigration and nationality purposes

- (1) HMRC and the RCPO may each supply the Secretary of State with information for use –
- (a) for immigration or nationality purposes;
 - (b) for the purpose of doing anything else in connection with the exercise of immigration and nationality functions.
- (2) For the purposes of subsection (1), “information” includes a document or article which –

- (a) comes into the possession of HMRC or the RCPO or a person acting on behalf of HMRC or the RCPO, or
 - (b) is discovered by HMRC or the RCPO or a person acting on behalf of HMRC or the RCPO.
- (3) The Secretary of State—
 - (a) may retain for a purpose mentioned in subsection (1) a document or article supplied by virtue of subsection (2);
 - (b) may dispose of a document or article supplied by virtue of subsection (2).
- (4) A power conferred by this section on HMRC or the RCPO may be exercised on behalf of HMRC or the RCPO by a person authorised generally or specifically for the purpose.

241 Supply by HMRC & RCPO for customs purposes

- (1) HMRC and the RCPO may each supply a person to whom this section applies with information for use for the purpose of the customs functions exercisable by that person.
- (2) This section applies to—
 - (a) a designated customs official,
 - (b) the Secretary of State by whom general customs functions are exercisable,
 - (c) the Director of Border Revenue, and
 - (d) a person acting on behalf of a person mentioned in paragraphs (a) to (c).
- (3) For the purposes of subsection (1), “information” includes a document or article which—
 - (a) comes into the possession of HMRC or the RCPO, or a person acting on behalf of HMRC or the RCPO, or
 - (b) is discovered by HMRC or the RCPO or a person acting on behalf of HMRC or the RCPO.
- (4) A person to whom this section applies—
 - (a) may retain for a purpose within subsection (1) a document or article supplied by virtue of subsection (3);
 - (b) may dispose of a document or article supplied by virtue of subsection (3).
- (5) A power conferred by this section on HMRC or the RCPO may be exercised on behalf of HMRC or the RCPO by a person authorised generally or specifically for the purpose.

242 Supply by Secretary of State to police and others

- (1) This section applies to information held by the Secretary of State in connection with the exercise of functions under this Act.
- (2) The Secretary of State may supply the information to—
 - (a) a chief officer of police, for use for police purposes;
 - (b) the Serious Organised Crime Agency, for use for SOCA purposes;
 - (c) HMRC, or a person providing services to HMRC, for use for Revenue and Customs purposes;

- (d) any person specified in an order made by the Secretary of State, for purposes specified in relation to that person by such an order.
- (3) “SOCA purposes” means any of the functions of the Serious Organised Crime Agency mentioned in section 2, 3 or 5 of the Serious Organised Crime and Police Act 2005.

243 Supply by Secretary of State to receiving country

- (1) This section applies if a person (“P”) –
 - (a) is to be removed from the United Kingdom under Part 5 (expulsion orders & removal etc. from the UK) to a country of which P is a national, and
 - (b) does not have a travel document in relation to P.
- (2) If the country to which P is to be removed indicates that P will not be admitted to it unless relevant biometric information relating to P is supplied by the Secretary of State, the Secretary of State may supply the information to that country.
- (3) In supplying relevant biometric information, the Secretary of State must not disclose whether P has made a protection application.
- (4) “Relevant biometric information” means biometric information held by the Secretary of State (whether having been supplied under section 58(1) or otherwise).
- (5) For the purposes of paragraph 4(1) of Schedule 4 to the Data Protection Act 1998, the supply under this section of relevant biometric information is a transfer of personal data which is necessary for reasons of substantial public interest.

Duty to share information

244 Duty of Secretary of State & others to share passenger information etc.

- (1) This section applies to –
 - (a) designated customs officials,
 - (b) designated immigration officials,
 - (c) the Secretary of State in so far as the Secretary of State has general customs functions,
 - (d) the Secretary of State in so far as the Secretary of State has functions relating to immigration or nationality,
 - (e) the Director of Border Revenue and any person exercising functions of the Director,
 - (f) a chief officer of police, and
 - (g) HMRC.
- (2) The persons to whom this section applies must share relevant information which is acquired or held by them in the course of their functions to the extent that the information is likely to be of use for –
 - (a) immigration or nationality purposes,
 - (b) police purposes, or
 - (c) Revenue and Customs purposes.

- (3) But a chief officer of police in Scotland may share information under subsection (2) only to the extent that it is likely to be of use for –
 - (a) immigration or nationality purposes,
 - (b) police purposes, in so far as they are or relate to reserved matters, or
 - (c) Revenue and Customs purposes, other than the prosecution of crime.
- (4) “Relevant information” means information which –
 - (a) is acquired or held in the exercise of a power specified by the Secretary of State and the Treasury jointly by order and relates to –
 - (i) passengers on a ship or aircraft,
 - (ii) crew of a ship or aircraft,
 - (iii) freight on a ship or aircraft, or
 - (iv) voyages or flights, or
 - (b) relates to such other matters in respect of travel or freight as the Secretary of State and the Treasury may jointly specify by order.
- (5) The Secretary of State and the Treasury may make an order under subsection (4) which has the effect of requiring information to be shared only if satisfied that –
 - (a) the sharing is likely to be of use for immigration or nationality purposes, police purposes or Revenue and Customs purposes, and
 - (b) the nature of the information is such that there are likely to be circumstances in which it can be shared under subsection (2) without breaching Convention rights.
- (6) Information shared under subsection (2) –
 - (a) must be made available to each of the persons or descriptions of persons mentioned in subsection (1), and
 - (b) may be used for immigration or nationality purposes, police purposes or Revenue and Customs purposes (regardless of the source of the information).
- (7) An order under subsection (4) must not specify –
 - (a) a power of HMRC if or in so far as it relates to a matter to which section 7 of the Commissioners for Revenue and Customs Act 2005 (former Inland Revenue matters) applies, or
 - (b) a matter to which that section applies.
- (8) This section has effect despite any restriction on the purposes for which information may be disclosed or used.

245 Code of practice for information sharing

- (1) The Secretary of State and the Treasury must jointly issue one or more codes of practice about –
 - (a) the use of information shared under section 244(2), and
 - (b) the extent to which, or form or manner in which, shared information is to be made available under section 244(6).
- (2) The Secretary of State and the Treasury jointly –
 - (a) must from time to time review each code issued under this section, and
 - (b) may revise and re-issue a code following a review.

- (3) A code must not be issued (or re-issued) unless a draft has been laid before Parliament.
- (4) A code (or re-issued code) is to come into force in accordance with provision made by order of the Secretary of State and the Treasury jointly.

Confidentiality

246 Prohibitions on disclosure of HMRC or RCPO information

- (1) A person to whom relevant information is supplied may not disclose the information.
- (2) A person who is or was acting on behalf of a person to whom relevant information is supplied may not disclose that information.
- (3) “Relevant information” means information supplied by or on behalf of HMRC or the RCPO under—
 - (a) section 240 (supply of information by HMRC and the RCPO to the Secretary of State), or
 - (b) section 244 (duty to share passenger information etc.), except in so far as the section relates to information supplied to a chief officer of police.
- (4) The reference in subsection (3) to information supplied under section 240 includes a reference to documents or articles supplied by virtue of subsection (2) of that section.
- (5) This section is subject to—
 - (a) section 247 (exceptions to the prohibitions in this section), and
 - (b) any other enactment (other than an enactment contained in this Act) permitting disclosure.
- (6) In subsection (5) the reference to an enactment does not include an enactment contained in, or in an instrument made under—
 - (a) an Act of the Scottish Parliament,
 - (b) a Measure or Act of the National Assembly for Wales, or
 - (c) an Act of the Northern Ireland Assembly.

247 Exceptions to section 246 prohibitions

- (1) A person does not breach section 246(1) or (2) by making a disclosure to which any of subsections (2) to (5) applies.
- (2) This subsection applies to a disclosure which is made for a purpose mentioned in section 240(1).
- (3) This subsection applies to a disclosure which—
 - (a) is made for the purposes of civil proceedings (whether or not within the United Kingdom) relating to an immigration or nationality matter,
 - (b) is made for the purposes of a criminal investigation or criminal proceedings (whether or not within the United Kingdom) relating to an immigration or nationality matter, or
 - (c) is made in pursuance of an order of a court.
- (4) This subsection applies to a disclosure which is made with the consent of each person to whom the information relates.

- (5) This subsection applies to a disclosure which is made with the consent (which may be general or specific) of HMRC or the RCPO, depending on by whom or on whose behalf the information was supplied.
- (6) In subsection (3) “immigration or nationality matter” means a matter in respect of which the Secretary of State has immigration and nationality functions.

248 Prohibitions on disclosure of information supplied under section 241

- (1) A person to whom information is supplied under section 241 may not disclose that information.
- (2) A person who is or was acting on behalf of a person to whom information is supplied under section 241 may not disclose that information.
- (3) But subsection (1) does not apply to a disclosure—
 - (a) which is made for the purposes of a customs function, where the disclosure does not contravene any restriction imposed by the Commissioners for Her Majesty’s Revenue and Customs;
 - (b) which is made for the purposes of civil proceedings (whether or not within the United Kingdom) relating to a customs function;
 - (c) which is made for the purposes of a criminal investigation or criminal proceedings (whether or not within the United Kingdom);
 - (d) which is made in pursuance of an order of a court;
 - (e) which is made with the consent (which may be general or specific) of HMRC or the RCPO, depending on by whom or on whose behalf the information was supplied;
 - (f) which is made with the consent of each person to whom the information relates.
- (4) References in this section to information supplied under section 241 include a reference to documents or articles supplied by virtue of subsection (3) of that section.
- (5) This section is subject to any other enactment permitting disclosure.
- (6) In subsection (5) the reference to an enactment does not include an enactment contained in, or in an instrument made under—
 - (a) an Act of the Scottish Parliament,
 - (b) a Measure or Act of the National Assembly for Wales, or
 - (c) an Act of the Northern Ireland Assembly.

249 Offence of wrongful disclosure

- (1) A person commits an offence if the person breaches section 246(1) or (2) or 248(1) or (2) by disclosing information relating to a person that—
 - (a) identifies the person, or
 - (b) enables the person to be identified (either by itself or in combination with other information).
- (2) Subsection (1) does not apply to the disclosure of information about internal administrative arrangements of HMRC or the RCPO (whether relating to Commissioners, officers, members of the RCPO or others).
- (3) It is a defence for a person charged with an offence under this section to prove that the person had reasonable grounds for believing—

- (a) that the disclosure was lawful, or
 - (b) that the information had already and lawfully been made available to the public.
- (4) A prosecution for an offence under this section –
- (a) may be brought in England and Wales only with the consent of the Director of Public Prosecutions;
 - (b) may be brought in Northern Ireland only with the consent of the Director of Public Prosecutions for Northern Ireland.
- (5) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment to imprisonment for a term not exceeding 2 years, or to a fine, or to both;
 - (b) on summary conviction –
 - (i) in England and Wales or in Scotland, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both;
 - (ii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both.

Supplementary

250 Meaning of “immigration purposes”, “nationality purposes” etc.

- (1) In this Part, “immigration purposes” means any of the following –
- (a) the administration of immigration control under this Act;
 - (b) the prevention, detection, investigation or prosecution of offences under –
 - (i) this Act,
 - (ii) section 1, 2, 3 or 4 of the Forgery and Counterfeiting Act 1981 (forgery etc.), or
 - (iii) section 25 of the Identity Cards Act 2006 (possession of false identity document etc.);
 - (c) the provision of support under Part 11 (support);
 - (d) determining whether to impose, or imposing, penalties under Part 13 (illegal workers);
 - (e) determining whether to impose, or imposing, penalties under Part 14 (carriers’ liability);
 - (f) such other purposes as may be specified in an order made by the Secretary of State.
- (2) In this Part, “nationality purposes” means any of the following –
- (a) determining whether an applicant for naturalisation under the British Nationality Act 1981 is of good character;
 - (b) determining whether, for the purposes of an application referred to in section 41A of the British Nationality Act 1981, the person for whose registration the application is made is of good character;
 - (c) determining whether, for the purposes of an application under section 1 of the Hong Kong (War Wives and Widows) Act 1996, the woman for whose registration the application is made is of good character;

- (d) determining whether, for the purposes of an application under section 1 of the British Nationality (Hong Kong) Act 1997 for the registration of an adult or young person within the meaning of subsection (5A) of that section, the person is of good character;
 - (e) determining whether to make an order in respect of a person under section 40 of the British Nationality Act 1981 (deprivation of citizenship).
- (3) In this Part, “police purposes” means any of the following –
- (a) the prevention, detection, investigation or prosecution of offences;
 - (b) safeguarding national security;
 - (c) such other purposes as may be specified in an order made by the Secretary of State.
- (4) In this Part, “Revenue and Customs purposes” means any of the functions of the Commissioners of HMRC in relation to –
- (a) the prevention, detection, investigation or prosecution of offences;
 - (b) the prevention, detection or investigation of conduct in respect of which penalties which are not criminal penalties are provided for by or under any enactment;
 - (c) the assessment or determination of penalties which are not criminal penalties;
 - (d) checking the accuracy of information relating to, or provided for purposes connected with, any matter under the care and management of the Commissioners or any assigned matter (as defined by section 1(1) of the Customs and Excise Management Act 1979);
 - (e) amending or supplementing any such information (where appropriate);
 - (f) legal or other proceedings relating to anything mentioned in paragraphs (a) to (e);
 - (g) safeguarding national security;
 - (h) such other purposes as may be specified in an order made by the Secretary of State.

251 Other definitions etc.

- (1) In this Part –
- “chief officer of police” means –
- (a) in England and Wales, the chief officer of police for a police area specified in section 1 of the Police Act 1996;
 - (b) in Scotland, the chief constable of a police force maintained under the Police (Scotland) Act 1967;
 - (c) in Northern Ireland, the Chief Constable of the Police Service of Northern Ireland;
 - (d) the Chief Constable of the British Transport Police Force;
- “HMRC” means Her Majesty’s Revenue and Customs;
- “the RCPO” means the Revenue and Customs Prosecutions Office.
- (2) Nothing in this Part or in sections 32 to 36 or section 56 limits the circumstances in which information, documents or articles may be used, shared, disclosed or otherwise supplied apart from this Part or those sections.

PART 13

ILLEGAL WORKERS

Meaning of “illegal worker” etc.

252 Meaning of “illegal worker” etc.

- (1) For the purposes of this Part, an “illegal worker” is a person who—
 - (a) is aged 16 or over,
 - (b) is neither a British citizen nor an EEA entrant, and
 - (c) falls within subsection (2) or (3).
- (2) A person falls within this subsection if the person—
 - (a) does not have immigration permission and is not on immigration bail,
 - (b) has immigration permission but it is subject to a condition preventing the person from accepting the work in question, or
 - (c) has immigration permission but its grant was obtained by deception.
- (3) A person falls within this subsection if—
 - (a) the person is on immigration bail, and
 - (b) a bail condition prevents the person from accepting the work in question.
- (4) In this Part, a reference to employment is to employment under a contract of service or apprenticeship, whether express or implied and whether oral or written.

Penalty for employing illegal workers

253 Penalty for employing illegal workers

- (1) It is contrary to this section for a person to employ an illegal worker.
- (2) If an employer acts contrary to this section, the Secretary of State may, by notice given to the employer, require the employer to pay a penalty.
- (3) The amount of the penalty must not exceed the maximum penalty specified in regulations made by the Secretary of State.
- (4) A penalty imposed under this section must be paid to the Secretary of State before the end of the prescribed period unless a notice of objection under section 282 (civil penalty procedure: notice of objection) is given in respect of the penalty.
- (5) If a notice of objection in respect of the penalty is given and then withdrawn, the penalty must be paid to the Secretary of State before the end of the prescribed period.
- (6) In this section “prescribed” means prescribed by regulations made by the Secretary of State.
- (7) See Part 15 (civil penalty procedure) for provision relating to notices under this section, notices of objection, appeals, enforcement and other procedure.

254 Defence

- (1) An employer is not liable to the imposition of a penalty under section 253 in respect of an illegal worker if the employer has a defence under this section.
- (2) It is a defence for an employer to show that the employer has complied with any requirements in relation to the employment prescribed by regulations made by the Secretary of State.
- (3) But subsection (1) does not apply if the employer knew, at any time during the period of the employment, that it was contrary to section 253.
- (4) The Secretary of State may give a notice under section 253 to an employer without having established whether subsection (1) applies.
- (5) Regulations prescribing requirements for the purposes of subsection (1) may, in particular –
 - (a) require the production to an employer of a document of a specified description;
 - (b) require the production to an employer of one document of each of a number of specified descriptions;
 - (c) require an employer to take specified steps to verify, retain, copy or record the content of a document produced to the employer in accordance with the regulations;
 - (d) require action to be taken before employment begins;
 - (e) require action to be taken at specified intervals or on specified occasions during the course of employment.

255 Code of practice

- (1) The Secretary of State must issue a code of practice specifying matters to be considered in determining the amount of a penalty under section 253.
- (2) The Secretary of State may revise and reissue the code.
- (3) The Secretary of State must have regard to the code having effect at the relevant time (in addition to any other matters which the Secretary of State thinks relevant) when imposing a penalty under section 253.
- (4) For the purpose of subsection (3), “the relevant time” means the date of commencement of the employment which gives rise to the imposition of the penalty.
- (5) Before issuing or reissuing the code, the Secretary of State must lay a draft before Parliament.

*Offence of employing illegal workers***256 Employment of illegal workers**

- (1) A person commits an offence if the person employs another person (an “employee”) knowing that the employee is an illegal worker.
- (2) For the purposes of subsection (1), a body (whether corporate or not) is to be treated as knowing a fact about a person if a person with responsibility in that body for an aspect of the employment knows that fact.

- (3) See section 320 (commission of certain offences by director etc.) where an offence under this section is committed by a body corporate or a partnership.
- (4) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment to imprisonment for a term not exceeding 2 years, or to a fine, or to both;
 - (b) on summary conviction—
 - (i) in England and Wales or in Scotland, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both;
 - (ii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both.

Supplementary

257 Discrimination: code of practice

- (1) The Secretary of State must issue a code of practice specifying what an employer should or should not do in order to ensure that, while avoiding liability to a penalty under section 253 and while avoiding the commission of an offence under section 256, the employer also avoids contravening—
 - (a) the Race Relations Act 1976, or
 - (b) the Race Relations (Northern Ireland) Order 1997 (S.I. 1997/869 (N.I. 6)).
- (2) The Secretary of State may revise and reissue the code.
- (3) Before issuing or reissuing the code, the Secretary of State must comply with subsections (4) and (5).
- (4) The Secretary of State must consult—
 - (a) the Commission for Equality and Human Rights,
 - (b) the Equality Commission for Northern Ireland,
 - (c) such bodies representing employers as the Secretary of State thinks appropriate, and
 - (d) such bodies representing workers as the Secretary of State thinks appropriate.
- (5) After that consultation, the Secretary of State must—
 - (a) publish a draft,
 - (b) consider any representations made about the published draft, and
 - (c) lay a draft before Parliament (after considering representations under paragraph (b) and with or without modifications to reflect the representations).
- (6) A breach of the code does not make a person liable to civil or criminal proceedings.
- (7) But a breach of the code may be taken into account by a court or tribunal.

PART 14

CARRIERS' LIABILITY

*Penalty for carrying inadequately documented passengers***258 Penalty for carrying inadequately documented passengers**

- (1) The Secretary of State may, by notice given to the owner, agent or operator of a ship or aircraft, require the owner, agent or operator to pay a penalty in respect of each inadequately documented passenger who arrives in the United Kingdom by that ship or aircraft.
- (2) The Secretary of State may, by notice given to the owner of or a liable operator in relation to a specified train, require the owner or liable operator to pay a penalty in respect of each inadequately documented passenger who arrives in the United Kingdom by that train.
- (3) The Secretary of State may not, in respect of the same inadequately documented passenger –
 - (a) impose a penalty on more than one person, or
 - (b) impose more than one penalty on the same person in different capacities.
- (4) In this section –
 - “inadequately documented passenger” means a person (“P”) who, in the course of an examination on arrival –
 - (a) fails to produce proper documentation in relation to P on being required to do so, and
 - (b) does not show that P is a British citizen or an EEA entrant;
 - “examination on arrival” means –
 - (a) examination under section 42(1)(a) (examination on arrival in the UK), or
 - (b) further examination under section 44(1)(a) as a person so examined;
 - “liable operator”, in relation to a train by which an inadequately documented passenger arrives in the United Kingdom, means any of the following –
 - (a) the operator of the train when the passenger embarked on the train;
 - (b) the operator of the train at its last scheduled stop before arrival in the United Kingdom;
 - (c) the operator of the train when the passenger disembarked from the train in the United Kingdom;
 - “specified train” means a train engaged on such international service as may be specified in regulations made by the Secretary of State.
- (5) In this Part “proper documentation”, in relation to P, means –
 - (a) a valid identity document in relation to P, and
 - (b) where P is required by the Rules to have immigration permission or transit permission before arrival, evidence that P has such permission.
- (6) References in this Part to a section 258 penalty notice are to a notice under this section.

259 Amount of penalty and period for payment

- (1) The amount of a penalty imposed by a section 258 penalty notice must be that specified in regulations made by the Secretary of State.
- (2) Without prejudice to the generality of section 334(2) (orders, regulations and rules), regulations under subsection (1) may specify different amounts of penalty for different cases or circumstances.
- (3) A penalty imposed by a section 258 penalty notice must be paid to the Secretary of State before the end of the prescribed period unless a notice of objection under section 282 (civil penalty procedure: notice of objection) is given in respect of the penalty.
- (4) If a notice of objection in respect of the penalty is given under section 282 and then withdrawn, the penalty must be paid to the Secretary of State before the end of the prescribed period.
- (5) In this section “prescribed” means prescribed by regulations made by the Secretary of State.
- (6) See Part 15 (civil penalty procedure) for provision relating to section 258 penalty notices, notices of objection, appeals, enforcement and other procedure.

260 Defence

- (1) A person is not liable to the imposition of a penalty under section 258 in respect of an inadequately documented passenger (“P”) if the person has a defence under this section.
- (2) It is a defence for a person to show that P produced proper documentation in relation to P to that person, or that person’s employee or agent, when embarking for the journey to the United Kingdom.
- (3) It is a defence for a person who is an operator of a train to show that P produced proper documentation in relation to P to that person, or that person’s employee or agent, at or before the train’s last scheduled stop before arrival in the United Kingdom.
- (4) For the purpose of this section, a person is entitled to regard a document—
 - (a) as relating to P unless it is reasonably apparent that it does not, and
 - (b) as being what it purports to be unless its falsity is reasonably apparent.
- (5) The Secretary of State may give a section 258 penalty notice to a person without having established whether this section applies.

Penalty for carrying clandestine entrants

261 Meaning of “clandestine entrant”

- (1) A person (“P”) is a “clandestine entrant” for the purposes of this Part if P—
 - (a) arrives in the United Kingdom concealed in a vehicle, container, ship, aircraft or train,
 - (b) passes, or attempts to pass, through immigration control concealed in a vehicle or container, or

- (c) arrives in the United Kingdom by ship, aircraft or train, having embarked concealed in a vehicle or container at a time when the ship, aircraft or train was outside the United Kingdom, and P evades, or attempts to evade, immigration control or makes a protection application (see section 21).
- (2) In this section “immigration control” means United Kingdom immigration control and includes any United Kingdom immigration control operated in a control zone outside the United Kingdom specified in regulations made by the Secretary of State.

262 Penalty for carrying clandestine entrants

- (1) The Secretary of State may, by notice given to a person who is responsible for a clandestine entrant, require the person to pay –
 - (a) a penalty in respect of the clandestine entrant;
 - (b) a penalty in respect of each person concealed with the clandestine entrant in the same transporter.
- (2) Subject to any defence provided by section 266, it is immaterial whether a person who is responsible for a clandestine entrant knew or suspected –
 - (a) that the clandestine entrant was concealed in the transporter, or
 - (b) that there were one or more other persons concealed in the same transporter.
- (3) If a person is concealed in a transporter (“transporter A”) which is itself being carried in or on another transporter (“transporter B”), the question whether another person is concealed in the same transporter is to be determined by reference to transporter A and not transporter B.
- (4) References in this Part to a section 262 penalty notice are to a notice under this section.

263 Amount of penalty and period for payment

- (1) The amount of a penalty imposed by a section 262 penalty notice must not exceed the maximum penalty specified in regulations made by the Secretary of State.
- (2) A penalty imposed by a section 262 penalty notice must be paid to the Secretary of State before the end of the prescribed period unless a notice of objection under section 282 (civil penalty procedure: notice of objection) is given in respect of the penalty.
- (3) If a notice of objection in respect of the penalty is given under section 282 and then withdrawn, the penalty must be paid to the Secretary of State before the end of the prescribed period.
- (4) In this section “prescribed” means prescribed by regulations made by the Secretary of State.
- (5) See Part 15 (civil penalty procedure) for provision relating to section 262 penalty notices, notices of objection, appeals, enforcement and other procedure.

264 Persons responsible for clandestine entrants

- (1) In the case of a clandestine entrant falling within section 261(1)(a), the persons responsible for the entrant are to be determined in accordance with the following table—

<i>Transporter in which entrant concealed</i>	<i>Persons responsible</i>
a vehicle other than a detached trailer	the owner, hirer and driver
a detached trailer	the owner, hirer and trailer operator
a container	the owner, hirer and container operator
a ship	the owner, agent, operator and captain
an aircraft	the owner, agent, operator and captain
a train	the owner and liable train operator

- (2) In the case of a clandestine entrant falling within section 261(1)(b) or (c), the persons responsible for the entrant are to be determined in accordance with the following table—

<i>Transporter in which entrant concealed</i>	<i>Persons responsible</i>
a vehicle other than a detached trailer	the owner, hirer and driver
a detached trailer	the owner, hirer and trailer operator
a container	the owner, hirer and container operator

- (3) If the clandestine entrant was concealed in a transporter (“transporter A”) which was itself carried in or on another transporter (“transporter B”), the persons responsible for the entrant are to be determined by reference to transporter A and not transporter B.
- (4) The Secretary of State—
- (a) may, in respect of a clandestine entrant or a person concealed with a clandestine entrant, impose separate penalties under section 262 on more than one of the persons responsible for the entrant, but
 - (b) may not impose penalties in respect of a clandestine entrant or a person concealed with a clandestine entrant that amount in aggregate to more

than the maximum aggregate specified in regulations made by the Secretary of State.

- (5) Where a person is responsible for a clandestine entrant in more than one capacity, the Secretary of State may impose a separate penalty under section 262 on the person in each capacity.
- (6) In this section –
- “container operator” means the operator who was responsible for transporting the container to the place from which it was embarked for the United Kingdom;
- “detached trailer” means a trailer, semi-trailer, caravan or any other thing which is designed or adapted for towing by a vehicle but which has been detached for transport –
- (a) in or on the vehicle concerned, or
 - (b) in the ship, aircraft or train concerned (whether separately or in or on a vehicle);
- “liable train operator” means the operator who was responsible for certifying the train as fit to travel to the United Kingdom –
- (a) at the train’s last scheduled stop before arrival in the United Kingdom, or
 - (b) if the train did not make a scheduled stop before arrival, at the train’s point of departure for the United Kingdom;
- “trailer operator” means the operator who was responsible for transporting the detached trailer to the place from which it was embarked for the United Kingdom.

265 Liability of employer for penalty imposed on employee

- (1) This section applies where a penalty under section 262 is imposed on the driver of a vehicle who is an employee of the vehicle’s owner or hirer.
- (2) The employer and employee are jointly and severally liable for the penalty imposed on the employee (irrespective of whether a penalty under section 262 is also imposed on the employer).
- (3) The penalty imposed on the employee is to be treated for the purposes of this Part as also having been imposed on the employer (irrespective of whether a penalty under section 262 is also imposed on the employer in the capacity as owner or hirer of the vehicle).
- (4) See section 289 for provision about the application of Part 15 (civil penalty procedure) in relation to a penalty to which this section applies.

266 Defences

- (1) A person (“P”) is not liable to the imposition of a penalty under section 262 if P has a defence under this section.
- (2) It is a defence for P to show that P, or an employee of P who was directly responsible for allowing the clandestine entrant to be concealed, was acting under duress.
- (3) Where P has a defence under subsection (2) in respect of a clandestine entrant, every other person who is responsible for the entrant is also entitled to the benefit of the defence.

- (4) It is a defence for P to show that –
 - (a) P did not know, and had no reasonable grounds for suspecting, that a clandestine entrant was, or might be, concealed in the transporter,
 - (b) an effective system for preventing the carriage of clandestine entrants was in operation in relation to the transporter, and
 - (c) on the occasion in question, the system was operated properly.
- (5) It is a defence for P to show that –
 - (a) P knew or suspected that a clandestine entrant was, or might be, concealed in a train, having embarked after the train began its journey to the United Kingdom,
 - (b) P could not stop the train without endangering safety,
 - (c) an effective system for preventing the carriage of clandestine entrants was in operation in relation to the train, and
 - (d) on the occasion in question, the system was operated properly.
- (6) The Secretary of State may give a section 262 penalty notice to a responsible person without having established whether subsection (1) applies.

267 Code of practice: level of penalty under section 262

- (1) The Secretary of State must issue a code of practice specifying matters to be considered in determining the amount of a penalty under section 262.
- (2) The Secretary of State may revise and reissue the code.
- (3) The Secretary of State must have regard to the code (in addition to any other matters which the Secretary of State thinks relevant) when imposing a penalty under section 262.
- (4) Before issuing or reissuing the code, the Secretary of State must lay a draft before Parliament.

268 Code of practice: prevention of clandestine entrants

- (1) The Secretary of State must issue a code of practice to be followed by any person operating a system for preventing the carriage of clandestine entrants.
- (2) The Secretary of State may revise and reissue the code.
- (3) The code must be taken into account in determining for the purposes of section 266 whether a particular system for preventing the carriage of clandestine entrants is effective.
- (4) Before issuing or reissuing the code, the Secretary of State must –
 - (a) consult such persons as the Secretary of State thinks appropriate, and
 - (b) lay a draft before Parliament.

Clandestine entrants: detention and sale of transporters

269 Power to detain until penalty notice is given etc.

- (1) The Secretary of State may detain a vehicle, container, small ship, small aircraft, hovercraft or train pending –
 - (a) the giving of a section 262 penalty notice in respect of it, or

- (b) a decision whether to detain it under section 270 (power to detain after penalty notice is given).
- (2) The power under this section may not be exercised –
 - (a) for longer than is necessary in the circumstances of the case, or
 - (b) in any event, after the end of the period of 24 hours beginning with the conclusion of the first search of the transporter by the Secretary of State after it arrived in the United Kingdom.

270 Power to detain after penalty notice is given

- (1) If a section 262 penalty notice has been given in respect of a vehicle, container, small ship, small aircraft, hovercraft or train, the Secretary of State may detain it until the following have been paid –
 - (a) the penalty to which the notice relates, and
 - (b) the connected expenses (if any).
- (2) The power under this section may not be exercised if the Secretary of State thinks that satisfactory security has been given in place of the transporter for the payment of the penalty and the connected expenses (if any).
- (3) A vehicle may be detained under this section only if –
 - (a) the driver of the vehicle is an employee of its owner or hirer,
 - (b) the driver of the vehicle is its owner or hirer, or
 - (c) a section 262 penalty notice is given to the owner or hirer of the vehicle.

271 Power to detain in default of payment of penalty

- (1) This section applies where a person (“P”) upon whom a penalty is imposed under section 262 fails to pay the penalty as required under –
 - (a) section 263(2) or (3) (payment period following a section 262 penalty notice),
 - (b) section 284(2) or (4) (payment period following decision on a notice of objection), or
 - (c) section 286(4) (payment period following decision on an appeal).
- (2) The Secretary of State may make arrangements for the detention of any vehicle, container, small ship, small aircraft, hovercraft or train which P uses in the course of a business.
- (3) A transporter may be detained under this section whether or not P owns it.
- (4) But a vehicle may be detained under this section only if P –
 - (a) is the owner or hirer of the vehicle, or
 - (b) was an employee of the owner or hirer of the vehicle when the notice was given.
- (5) The Secretary of State must arrange for the release of a transporter detained under this section if P pays –
 - (a) the penalty, and
 - (b) the connected expenses (if any).

272 Supplementary provisions about detention

- (1) If a transporter is detained under section 269, 270 or 271 any person who has an interest in any freight or other thing carried in or on the transporter may remove it, or arrange for it to be removed, at such time and in such a way as is reasonable.
- (2) The detention of a transporter under section 269, 270 or 271 is lawful even if it is later established that the section 262 penalty notice on which the detention was based was ill-founded in respect of the penalty to which it related.
- (3) But subsection (2) does not apply if the Secretary of State was acting unreasonably in giving the notice.
- (4) The power under section 269, 270 or 271 to detain a train includes power to detain any part of a train.
- (5) Accordingly, the provisions of this Part relating to a transporter that has been detained under any of those sections apply to a part of a train that has been so detained as they apply to a train that has been so detained.

273 Application for release of detained transporter

- (1) Any of the following may apply for the release of a transporter which has been detained under section 270 or 271 –
 - (a) a person upon whom the penalty was imposed under section 262;
 - (b) the owner;
 - (c) any other person whose interests may be affected by the detention.
- (2) The application must be made to –
 - (a) a county court, in England and Wales or Northern Ireland, or
 - (b) the sheriff, in Scotland.
- (3) On an application under this section, the court or sheriff may release a transporter detained under section 270 if the court or sheriff thinks that –
 - (a) satisfactory security has been given in place of the transporter for the payment of the penalty alleged to be due and the connected expenses (if any), or
 - (b) there is a significant doubt as to whether the person upon whom the penalty was imposed was liable to its imposition.
- (4) On an application under this section, the court or sheriff may release a transporter detained under section 271 if the court or sheriff thinks that the condition in subsection (1) of that section for detention of the transporter is not met.
- (5) On an application by the owner under this section, the court or sheriff may release a transporter detained under section 270 or 271 if –
 - (a) a section 262 penalty notice was not given to the owner or an employee of the owner, and
 - (b) the court or sheriff thinks it right to release the transporter.
- (6) In determining whether to release a transporter under subsection (5), the court or sheriff must consider –
 - (a) the extent of any hardship caused by the detention,

- (b) the extent to which the owner is responsible for the matters in respect of which the notice was given, and
 - (c) any other matter which appears to the court or sheriff to be relevant.
- (7) In this section “owner” includes –
- (a) in relation to a ship or aircraft, the agent or operator;
 - (b) in relation to a train, the operator;
 - (c) in relation to a transporter which is the subject of a hire purchase agreement, the person in possession of it under that agreement.

274 Power of Secretary of State to sell transporter

- (1) The Secretary of State may sell a transporter that is being detained under section 270 or 271 if conditions A and B are met.
- (2) Condition A is met if –
- (a) the penalty has not been paid as required under section 263(2) or (3), 284(2) or (4), or 286(4) (payment periods following a section 262 notice or a decision on a notice of objection or on an appeal), or
 - (b) the connected expenses have not been paid.
- (3) Condition B is met if –
- (a) no notice of objection in respect of the penalty is being considered or can be given, and
 - (b) no appeal in respect of the penalty is pending or can be brought.

275 Permission to sell transporter

- (1) The sale of a transporter under section 274 requires the permission of –
- (a) a county court, in England and Wales or Northern Ireland, or
 - (b) the sheriff, in Scotland.
- (2) Before applying for permission to sell a transporter, the Secretary of State must take such steps as may be specified in regulations made by the Secretary of State –
- (a) for bringing the proposed sale to the notice of persons whose interests may be affected by a decision to give permission, and
 - (b) for giving each such person an opportunity to become a party to the proceedings if the Secretary of State applies for permission.
- (3) The court or sheriff must not give permission to sell a transporter without proof –
- (a) that the penalty is or was due, and
 - (b) that the person liable to pay the penalty or the connected expenses (if any) has failed to do so.
- (4) Where the owner of a transporter is a party to an application for permission to sell it, the court or sheriff must consider –
- (a) the extent of any hardship likely to be caused by the sale,
 - (b) the extent to which the owner is responsible for the matters in respect of which the section 262 penalty notice was given, and
 - (c) any other matter which appears to the court or sheriff to be relevant.
- (5) In this section “owner” includes –

- (a) in relation to a ship or aircraft, the agent or operator;
- (b) in relation to a train, the operator;
- (c) in relation to a transporter which is the subject of a hire purchase agreement, the person in possession of it under that agreement.

276 Sale of transporter

- (1) If the court or sheriff gives permission to sell a transporter, the Secretary of State must ensure that it is sold for the best price that can reasonably be obtained.
- (2) The proceeds of the sale are to be applied –
 - (a) in making such payments as may be specified in regulations made by the Secretary of State, and
 - (b) in accordance with such provision as to priority of payments as may be made by such regulations.
- (3) The regulations may, in particular, provide for proceeds of sale to be applied in payment –
 - (a) of customs or excise duty;
 - (b) of value added tax;
 - (c) of any expenses incurred by the Secretary of State;
 - (d) of any penalty which the court or sheriff has found to be due;
 - (e) in the case of the sale of an aircraft, of charges payable by virtue of section 73 of the Transport Act 2000 (charges for air services);
 - (f) of any surplus to or among the person or persons whose interests in the transporter have been divested as a result of the sale,but not necessarily in that order of priority.
- (4) If there is a failure to comply with a requirement of section 275(2) or subsection (1) of this section in respect of a sale –
 - (a) any person suffering loss in consequence of the sale may bring an action against the Secretary of State, but
 - (b) the failure does not affect the validity of the sale.

277 Transfer of proceedings

- (1) This section applies in relation to proceedings before a county court or the sheriff under –
 - (a) section 273 (application for release of detained transporter), or
 - (b) section 275 (permission to sell transporter).
- (2) A county court may transfer the proceedings to the High Court.
- (3) The sheriff may transfer the proceedings to the Court of Session.

Authority-to-carry schemes

278 Authority-to-carry schemes

- (1) The Secretary of State may by regulations make provision requiring a person (“the carrier”) to pay a penalty if –
 - (a) the carrier brings a passenger to the United Kingdom, and

- (b) the carrier was required by the regulations to seek authority to carry the passenger, but
 - (c) the carrier did not seek authority before the journey to the United Kingdom began or was refused authority.
- (2) The regulations must specify –
- (a) the description of carrier to which they apply, and
 - (b) the description of passenger to which they apply.
- (3) For the purposes of subsection (2) –
- (a) the matters by reference to which a description of carrier may be defined include a method of transport;
 - (b) the matters by reference to which a description of passenger may be defined include the possession of specified documents.
- (4) The regulations may, in particular –
- (a) make provision similar to a provision of sections 258 to 260 (penalty for carrying inadequately documented passengers) or a provision of Part 15 (civil penalty procedure) relating to a penalty imposed under section 258;
 - (b) do anything which may be done under any of those provisions;
 - (c) amend any of those provisions.
- (5) The grant or refusal of authority under the regulations is not to be taken to determine whether a person is entitled or permitted to enter the United Kingdom.

Supplementary

279 Application of Part to certain trains

- (1) The Secretary of State may by order make provision about the application of this Part in a case where –
- (a) a person arrives in the United Kingdom by train, and
 - (b) the train includes all or part of another train on which the person embarked for the journey to the United Kingdom.
- (2) An order under this section may, in particular –
- (a) amend this Part in its application to a case within subsection (1), or
 - (b) make provision for this Part to apply to such a case with modifications.

280 Interpretation

- (1) References in this Part to being concealed in a transporter include –
- (a) being concealed on or under the transporter;
 - (b) being concealed in any freight, stores or any other thing carried in or on the transporter.
- (2) In this Part –
- “connected expenses” means expenses incurred by the Secretary of State in connection with the detention of a transporter;
 - “container” means a storage facility designed or adapted to be carried –
 - (a) by a transporter, or

- (b) on a trailer or other thing designed or adapted for towing by a transporter;
“hirer”, in relation to a vehicle or container, means any person who is hiring the vehicle or container from another person;
“transporter” means a vehicle, container, ship, aircraft or train together with—
 - (a) its equipment, and
 - (b) any stores for use in connection with its operation;“vehicle”—
 - (a) includes a trailer, semi-trailer, caravan or other thing which is designed or adapted to be towed by another vehicle, and
 - (b) does not include a container, ship, aircraft or train.
- (3) For the purposes of the definition of “transporter”, “equipment”, in relation to an aircraft, includes—
 - (a) any certificate of registration, maintenance or airworthiness of the aircraft, and
 - (b) any log book relating to the use of the aircraft.

PART 15

CIVIL PENALTY PROCEDURE

Application of this Part

281 Meaning of “penalty notice” etc.

- (1) Unless otherwise stated, references in this Part to—
 - (a) a “penalty notice” are to—
 - (i) a notice under section 62 (penalty for non-compliance with biometric requirements),
 - (ii) a notice under section 253 (penalty for employing illegal workers),
 - (iii) a notice under section 258 (penalty for carrying inadequately documented passengers), or
 - (iv) a notice under section 262 (penalty for carrying clandestine entrants), and
 - (b) a “penalty” are to a penalty imposed under section 62, 253, 258 or 262 (as the case may be).
- (2) In this Part “prescribed” means prescribed by regulations made by the Secretary of State.

Notice of objection

282 Notice of objection

- (1) A person (“P”) upon whom a penalty is imposed may give a notice of objection to the Secretary of State.
- (2) But P may not give a notice of objection if P has arranged to pay the penalty by instalments.

- (3) A notice of objection must be given before the end of the prescribed period.
- (4) That period –
 - (a) must begin with the date on which the penalty notice is given, and
 - (b) must not be less than the period prescribed for payment of the penalty under section 62(5), 253(4), 259(3) or 263(2) (as the case may be).
- (5) P may object only on one or more relevant grounds.
- (6) In the case of a penalty notice under section 62 the relevant grounds are –
 - (a) that P is not liable to the imposition of a penalty;
 - (b) that it is unreasonable to require P to pay a penalty;
 - (c) that the amount of the penalty is excessive.
- (7) In the case of a penalty notice under section 253 or 262 the relevant grounds are –
 - (a) that P is not liable to the imposition of a penalty;
 - (b) that the amount of the penalty is excessive.
- (8) In the case of a penalty notice under section 258 the relevant ground is that P is not liable to the imposition of a penalty.
- (9) The Secretary of State must consider the notice of objection and –
 - (a) in the case of a penalty notice under section 62, 253 or 262 –
 - (i) cancel the penalty notice,
 - (ii) reduce the penalty by varying the penalty notice,
 - (iii) increase the penalty by varying the penalty notice, or
 - (iv) confirm the penalty notice, and
 - (b) in the case of a penalty notice under section 258 –
 - (i) cancel the penalty notice, or
 - (ii) confirm the penalty notice.

283 Duty to consider codes of practice

- (1) When considering a notice of objection in respect of a penalty imposed under section 62 the Secretary of State must have regard to the code of practice under section 63 having effect at the time of the failure to which the penalty relates.
- (2) When considering a notice of objection in respect of a penalty imposed under section 253 the Secretary of State must have regard to –
 - (a) the code of practice under section 255 having effect at the relevant time (in so far as the objection relates to the amount of the penalty), and
 - (b) any other matters which the Secretary of State thinks relevant.
- (3) For the purpose of subsection (2), “the relevant time” is to be construed in accordance with section 255(4).
- (4) When considering a notice of objection in respect of a penalty imposed under section 262 the Secretary of State must have regard to –
 - (a) the code of practice under section 267 having effect at the time of the events to which the penalty relates (in so far as the objection relates to the amount of the penalty),
 - (b) the code of practice under section 268 having effect at the time of the events to which the penalty relates (in so far as the objection relates to liability for the penalty), and

- (c) any other matters which the Secretary of State thinks relevant.

284 Decision of the Secretary of State

- (1) The Secretary of State must give P notice of the decision under section 282.
- (2) If the decision is to vary or confirm the penalty notice, the penalty must be paid to the Secretary of State before the end of the prescribed period unless an appeal under section 285 is brought in respect of the penalty.
- (3) The prescribed period –
 - (a) must begin with the date on which P is given notice of the decision under section 282, and
 - (b) must not be less than the period for bringing an appeal under section 285 in respect of the penalty.
- (4) If an appeal in respect of the penalty is brought and then abandoned, the penalty must be paid to the Secretary of State before the end of the prescribed period mentioned in subsection (2).

Appeal

285 Appeal

- (1) A person (“P”) upon whom a penalty is imposed may appeal in accordance with the provisions of this section.
- (2) But P may not appeal if P has arranged to pay the penalty by instalments.
- (3) In the case of a penalty imposed under section 62, 258 or 262, P may appeal to –
 - (a) a county court, in England and Wales or Northern Ireland, or
 - (b) the sheriff, in Scotland.
- (4) In the case of a penalty imposed under section 253, P may appeal to –
 - (a) a county court, where P’s principal place of business is in England and Wales or Northern Ireland, or
 - (b) the sheriff, where P’s principal place of business is in Scotland.
- (5) An appeal may be brought only if –
 - (a) P has given a notice of objection under section 282 in respect of the penalty, and
 - (b) the Secretary of State has given notice of the decision on the objection.
- (6) An appeal may be brought whether or not the penalty has been increased or reduced under section 282.
- (7) An appeal must be brought before the end of such period as may be specified by rules of court.
- (8) An appeal may be brought only on one or more relevant grounds.
- (9) In the case of a penalty notice under section 62 the relevant grounds are –
 - (a) that P is not liable to the imposition of a penalty;
 - (b) that it is unreasonable to require P to pay a penalty;
 - (c) that the amount of the penalty is excessive.

- (10) In the case of a penalty notice under section 253 or 262 the relevant grounds are—
 - (a) that P is not liable to the imposition of a penalty;
 - (b) that the amount of the penalty is excessive.
- (11) In the case of a penalty notice under section 258 the relevant ground is that P is not liable to the imposition of a penalty.

286 Disposal of appeal

- (1) An appeal under section 285 is to be a re-hearing of the decision to impose a penalty.
- (2) In the case of a penalty notice under section 62, 253 or 262, the court or sheriff may—
 - (a) cancel the penalty notice,
 - (b) reduce the penalty by varying the penalty notice,
 - (c) increase the penalty by varying the penalty notice (whether because the court or sheriff thinks the original amount insufficient or because the court or sheriff thinks that the appeal should not have been brought), or
 - (d) confirm the penalty notice.
- (3) In the case of a penalty notice under section 258, the court or sheriff may—
 - (a) cancel the penalty notice, or
 - (b) confirm the penalty notice.
- (4) If the decision is to vary or confirm the penalty notice, the penalty must be paid to the Secretary of State before the end of the prescribed period.
- (5) That period must begin with the date on which P is given notice of the decision.

287 Duty to have regard to codes of practice

- (1) In determining an appeal in respect of a penalty imposed under section 62, the court or sheriff must have regard to—
 - (a) the code of practice under section 63 having effect at the time of the failure to which the penalty relates, and
 - (b) any other matters which the court or sheriff thinks relevant (which may include matters of which the Secretary of State was unaware).
- (2) In determining an appeal in respect of a penalty imposed under section 253, the court or sheriff must have regard to—
 - (a) the code of practice under section 255 having effect at the relevant time (in so far as the appeal relates to the amount of the penalty), and
 - (b) any other matters which the court or sheriff thinks relevant (which may include matters of which the Secretary of State was unaware).
- (3) For the purposes of subsection (2), “the relevant time” is to be construed in accordance with section 255(4).
- (4) In determining an appeal in respect of a penalty imposed under section 262, the court or sheriff must have regard to—
 - (a) the code of practice under section 267 having effect at the time of the events to which the penalty relates (in so far as the appeal relates to the amount of the penalty),

- (b) the code of practice under section 268 having effect at the time of the events to which the penalty relates (in so far as the appeal relates to liability for the penalty), and
- (c) any other matters which the court or sheriff thinks relevant (which may include matters of which the Secretary of State was unaware).

288 Transfer of proceedings

- (1) This section applies in relation to proceedings before a county court or the sheriff under section 285 in respect of a penalty imposed under section 253, 258 or 262.
- (2) A county court may transfer the proceedings to the High Court.
- (3) The sheriff may transfer the proceedings to the Court of Session.

Cases of joint & several liability

289 Application to cases of joint and several liability

- (1) This section makes provision for the application of this Part in relation to a penalty to which section 265 (liability of employer for penalty imposed on employee) applies.
- (2) A notice of objection under section 282 in respect of the penalty may be given in accordance with this Part by the employer or the employee, but not both.
- (3) Neither the employer nor the employee may give a notice of objection if the employer or the employee has arranged to pay the penalty in instalments.
- (4) The grounds of the objection may relate to the employer or the employee, or both.
- (5) The cancellation, variation or confirmation of the penalty notice under section 282 has effect in relation to—
 - (a) any notice in respect of the penalty given to the person objecting, and
 - (b) any notice in respect of the penalty given to the employer or employee (as the case may be).
- (6) Notice of the decision under section 282 must be given—
 - (a) to the person objecting, and
 - (b) to the employer or the employee (as the case may be).
- (7) An appeal under section 285 in respect of the penalty may be brought in accordance with this Part by the employer or the employee, but not both.
- (8) Neither the employer nor the employee may appeal if the employer or the employee has arranged to pay the penalty in instalments.
- (9) The employer or the employee may appeal irrespective of who gave the notice of objection in respect of the penalty.
- (10) The grounds of the appeal may relate to the employer or the employee, or both.
- (11) The cancellation, variation or confirmation of the penalty notice under section 286 has effect in relation to—
 - (a) any notice in respect of the penalty given to the person appealing, and

- (b) any notice in respect of the penalty given to the employer or employee (as the case may be).

Enforcement

290 Enforcement

- (1) Where a penalty has not been paid as required under –
 - (a) section 62(5) or (6) (payment period following a notice under that section),
 - (b) section 253(4) or (5) (payment period following a notice under that section),
 - (c) section 259(3) or (4) (payment period following a notice under section 258),
 - (d) section 263(2) or (3) (payment period following a notice under section 262),
 - (e) section 284(2) or (4) (payment period following decision on a notice of objection), or
 - (f) section 286(4) (payment period following decision on an appeal),
 it may be recovered as a debt due to the Secretary of State.
- (2) In proceedings for the enforcement of a penalty imposed under section 62, no question may be raised as to –
 - (a) liability to the imposition of the penalty,
 - (b) whether it was unreasonable to require P to pay a penalty, or
 - (c) the amount of the penalty.
- (3) In proceedings for the enforcement of a penalty imposed under section 253, 258 or 262, no question may be raised as to –
 - (a) liability to the imposition of the penalty, or
 - (b) the amount of the penalty.

Notices and procedure etc.

291 Notices and procedure etc.

- (1) The Secretary of State may by regulations make provision about –
 - (a) the form and content of notices under section 62, 253, 258, 262 or 282;
 - (b) the procedure in relation to such a notice;
 - (c) the means by which such a notice or a document in proceedings under section 290 may be given to or served on a person outside the United Kingdom;
 - (d) the time at which such a notice or document may or must be taken to have been given or served;
 - (e) the manner in which penalties imposed under section 62, 253, 258 or 262 may or must be paid (which may include provision for payment by instalments);
 - (f) the time limit for bringing an appeal under section 285 in respect of a penalty imposed under section 253.
- (2) Subsection (1)(a) is subject to section 329(1) (requirement for notices to be in writing).

- (3) See sections 330 and 331 for the giving of notices under section 62, 253, 258 or 262 or under this Part.

PART 16

INSPECTION & OVERSIGHT

UK Border Agency Inspectorate

292 Chief Inspector of the UK Border Agency

- (1) There is to continue to be a Chief Inspector of the UK Border Agency whom the Secretary of State must appoint.
- (2) The person holding the office of Chief Inspector of the UK Border Agency immediately before the day on which this section comes into force is to be treated, on and after that day, as if duly appointed under this section.
- (3) A person who is employed by or in any of the following may not be appointed as Chief Inspector –
- (a) a government department;
 - (b) the Scottish Administration;
 - (c) the National Assembly for Wales;
 - (d) a department in Northern Ireland.
- (4) The Secretary of State –
- (a) must pay remuneration, expenses and allowances to the Chief Inspector, and
 - (b) may pay compensation to a person who ceases to be Chief Inspector if the Secretary of State thinks it appropriate because of special circumstances.
- (5) The Secretary of State –
- (a) must before the beginning of each financial year specify a maximum sum which the Chief Inspector may spend on functions for that year,
 - (b) may permit that to be exceeded for a specified purpose, and
 - (c) must meet the Chief Inspector's expenditure for each financial year subject to paragraphs (a) and (b).
- (6) The Chief Inspector holds and vacates office in accordance with the terms of the appointment (which may include provision about retirement, resignation or dismissal).
- (7) The Chief Inspector may appoint staff.

293 Role of the Chief Inspector

- (1) The Chief Inspector of the UK Border Agency –
- (a) must monitor and report on the efficiency and effectiveness of the performance of the functions of the UK Border Agency, and
 - (b) may monitor and report on the efficiency and effectiveness of the services provided by one or more relevant persons.

-
- (2) In particular, under subsection (1)(a) the Chief Inspector must consider and make recommendations about, and under subsection (1)(b) the Chief Inspector may consider and make recommendations about, each of the following –
- (a) consistency of approach among the persons exercising the functions of the Agency and relevant persons in relation to the doing of similar things;
 - (b) the practice and performance of the persons mentioned in paragraph (a) compared to other persons doing similar things;
 - (c) practice and procedure in making decisions;
 - (d) the treatment of applicants in connection with immigration or nationality;
 - (e) certification under section 188 (unfounded protection application);
 - (f) compliance with law about discrimination in the exercise of functions, including reliance on section 19D of the Race Relations Act 1976 (exception for immigration functions);
 - (g) practice and procedure in relation to the exercise of enforcement powers (including powers of arrest, entry, search and seizure);
 - (h) practice and procedure in relation to the prevention, detection and investigation of offences,
 - (i) practice and procedure in relation to the conduct of criminal proceedings,
 - (j) whether customs functions have been appropriately exercised by the Secretary of State and the Director of Border Revenue,
 - (k) the provision of information;
 - (l) the handling of complaints;
 - (m) the content of information about conditions in countries outside the United Kingdom which the Secretary of State compiles and makes available, for purposes connected with immigration, to designated immigration officials and other officials of the Secretary of State.
- (3) Unless directed to do so by the Secretary of State, the Chief Inspector is not to monitor and report on the exercise of –
- (a) the functions at removal centres and short-term holding facilities, and under escort arrangements (within the meaning of Part 7), in so far as Her Majesty’s Chief Inspector of Prisons has functions under section 5A of the Prison Act 1952 in relation to such functions, and
 - (b) the functions at detention facilities, in so far as Her Majesty’s Inspectors of Constabulary, the Scottish inspectors or the Northern Ireland inspectors have functions by virtue of section 29 of the Borders, Citizenship and Immigration Act 2009 in relation to such functions.
- (4) The Chief Inspector is not to aim to investigate individual cases.
- (5) But subsection (4) does not prevent the Chief Inspector from considering or drawing conclusions about an individual case for the purpose of, or in the context of, considering a general issue.
- (6) For the purposes of this section –
- (a) “relevant person” means a person acting pursuant to arrangements relating to the discharge of a function of the UK Border Agency, and
 - (b) “the Scottish inspectors” and “the Northern Ireland inspectors” have the meanings given in section 29 of the Borders, Citizenship and Immigration Act 2009.

294 Reports by Chief Inspector

- (1) The Chief Inspector must –
 - (a) make an annual report in writing to the Secretary of State in relation to the performance of the functions under section 293 generally, and
 - (b) report in writing to the Secretary of State at other times as requested by the Secretary of State in relation to specified matters.
- (2) The Secretary of State must lay before Parliament a copy of any report received under subsection (1).
- (3) But a copy may omit material if the Secretary of State thinks that its publication –
 - (a) is undesirable for reasons of national security, or
 - (b) may jeopardise a person’s safety.

295 Plans of the Chief Inspector

- (1) The Chief Inspector must prepare plans describing the objectives and terms of reference of proposed inspections.
- (2) Plans are to be prepared –
 - (a) at prescribed times and in respect of prescribed periods, and
 - (b) at such other times, and in respect of such other periods, as the Chief Inspector thinks appropriate.
- (3) A plan must –
 - (a) be in the prescribed form, and
 - (b) contain the prescribed information.
- (4) In preparing a plan the Chief Inspector must consult –
 - (a) the Secretary of State, and
 - (b) prescribed persons.
- (5) As soon as is reasonably practicable after preparing a plan the Chief Inspector must send a copy to –
 - (a) the Secretary of State, and
 - (b) each prescribed person.
- (6) The Chief Inspector and a prescribed person may by agreement disapply a requirement –
 - (a) to consult the person, or
 - (b) to send a copy of a plan to the person.
- (7) Nothing in this section prevents the Chief Inspector from doing anything not mentioned in a plan.

296 Relationship with other bodies: general

- (1) The Chief Inspector must co-operate with prescribed persons in so far as the Chief Inspector thinks it consistent with the efficient and effective performance of the Chief Inspector’s functions under section 293.
- (2) The Chief Inspector may act jointly with prescribed persons where the Chief Inspector thinks it is in the interests of the efficient and effective performance of the Chief Inspector’s functions under section 293.

- (3) The Chief Inspector may assist a prescribed person.
- (4) The Chief Inspector may delegate a specified aspect of the Chief Inspector’s functions under section 293 to a prescribed person.

297 Relationship with other bodies: non-interference notices

- (1) The Chief Inspector may give a prescribed person a notice prohibiting a specified inspection if the Chief Inspector thinks that—
 - (a) the person proposes to inspect an aspect of—
 - (i) the exercise of the functions of the UK Border Agency, or
 - (ii) the services provided by a relevant person, and
 - (b) the inspection may impose an unreasonable impediment to the exercise of the functions of the UK Border Agency.
- (2) The prescribed person must comply with the notice, unless the Secretary of State cancels it on the grounds that the inspection would not impose an unreasonable impediment to the exercise of the functions of the UK Border Agency.
- (3) A notice must—
 - (a) be in the prescribed form, and
 - (b) contain the prescribed information.
- (4) The Secretary of State may by order make provision about—
 - (a) the timing of notices;
 - (b) the publication of notices;
 - (c) the revision or cancellation of notices.
- (5) Subsection (3)(a) is subject to section 329 (requirement for notices to be in writing).
- (6) “Relevant person” has the same meaning as it has for the purposes of section 293.

298 Prescribed matters

- (1) In sections 295 to 297 “prescribed” means prescribed by order of the Secretary of State.
- (2) An order under any of those sections prescribing a person may specify—
 - (a) one or more persons, or
 - (b) a description of person.

299 Senior President of Tribunals

In exercising the function under section 43 of the Tribunals, Courts and Enforcement Act 2007 (c. 15), the Senior President of Tribunals must have regard to—

- (a) the functions of the Chief Inspector of the UK Border Agency, and
- (b) in particular, the Secretary of State’s power to request the Chief Inspector to report about specified matters.

Police Ombudsman for Northern Ireland

300 Police Ombudsman for Northern Ireland

After section 60ZA of the Police (Northern Ireland) Act 1998 insert –

“60ZB UK Border Agency

- (1) An agreement for the establishment in relation to persons mentioned in subsection (3) of procedures corresponding or similar to any of those established by virtue of this Part may be made between the Ombudsman and the Secretary of State.
- (2) Where, in relation to particular persons mentioned in subsection (3), no such procedures are in force, the Secretary of State may by order establish such procedures.
- (3) The persons referred to in subsection (1) are –
 - (a) designated immigration officials (within the meaning of the Immigration Act 2009) exercising specified enforcement functions;
 - (b) other officials of the Secretary of State exercising specified enforcement functions relating to immigration;
 - (c) designated customs officials, and officials of the Secretary of State, exercising customs functions within the meaning of Part 1 of the Borders, Citizenship and Immigration Act 2009;
 - (d) the Director of Border Revenue exercising customs revenue functions within the meaning of that Part of that Act, and persons exercising such functions of the Director;
 - (e) persons providing services pursuant to arrangements relating to the discharge of a function within paragraph (a), (b), (c) or (d).
- (4) In subsection (3) the reference to enforcement functions includes, in particular, reference to –
 - (a) powers of entry,
 - (b) powers to search persons or property,
 - (c) powers to seize or detain property,
 - (d) powers to arrest persons,
 - (e) powers to detain persons,
 - (f) powers to examine persons or otherwise to obtain information (including powers to take fingerprints or to acquire other personal data), and
 - (g) powers in connection with the removal of persons from the United Kingdom.
- (5) An agreement under this section may at any time be varied or terminated with the approval of the Secretary of State.
- (6) Before making an order under this section the Secretary of State shall consult the Ombudsman and such persons as the Secretary of State thinks appropriate.
- (7) Nothing in any other statutory provision shall prevent the Secretary of State from carrying into effect procedures established by virtue of this section.

- (8) An agreement or order under this section shall relate only to the exercise of functions mentioned in subsection (3) –
- (a) in Northern Ireland or, in relation to Northern Ireland, in England and Wales or Scotland, and
 - (b) on or after the day on which the agreement or order is made.
- (9) An agreement or order under this section shall not provide for procedures in relation to so much of any complaint or matter as relates to any functions conferred by or under Part 7 of the Immigration Act 2009 (detained persons & removal centres etc.).”

PART 17

IMMIGRATION ADVISERS & IMMIGRATION SERVICE PROVIDERS [TO BE DRAFTED]

PART 18

OFFENCES: GENERAL

Illegal immigration etc.

301 Illegal presence in the UK

- (1) A person (“P”) who is neither a British citizen nor an EEA entrant commits an offence if P is illegally present in the United Kingdom.
- (2) For the purposes of this section, P is illegally present in the United Kingdom at a particular time if, at that time –
 - (a) P is in the United Kingdom, having entered it, and
 - (b) P knows that P does not have immigration permission, is not on immigration bail and is not being detained under Part 6 or otherwise.
- (3) An offence under this section –
 - (a) is committed on the first day when P is illegally present in the United Kingdom, and
 - (b) continues to be committed throughout any period after that during which P is illegally present in the United Kingdom.
- (4) But a person is not to be prosecuted more than once under this section in respect of the same period of illegal presence in the United Kingdom.
- (5) See section 318 (defence for a refugee or person entitled to humanitarian protection) for a defence to an offence under this section.
- (6) A person guilty of an offence under this section is liable on summary conviction –
 - (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding level 5 on the standard scale, or to both;
 - (b) in Scotland or Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the standard scale, or to both.

302 Assisting illegal immigration

- (1) A person commits an offence if the person –
 - (a) does an act which facilitates the commission of a breach of immigration law by a person, and
 - (b) knows, or has reasonable grounds for believing, that the act facilitates the commission of a breach of immigration law by the person.
- (2) “Immigration law” means a law which –
 - (a) has effect in a member State or a listed Schengen Acquis State, and
 - (b) controls, in respect of some or all persons who are not nationals of that State, entitlement to enter the State, pass through it or be in it.
- (3) A document issued by the government of a member State or a listed Schengen Acquis State certifying a matter of law in that State –
 - (a) is to be admissible in proceedings for an offence under this section, and
 - (b) is to be conclusive as to the matter certified.
- (4) A “listed Schengen Acquis State” means a State on a list prescribed for the purposes of this section by order made by the Secretary of State (to be known as the “Section 302 List of Schengen Acquis States”).
- (5) An order under subsection (4) may be made only if the Secretary of State thinks it necessary for the purpose of complying with the United Kingdom’s obligations under the Community Treaties.
- (6) Subsection (1) applies to anything done whether inside or outside the United Kingdom.
- (7) See section 320 (commission of certain offences by director etc.) where an offence under this section is committed by a body corporate or a partnership.
- (8) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to imprisonment for a term not exceeding 14 years, or to a fine, or to both;
 - (b) on summary conviction –
 - (i) in England and Wales or in Scotland, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both;
 - (ii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both.

303 Assisting protection applicant to enter the UK

- (1) A person commits an offence if the person –
 - (a) knowingly and for gain facilitates the arrival in, or entry into, the United Kingdom of a person, and
 - (b) knows, or has reasonable grounds for believing, that the person is a protection applicant.
- (2) In this section, “protection applicant” means a person who intends to make a protection application (see section 21).
- (3) Subsection (1) applies to anything done whether inside or outside the United Kingdom.

- (4) But subsection (1) does not apply to anything done by a person acting on behalf of an organisation which—
 - (a) aims to assist protection applicants, and
 - (b) does not charge for its services.
- (5) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment to imprisonment for a term not exceeding 14 years, or to a fine, or to both;
 - (b) on summary conviction—
 - (i) in England and Wales or in Scotland, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both;
 - (ii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both.

304 Trafficking people for exploitation

- (1) A person commits an offence if the person—
 - (a) arranges or facilitates the arrival in, or entry into, the United Kingdom of an individual (a “passenger”), and
 - (b) intends to exploit, or believes that another person is likely to exploit, the passenger in the United Kingdom or elsewhere.
- (2) A person commits an offence if the person—
 - (a) arranges or facilitates travel within the United Kingdom by an individual (a “passenger”) in respect of whom that person believes that an offence under subsection (1) may have been committed, and
 - (b) intends to exploit, or believes that another person is likely to exploit, the passenger in the United Kingdom or elsewhere.
- (3) A person commits an offence if the person—
 - (a) arranges or facilitates the departure from the United Kingdom of an individual (a “passenger”), and
 - (b) intends to exploit, or believes that another person is likely to exploit, the passenger outside the United Kingdom.
- (4) Subsections (1) to (3) apply to anything done whether inside or outside the United Kingdom.
- (5) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment to imprisonment for a term not exceeding 14 years, or to a fine, or to both;
 - (b) on summary conviction—
 - (i) in England and Wales or in Scotland, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both;
 - (ii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both.

305 Section 304: meaning of “exploit”

- (1) For the purposes of section 304, a person (“P”) is exploited if condition A, B, C or D is met.
- (2) Condition A is met if P is the victim of behaviour that contravenes Article 4 of the Human Rights Convention (slavery and forced labour).
- (3) Condition B is met if P is encouraged, required or expected to do anything as a result of which P or another person would commit an offence under –
 - (a) section 32 or 33 of the Human Tissue Act 2004, or
 - (b) Part 1 of the Human Tissue (Scotland) Act 2006 (asp 4).
- (4) Condition C is met if P is subjected to force, threats or deception designed to induce P –
 - (a) to provide services of any kind,
 - (b) to provide another person with benefits of any kind, or
 - (c) to enable another person to acquire benefits of any kind.
- (5) Condition D is met if another person uses or attempts to use P for any purpose within paragraph (a), (b) or (c) of subsection (4), having chosen P for that purpose on the grounds that –
 - (a) P is mentally or physically ill or disabled, P is young or P has a family relationship with a person, and
 - (b) a person without the illness, disability, youth or family relationship would be likely to refuse to be used for that purpose.

306 Failure to possess passport etc. at examination on arrival

- (1) A person who is neither a British citizen nor an EEA entrant commits an offence if, at an examination on arrival, the person does not have in the person’s possession a relevant travel document in relation to the person.
- (2) A “relevant travel document” in relation to the person means a document used by the person as a travel document in relation to the person in connection with the person’s journey to the United Kingdom.
- (3) It is a defence for a person charged with an offence under subsection (1) to prove that –
 - (a) the person travelled to the United Kingdom without, at any stage since setting out on the journey, having possession of a relevant travel document in relation to the person, or
 - (b) the person has a reasonable excuse for not being in possession of a relevant travel document in relation to the person at the examination.
- (4) A person commits an offence if, at an examination on arrival, the person does not have in the person’s possession a relevant travel document in relation to a child (“C”) with whom the person claims to be travelling or living.
- (5) A “relevant travel document” in relation to C means a document used as a travel document in relation to C in connection with C’s journey to the United Kingdom.
- (6) It is a defence for a person charged with an offence under subsection (4) to prove that –
 - (a) at the time of the examination, C is a British citizen or an EEA entrant,

- (b) the person travelled to the United Kingdom without, at any stage since setting out on the journey, having possession of a relevant travel document in relation to C, or
 - (c) the person has a reasonable excuse for not being in possession of a relevant travel document in relation to C at the examination.
- (7) “Examination on arrival” means –
- (a) an examination under section 42(1)(a) (powers to examine on arrival and before entry), or
 - (b) a further examination under section 44 which takes place before entry into the United Kingdom,
- at which a person seeks the grant of immigration permission.
- (8) It is irrelevant for the purposes of subsection (2) or (5) whether a document used as a travel document is a travel document or a valid, current or false document.
- (9) A person is to be presumed for the purposes of this section not to be in possession of a document if the person fails to produce it to the Secretary of State on request.
- (10) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment to imprisonment for a term not exceeding 2 years, or to a fine, or to both;
 - (b) on summary conviction –
 - (i) in England and Wales or in Scotland, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both;
 - (ii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both.

307 Failure to possess passport etc. at permission interview after entry

- (1) A person who is neither a British citizen nor an EEA entrant commits an offence if –
- (a) at a permission interview after the person’s entry into the United Kingdom, the person does not have in the person’s possession a relevant travel document in relation to the person, and
 - (b) the person fails to produce a relevant travel document in relation to the person to the Secretary of State before the end of the 3 day period.
- (2) A “relevant travel document” in relation to the person means a document used by the person as a travel document in relation to the person in connection with the person’s journey to the United Kingdom.
- (3) It is a defence for a person charged with an offence under subsection (1) to prove that –
- (a) the person travelled to the United Kingdom without, at any stage since setting out on the journey, having possession of a relevant travel document in relation to the person, or
 - (b) the person has a reasonable excuse for not producing a relevant travel document in relation to the person to the Secretary of State before the end of the 3 day period.

- (4) A person commits an offence if—
 - (a) at a permission interview after the person’s entry into the United Kingdom, the person does not have in the person’s possession a relevant travel document in relation to a child (“C”) with whom the person claims to be travelling or living, and
 - (b) the person fails to produce a relevant travel document in relation to C to the Secretary of State before the end of the 3 day period.
- (5) A “relevant travel document” in relation to C means a document used as a travel document in relation to C in connection with C’s journey to the United Kingdom.
- (6) It is a defence for a person charged with an offence under subsection (4) to prove that—
 - (a) at the time of the permission interview, C is a British citizen or an EEA entrant,
 - (b) the person travelled to the United Kingdom without, at any stage since setting out on the journey, having possession of a relevant travel document in relation to C, or
 - (c) the person has a reasonable excuse for not producing a relevant travel document in relation to C to the Secretary of State before the end of the 3 day period.
- (7) “Permission interview” means—
 - (a) an examination under section 42(1)(b) or a further examination under section 44 (powers to examine those who enter the UK etc.), or
 - (b) an interview with an official of the Secretary of State, at which a person seeks the grant of immigration permission.
- (8) “The 3 day period” means the period of 3 days beginning with the date of the permission interview.
- (9) It is irrelevant for the purposes of subsection (2) or (5) whether a document used as a travel document is a travel document, or a valid, current or false document.
- (10) A person is to be presumed for the purposes of this section not to be in possession of a document if the person fails to produce it to the Secretary of State on request.
- (11) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment to imprisonment for a term not exceeding 2 years, or to a fine, or to both;
 - (b) on summary conviction—
 - (i) in England and Wales or in Scotland, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both;
 - (ii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both.

308 Meaning of “reasonable excuse” in sections 306 & 307

- (1) For the purposes of sections 306 and 307, the fact that a document was deliberately destroyed or disposed of is not a reasonable excuse for not being

in possession of it or for not producing it unless it is shown that the destruction or disposal was –

- (a) for a reasonable cause, or
 - (b) beyond the control of the person charged with the offence.
- (2) “Reasonable cause” does not include the purpose of –
- (a) delaying the handling or resolution of an application or the taking of a decision,
 - (b) increasing the chances of success of an application, or
 - (c) complying with instructions or advice given by a person who offers advice about, or facilitates, immigration into the United Kingdom, unless in the circumstances of the case it is unreasonable to expect non-compliance with the instructions or advice.

Deception & false documents etc.

309 Deception

- (1) A person (“P”) commits an offence if, wholly or partly by means of deception by P, P or another person –
- (a) seeks to obtain, or obtains, a grant of immigration permission,
 - (b) seeks to obtain, or obtains, an immigration document, or
 - (c) seeks to secure, or secures, the avoidance, postponement or revocation of enforcement action against P or another person.
- (2) “Deception by P” means –
- (a) the making of a representation by P which P knows to be false or does not believe to be true, or
 - (b) the failure by P to correct a representation in relation to P made by someone else which P knows has been made and which P knows to be false or does not believe to be true.
- (3) A representation –
- (a) may be express or implied;
 - (b) may be regarded as made if it, or anything implying it, is submitted in any form to any system or device designed to receive, convey or respond to communications (with or without human intervention).
- (4) “Enforcement action” against a person means –
- (a) the making of an expulsion order in relation to the person,
 - (b) the giving of directions under section 73 for the person’s removal from the United Kingdom, or
 - (c) the removal of the person from the United Kingdom in consequence of such an expulsion order or such directions.
- (5) Subsection (1) applies to things done whether inside or outside the United Kingdom.
- (6) See section 318 (defence for a refugee or person entitled to humanitarian protection) for a defence to an offence under this section.
- (7) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment to imprisonment for a term not exceeding 2 years, or to a fine, or to both;

- (b) on summary conviction—
 - (i) in England and Wales or in Scotland, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both;
 - (ii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both.

310 Altering documents and use or possession of false documents

- (1) A person commits an offence if, without lawful authority, the person—
 - (a) alters a document issued or made under or for the purposes of this Act,
 - (b) uses for the purposes of this Act a document which that person knows, or has reasonable cause to believe, to be false, or
 - (c) has possession of, for use for the purposes of this Act, a document which that person knows, or has reasonable cause to believe, to be false.
- (2) See section 318 (defence for a refugee or person entitled to humanitarian protection) for a defence to an offence under this section.
- (3) See section 322 (which provides an extended time limit for prosecution of an offence under this section).
- (4) A person guilty of an offence under this section is liable on summary conviction—
 - (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding level 5 on the standard scale, or to both;
 - (b) in Scotland or Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the standard scale, or to both.

311 Falsifying or altering etc. a registration card

- (1) A person commits an offence if the person—
 - (a) makes a false registration card,
 - (b) uses or attempts to use a false registration card for a purpose for which a registration card is issued,
 - (c) makes an article designed to be used in making a false registration card,
 - (d) alters a registration card with intent to deceive or to enable another to deceive,
 - (e) uses or attempts to use an altered registration card with intent to deceive, or
 - (f) makes an article designed to be used in altering a registration card with intent to deceive or to enable another to deceive.
- (2) A person commits an offence if, without reasonable excuse, the person has possession of—
 - (a) a false or altered registration card, or
 - (b) an article mentioned in subsection (1)(c) or (f).
- (3) In this section, “registration card” means a document which—
 - (a) carries information about a person (“P”) (whether or not wholly or partly electronically), and

- (b) is issued by the Secretary of State to P wholly or partly in connection with—
 - (i) a protection application (see section 21), or
 - (ii) an application for support under section 206 or 210.
- (4) The Secretary of State may by order amend this section so as to amend the definition of “registration card” in subsection (3).
- (5) A person guilty of an offence under subsection (1) is liable—
 - (a) on conviction on indictment to imprisonment for a term not exceeding 10 years, or to a fine, or to both;
 - (b) on summary conviction—
 - (i) in England and Wales or in Scotland, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both;
 - (ii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both.
- (6) A person guilty of an offence under subsection (2) is liable—
 - (a) on conviction on indictment to imprisonment for a term not exceeding 2 years, or to a fine, or to both;
 - (b) on summary conviction—
 - (i) in England and Wales or in Scotland, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both;
 - (ii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both.

312 Possession of immigration stamp or vignette

- (1) A person commits an offence if, without reasonable excuse, the person has possession of—
 - (a) an immigration stamp,
 - (b) a replica immigration stamp, or
 - (c) an immigration vignette which is not attached to an identity document.
- (2) “Immigration stamp” means a device designed for the purpose of stamping documents in the exercise of a function under this Act.
- (3) “Replica immigration stamp” means a device designed for the purpose of stamping a document so that it appears to have been stamped in the exercise of function under this Act.
- (4) “Immigration vignette” means a sticker, label or other attachment designed for the purpose of being attached to an identity document in order to confirm that the holder may enter and stay in the United Kingdom.
- (5) In subsections (2) and (3), a reference to stamping a document includes fixing a sticker, label or other attachment on it or otherwise marking it.
- (6) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment to imprisonment for a term not exceeding 2 years, or to a fine, or to both;

- (b) on summary conviction—
 - (i) in England and Wales or in Scotland, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both;
 - (ii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both.

Failure to comply with conditions of permission or immigration bail etc.

313 Failure to comply with conditions of permission or immigration bail etc.

- (1) A person (“P”) commits an offence if—
 - (a) P has temporary permission and, without reasonable excuse, P fails to comply with a condition subject to which the permission was granted,
 - (b) without reasonable excuse, P fails to comply with a requirement of regulations under section 11(2) (regulations as to condition of temporary permission requiring registration with the police), or
 - (c) P is on immigration bail and, without reasonable excuse, P fails to comply with a bail condition.
- (2) An offence under this section—
 - (a) is committed on the first day when, without reasonable excuse, P fails to comply with a condition mentioned in subsection (1)(a) or (c) or with a requirement mentioned in subsection (1)(b), and
 - (b) continues to be committed throughout any period after that during which the failure continues.
- (3) But a person is not to be prosecuted more than once under this section in respect of the same failure.
- (4) A person guilty of an offence under this section is liable on summary conviction—
 - (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding level 5 on the standard scale, or to both;
 - (b) in Scotland or Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the standard scale, or to both.

Impersonation & assault etc.

314 Impersonation

- (1) A person (“P”) commits an offence if, with intent to deceive—
 - (a) P impersonates a person acting in the exercise of a function of the UK Border Agency, or
 - (b) P makes a statement or does an act calculated falsely to suggest that P is a person acting in the exercise of a function of the UK Border Agency.
- (2) A person guilty of an offence under this section is liable on summary conviction—

- (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding level 5 on the standard scale, or to both;
- (b) in Scotland or Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the standard scale, or to both.

315 Assault or obstruction etc.

- (1) A person commits an offence if the person assaults a person acting in the exercise of a function under this Act.
- (2) A person commits an offence if the person resists or wilfully obstructs a person acting in the exercise of a function under this Act.
- (3) A person guilty of an offence under subsection (1) is liable on summary conviction –
 - (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding level 5 on the standard scale, or to both;
 - (b) in Scotland, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding level 5 on the standard scale, or to both;
 - (c) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the standard scale, or to both.
- (4) A person guilty of an offence under subsection (2) is liable on summary conviction –
 - (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding level 3 on the standard scale, or to both;
 - (b) in Scotland, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding level 3 on the standard scale, or to both;
 - (c) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 3 on the standard scale, or to both.

Powers to detain & forfeit transporters where assist illegal immigration etc.

316 Detention of transporter

- (1) This section applies where a person (“P”) is arrested for an offence under –
 - (a) section 302 (assisting illegal immigration),
 - (b) section 303 (assisting protection applicant to enter UK), or
 - (c) section 304 (trafficking people for exploitation).
- (2) In England and Wales or Northern Ireland, a designated immigration official or a constable may detain a relevant transporter –
 - (a) until a decision is taken as to whether or not to charge P with the offence,
 - (b) if P has been charged, until P is acquitted, the charge is dismissed or the proceedings discontinued, or

- (c) if P has been charged and convicted, until the court decides whether or not to order forfeiture of the transporter.
- (3) In Scotland, a designated immigration official or a constable may detain a relevant transporter –
- (a) until a decision is taken as to whether or not to institute criminal proceedings against P for the offence,
 - (b) if criminal proceedings have been instituted against P, until P is acquitted or, under section 65 or 147 of the Criminal Procedure (Scotland) Act 1995, discharged or liberated or the trial diet is deserted *simpliciter*, or
 - (c) if criminal proceedings have been instituted against P and P has been convicted, until the sheriff decides whether or not to order forfeiture of the transporter.
- (4) For the purposes of subsection (3), criminal proceedings are instituted against a person at whichever is the earlier of –
- (a) the person’s first appearance before the sheriff on petition, or
 - (b) the service on the person of an indictment or complaint.
- (5) A “relevant” transporter is a transporter which the designated immigration official or constable concerned has reasonable grounds for believing could be the subject of an order for forfeiture under section 317 if P were to be convicted of the offence in question.
- (6) A person (other than P) may apply to the court or, in Scotland, the sheriff for the release of a transporter on the grounds that the person –
- (a) owns the transporter,
 - (b) was, immediately before its detention, the hirer of it, or
 - (c) is, in the case of a ship or aircraft, an operator of it.
- (7) Where an application is made under subsection (6) the court or sheriff may, on such security or surety being tendered as the court or sheriff thinks satisfactory, release the transporter on condition that it is made available to the court or sheriff if –
- (a) P is convicted, and
 - (b) an order for its forfeiture is made under section 317.
- (8) “Court”, in relation to England and Wales, means –
- (a) if P has not been charged, or has been charged but proceedings for the offence have not begun to be heard, a magistrates’ court;
 - (b) if P has been charged and proceedings for the offence are being heard, the court hearing the proceedings.
- (9) “Court”, in relation to Northern Ireland, means –
- (a) if P has not been charged, the magistrates’ court for the county court division in which the person was arrested;
 - (b) if P has been charged but proceedings for the offence have not begun to be heard, the magistrates’ court for the county court division in which the person was charged;
 - (c) if P has been charged and proceedings for the offence are being heard, the court hearing the proceedings.
- (10) “Transporter” has the same meaning as in Part 14 (see section 280(2)) except that a “transporter” also includes a part of a train.

- (11) “Hirer”, in relation to a transporter, means any person who is hiring the transporter from another person.

317 Forfeiture of transporter

- (1) This section applies where a person (“P”) is convicted on indictment of an offence under –
- (a) section 302 (assisting illegal immigration),
 - (b) section 303 (assisting protection applicant to enter UK), or
 - (c) section 304 (trafficking people for exploitation).
- (2) The court or sheriff may order the forfeiture of a transporter used or intended to be used in connection with the offence if –
- (a) in the case of any transporter, P at the time the offence was committed –
 - (i) owned the transporter,
 - (ii) was a director, secretary or manager of a company which owned the transporter,
 - (iii) was the hirer of the transporter,
 - (iv) was a director, secretary or manager of a company which was the hirer of the transporter,
 - (b) in the case of a ship, aircraft or train, P –
 - (i) was an operator of the ship, aircraft or train at the time the offence was committed, or
 - (ii) committed the offence while acting as captain of the ship, aircraft or train, or
 - (c) in the case of a vehicle, P was driving the vehicle in the course of the commission of the offence.
- (3) But in a case where subsection (2)(a)(iii) or (iv), (b) or (c) applies –
- (a) forfeiture of a ship (other than a hovercraft) may be ordered only if it is a small ship or the relevant condition is met;
 - (b) forfeiture of a hovercraft may be ordered only if the relevant condition is met;
 - (c) forfeiture of an aircraft may be ordered only if it is a small aircraft or the relevant condition is met;
 - (d) forfeiture of a train, vehicle or container may be ordered only if the relevant condition is met.
- (4) The “relevant condition” is met if a person who, at the time the offence was committed, owned the transporter was a director, secretary or manager of a company which owned it, knew or ought to have known of the intention to use it in the course of the commission of an offence listed in subsection (1).
- (5) Where a person who claims to have an interest in a transporter applies to a court or sheriff to make representations on the question of forfeiture, the court or sheriff may not make an order under this section in respect of the transporter concerned unless the person has been given an opportunity to make representations.
- (6) “Transporter” and “hirer” have the same meanings as in section 316.
- (7) “Vehicle” and “container” have the same meaning as in Part 14 (see section 280(2)) and “train” includes a part of a train.

General provision relating to offences

318 Defence for a refugee or person entitled to humanitarian protection

- (1) It is a defence for a refugee (“R”) who is charged with an offence to which this section applies to prove that, having come to the United Kingdom directly from a country where R’s life or freedom was threatened (within the meaning of the Refugee Convention), R—
 - (a) presented himself or herself to the authorities in the United Kingdom without delay,
 - (b) showed good cause for R’s illegal entry or presence, and
 - (c) made a protection application as soon as was reasonably practicable after arriving in the United Kingdom.
- (2) If, in coming from the country where R’s life or freedom was threatened, R stopped in another country outside the United Kingdom, subsection (1) applies only if R shows that R could not reasonably have expected to be given protection under the Refugee Convention in that other country.
- (3) If the Secretary of State has refused to grant refugee permission to a person claiming to have a defence under subsection (1), the person is to be taken not to be a refugee, unless—
 - (a) sufficient evidence is adduced to raise an issue as to whether the person is a refugee, and
 - (b) the contrary is not proved beyond a reasonable doubt.
- (4) It is a defence for a person entitled to humanitarian protection (“P”) who is charged with an offence to which this section applies to prove that, having come to the United Kingdom directly from a country where P faced a real risk of suffering serious harm (within the meaning of Council Directive 2004/83/EC) (“country A”), P—
 - (a) presented himself or herself to the authorities in the United Kingdom without delay,
 - (b) showed good cause for P’s illegal entry or presence, and
 - (c) made a protection application as soon as was reasonably practicable after arriving in the United Kingdom.
- (5) If, in coming from country A, P stopped in another country outside the United Kingdom (“country B”), subsection (4) applies only if P shows that P could not reasonably have expected to be given in country B protection under Council Directive 2004/83/EC, or protection equivalent to that provided under that Directive, from being returned to country A.
- (6) If the Secretary of State has refused to grant protection permission to a person claiming to have a defence under subsection (4), the person is to be taken not to be a person entitled to humanitarian protection, unless—
 - (a) sufficient evidence is adduced to raise an issue as to whether the person is a person entitled to humanitarian protection, and
 - (b) the contrary is not proved beyond a reasonable doubt.
- (7) This section does not apply if the offence was committed after the making of the protection application mentioned in subsection (1)(c) or (4)(c) (as the case may be).
- (8) “Refugee” has the same meaning as it has for the purposes of the Refugee Convention.

- (9) A person is a “person entitled to humanitarian protection” if to remove the person from, or require the person to leave, the United Kingdom would contravene the United Kingdom’s obligations under Council Directive 2004/83/EC (international protection).

319 Offences to which section 318 applies

- (1) In England and Wales and Northern Ireland, the offences to which section 318 applies are any offence, and any attempt to commit an offence, under –
- (a) Part 1 of the Forgery and Counterfeiting Act 1981 (forgery etc.),
 - (b) section 25(1) or (5) of the Identity Cards Act 2006 (false identity document),
 - (c) section 77 of this Act (breach of expulsion order),
 - (d) section 301 (illegal presence in the UK),
 - (e) section 309 (deception), or
 - (f) section 310 (altering documents etc.).
- (2) In Scotland, the offences to which section 318 applies are –
- (a) the common law offence of fraud,
 - (b) the common law offence of uttering a forged document,
 - (c) any offence under section 25(1) or (5) of the Identity Cards Act 2006 (false identity document),
 - (d) any offence under section 77 of this Act (breach of expulsion order),
 - (e) any offence under section 301 (illegal presence in the UK),
 - (f) any offence under section 309 (deception), or
 - (g) any offence under section 310 (altering documents etc.),
- and any attempt to commit any of those offences.

320 Commission of certain offences by director etc.

- (1) This section applies in relation to an offence under –
- (a) section 224 (support: dishonest representations),
 - (b) section 225 (support: delay or obstruction),
 - (c) section 238(1)(a) or (b) (power to require information from employers or financial institutions),
 - (d) section 256 (employment of illegal workers),
 - (e) section 302 (assisting unlawful immigration), or
 - (f) section 303 (assisting protection applicant to enter the UK).
- (2) Subsection (3) applies where an offence to which this section applies was committed by a body corporate and is proved –
- (a) to have been committed with the consent or connivance of an officer of the body, or
 - (b) to be attributable to neglect on the part of an officer of the body.
- (3) The officer (as well as the body) is to be treated as having committed the offence.
- (4) In subsections (2) and (3), “officer”, in relation to a body corporate, includes –
- (a) a director, manager or secretary of the body,
 - (b) a person purporting to act as a director, manager or secretary of the body, and

- (c) where the affairs of the body are managed by its members, a member.
- (5) Subsection (6) applies where an offence to which this section applies was committed by a partnership and is proved –
 - (a) to have been committed with the consent or connivance of a partner, or
 - (b) to be attributable to neglect on a partner’s part.
- (6) The partner (as well as the partnership) is to be treated as having committed the offence.
- (7) In subsections (5) and (6), “partner” includes a person purporting to act as a partner.
- (8) Subsections (2)(b) and (5)(b) do not apply in relation to an offence under section 256 (employment of illegal workers).

321 Jurisdiction to try offences

For the purposes of the trial of a person for an offence under this Act, the offence is to be treated as having been committed –

- (a) at the place at which it actually was committed, or
- (b) at any place at which that person may be.

322 Extended time limit for prosecutions

- (1) This section applies in relation to an offence under section 310 (altering documents etc.).
- (2) In England and Wales, an information relating to the offence may be tried by a magistrates’ court if it is laid –
 - (a) within the period mentioned in subsection (5), or
 - (b) within both of the periods mentioned in subsection (6).
- (3) In Scotland, proceedings for the offence may be commenced –
 - (a) within the period mentioned in subsection (5), or
 - (b) within both of the periods mentioned in subsection (8).
- (4) In Northern Ireland, a complaint charging the commission of the offence may be heard and determined by a magistrates’ court if it is made –
 - (a) within the period mentioned in subsection (5), or
 - (b) within both of the periods mentioned in subsection (6).
- (5) The period referred to in subsections (2)(a), (3)(a) and (4)(a) is a period of 6 months beginning with the date (or first date) on which the offence is alleged to have been committed.
- (6) The periods referred to in subsections (2)(b) and (4)(b) are –
 - (a) a period of 3 years beginning with the date mentioned in subsection (5), and
 - (b) a period of 6 months beginning with a date certified by a relevant officer as the date on which the commission of the offence came to the officer’s notice.
- (7) In subsection (6)(b), a “relevant officer” means an officer of police above the rank of chief superintendent or, in Northern Ireland, an officer of police not below the rank of assistant chief constable.

- (8) The periods referred to in subsection (3)(b) are –
- (a) a period of 3 years beginning with the date mentioned in subsection (5), and
 - (b) a period of 6 months beginning with a date specified, in a certificate signed by or on behalf of the procurator fiscal, as the date on which evidence sufficient in the procurator fiscal’s opinion to warrant such proceedings came to the procurator fiscal’s knowledge.
- (9) A certificate purporting to be signed as mentioned in subsection (8)(b) is –
- (a) to be treated as having been signed accordingly (unless the contrary is proved), and
 - (b) to be conclusive as to the facts stated in it.
- (10) Section 136(3) of the Criminal Procedure (Scotland) Act 1995 (date on which proceedings are deemed to be commenced) has effect for the purposes of subsection (3) of this section as it has effect for the purposes of that section.

323 Proceedings not to affect exercise of powers

Any power exercisable under this Act in relation to a person may be exercised even though proceedings have been taken against the person for an offence (whether or not under this Act).

PART 19

GENERAL SUPPLEMENTARY PROVISIONS

Power to board ships, aircraft or trains

324 Power to board ships, aircraft or trains

A person may board a ship, aircraft or train for the purpose of the exercise by the person of a function under this Act.

Use of reasonable force & codes of practice

325 Use of reasonable force

- (1) A designated immigration official may, if necessary, use reasonable force exercising any function of a designated immigration official under this Act which is exercisable by the official by virtue of the official’s designation under section 40.
- (2) Subsection (1) does not apply to the exercise by a designated immigration official of a function under section 133 (power to stop & question etc.).
- (3) A person authorised for the purpose of section 47 (contracting out of the section 46 search power) may, if necessary, use reasonable force exercising any of the following –
 - (a) the power of a designated immigration official to search under section 46;
 - (b) a function under section 49 (power to search persons found on a search under section 47);

- (c) a function under section 84 (power to detain persons liable to examination found on a search under section 47).
- (4) An authorised person (within the meaning of section 58 (power to obtain biometric information)) may, if necessary, use reasonable force exercising a function under that section in relation to a person being detained under Part 6.
- (5) A detainee custody officer, prison officer or prisoner custody officer may, if necessary, use reasonable force exercising a function under Part 7 (detained persons & removal centres etc.).
- (6) A detainee custody officer may, if necessary, use reasonable force exercising a function under section 141(4) (entry of premises for purpose of searching detained person under section 111(1)(a)).
- (7) A constable may, if necessary, use reasonable force exercising a function under Part 8 (powers to stop, arrest, enter & search etc.).

326 Codes of practice under PACE etc.

- (1) A designated immigration official exercising a power under this Act mentioned in subsection (2) must, if the power is specified in a direction given under this section, have regard to such provisions of a PACE code as may be so specified.
- (2) The powers referred to in subsection (1) are –
 - (a) any power to arrest or search a person;
 - (b) any power to enter and search premises;
 - (c) any power to seize and retain property found on persons or premises.
- (3) An authorised person within the meaning of section 58 exercising the power conferred by subsection (2) of that section must, if the power is specified in a direction given under this section, have regard to such provisions of a PACE code as may be so specified.
- (4) The power to give a direction under this section is exercisable by the Secretary of State.
- (5) A direction under this section may provide for a provision of a PACE code to have effect for the purposes of this section subject to such modifications as may be specified in the direction.
- (6) A “PACE code” means –
 - (a) in relation to England and Wales, any code of practice for the time being in force under PACE;
 - (b) in relation to Northern Ireland, any code of practice for the time being in force under the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).
- (7) This section does not apply to any person exercising powers in Scotland.

Children

327 Duty regarding the welfare of children

- (1) The Secretary of State must make arrangements for ensuring that –

- (a) the functions of the UK Border Agency (other than the functions of the Director of Border Revenue) are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom, and
 - (b) any services provided by another person pursuant to arrangements which are made by the Secretary of State and relate to the discharge of such a function are provided having regard to that need.
- (2) A person exercising a function of the UK Border Agency (other than a function of the Director of Border Revenue) must, in exercising the function, have regard to any guidance given to the person by the Secretary of State for the purpose of subsection (1).
 - (3) The Director of Border Revenue must make arrangements for ensuring that—
 - (a) the Director’s functions are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom, and
 - (b) any services provided by another person pursuant to arrangements which are made by the Director and relate to the discharge of such a function are provided having regard to that need.
 - (4) A person exercising a function of the Director of Border Revenue must, in exercising the function, have regard to any guidance given to the person by the Secretary of State for the purpose of subsection (3).

Fees

328 Fees

- (1) The Secretary of State may by order provide for fees to be charged in respect of the exercise of functions in connection with immigration or nationality.
- (2) The amount of any fee to be charged must be specified in an order made by the Secretary of State.
- (3) The amount of a fee may be specified as—
 - (a) a fixed amount, or
 - (b) an amount calculable by reference to an hourly rate or other factors specified in the order.
- (4) The amount specified may be an amount that is intended to exceed the costs of exercising the function.
- (5) An amount specified in reliance on subsection (4) may reflect one or more of the following—
 - (a) costs incurred, or to be incurred, in connection with the exercise of the function in circumstances other than those in relation to which the fee is charged;
 - (b) costs incurred, or to be incurred, in connection with the exercise of any other function in connection with immigration or nationality;
 - (c) such other costs (whether incurred or to be incurred) as the Secretary of State thinks appropriate.
- (6) The Secretary of State may by order—
 - (a) provide for exceptions to a requirement to pay a fee;

- (b) confer a discretion to reduce, waive or refund all or part of a fee;
 - (c) make provision about when a fee may or must be paid;
 - (d) make provision about the manner of payment;
 - (e) make provision about the consequences of failure to pay a fee.
- (7) References in this section to a function in connection with immigration or nationality include a reference to a function exercisable by the Secretary of State in connection with entitlement to enter or stay in—
- (a) any of the Islands,
 - (b) a British overseas territory, or
 - (c) a country listed in Schedule 3 to the British Nationality Act 1981.
- (8) References in this section to “costs” are to—
- (a) the costs of the Secretary of State, and
 - (b) the costs of any other person who is entirely or substantially funded from public money.
- (9) An order under subsection (1), (2) or (6) may be made only with the consent of the Treasury.
- (10) A fee under this section may relate to something done outside the United Kingdom.
- (11) Fees payable by virtue of this section may be recovered as a debt due to the Secretary of State.
- (12) This section is without prejudice to—
- (a) section 1 of the Consular Fees Act 1980 (fees for consular acts etc.),
 - (b) section 102 of the Finance (No. 2) Act 1987 (government fees and charges), or
 - (c) any other power to charge a fee.

Notices and directions etc.

329 Notices

- (1) A requirement or power under this Act to give a notice (however expressed) is a requirement or power to give notice in writing.
- (2) But in the case of a grant, or refusal to grant, temporary permission for the purpose of visiting the United Kingdom, the notice required under section 6(2) may, instead of being given in writing, be given orally.

330 Giving of notices

- (1) This section applies to the giving of notice in writing to a person (“P”) under this Act other than the giving of a notice under section 297 (non-interference notices given by the Chief Inspector).
- (2) The notice may be given—
 - (a) by hand to P or P’s representative,
 - (b) by sending it by post to P or P’s representative at the appropriate address,
 - (c) by sending it to a fax number provided by P or P’s representative, or

- (d) subject to section 331, by otherwise transmitting it electronically to P or P's representative.
- (3) For the purposes of subsection (2)(a), the notice may be given –
- (a) where P or P's representative is a body corporate (other than a limited liability partnership), to a director, secretary, manager or other officer of that body;
 - (b) where P or P's representative is a limited liability partnership, to a member of the partnership;
 - (c) where P or P's representative is a partnership, to a partner or a person having the control or management of the partnership business;
 - (d) where P or P's representative is an unincorporated body or association (other than a partnership), to a member of the governing body of that body or association.
- (4) The “appropriate address” means –
- (a) an address provided by P or P's representative for correspondence, or
 - (b) where subsection (5) applies, the usual or last known place of residence, business or employment of P or P's representative.
- (5) This subsection applies where –
- (a) no address or fax number has been provided by P or P's representative for correspondence and there is no relevant electronic address, or
 - (b) an address or fax number has been so provided or there is a relevant electronic address, but it is defective, false or no longer in use by P or P's representative.
- (6) “Relevant electronic address” means an electronic address provided by P in accordance with section 331(2) for the notice in question to be transmitted electronically.
- (7) Where P is under the age of 18 and does not have a representative and there are one or more responsible persons in relation to P, that person or one of those persons is to be treated for the purposes of this section as P's representative.
- (8) A “responsible person” in relation to P means –
- (a) P's parent or guardian, or
 - (b) any person who for the time being takes responsibility for P.
- (9) Where –
- (a) P's whereabouts are not known,
 - (b) subsection (5) applies, and
 - (c) no representative appears to be acting for P,
- the notice is to be deemed to have been given to P when the person giving the notice certifies that paragraphs (a), (b) and (c) apply.
- (10) Where a notice is deemed to have been given under subsection (9), and P or P's representative is subsequently located, P or P's representative must be given, as soon as is reasonably practicable –
- (a) a copy of the notice, and
 - (b) details of when and how it was deemed to have been given under subsection (9).
- (11) In this section, “electronically” and “electronic address” have the same meaning as in section 331.

331 Giving notices electronically other than by fax

- (1) This section applies to the giving of notice by the Secretary of State to a person (other than the First-tier Tribunal) by transmitting it electronically other than by fax.
- (2) For the purposes of section 330, such a notice transmitted electronically other than by fax to a person (“the recipient”), is to be treated as given to the recipient only if the following requirements are met –
 - (a) the recipient must have indicated to the Secretary of State a willingness to receive the notice electronically,
 - (b) that indication must not have been withdrawn, and
 - (c) the notice must have been transmitted to an electronic address specified in the indication.
- (3) An indication to the Secretary of State for the purposes of subsection (2)(a) –
 - (a) must be given to the Secretary of State in such manner as the Secretary of State may require;
 - (b) may be a general indication or one that is limited to notices of particular descriptions;
 - (c) must be accompanied by such other information as the Secretary of State requires for the making of the transmission;
 - (d) may be varied or withdrawn at any time by a notice given to the Secretary of State in such manner as the Secretary of State may require.
- (4) Subject to subsections (2) and (3), the Secretary of State may determine the manner in which the transmission is made, and the form in which the notice is transmitted.
- (5) In this section –
 - “electronically” means by means of an electronic communication;
 - “electronic address” includes any number or address used for the purposes of receiving electronic communications;
 - “electronic communication” means an electronic communication within the meaning of the Electronic Communications Act 2000.

332 Directions

- (1) A requirement or power under this Act to direct or give a direction (however expressed) is a requirement or power to give a direction in writing.
- (2) But subsection (1) does not apply to –
 - (a) section 54(2) (post-arrival medical examinations: directions by an appropriate national authority),
 - (b) section 57(1) (post-arrival medical examinations: directions by a registered medical practitioner),
 - (c) section 87(4) or 88(4) (court or Secretary of State directing that a person not be detained),
 - (d) section 114(6) (directions by contractors etc. in relation to officers of removal centres etc.),
 - (e) section 117(4)(c) (directions by Controller),
 - (f) section 157(3) (general power of seizure: directions by constables), or
 - (g) paragraph 5(1) of Schedule 4 (sitting directions for SIAC).

- (3) A power under this Act to direct or give a direction (however expressed) includes power to amend or cancel the direction by a subsequent direction.

333 Proof of documents

- (1) A document purporting to be an expulsion order, notice, direction or certificate given, made or issued by the Secretary of State for the purposes of this Act and to be signed by or on behalf of the Secretary of State –
- (a) is to be received in evidence, and
 - (b) unless the contrary is proved, is to be taken to have been so given, made or issued by the Secretary of State.
- (2) A document bearing a certificate purporting to be signed by or on behalf of the Secretary of State and stating that the document is a true copy of an expulsion order, notice, direction or certificate given, made or issued by the Secretary of State for the purposes of this Act, is –
- (a) in England and Wales, and Northern Ireland, to be evidence of that order, notice, direction or certificate in any legal proceedings or other proceedings under this Act;
 - (b) in Scotland, to be sufficient evidence of that order, notice, direction or certificate in such legal or other proceedings.

Orders, regulations and rules

334 Orders, regulations and rules

- (1) This section applies to –
- (a) orders and regulations made by the Secretary of State, or by the Secretary of State and the Treasury jointly, under this Act,
 - (b) regulations made other than by the Secretary of State under section 54(4) (directions by appropriate national authorities to health bodies), and
 - (c) rules made by the Lord Chancellor under section 203 (procedure rules relating to SIAC).
- (2) Subject to subsection (3), those orders, regulations and rules are to be made by statutory instrument.
- (3) Regulations made by the Department of Health, Social Services and Public Safety in Northern Ireland under section 54(4) are to be made by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (4) The orders, regulations and rules to which this section applies –
- (a) may make provision generally or only for specified cases, purposes or circumstances or areas;
 - (b) may make different provision for different cases, purposes, circumstances or areas;
 - (c) may make incidental, supplementary, consequential, transitional, transitory or saving provision.
- (5) Without prejudice to the generality of subsection (4), the provision which may be made by such orders, regulations and rules may be made by reference to nationality.

- (6) Subsection (5) does not apply to regulations made under section 54(4) (directions to health bodies).
- (7) This section does not apply to expulsion orders.

335 Parliamentary control

- (1) A statutory instrument containing any of the following is subject to annulment in pursuance of a resolution of either House of Parliament –
 - (a) an order under this Act,
 - (b) regulations made by the Secretary of State under this Act, or
 - (c) rules under section 203 (procedure rules relating to SIAC).
- (2) But subsection (1) does not apply to –
 - (a) a statutory instrument containing (whether alone or with other provision) an order under section 25 (juxtaposed controls) if a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament before it is made,
 - (b) a statutory instrument containing only an Order in Council under section 345(5) (extension to the Islands),
 - (c) a statutory instrument containing only an order under section 346(2) (commencement), or
 - (d) a statutory instrument to which subsection (3) applies.
- (3) A statutory instrument containing (whether alone or with other provision) an order, or rules or regulations, mentioned in subsection (4) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (4) The orders, rules and regulations referred to in subsection (3) are –
 - (a) an order under section 9 (grant of immigration permission by order);
 - (b) regulations under section 60 (regulations concerning retention of biometric information);
 - (c) regulations under section 61 (regulations concerning biometric immigration documents);
 - (d) an order under section 171(2) (power to amend the offences listed in Schedule 1);
 - (e) regulations under section 177(2)(b)(ii) (power to prescribe persons to be visited in order to be an application for the purpose of visiting);
 - (f) an order under section 189(1) (power to add countries to list in Schedule 2);
 - (g) an order under section 194(3) (power to add countries to list in Schedule 3);
 - (h) rules under section 203 (procedure rules etc. in relation to SIAC);
 - (i) regulations under section 210(4)(c) (power to prescribe criteria for eligibility for support under that section);
 - (j) an order under section 211(3) (power to prescribe circumstances where late qualifying protection application does not prevent provision of support under section 206);
 - (k) an order under section 239(2) (order concerning who may supply information under that section);
 - (l) an order under section 242(2) (order concerning to whom information may be supplied under that section);

- (m) an order under section 244(4) (order concerning the information subject to the duty to share under that section);
 - (n) an order under section 250(1), (3) or (4) (power to specify what are “immigration purposes” etc. in Part 12 (information));
 - (o) regulations under section 278 (authority-to-carry schemes);
 - (p) an order under section 279 (power to make provision about the application of Part 14 (carriers’ liability) to certain trains);
 - (q) an order under section 311(4) (power to amend the definition of “registration card” in that section);
 - (r) an order under section 328(1) (power to provide for a fee to be charged);
 - (s) an order under subsection (2) of section 328 (power to specify the amount of a fee) which—
 - (i) specifies the amount of a fee in reliance on subsection (4) of that section (power to specify an amount exceeding the costs of exercising the function), and
 - (ii) in specifying that amount is not varying the amount of a fee specified by a previous order under subsection (2) of that section;
 - (t) an order under subsection (2) of section 328 (power to specify the amount of a fee) which—
 - (i) specifies the amount of a fee in reliance on subsection (4) of that section (power to specify an amount exceeding the costs of exercising the function), and
 - (ii) in specifying that amount is increasing the amount of a fee specified by a previous order under subsection (2) of that section where the change in value condition is not met;
 - (u) an order under section 341 (power to make consequential amendments etc.).
- (5) For the purposes of subsection (4)(t)(ii), the change in value condition is met if the Secretary of State thinks that it is expedient to increase the amount of the fee in consequence of a change in the value of money.
- (6) A statutory instrument containing regulations made by the Scottish Ministers under section 54(4) (directions by an appropriate national authority to a health body) is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (7) A statutory instrument containing regulations made by the Welsh Ministers under section 54(4) (directions by an appropriate national authority to a health body) is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (8) A statutory rule containing regulations made by the Department of Health, Social Services and Public Safety in Northern Ireland under section 54(4) (directions by an appropriate national authority to a health body) is subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).

336 Procedure etc. for the Rules

- (1) The Secretary of State must lay before Parliament—
 - (a) statements of the Rules, and
 - (b) statements of any changes made to those Rules.

- (2) If a statement laid before either House of Parliament under this section is disapproved by a resolution of that House passed during the period of 40 days beginning with the date on which it was laid –
 - (a) the Secretary of State must as soon as is reasonably practicable make changes or further changes in the Rules, and
 - (b) the Secretary of State must lay before Parliament a statement of those changes before the end of the period of 40 days beginning with the date of the resolution.
- (3) In calculating any period of days for the purposes of subsection (2), no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.
- (4) Subsections (4) and (5) of section 334 (power to make different provision for different cases etc.) apply to the Rules as they apply to the orders, regulations and rules to which that section applies.

PART 20

FINAL PROVISIONS

337 Meaning of “document”, “valid”, “current” and “false”

- (1) In this Act, “document” includes a stamp, sticker, label or card and any other method of recording information (whether in writing or by the use of electronic or other technology or by a combination of methods).
- (2) For the purposes of this Act, a document is “valid” in relation to a person if –
 - (a) it is current,
 - (b) it relates to the person, and
 - (c) it is not false.
- (3) For the purposes of this Act, a document is “current” if –
 - (a) the period of validity of the document has commenced,
 - (b) that period has not expired, and
 - (c) the document has not been cancelled.
- (4) For the purposes of this Act, a document is a false document only if it is false within the meaning of Part 1 of the Forgery and Counterfeiting Act 1981 (see section 9(1) of that Act).

338 When immigration or transit permission is “current”

For the purposes of this Act, immigration or transit permission is “current” if –

- (a) the period for which the permission is granted has commenced,
- (b) that period has not expired or any extension of it under section 13(2) (extension pending decision on new application) has not ended, and
- (c) the permission has not been cancelled or, if it has been cancelled, any period during which the person is treated under section 16(2) (person to have permission following cancellation and pending appeal) as having the permission has not ended.

339 Other definitions

- (1) In this Act, unless express provision is made to the contrary –
- “biometric information” means information about external physical characteristics (which may include, in particular –
- (a) fingerprints, and
 - (b) information about features of the iris or any other part of the eye);
- “captain” means –
- (a) in the case of a ship (other than a hovercraft), the master of the ship,
 - (b) in the case of a hovercraft or aircraft, its commander, and
 - (c) in the case of a train, the train manager of the train;
- “child” means a person under the age of 18 (and references to “children” are to be read accordingly);
- “Convention rights” has the same meaning as in the Human Rights Act 1998;
- “the Council of Europe Convention on Trafficking in Human Beings” means the Council of Europe Convention on Action against Trafficking in Human Beings (done at Warsaw on 16 May 2005);
- “country” includes any territory;
- “crew”, in relation to a ship or aircraft, means all persons actually employed in the working or service of the ship or aircraft, including the captain;
- “crew”, in relation to a train, means all persons on the train who are actually employed in its working or service, including the train manager;
- “customs function” has the meaning given by Part 1 of the Borders, Citizenship and Immigration Act 2009;
- “designated customs official” has the meaning given by Part 1 of the Borders, Citizenship and Immigration Act 2009;
- “enactment” means an enactment contained in, or in an instrument made under –
- (a) an Act of Parliament,
 - (b) an Act of the Scottish Parliament,
 - (c) a Measure or Act of the National Assembly for Wales, or
 - (d) Northern Ireland legislation;
- “general customs function” has the meaning given by Part 1 of the Borders, Citizenship and Immigration Act 2009;
- “the Human Rights Convention” has the same meaning as “the Convention” in the Human Rights Act 1998;
- “identity document”, in relation to a person, means –
- (a) a passport, or
 - (b) other document,
- which satisfactorily establishes both the person’s identity and nationality;
- “immigration document” means –
- (a) a document used for confirming the entitlement of a person to enter, stay and work in the United Kingdom by virtue of any provision made under section 2(2) of the European Communities Act 1972,

- (b) a document which is given in exercise of functions under this Act and records information about immigration permission or immigration bail granted to a person, or
 - (c) a registration card (within the meaning of section 311);
- “international railway station” means a railway station where a train stops for the purpose of the embarkation or disembarkation of passengers;
- “the Islands” means the Channel Islands and the Isle of Man;
- “items subject to legal privilege” has the same meaning –
- (a) in England and Wales, as in PACE,
 - (b) in Northern Ireland, as in the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I.12)), and
 - (c) in Scotland, as in section 412 of the Proceeds of Crime Act 2002;
- “medical examination” includes medical test;
- “member of the crew” in relation to a ship, aircraft or train is to be construed in accordance with the appropriate definition of “crew” (see above);
- “modify” includes add to, repeal or revoke or otherwise amend (and references to “modification” are to be read accordingly);
- “national” includes citizen;
- “nationality” includes citizenship;
- “outer clothing” means –
- (a) any item of clothing that is being worn otherwise than wholly next to the skin or immediately over a garment being worn as underwear, or
 - (b) headgear, footwear, gloves or a scarf;
- “PACE” means the Police and Criminal Evidence Act 1984;
- “port” includes an airport or hoverport;
- “the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and its Protocol;
- “reserved matter” has the same meaning as in the Scotland Act 1998;
- “ship” includes a hovercraft and every description of vessel used in navigation;
- “small aircraft” means an aircraft which has an operating weight of less than 5,700 kilogrammes;
- “small ship” means a ship (other than a hovercraft) which has a gross tonnage of less than 500 tonnes;
- “train” means a train engaged on an international service;
- “train manager”, in relation to a train, means the person designated as train manager of the train by the person operating the international service on which the train is engaged;
- “travel document”, in relation to a person, means an identity document in relation to the person which enables the person to travel;
- “United Kingdom passport” means a passport issued by –
- (a) the Government of the United Kingdom,
 - (b) the Lieutenant-Governor of any of the Islands, or
 - (c) the Government of any territory which is for the time being a British overseas territory.
- (2) For the purposes of the definition of “small aircraft”, “operating weight” means the maximum total weight of the aircraft and its contents at which the aircraft

may take off anywhere in the world, in the most favourable circumstances, in accordance with the certificate of airworthiness in force in respect of the aircraft.

- (3) References in this Act to the functions of the UK Border Agency are to—
 - (a) the functions of the Secretary of State, or of designated immigration officials, relating to immigration or nationality,
 - (b) the customs functions of the Secretary of State,
 - (c) the functions of the Director of Border Revenue, and
 - (d) the functions of designated customs officials.
- (4) In subsection (3)(a), the reference to the functions of the Secretary of State relating to immigration or nationality does not include the functions of the Secretary of State under section 54, 55 or 56 by virtue of being an appropriate national authority within the meaning of section 54 (functions relating to post-arrival medical examinations).
- (5) In this Act, “immigration and nationality functions” means functions exercisable under any of the following—
 - (a) this Act (other than the functions of the Secretary of State under section 54, 55 or 56 referred to in subsection (4));
 - (b) the British Nationality Act 1981;
 - (c) the Hong Kong Act 1985;
 - (d) the Hong Kong (War Wives and Widows) Act 1996;
 - (e) the British Nationality (Hong Kong) Act 1997.
- (6) When construing references in this Act to a time when an appeal could be brought, any possibility of an appeal out of time with permission is to be ignored.
- (7) A reference in this Act to being the owner of a ship, aircraft, train or vehicle includes a reference to being any of a number of persons who jointly own it.
- (8) References in this Act (however expressed) to arriving by ship in the United Kingdom include arrival by any floating structure; and references (however expressed) to disembarkation are to be construed accordingly.
- (9) But the provisions of this Act which specifically relate to members of the crew of a ship are not, because of subsection (8), to apply in the case of any floating structure which is not a ship.
- (10) See also Schedule 7 (index of defined expressions).

340 Money

- (1) There is to be paid out of money provided by Parliament—
 - (a) any expenditure of the Secretary of State or the Lord Chancellor in connection with a provision of this Act, and
 - (b) any increase attributable to this Act in the sums payable under any other Act out of money provided by Parliament.
- (2) A sum received by the Secretary of State in connection with a provision of this Act must be paid into the Consolidated Fund.

341 Power to make consequential amendments etc.

- (1) The Secretary of State may by order make such provision amending, repealing or revoking any enactment to which this section applies as the Secretary of State considers necessary or expedient in consequence of any provision made by or under this Act.
- (2) This section applies to—
 - (a) any enactment passed or made before the passing of this Act,
 - (b) any enactment contained in, or in an instrument made under, this Act, and
 - (c) any enactment passed or made before the end of the session after that in which this Act is passed.
- (3) Amendments, repeals and revocations made under this section are additional, and without prejudice, to those made by or under any other provision of this Act.

342 Transitional, transitory or saving provision

- (1) The Secretary of State may by order make such transitional, transitory or saving provision as the Secretary of State considers necessary or expedient in connection with the coming into force of any provision made by or under this Act.
- (2) An order may, in particular, make such adaptations of provisions brought into force as appear to be necessary or expedient in consequence of other provisions of this Act not yet having come into force.
- (3) Transitional, transitory or saving provision made under this section are additional, and without prejudice, to those made by or under any other provision of this Act.
- (4) Schedule 5 (transitional, transitory and saving provision) has effect.
- (5) Nothing in Schedule 5 affects the power to make transitional, transitory or saving provision under subsection (1); and an order under that subsection may modify any provision made by that Schedule.

343 Repeals and revocations

Schedule 6 (repeals and revocations, including repeals and revocations of spent enactments) has effect.

344 Index of defined expressions

Schedule 7 (which contains an index of defined expressions) has effect.

345 Extent

- (1) Subject to the following provisions of this section, this Act extends to—
 - (a) England and Wales,
 - (b) Scotland, and
 - (c) Northern Ireland.

- (2) Sections 139 and 140 (non-immigration bail: failure to attend at police station etc.) do not extend to Scotland or Northern Ireland.
- (3) Section 167 (forfeiture of property where person convicted) does not extend to Scotland.
- (4) An amendment, repeal or other modification of an enactment by this Act has the same extent as the enactment or relevant part of the enactment to which it relates (ignoring extent by virtue of an Order in Council).
- (5) Her Majesty may by Order in Council provide for any of the provisions of this Act to extend, with or without modifications, to any of the Islands.
- (6) Subsection (5) does not apply in relation to the extension to a place of a provision which extends there by virtue of subsection (4).

346 Commencement

- (1) The following provisions come into force on the day on which this Act is passed –
 - (a) sections 334 and 335 (orders and procedure etc.);
 - (b) sections 341 and 342 (power to make consequential and transitional provision etc.);
 - (c) section 345 (extent);
 - (d) this section;
 - (e) section 347 (short title).
- (2) The remaining provisions of this Act come into force in accordance with provision made by order of the Secretary of State.

347 Short title

This Act may be cited as the Immigration Act 2009.

SCHEDULES

SCHEDULE 1

Section 171

LISTED OFFENCES REFERRED TO IN SECTION 171

Bigamy

- 1 Offence under section 57 of the Offences against the Person Act 1861 (bigamy).
- 2 Scottish common law offence of bigamy.

Conspiracy to defraud

- 3 Common law offence of conspiracy (in relation to conspiracy to defraud).
- 4 Scottish common law offence of conspiracy to defraud.

Forgery, false statements and documents etc.

- 5 Offence under any of the following provisions of the Forgery and Counterfeiting Act 1981 (c. 45) –
 - (a) section 1 (forgery);
 - (b) section 2 (copying false instrument);
 - (c) section 3 (using false instrument);
 - (d) section 4 (using copy of false instrument);
 - (e) section 5(1) and (3) (false documents).
- 6 Offence under section 53 of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (knowingly giving false information to district registrar etc.).
- 7 Offence under section 25 of the Identity Cards Act 2006 (possessing false identity document).

Fraud

- 8 Offence under any of the following provisions of the Fraud Act 2006 –
 - (a) section 1 (fraud);
 - (b) section 6 (possession etc. of articles for use in frauds);
 - (c) section 7 (making or supplying articles for use in frauds);
 - (d) section 11 (obtaining services dishonestly).
- 9 Scottish common law offence of –
 - (a) fraud, or
 - (b) uttering.

Perjury (and related matters)

- 10 Offence under any of the following provisions of the Perjury Act 1911 –
 (a) section 3 or 4 (false statements);
 (b) section 7 (aiding, abetting etc.) if it relates to an offence under section 3 or 4 of that Act.
- 11 Offence under any of the following provisions of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)) –
 (a) Article 8 or 9 (false statements);
 (b) Article 12 (aiding, abetting etc.) if it relates to an offence under Article 8 or 9 of that Order.

Theft (and related matters)

- 12 Offence under any of the following provisions of the Theft Act 1968 –
 (a) section 1 (theft);
 (b) section 17 (false accounting);
 (c) section 22 (handling stolen goods).
- 13 Offence under any of the following provisions of the Theft Act (Northern Ireland) 1969 (c. 16) (N.I.) –
 (a) section 1 (theft);
 (b) section 17 (false accounting);
 (c) section 21 (handling stolen goods).
- 14 Scottish common law offence of –
 (a) theft, or
 (b) reset.

Trafficking

- 15 Offence under section 57, 58 or 59 of the Sexual Offences Act 2003 (trafficking for sexual exploitation).
- 16 Offence under section 22 of the Criminal Justice (Scotland) Act 2003 (asp 7) (trafficking in prostitution).

SCHEDULE 2

Section 188

LIST OF COUNTRIES REFERRED TO IN SECTION 188

<i>Country or part of country</i>	<i>Description of person by reference to which country or part is listed</i>
The Republic of Albania	
Bolivia	
Bosnia-Herzegovina	

<i>Country or part of country</i>	<i>Description of person by reference to which country or part is listed</i>
Brazil	
Ecuador	
Gambia	Men
Ghana	Men
India	
Jamaica	
Kenya	Men
Liberia	Men
Macedonia	
Malawi	Men
Mali	Men
Mauritius	
The Republic of Moldova	
Mongolia	
Montenegro	
Nigeria	Men
Peru	
Serbia	
Sierra Leone	Men
South Africa	

SCHEDULE 3

Sections 194 and 195

LIST OF COUNTRIES REFERRED TO IN SECTIONS 194 AND 195

Austria
 Belgium
 Bulgaria
 Republic of Cyprus
 Czech Republic
 Denmark
 Estonia
 Finland
 France

Germany
Greece
Hungary
Iceland
Ireland
Italy
Latvia
Lithuania
Luxembourg
Malta
Netherlands
Norway
Poland
Portugal
Romania
Slovak Republic
Slovenia
Spain
Sweden

SCHEDULE 4

Section 199

THE SPECIAL IMMIGRATION APPEALS COMMISSION

PART 1

MEMBERSHIP

Appointment

- 1 The Lord Chancellor must appoint the members of SIAC.

Terms

- 2 (1) A member of SIAC –
 (a) is to hold and vacate office in accordance with the terms of the member's appointment;
 (b) may resign by giving notice to the Lord Chancellor.
 (2) A member of SIAC is, on ceasing to hold office, eligible for reappointment.

Chair

- 3 The Lord Chancellor must appoint a member of SIAC to be its chair.

Remuneration etc.

- 4 The Lord Chancellor –
 (a) may pay remuneration and allowances to members of SIAC,

- (b) may pay a pension, allowance or gratuity to or in respect of a member of SIAC,
- (c) may pay sums towards the provision of a pension, allowance or gratuity to or in respect of a member of SIAC, and
- (d) may pay compensation to a person who ceases to be a member of SIAC if it appears to the Lord Chancellor that there are special circumstances which make it right that the person should receive compensation.

PART 2

PROCEEDINGS

Sittings

- 5 (1) SIAC is to sit at such times and places as the Lord Chancellor may direct.
- (2) SIAC may sit in two or more divisions.
- (3) The chair of SIAC or (in the chair's absence) such other member as the chair may nominate must –
- (a) preside at sittings of SIAC, and
 - (b) report its decisions.

Exercise of jurisdiction

- 6 (1) SIAC is to be regarded as duly constituted if it consists of 3 members of whom –
- (a) at least one falls within sub-paragraph (2), and
 - (b) at least one is or has been a judge of the First-tier Tribunal, or of the Upper Tribunal, who is assigned to a chamber with responsibility for immigration and asylum matters.
- (2) A member falls within this sub-paragraph if the member –
- (a) holds or has held high judicial office (as defined in section 60(2) of the Constitutional Reform Act 2005), or
 - (b) is or has been a member of the Judicial Committee of the Privy Council.

PART 3

MISCELLANEOUS

Staff

- 7 The Lord Chancellor may appoint staff for SIAC.

Expenses

- 8 The Lord Chancellor must meet –
- (a) the remuneration of persons appointed under paragraph 7, and
 - (b) such expenses of SIAC as the Lord Chancellor thinks fit.

SCHEDULE 5

Section 342

TRANSITORY, TRANSITIONAL AND SAVING PROVISION

Offences: sentencing

- 1 In relation to an offence which is committed under a provision listed in column A of the following Table before the commencement of section 154(1) of the Criminal Justice Act 2003 (limit on magistrates' courts powers to impose imprisonment), the reference to 12 months in relation to conviction in England and Wales in the provision listed in column B of the Table is to be read as a reference to 6 months –

<i>Column A</i>	<i>Column B</i>
Section 79 (failure to comply with a requirement under section 76 to facilitate removal)	Section 79(2)
Section 96 (assisting a person to abscond)	Section 96(3)
Section 224 (support: dishonest representations)	Section 224(3)
Section 249 (wrongful disclosure of information)	Section 249(5)
Section 256 (employment of illegal workers)	Section 256(4)
Section 302 (assisting illegal immigration)	Section 302(8)
Section 303 (assisting protection applicant to enter the UK)	Section 303(5)
Section 304 (trafficking people for exploitation)	Section 304(5)
Section 306 (failure to possess passport etc. at permission interview on arrival)	Section 306(10)
Section 307 (failure to possess passport etc. at permission interview after entry)	Section 307(11)
Section 309 (deception)	Section 309(7)
Section 311 (falsifying or altering etc. a registration card)	Section 311(5) and (6)
Section 312 (possession of immigration stamp or vignette)	Section 312(6)

- 2 In relation to an offence which is committed under a provision listed in column A of the following Table before the commencement of section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for summary offences), the reference to 51 weeks in the provision listed in column B of the Table is to be read as a reference to 6 months –

<i>Column A</i>	<i>Column B</i>
Section 37 (failure to comply with duties imposed by section 28)	Section 37(2)
Section 38 (failure to supply information in connection with arrival or departure etc.)	Section 38(3)
Section 39(1)(a) (failure to comply with a requirement to supply information under section 32)	Section 39(4)
Section 52 (refusal to be examined or provide information etc.)	Section 52(2)
Section 77 (breach of expulsion order)	Section 77(7)
Section 78 (failure by carriers etc. to comply with removal directions)	Section 78(2)
Section 95 (absconding from detention)	Section 95(2)
Section 97 (failure by captain to prevent disembarkation)	Section 97(2)
Section 125 (failure to submit to medical examination or provide sample)	Section 125(2)
Section 126 (introduction of alcohol & other articles into removal centre etc.)	Section 126(6)
Section 238(1)(c) (failure to comply with a section 237 requirement)	Section 238(3)
Section 301 (illegal presence in the UK)	Section 301(6)
Section 310 (altering documents etc.)	Section 310(4)
Section 313 (failure to comply with conditions of permission or immigration bail etc.)	Section 313(4)
Section 314 (impersonation)	Section 314(2)
Section 315(1) (assault)	Section 315(3)
Section 315(2) (obstruction etc.)	Section 315(4)

- 3 In relation to an offence which is committed under a provision listed in column A of the following Table before the commencement of section 281(5) of the Criminal Justice Act 2003, the reference to 51 weeks in the provision listed in column B of the Table is to be read as a reference to 3 months –

<i>Column A</i>	<i>Column B</i>
Section 39(1)(b) or (c) (failure to comply with requirement to supply information under section 33 or 34)	Section 39(5)
Section 238(1)(a) or (b) (failure to comply with requirement to supply information under section 234 or 235)	Section 238(3)

SCHEDULE 6

Section 343

REPEALS AND REVOCATIONS

PART 1

PERMISSION TO ENTER & STAY IN THE UK

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Immigration Act 1971 (c. 77)	Section 1(1), (2) and (4). Sections 2 and 2A. Section 3(1) to (3) and (7) to (9). Sections 3A, 3B, 3C and 3D. Section 4(1), (3) and (4). Sections 8 and 8A. Section 10(1), (1A) and (1B). Section 11(1) and (5). Section 33(5).
British Nationality Act 1981 (c. 61)	Section 39(2) and (4). In Schedule 4, paragraphs 4, 5 and 7(a)(ii).
Immigration Act 1988 (c. 14)	Section 2. Section 3(1) and (3). Section 4. Sections 7 and 8. In the Schedule, paragraph 1.
Immigration Act 1988 (Commencement No.1) Order 1988 (S.I. 1988/1133)	Article 3(1).
Asylum and Immigration Appeals Act 1993 (c. 23)	Sections 1 and 2.
Asylum and Immigration Act 1996 (c. 49)	In Schedule 2, paragraph 1(1).
Immigration and Asylum Act 1999 (c. 33)	Sections 1 to 3. Sections 6 and 7. Sections 16 and 17. Section 41.

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Immigration and Asylum Act 1999 (c. 33) – <i>cont.</i>	In Schedule 14 – (a) paragraph 44(1), (b) paragraph 45, (c) paragraph 47(2) and (3), and (d) paragraph 48. In Schedule 15, paragraph 1.
Nationality, Immigration and Asylum Act 2002 (c. 41)	Section 10. Section 62(8). Section 76(1) to (6). Section 109. Section 118.
Nationality, Immigration and Asylum Act 2002 (Consequential and Incidental Provisions) Order 2003 (S.I. 2003/1016)	In the Schedule, paragraph 1.
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19)	Section 8.
Immigration, Asylum and Nationality Act 2006 (c. 13)	Section 11(1) to (5). Section 30. Section 50(1), (2), (3)(a) and (5). Section 57(1).
UK Borders Act 2007 (c. 30)	Section 16.
Borders, Citizenship and Immigration Act 2009 (c. 11)	Section 50.

PART 2

IMMIGRATION CONTROLS

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Immigration Act 1971 (c. 77)	In Schedule 2, paragraphs 5, 26 and 27(1).
British Nationality Act 1981 (c. 61)	In Schedule 4, paragraph 2.
Immigration and Asylum Act 1999 (c. 33)	Sections 25 and 26. In Schedule 14, paragraph 64.
Nationality, Immigration and Asylum Act 2002	Section 141.
UK Borders Act 2007	Section 1.

PART 3

POWERS TO EXAMINE ETC.

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Immigration Act 1971 (c. 77)	In Schedule 2— (a) paragraphs 1, 2, 2A and 3, (b) paragraph 4(1), (2), (3) and (4), (c) paragraphs 6 and 7, and (d) paragraph 27(1).
Immigration Act 1988 (c. 14)	In the Schedule, paragraphs 6, 7 and 8.
The Channel Tunnel (International Arrangements) Order 1993 (S.I. 1993/1813)	In Schedule 5, paragraph 1.
Asylum and Immigration Act 1996 (c. 49)	In Schedule 2, paragraph 5(1).
Immigration and Asylum Act 1999 (c. 33)	In Schedule 14, paragraphs 56 to 59.
Nationality, Immigration and Asylum Act 2002 (c. 41)	Section 119. In Schedule 7, paragraph 2.
Health Protection Agency Act 2004 (c. 17)	In Schedule 3, paragraph 3.
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19)	Section 18.
Immigration, Asylum and Nationality Act 2006 (c. 13)	Sections 40 and 41. Section 42(2).

PART 4

POWER TO OBTAIN BIOMETRIC INFORMATION

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Immigration Act 1971	In Schedule 2— (a) paragraph 4(5), and (b) paragraph 18(2) and (2A).
Immigration and Asylum Act 1999	Sections 141 to 144. In Schedule 14, paragraph 61.
Anti-terrorism, Crime and Security Act 2001 (c. 24)	Section 36.
Nationality, Immigration and Asylum Act 2002	Section 66(3)(n). Sections 126, 127 and 128(1). Section 153(2).
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19)	Section 15. Section 35(2)(c).

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Immigration, Asylum and Nationality Act 2006 (c. 13)	Section 28. Section 29.
UK Borders Act 2007 (c. 30)	Sections 5 to 14. Section 15(1).

PART 5

EXPULSION ORDERS & REMOVAL ETC. FROM THE UK

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Immigration Act 1971 (c. 77)	Section 3(5) and (6). Sections 5, 6 and 7. Section 8B. In Schedule 2, paragraphs 8 to 15. In Schedule 3, paragraph 1.
Criminal Justice Act 1972 (c. 71)	In Schedule 5, the entry relating to the Immigration Act 1971.
Magistrates' Courts Act 1980 (c. 43)	In Schedule 7, paragraph 104.
Criminal Justice Act 1982 (c. 48)	In Schedule 15, paragraph 15.
Immigration Act 1988 (c. 14)	In the Schedule – (a) paragraph 2, and (b) paragraph 9(1) and (2).
Asylum and Immigration Act 1996 (c. 49)	In Schedule 2, paragraphs 2 and 6.
Immigration and Asylum Act 1999 (c. 33)	Sections 8 to 10. Section 14. In Schedule 14, paragraph 44(2).
Nationality, Immigration and Asylum Act 2002 (c. 41)	Sections 58 and 59. Section 73(1) to (4). Section 74. Section 76(7). Sections 77, 78 and 79. In Schedule 7, paragraph 4.
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19)	In section 35 – (a) subsection (1), (b) subsection (2) (other than paragraph (c)), and (c) subsections (3) and (4), and (7) to (11).
Civil Partnership Act 2004 (c. 33)	In Schedule 27, paragraph 37.
Immigration, Asylum and Nationality Act 2006	Sections 47 and 48.
UK Borders Act 2007	Sections 32 to 34. Section 35(2). Sections 37 and 38.

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Criminal Justice and Immigration Act 2008 (c. 4)	Section 146.

PART 6

POWERS TO DETAIN & IMMIGRATION BAIL

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Immigration Act 1971 (c. 77)	In Schedule 2 – (a) paragraph 16, (b) paragraph 18(1), (3) and (4), (c) paragraphs 19 to 23, (d) paragraph 24(2) and (3), (e) paragraphs 29 to 32, and (f) paragraph 33(2) and (3). In Schedule 3 – (a) paragraph 2, and (b) paragraphs 8 to 10.
Criminal Justice Act 1982 (c. 48)	In Schedule 10, paragraphs 1 and 2.
Immigration Act 1988 (c. 14)	In the Schedule, paragraph 10(1).
Asylum and Immigration Act 1996 (c. 49)	In Schedule 2, paragraphs 8 to 13.
Access to Justice Act 1999 (c. 22)	In Schedule 13, paragraph 70.
Immigration and Asylum Act 1999 (c. 33)	Section 54. Section 140. In Schedule 14, paragraphs 60, 62, 63, 67 and 68.
Nationality, Immigration and Asylum Act 2002 (c. 41)	Section 62(1) to (7). Section 63 and 64. Section 67. Section 69. Section 73(5). In Schedule 7, paragraphs 6 to 8.
Courts Act 2003 (c. 39)	In Schedule 8, paragraphs 149 and 150(4).
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19)	Section 34. In Schedule 2, paragraph 1.
Immigration, Asylum and Nationality Act 2006 (c. 13)	Section 42(3) and (4). Section 53.
UK Borders Act 2007 (c. 30)	Section 2(1) to (3) and (5). Sections 3 and 4. Section 36.
Criminal Justice and Immigration Act 2008	Sections 130 to 137.
Borders, Citizenship and Immigration Act 2009 (c. 11)	Section 52.

PART 7

DETAINED PERSONS & REMOVAL CENTRES ETC.

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Immigration and Asylum Act 1999 (c. 33)	Sections 147 to 151. Section 152(1) to (4). Sections 153 to 159. Schedule 11. Schedule 12. Schedule 13.
Nationality, Immigration and Asylum Act 2002 (c. 41)	Section 62(14). Section 65. In section 66 – (a) subsection (1), (b) in subsection (3), paragraphs (a) to (m).
Immigration (Short-term Holding Facilities) Regulations 2002 (S.I. 2002/2538)	The whole Regulations.
Agricultural Holdings (Scotland) Act 2003 (asp 11)	In the Schedule, paragraph 52.
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19)	In Schedule 2, paragraph 15.
Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078 (S. 9))	In Schedule 1, paragraph 5.
Immigration, Asylum and Nationality Act 2006 (c. 13)	Section 59(1).
UK Borders Act 2007 (c. 30)	Section 2(6).
Borders, Citizenship and Immigration Act 2009 (c. 11)	Section 25.

PART 8

POWERS TO STOP, ARREST, ENTER & SEARCH ETC.

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Immigration Act 1971 (c. 77)	Sections 28A to 28L. In Schedule 2, paragraphs 25A to 25E.
Immigration and Asylum Act 1999	Section 109A. Section 109B. Sections 128 to 139.
Proceeds of Crime Act 2002 (c. 29)	In Schedule 11, paragraph 6.

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Nationality, Immigration and Asylum Act 2002 (c. 41)	Section 144(3) to (7). Section 150. Section 152. Section 153(1). Section 154. Section 155.
Courts Act 2003 (c. 39)	In Schedule 8, paragraph 148.
Asylum and Immigration (Treatment of Claimants etc.) Act 2004 (c. 19)	Section 2(10), (11). Section 14(1) to (3). Section 17. Section 35(5) and (6).
Serious Organised Crime and Police Act 2005 (c. 15)	In Schedule 7, paragraphs 53 and 63.
Immigration, Asylum and Nationality Act 2006 (c. 13)	Section 21(3).
Identity Cards Act 2006 (c. 15)	Section 30(3).
Fraud Act 2006 (c. 35)	In Schedule 1, paragraph 35.
UK Borders Act 2007 (c. 30)	Section 18. Sections 23 to 28. Sections 44 to 46.

PART 9

APPEALS AGAINST IMMIGRATION DECISIONS

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Immigration Act 1971 (c. 77)	In Schedule 2, paragraph 25.
Anti-terrorism, Crime and Security Act 2001 (c. 24)	Section 34.
Nationality, Immigration and Asylum Act 2002	Section 72. Sections 81 to 92. Sections 94 to 99. Section 104. Sections 106 to 108. Section 112(3A) to (5B) and (7). Section 113. Section 115. Schedule 4. In Schedule 7, paragraph 5.
Asylum (Designated States) Order 2003 (S.I. 2003/970)	The whole Order.
Asylum (Designated States) (No. 2) Order 2003 (S.I. 2003/1919)	The whole Order.
Race Relations Order (Amendment) Regulations (Northern Ireland) 2003 (S.R. 2003/341)	Article 60.

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19)	Section 26(1) to (4). Sections 27 to 31. Section 33. Schedule 1. In Schedule 2, paragraphs 17 to 23. Schedule 3.
Constitutional Reform Act 2005 (c. 4)	In Schedule 7, in paragraph 4, in part A of the list, the entries for sections 81, 106 and 107 of, and Schedule 4 to, the Nationality, Immigration and Asylum Act 2002. In Schedule 17, paragraph 34.
Asylum and Immigration Tribunal (Judicial Titles) Order 2005 (S.I. 2005/227)	Article 3.
Asylum (Designated States) Order 2005 (S.I. 2005/330)	The whole Order.
Asylum (Designated States) (Amendment) Order 2005 (S.I. 2005/1016)	The whole Order.
Asylum (Designated States) (No. 2) Order 2005 (S.I. 2005/3306)	The whole Order.
Immigration, Asylum and Nationality Act 2006 (c. 13)	Sections 1 to 3. Section 4(1). Sections 5 to 7. Section 9. Sections 12 and 13. Section 55. Section 57(2). In Schedule 1, paragraphs 2 to 6 and 9 to 11.
Lord Chancellor (Transfer of Functions and Supplementary Provisions) (No 2) Order 2006 (S.I. 2006/1016)	In Schedule 1, paragraphs 8 to 11.
Asylum (Designated States) (Amendment) Order 2006 (S.I. 2006/3215)	The whole Order.
Asylum (Designated States) (Amendment) (No. 2) Order (S.I. 2006/3275)	The whole Order.
Tribunals, Courts and Enforcement Act 2007 (c. 15)	Section 144(10). In Schedule 8, paragraph 54. In Schedule 10, paragraph 37.
UK Borders Act 2007 (c. 30)	Section 19. Section 35(3).
Asylum (Designated States) Order 2007 (S.I. 2007/2221)	The whole Order.

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Asylum (Procedures) Regulations 2007 (S.I. 2007/3187)	Regulations 3 and 4.

PART 10

THE SPECIAL IMMIGRATION APPEALS COMMISSION

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Special Immigration Appeals Commission Act 1997 (c. 68)	Section 1. Section 2. Sections 3 and 5 to 9. Schedules 1 and 3.
Anti-terrorism, Crime and Security Act 2001 (c. 24)	Section 35.
Nationality, Immigration and Asylum Act 2002 (c. 41)	In Schedule 7, paragraphs 20 to 26.
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19)	In Schedule 2, paragraph 12(1).
Constitutional Reform Act 2005 (c. 4)	In Schedule 7, in paragraph 4, in Part A of the list, the entries for sections 5 and 8 of, and paragraphs 1 to 4 of Schedule 1 to, the Special Immigration Appeals Act 1997. In Schedule 17, paragraph 28.
Immigration, Asylum and Nationality Act 2006 (c. 13)	In Schedule 1, paragraph 14(a) and (c).

PART 11

SUPPORT

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Immigration and Asylum Act 1999 (c. 33)	Section 4. Sections 94 to 101 and 103 to 103B. Sections 105 to 108. Sections 110 to 114. Section 122 to 127. Schedules 8 and 9.
Postal Services Act 2000 (Consequential Modifications No. 1) Order 2001 (S.I.2001 No. 1149)	In Schedule 1, paragraph 124.
Nationality, Immigration and Asylum Act 2002	Sections 16 to 33. Sections 35 to 42. Sections 43 to 49. Section 50(1). Section 51. Section 53. Sections 55 to 57.

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Nationality, Immigration and Asylum Act 2002 (c. 41) – <i>cont.</i>	Sections 60 and 61.
Criminal Justice Act 2003 (c. 44)	In Schedule 26, paragraph 53.
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19)	Sections 10(1) and (4) and 11(2) and (3).
Education Act 2005 (c. 18)	In Schedule 9, paragraph 30.
Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078) (S. 9))	In Schedule 1, paragraph 6
Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833)	In Schedule 3, paragraphs 182 and 183.

PART 12

INFORMATION

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Immigration Act 1971 (c. 77)	In Schedule 2 – (a) paragraph 27(2) to (5), and (b) paragraphs 27B and 27C.
Immigration and Asylum Act 1999 (c. 33)	Section 13. Section 18. Sections 20 and 21.
Nationality, Immigration and Asylum Act 2002 (c. 41)	Section 129. Sections 131 to 139.
Health and Social Care (Community Health and Standards) Act 2003 (c. 43)	In Schedule 4, paragraphs 127 and 128. In Schedule 13, paragraph 12.
Criminal Justice Act 2003	In Schedule 26, paragraph 58.
Health Protection Agency Act 2004 (c. 17)	In Schedule 3, paragraph 17.
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19)	Section 16.
Serious Organised Crime and Police Act 2005 (c. 15)	In Schedule 4, paragraphs 122 to 124.
Immigration, Asylum and Nationality Act 2006 (c. 13)	Section 31(2) and (3). Sections 32 to 37. Sections 39.
National Health Service (Consequential Provisions) Act 2006 (c. 43)	In Schedule 1, paragraphs 227 and 228.

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Police and Justice Act 2006 (c. 48)	Section 14.
UK Borders Act 2007 (c. 30)	Sections 40 to 43.
Borders, Citizenship and Immigration Act 2009 (c. 11)	Sections 20 and 21. Section 47(4) and (5).

PART 13

ILLEGAL WORKERS

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Immigration, Asylum and Nationality Act 2006 (c. 13)	Sections 15 to 25.

PART 14

CARRIERS' LIABILITY

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Immigration and Asylum Act 1999 (c. 33)	Sections 32 to 37. Sections 40, 40A and 40B. Section 43. Schedule 1.
Nationality, Immigration and Asylum Act 2002 (c. 41)	Sections 124 and 125. Schedule 8.

PART 15

INSPECTION & OVERSIGHT

<i>Reference</i>	<i>Extent of repeal or revocation</i>
UK Borders Act 2007	Sections 48 to 56.
Borders, Citizenship and Immigration Act 2009 (c. 11)	Section 28(1) to (9).

PART 16

OFFENCES

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Immigration Act 1971 (c. 77)	Sections 24 to 25B and 26 to 28.
Transfer of Functions (Local Government, etc.) (Northern Ireland) Order 1973 (S.R. & O. (N.I. 1973/256))	In Schedule 2, the entry relating to section 24(1)(d) of the Immigration Act 1971.

<i>Reference</i>	<i>Extent of repeal or revocation</i>
British Nationality Act 1981 (c. 61)	In Schedule 4, in paragraph 3(1), the entry relating to section 26(1)(d) of the Immigration Act 1971.
Immigration Act 1988 (c. 14)	Section 6. In the Schedule, paragraphs 4 and 10(3) and (4).
Asylum and Immigration Act 1996 (c. 49)	Section 6.
Immigration and Asylum Act 1999 (c. 33)	Section 28. Section 30. Section 31. Section 38(2) and (4). In Schedule 14, paragraphs 50 and 52.
Nationality, Immigration and Asylum Act 2002 (c. 41)	Section 62(9). Section 147(1) to (4). Sections 148 and 149. Section 151. Section 156.
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19)	Section 1. Section 2(1) to (9) and (12) to (17). Section 4. Section 5(1) to (3) and (11) to (13).
Human Tissue Act 2004 (c. 30)	In Schedule 6, paragraph 7.
Immigration, Asylum and Nationality Act 2006 (c. 13)	Section 31(4).
Identity Cards Act 2006 (c. 15)	Section 30(2).
UK Borders Act 2007 (c. 30)	Section 22. Sections 29 and 30. Section 31(1) and (2).
Borders, Citizenship and Immigration Act 2009 (c. 11)	Section 54.

PART 17

CHILDREN

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Borders, Citizenship and Immigration Act 2009 (c. 11)	Section 55.

PART 18

FEEES

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19)	Section 42.

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Immigration, Asylum and Nationality Act 2006 (c. 13)	Sections 51 and 52. Schedule 2.
UK Borders Act 2007 (c. 30)	Section 20.

PART 19

PROCEDURE

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Nationality, Immigration and Asylum Act 2002 (c. 41)	Section 120.

PART 20

USE OF REASONABLE FORCE & CODES OF PRACTICE

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Immigration and Asylum Act 1999 (c. 33)	Sections 145 and 146.
Nationality, Immigration and Asylum Act 2002	Section 128(2). Section 153(2).
UK Borders Act 2007	Section 2(4).

PART 21

NOTICES AND DIRECTIONS ETC.

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Immigration Act 1971 (c. 77)	Section 32.
Immigration and Asylum Act 1999	In Schedule 14, paragraph 54.

PART 22

DEFINITIONS FOR THE PURPOSES OF THE ACT

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Immigration Act 1971	Section 11(3).
Immigration and Asylum Act 1999	Section 167.

SCHEDULE 7

Section 344

INDEX OF DEFINED EXPRESSIONS

This Schedule lists the places where expressions used in this Act are defined or otherwise explained in this Act –

- (a) for the purposes of this Act, or
- (b) for the purposes of a Part of this Act.

<i>Expression</i>	<i>Where defined</i>
appropriate judicial officer (in Part 8)	section 172(2)
the appropriate regulations (in Part 7)	section 132(2)
arrival by ship in the United Kingdom	section 339(8)
bail conditions	section 99(1)
BID (in Part 4)	section 58(3)(f)
biometric information	section 339(1)
business premises (in Part 8)	section 172(6)
captain	section 339(1)
chief officer of police (in Part 12)	section 251(1)
child	section 339(1)
clandestine entrant (in Part 14)	section 261
concealed (in Part 14)	section 280(1)
connected expenses (in Part 14)	section 280(2)
container (in Part 14)	section 280(2)
contract monitor (in Part 7)	section 114
contracted out (in relation to a removal centre or short-term holding facility) (in Part 7)	section 132(2)
contractor (in Part 7)	section 132(2)
Convention rights	section 339(1)
the Council of Europe Convention on Trafficking in Human Beings	section 339(1)
country	section 339(1)
crew (in relation to a ship or aircraft)	section 339(1)
crew (in relation to a train)	section 339(1)

<i>Expression</i>	<i>Where defined</i>
current (in relation to a document)	section 337(3)
current (in relation to permission)	section 338
custody certification (in Part 7)	section 132(4)
customs function	section 339(1)
dependant (in Part 11)	section 232(1)
designated control area	section 24(3)
designated customs official	section 339(1)
designated immigration official	section 40(4)
destitute (in Part 11)	section 208(1)
detained person (in Part 7)	section 132(2)
detainee custody officer	section 132(1)
determination of a qualifying protection application (in Part 11)	section 207(3)
directing	section 332
document	section 337(1)
EEA entrant	section 3
electronic monitoring condition (in Part 6)	section 104(1)
eligible protection applicant (in Part 11)	section 207(1)
employment (in Part 13)	section 252(4)
enactment	section 339(1)
entering the United Kingdom	section 27
escort arrangements (in Part 7)	section 109(1)
escort certification (in Part 7)	section 132(3)
escort functions (in Part 7)	section 109(1)
ex-protection applicant (in Part 11)	section 210(5)
expulsion order	section 64(2)
false, in relation to a document	section 337(4)
family life application	section 22(1)
financial security condition	section 103(1)
foreign criminal	section 71

<i>Expression</i>	<i>Where defined</i>
functions of the UK Border Agency	section 339(3) and (4)
general customs function	section 339(1)
giving a direction	section 332
giving a notice	sections 329 and 330
grant of immigration bail	section 98(10)
has immigration permission	section 2(2)
has transit permission	section 2(2)
hirer (in Part 14)	section 280(2)
housing accommodation (in Part 11)	section 232(1)
HMRC (in Part 12)	section 251(1)
the Human Rights Convention	section 339(1)
identifying document (in Part 8)	section 172(3)
identity document	section 339(1)
illegal worker (in Part 13)	section 252(1)
immigration and nationality functions	section 339(5)
immigration bail	section 98
immigration decision	section 173(2)
immigration document	section 339(1)
immigration permission	sections 2, 4 and 10
immigration purposes (in Part 12)	section 250(1)
in force (in relation to an expulsion order)	section 64(5)
in-country appeal under section 173	section 173(3)
in-country appeal under section 200	section 200(8)
individual grant of immigration permission	section 6
individual grant of transit permission	section 18(3)
international railway station	section 339(1)
intimate search (in Part 8)	section 172(4)
the Islands	section 339(1)
items subject to legal privilege	section 339(1)

<i>Expression</i>	<i>Where defined</i>
listed offence (in Part 8)	section 171(1)
local authority (in Part 11)	section 232(1)
manager, in relation to a short-term holding facility (in Part 7)	section 132(2)
medical examination	section 339(1)
member of the crew	section 339(1)
member of the family of a person (in Part 5)	section 72
modify	section 339(1)
national	section 339(1)
nationality	section 339(1)
nationality purposes (in Part 12)	section 250(2)
Northern Ireland authority (in Part 11)	section 232(1)
on immigration bail	section 101(1)
out-of-country appeal under section 173	section 173(3)
out-of-country appeal under section 200	section 200(8)
outer clothing	section 339(1)
owner of a ship, aircraft, train or vehicle	section 339(7)
PACE	section 339(1)
penalty (in Part 15)	section 281(1)
penalty notice (in Part 15)	section 281(1)
pending appeal under section 173	section 197
pending appeal under section 200	section 205
permanent permission	section 4(4)
person whom there is power to detain under section 85 or 88	section 108
persons responsible for clandestine entrants (in Part 14)	section 264
police purposes (in Part 12)	section 250(3)
port	section 339(1)
port of entry (in Part 2)	section 23(2)

<i>Expression</i>	<i>Where defined</i>
post-arrival medical examination (in Part 3)	section 45(2)
premises (in Part 8)	section 172(5)
prescribed (in Part 7)	section 132(2)
prescribed (in Part 11)	section 232(1)
prescribed (in Part 15)	section 281(2)
prisoner custody officer	section 132(1)
proper documentation (in Part 14)	section 258(5)
protection applicant (in Part 11)	section 207(2)
protection application	section 21(1)
protection permission	section 21(3)
the RCPO (in Part 12)	section 251(1)
the Refugee Convention	section 339(1)
refugee permission	section 21(3)
removal centre	section 132(1)
removal centre regulations (in Part 7)	section 132(2)
reserved matter	section 339(1)
responsible authority (in relation to a post-arrival medical examination) (in Part 3)	section 54(9)
Revenue and Customs purposes (in Part 12)	section 250(4)
Rules	section 20(2)
section 258 penalty notice (in Part 14)	section 258(6)
section 262 penalty notice (in Part 14)	section 262(4)
senior officer (in Part 8)	section 172(7)
ship	section 339(1)
short-term holding facility	section 132(1)
short-term holding facility regulations (in Part 7)	section 132(2)
SIAC	section 199(4)
small aircraft	section 339(1) and (2)

<i>Expression</i>	<i>Where defined</i>
small ship	section 339(1)
station of entry (in Part 2)	section 23(2)
sub-contractor (in Part 7)	section 132(2)
support provided under Part 11 (in that Part)	section 232(2)
support regulations (in Part 11)	section 232(1)
supported person (in Part 11)	section 232(1)
temporary permission	section 4(2)
time when an appeal may be brought	section 339(6)
train	section 339(1)
train manager	section 339(1)
transit permission	sections 2 and 17
transporter (in Part 14)	section 280(2) and (3)
travel document	section 339(1)
United Kingdom passport	section 339(1)
valid (in relation to a document)	section 337(2)
vehicle (in Part 14)	section 280(2)

DRAFT IMMIGRATION BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the draft Immigration Bill (the “Bill”) published on 12 November 2009. They 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.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND

3. The Bill is intended to consolidate, simplify and repeal all the provisions of the following Acts:

Immigration Act 1971 (“IA 1971”)

Immigration Act 1988 (“IA 1988”)

Asylum and Immigration Appeals Act 1993 (“AIAA 1993”)

Asylum and Immigration Act 1996 (“AIA 1996”)

Special Immigration Appeals Commission Act 1997 (“SIACA 1997”)

Immigration and Asylum Act 1999 (“IAA 1999”)

Nationality, Immigration and Asylum Act 2002 (“NIAA 2002”)

Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (“AI (TC) A 2004”)

Immigration, Asylum and Nationality Act 2006 (“IANA 2006”)

UK Borders Act 2007 (“UKBA 2007”)

Borders, Citizenship and Immigration Act 2009 (Parts 3 and 4 only) (“BCIA

*These notes refer to the Draft Immigration Bill
as published on 12 November 2009*

2009”).

It also makes consequential amendments to, and repeals of, other enactments.

4. There are a number of further topics for inclusion in the full Bill which are not yet drafted: the most relevant of which are the Common Travel Area; Office of the Immigration Services Commissioner; Public Funds and Marriage.

OVERVIEW

5. The Bill is arranged in 20 Parts:

Part 1: Permission to enter & stay in the UK

Part 2: Immigration controls

Part 3: Powers to examine etc.

Part 4: Power to obtain biometric information

Part 5: Expulsion orders & removal etc. from the UK

Part 6: Powers to detain & immigration bail

Part 7: Detained persons & removal centres etc.

Part 8: Powers to stop, arrest, enter & search etc.

Part 9: Appeals against immigration decisions

Part 10: The Special Immigration Appeals Commission

Part 11: Support

Part 12: Information

Part 13: Illegal workers

Part 14: Carriers' liability

Part 15: Civil penalty procedure

Part 16: Inspection & oversight

[Part 17: Immigration Advisers and Immigration Service providers- to be drafted]

Part 18: Offences: general

Part 19: General supplementary provisions

Part 20: Final provisions

SUMMARY

PART 1: PERMISSION TO ENTER & STAY IN THE UK

6. Part 1 provides the general principles of the framework for regulating entry and stay in the UK. Clauses 1 to 3 provide for the entitlement of British citizens and EEA entrants to enter and stay in the UK. Those who are neither British citizens nor EEA entrants will require permission to enter or stay in the UK, and to pass through the UK without entering (“transit”).

7. Clauses 4 to 16 make provision for immigration permission. Immigration permission is a new concept that replaces leave to enter, leave to remain and entry clearance (often deemed to also be leave to enter). There will be two types of immigration permission: temporary and permanent. Temporary permission may be subject to conditions and limited to a particular purpose (for example, visit, work or study). Permission may be granted individually or, by order made under clause 9, to certain groups, generally those who were exempt from immigration control under the IA 1971. Where a person does not have permission to be in the UK they will have a duty to apply for it and to state their full reasons for wanting to enter or stay in the UK. Provision is also made for the cancellation of permission, automatically if a particular event happens, or by individual decision of the Secretary of State.

8. Clauses 17 to 19 make provision for persons wishing to transit the UK without entering. A person in transit may arrive in the UK and remain airside but may not enter i.e. may not pass through immigration control. The Bill replaces the current direct airside transit visa with a system of individual transit permission or transit permission granted by order to a group or class of person.

9. Clause 20 requires the Secretary of State to make Immigration Rules (“the Rules”) as to the practice to be followed in the administration of the Bill.

10. Clauses 21 and 22 define a “protection application” and a “family life application”. Protection applications will include asylum, humanitarian protection and human rights applications made by a person in the UK.

PART 2: IMMIGRATION CONTROLS

11. Part 2 makes provision for the operation of immigration controls. Clause 23

makes provision for the Secretary of State to designate ports and stations of entry. Clause 24 gives the Secretary of State various powers in relation to designated control areas in the UK. Subsection (1) allows him to give notice to the owner, agent or operator of a ship, aircraft or train designating control areas for the embarkation and disembarkation of passengers in a port or international railway station in the UK and specifying what, if any, conditions and restrictions are to be observed there. Clause 28 requires carriers and others to observe those conditions and restrictions and take other steps in relation to embarking and disembarking passengers. Clause 37 makes it an offence for a port or station operator, carrier, etc not to comply with the conditions, restrictions and requirements. Clause 27 defines when a person who arrives by ship, aircraft or train “enters” the UK.

12. Clauses 25 and 26 enable the Secretary of State, by order, to establish juxtaposed controls to implement an international agreement on border controls. This enables the border control to be “exported” to the State of departure rather than being operated on arrival. There are currently juxtaposed controls with France and Belgium in relation to arrival by ship and (under equivalent powers in the Channel Tunnel Act 1987) by train.

13. Clauses 29 and 32 to 34 enable the Secretary of State and the police to require passengers or carriers to provide passenger and other specified information. Clauses 38 and 39 make it an offence for a passenger or carrier not to comply with such a requirement. Clause 36 makes provision in relation to disclosure of information acquired by the police under clauses 33 and 34.

14. Clause 40 and 41 enable the Secretary of State to designate officials for the purpose of exercising specific functions under the Bill. Functions under the Bill are generally vested in the Secretary of State and will be exercised by the Secretary of State’s officials acting on the Secretary of State’s behalf under *Carltona* principles (*Carltona Limited v Commissioners of Works* [1943] 2 All ER 560 (CA)). See for example the powers in clauses 42 and 43 to examine arriving and departing passengers. However, some functions are reserved under the Bill to designated immigration officials who will have received specialist training for example in restraint and criminal investigation. The Bill makes clear which functions may only be exercised by designated immigration officials.

PART 3: POWERS TO EXAMINE ETC.

15. Part 3 provides the framework for the Secretary of State to examine persons who are outside the UK but seeking to enter or have applied for permission; have arrived in the UK; have entered the UK and are applying for immigration permission and those who are leaving the UK. The purposes of examination are set out in this Part. The extent of the examination will vary according to a number of factors. It is essentially an administrative process which usually includes verification of the person’s identity, questioning and examination of documents. There is also power to

require on examination, the production of identity and other relevant documents and information from a person being examined, and to require a medical examination or medical report. This Part also provides for powers to search for persons liable to examination and to search such persons when found. Clauses 47 and 48 provide for the contracting out of the power to search to authorised persons. Clause 52 makes it an offence to refuse to be examined or comply with examination requirements. Clause 53 makes it an offence to obtain authorisation under clause 47 by false pretences.

16. Clauses 54 to 57 make provision for post-arrival medical examination and the supply of information to the Secretary of State (for use for immigration purposes) or a specified health body (in connection with a medical examination under clause 45).

PART 4: POWER TO OBTAIN BIOMETRIC INFORMATION

17. Part 4 provides for the taking and retention of biometric information. A person authorised by the Secretary of State may require persons to supply biometric information when making an application for permission (inside or outside the UK); when being examined or further examined on arrival or departure; when on immigration bail; when being detained under Part 6; when applying for or when in receipt of support under Part 11; and when applying for or required to produce a biometric immigration document (“BID”).

18. Clause 59 provides safeguards regarding the supply of biometric information by children under the age of 16. Clause 60 provides for regulations to be made regarding the retention and destruction of biometric information. Clause 61 provides for regulations to be made regarding BIDs.

19. Clauses 62 and 63 make provision for the Secretary of State to require a person to pay a civil penalty for failure to comply with a requirement to supply biometric information in connection with a BID, or failure to comply with a requirement of regulations under clause 61; and for an associated code of practice. Part 15 makes provision about objections and appeals relating to, and for the recovery of, civil penalties issued under the Bill.

PART 5: EXPULSION ORDERS & REMOVAL ETC. FROM THE UK

20. Part 5 makes provision for expulsion orders and removal from the UK. Expulsion will replace the existing concepts of administrative removal and deportation. Expulsion orders may be made against persons inside and outside the UK. There is a duty to make an expulsion order in the case of a “foreign criminal” (as defined in clause 71). There is a power to make an expulsion order where a person is refused admission or immigration permission at a port of entry; a person is in the UK without permission; has breached conditions attached to permission; has obtained permission by deception; and persons whose expulsion would be conducive to the public good. There are exceptions and limitations on the duty and power to make an

expulsion order. Clauses 73 to 75 make provision for removal of a person from the UK once an expulsion order has been made. Clause 76 enables the Secretary of State to require persons to take specified action to facilitate their removal from the UK.

21. Clauses 77 to 79 create offences specifically linked to expulsion and removal. Clause 80 makes provision for international travel bans and sets out the effect of a travel ban on immigration and transit permission.

22. Clause 81 and 82 enable the Secretary of State to assist those voluntarily leaving the UK and also to contribute to projects relating to migration.

PART 6: POWERS TO DETAIN & IMMIGRATION BAIL

23. Part 6 makes provision for detention and immigration bail. Clauses 83 to 90 set out the power to detain. The power to detain includes persons liable to examination; persons against whom an expulsion order may be made and persons against whom an expulsion order has or must be made. There are additional powers for a captain to detain on board an aircraft, ship or train; a power to detain persons subject to a warrant of arrest at a port for a maximum of 3 hours pending arrest by the police and a power to detain a foreign criminal on sentencing for a limited period.

24. Clauses 91 to 94 make provision relating to removing a person from an aircraft, etc for detention, the place of detention, the effect of detention, the need to give reasons for detention and the recovery of detention and other costs from carriers. Clauses 95 and 96 create offences relating to escape from detention, and clause 97 creates an offence for a captain who permits a person to disembark in the UK when required to prevent that.

25. Clauses 98 to 107 relate to the power to grant immigration bail and the conditions subject to which it may be granted. Those conditions include the provision of financial securities and electronic monitoring. Immigration bail may be granted to a person whom there is power to detain, whether or not he has been detained and to a person who meets the criteria for special immigration status (see clause 98(2)). The single concept of immigration bail replaces the concepts of temporary admission, temporary release, release on restrictions and bail under the Immigration Acts.

PART 7: DETAINED PERSONS & REMOVAL CENTRES ETC.

26. Part 7 provides the framework for the contracting out, operation, management and regulation of removal centres and short-term holding facilities and for escort arrangements for the custody and transport of detained persons.

PART 8: POWERS TO STOP, ARREST, ENTER & SEARCH ETC.

27. Part 8 and Schedule 1 relate to powers to stop, arrest, enter, search and seize which are conferred on designated immigration officials (see Part 2) and in certain cases on constables (“coercive powers”). Clauses 133 to 135 make provision for a new statutory power to stop persons who are in the UK in a specified area for the purpose of asking them questions or to supply information relating to their immigration status. Provision is made for arrest; entry and search of premises, with and without warrants; search of persons; the issuing of warrants; and the execution and retention of warrants. There are also powers of forfeiture, retention and disposal of cash and other property. Reasonable force may be used by designated officials in exercising any of the functions under this Part (see clause 325).

PART 9: APPEALS AGAINST IMMIGRATION DECISIONS

28. Part 9, and Schedules 2 and 3, makes provision for appeals against immigration decisions. Clauses 173 to 198 provide for the right of appeal to the First-tier Tribunal against immigration decisions (see clause 173), subject to specified exceptions and limitations. It also sets out the circumstances in which a person may appeal when still in the UK. It provides for the grounds of appeal and the matters to be considered at appeal. It also provides for the certification of repetitive submissions and of late, or clearly unfounded, protection applications. Clauses 191 and 193 provide for certification where classified information or national security is involved. In some such cases Part 10 provides for an appeal to the Special Immigration Appeals Commission (“SIAC”) Clauses 194 to 196 make provision for removal of protection applicants to safe countries.

PART 10: THE SPECIAL IMMIGRATION APPEALS COMMISSION

29. Part 10 and Schedule 4 make provision for appeals to SIAC where there would be a right of appeal under Part 9 against an immigration decision but for a certificate of the Secretary of State under clause 191 (classified information) or clause 193 (certification that removal in the interests of national security).

PART 11: SUPPORT

30. Part 11 provides the framework for the provision of support for protection applicants, for those whose protection applications have been refused and for specified persons on immigration bail and their dependants. There is a duty to provide support for eligible protection applicants and their dependants and a power to provide support for others. A person who makes a late protection application may be refused support, unless it is necessary to provide support to avoid a breach of human rights. Support is provided to meet accommodation or essential living needs. The Bill sets

out how the support is to be provided. Much of the detail on eligibility for support, the nature of support and other matters to be taken into account in relation to support is to be provided for in support regulations under this Part.

31. There is provision for the Secretary of State to make arrangements for local authorities to provide accommodation for support under this Part. There is also provision to ensure there is no gap in support arrangements for children.

PART 12: INFORMATION

32. Part 12 makes provision for the supply of information to and by the Secretary of State. There are powers to require information in certain circumstances, prohibitions on the disclosure of certain information, and offences linked to both. The use and disclosure of information must also be compliant with the Data Protection Act 1998 (“the DPA 1998”) and the Human Rights Act 1998 (“the HRA 1998”).

PART 13: ILLEGAL WORKERS

33. Part 13 makes provision in relation to persons who employ persons aged 16 or over who are neither British citizens nor EEA entrants and who do not have the relevant authorisation to work in the UK (“an illegal worker”). There is provision for a civil penalty where an illegal worker is employed, and an offence where an illegal worker is knowingly employed. There is also provision for a code of practice to be issued in relation to the civil penalty and for a code of practice to be issued on how employers avoid discrimination. Part 15 makes provision about objections and appeals relating to, and the recovery of, civil penalties issued under the Bill.

PART 14: CARRIERS’ LIABILITY

34. Part 14 enables the Secretary of State to impose a penalty on carriers who bring either inadequately documented passengers or “clandestine entrants” to the UK. It also enables the Secretary of State to make regulations establishing an authority-to-carry scheme. There is provision for codes of practice to be issued in relation to the civil penalty relating to those responsible for clandestine entry. Part 15 makes provision about objections and appeals relating to, and the recovery of, civil penalties issued under the Bill.

PART 15: CIVIL PENALTY PROCEDURE

35. Part 15 consolidates the procedures for notices of objection and appeals against the civil penalties issued under the Bill. Those civil penalties are:

*These notes refer to the Draft Immigration Bill
as published on 12 November 2009*

- Failure to comply with a requirement to provide biometric information (clause 62)
- Employment of illegal workers (clause 253)
- Carriers bringing inadequately documented passengers to the UK (clause 258)
- Carriers of clandestine entrants (clause 262)

PART 16: INSPECTION & OVERSIGHT

36. Part 16 makes provision for inspection and oversight arrangements. Clauses 292 to 299 set out the role and responsibilities of the independent Chief Inspector of the UK Border Agency, and the Chief Inspector's relationships with other bodies with oversight functions. Clause 300 provides for the Police Ombudsman for Northern Ireland to have oversight of certain personnel in the UK Border Agency (including contractors) in relation to the exercise of certain functions in or in relation to Northern Ireland. This complements oversight arrangements for the Independent Police Complaints Commission in England and Wales and Police Complaints Commissioner for Scotland.

PART 17: IMMIGRATION ADVISERS & IMMIGRATION SERVICE PROVIDER [TO BE DRAFTED]

PART 18: OFFENCES: GENERAL

37. Clauses 301 to 323 create offences in relation to illegal immigration; trafficking; deception; false documentation; failure to comply with conditions of permission or immigration bail; impersonation and assault or obstruction. There are also powers to detain and forfeit transporters used in the commission of offences relating to illegal immigration and trafficking.

38. There are also some general provisions relating to offences, including the defence for a refugee or person entitled to humanitarian protection (which applies to certain offences) and the jurisdiction to try offences.

PART 19: GENERAL SUPPLEMENTARY PROVISIONS

39. Clause 324 provides a power for a person exercising a function under the Bill to board an aircraft, ship or train for that purpose. Clause 325 provides for the use of reasonable force by designated immigration officials and other specified persons exercising functions under the Bill. Clause 326 makes provision in relation to the

application of PACE Codes in relation to the exercise of certain functions.

40. Clause 327 imposes a duty on the Secretary of State, and the Director of Border Revenue to ensure that the functions of the UK Border Agency are carried out with regard to the need to safeguard and promote the welfare of children who are in the UK. It also provides for regard to be had to guidance issued by the Secretary of State for this purpose.

41. Clause 328 enables the Secretary of State to, by order, set fees to be charged in respect of the exercise of functions in connection with immigration or nationality.

42. Clauses 329 to 333 make provision for the giving of notices and directions under the Bill and for proof of documents.

43. Clauses 334 to 336 make provision for the parliamentary procedure for orders, regulations and rules made under the Bill and for the parliamentary procedure for the Rules.

PART 20: FINAL PROVISIONS

44. Part 20, and Schedules 5 to 7, make provision for definitions; money; consequential provisions; repeals; transitional provisions; extent; commencement and the short title of the Bill.

COMMENTARY ON CLAUSES

PART 1: PERMISSION TO ENTER & STAY IN THE UK

General principles

Clause 1: British citizens

45. Subsection (1) provides that British citizens are free to arrive in, enter, stay in and leave the UK. They do not need permission to do so. Subsection (2) provides that this right is subject to the requirements of this Bill and other enactments, for example the power to examine under Part 3, and provisions of criminal law that may affect their ability to enter and leave. Under the IA 1971 non-British citizens with the right of abode may also enter and leave freely. Under the Bill they require permission. However, an order under clause 9 must make provision for them to be granted permission and to ensure that they are no less free to enter and leave than under the IA 1971 (see clause 9(7)). Subsection (3) and (4) provide that a person who asserts that he is a British citizen must prove it by presenting a valid UK passport describing the holder as a British citizen, or an ID card describing the holder as a British citizen. This replicates the position under section 3(9) of the IA 1971. Those with the right of

abode as a British citizen under section 2(1)(a) of the IA 1971, but who do not hold a UK passport or ID card will be able to present a document evidencing their British citizenship, to be issued by the Secretary of State under proposed legislation on passports, as evidence of their right to enter the UK. Until that time, as a transitional measure, a person will continue to be able to use a certificate of entitlement issued under section 10 of the NIAA 2002.

Clause 2: Non-British citizens

46. The concept of immigration permission replaces the concepts under the IA 1971 of leave to enter, leave to remain, further leave to enter and remain, and entry clearance. Clause 2 provides the basis for the regulation of the entry and stay in the UK of non-British citizens and non-EEA entrants (as defined in clause 3). Subsection (1)(a) provides that those who are neither British citizens nor EEA entrants must have immigration permission to enter or stay in the UK. Subsection (1)(b) provides that those who transit the UK without entering (see clause 27) must have immigration or transit permission. The provisions on transit permission are set out in clauses 17 to 19. Transit permission replaces the provisions in section 41 of the IAA 1999 on direct airside transit visas. Subsection (3) provides that a person who claims to have immigration or transit permission must prove it.

Clause 3: EEA entrants

47. An “EEA entrant” is defined in clause 3 as a national of an EEA State or Switzerland (other than a UK national), or a family member of an EEA national or of a Swiss national, who is entitled to enter and stay in the UK by virtue of provision made under section 2(2) of the European Communities Act 1972. This replaces section 7(1) of the IA 1988. The core rights of entry into and residence in the UK of EEA nationals and their family members are set out in the Immigration (EEA) Regulations 2006 (SI. 2006/1003). EEA entrants not exercising rights under Community Treaties require permission.

48. Subsection (5) provides that a person who claims to be an EEA entrant must prove it in accordance with any provisions made for that purpose under section 2(2) of the European Communities Act 1972.

Immigration permission

Clause 4: Immigration permission

49. Subsection (1) provides for the two types of immigration permission. Temporary permission is for a limited time, may be granted for a particular purpose and may be subject to conditions. The main purposes for which temporary permission is granted are set out in the Rules (see clause 20). Where a person has permission for a particular purpose and seeks to enter or remain for a different purpose, or for a further period, the person must apply for new immigration permission. This is a change from the current system where existing leave can be varied both as to purpose and duration. Permanent permission replaces indefinite leave to enter or remain and the right of abode for non-British citizens. Subsection (5) provides that permission may be

granted in relation to a period which begins on the person's arrival in the UK. See also clauses 14 and 15 on the cancellation of permission.

Clause 5: Methods of grant

50. This clause provides that permission can be granted by individual grant by the Secretary of State, or to a group of persons specified in an order under clause 9. Subsection (3) provides that the power to grant or refuse permission may be exercised whether a person is in the UK or not.

Clause 6: Individual grant

51. This clause provides that an individual grant of immigration permission is by notice (see clause 329(1) on notices). Where temporary permission is subject to conditions the notice must state those conditions.

Clause 7: Duty to apply

52. Clause 7 imposes a new duty on a person who is neither a British citizen, nor an EEA entrant, and who is in the UK without permission, to apply for permission. Subsection (2) indicates that a person in the UK without permission can be expelled and may be committing an offence.

Clause 8: Requirement to state grounds

53. If a person makes an application for permission or has had an immigration decision (see clause 173) made in respect of the person, the Secretary of State may require the person to state all their grounds for entering or staying in the UK. The notice must state the consequences under clause 190 of failure to comply with the requirement, which is that, in certain cases, if there is no good reason for the matter not being raised in response to the notice then the person's application for immigration permission may be certified as "late" and there will then be no right of appeal against a refusal to grant permission. This broadly replicates sections 96 and 120 of the NIAA 2002

Clause 9: Grant by order

54. The clause enables the Secretary of State by order to grant permission to a description of persons specified in the order. This replaces the current provision for exemption from immigration control under the IA 1971. The Secretary of State will be able to grant temporary or permanent permission by order, and to attach conditions. Permission by order will usually be granted in order to meet the UK's international obligations, for example to heads of state, members of diplomatic or consular missions based in the UK, certain individuals connected with particular international organisations and air, sea and rail crew. The permission will only be valid while the person meets the requirements of the order. The fact that someone has permission by order (rather than being exempt from control) will not result in any practical difference in their treatment when they arrive at the UK border.

55. Subsection (3) requires the Secretary of State to grant permission by order to members of the armed forces, members of certain visiting forces, those serving as

members of an international headquarters or defence organisation designated under section 1 of the International Headquarters and Defence Organisations Act 1964 and to Commonwealth citizens with a right of abode defined in subsection (11). Under section 1(1) of the IA 1971 the right to enter and leave freely was conferred on those with the right of abode as defined in section 2 of the IA 1971 (as amended by section 39 of the British Nationality Act 1981 (“BNA 1981”). Section 2(1)(b) of the IA 1971 deals with non-British citizens with the right of abode. Subsection (7) provides that permission granted by order to Commonwealth citizens with a right of abode must give them the same freedom to enter, stay in, or leave the UK as they had before commencement of this provision.

56. Subsection (6) provides that the order may modify or disapply provisions of this Bill, either conditionally or unconditionally. The order may also make provision for those who have permission by order and are then granted an individual grant. Under subsection (6)(e) provisions may be made for those granted permission by order to be regarded as settled under section 1(1) or (3) of the BNA 1981.

Clause 10: Effect of grant

57. Subsection (1) provides that immigration permission confers the right to enter, re-enter, stay in and transit the UK. Subsection (2) provides that these rights are limited by any conditions attached to temporary permission and to any restrictions in the Bill or another enactment.

Clause 11: Conditions of temporary permission

58. Subsection (1) sets out the conditions the Secretary of State may attach to a grant of temporary permission. This replicates section 3(1)(c) of the IA 1971. Conditions may relate to the person’s work; study; ability to support themselves and their family; police registration; reporting to the Secretary of State or other specified person, and the person’s residence.

59. Subsections (2) to (4) enable the Secretary of State to make regulations in relation to the police registration condition. See clauses 334 and 335 on regulations.

60. Subsection (5) provides that any conditions attached to a person’s temporary permission are suspended when the person is outside the UK, is being detained or is on immigration bail.

Clause 12: Variation of conditions

61. This clause enables the Secretary of State to amend, cancel or impose conditions, or additional conditions, on temporary permission. Subsection (3) provides that the Secretary of State’s power is exercised by notice (see clause 329(1) on notices). A person can apply for conditions of temporary permission to be varied only while they are in the UK with current permission.

Clause 13: Extension of period of grant pending decision on new application

62. This clause extends a person’s existing permission if it expires when they have

made an “in-time” application for new permission which has not been decided. Permission is extended until that application is decided, and while any appeal against refusal of that new permission is pending (see clauses 173 and 200). This ensures that such a person is lawfully in the UK during this period. The permission is cancelled if the person leaves the UK. This replicates section 3C(2) of the IA 1971 but there are some changes because any change of purpose requires an application for new permission rather than a variation as under the IA 1971. Also, for any further period of permission, an application for new permission is required.

63. Subsection (4) provides that whilst permission is extended under subsection (2) because an application for new permission is made, any further application for new permission replaces the previous application. The conditions of a person’s permission continued under this clause can be varied by the Secretary of State.

Clause 14: Automatic cancellation

64. This clause introduces a new concept of automatic cancellation and specifies the circumstances in which it occurs. Subsection (1) reflects the current position under paragraph 18 of the Rules (HC 395) whereby leave lapses where a person has spent two years or more outside the UK. Subsection (2) provides for automatic cancellation of permission when new permission is granted, so a person cannot have two extant individual grants of permission. Permission will also be automatically cancelled under other provisions of the Bill listed in subsection (3) – for example, when an expulsion order is made (see clause 69) or the person becomes subject to a travel ban (see clause 80). There is no right of appeal against automatic cancellation.

Clause 15: Power to cancel

65. This clause enables the Secretary of State to cancel permission, whether or not the person is in the UK. The grounds for cancellation will be provided for in the Rules (see clause 20(3)(d)). See Part 9 for the right of appeal against cancellation of permission.

Clause 16: Person treated as having permission following cancellation & pending appeal

66. This clause ensures that a person whose permission has been cancelled under clause 15 has permission, while an appeal can be brought or is pending, unless they leave the UK. This provision is similar to section 3D of the IA 1971. A person cannot make an application for a grant of new permission whilst permission is continued under this provision, except a protection application (see clause 21). However, the conditions of a person’s permission continued under this clause can be varied by the Secretary of State.

Transit permission

Clauses 17: Transit permission

67. Clause 17 sets out the limited right to transit the UK without entering (see clause 27). Passengers wishing to transit the UK without clearing immigration control

remain airside but still need either immigration or transit permission (see clause 2(1)(b)). Transit permission may be granted for a period which begins on the person's arrival in the UK.

Clause 18: Method of grant

68. Clause 18 provides for transit permission to be granted by the Secretary of State by notice to an individual or, by order, to a group of persons specified in the order (see clauses 334 and 335 on orders). This is similar to the system for direct airside transit visas under section 41 of the IAA 1999. The Secretary of State may grant or refuse transit permission to a person whether or not they are in the UK.

Clause 19: Cancellation

69. An individual grant, or grant by order, of transit permission may be cancelled by the Secretary of State by notice, whether or not the person is in the UK. Transit permission is automatically cancelled if an expulsion order is made (see clause 69) or the person becomes subject to a travel ban (see clause 80).

Immigration rules

Clause 20: Immigration rules (“the Rules”)

70. Clause 20 requires the Secretary of State to make rules as to the practice to be followed in the administration of the Bill and for regulating the arrival in, entry into and stay in the UK of persons who are not British citizens. This is a change from the position under the IA 1971 as Rules must be made. The Rules may include provision about the requirements to be met for the grant of immigration permission; for the periods and purposes of permission; requiring persons to obtain permission before arrival in the UK; the grounds for cancellation of permission; about the making of an expulsion order; the procedures to be followed, forms to be used and information to be supplied in support of an application in connection with immigration and for requirements in relation to sponsors. Subsection (5) provides that permission may be granted even if a person does not meet the requirements of the Rules. This is a new provision, but is not intended to change the existing position: it confirms the Secretary of State can exercise discretion outside the Rules. The Secretary of State may also issue instructions which are consistent with the Rules.

Protection & family life applications

Clause 21: Protection applications

71. This clause defines a “protection application” as an application for an individual grant of immigration permission on the grounds that to remove the person from the UK would breach the Refugee Convention, EC Directive on international protection or would be unlawful under section 6 of the HRA 1998. Subsection (2) provides that a protection application can only be made while a person is in the UK.

Clause 22: Family life applications

72. This clause defines a “family life application” as an application for an

individual grant of immigration permission on the grounds that a refusal to grant permission to the person would be a breach of a person's right to respect for private and family life under Article 8 of the European Convention on Human Rights ("ECHR") and so be unlawful under Article 6 of the HRA 1998. A family life application can only be made while the person is outside the UK.

PART 2: IMMIGRATION CONTROLS

Control areas

Clause 23: Ports of entry and stations of entry

73. This clause enables the Secretary of State to make an order designating a port or international railway station as a port or station of entry. By virtue of clause 28(1) a ship, aircraft or train embarking or disembarking passengers at a port or station of entry does not require the prior approval of the Secretary of State. See clauses 334 and 335 on orders.

Clause 24: Designated control areas in the UK

74. Clause 24 enables the Secretary of State to designate control areas for the examination of passengers entering or leaving the UK and to specify conditions and restrictions to be observed in those control areas. This clause replicates in part provisions in paragraph 26(2) and (3) of Schedule 2 to the IA 1971. This clause is linked to clause 28(2) and (3), which places duties relating to designated control areas on carriers and port and station managers.

Clause 25: Immigration controls at ports in the UK or abroad: juxtaposed controls

75. This clause enables the Secretary of State to make an order for the purpose of giving effect to an international agreement which concerns immigration controls in the UK or overseas. See clauses 334 and 335 on orders. The order may also cover other aspects of border control at a port and may include any provision likely to facilitate implementation of the international agreement.

Clause 26: Juxtaposed controls: supplementary

76. This clause sets out what may be included in an order made under clause 25. For example, an order may specify that particular laws of England and Wales have effect (with or without modification) where immigration and other border controls are being carried out by UK officials abroad. An order may also modify or disapply UK legislation in order to allow officers from other countries to perform their functions in the UK.

Point of entry into the UK

Clause 26: Point of entry into the UK

77. Clause 26 provides that for the purposes of this Bill a person who arrives in the UK by ship, aircraft or train does not enter the UK until the person disembarks or,

if the person disembarks at a port or international railway station with a designated control area, does not enter the UK until the person has left the designated control area (see clause 23 on designated control areas). This reflects the current position under the IA 1971.

Control of disembarkation and embarkation

Clause 28: Duties on carriers, port management and captains

78. Subsection (1) of this clause provides that the owner, agent, operator or captain of a ship, aircraft or train employed to carry passengers must not without the approval of the Secretary of State permit any of those passengers to embark or disembark at a port or international railway station in the UK other than a port or station of entry.

79. Subsection (2) requires that owners, agents or operators who are given notice under clause 24, in relation to designated control areas and the embarkation and disembarkation of passengers, must take all reasonable measures to ensure that passengers do not enter or leave the UK outside the designated control area and if conditions or restrictions are specified in the notice, that they are observed. Subsection (3) provides that if a person concerned with the management of a port or international railway station is given notice under clause 24(2) the person must take all reasonable steps to ensure that the requirements in the notice are observed.

80. Subsection (4) requires the captain of a ship, aircraft or train arriving in the UK to ensure that persons aboard do not disembark other than in accordance with arrangements approved by the Secretary of State, or unless the passengers have already been examined by the Secretary of State under Part 3. Subsection (5) requires the captain, where passengers are to be examined on the ship, aircraft or train, to ensure that the passengers are presented for examination in an orderly manner. See clause 37 for offences in relation to failure to comply with requirements under this clause.

Clause 29: Information in connection with arrival or departure

81. Clause 29 enables the Secretary of State to require a person seeking to arrive in or enter the UK, or seeking to leave the UK, to supply immigration information, as specified by order, to the Secretary of State. See clauses 334 and 335 on orders. Subsection (3) enables the Secretary of State to require such persons to produce a landing or embarkation card. Subsection (4) enables the Secretary of State to direct owners, agents or operators of ships, aircraft or trains to supply landing or embarkation cards to those persons. Subsection (5) sets out the definition of immigration information for the purpose of this section.

Provision of facilities for immigration control

Clause 30: provision of facilities for immigration control

82. Subsections (1) and (2) of this clause enable the Secretary of State to direct the

manager of a control port or station or the owner, agent or operator of a ship or train to provide the Secretary of State, free of charge and to a specified standard, with such facilities at the port or station or on board the ship or train as the Secretary of State may direct as being reasonably necessary for, or in connection with, the administration of immigration control there. Subsection (3) provides that the Secretary of State must consult such persons likely to be affected as the Secretary of State thinks appropriate before giving a direction under subsection (1) or (2).

83. Subsection (4) requires the Secretary of State to send a copy of a direction to (a) the person who appears to the Secretary of State to be the manager of the control port or station or (b) the owner, agent or operator of the ship or train. Subsection (5) provides that a direction given under subsection (1) or (2) is enforceable, on application by the Secretary of State, by an injunction granted by a county court or, in Scotland, by an order under section 45(b) of the Court of Session Act 1988. Subsection (6) applies to a case where a manager of a control port or station persistently fails to comply with a direction. It enables the Secretary of State to revoke any approval in relation to the port or station under section 28(1) or, where the port or station has been designated as a port or station of entry, to revoke the designation. Subsection (7) defines (a) control port or station and (b) facilities for the purpose of this clause. Subsection (8) sets out that such facilities include accommodation for the carrying out of post-arrival medical examinations as defined in clause 45(2).

Clause 31: Charges: immigration control

84. This clause enables the Secretary of State to charge for the services of officials of the Secretary of State exercising functions under this Act or for facilities where the officials or facilities are needed in addition to the provision of a basic service at a port or station or for dealing with passengers of a particular description or in particular circumstances. The meaning of “basic service” will be prescribed by regulations. “Facilities” for the purposes of this clause includes equipment.

Powers to require information from carriers & captains

Clause 32: Power by order to require passenger information etc.

85. This clause enables the collection of passenger, service or crew information either on or before the arrival of a ship or aircraft in the UK, or from a ship or aircraft which is leaving or is expected to leave the UK.

86. Subsection (2) provides that the Secretary of State may, by order, require (or enable the Secretary of State to require) the carrier or the captain of the ship or aircraft to supply passenger, service or crew information and/or a copy of all or part of a document which relates to a passenger and contains passenger or service information. The “carrier” means the owner, agent or operator of the ship or aircraft.

87. Subsections (3), (4) and (5) provide that an order made under subsection (2) may: apply to all ships or aircraft arriving in/leaving the UK or expected to do so, or to those doing so via a specified route; apply to specified ships or aircraft; apply to

some or all of the ships or aircraft operated by a carrier; require all or specified passenger, service or crew information in relation to that ship or aircraft; stipulate the date or time at which or period during which information is to be supplied; and specify the form and manner in which the information is to be supplied (for example by electronic means).

88. Subsection (6) defines “passenger information”, “service information” and “crew information”. See clauses 334 and 335 on orders.

Clause 33: Power of police to require passenger information etc.

89. This clause enables the police to require, for police purposes, passenger, crew or service information in respect of ships and aircraft arriving (or expected to arrive) in or leaving (or expected to leave) any place in the UK. It applies to domestic and international journeys.

90. Subsection (2) provides that a constable of at least the rank of superintendent may require (by notice) the information referred to above from a carrier (that is the owner, agent or operator of a ship or aircraft). Under subsection (4), a constable may only impose such a requirement if the constable thinks it is necessary for police purposes or, in Scotland, for police purposes which are, or relate to, reserved matters within the meaning of the Scotland Act 1998 (see the definition in clause 340(1); “reserved matters” are those set out in Schedule 5 to the Scotland Act 1998). Subsections (5) and (6) provide that a requirement under subsection (2) may apply generally or only to one or more specified ships or aircraft, and that the Secretary of State may by order specify the form and manner in which information is to be supplied.

91. Subsection (3) states that a passenger or member of the crew must supply the carrier with the relevant information for the purposes of complying with a requirement under subsection (2).

92. Subsection (7) defines “passenger information”, “police purposes” (which has the same meaning as in Part 12 – see clause 250(3)), “service information” and “crew information”. Subsection (8) states that the Secretary of State can only make an order specifying types of information if satisfied that there are likely to be circumstances in which the information can be required under subsection (2) without breaching Convention rights. “Convention rights” are defined in clause 339(1) by reference to the Human Rights Act 1998 (see section 1(1) of that Act). See clauses 334 and 335 on orders.

Clause 34: Power of police to require freight information

93. This clause is an equivalent power to that in clause 33, but applies in respect of freight information and applies additionally to vehicles and to the owner or hirer of a vehicle, or any other person responsible for the import or export of the freight in question.

94. Subsection (1) states that this clause applies to ships, aircraft and vehicles which have arrived or left the UK or are expected to do so. Subsection (2) provides that a constable of at least the rank of superintendent may, by a notice given to a person referred to in subsection (3), require that person to supply freight information. Subsection (3) states the circumstances when an owner, agent, operator or hirer is liable to have this requirement imposed on them, and that in all cases persons responsible for the import or export of the freight into or from the UK are so liable.

95. Under subsection (4), a constable may only impose such a requirement if the constable thinks it is necessary for police purposes or, in Scotland, for police purposes which are or relate to reserved matters (see above in relation to clause 33(4)). Subsections (5) and (6) provide that a requirement under subsection (2) may apply generally or only to one or more specified ships, aircraft or vehicles, and that the Secretary of State may by order specify the form and manner in which information is to be supplied.

96. Subsection (7) defines “freight information”. Subsection (8) states that the Secretary of State can only make an order specifying types of information if satisfied that there are likely to be circumstances in which the information can be required under subsection (2) without breaching Convention rights (see above in relation to clause 33(8)). See clauses 334 and 335 on the order.

Clause 35: Notices under section 33 or 34

97. This clause relates to notices which impose one of the requirements under clause 33 (police requiring passenger, service or crew information) or 34 (police requiring freight information). See clause 329(1) on notices.

98. Subsection (1) states that a notice imposing one of the requirements listed above must specify the information required, the date or time by which it is to be supplied and the period during which it has effect. Under subsection (2), this period must begin with the date on which the notice is given and must not exceed 12 months – this is a change from the current provision, under the IANA 2006, where the maximum duration is six months. Subsection (3) provides that further requirements may be made following the expiry of the initial specified period.

Clause 36: Disclosure of information obtained under section 33 or 34

99. This clause provides that information obtained under clause 33 (police requiring passenger, service or crew information) or 34 (police requiring freight information) may be disclosed by a chief officer of police to the police in Jersey, Guernsey or the Isle of Man or any other foreign law enforcement agency. Subsections (2) and (3) define “foreign law enforcement agency” and “chief officer of police”.

Related offences

Clause 37: Failure to take steps required under section 28

100. This clause creates four offences. Taken together, the offences relate to owners, agents, operators and captains of ships, aircraft or trains, and to persons concerned with the management of ports or international railway stations. It is an offence for these persons either to do something prohibited, or to fail to do something required, by clause 28 without reasonable excuse.

101. Subsection (2) sets out the penalties for the offences. These reflect the provisions of the Criminal Justice Act 2003, subject to the transitory provision in Schedule 5.

Clause 38: Failure to supply information in connection with arrival or departure and clause 39: Failure to supply passenger information etc.

102. These clauses create offences related to the provision of information. A person commits an offence if, without reasonable excuse, the person fails to comply with a requirement imposed by or by virtue of: clause 29 (information connected with arrival and departure) or 32 (which relates to owners, agents, operators and captains being required to supply passenger, service and crew information); clause 33(2) or 34(2) (which relate to the police requiring passenger, service, crew and freight information); or clause 33(3) (which requires passengers and crew members to supply information to the carrier for the purposes of complying with a requirement imposed on a carrier under that clause).

103. A person who fails, without a reasonable excuse, to provide information further to a requirement under clause 33(2) or 34(2) by a constable in England, Wales or Northern Ireland otherwise than in relation to a reserved matter is not to be treated as committing an offence in Scotland.

104. A person who fails, without a reasonable excuse, to comply with a requirement under clause 33(3) for the purpose of complying with a non-reserved requirement is not to be treated as committing an offence in Scotland.

105. The penalties for these offences reflect the provisions of the Criminal Justice Act 2003, subject to the transitory provision in Schedule 5.

Designated immigration officials

Clause 40: Designated immigration officials

106. This clause provides that the Secretary of State may designate an official of the Secretary of State as a designated immigration official for the purposes of the Bill. Subsection (2) provides that a function of a designated immigration official under the Bill or any other enactment is exercisable by a designated immigration official, subject to any limitation specified in the official's designation under clause 41. Subsection (3) states that reference to "an enactment" in subsection (2) includes an enactment that is passed or made after this Bill is passed.

Clause 41: Designation: supplementary

107. Clause 41 provides that limitations specified in a designation may, in particular, relate to the functions which may be exercised under the designation or the purposes for which those functions may be exercised by the designated immigration official. Subsection (3) provides that a designation may be permanent or may be made for a specified period, may (in either case) be withdrawn and may be varied.

108. Subsection (4) requires that the power to designate or to withdraw or vary a designation must be exercised by the Secretary of State giving notice to the official in question (see clause 329(1) on notices). Subsection (5) provides that the Secretary of State may designate an official under clause 40 only if satisfied that the official is capable of effectively carrying out the functions that are exercisable by virtue of the designation and has received adequate training in respect of the exercise of those functions. In addition to these requirements, the Secretary of State must also be satisfied that the designated immigration official is otherwise a suitable person to exercise those functions.

PART 3: POWERS TO EXAMINE ETC.

Powers to examine

Clause 42: Persons who arrive in, enter or seek to enter etc. the UK

109. Clause 42 enables the Secretary of State to examine persons who fall within subsection (1) for the purposes set out in subsection (2). Subsection (1)(a) provides that the Secretary of State may examine those who have arrived in but who have not entered the UK. This allows the examination of those who have arrived in the UK or are in transit through the UK. Subsection (1)(b) provides for the examination of those who have entered the UK and have made an application for permission which is pending. Subsection (1)(c) provides for examination where a person is outside the UK, has applied for immigration or transit permission and the application is pending, and subsection (1)(d) provides for examination where a person is outside the UK and is seeking to arrive in or enter the UK but has not applied for immigration or transit permission and does not, therefore, fall within subsection (1)(c).

110. Subsection (2) sets out the purposes for which the person may be examined. A person may be examined to determine whether the person is a British citizen or an EEA entrant and, if the person is not, to determine whether the person has immigration or transit permission and, if the person has such permission, whether it should be cancelled or, if the person does not have such permission, whether it should be granted.

111. Subsections (3) and (4) provide that the Secretary of State may by notice require a person examined under this provision to submit to a specified medical examination or to provide a specified medical report. Subsection (5) provides that for the purposes of this clause, an application for an individual grant of immigration permission or transit permission is pending if it has been made and has not been

decided or withdrawn.

Clause 43: Persons leaving the UK

112. Clause 43 provides a power for the Secretary of State to examine a person at a port, international railway station or other place in the UK, where the Secretary of State has reasonable grounds to suspect that the person has gone there to embark on a ship, aircraft or train to leave the UK. Clause 43 sets out, at subsection (2), the purposes for which such a person may be examined. A person leaving or seeking to leave the UK may be examined for the purpose of determining whether the person is a British citizen. If the person is not a British citizen, the person may be examined to determine the person's identity, as well as other matters, including whether the person entered and remained in the UK lawfully and whether the person has committed an offence in the UK or elsewhere.

Clause 44: Further examination

113. Clause 44 enables the Secretary of State to require a person who is examined under clause 42 or 43 to submit to further examination for the purpose of determining one or more of the matters in subsection (2) of each clause respectively. Subsection (2) provides that the power to require a person to submit to further examination is exercised by the Secretary of State giving notice to the person.

114. Subsection (3) provides that a requirement to submit to further examination does not prevent a person who arrives in the UK as a transit passenger, as a member of crew or for the purpose of joining a ship, aircraft or train as a member of the crew, from leaving on their intended ship, aircraft or train. Subsection (4) defines "transit passenger" for the purpose of subsection (3), as a person who passes through the UK, without entering it, en route to another country.

Clause 45: Further medical examination in interests of public health

115. Clause 45 enables the Secretary of State to require a person who has arrived in the UK to report to a specified health body and submit to any such examination that the health body may require in the interests of public health. This clause applies where a person who is examined under clause 42(1)(a) (examination on arrival and before entry) submits to a post-arrival medical examination pursuant to a requirement under clause 42(3)(a) or 44(1)(c)(i), and the Secretary of State thinks a further medical examination of that person may be required in the interests of public health.

116. Subsection (2) defines a "post arrival medical examination" for the purposes of Part 3 of the Bill.

117. Subsection (3) provides the Secretary of State with the power to require such a person to report to a specified health body in the UK and to attend at the time and place for any such examination as that body may require. Subsection (4) requires that the power in subsection (3) be exercised by the Secretary of State giving notice to that person (see clauses 329 and 330 on notices). Subsection (5) requires the Secretary of State to act on the advice of the registered medical practitioner who carried out the

original post-arrival medical examination in deciding whether to require a further medical examination under subsection (1)(b). Subsection (6) defines “health body” for the purposes of this clause.

Power to search for those liable to examination

Clause 46: Power to search ships, aircraft & trains etc.

118. Clause 46 enables a designated immigration official to search any ship, aircraft or train, anything on board a ship, aircraft or train, anything which the official has reasonable grounds for believing has been on board a ship, aircraft or train which brought it to the UK or anything that the designated immigration official has reasonable grounds to believe is about to be taken on board a ship, aircraft or train to leave the UK. The purpose of this power is to search for persons who are liable to examination under Part 3 of the Bill.

Clause 47: Contracting out the section 46 power

119. Clause 47(1) enables a person authorised by the Secretary of State for this purpose to exercise the power of a designated immigration official under clause 46 to search any ship, aircraft or train for the purpose of determining whether there are persons liable to examination on board. Clause 324 provides a power to board the ship, aircraft or train for the purposes of this Bill. Subsections (3) to (5) provide for the Secretary of State to make arrangements for the exercise of these powers by authorised persons or constables. Subsection (6) requires the Secretary of State to make provision for the appointment of a Crown servant to monitor and inspect the exercise of the powers under subsection (1) when undertaken by authorised persons other than constables and to investigate any allegation made against an authorised person (other than a constable).

Clause 48: Contracting out: supplementary

120. Clause 48 sets out the conditions for authorisation by the Secretary of State of a constable or a person other than a constable under clause 47. Subsection (3) provides that the power to authorise, withdraw or suspend an authorisation must be exercised by the Secretary of State giving notice to the authorised person. Subsection (4) provides that the Secretary of State may only authorise a person, other than a constable, if that person applies to be authorised and the Secretary of State is satisfied that the person is capable of effectively carrying out the functions, has received adequate training and is otherwise a suitable person to exercise the functions which are exercisable by virtue of the authorisation. See related offence in clause 53.

Clause 49: Power to search persons found on a section 47 search

121. Clause 49 provides the power for an authorised person to search a person discovered in the course of a search under section 47, if the authorised person has reasonable grounds for suspecting that the person discovered is liable to examination under Part 3. Subsection (2) sets out that the person and their baggage and vehicle may be searched for anything that may assist escape; cause injury or provide information about the person’s identity, nationality or journey. Subsection (3)

provides a power to seize and retain anything falling within subsection (2) and subsection (4) requires the authorised person to deliver anything retained to the Secretary of State as soon as is reasonably practicable. Subsection (6) sets out the limitations on the exercise of the power to search the person.

Powers to obtain information and documents etc.

Clause 50: Power to require production of identity document etc.

122. This clause requires a person (“P”) being examined or being further examined to supply to the Secretary of State all the information in P’s possession that is requested for the purposes of the examination, to produce a valid identity document in relation to P, to declare whether or not P is carrying or conveying (for example, in baggage or a vehicle) or has carried or conveyed a specified item or other item, and to produce a specified document P is carrying or conveying if required to do so.

123. Subsection (3) defines “specified document or other item” for the purposes of subsection (2) as a document or other item of a description specified by the Secretary of State, which appears to the Secretary of State to be relevant for the purposes of the examination. This could include information contained in an electronic device for example a laptop or mobile phone.

Clause 51: Power to search for identity documents etc.

124. Clause 51 enables a designated immigration official to search a person who is being examined, or has been required to submit to a further examination, or who is being further examined under clause 44. The person, and his baggage or vehicle may be searched for anything that P might use to assist his escape from detention, to cause physical injury or that provides information about his identity, nationality or journey.

125. Subsections (3) and (4) enable a designated immigration official to carry out a more extensive search to determine whether P is carrying or conveying or has carried or conveyed a valid identity document or a specified document or other item where P has been required under clause 50 to produce or to declare whether or not P is carrying or conveying or has carried or conveyed such a document or item. Subsection (4) specifies what may be searched for this purpose.

126. Subsection (5) sets out the threshold that must be satisfied for an aircraft, ship, train or vehicle to be searched: that the designated immigration official has reasonable grounds for believing that P arrived in the UK in it, or that P is to leave the UK in it. Subsection (6) provides for a power to seize anything found on a search, which falls within subsection (2) or (4) (the latter power applying only where the official has reasonable grounds for believing anything found on such a search is relevant for immigration purposes (see subsection (7))). An item subject to legal privilege may not be seized (see subsection (9)). Subsection (8) provides for a person to carry out the search under this clause under the authority of a designated immigration official. Subsection (10) sets out the limitations on the search of a person

in public. For retention of items seized on a search see clause 168.

Related offences

Clause 52: Refusal to be examined or supply information etc.

127. This clause makes it an offence for a person (“P”), without reasonable excuse, to fail to submit to examination under clause 42(1) or 43(1), or to a further examination under clause 44(1)(a) or (b); fail to submit to a medical examination or to provide a medical report under clause 42(3) or 44(1)(c); fail to comply with a requirement under clause 45(3) to report to a specified health body; fail to supply information in P’s possession which P is required to supply under clause 50, or fail to produce documents or other items which P is carrying or conveying and which P is required to produce under clause 50.

128. Subsection (2) sets out the penalties for these offences. The penalties reflect the Criminal Justice Act 2003, subject to the transitory provision in paragraph 2 of Schedule 5.

Clause 53: Obtaining authorisation under section 47 by false pretences

129. This clause makes it an offence for a person (“P”) to make a statement, with a view to obtaining authorisation under section 47 (contracting out of clause 46 power) for P or another person, which P knows to be false in a material particular or recklessly make a statement which is false in a material particular

Clause 54: Provision of post-arrival medical examinations

130. Clause 54 places a duty on the appropriate national authority to provide or arrange for the provision of services required for the carrying out of post-arrival medical examinations in the authority’s area; and facilities required for that purpose, so far as they are not the subject of a direction given by the Secretary of State under clause 30. Subsection (1) imposes the duty on the appropriate national authority; subsection (2) provides that the appropriate national authority may direct a health body (“a designated health body”) to exercise the functions under subsection (1).

131. Subsection (3) requires that a post-arrival medical examination be carried out by a registered medical practitioner acting on behalf of the appropriate national authority for the area where it is carried out or on behalf of a designated health body, where a direction is given under subsection (2). Subsection (4) provides that directions under subsection (2) are given by regulations made by the appropriate national authority or by an instrument in writing. Subsection (5) provides that where directions are given by an instrument in writing, clause 334(4) applies as it would have applied if the directions had been given by regulations. Accordingly the directions may make provision of a kind mentioned in clause 334(4) (including different provision for different cases and incidental, consequential and transitional provision). Subsection (6) provides that where an appropriate national authority gives directions under subsection (2) to a designated health body, the body must have regard to any guidance given to the health body in relation to the exercise of the

delegated functions.

132. Subsection (7) defines “appropriate national authority” for the different areas of the UK and provides that references to the appropriate national authority’s area are to be read accordingly.

133. Subsection (8) sets out that the meaning of “health body” and subsection (9) defines “responsible authority” for the purposes of the Part.

Clause 55: supply of information to Secretary of State

134. This clause imposes a duty on the responsible authority to disclose to the Secretary of State, for use for immigration purposes, information relating to a person that the authority holds as a result of that person having submitted to a post-arrival medical examination. “Immigration purposes” in this clause has the same meaning as in Part 12.

Clause 56: Supply of information to health body

135. Clause 56 applies where a person has been required to submit to a post-arrival medical examination and the Secretary of State has given the person a notice under clause 45 requiring the person to report to a specified health body for a further examination in the interests of public health. The clause provides for the supply and sharing of necessary information between the responsible authority and the specified health body about that person, as set out in subsection (2). Subsection (3) makes clear that the responsible body may only disclose the information under subsection (2) if it thinks it is necessary for the purpose of medical diagnosis, the provision of medical care, protecting public health or the management of health care services. Subsection (4) sets out the interpretation of contamination.

Clause 57: Post-arrival medical examinations: health care professionals

136. This clause provides that, for the purposes of Part 3, a post-arrival medical examination is to be treated as carried out by a registered medical practitioner where it is carried out by a health care professional acting under the direction of that practitioner. Subsection (2) enables the registered medical practitioner to disclose to the health care professional information the practitioner thinks necessary for the purpose of enabling the examination to be carried out. Subsection (3) requires that information acquired by the health care professional must be disclosed to the registered medical practitioner and provides that the information may not be used by the health care practitioner for any other purpose. Subsection (4) defines health care professional.

PART 4: POWER TO OBTAIN BIOMETRIC INFORMATION

Power to obtain biometric information

Clause 58: Power to obtain biometric information

137. Clause 58 consolidates powers to obtain and record biometric information

from the IA 1971; the IAA 1999; the NIAA 2002, the IAA 2002; the IANA 2006 and the UKBA 2007. Subsection (1) enables a person authorised by the Secretary of State for the purposes of the clause (see subsection (5)) to require a person to whom subsection (3) applies to supply their biometrics. Subsection (2) allows the imposition of a requirement to submit to a particular process or to attend at a particular place and time for the purpose of supplying biometrics.

138. Subsection (3) enables biometric information to be obtained or recorded from: anyone, inside or outside the UK, who has an application for permission outstanding; anyone being examined or further examined on entry to or departure from the UK; anyone on immigration bail; anyone detained under Part 6; anyone who has applied for or is in receipt of support; anyone who has to apply for a biometric immigration document (“BID”); and anyone required to produce a BID.

139. Subsection (4) ensures that biometric information taken by an authorised person who is not an official of the Secretary of State is to be treated as belonging to the Secretary of State. An authorised person may, if necessary, use reasonable force to obtain biometrics from a detained person (see clause 325(4)).

Clause 59: Safeguards etc. for children

140. Subsection (1) of clause 59 retains the existing requirement in the IAA 1999, the NIAA 2002 and the UKBA 2007 for a “responsible adult” (defined in subsections (2) and (3)) to be present when biometric information is obtained or recorded from a child under the age of 16. Subsection (5) provides that “authorised person” has the same meaning as in clause 58.

141. Subsection (4) provides that biometric information may be obtained or recorded from a child under the age of 16 without an adult present if an authorised person has reasonable grounds for believing that the child is aged 16 or over.

Clause 60: Retention of biometric information

142. Clause 60 requires the Secretary of State to make regulations about the retention of biometric information supplied under clause 58. The regulations may make provision for retention for prescribed periods and must include provision for the destruction of biometrics, in particular where a person proves he is a British citizen or EEA entrant. The requirement to destroy does not apply if the biometric information is retained in accordance with or for the purposes of another enactment.

Biometric immigration documents

Clause 61: Regulations as to issue and use

143. Clause 61(1) enables the Secretary of State to make regulations in relation to BIDs. The regulations (“BID regulations”) may, specifically, require a person who is neither a British citizen nor an EEA national to apply for a BID, to use it for specified purposes and, when it is used, to supply non-biometric information for comparison with non-biometric information supplied in connection with the application for a BID.

Subsection (2) provides that BID regulations may make provision about: the issue and contents of a BID; for a BID to be combined with another document; its period of validity; its surrender; and the surrender of immigration or nationality documents on issuing of a BID.

144. Subsection (3) provides that regulations may require the BID holder to notify the Secretary of State where the person knows or suspects that the document has been altered, damaged, lost or stolen; or that the information supplied in connection with the BID is or has become false, misleading or incomplete.

145. Subsection (4) provides that BID regulations may permit the Secretary of State to cancel a BID in specified circumstances, including where an attempt has been made to copy the BID; where the BID holder has failed to surrender it when required; where the BID needs to be reissued; where the BID holder is to be granted permission or the holder's permission is to be varied or cancelled; where the BID holder has been removed from or has left the UK; and where the BID holder has refused to supply their biometrics.

146. Subsection (5) provides that BID regulations may require the production or use of a BID that is combined with another document, including an identity card, but may not require a BID to be carried at all times .

147. Subsection (6) provides that if a BID were to be combined with an identity card subsection (5)(a) takes precedence over section 16 of the Identity Cards Act 2006 (prohibition of requirement to produce an ID card).

148. Subsection (7) provides that BID regulations which amend or replace existing regulations may require someone holding a BID issued under the old regulations to apply for a BID under the new regulations.

Penalty for non-compliance

Clause 62: Penalty for non-compliance

149. Subsection (1) provides for a civil penalty for failure by a person falling within clause 58(3)(f) or (g) to comply with a requirement to provide biometrics under clause 58(1); and for failure by a person to comply with a requirement imposed by regulations under clause 61.

150. Subsections (2) and (3) allow the Secretary of State to designate a person aged 18 or over as being responsible for ensuring that a child falling within clause 58(3)(f) or (g) complies with a requirement to supply biometrics or for ensuring that a child complies with a requirement imposed by regulations under clause 61. Where the designated person fails to ensure the child's compliance, the designated person is treated as having failed to comply with the requirement in question.

151. Subsection (4) stipulates that the penalty cannot exceed the maximum amount

set out in regulations (see clauses 334 and 335 on regulations). Subsection (5) stipulates that a civil penalty must be paid within the period prescribed by regulations unless a notice of objection is given in respect of the penalty. The intention as regards the deadline for payment is that it will be 28 days unless payment by instalments is agreed (and this will be the deadline for all civil penalties in the Bill). Under subsection (6), if the notice of objection is withdrawn, the penalty becomes due before the end of the prescribed period. Subsections (8) and (9) provide that further notices may be issued in the event of continued failure to comply, but not while a notice of objection could be, or has been given, or while there is, or could be, an appeal. Part 15 makes provision about objections and appeals relating to, and for the recovery of, civil penalties imposed under the Bill.

Clause 63: Code of Practice

152. Clause 63 requires the Secretary of State to issue and refer to a code of practice specifying the matters to be considered in determining whether to impose a civil penalty under clause 62, and in determining the amount of the penalty. The code of practice must be laid before Parliament.

PART 5: EXPULSION ORDERS & REMOVAL ETC. FROM THE UK

Expulsion orders

Clause 64: Expulsion orders

153. Subsection (1) provides for the effect of an expulsion order. An expulsion order may be made for a limited or unlimited period and whether or not a person is in the UK. Where an expulsion order is made against a person who is in the UK, that person will be required to leave the UK, and will be prohibited from re-entering. Where an expulsion order is made against a person outside the UK, that person will be prohibited from arriving in or entering the UK, and if the person arrives or enters in breach of that order, he is required to leave. See clause 77 for the related offence.

154. Subsection (6) requires the Secretary of State to give notice to a person where an expulsion order is made against that person. See clause 329(1) on notices.

Clause 65: Duty and power to make an expulsion order

155. Subsection (1) requires the Secretary of State to make an expulsion order in respect of foreign criminals. This maintains the position established in the UKBA 2007. Subsection (2) enables the Secretary of State to make an expulsion order in relation to a person who falls within subsection (3). The Secretary of State also has the power to make an expulsion order in relation to family member (defined in clause 72) of any person against whom an expulsion order is made.

156. Subsection (3) provides that an expulsion order may be made where a person has arrived in UK with no immigration permission or transit permission (either because it has not been granted or because it has been cancelled); has entered the UK and does not have permission; has breached a condition of temporary permission; has

obtained, or attempted to obtain, immigration permission by deception, or where the Secretary of State thinks that the person's expulsion from the UK would be conducive to the public good. An expulsion order may be made whether the person is in the UK or not.

157. Subsection (4) defines the qualifying family members in relation to whom an expulsion order may be made. It prevents an expulsion order from being made against a family member where more than 8 weeks have elapsed since the person against whom the original expulsion order was made has left the UK or the expulsion order in relation to that other person has been cancelled or has expired.

Clause 66: Exceptions to the duty to make an expulsion order

158. This clause sets out the exceptions which only apply to the duty to make an expulsion order in respect of foreign criminal under clause 65(1). The application of one or more of the exceptions in this clause removes the duty to make an expulsion order but, subject to the limits on the making of an expulsion order under clause 67, does not prevent the Secretary of State from exercising discretion to make an expulsion order under the power in clause 65(2). The exceptions broadly cover persons subject to extradition or to an order under mental health legislation.

159. Subsection (6) creates a presumption that where exception 2 (extradition) applies the expulsion of a person will be regarded as conducive to the public good for the purposes of clause 65(3)(f). This does not prejudice the Secretary of State's power to make an expulsion order against a foreign criminal to whom exception 1 applies on the basis that expulsion would be conducive to the public good. In these cases there will be no similar presumption but the Secretary of State will have the power to make an order on that ground. In all cases, when looking at the power to make an expulsion order, the limits on the making of an expulsion order in clause 67 will apply.

Clause 67: Limits on the making of an expulsion order

160. This clause contains exceptions which prohibit the Secretary of State from making an expulsion order. These exceptions apply to all expulsion orders. Exception A reflects obligations under EU treaties; Exception B reflects obligations under the Refugee Convention; Exception C reflects obligations in respect of persons entitled to humanitarian protection under the EU Directive on international protection (Council Directive 2004/83/EC); Exception D reflects obligations under the HRA 1998.

Clause 68: Timing

161. Where there is a duty to make an expulsion order in relation to a foreign criminal this clause provides that the making of the order is at a time chosen by the Secretary of State. It also provides in subsection (3) that the duty does not create a private right of action in respect of non-compliance. Subsection (4) and (5) provide that an expulsion order may not be made whilst any appeal against the conviction, or the conviction or sentence to which it relates, could be brought or, where it has been instituted, until any such appeal is either withdrawn or determined.

Clause 69: Effect of expulsion order on immigration or transit permission

162. Subsection (1) provides that the making of an expulsion order automatically cancels any permission that has been granted to a person against whom an expulsion order has been made. Subsection (2) provides that automatic cancellation does not take effect while a person has a right to bring an in-country appeal. However subsection (3) provides that, where subsection (2) applies, and the appeal can no longer be brought or when it ceases to be pending, then the permission is automatically cancelled. Under subsection (4) the permission is not cancelled if the appeal is successful and the Secretary of State cancels the expulsion order. Subsection (6) provides that any permission granted to a person where an expulsion order is in force is to be treated as if never granted. This is to protect against any situation where a person who is subject to an expulsion order is granted permission either by oversight or, for example, due to a person's use of a false identity.

Clause 70: Cancellation of an expulsion order

163. Subsection (1) allows for an expulsion order to be cancelled by the Secretary of State. The Rules may make provision about cancellation of an expulsion order (see clause 20(3)(e)). Subsection (4) specifies that a person must be given notice of a decision to cancel or refuse to cancel an expulsion order (see clause 329(1) on notices).

164. Where a person is a foreign criminal and an expulsion order is made under the duty under clause 65(1), subsection (2) provides that the order may be cancelled only if an exception in clause 66 or 67 applies, or if the foreign criminal is outside the UK. Subsection (3) creates a duty to cancel an expulsion order where the person is outside the UK if prohibiting that person's entry to the UK would breach their rights under the Community Treaties or a person's Convention rights.

165. Subsection (5) provides for the automatic cancellation of an expulsion order against a person if they become a British citizen.

166. Subsection (6) provides for the automatic cancellation of an expulsion order against a person ("P") if it was made on the basis that P is the family member of another person (in respect of whom an expulsion order is being or has been made), and P ceases to be a family member of that person, or the expulsion order in respect of the other person is cancelled or has expired.

Clause 71: Meaning of "foreign criminal"

167. Subsection (1) defines a "foreign criminal" as a non-British citizen who has been convicted in the UK of an offence, where conditions A or B in subsections (2) and (3) are met. Subsection (2) states that Condition A is met if the person is sentenced to a period of imprisonment of at least 12 months (as defined in subsection (5)).

168. Subsection (3) states that Condition B is met if the person is convicted of an offence specified by an order (see clauses 334 and 335 on orders) made by the

Secretary of State, and the person has been sentenced to a period of imprisonment (see also subsection (6)). Subsection (4) makes an exception for persons subject to an order under section 5 of the Criminal Procedure Insanity Act 1964 so that such persons are not regarded as having been convicted of an offence for the purpose of subsection (1).

Clause 72: Meaning of member of the family of a person

169. This clause defines when a person is a member of the family of another person for the purposes of Part 5. Under subsection (1), a person's family members include that person's spouse, civil partner or unmarried partner (of either sex); that person's children under the age of 18, and the children under the age of 18 of that person's spouse, civil partner or unmarried partner.

170. Subsections (2) to (4) define when a person is another person's unmarried partner. Persons are considered to be unmarried partners if those persons have been living together in a relationship akin to marriage or civil partnership which has subsisted for 2 years or more. Subsections (2)(b) and (c) make provision for persons to fall within this definition when the only reason those persons have been living apart is because one of those persons has been detained (whether under Part 6 or otherwise) or removed under the powers in this Bill. Subsection (5) sets out who is to be regarded as an adopted child with regard to subsection (1), and subsection (6) defines the meaning of "legally adopted" within this clause.

Removal from the United Kingdom

Clause 73: Power to remove those subject to an expulsion order

171. This clause provides that where an expulsion order has been made in relation to a person that person may be removed to a country specified by the Secretary of State. The country specified must be a country mentioned in subsection (3) – for example, the country in which the person embarked for the UK. A person may not be removed from the UK while there is an in-country right of appeal, or such an appeal is pending (see clause 75).

172. Subsection (4)(a) and (b) provide for directions to be given to the captain of a ship, aircraft or train on which the person arrived, to remove the person either on that ship etc, or for the carrier to remove the person on any ship etc or to make arrangements for the person's removal as specified in the removal directions. Subsection (4)(c) provides for directions to be given to the captain of a ship, aircraft or train which is about to leave the UK to remove the person on that ship etc. Subsection (4)(d) provides for directions to be given to the carrier of any ship, aircraft or train (other than one in which the person arrived in the UK) to make arrangements for the person's removal from the UK as specified in the removal directions, or to remove the person from the UK in accordance with arrangements made by the Secretary of State.

173. Subsections (5) and (6) define "the carrier" of a ship, aircraft or train.

Subsection (7) provides for the removal directions to include provision for a person to be accompanied by one or more escorts. Subsection (8) provides that where the directions include provision for a person to be accompanied by an escort, the directions may include provision for the return of the escort to the UK and the escort's remuneration. The question of who must bear the costs of complying with removal directions is dealt with in clause 74.

174. Subsection (9) gives the Secretary of State, or a person acting under the authority of the Secretary of State, the power to place persons being removed from the UK on any ship, aircraft or train in accordance with the removal directions.

Clause 74: Costs of removal

175. This clause sets out who must bear the costs of complying with removal directions under clause 73(4). Subsection (1) provides where the directions are given under clause 73(4)(a) or (b) to the captain or carrier of the ship etc by which the person arrived in the UK, the costs of removal must be met by the carrier. Subsection (2) provides that the Secretary of State will bear the costs of other removals. Subsection (3) allows the Secretary of State to recover the costs of removal from the carrier of the ship etc by which the person arrived in the UK where directions, given under clause 73(4)(a) or (b) to the carrier or the captain of that ship etc, have not been complied with.

Clause 75: No removal etc. where right of in-country appeal

176. This clause prevents a person ("P") from being removed from or required to leave the UK while P is in the UK and has a right to bring or has pending an in-country appeal against the making of an expulsion order or other immigration decision (see subsection (4)). However, it is possible for the Secretary of State to make an expulsion order against P at the point at which P meets the criteria for expulsion, even if P cannot be removed or required to leave the UK until an in-country appeal is heard. Subsection (3) specifies that subsection (1) does not prevent P's detention, the grant of immigration bail to P, the giving of removal directions, a requirement to take specified action in order to facilitate removal, or other interim or preparatory action being taken for P's removal.

Clause 76: Power to require specified action to facilitate removal

177. This clause enables the Secretary of State to require a person to take specified action if the Secretary of State thinks that it will or may enable a travel document to be obtained by or for the person, and possession of the travel document will facilitate the person's removal from the UK (see clause 339 for the definition of a "travel document"). Subsection (2) sets out the sort of steps the Secretary of State may require a person to take. It includes obtaining documents; providing documents; providing biometric information and attending an interview. Many people arrive in the UK without a passport or other identification and cannot always be removed until a travel document is obtained on their behalf. A travel document is obtained from the person's relevant embassy or high commission and before issuing such a document the

embassy must be satisfied of the person's identity and nationality.

Related offences

Clause 77: Breach of expulsion order

178. This clause makes it an offence for a person (“P”) to be present in the UK in breach of an expulsion order. Subsections (2) and (3) define when a person will be present in the UK in breach of an expulsion order for the purposes of this clause. This applies when a person is knowingly in the UK and P knows that P’s presence is in breach of an expulsion order made against P. However, for the purposes of this clause, P’s presence is not to be regarded as in breach of an expulsion order when P is on immigration bail, is being detained (under Part 6 or otherwise) or has immigration permission by virtue of clause 69 (permission not automatically cancelled pending appeal).

179. Subsections (4) and (5) provide that the offence is a continuing offence. This means that the offence is committed on the first day when P is present in the UK in breach of an expulsion order, and continues to be committed throughout any period after that during which P is present in the UK in breach of an expulsion order. P may only be prosecuted once under this section in respect of the same period.

180. The defence in clause 318 (defence for a refugee or person entitled to humanitarian protection) is available in the case of this offence (see subsection (6)). Subsection (7) sets out the penalty for this offence, which reflects the Criminal Justice Act 2003, subject to the transitory provision in Schedule 5.

Clause 78: Failure by carriers etc. to comply with removal directions

181. This clause makes it an offence for a person (carrier, etc) to, without reasonable excuse, fail to comply with any removal directions given to that person under clause 73(4). The penalty for this offence reflects the Criminal Justice Act 2003, subject to the transitory provision in Schedule 5.

Clause 79: Failure to comply with a requirement under section 76 to facilitate removal

182. This clause makes it an offence for a person to, without reasonable excuse, fail to comply with a requirement to take specified action to facilitate removal under clause 76. The penalty for this offence reflects the Criminal Justice Act 2003, subject to the transitory provision in Schedule 5.

International travel bans

Clause 80: Effect of international travel ban on immigration or transit permission

183. Subsection (1) defines a “person subject to an international travel ban” as a person named by or by virtue of, or of a description specified in, a designated

instrument.

184. Subsection (2) provides that where a person becomes subject to an international travel ban any prior immigration or transit permission granted to that person is automatically cancelled. Subsection (3) sets out the specific circumstances in which a person who is subject to an international travel ban may be granted immigration or transit permission. Immigration permission may be granted where it is necessary to avoid a breach of a person's Convention rights or a contravention of the UK's obligations under the Refugee Convention or Council Directive 2004/83/EC (international protection). Immigration or transit permission may be granted where the grant would not contravene the UK's obligations under the designated instrument. Subsections (4) to (7) make provision about a "designated instrument".

Assistance to voluntary leavers and other support

Clause 81: Power to provide assistance in relation to voluntary leavers

185. This clause largely replicates sections 58 of the NIAA 2002. It allows the Secretary of State to make arrangements to assist voluntary leavers. Subsections (1) to (4) define who is a "voluntary leaver". A person ("P") is a "voluntary leaver" if P falls within subsection (3) or (4), leaves the UK for a place where P hopes to take up permanent residence and the Secretary of State thinks that P wishes to leave the UK.

186. To fall within subsection (3), P must be neither a British citizen nor an EEA entrant. To fall within subsection (4) P must be an EEA entrant and the Secretary of State must have reasonable grounds for believing that P is or has been a victim of trafficking within the meaning of the Council of Europe Convention on Action against Trafficking in Human Beings. Subsection (4) is new.

187. Subsection (5) provides that the arrangements made under subsection (1) must require that, before assistance is given, an application for assistance must be made. Subsection (6) sets out the sort of assistance which can be given and in particular makes clear that financial assistance can be given.

Clause 82: Projects relating to migration

188. This clause replicates section 59 of the NIAA 2002. It provides a power to the Secretary of State to participate in migration projects. The types of projects in respect of which this power to participate may be exercised are set out in subsection (1). Subsection (2) clarifies the way in which the power to participate may be exercised by the Secretary of State. Subsection (4) states that subsection (1) does not confer a power to remove a person from the UK or affect whether a person is entitled or permitted to enter or stay in the UK.

PART 6: POWERS TO DETAIN & IMMIGRATION BAIL

Powers to detain

Clause 83: Persons without immigration permission on board aircraft etc.

189. This clause enables a person who is not a British citizen or EEA entrant to be detained on board an aircraft, ship or train, where that person has arrived in the UK and been refused immigration or transit permission, or has arrived with such permission which has been cancelled. Subsection (2) provides that the Secretary of State may require the captain of an aircraft etc to prevent a person disembarking in the UK. Subsection (3) enables the captain to detain the person for that purpose.

Clause 84: persons liable to examination found on a section 47 search

190. Clause 84 enables a person authorised under clause 47 (see subsection (5)) to detain a person who is discovered in the course of a search under that provision if the authorised person has reasonable grounds for suspecting that the person is liable to examination under Part 3. Subsections (2) and (3) provide for the person to be delivered as soon as reasonably practicable to the Secretary of State. Subsection (4) limits detention under this clause to no longer than 3 hours. This power broadly replicates section 40 of the IANA 2006.

Clause 85: Persons liable to examination on arrival or after entry

191. Clause 85 enables a person who is liable to examination under clause 42(1)(a) or (b) (examination on arrival or after entry), or as a person so examined, to further examination under clause 44, to be detained under authority of the Secretary of State until completion of the examination

Clause 86: Person liable to examination on leaving the UK

192. Clause 86 enables a person who is liable to examination under clause 43 (examination on leaving the UK), or as a person so examined, to further examination under clause 44, to be detained under authority of the Secretary of State until completion of the examination. Detention under this provision is limited to a maximum of 12 hours.

Clause 87: Foreign criminals pending detention under section 88

193. Clause 87 provides for the detention of a foreign criminal for up to 2 days after notification to the Secretary of State where a person becomes a foreign criminal (see clause 71) on sentencing but is not detained in pursuance of that sentence. Subsection (2) requires the sentencing court to give the Secretary of State notice of the person's conviction and sentence as soon as is reasonably practicable. Subsection (3) specifies that the sentencing court is the court giving the sentence that results in the person falling within the definition of foreign criminal in clause 71. Subsection (4) provides that a foreign criminal must be detained where following the sentence of a court the person is not detained in pursuance of that sentence and the Secretary of State or a court has not otherwise directed release. It is specified that the detention will continue until the Secretary of State decides whether to detain under clause 88 and, where the Secretary of State does decide to detain, until that detention takes effect. Subsections (5) and (6) place a limit of two days on detention under this clause, beginning with the day after the court notifies the Secretary of State of the conviction

and sentence.

Clause 88: Persons who may be or are subject to an expulsion order

194. Subsection (1) enables a person to be detained under the authority of the Secretary of State where the Secretary of State has reasonable grounds for suspecting an expulsion order may or must be made in relation to that person. The person may be detained until an expulsion order is made or a decision not to make an expulsion order is made.

195. Subsection (2) provides that if a expulsion order is made the person may be detained until the person's removal or departure from the UK.

196. Subsection (3) provides that a foreign criminal against whom an expulsion order has been made pursuant to the duty in clause 65(1) must be detained unless, in the circumstances, the Secretary of State thinks it inappropriate. Subsection (4) provides that, in the case of a person being detained under subsection (1) or (2), a court hearing that person's appeal against conviction or sentence may direct the release of that person from detention.

Clause 89: Persons subject to an expulsion order placed on board aircraft etc.

197. This clause provides that where a person is to be removed from the UK under clause 73 and is placed on board an aircraft, ship or train, the captain when required to do so by the Secretary of State, must prevent the person from disembarking in the UK until the person has been removed. Subsection (3) enables the captain to detain for this purpose.

Clause 90: Persons liable to arrest by a constable

198. Clause 90(1) enables a designated immigration official at a port or international railway station in England, Wales, or Northern Ireland to detain a person where the designated immigration official has reasonable grounds for suspecting that the person is someone whom a constable could arrest without a warrant pursuant to section 24(1), (2) or (3) of the Police and Criminal Evidence Act 1984 (or the equivalent powers in Northern Ireland) or that an arrest warrant is outstanding for that person.

199. Subsection (2) enables a designated immigration official to detain at a port in Scotland a person whom there are reasonable grounds for suspecting is a person subject to a warrant for arrest.

200. Subsection (3) provides that the designated immigration official must arrange for a constable to attend as soon as is reasonably practicable, may search the person for, and seize and retain anything that might be used to escape; cause physical injury, or which the official thinks may be evidence of the commission of an offence. An item subject to legal privilege may not be seized (see subsection (6)). The designated immigration official must deliver the person and anything retained on the search to the constable on arrival. Subsection (4) limits the detention of a person under this clause

to no longer than 3 hours. Subsection (5) enables a designated official to pursue and return the person to the port or railway station.

201. Subsection (8) makes clear that a “port” for the purposes of this section includes a place where a designated immigration official has reasonable grounds for suspecting that the person has gone for the purpose of embarking on a ship or aircraft or has arrived there on disembarking from a ship or aircraft. This power broadly replicates section 2 of the UKBA 2007 (as amended by section 52(1) of the BCIA 2009), except that the power now extends to international railway stations.

Related provisions

Clause 91: Power to remove a person from an aircraft etc. for detention

202. This clause enables a person to be removed from an aircraft, ship or train, under the authority of the Secretary of State, in order for that person to be detained.

Clause 92: Place and effect of detention

203. This clause provides that a person detained under this Part may be detained in such places as the Secretary of State may direct. While being detained, the person may be taken, in the custody of a constable, or any person acting under the authority of the Secretary of State, to such a place for the purpose of being detained at that place, or to and from a place where the person’s presence is required for a purpose connected with the operation of this Bill. Subsection (4) provides that a person, whilst being detained, is still subject to any requirement under clause 2(1) to have immigration permission.

Clause 93: Duty to give reasons and to review detention

204. This clause provides that the Secretary of State must give a person who is detained under Part 6 a notice stating the reasons for detention. The notice must be given at the time of detention or as soon as is reasonably practicable after that. Subsection (3) provides that the detention must be reviewed every 28 days, or as soon as reasonably practicable after that. Subsection (4) provides for the person to be given notice of the outcome of the review and, if applicable, the reasons for continued detention (see clause 329(1) on notices).

Clause 94: Recovery of detention & other costs

205. This clause makes provision for the recovery from a carrier of costs arising from a person’s detention, accommodation and maintenance where the person arrives in the UK without permission or has permission but it is cancelled within 24 hours of arrival and an expulsion order is made in relation to the person. The maximum number of days in respect of which costs may be demanded is 14 days. Subsection (5) provides that if the person is subsequently granted permission the costs will not be demanded, or if already paid, they will be refunded.

Related Offences

Clause 95: Absconding from detention

206. This clause makes it an offence for a person to abscond from detention under Part 6. This is an extension of the current offences relating to escape from authorised persons and from immigration officers detaining persons at a port pending the arrival of the police. Subsection (2) sets out the penalty for this offence, which reflects the Criminal Justice Act 2003, subject to the transitory provision in Schedule 5.

Clause 96: Assisting a person to abscond

207. Subsection (1) makes it an offence for a person to assist a person being detained under Part 6 to abscond, or attempt to abscond, from detention. Subsection (2) makes it an offence for a person if, intending to facilitate a person being detained under this Part to abscond from detention, the person brings, throws or otherwise conveys anything into a place where the person is being detained; causes another person to bring, throw or otherwise convey anything into such a place; gives anything to a person being detained under this Part; or places anything in any place (whether inside or outside a place where the person being detained under this Part is being detained). Subsection (3) sets out the penalty for these offences, which reflect the Criminal Justice Act 2003, subject to the transitory provision in Schedule 5.

Clause 97: Failure by captain to prevent disembarkation

208. This clause makes it an offence for the captain of a ship, aircraft or train, without reasonable excuse, to permit a person to disembark in the UK when the captain is required under clause 83 or 89 to prevent disembarkation. Subsection (2) sets out the penalty for this offence, which reflects the Criminal Justice Act 2003, subject to the transitory provision in Schedule 5.

Immigration bail

Clause 98: Power to grant immigration bail

209. Subsection (1) sets out the circumstances in which the Secretary of State may grant immigration bail. Immigration bail may be granted when a person is detained under clause 85 or 88, or the person is not being detained under either of those clauses but there is a power to do so, or the person is detained under clause 87, or the person meets the criteria for special immigration status (as defined in subsections (2) to (7)) and the requirements of subsection (1)(d).

210. Subsection (8) sets out the circumstances in which the First-tier Tribunal may grant immigration bail. Immigration bail may be granted in cases where a person (“P”) is being detained under clause 85 or 88, SIAC does not have power to grant immigration bail (see clause 201) and at least 7 days have passed since P arrived in the UK. There is an additional limitation on the Tribunal’s power to grant immigration bail in subsection (9), which provides that the Tribunal cannot grant bail without the Secretary of State’s consent where P’s removal from the UK is intended within 14 days of the date of the application for immigration bail.

Clause 99: Conditions of immigration bail

211. Immigration bail will be granted subject to conditions and subsection (1) sets out the conditions which may be attached to a grant of immigration bail (bail conditions). These conditions largely mirror the conditions which may be attached to temporary permission, except that there is no power to require a person on immigration bail to register with the police, and some additional conditions can be attached to immigration bail which cannot be attached to immigration permission. The additional conditions are: to require a person to appear before the First-Tier Tribunal at a time and place specified; to require the payment of a financial security, and to require a person to co-operate with electronic monitoring arrangements.

212. Subsection (2) sets out a list of factors to which the Secretary of State and Tribunal must have regard when deciding whether to grant immigration bail and, if so, which conditions to attach. The factors are: the likelihood of a person failing to comply with a bail condition; a person's conviction for an offence (see also subsection (3)); the likelihood of future offending; the likelihood of a person's presence in the UK causing a danger to public health or being a threat to the maintenance of public order; where detention is necessary in a person's own interests or for the protection of another person; and any other matters that the Secretary of State or Tribunal thinks relevant.

Clause 100: Requirement to give notice

213. This clause places a requirement on both the Secretary of State and the Tribunal to give a person granted or refused immigration bail notice of the decision. Where the Tribunal grants immigration bail, the Tribunal is also required to notify the Secretary of State of the grant and of the conditions imposed. All notices must state when the grant of immigration bail will commence and the conditions that have been attached to the grant of immigration bail.

214. Subsection (4) provides that a grant immigration bail may be specified not to take effect until, in cases where a financial security is required, payment of the security has taken place or, in any case, until arrangements are put in place to ensure that a person can comply with the conditions. This means, in cases where electronic monitoring is required, the infrastructure required for a person to comply must be set up before the person's immigration bail commences.

Clause 101: When a person is "on immigration bail"

215. Subsection (1) and (2) set out the circumstances in which immigration bail begins and ends. Immigration bail commences when the grant of immigration bail commences and ends when immigration permission granted to the person commences; the person is detained under Part 6 or the person is removed or departs from the UK.

Clause 102: Effect of grant of immigration bail

216. Subsection (1) provides that, where immigration bail is granted to a person who is detained, that person will not be released from detention until the immigration bail commences. A person will therefore not be released from detention if

immigration bail is granted in principle unless and until the necessary arrangements have been put in place for the grant of immigration bail to commence. Subsection (2) provides that a grant of immigration bail does not prevent a person's subsequent detention under Part 6. So, for example, a person who is liable to detention may be granted immigration bail, and later be detained, or redetained. A person's subsequent detention may be (but is not always) under the same power of detention under which the person was initially detained (or initially became liable to detention).

217. Subsection (3) makes clear that a person on immigration bail is still subject to any requirements under clause 2(1) to have immigration permission.

Clause 103: Financial security condition

218. This clause sets out provisions for the taking, holding and forfeiture of a financial security as a condition of immigration bail. Subsection (1) defines a financial security condition as a condition requiring the deposit of a sum of money by a person to whom immigration bail is granted, or by any other person on that person's behalf. Subsection (2) sets out the purpose of taking a financial security which is to ensure compliance with any other bail conditions. The condition may be imposed by the Secretary of State or the Tribunal.

219. Subsection (3) provides that the financial security condition must specify the sum of money required, when it is required to be paid, and the form and manner in which it is to be provided. Subsection (4) states that the money is to be held by the Secretary of State until a person ceases to be on immigration bail, the financial security condition is cancelled or the money is otherwise required to be repaid, for example following a bail variation hearing which finds that the amount deposited is too high and a refund will need to be given to the person who paid the financial security.

220. Subsection (5) states that in the circumstances where the money is to be repaid it must be returned to whoever provided it, as long as the person on immigration bail has complied with each of the bail conditions. The Secretary of State may forfeit the security in full if the person on immigration bail has failed to comply with any other condition attached to the grant, however, under subsection (6) this cannot happen until that person who provided the money has been given a chance to make representations to the Secretary of State.

Clause 104: Electronic monitoring condition

221. This clause sets out the arrangements relating to electronic monitoring, which is one of the conditions which may be attached to a grant of immigration bail. Subsection (1) defines "an electronic monitoring condition" as a condition requiring the person subject to it to co-operate with arrangements for detecting and recording that person's location and in particular whether the person is present in or absent from a location at specified times, during specified periods of time, or while the arrangements are in place. The electronic means employed in connection with such arrangements may include voice recognition technology, or the use of a "tag" or

“tracking” technology to monitor a person’s whereabouts on a continuous basis.

222. Subsection (2) sets out what the arrangements for electronic monitoring may entail. Subsection (3) makes clear that electronic monitoring may only be attached as a condition of immigration bail if the person is aged 18 or over. Subsections (4) and (5) prevent a grant of immigration bail being subject to an electronic monitoring condition where this technology is not available in an area.

Clause 105: Regulations about arrangements for electronic monitoring

223. This clause provides for the Secretary of State to make regulations about the arrangements for electronic monitoring. See clause 334 and 335 on regulations.

Clause 106: Power to pay travel expenses in relation to reporting condition

224. This clause enables the Secretary of State to pay to a person granted immigration bail their reasonable travel expenses incurred in complying with a reporting condition.

Clause 107: Power to vary bail conditions

225. This clause enables the Secretary of State or Tribunal to vary conditions of immigration bail by amending or cancelling one or more of the existing conditions or adding new conditions. The Secretary of State may vary conditions imposed by the Tribunal and vice versa, except that neither may cancel a condition imposed by the other or impose new conditions on bail granted by the other. In addition, the Tribunal may not vary the bail conditions of a person granted immigration bail by the Secretary of State on the ground that the person falls within clause 98(1)(d) (persons meeting the criteria for special immigration status). Subsections (5) and (6) provide that the power to vary conditions is exercised by giving notice to the person and where the Tribunal varies conditions it must also give notice to the Secretary of State.

Interpretation

Clause 108: Meaning of references to a person whom there is power to detain

226. This clause provides that references in the Bill to a person whom there is power to detain under clause 85 or 88 include a person who cannot be removed for legal, practical or administrative resource reasons. The purpose of this clause is to ensure that where the Secretary of State cannot detain a person because that person cannot be removed within a reasonable period, that person may still be granted immigration bail. This replicates section 67 of the NIAA 2002.

PART 7: DETAINED PERSONS & REMOVAL CENTRES ETC.

Escort of detained persons

Clause 109 Escort arrangements

227. This clause allows the Secretary of State to make arrangements, by contract or otherwise, for the exercise of escort functions in relation to detained persons. “Escort

functions” are defined in subsection (1) as the delivery of detained persons to premises in which they may lawfully be detained; delivery from such premises for the purposes of removal; custody of detained persons who are temporarily outside such premises, and custody of detained persons on the premises of a tribunal, SIAC, or a court. “Detained person” means a person who is being detained under Part 6 of the Bill or has been arrested under the Bill and is being delivered to a place of detention (see clause 132(1)). Subsections (2), (3) and (5) set out who may exercise escort functions. A “detainee custody officer” means a person certified under clause 124 to exercise escort functions in relation to a detained person or to exercise such functions and custodial functions at a removal centre or a short-term holding facility (these terms are defined in clause 132(1)). A “prisoner custody officer” is defined by clause 132(3) and (4) by reference to the relevant provisions of the Criminal Justice Act 1991 and the Criminal Justice Public Order Act 1994, so, broadly, this term covers persons authorised to exercise escort functions and/or custodial functions in relation to prisoners.

Clause 110: Monitoring of escort arrangements

228. This clause provides for the appointment of a Crown servant as an escort monitor. Subsection (2) sets out the escort monitor’s duties.

Clause 111: Persons acting under escort arrangements

229. This clause details the powers and duties of detainee custody officers, prison officers and prisoner custody officers when escorting detained persons. Subsections (1) and (2) provide a power to search, in accordance with regulations, such detained persons, and any person visiting a place where such detained persons are or are to be held. Subsection (3) limits the power to search persons; they can only be required to remove outer clothing; and their mouth may be searched. Subsection (5) sets out the duties of persons acting in accordance with escort arrangements. A person acting in accordance with escort arrangements may use reasonable force by virtue of clause 325.

Clause 112: Transfer directions

230. This clause relates to the discharge by an escort of the obligation under a mental health transfer direction, as defined in subsection (3).

Contracting out of removal centres etc.

Clause 113: Contracting out of removal centres etc.

231. This clause allows the Secretary of State to contract out the provision or running of removal centres and short-term holding facilities, or parts of removal centres and short-term holding facilities. While the contract is in force the removal centre or short-term holding facility must be run in accordance with the provisions made by or under this Part. Subsection (4) sets out the enactments which do not apply to a contract under this clause. Clause 132(1) defines a “removal centre” as a place (other than a short-term holding facility or prison) used solely for the detention of detained persons, and a “short-term holding facility” as a place used for the detention

of detained persons for not more than 7 days, or such other period as may be prescribed.

Clause 114: Contract monitors

232. This clause provides for the Secretary of State to appoint a contract monitor, who will be a Crown servant, for each contracted out removal centre and each contracted out short-term holding facility. Subsection (3) provides for functions to be conferred on the monitor by removal centre regulations or short-term holding facility regulations, as appropriate (see the definition of “the appropriate regulations” in clause 132(2)). Subsection (5) requires the contract monitor to review and report to the Secretary of State on the running of the removal centre or short-term holding facility and subsection (6) requires the contractor to assist the monitor in the exercise of those functions.

Clause 115: Contracted out functions

233. This clause allows the Secretary of State to enter into a contract for the fulfilment of specific functions at a removal centre or short-term holding facility which is being directly managed i.e. has not been contracted out under clause 113. It allows detainee custody officers, or prisoner custody officers, to be provided by another person, while management of the centre remains a matter for the Secretary of State.

Management of removal centres

Clause 116: Management of removal centres

234. This clause requires the appointment of a manager at every removal centre. Subsection (2) requires that in the case of contracted out premises, the appointed person must be a detainee custody officer whose appointment is approved by the Secretary of State. Subsection (3) provides that the functions of removal centre managers will be set out in regulations. Subsection (4) provides that managers of contracted-out removal centres may not authorise removal from association, segregation, or special control or restraint of detainees other than in an emergency.

Clause 117: Intervention by the Secretary of State

235. This clause sets out the circumstances in which the Secretary of State can intervene in the management of a contracted out removal centre or contracted out short-term holding facility. Subsection (2) provides for the appointment of a Controller, who is to be a Crown servant. Subsection (3) requires the Secretary of State to give notice of the appointment to the contractor, manager and contract monitor of the centre or facility as soon as is reasonably practicable. Subsection (4) sets out the powers of the Controller and subsection (6) makes provision for the termination of the Controller’s appointment by the Secretary of State. It is envisaged that only a person with relevant experience would be appointed as a Controller and that this person would take charge of a centre or facility for a temporary period, until order is restored. Subsection (7) requires the Secretary of State to give notice of the termination of the appointment of the Controller to the contractor, manager and the

contract monitor for the centre or facility as soon as is reasonably practicable.

Clause 118: Independent Monitoring Boards and inspections

236. This clause requires the Secretary of State to appoint an Independent Monitoring Board for every removal centre and short-term holding facility, and makes provision for the functions of those Boards to be set out in removal centre regulations, or short-term holding facility regulations, as appropriate. Subsection (4) requires the regulations to make provision about visits, complaints and reports to the Secretary of State. Subsection (6) ensures that every member of an Independent Monitoring Board is entitled to enter the centre or facility at any time and have free access to any part of it and to every person detained there.

Custody of detained persons

Clause 119: Custodial functions

237. Subsection (1) of this clause sets out who may exercise custodial functions at a removal centre or short-term holding facility. Subsection (2) enables the Secretary of State to confer custodial functions at a removal centre or short-term holding facility on a prison officer or prisoner custody officer with a custody certification (see clause 132(4)). Subsection (3) confirms that a prison officer acting under these arrangements has the power, authority, protection and privileges of a constable. Subsection (4) provides that this clause is subject to the powers set out in clause 121 (power of authorised persons to exercise custodial functions).

Clause 120: Persons exercising custodial functions

238. This clause sets out the powers and duties of detainee custody officers, prison officers or prisoner custody officers when exercising custodial functions at a removal centre or short-term holding facility. Subsection (1) provides a power to search persons detained at the centre or facility, and persons visiting a place where such persons are or are to be detained. Subsection (3) limits the power to search; only outer clothing may be removed; the mouth may be searched. Subsection (5) sets out the duties of detainee custody officers, prison officers and prisoner custody officers. Such persons have the power to use reasonable force in the exercise of the functions under subsection (1) or (5) by virtue of clause 325.

Clause 121: Power of an authorised officer to exercise custodial functions

239. This clause provides for workers at a removal centre or short-term holding facility, who are not detainee custody officers, prison officers or prisoner custody officers, to perform authorised functions at the centre or facility. Subsection (2) provides that the functions in question are ones that would otherwise be carried out by detainee custody officers, prison officers or prisoner custody officers, but have been determined by the centre or facility manager not to be functions that could only appropriately be carried out by such officers. Subsection (3) requires any such determination to be approved by the Secretary of State and subsection (4) sets out the basis on which authorisations may be given. Subsection (5) precludes authorisations under this clause from authorising the use of force. This clause will allow for the

employment of auxiliary officers in centres to perform certain roles which might be regarded as custodial in nature (e.g. operating the centre's gates, working in a control room or carrying out perimeter security patrols) but which do not involve direct control or supervision of detained persons.

Medical examinations and testing for drugs and alcohol

Clause 122: Medical examinations

240. This clause provides a power to require a person detained in a removal centre or short-term holding facility to be medically examined where there are reasonable grounds for believing that the person is suffering from a highly contagious disease (to be specified by the Secretary of State by direction). It applies where an authorisation given by the manager (in the case of a removal centre) or the Secretary of State (in the case of a short-term holding facility) is in force for the centre or facility. See clause 125 for the related offence

Clause 123: Testing for drugs or alcohol

241. This clause provides for the testing for drugs or alcohol in removal centres or short term holding facility where the Secretary of State has authorised such testing. Subsection (2) provides for a detainee custody officer, prison officer or prisoner custody officer to require a person detained in the centre or facility to provide a sample for ascertaining whether there is a drug or alcohol in the person's body. Subsection (3) sets out what type of sample may be required. Subsection (4) prevents the taking of an intimate sample. Subsection (5) requires the sample to be taken at the removal centre or short term holding facility and in accordance with regulations. Subsection (6) defines "drug" and "intimate sample" for the purposes of this clause.

Detainee custody officers

Clause 124: Authorisation of detainee custody officers

242. This clause sets out the arrangements for the appointment of detainee custody officers. It provides for the Secretary of State to issue certificates of authorisation without which a person will not be allowed to perform custodial or escort functions. Subsection (2) requires the Secretary of State to be satisfied before issuing a certificate that the applicant is a fit and proper person to exercise the functions to be authorised and that the applicant has received appropriate training in order to do so. Subsection (3) provides that the certificate may be limited to a specified expiry date and that where a certificate authorises both custodial and escort functions, different dates may be specified for each kind of function. Subsection (4) enables the Secretary of State to cancel a certificate if it appears that a detainee custody officer is not a fit and proper person to exercise custodial or escort functions. Subsections (5) and (6) provide for the suspension of certificates of authorisation if it appears to the contract or escort monitor that a detainee custody officer is not a fit and proper person to exercise such functions. The matter may be referred to the Secretary of State for a decision as to whether to revoke the certificate, and the certificate may be suspended

by the escort or contract monitor pending a decision by the Secretary of State.

Related offences

Clause 125: Failure to submit to medical examination or provide sample

243. This clause creates an offence if, without reasonable excuse, a person detained in a removal centre or short-term holding facility fails to submit to a medical examination under clause 122 or fails to comply with a requirement imposed under clause 123 (testing for drugs or alcohol). The penalty for this offence reflects the Criminal Justice Act 2003, subject to the transitory provision in paragraph 2 of Schedule 5.

Clause 126: Introduction of alcohol and other articles into a removal centre etc.

244. Subsection (1) makes it an offence for a person, contrary to the appropriate regulations, to bring or attempt to bring alcohol or any other thing into a removal centre or short-term holding facility, or to a person detained in such a centre or facility; or to place alcohol or any other thing anywhere outside a removal centre or short-term holding facility intending it to come into the possession of a person detained there. Subsection (2) states that a responsible person commits an offence if, contrary to the appropriate regulations, the person allows alcohol to be sold or used in a removal centre or short-term holding facility. Subsection (3) defines a responsible person for the purpose of this offence. Subsection (4) adds a new definition of alcohol – that is as defined in the Licensing Act 2003 (see section 191 of that Act). Subsection (5) states that anything that constitutes an offence under clause 96 is not an offence under this clause. The offence has been extended to cover short-term holding facilities, but does not cover taking items out of a removal centre – this is currently an offence under paragraph 6(1) of Schedule 12 to the IAA 1999. The penalties for these offences reflect the Criminal Justice Act 2003, subject to the transitory provision in Schedule 5.

Clause 127: Obtaining detainee custody officer authorisation by false pretences

245. This clause applies to a person (“P”) who makes a statement with a view to obtaining a certificate of authorisation under section 124 for P or another person. The clause makes it an offence for P to make a statement which P knows to be false in a material particular or recklessly to make a statement which is false in a material particular.

Notice of penalties for related offences

Clause 128: Notice of penalties

246. This clause requires the contractor of a contracted out removal centre or short-term holding facility, or the Secretary of State for any other removal centres or short-term holding facility, to post a notice in a conspicuous place at the premises. The notice must draw attention to the penalties to which a person may be liable if that person commits an offence under clause 96 (assisting a person to abscond) or 126

(introduction of alcohol and other articles into removal centres etc.).

Supplementary

Clause 129: Power of constable to act outside jurisdiction

247. This clause provides constables who are engaged in escorting a detained person to or from a removal centre or short term holding facility with the power to act outside their jurisdiction.

Clause 130: Removal centre regulations

248. This clause provides that the Secretary of State must make regulations for the regulation and management of removal centres, which may in particular include provision about the safety, care, activities, discipline and control of detained persons. Subsection (3) exempts detained persons from the national minimum wage in respect of work performed in pursuance of removal centre regulations. See clauses 334 and 335 on regulations.

Clause 131: Short-term holding facility regulations

249. This clause provides that the Secretary of State may make regulations for the regulation and management of short-term holding facilities. See clauses 334 and 335 on regulations.

Interpretation

Clause 132: Interpretation

250. Subsection (1) of this clause provides definitions for the purposes of the Bill; subsection (2) provides definitions for the purposes of this Part and subsections (3) and (4) set out, for the purposes of this Part, when a prisoner custody officer has an escort certification or a custody certification.

PART 8: POWERS TO STOP, ARREST, ENTER & SEARCH ETC.

Power to stop & question etc.

Clause 133: Power to stop & question etc.

251. Clauses 133 to 135 provide a new statutory power for a designated immigration official to stop a person, subject to a number of safeguards, for the purpose of establishing their immigration status.

252. Subsection (1) enables the Secretary of State to authorise that the powers set out in this section may be exercised in a public place within an area where there are reasonable grounds for believing that immigration offenders are in that area. The powers may be exercised for a specified period.

253. Subsection (2) sets out the power to stop and the purposes for stopping a

person, whilst subsection (3) sets out the purposes for which questions may be asked once a person has been stopped.

254. Under subsection (4) a designated immigration official must identify himself as a person designated to exercise the power to stop and question.

255. Subsection (5) makes it clear that a person is not committing the offence of resisting or wilfully obstructing the designated immigration official if a person fails to answer questions or supply the requested information once stopped.

Clause 134: Authorisation

256. This clause sets out who can authorise the use of the power to stop, how that authorisation must be made, and the extent of that authorisation.

Clause 135: Code of practice

257. This clause requires the Secretary of State to issue a code of practice specifying how designated immigration officials will exercise the power to stop in clause 133. Subsection (4) provides that before issuing or reissuing the code the Secretary of State must consult the Commission for Equality and Human Rights, the Equality Commission for Northern Ireland and such other persons as the Secretary of State thinks appropriate, and lay a draft before Parliament. Subsection (5) provides that a breach of this code does not make a designated immigration official liable for civil or criminal proceedings but subsection (6) provides that a breach may be taken into account by a court or tribunal.

Powers of arrest without warrant

Clause 136: Persons liable to detention or on immigration bail

258. Subsection (1) of this clause enables a designated immigration official or constable to arrest without warrant a person whom there is a power to detain under Part 6 of the Bill. An exception is made for persons who are liable to be detained at a port or international railway station under clause 90 (persons liable to arrest by a constable).

259. Subsection (2) enables a designated immigration official or constable to arrest without warrant a person who is subject to immigration bail if that official or constable has reasonable grounds for believing that the person is likely to fail to comply with a bail condition or if the official or constable has reasonable grounds for suspecting that the person is failing to comply, or has failed to comply, with a bail condition.

260. Subsection (3) enables a designated immigration official or constable to arrest without warrant a person subject to immigration bail if, in connection with the person's bail, a person (the "financial security provider") who provided all or part of the money as a financial security condition (see clause 103) gives the Secretary of State or a constable a notice of concern. A notice of concern is defined in subsection

(4) as a notice stating, amongst other things, the financial security provider's belief that the person is likely to fail to comply with a condition of their immigration bail and that the provider wishes to be relieved of liability to forfeit the security.

Clause 137: Persons suspected of committing etc. offences under this Act

261. This clause enables a designated immigration official to arrest without warrant a person if the official has reasonable grounds for suspecting that the person is committing or has committed an offence under this Bill, or is about to commit an offence of assault or obstruction (clause 315). Subsection (2) states that the official may only carry out such an arrest if the official has reasonable grounds for believing that the arrest is necessary for one or more of the reasons mentioned in subsection (3). These reasons are that arrest is necessary to enable the person's name and address to be ascertained; to prevent injury or loss of or damage to property; to protect a child or other vulnerable person; to enable prompt investigation of the offence or the person's conduct; to prevent prosecution being hindered by the person's disappearance.

262. Subsection (4) states that the reason in subsection (3)(a) (to enable the person's name or address to be ascertained) only applies where the designated immigration official does not know, and cannot readily ascertain, the person's name or address, or has reasonable grounds for doubting whether a name or address that is provided is that person's real name or address.

Clause 138: Persons suspected of having committed etc. listed offences

263. This clause replicates the power of arrest previously contained in section 14 of the AI(TOC)A 2004. It enables a designated immigration official to arrest without warrant a person if the official has reasonable grounds for suspecting that the person has committed or attempted to commit a listed offence. "Listed offence" is defined in clause 171 and Schedule 1.

264. The power is only available where a designated immigration official forms a reasonable suspicion of the offence or attempted offence in the course of exercising a function conferred under the Bill. As with clause 137, subsections (2), (3), and (4) apply a test that the official must have reasonable grounds for believing that the arrest is necessary for one or more of the reasons mentioned. The reasons are the same as those mentioned in clause 137(3).

Clause 139: Non-immigration bail: failure to attend at police station

265. This is a new power for designated immigration officials to arrest a person without warrant where that person has been bailed by the police and breaches bail. This does not apply to immigration bail in Part 6, where the person can be arrested under clause 136.

266. Under subsection (1) this power may only be exercised by a designated immigration official where the person has been arrested for an offence under the Bill or a listed offence, and where the person has been bailed by the police with a duty to

attend a police station but fails to do so at the appointed time.

267. Subsection (2) provides that the reference in subsection (1)(c) to failure to attend at a police station at an appointed time includes a case where the person leaves a police station before the beginning of live link bail proceedings. Subsections (4) and (5) define “live link bail” and “live link direction”.

268. Under subsection (3), a person arrested under this clause must be taken to the police station as soon as is reasonably practicable. Subsection (6) provides that references in the Police and Criminal Evidence Act 1984 (“PACE 1984”) to arrest under section 46A of that Act are to be read as including references to arrest under this clause.

Clause 140: Non-immigration bail: failure to surrender to custody of a court

269. This clause is similar to clause 139 but applies where a person is bailed by a court and where a designated immigration official has reasonable grounds for believing (a) that the person is unlikely to surrender to custody, or (b) is likely to fail to comply with a condition of bail, or that official has reasonable grounds for suspecting that the person has failed to comply with a condition of bail.

270. The clause also applies when a person is bailed by a court and, is released with one or more sureties, and a surety gives the Secretary of State a notice of concern. Subsection (3) sets out a definition of “notice of concern”.

271. Under subsection (4), the person must be brought before the appropriate judicial officer or to the court where the person was to have surrendered to custody, depending on the timing of the arrest.

272. Subsections (5) to (7) make provision as to the action that the appropriate judicial officer may or must take, depending on the circumstances.

273. Subsection (8) provides how subsections (5) to (7) are to have effect in any case involving a child below the age of 17 years who is not granted bail by the appropriate judicial officer. Subsection (9) relates to the meaning of “bail”, “bail in criminal proceedings” and “surrender to custody”.

Power to enter & search premises for purpose of arrest

Clause 141: With a warrant: for purpose of arresting a person under section 136

274. This clause enables an appropriate judicial officer to issue a warrant for a designated immigration official or constable to enter and search premises in order to arrest a person who is liable to arrest under clause 136 if the appropriate judicial officer is satisfied that there are reasonable grounds for believing that the person is on the premises. Under subsection (4), a detainee custody officer may also enter the premises in order to search a person detained on the premises following the exercise

of the warrant, as part of the custody or escort arrangements set out in clause 111.

Clause 142: Without a warrant: to arrest for indictable offence under this Act etc.

275. This clause confers power for designated immigration officials to enter and search premises without a warrant in order to arrest a person for an offence under this Bill where the offence may be tried on indictment, or where it may be tried either way (i.e. on summary conviction or on indictment). It may also be used for the purpose of arresting a person suspected of committing a listed offence (as defined in clause 171 and Schedule 1). Subsection (2) sets out the limitations on the exercise of this power, namely that it may be exercised only to the extent reasonably required for the purpose specified, if there are reasonable grounds for believing that the person is on the premises and, where the premises are occupied, if the official identifies himself as designated under clause 40 to carry out this function.

276. For a multiple occupancy address, this power is restricted in subsection (4) to any dwelling where the official has reasonable grounds for believing that the person sought may be, and to any common parts.

Clause 143: With a warrant: to arrest for summary offence under this Act

277. This clause provides that an appropriate judicial officer may issue a warrant for a designated immigration official or constable to enter and search premises in order to arrest a person for an offence under this Bill which may be tried on summary conviction, if the appropriate judicial officer has reasonable grounds for believing that the person is to be found on the premises.

Powers to enter & search premises to find identifying documents

Clause 144: Without a warrant

278. This clause provides a power to enter and search premises without a warrant for the purpose of finding documents which might be identifying documents in relation to a person. The persons able to exercise these powers are split between designated immigration officials only for case 1; and designated immigration officials and constables for case 2 (see subsection (2)).

279. Subsection (3) describes case 1 as arising where a person is either arrested under clause 136 or was arrested by a constable (other than under clause 136) and is detained under Part 6, and a designated immigration official has reasonable grounds for suspecting that documents which might be identifying documents in relation to the person might be found on the premises.

280. Subsection (4) describes case 2 as arising, where a person has been arrested on suspicion of the commission of any offence, has not been released without being charged with an offence, and a designated immigration official or a constable has reasonable grounds for suspecting that the person might not be a British citizen and

that documents relating to their identity might be found on certain premises.

281. The premises which may be searched are premises occupied or controlled by the arrested person, or the premises in which the person was when, or immediately before being, arrested (subsection (5)).

282. The power of entry and search may only be exercised to the extent that it is reasonably required for the purpose of discovering documents which might be identifying documents and with the written authority of a senior officer (as defined in clause 172(7)). Subsection (7) disapplies the requirement for written authority in relation to case 1 where the premises are those occupied or controlled by the person.

283. Under subsection (8) the senior officer who authorises the search must arrange for a written record of the grounds for the search and the nature of the documents sought.

Clause 145: With a warrant

284. Where it is believed that identifying documents may be found on certain premises, this clause enables a warrant to be sought to enter and search those premises. This ensures judicial oversight for the exercise of this search power.

285. The clause applies where a person has been arrested under clause 136, where a person has been arrested by a constable (other than under clause 136) and is detained under Part 6, or where a person has been arrested on suspicion of committing an offence and has not been released without being charged with an offence.

286. For the appropriate judicial officer to issue a warrant, he must be satisfied that there are reasonable grounds for believing the matters set out in subsection (3), and at least one of the conditions in subsection (4).

Clause 146: Search under section 144 or 145: seizure of identifying document etc.

287. This clause allows a designated immigration official or constable searching premises under clause 144 or 145 to seize a document which he has reasonable grounds for believing is an identifying document relating to the arrested person. It also provides a power for constables to retain such a document. Retention by designated immigration officials is dealt with in clause 168.

Powers to enter & search premises to find evidence etc.

Clause 147: Without a warrant: to find evidence relating to offence

288. This clause enables a designated immigration official to enter and search any premises listed in subsection (2) in order to find evidence relating to an offence for which an arrest under clause 137 or 138 was made.

289. Subsection (3) sets out certain conditions that must be met before the power

may be exercised, including a requirement for the written authority of a senior officer. Under subsection (4) the senior officer who authorises a search must arrange for a written record of the grounds for the search and the nature of the evidence sought.

290. For a multiple occupancy address, this power extends to any common parts (subsection (5)). Subsection (6) provides a specific power of seizure for relevant evidence found under this clause.

Clause 148: With a warrant: to find evidence relating to offence

291. Clause 148 enables an appropriate judicial officer to issue a warrant authorising a designated immigration official to enter and search relevant premises, as described in subsection (2), for the purpose of finding evidence in relation to an offence under this Bill or a listed offence, if the appropriate judicial officer has reasonable grounds for believing, amongst other things, that the evidence is to be found on the premises (subsection (3)) and that at least one of the conditions in subsection (4) is met for each set of premises specified in the application for a warrant.

292. Under subsection (5), where more than one set of premises is specified in the application, the appropriate judicial officer needs to be satisfied that the relevant evidence is on at least one of those sets of premises.

293. The clause contains special provision for the giving of an all premises warrant – that is, a warrant relating to any premises occupied or controlled by a person specified in the warrant application.

294. Subsection (8) provides a specific power of seizure for evidence found under this section.

Clause 149: Without a warrant: search of business premises for personnel records

295. This clause enables a designated immigration official or a constable to search without warrant business premises where an arrest was made, if the person in question has been arrested or is liable to arrest under clause 136 or for an offence specified in subsection (2). Before exercising this power, the official or constable must have reasonable grounds for believing that the offence of employing an illegal worker has been committed in relation to the person arrested or liable to arrest, and that there are employee records on the premises which are likely to be of substantial value in the investigation of that offence.

296. Under subsection (4), the search power under subsection (3) may only be exercised to the extent reasonably required to discover employee records and where at least one of the conditions in subsection (5) is met. Subsection (6) enables the official or constable searching premises under subsection (3) to seize records which he has reasonable grounds for believing are likely to be of substantial value to the investigation of the offence under clause 224 (dishonest representations, in the context

of support under Part 11) or 256 (employment of illegal workers). Subsection (8) defines what is meant by “employee records” in this clause.

Clause 150: With a warrant: search of business premises for personnel records

297. Clause 150 replicates section 28FB of the IA 1971. It enables a designated immigration official to apply for a warrant to search business premises, which may be granted by an appropriate judicial officer who is satisfied that there are reasonable grounds for believing that an employer has provided inaccurate or incomplete information under the power to require information from an employer (clause 234), that employee records will be found on the premises specified in the application and will enable deduction of some or all of the information that the employer was required to provide, and that at least one of the conditions in subsection (4) is met in relation to the premises.

298. Subsection (6) enables an official searching premises under a warrant under this clause to seize employee records, where the official has reasonable grounds for suspecting that they will be of substantial value in the investigation of an offence under clause 224 or 238(1)(a) (dishonest representations in the context of support under Part 11, or failure to supply information required from an employer).

Multiple entry warrants

Clause 151: Multiple entry warrants

299. Under this clause a warrant under clause 141, 143, 145, 148 or 150 may authorise entry to and search of premises on more than one occasion if the appropriate judicial officer deems it necessary in order to achieve the purpose for which the warrant was issued.

Powers to search people

Clause 152: Persons arrested under section 136

300. Where a person is arrested under clause 136, subsection (2) enables a designated immigration official to search that person if the official has reasonable grounds for believing that the person may present a danger to themselves or others. Subsection (3) enables a designated immigration official to search a person for anything which the person might use to assist the person’s escape from lawful custody, or any document which might be an identifying document in relation to the person, if the official has reasonable grounds for believing that the person has any such thing concealed on them and a search is reasonably required to discover the thing. Subsection (5) places limits on the extent of a physical search. Subsections (6) and (7) give officials carrying out a search under subsection (2) or (3) powers to seize items found.

Clause 153: Persons arrested under section 136 who are in police custody

301. Where a person has been arrested under clause 136 and is in police custody, the person may be searched by a designated immigration official of the same sex as

the person being searched for purposes similar to those in clause 152. The physical extent of the search may be greater than that under clause 152, although subsection (6) prevents an intimate search.

Clause 154: Persons arrested for an offence under this Act or a listed offence

302. Where someone is arrested other than at a police station for an offence under this Bill or is arrested under clause 138, a designated immigration official may search the arrested person if the official has reasonable grounds for believing that the person may present a danger to themselves or others. In addition, the arrested person may be searched in order to find anything which might be used to assist their escape from lawful custody or anything which might be evidence relating to the offence for which they were arrested. This power may be used only if the official has reasonable grounds for believing that the arrested person may have such items concealed on them and to the extent that is reasonably required for the purpose of discovering such items. Subsection (5) places limits on the extent of a physical search, corresponding to the limits under clause 152.

Clause 155: Persons arrested for an offence under this Act or a listed offence who are in police custody

303. This clause enables a designated immigration official to search a person who has been arrested for an offence under this Bill or has been arrested under clause 138 and is in custody at a police station, or in police detention at a place other than a police station. The arrested person may be searched by an official of the same sex as the person being searched, in order to establish whether the arrested person has any article which he might use to assist escape, to cause physical injury to himself or others, to damage property, or to interfere with evidence. The arrested person may also be searched for anything the officer has reasonable grounds for believing is likely to be evidence relating to the offence for which the person was arrested.

304. The power to search a person under subsection (2) may be exercised only to the extent considered necessary for the purpose of discovering such articles, and does not include power to carry out an intimate search (subsection (7)). If any articles of the kind described are found they may be seized on the basis of the designated immigration official's reasonable grounds for believing that the articles might be used for one or more of the purposes mentioned in subsection (2)(a) to (c) or that they are likely to be evidence relating to the offence for which the person was arrested. Items which might be used to assist escape, to cause physical injury, or to damage property or interfere with evidence, must be delivered to a constable and may be retained by a constable. Under subsection (6) the person from whom something is seized must be told why it is being taken unless they are violent, or appear likely to become violent, or are incapable of understanding what is said to them.

Clause 156: meaning of "police detention" etc.

305. This clause defines "police detention" and "custody officer" by reference to the relevant legislation in England and Wales, Scotland, and Northern Ireland.

Seizure etc

Clause 157: General power of seizure etc.

306. In addition to specific powers of seizure elsewhere in this Part, where a designated immigration official is carrying out a search under this Part of premises or a person, subsection (2) confers a general power to seize anything where the official has reasonable grounds for believing that it is evidence relating to an offence and that it is necessary to seize it in order to prevent the evidence being lost, damaged, altered or destroyed.

307. Subsection (4) provides that anything seized under subsection (2) which relates to an offence listed in Schedule 1 which is not being investigated under the Bill must be handed to a constable as soon as is reasonably practicable. Before seizing such an item an official should first contact the police to seek advice on whether that item should be removed from the scene.

308. Where a designated immigration official is carrying out a search under this Part of premises or a person, subsection (5) provides that the official may seize a document which the official has reasonable grounds for believing is an identifying document relating to a person if the official has reasonable grounds for suspecting that the person is liable to removal from the UK under Part 5.

Clause 158: Items subject to legal privilege

309. This clause prohibits the seizure by a designated immigration official of items which the official has reasonable grounds for believing to be subject to legal privilege. The definition of items subject to legal privilege is in clause 339(1).

Clause 159: Access and copying

310. This clause sets out conditions relating to the handling of material which has been seized by a designated immigration official under a provision listed in subsection (1)(a) and retained under clause 168. It also applies section 21 of the PACE 1984 and the corresponding provision in Northern Ireland to anything seized by a designated immigration official but retained by a constable (subsection (9)).

311. The clause provides that an “interested person” (see subsection (3)) who shows himself or herself to have had custody or control of material immediately before its seizure must, on request, be given access (under supervision) to the seized material (subsection (4)). It also provides that such a person, on request, must be given access to the material for the purpose of photographing or copying it or must be given a photograph or copy of the material within a reasonable time (subsection (6)). But the Secretary of State is not required to comply with subsection (4) or (6) if in either case there are reasonable grounds for believing that to accede to the request would prejudice the exercise of any function in connection with which the material was seized or any investigation being conducted under this Bill or criminal proceedings which may be brought as a result: see subsection (7).

Warrants

Clause 160: Entry and search warrants

312. Where an entry and search warrant is issued to a designated immigration official, it must comply with the requirements set out in clauses 161 to 165. These reflect conditions which apply to the police under PACE 1984.

Clause 161: Safeguards: application for warrant

313. This clause sets out actions which must be undertaken when seeking a warrant. Subsections (2) and (3) deal with an “all premises warrant” when it is necessary to search all premises occupied or controlled by an individual, but it is not reasonably practicable to specify all such premises at the time the application is made. The warrant will allow access to all premises occupied or controlled by that person, both those specified and those which are not.

314. A significant change in subsection (4) is that a warrant can now be applied for which authorises entry on more than one occasion, if necessary. In the case of such an application, the applicant must set out the ground on which a multiple entry warrant has been sought (subsection (4)). Subsections (5) and (6) explain how an application for a warrant must be supported in England and Wales, Scotland and Northern Ireland, and that the official must answer on oath any question that the person considering the application asks.

Clause 162: Safeguards: the warrant

315. This clause sets out the safeguards which must be specified in the warrant itself. If a multiple entry warrant is sought to enter premises on more than one occasion, the warrant must specify whether the authorised number of entries is unlimited or limited to a specified maximum (subsections (1) and (2)). The other safeguards provided by the clause include the requirement to specify the name of the applicant, the date of issue of the warrant, the premises authorised to be searched, the legal basis for the warrant, and, as far as possible, the persons or articles sought. Subsections (5) and (6) make provision for copies of warrants.

Clause 163: Accompanying persons

316. This clause states that other persons may be authorised to accompany the designated immigration official executing a warrant. Such a person has the same powers of execution and seizure but may exercise these powers only under the official’s supervision. Anything seized by an accompanying person must be given to the designated immigration official as soon as is reasonably practicable.

Clause 164: Timing of execution and procedure

317. This clause sets out actions which must be undertaken during the execution of a warrant, in particular relating to when a warrant may be executed, the identification of the official and the extent of the search. A change in this Bill is that a warrant will now be valid for three months from the date of issue.

Clause 165: Return and inspection of warrant

318. This clause sets out provision about the return of a warrant, whether executed or not, and about the period for which it must be retained by either the designated immigration official or the clerk to the court where it was issued. It also confers a right for an occupier of the premises to which the warrant relates to inspect the warrant.

Powers to search for, seize and forfeit cash

Clause 166: Powers to search for, seize and forfeit cash

319. Clauses 166 and 167 replicate sections 25 and 26 of the UKBA 2007. Chapter 3 of Part 5 of the Proceeds of Crime Act 2002 allows a police constable or customs officer to search a person or premises for cash where there are reasonable grounds for suspecting that such cash is derived from or intended for use in unlawful conduct. The provisions also empower a police constable or customs officer to seize and detain any such cash. Seized cash can be further detained and forfeited on an application made to a court of summary jurisdiction. The power to apply for further detention and forfeiture of cash does not depend upon a criminal prosecution and the proceedings focus on the source of the cash which has been seized rather than the guilt of any individual. These clauses extend the powers to designated immigration officials.

320. Subsection (2)(a) provides that the power to carry out a search for cash will be available to designated immigration officials where there are reasonable grounds for suspecting that the cash in question is derived from or intended for use in connection with an offence under this Bill. Subsection (2)(b) provides that the power to seize and detain cash may be exercised where there are reasonable grounds for suspecting that the cash is derived from or intended for use in connection with an offence under this Bill or an offence listed in Schedule 1. The safeguards that apply to constables and officers of HMRC will similarly apply to designated immigration officials. The code of practice will be amended to apply to designated immigration officials to provide guidelines on the operation of their search powers.

321. A designated immigration official can only exercise the power to search for cash with the prior approval of a judicial officer, unless it is not practicable to obtain that approval at the time. Subsection (2)(c) provides that where it is not practicable to obtain the approval of a judicial officer an official must seek the authority of a senior designated immigration official in order to exercise the power of search.

322. Subsection (2)(f)(i) provides that where an official continues to have reasonable suspicion that the seized cash is the proceeds of or intended for the use in an offence related to immigration, he will be able to make an application for an order to extend the detention period of the cash direct to a magistrates' court in England and Wales or Northern Ireland. Subsection (2)(f)(ii) provides that in Scotland such applications must either be made by the Scottish Ministers in connection with their functions under section 298 of the Proceeds of Crime Act 2002 or by a procurator

fiscal.

323. Subsection (2)(g)(i) provides that whilst the cash is detained, a designated immigration official will be able to make an application for a forfeiture order direct to a magistrates' court in England, Wales and Northern Ireland. Subsection (2)(g)(ii) provides that in Scotland such applications must be made by the Scottish Ministers. Subsection (2)(h) provides that compensation claims in relation to cash seized by designated immigration officials, for which no forfeiture order is made, will be paid by the Secretary of State.

Forfeiture of property where person convicted

Clause 167: Forfeiture of property where person convicted

324. This clause applies where a court makes a forfeiture order under section 143 of the Powers of Criminal Courts (Sentencing) Act 2000 (which extends to England and Wales) or Article 11 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)), which allows the court to deprive a convicted offender of property used, essentially, for the commission of a crime or to facilitate the commission of a crime, or intended to be used in this way. It provides that the court may order the property be taken into the possession of the Secretary of State if it thinks that the offence in connection with which the order was made related to, or was committed for a purpose connected with, immigration or nationality.

General power to examine & retain documents & other items

Clause 168: Examination and retention of documents or other items

325. This clause provides a power to examine and retain documents or other items which have come into the possession the Secretary of State in the course of, or in connection with, the exercise of a function under the Bill. The grounds on which items may be examined and retained are set out in subsection (2). The grounds for retention of documents and other items include: grounds relating to a person's potential liability to removal from the UK under Part 5; retention for the purpose of investigating offences or for legal proceedings; retention for other immigration or nationality purposes or for the purpose of doing anything else in connection with the exercise of immigration and nationality functions; and retention of anything which the Secretary of State has reasonable grounds for suspecting is a false travel or immigration document.

326. Subsection (3) provides that "prohibited items", as defined in subsection (4), may not be retained for longer than is necessary in the circumstances or once the person from whom the item was seized is no longer in detention or is in the custody of a court but has been released on bail.

327. Subsections (5) and (6) make provision as to the meaning of "immigration purposes", "nationality purposes" and "immigration document".

Disposal of property

Clause 169: Disposal of property: general

328. This clause provides powers of disposal in respect of property which has come into the possession of the Secretary of State in the course of, or in connection with, the exercise of a function under the Bill. This includes property which has been forfeited or seized under the Bill, as well as property acquired in any other way (see subsection (9)), but it specifically excludes items listed in subsection (2).

329. Under subsection (3) a magistrates' court, or sheriff in Scotland, may, on the application of the Secretary of State or a claimant of property, order the delivery of the property to the person who appears to the court to be its owner. If the owner cannot be ascertained, the court may make any other order about the property. However, an order under subsection (3) is subject to the right of any person to bring legal proceedings for the recovery of the property within 6 months from the date of the order (see subsection (4)).

330. Subsection (5) makes additional provision in respect of property which has been forfeited under clauses 167 or 317 in certain circumstances. A magistrates' court or sheriff may make an order about the property under subsection (3) if the application is made within 6 months beginning with the date when the forfeiture order was made (see subsection (5)(a)). In addition, if the applicant is not the Secretary of State, an order may be made only if the applicant satisfies the court that the applicant did not consent to the offender's possession of the property or that the applicant did not know and had no reason to suspect that the property was likely to be used in connection with an offence (see subsection (5)(b)).

331. Subsection (6) enables the Secretary of State to make regulations for the disposal of property where the owner has not been ascertained, or where a court order under subsection (3) cannot be made because of subsection (5)(a) (that is, because 6 months have expired since a forfeiture order was made). Regulations may also provide for disposal where a court, or sheriff, has declined to make an order under subsection (3) because it is not satisfied of the matters specified in subsection (5)(b) (that is, the applicant did not consent to the offender's use of the property or the applicant did not know and had no reason to suspect that the property was likely to be used in connection with an offence).

332. Subsections (7) and (8) make further provision about the regulations. The regulations may make provision which is the same as, or similar to, provision that may be made by regulations under section 2 of the Police (Property) Act 1897 or any similar enactment which applies in relation to Scotland or Northern Ireland. The regulations may apply, with or without modification regulations made under that Act. They may make provision for property to vest in the Secretary of State. They may make provision about the timing of the disposal (which may differ from the provision made under the Police (Property) Act 1897). The regulations have effect only where

this is not inconsistent with any court order.

Clause 170: Disposal of false travel or immigration documents

333. Under this clause if the Secretary of State no longer wishes to retain a false travel or immigration document, it may be sent back to the issuing authority, as defined in subsection (5) or destroyed subject to the conditions in subsections (3) and (4). Subsection (6) provides the Secretary of State with a power to endorse the document as not valid for travel to the UK.

Interpretation

Clause 171: Meaning of “listed offence”

334. A “listed offence” is defined as an offence listed in Schedule 1. There is an order-making power for the Secretary of State to add, vary or omit offences listed in that Schedule. See clauses 334 and 335 on orders.

Clause 172: Other definitions

335. This clause defines “appropriate judicial officer”, “identifying document”, “intimate search”, “premises”, “business premises”, and “senior officer” for the purposes of Part 8.

PART 9: APPEALS AGAINST IMMIGRATION DECISIONS

Right of appeal against an immigration decision

Clause 173: Right of appeal

336. This clause provides that a person may appeal against an “immigration decision”, as defined in subsection (2). The decisions are: a refusal to grant refugee permission on a protection application where other permission granted; refusal to grant protection permission on a protection application; a refusal to grant permission on a family life application; any other refusal to grant permission on any other application; the cancellation of refugee permission where the person has other permission; cancellation of other immigration permission; the making of an expulsion order and the refusal to cancel an expulsion order.

337. The right of appeal is subject to the limitations set out in the remainder of the Part. Subsection (3) defines “in-country” and “out-of-country” appeals. Subsection (4) states that for the purposes of clauses 175 to 180, references to a person having immigration permission do not include permission extended under clause 13(2) or 16(2). See also clauses 187 to 193 on certification of applications and the effect on appeal rights. The appeal rights are broadly the same as under the NIAA 2002.

Clause 174: Refusal to grant refugee permission where other permission granted

338. This clause provides that a person refused a grant of refugee permission on a protection application where other permission is granted may appeal while in the UK

but may not appeal from outside the UK. This reflects the current position.

Clause 175: Refusal to grant protection permission

339. This clause provides that a person refused a grant of protection permission on a protection application, who as a result of that decision does not have immigration permission, may appeal while in the UK but may not appeal from outside the UK. A protection application may only be made by a person in the UK (see clause 21).

Clause 176: Refusal to grant immigration permission on family life application

340. This clause provides that a person refused immigration permission on a family life application may appeal from outside the UK but may not appeal from within the UK. A family life application may only be made by a person outside the UK (see clause 22).

Clause 177: Refusal to grant immigration permission on other applications

341. This clause provides that a person refused immigration permission on an application (other than on a protection or family life application) may appeal that decision in-country if the application was made while the person had permission, the permission was not obtained by deception, the person did not use deception in making the application that has been refused, and the result of that decision is that the person has no permission (see also clause 173(4)). The person may appeal from outside the UK if the person was outside the UK when the application which was refused was made and if that application was made for the purpose of visiting a person of a description prescribed by regulations (i.e. a family visit).

Clause 178: Cancellation of refugee permission where person has permission

342. This clause provides that a person may appeal a cancellation of refugee permission where the person has other permission if the person is in the UK when the decision to refuse is made, but may not appeal from outside the UK.

Clause 179: Cancellation of immigration permission in other cases

343. This clause provides that a person (“P”) may appeal a cancellation of immigration permission (other than refugee permission). P may appeal while in the UK if when the permission is cancelled P is in the UK and deception was not used to obtain the cancelled permission. However, P may not appeal the cancellation if it was temporary permission cancelled on P’s arrival in UK and P was seeking to enter for a different purpose than the purpose for which that permission was granted. P may appeal from outside the UK.

Clause 180: Making of an expulsion order

344. This clause provides that a person may appeal a decision to make an expulsion order. The person may appeal in the UK if when the decision was made the person was in the UK and had immigration permission (other than permission obtained by deception) and the order is not an “excluded expulsion order”. An “excluded expulsion order” is defined in subsection (3) as an expulsion order other than a mandatory expulsion order against a foreign criminal under clause 65(1); an order

made for breach of conditions of temporary permission, or an order made on grounds that a person is a family member of a person who falls within those exclusions. A person may appeal the making of an expulsion order from outside the UK if the person was in the UK when the order was made and could not appeal in-country.

Clause 181: Refusal to cancel an expulsion order

345. This clause provides that a person may appeal a refusal to cancel an expulsion order from outside the UK, but may not appeal while in the UK.

Clause 182: Case where person has an in-country and out-of-country right of appeal

346. This clause provides that where it is possible to bring both an in-country and an out-of-country appeal, only one appeal may be brought.

Clause 183: No appeal if permission refused or cancelled on certain grounds

347. This clause provides that a person may not appeal a refusal of immigration permission (other than on a protection or family life application), or the cancellation of immigration permission (other than refugee permission where the person has other permission), if the decision was taken on one of the grounds in subsection (3). The grounds are that the person or the person of whom that person is a dependant does not satisfy a requirement of the Rules as to age or nationality; failure to obtain permission before arrival when required to do so by the Rules; seeking to stay for a period or purpose other than permitted by the Rules; failure to produce a valid identity document (see clauses 337 and 339) or information as to sponsorship as required by the Rules. The list of grounds is similar to section 88 of the NIAA 2002. However, subsection (3)(f) provides that an appeal cannot be brought if the applicant has not provided such information in relation to sponsorship as may be required by the Rules. This means that, for example, a person who applies under the Points Based System and requires a sponsor, for example an employer or college in the UK, and is refused because the person does not have a sponsor, cannot appeal that refusal.

Clause 184: Grounds of appeal

348. This clause provides that an appeal may be brought on the grounds that the decision is not in accordance with the Rules or otherwise not in accordance with the law. The list of grounds is shorter than that in section 84 of the NIAA 2002, but the effect is largely unchanged as those grounds fall within the ground of the decision not being in accordance with the law. Subsection (2) provides that the reference in subsection (1) to a decision which is not in accordance with the law includes a decision where both removal and voluntary departure of the appellant in consequence of the decision would not be in accordance with the law. A further change is that it will no longer be possible to appeal on the grounds that the person taking the decision should have exercised discretion differently.

Determination of appeal

Clause 185: Matters to be considered

349. This clause sets out the evidence that the Tribunal may consider when deciding an appeal. Subsection (1) provides that an appeal against an immigration decision is to be treated as an appeal against any other immigration decision which the applicant may appeal. Subsection (2) provides for the Tribunal to consider any matter that is relevant to the decision appealed against, including any matter raised after the date of the decision, provided the matter in question is relevant to the decision. Subsections (3) and (4) provide an exception to subsection (2) for applications made under the Points Based System. In these appeals the Tribunal will only be able to consider evidence that was submitted with the application. Other evidence may only be considered if it is being submitted to prove that a document is genuine, or in connection with a ground for refusal that does not relate to the acquisition of points (for example, a refusal relying on the General Grounds for Refusal under the Rules).

Clause 186: Decision on appeal

350. This clause provides that the Tribunal must decide any matter raised as a ground of appeal and must allow the appeal in so far as it thinks that the immigration decision is not in accordance with the Rules, or otherwise in accordance with the law but must otherwise dismiss the appeal. The Tribunal must allow an appeal if it thinks that the appellant's removal and departure from the UK in consequence of the decision would not be in accordance with the law, even if the decision appealed against would not immediately result in the applicant's removal or departure from the UK. Subsection (5) provides that a decision is not to be regarded as not in accordance with the law only on grounds of refusal to exercise discretion to grant immigration permission to a person who does not meet a requirement of the Rules (see clause 20(5)). A change from the current position is that the Tribunal when it allows an appeal will not have the power to make a direction to give effect to its decision.

Certification powers

Clause 187: Certification of repetitious or unmeritorious submissions

351. This clause provides that where a person has made a protection application which has been decided and the person makes further submissions on their case, the Secretary of State may certify that the submissions are not significantly different from matters that have already been considered, or when taken together with those matters a protection application based on those submissions has no realistic prospect of success. The effect of the certificate is that the submissions are not regarded as a new protection application, and the rejection of those submissions will not be an immigration decision under clause 173(2)(b) and there will not be a further right of appeal. This clause gives statutory effect to the provision currently contained in paragraph 353 of the Rules.

Clause 188: Certification of clearly unfounded protection application

352. Where a person has made a protection application the Secretary of State may certify that the application is clearly unfounded. Subsection (3) requires an application to be certified where the applicant is entitled to reside in a country listed in Schedule 2, or the applicant falls within a description of persons listed in relation to that

country, unless the Secretary of State is satisfied that the application is not clearly unfounded. Subsection (5) disapplies the requirement to certify under subsection (3) where that applicant is subject to extradition proceedings or has been arrested in anticipation of extradition proceedings pursuant to the Extradition Act 1989 or the Extradition Act 2003. The effect of certification is that there is no right of appeal against the refusal of the protection application.

Clause 189: Power to amend list of countries in Schedule 2

353. Subsection (1) enables the Secretary of State, by order, to add a country or a part of a country to the list in Schedule 2 if satisfied that there is in general no serious risk of persecution in that country (or part of that country) of persons entitled to reside there and that removal to that country would not in general contravene the UK's obligations under the Human Rights Convention. Subsection (2) provides that where the conditions in subsection (1) are satisfied for a description of person within a country (or part of a country) then that country or part may be added to the list in Schedule 2 in respect of that description of person only. Examples of what might constitute a description of person are given in subsection (3). See clauses 334 and 335 on orders.

Clause 190: Certification of late protection application

354. Where a person makes a protection application the Secretary of State may certify that the person has been notified of the requirement under clause 8 to state the person's grounds for being permitted to be in the UK and subsequently seeks to rely on a ground that should have been raised in response to that notice and there are no good reasons for the ground not having been raised earlier. The effect of certification is that the person may not appeal the refusal of the protection application.

355. Under subsection (3) where a person makes a protection application the Secretary of State may certify that the person was notified of a right of appeal against another immigration decision, whether or not that right was exercised, and in the opinion of the Secretary of State the new application relies on a ground which could have been raised at the earlier appeal and there is no good reason for the ground not having been raised on that appeal. Subsection (4) states that for the purposes of subsection (3) it does not matter whether the right of appeal against the earlier decision was exercised, or whether the appeal has been determined. The effect of certification is that the person may not appeal the refusal of the protection application.

Clause 191: Certification where decision relied upon classified information

356. Where the Secretary of State personally certifies that an immigration decision was taken wholly or partly in reliance on classified information the person may not appeal that decision under Part 9. Part 10 provides that where there is such a certificate the appeal is to SIAC. Subsection (2) defines "classified information" and subsection (3) states that any pending appeal to the Tribunal against the immigration decision is treated as abandoned on certification.

Clause 192: Certification that exclusion conducive to public good

357. This clause applies where the Secretary of State certifies that the Secretary of State personally decided in relation to a person outside the UK to cancel immigration permission or refuse to cancel an expulsion order on the grounds that the exclusion from the UK of the person concerned is conducive to the public good. The effect of certification is that the person may not appeal the decision and that any pending appeal to the Tribunal is treated as abandoned on certification.

Clause 193: Certification that removal in the interests of national security

358. This clause prevents an appeal to the Tribunal against certain decisions from being brought or continued where the Secretary of State personally certifies that the person's removal from the UK would be in the interests of national security. Subsection (1) provides that a decision to make an expulsion order may be certified, and subsection (2) provides that a decision to refuse to grant protection permission on a protection application may be certified. Subsection (3) ensures that where a certificate is issued any pending appeal is treated as abandoned. Where a decision is certified under this clause to prevent an appeal to the Tribunal or to cause an existing appeal to lapse, clause 200 provides certain appeals may be made to the Special Immigration Appeals Commission.

Removal of protection applicants to safe countries

Clause 194: Presumptions where removal to safe European country

359. Someone who has made a protection application may be removed to a country even if they do not hold the nationality of that country, provided that certain conditions are met. If the conditions are met, the country in question is known as a safe third country. Subsection (2) specifies that countries listed in Schedule 3 are to be treated as safe third countries.

Clause 195: No appeal against proposed removal to safe European country

360. This clause provides that where the Secretary of State certifies that a person is not a national of a country listed in Schedule 3, but nonetheless proposes to remove a person to that country, no appeal may be brought against a refusal of permission. This applies insofar as a protection application was based on the assertion that such a removal would contravene the person's rights under the Refugee Convention, Council Directive 2004/83/EC (international protection) or section 6 of the Human Rights Act 1998. Subsection (5) provides that where the protection application is based on grounds other than unlawful removal, no appeal may be brought against refusal of protection permission if the Secretary of State certifies that the application is clearly unfounded. Subsection (6) requires the Secretary of State to issue a certificate that the application is clearly unfounded, except where satisfied that the application is not clearly unfounded. No other appeal may be brought against a decision, as a consequence of which the person's removal is proposed.

Clause 196: No appeal against proposed removal to other safe country

361. This clause provides for where the Secretary of State certifies that it is proposed to remove someone to a specified safe country, but the person is not a

national of that country. A country is considered safe if it is a place where the person's life or liberty will not be threatened by reason of the person's race, religion, nationality, membership of a particular social group or political opinion and if the person will not be sent from that country to another country except in accordance with the Refugee Convention. No appeal may be brought against a refusal of protection permission insofar as the application was based on a submission that removing the person to the specified country would breach the UK's obligations under the Refugee Convention or under Council Directive 2004/83/EC (international protection). Subsection (5) provides that where the protection application is based on grounds other than unlawful removal, no appeal may be brought against refusal of protection permission if the Secretary of State certifies that the application is clearly unfounded.

Supplementary

Clause 197: Meaning of “pending appeal”

362. This clause defines a “pending appeal”, in relation to an appeal under clause 173, for the purposes of the Bill.

Clause 198: False document: proceedings in private

363. This clause provides that where it is alleged that a party to an appeal is relying on a false document and where disclosing information about the detection of the falsity would not be in the public interest, the Tribunal must proceed in private as far as necessary to protect the public interest.

PART 10: THE SPECIAL IMMIGRATION APPEALS COMMISSION

The Special Immigration Appeals Commission

Clause 199: The Special Immigration Appeals Commission

364. This clause provides for the continuation of the Special Immigration Appeals Commission, and that SIAC shall continue to be a superior court of record. Schedule 4 provides for the membership and proceedings of SIAC. References in the Bill to “SIAC” mean the Special Immigration Appeals Commission.

Right of appeal against an immigration decision

Clause 200: Right of appeal

365. This clause provides for appeals against specified immigration decisions to be made to SIAC where, but for the issuing of a certificate on certain grounds, there would have been a right of appeal to the Tribunal against the decision.

366. Subsection (1) provides a right of appeal to SIAC where the Secretary of State has certified that a decision was taken wholly or partly in reliance of classified information. That appeal may be in-country or out-of country depending on whether the person would have had an in-country or out of country appeal to the Tribunal but

for the issuing of the certificate.

367. Subsection (2) provides that where a decision to make an expulsion order is made against a person and the Secretary of State certifies that the person's removal would be in the interests of national security, the person may make an out of country appeal to SIAC against that decision if, but for the certificate, the person would have had either an in-country or out-of-country right of appeal to the Tribunal.

368. Subsection (3) provides for an in-country appeal to SIAC against a decision to refuse to grant protection permission where the Secretary of State has certified that the person's removal is in the interests of national security.

369. Subsection (4) states that certain provision in Part 9 (Appeals) apply with any necessary modifications to appeals to SIAC. Subsection (5) specifies which provisions in Part 9 do not apply to appeals to SIAC. Subsection (6) prevents SIAC from considering matters that may only be raised out-of-country from being considered as part of any separate, in-country appeal to SIAC. Subsection (7) limits the grounds of appeal that may be brought under subsection (3) to whether removing the appellant from, or requiring the appellant to leave the UK in consequence of the decision to refuse protection permission would be unlawful under section 6 of the HRA 1998.

Power to grant immigration bail

Clause 201: Power to grant immigration bail

370. This clause sets out the various cases where SIAC may grant a person immigration bail.

Appeals from SIAC

Clause 202: Appeals from SIAC

371. This clause creates the arrangements for an appeal against the final determination by SIAC of an appeal. Such appeals are limited to questions of law. Bringing an appeal requires the permission of either SIAC or the appropriate appeal court (the Court of Appeal for determinations made in England and Wales; the Court of Session for determinations in Scotland and the Court of Appeal for Northern Ireland for determinations in Northern Ireland). Subsection (4) states that the only avenue of legal challenge to SIAC decisions is the one provided for under this clause.

Clause 203: Procedure rules

372. Subsection (1) gives the Lord Chancellor the power to make rules regulating how appeals to SIAC should be made and the procedure and practice that apply to such appeals and to any related matters before SIAC. Subsection (2) stipulates that when making these rules the Lord Chancellor has to have regard both to the need to ensure that the decisions which are the subject of appeals are properly reviewed and the need to ensure that information is not disclosed if that would be against the public interest. Subsection (3) provides that the procedure rules may do anything which the

may be done by Tribunal Procedure Rules under the Tribunals, Courts and Enforcement Act 2007.

373. Subsection (4) permits the rules to allow proceedings before SIAC to take place without the appellant being given full details of the reasons for the decision being appealed and in the absence of the appellant and his or her appointed legal representative. It also allows the rules to specify the functions of persons appointed under clause 204, and to enable the appellant to be given a summary of any evidence taken in his or her absence. Subsection (5) states that the procedure rules can permit any preliminary or incidental matters, or any functions of SIAC under clause 201 (immigration bail), to be performed by a single member of SIAC. Subsection (5) also allows the Lord Chancellor to use the rules to confer on SIAC any ancillary powers which the Lord Chancellor thinks necessary in order for it to carry out its functions properly.

Clause 204: Appointment of a person to represent the appellant's interests

374. Subsection (1) enables the "relevant law officer" to appoint a person to represent the appellant's interests before SIAC during the time the appellant and his or her appointed legal representative are not allowed to be present. Subsection (2) defines the relevant law officer for the three jurisdictions (England and Wales, Scotland and Northern Ireland). Subsections (3) to (5) stipulate the qualification for appointment in England and Wales, Northern Ireland and Scotland respectively, and subsection (6) makes it clear that the person appointed does not represent the interests of the appellant.

Supplementary

Clause 205: Meaning of "pending appeal"

375. This clause defines "pending appeal", in relation to an appeal under clause 200, for the purposes of the Bill.

PART 11: SUPPORT

Duties and power to provide support

Clause 206: Duty to provide support for eligible protection applicants etc.

376. This clause requires the Secretary of State to provide, or arrange for the provision of, support for a person who is an eligible protection applicant (defined in clause 207) or a dependant of an eligible protection applicant, in respect of whom an application for support has been made which meets such requirements as are prescribed in support regulations (see clause 214(4)), and who appears to the Secretary of State to be destitute, or likely to become destitute within a prescribed period. Subsections (1)(d) and (2) enable the Secretary of State, in considering an application for support, to take into account whether an individual previously supported has complied with conditions subject to which that support was provided.

377. Subsection (3) provides that the duty to provide support is subject to clauses 211 (late protection applications) and 214(6) (support regulations on suspension or discontinuance of support).

Clause 207: Meaning of “eligible protection applicant” etc.

378. This clause defines an eligible protection applicant as a protection applicant who is aged 18 or over and is in the UK. A protection applicant is defined as a person who has made a protection application (which has not been determined – see subsections (3) to (5)) on the grounds that to remove him from, or require him to leave, the UK would breach the UK’s obligations under the Refugee Convention or on the grounds that if removed from, or required to leave, the UK he would face a real risk of suffering serious harm (see clause 21(1)(a) and (b)). A protection applicant does not include a person who has made further submissions after his initial protection application was determined where the further submissions have not yet been considered by the Secretary of State (subsection (2)(b)).

Clause 208: Meaning of “destitute”

379. This clause defines “destitute” and what the Secretary of State must, and must not, have regard to when determining whether a person and any dependants are destitute. Subsection (3)(a) provides for support regulations to set out matters to be taken into account, and not to be taken into account, when determining whether a person is destitute or likely to become destitute. Subsection (3)(b) provides for support regulations to specify items or expenses which are, or are not, to be treated as essential living needs.

Clause 209: Temporary support for eligible protection applicants etc.

380. There may be circumstances where an eligible protection applicant or a dependant of an eligible protection applicant needs support while the Secretary of State decides whether there is a duty to support under clause 206. The clause requires the Secretary of State to support, or arrange support for, such a person if it appears to the Secretary of State that the person may be destitute, until that decision is made. Subsections (1)(d) and (2) align the provision of temporary support with a decision to provide support under clause 206(2), enabling the Secretary of State to take into account whether an individual previously supported has complied with conditions subject to which that support was provided. Subsection (4) provides that the duty to support is subject to clauses 211 (late protection applications) and 214(6) (support regulations on suspension or discontinuance of support).

Clause 210: Power to provide support

381. This clause enables the Secretary of State to provide, or arrange for the provision of support, for destitute ex-protection applicants and their dependants who meet criteria prescribed by support regulations (case A); dependants of persons who were eligible protection applicants but who ceased to be eligible protection applicants because they left the UK (case B); and persons granted immigration bail and their dependants who meet criteria prescribed by support regulations (case C). Subsection (1) enables the Secretary of State to provide support for those who fall within any of

cases A to C (see subsection (4) to (7)) and in respect of whom an application for support has been made that meets the requirements prescribed under clause 214(4). Subsection (9) provides that support provided under subsection (1) is subject to clauses 211 (late protection applications) and 214(6) (support regulations on suspension or discontinuance of support).

382. Subsection (2) disapples the requirement to make an application in certain circumstances to be prescribed by support regulations. The intention of this power is to enable the continuation of support for families who have been supported under clause 206 and who become ex-protection applicants, without the requirement for an application to be made.

383. Subsection (5) defines “ex-protection applicant” for the purposes of the Part.

384. Subsection (8) provides that support regulations may provide for support to be provided for a prescribed period. The intention is that this will provide a limited 3-month period of support for eligible ex-protection applicants who are taking steps to leave the UK.

Clause 211: Late protection applications

385. This clause provides that the duty to provide support under clause 206 and 209, and the power to provide support under clause 210 for a person within case A in that clause (ex-protection applicants and their dependants), do not apply where the Secretary of State is not satisfied that the protection application in question was made as soon as reasonably practicable after the protection applicant’s arrival in the UK. Subsection (2) provides that subsection (1) does not prevent the provision of support to the extent necessary to avoid a breach of a person's Convention rights or if an eligible protection applicant or an ex-protection applicant has a dependant under the age of 18.

386. Subsection (3) enables the Secretary of State by order to specify cases or circumstances where subsection (1) does not disapply the duty or power to support. See clauses 334 and 335 on orders.

How support is provided

Clause 212: The support which may be provided etc.

387. Clause 212 sets out how the Secretary of State may provide support under this Part. Support may include accommodation, or provision for essential living needs, or both. Where a person has adequate accommodation (e.g. because he can stay with friends or relatives) the support may be for essential living needs only, and where the person has sufficient resources to meet those needs, but cannot afford rent, the support may be accommodation only. However, subsection (2) provides that the Secretary of State may decide that essential living needs will be provided for a person only when accommodation is also provided for him. Support may also include the means to enable a person, and any dependants, to attend an immigration bail hearing or for an

eligible protection applicant to meet the expenses (other than legal expenses) in connection with the protection application (for example the costs of travelling to an interview with the UK Border Agency). Support may also consist of the provision of such other items or services, or the means to enable a person to meet such expenses or other needs, as may be prescribed by support regulations. Subsection (1)(f) provides that in exceptional circumstances other kinds of support may be provided.

388. The remainder of the clause sets out other matters (in some cases to be prescribed by support regulations) that the Secretary of State may take into account or which are otherwise relevant to the provision of support.

Clause 213: Support provided subject to conditions

389. Subsection (1) provides that a supported person must reside in accommodation provided under the Part or in accommodation notified to the Secretary of State, for the period for which support is provided. Subsection (2) and (3) provide that support may be provided subject to conditions and the Secretary of State must notify the supported person of any such conditions.

Clause 214: Support regulations

390. This clause enables regulations to make further provision with respect to functions of the Secretary of State under this Part. Regulations may include provision enabling the Secretary of State to take into account, in deciding whether to provide support under clause 210, or the level or kind of support to be provided, the extent to which a person is complying or has complied with conditions subject to which support is or has previously been provided (subsection (2)); provision requiring the supported person to make a contribution to support (subsection (3)); and provision about the procedure for an application for support (subsection (4)). Subsection (5) enables regulations to provide for an application for support not to be entertained where the Secretary of State is not satisfied that information provided by an applicant is complete or accurate or that the applicant is co-operating with enquiries made by the Secretary of State.

391. Subsection (6) enables regulations to make provision for the suspension or discontinuance of support in prescribed circumstances, including where a person fails to comply with a condition attached to the support. These circumstances may, for example, include where the supported person has stopped living in the accommodation provided or (for those receiving essential living needs only) who are no longer living at the address they had notified to the Secretary of State.

392. Subsection (7) enables regulations to prescribe the period of notice to be given to a supported person required to quit accommodation provided under this Part. Subsection (8) provides that a notice to quit may only be given where the support is to be discontinued, where the person is to be moved to other accommodation, where the accommodation is no longer required by the supported person, or in any other prescribed circumstances.

Support and assistance by local authorities etc.

Clause 215: Provision of support by local authorities

393. This clause enables a local authority or Northern Ireland authority to provide support in accordance with arrangements made by the Secretary of State under this Part. The authority has the power to provide support outside its area, in conjunction with other bodies, to form a company in order to provide a service and to bid for contracts (either individually or in consortium) to provide support. An authority may incur reasonable expenditure in connection with the preparation of proposals for entering into arrangements under this Part.

Clause 216: Local authority and other assistance for Secretary of State

394. If the Secretary of State asks a provider of social housing (defined in subsections (1) and (6)) to assist in providing accommodation under this Part, the provider must co-operate in giving such assistance as is reasonable in the circumstances. Subsection (4) requires a local authority to provide the Secretary of State with such information about its housing stock as the Secretary of State requests. Collecting such information would help the Secretary of State to decide whether to ask for assistance.

Clause 217: Reception zones

395. This clause enables the Secretary of State, having consulted such local authorities, local authority associations and other persons as he thinks fit, by order to designate a reception zone. The zone would typically be an area comprising a number of local authorities in which the Secretary of State felt there was spare housing accommodation suitable for the support of persons under this Part.

396. If a reception zone has been designated, and it appears to the Secretary of State that there is unoccupied housing available in the area of a particular authority which matches the criteria used to establish the reception zone, he may direct that authority to make available to him (or to a person with whom he has contracted for the provision of support) a specified amount of housing accommodation for a specified period of time, not exceeding 5 years. Subsection (6) provides for such a direction to include a requirement to have minor works carried out in relation to the housing accommodation, if it is necessary to render the accommodation appropriate for support.

Clause 218: Directions under section 217(3)

397. This clause relates to the power of the Secretary of State to give a direction under clause 217. The power to give a direction must be exercised by reference to the criteria used to select the zone for designation. Before determining those criteria the Secretary of State must consult relevant local authorities and before issuing a direction in Scotland he must first obtain confirmation from the Scottish Ministers that the designation criteria are in their opinion met.

Clause 219: Regulations about housing accommodation

398. This clause requires the Secretary of State to make regulations with respect to the general management of housing accommodation for which a direction under clause 217(3) is in force. The regulations must set out the method by which rent and other charges are to be determined; when such amounts are to be paid; and where responsibility rests for maintenance, repairs and any minor work required to bring the property into use. This clause also requires the Secretary of State to make regulations providing for a dispute resolution procedure to resolve any disputes associated with property that is subject to a direction. Prior to making regulations, the Secretary of State must follow the consultation requirements set out in subsections (6) to (8).

Clause 220: Payments in respect of directions under section 217(3)

399. This clause requires the Secretary of State to make such payments as he considers reasonable to a body to which a direction is given under clause 217(3) to represent the costs to the body of complying with the direction.

Clause 221: Access to other support for children

400. Local authority social services departments may not provide assistance to a dependant under 18 where any of the conditions set out in the clause are met, including where the Secretary of State is providing support under this Part or where there are reasonable grounds for believing that he would be required to provide support if an application for such support were made. Subsection (1) does not apply in such circumstances as regulations may provide.

Appeals

Clause 222: Appeals

401. This clause provides that a person may appeal to the First-tier Tribunal against a refusal of support under clause 206 or 210, or the discontinuance of support provided under either of those clauses. The person must be in the UK in order to exercise this right of appeal (subsection (4)). If the First-tier Tribunal finds in favour of the applicant it may either require the Secretary of State to reconsider his decision, or substitute its own decision. Where the First-tier Tribunal has rejected an appeal, a further application for support made by that person will not be entertained unless there has been a material change in his circumstances. This clause also provides that the Secretary of State may pay reasonable travelling costs incurred by an appellant to attend a hearing in relation to an appeal under this clause.

402. Subsection (3) provides that a person may not appeal a refusal or discontinuance of support where the application for support does not meet the procedural requirements prescribed by support regulations; where support is refused by virtue of clause 211 (late protection application); where the person fails to move into accommodation provided; where support under clause 206 is immediately replaced by support under clause 210, or vice versa; where support provided under clause 210 ends as a result of the expiry of a prescribed period; where a previous application for support has been refused and there has been no material change of circumstances; where the person ceases to be an eligible protection applicant or the

dependant of an eligible protection applicant (under clause 206); or where an ex-protection applicant or the dependant of an ex-protection applicant for whom support was provided under clause 210 on the basis that he met the relevant (case A) criteria, has ceased to meet such case A criteria as may be prescribed. This would not prevent the person making a new application for support under clause 210, if he remains otherwise eligible.

Recovery of support and overpayments

Clause 223: Recovery of support and overpayments

403. This clause provides for recovery by the Secretary of State of the monetary value of support provided for a person under the Part, where the person has misrepresented or failed to disclose a material fact and the misrepresentation or failure resulted in the person being supported. It extends to recovery by the Secretary of State of the monetary value of support provided by a contractor on the Secretary of State's behalf. Subsection (4) enables the Secretary of State to recover the monetary value of support if a supported person was not destitute during any period when supported was provided.

404. Subsections (5) and (6) enable the Secretary of State to recover all or part of the monetary value of support provided to a person if, although destitute at the time of making the application, the person possessed assets which were not at that time capable of being realised but have since become realisable.

405. Subsections (7) and (8) enable recovery by the Secretary of State of the monetary value of any support provided under the Part as a result of an error on the part of the Secretary of State.

406. Subsections (9) and (10) provide for an amount recoverable under the clause to be recovered as if it were a debt due to the Secretary of State or by any other method prescribed by support regulations, including by deductions from future support payments.

Related Offences

Clause 224: Dishonest representations

407. This clause makes it an offence for a person to obtain a benefit, other payment or advantage for himself or anyone else under this Part, by making dishonest representations. Subsection (3) sets out the penalty for these offences, which reflect the Criminal Justice Act 2003, subject to the transitory provision in paragraph 1 of Schedule 5.

Clause 225: Delay or obstruction

408. This clause makes it an offence, without reasonable excuse, to obstruct a person carrying out functions under this Part (either the Secretary of State or someone acting on his behalf) by delaying or obstructing him, or failing to give him

information or produce a document when required to do so.

Power of entry

Clause 226: Entry of premises in which accommodation is provided

409. This clause provides that a person acting on behalf of the Secretary of State may make an application to an appropriate judicial officer for a warrant to enter premises being used to provide accommodation under this Part. Where the appropriate judicial officer is satisfied that there are reasonable grounds for believing that the supported person or any dependants of his are not residing there, or that someone other than the supported person and his dependants is living there, or that the premises are being used for a purpose other than the accommodation of the supported person or his dependants, he may issue the warrant.

410. Subsection (4) provides that, once issued, the warrant may be executed at any reasonable time.

Power to obtain information

Clause 227: Information to be supplied by property owners etc.

411. This clause enables the Secretary of State to require the owner or manager of property provided to accommodate persons supported under this Part to supply him with information about the premises and the persons occupying the premises. This power might be used, for example, to require landlords to notify the Secretary of State when a supported person had left the property provided under an agreement, or when a supported person is subletting the property.

Expenditure

Clause 228: Payments to local authorities

412. Subsection (1) enables the Secretary of State to make payments to local authorities or to Northern Ireland authorities in connection with the expenditure they incur in relation to persons who are, or have been, protection applicants and their dependants. Such payments might cover the cost to the authorities of providing accommodation for use by protection applicants (rent etc), or the cost of providing other support. Subsection (2) gives the Secretary of State power to make payments to local authorities, local authority associations or Northern Ireland authorities in respect of services provided to the Secretary of State in connection with his support functions.

413. Subsection (4) enables the Secretary of State to make payments to local authorities or local authority associations in respect of the liability to council tax that may fall to persons who are, or have been, protection applicants and their dependants. Subsection (5) provides that payments under this clause may be made on terms and conditions determined by the Secretary of State.

Clause 229: Grants to voluntary organisations

414. This clause enables the Secretary of State to pay grants to voluntary organisations for the provision of support to persons who are, or have been, protection applicants and to their dependants. Grants under this clause may be made on terms and conditions determined by the Secretary of State.

Supplementary

Clause 230: Secretary of State to be a corporation sole for the purposes of this Part

415. This clause provides that the Secretary of State is to be treated as a corporation sole for the purposes of holding property under this Part.

Clause 231: Accommodation for previously support persons: local connection

416. This clause provides that section 193 of the Housing Act 1996 does not apply in respect of homeless applicants who have formerly been provided with accommodation under clause 206 or 210 in a place in Scotland, and who do not have a local connection with a district of a local housing authority in England and Wales or with a district in Scotland. Those who are provided with accommodation under clause 206 or 210 establish a local connection with the district where the accommodation is provided. Where accommodation is provided in more than one district, a local connection is established only with the district where accommodation was most recently provided. Subsection (4) provides that, in cases where the duty under clause 206 does not apply, local housing authorities may secure that accommodation is available for occupation by the person for a period that will give him a reasonable opportunity of securing accommodation for himself, and may provide the person (or secure that he is provided with) advice and assistance in any attempts he may make to secure that accommodation becomes available for his occupation.

Interpretation

Clause 232: Interpretation

417. Subsection (1) provides definitions for the purposes of this Part. Subsection (3) enables the Secretary of State to inquire into and decide the age of a person claiming support.

PART 12: INFORMATION

Powers to require information

Clause 233: Power to require information from local authority

418. This clause enables the Secretary of State to require a local authority or the Northern Ireland Housing Executive (“the NIHE”) to supply information for the purpose of establishing where a person is. The Secretary of State can impose such a requirement if the Secretary of State has reasonable grounds for believing that the person (a) has committed a relevant offence and (b) is or has been resident in the local authority’s area or, in the case of the NIHE, in Northern Ireland. Subsection (2) lists

the relevant offences mentioned in subsection (1). Subsection (3) makes it clear that a local authority and the NIHE must comply with a requirement imposed under subsection (1) and subsection (4) defines the term “local authority” as used in this clause.

Clause 234: Power to require information from employer

419. This clause enables the Secretary of State to require an employer, if served with a notice to this effect, to supply information about an employee (see definitions in subsection (5)). This power applies if the Secretary of State (a) has reasonable grounds for suspecting that the employee has committed a relevant offence and (b) the information is required for establishing the employee’s whereabouts or relates to the employee’s earnings or employment history. Subsection (2) lists the relevant offences referred to in subsection (1). Subsection (3) makes it clear that any information supplied by an employer under subsection (1) is not admissible as evidence in criminal proceedings except proceedings for an offence under clause 238(1)(a) (failure to comply with a requirement imposed under this clause). Subsection (4) sets out how this clause applies to an employment agency who arranges for a person to provide services to another person (the client), but neither the agency nor the client employs the worker.

Clause 235: Power to require information from financial institution

420. This clause enables the Secretary of State to require a financial institution (as defined in subsection (3)), if served with a notice to this effect, to supply information about a person. This power applies if the Secretary of State has reasonable grounds for suspecting that (a) the person has committed an offence under clause 224(1)(a), (b), (c) or (d) (these relate to dishonest representations in connection with the provision of support under Part 11), (b) the information is relevant to the offence, and (c) the institution has the information. Subsection (2) makes it clear that any information supplied by a person under subsection (1) is not admissible as evidence in criminal proceedings except proceedings for an offence under clause 238(1)(b) (failure to comply with a requirement imposed under this clause).

Clause 236: Notices under section 234 or 235

421. This clause sets out the form in which a requirement under clause 234 or 235 must be made. Subsection (1) sets out that a notice imposed under clause 234(1) or 235(1) must specify (a) the information required, (b) the date or time by which it is to be supplied, and (c) the form and manner in which it is to be supplied. Subsection (2) states that the deadline for supplying the information must be at least 10 working days beginning with the date on which the notice is given. Subsection (3) defines the term “working days” for this purpose. See clause 329(1) on notices.

Clause 237: Power to make provision for registration at hotels etc.

422. This clause enables the Secretary of State to make an order requiring records to be kept of people staying at hotels or other premises where lodging or sleeping accommodation is provided and requiring people staying in such establishments (including British citizens) to provide the necessary information. See clauses 334 and

335 on orders.

Related offences

Clause 238: Failure to comply with a section 234, 235 or 237 requirement

423. This clause makes it an offence if a person, without a reasonable excuse, fails to comply with a requirement imposed under or by virtue of clause 234, 235 or 237. Subsection (2) states that the provisions in clause 320 (commission of certain offences by director etc.) apply to the offences in subsections (1)(a) and (b) of this clause (that is requirements imposed on employers and financial institutions). Subsection (3) sets out the penalty for the offence, which reflects the Criminal Justice Act 2003, subject to the transitory provisions in Schedule 5.

Powers to supply information

Clause 239: Supply by police and others to Secretary of State

424. This clause provides for information to be supplied to the Secretary of State by a relevant person. Subsection (1) sets out the type of information this clause applies to, which is (a) information held by a relevant person, (b) a document or article which comes into the possession of a relevant person or a person acting on behalf of a relevant person, and (c) a document or article which is discovered by a relevant person or a person acting on behalf of a relevant person.

425. Subsection (2) defines the term “relevant person” as: a chief officer of police, the Serious Organised Crime Agency (SOCA), those with whom arrangements have been made for the provision of support under Part 11 and any other person specified by order for such purposes as may be specified. See clauses 334 and 335 on orders.

426. Subsection (3) provides that the information, document or article may be supplied to the Secretary of State for use for immigration or nationality purposes, as defined in clause 250. Subsection (4) provides that the Secretary of State may (a) retain for immigration or nationality purposes a document or article supplied under subsection (1) and (b) may dispose of a document or article supplied under subsection (1).

Clause 240: Supply of information by HMRC & RCPO for immigration and nationality purposes

427. Subsection (1) of this clause sets out the purposes for which Her Majesty’s Revenue and Customs (“HMRC”) and the Revenue and Customs Prosecution Office (“RCPO”) may supply information to the Secretary of State – that is for immigration or nationality purposes or for the purpose of doing anything else in connection with the exercise of immigration and nationality functions. Immigration and nationality functions are defined in clause 339(5). Subsection (2) defines “information”, for the purposes of subsection (1), to include a document or article which (a) comes into the possession of HMRC or RCPO or a person acting their behalf, or (b) is discovered by

HMRC or RCPO or a person acting on their behalf.

428. Subsection (3) sets out that the Secretary of State (a) may retain for a purpose set out in subsection (1) a document or article supplied by virtue of subsection (2) and (b) may dispose of a document or article supplied by virtue of subsection (2). Subsection (4) sets out that this power can be exercised on behalf of HMRC or the RCPO by a person authorised generally or specifically for that purpose.

Clause 241: Supply by HMRC & RCPO for customs purposes

429. Subsection (1) provides a power for HMRC and RCPO to provide information to a person to whom this clause applies for use for the purpose of the customs functions exercisable by that person. Subsection (2) lists the persons referred to in subsection (1). These are a designated customs official, the Secretary of State by whom general customs functions are exercisable, the Director of Border Revenue and any other person acting on behalf of these persons. Subsection (3) defines “information”, for the purposes of subsection (1), to include a document or article which (a) comes into the possession of HMRC or the RCPO or a person acting on behalf of them or (b) is discovered by HMRC or RCPO or a person acting on behalf of them. Subsection (4) sets out that a person to whom this section applies (a) may retain for a purpose set out in subsection (1) a document or article supplied by virtue of subsection (3) and (b) may dispose of a document or article supplied by virtue of subsection (3). Subsection (5) sets out that this power can be exercised on behalf of HMRC or the RCPO by a person authorised generally or specifically for that purpose.

Clause 242: Supply by Secretary of State to police and others

430. Subsection (1) states that this clause applies to information held by the Secretary of State in connection with the exercise of functions under this Act. Subsection (2) provides that the Secretary of State may supply this information to certain people. These are (a) the police for police purposes, (b) SOCA for SOCA purposes (see subsection (3)), (c) HMRC, or a person providing services to HMRC, for Revenue and Customs purposes, and (d) any person specified in an order for purposes specified in that order in relation to that person. Clause 250 defines police purposes and Revenue and Customs purposes. See clauses 334 and 335 on orders.

Clause 243: Supply by Secretary of State to receiving country

431. Many of those individuals awaiting removal from the UK are not in possession of a travel document, which is needed before removal can proceed. Securing a travel document without proof of identity can be difficult. The purpose of this clause is to enable the Secretary of State to provide biometric information (as defined in clause 339(1)) to the appropriate national authorities, where necessary, to secure the provision of a travel document.

432. Subsection (1) sets out that this clause applies if a person (“P”) (a) is to be removed from the UK under Part 5 to a country of which P is a national and (b) does not have a travel document. Subsection (2) states that if the country to which the person is to be removed indicates that P will not be admitted there unless relevant

biometric information relating to P is supplied by the Secretary of State, then the Secretary of State may supply it. Subsection (3) states that in disclosing this information the Secretary of State must not disclose whether the person has made a protection application. Subsection (4) states that relevant biometric information is biometric information held by the Secretary of State. Subsection (5) provides that the supply of biometric information under this clause is, for the purposes of paragraph 4(1) of Schedule 4 to the DPA 1998, a transfer of personal data which is necessary for reasons of substantial public interest.

Duty to share information

Clause 244: Duty of Secretary of State & others to share passenger information etc.

433. This clause preserves the existing duty for information obtained or held by the UK Border Agency, the police and HMRC in the course of their functions to be shared, to the extent that the information is likely to be of use for relevant purposes. Subsection (1) sets out the persons this clause applies to. Subsection (2) provides that these persons must share relevant information which is acquired or held by them in the course of their functions to the extent the information is likely to be of use for immigration or nationality, police or Revenue and Customs purposes. Subsection (3) limits the application of the section to disclosure by a chief officer of police in Scotland in relation to police and Revenue and Customs purposes.

434. Subsection (4) defines the term “relevant information” as information which (a) is acquired or held in the exercise of power specified by the Secretary of State and the Treasury jointly by order and relates to (i) passengers on a ship or aircraft, (ii) crew of a ship or aircraft, (iii) freight on a ship or aircraft, or (iv) voyages or flights, or (b) relates to such other matters in respect of travel or freight as the Secretary of State and Treasury may jointly specify by order.

435. Subsection (5) limits the joint order-making power in subsection (4) so that an order can only be made if the Secretary of State and the Treasury are satisfied that the information sharing is likely to be of use for immigration or nationality purposes, police purposes or Revenue and Customs purposes, and that there are likely to be circumstances where this information can be shared under subsection (2) without breaching Convention rights. See clauses 334 and 335 on orders.

436. Subsection (6) states that information shared under subsection (2) must (a) be made available to each of the persons or descriptions of persons mentioned in subsection (1), and (b) may be used for immigration or nationality purposes, police purposes or Revenue and Customs purposes (regardless of the source of the information). Subsection (7) states that an order made under subsection (4) must not require HMRC to share information relating to matters that were formerly the responsibility of the Inland Revenue. Subsection (8) provides that this clause has effect despite any restrictions on the purposes for which information may be disclosed

or used.

Clause 245: Code of practice for information sharing

437. Subsection (1) of this clause provides that a code of practice must be jointly issued by the Secretary of State and the Treasury covering (a) the use of information shared under clause 244(2) and (b) the extent to which, or form or manner in which, shared information is to be made under clause 244(6). Subsection (2) provides that the Secretary of State and the Treasury must jointly review this code of practice from time to time and may revise or re-issue a code following a review. Subsections (3) and (4) provide that a code of practice issued (or re-issued) under the clause must be laid before Parliament in draft, and will come into force in accordance with provision made by order by the Secretary of State and the Treasury jointly.

Confidentiality

Clause 246: Prohibitions on disclosure of HMRC or RCPO information

438. Subsections (1) and (2) prohibit a person to whom relevant information is supplied by HMRC or RCPO, or person acting on behalf of such a person, from disclosing this information.

439. Subsection (3) defines “relevant information” for the purpose of this clause. That is information supplied by or on behalf of HMRC or the RCPO under clause 240 or 244 (except insofar as it relates to information supplied to a chief officer of police). Subsection (4) includes documents or articles supplied under clause 240(2) within the information referred to in subsection (3). Subsection (5) states that this prohibition is subject to clause 247 (exceptions to section 246 prohibitions) and any other enactment permitting disclosure. Subsection (6) states that “enactment”, for the purposes of subsection (5), does not include an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament, a Measure or Act of the National Assembly for Wales or an Act of the Northern Ireland Assembly. Transitional provisions will be made in relation to information obtained before the commencement of this provision.

Clause 247: Exceptions to section 246 prohibitions

440. Subsection (1) states that a person does not breach clause 246(1) or (2) by making a disclosure to which any of subsections (2) to (5) of this clause applies. Subsection (2) states that a disclosure can be made for the purposes listed in clause 240(1) (i.e. for immigration or nationality purposes and for the purpose of immigration and nationality functions). Subsection (3) states that information is disclosable if it is (a) made for the purpose of civil proceedings (whether or not within the UK) relating to an immigration or nationality matter, (b) is made for the purposes of a criminal investigation or criminal proceedings (whether or not within the UK) relating to an immigration or nationality matter, or (c) is made in pursuance of an order of a court.

441. Subsection (4) states that a disclosure can be made with the consent of each person to whom the information applies. Subsection (5) states that a disclosure can be

made with the consent (which can be general or specific) of HMRC or RCPO.

Clause 248: Prohibitions on disclosure of information supplied under section 241

442. Subsections (1) and (2) of this clause state that a person to whom information is supplied under clause 241, or a person acting on behalf of a person to whom information is supplied under clause 241, may not disclose that information. Subsection (3) sets out the exemptions to this prohibition on disclosing information for a disclosure: (a) which is made for a customs function (where such disclosure does not contravene any restrictions imposed by the Commissioners for HMRC), (b) which is made for civil proceedings (whether or not within the UK) relating to a customs function, (c) which is made for the purpose of a criminal investigation or criminal proceedings (whether or not within the UK), (d) which is made in pursuance of an order of a court, (e) which is made with the consent (which may be general or specific) of HMRC or RCPO, or (f) which is made with the consent of each person to whom the information relates.

443. Subsection (4) makes clear that this prohibition on disclosure also applies to documents and articles supplied under clause 241(3). Subsection (5) makes clear that this clause is subject to any enactment permitting disclosure. Subsection (6) states that “enactment”, for the purposes of subsection (5), does not include an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament, a Measure or Act of the National Assembly for Wales or an Act of the Northern Ireland Assembly.

Clause 249: Offence of wrongful disclosure

444. This section creates an offence of wrongful disclosure of certain information supplied by HMRC, the RCPO or those authorised to act on behalf of either of them. Subsection (1) sets out that a person commits an offence if the person breaches the prohibitions on disclosing information in clause 246(1) or (2) or 248(1) or (2) by disclosing information relating to a person that identifies that person or enables the person to be identified.

445. Subsection (2) states that subsection (1) does not apply to the disclosure of information about internal administrative arrangements of HMRC or the RCPO. Subsection (3) sets out that it is a defence for a person charged with this offence to prove that the person had reasonable grounds for believing (a) that the disclosure was lawful, or (b) that the information had already and lawfully been made available to the public. The penalty for this offence reflects the Criminal Justice Act 2003, subject to the transitory provisions in paragraph 1 of Schedule 5.

Supplementary

Clause 250: Meaning of "immigration purposes", "nationality purposes" etc.

446. This clause contains definitions of “immigration purposes” (subsection (1)), “nationality purposes” (subsection (2)), “police purposes” (subsection (3)) and

“Revenue and Customs purposes” (subsection (4)) as they relate to this Part.

Clause 251: Other definitions etc.

447. Subsection (1) defines, for the purposes of this Part, “chief officer of police”, “HMRC” and “RCPO”. Subsection (2) provides that nothing in this Part, or clauses 32 to 36 (powers to require information from carriers & captains) or clause 56 (supply of information by medical inspectors to health service bodies) limits the extent to which information, documents, or articles may be used, shared, disclosed or otherwise supplied apart from this Part or those clauses.

PART 13: ILLEGAL WORKERS

Meaning of “illegal worker” etc.

Clause 252: Meaning of “illegal worker” etc.

448. This clause defines an “illegal worker” for the purposes of this Part. Subsection (1) provides that an “illegal worker” is a person who is aged 16 or over, is neither a British citizen nor an EEA entrant and falls within subsections (2) or (3). Subsections (2) and (3) apply to a person who does not have immigration permission and is not on immigration bail; has immigration permission or is on immigration bail but it is subject to a condition preventing the person from accepting the work in question; or has immigration permission but its grant was obtained by deception. Subsection (4) provides that a reference to employment is to employment under a contract of service or apprenticeship, whether express or implied and whether oral or written.

Penalty for employing illegal workers

Clause 253: Penalty for employing illegal workers

449. This clause provides that a person may be liable to a civil penalty for employing an illegal worker and that the penalty must not exceed the maximum specified in regulations. The clause also sets out the time limit for payment of the penalty – this will be prescribed in regulations, but the intention is that it will be 28 days, unless payment by instalments is agreed (and this will be the deadline for all four civil penalties in the Bill). Subsection (4) provides that a penalty imposed under this clause must be paid before the end of the prescribed period, unless a notice of objection under clause 282 is given in respect of the penalty. Subsection (5) states that if a notice of objection is given and then withdrawn, the penalty must be paid before the end of the prescribed period. See Part 15 on the procedure for objections and appeals relating to, and for recovery of, a civil penalty.

Clause 254: Defence

450. This clause provides that an employer is not liable for a civil penalty if the employer has a defence under this clause. Subsection (2) provides that it is a defence for an employer to show compliance with any prescribed requirements. However, subsection (3) provides that there is no defence if the employer knew, at any time

during the period of employment, that the employment was contrary to clause 253. Subsection (4) provides that the Secretary of State can give a penalty without having established that the defence applies. Subsection (5) lists some of the requirements which may be included in regulations setting out what an employer must do to establish a defence against a penalty. They relate to the checking, copying and retention of specified documents. See clauses 334 and 335 on regulations.

Clause 255: Code of practice

451. This clause requires the Secretary of State to issue a code of practice specifying matters to be considered in determining the amount of the civil penalty. Subsections (3) and (4) require the Secretary of State to have regard to both the code of practice having effect when the employment of the illegal worker commenced and any other relevant matters when imposing a penalty under clause 253. Subsection (5) provides that before issuing or reissuing the code, the Secretary of State must lay a draft before Parliament.

Offence of employing illegal workers

Clause 256: Employment of illegal workers

452. This clause makes it an offence to knowingly employ an illegal worker. Subsection (2) provides that a body will be treated as knowing a fact about a person, if a person with responsibility in that body for an aspect of the employment knows that fact. Subsection (3) cross-refers to the provision in clause 320 (commission of certain offences by director etc.). The penalty for this offence reflects the Criminal Justice Act 2003, subject to the transitory provision in Schedule 5.

Supplementary

Clause 257: Discrimination: code of practice

453. This clause requires the Secretary of State to issue a code of practice to employers specifying how to avoid contravening the Race Relations Act 1976 or the Race Relations (Northern Ireland) Order 1997 (S.I. 1997/869 (N.I.6)) while avoiding liability for a civil penalty under clause 253 or the commission of an offence under clause 256. Subsection (3) provides that before issuing or reissuing the code the Secretary of State must comply with subsections (4) and (5). Subsection (4) obliges the Secretary of State to consult various specified bodies before issuing or reissuing the code and subsection (5) provides for the code to be published in draft, the Secretary of State to consider representations made about the published draft and, after considering any representations, to lay a draft before Parliament. Subsection (6) provides that a breach of this code does not make a person liable for civil or criminal proceedings but subsection (7) provides that a breach may be taken into account by a court or tribunal.

PART 14: CARRIERS' LIABILITY

Penalty for carrying inadequately documented passengers

Clause 258: Penalty for carrying inadequately documented passengers

454. This clause enables the Secretary of State to impose a penalty on the owner, agent or operator of a ship or aircraft, or the owner or liable operator of a specified train, where the ship, aircraft or train brings an inadequately documented passenger to the UK. The penalty can be imposed if, during examination on arrival the passenger is unable to produce a valid identity document and evidence of immigration permission or transit permission (where permission is needed) and is unable to show that they are a British citizen or EEA entrant. “Specified train” means a train engaged on an international service specified in regulations made by the Secretary of State.

Clause 259: Amount of penalty and period for payment

455. Subsections (1) and (2) require the Secretary of State to specify in regulations the amount of the penalty under clause 258. Subsection (3) stipulates that penalties must be paid before the end of the prescribed period unless a notice of objection is submitted – the deadline will therefore be prescribed in regulations, but the intention is that it will be 28 days unless payment by instalments is agreed (and this will be the deadline for all four civil penalties in the Bill). Subsection (4), which is new, specifies that if a notice of objection is given and then withdrawn the outstanding penalty is payable before the end of the prescribed period. See Part 15 on objections and appeals relating to, and on recovery of, civil penalties.

Clause 260: Defence

456. This clause provides a defence in relation to a clause 258 penalty. Under subsections (2) and (3) a person is not liable to a penalty if they can show that the passenger produced proper documentation when embarking for the UK or, in the case of a train, at or before its last scheduled stop before arrival in the UK. Subsection (4) entitles a person to regard a document as being what it purports to be unless its falsity is reasonably apparent and to regard the document as relating to the passenger presenting it unless it is reasonably apparent that it does not. Subsection (6) is a new provision under which the Secretary of State may impose a penalty without having established whether the carrier has a defence.

Penalty for carrying clandestine entrants

Clause 261: Meaning of “clandestine entrant”

457. Subsection (1) defines a clandestine entrant as someone who arrives in the UK concealed in a vehicle, container, ship, aircraft or train; who passes, or attempts to pass, through immigration control whilst concealed in a vehicle or container; or who arrives in the UK on a ship, aircraft or train having been concealed in a vehicle or container when the ship, aircraft or train was outside the UK. Such a person is a clandestine entrant if the person evades or tries to evade immigration control or makes an application for protection. Subsection (2) defines “UK immigration control” as including control operated in a control zone abroad specified in regulations made by

the Secretary of State.

Clause 262: Penalty for carrying clandestine entrants

458. Subsection (1) enables the Secretary of State to give notice to a person responsible for a clandestine entrant to pay a penalty in respect of the clandestine entrant and anyone concealed with them in the same transporter. Subsection (2) provides that, subject to any clause 266 defence, the person responsible must pay the penalty regardless of whether that person was aware that a clandestine entrant was concealed in that person's transporter. Under subsection (3), if a clandestine entrant is concealed in a transporter carried by another (e.g. a boat on a trailer) the question of whether others are concealed with the clandestine entrant will be determined with reference to the carried transporter.

Clause 263: Amount of penalty and period for payment

459. Subsection (1) states a clause 262 penalty must not exceed the maximum specified in regulations made by the Secretary of State. Subsection (2) stipulates payment must be made before the end of the prescribed period unless a notice of objection is given – the deadline will therefore be prescribed in regulations, but the intention is that it will be 28 days unless payment by instalments is agreed (and this will be the deadline for all four civil penalties in the Bill). Subsection (3), which is new, specifies that if a notice of objection is given and then withdrawn the outstanding penalty is payable before the end of the prescribed period. See Part 15 on objections and appeals relating to, and on recovery of, civil penalties.

Clause 264: Persons responsible for clandestine entrants

460. Subsections (1) and (2) set out the person(s) responsible for the penalty according to the type of transporter used to carry a clandestine entrant. Subsection (3) clarifies the responsible person when a clandestine entrant is discovered in a transporter (A) which itself is being carried on another transporter (B). In such a case the responsible person will be determined by reference to transporter A. Subsection (4) enables the Secretary of State to impose a clause 262 penalty on more than one responsible person but the aggregated amount must not exceed that specified in regulations. Under subsection (5), where a person is responsible in more than one capacity, the Secretary of State may impose a penalty for each capacity.

Clause 265: Liability of employer for penalty imposed on employee

461. Subsection (1) applies this section where the clause 262 penalty is imposed on a driver employed by the vehicle's owner or hirer. Subsection (2) makes the employer and employee jointly and severally liable for the penalty imposed on the employee, irrespective of whether a penalty is imposed on the employer. Subsection (3) states that a penalty imposed on the employee is to be treated as also having been imposed on the employer (irrespective of whether a penalty is also imposed on the employer). Subsection (4) refers to clause 289, which makes provision about the application of Part 15 (civil penalty procedure) in these circumstances.

Clause 266: Defences

462. Under subsection (1) a person responsible for bringing a clandestine entrant to the UK will not be liable to the imposition of a clause 262 penalty if the person has a defence under this clause. Under subsections (2) and (3), it is a defence to show that the responsible person or an employee of that person acted under duress and this defence then applies to anyone else responsible. Subsections (4) and (5) provide defences in circumstances where there was an effective system for preventing the carriage of clandestine entrants in relation to the transporter, and the system was operated properly. The defence in subsection (4) applies where the responsible person did not know or did not have reasonable grounds for suspecting a clandestine entrant was concealed in the transporter. The defence in subsection (5) applies where a person knew a clandestine entrant was concealed in a train, having embarked after the train set out for the UK, but could not stop the train without endangering safety. Under subsection (6), the Secretary of State may impose a penalty without having established whether the responsible person has a defence.

Clause 267: Code of practice: level of penalty under section 262

463. Subsection (1) obliges the Secretary of State to issue a code of practice specifying matters for consideration when determining the amount of a penalty imposed under section 262. The Secretary of State may, under subsection (2), revise and reissue the code. Under subsection (3) the code must be taken into account by the Secretary of State when determining the amount of penalty. Under subsection (4) the Secretary of State must lay a draft of the code before Parliament.

Clause 268: Code of practice: prevention of clandestine entrants

464. Subsection (1) obliges the Secretary of State to issue a code of practice to be followed by anyone operating a system for preventing the carriage of clandestine entrants. Subsection (2) permits the Secretary of State to revise and reissue the code. Subsection (3) stipulates that the code must be taken into account when determining whether a particular system for preventing clandestine carriage was effective and so is capable of providing a defence under clause 266. Under subsection (4) before issuing or reissuing the code, the Secretary of State must consult those the Secretary of State thinks appropriate and lay a draft before Parliament.

Clandestine entrants: detention and sale of transporters

Clause 269: Power to detain until penalty notice is given etc.

465. Subsection (1) enables the Secretary of State to detain the relevant transporter pending the giving of a clause 262 penalty notice or a decision on whether to detain the transporter under clause 270. Subsection (2) places limits on the power of the Secretary of State to detain a transporter for longer than is necessary or (in any event) beyond 24 hours from the conclusion of the first search of the transporter.

Clause 270: Power to detain after penalty notice is given

466. Subsection (1) enables the Secretary of State to detain a vehicle, container, small ship, small aircraft, hovercraft or train until the penalty and any connected expenses have been paid. Subsection (2) provides the power may not be exercised if

alternative security is given which the Secretary of State finds satisfactory. Under subsection (3) a vehicle may only be detained if the driver is an employee of its owner or hirer, the driver is the owner or hirer, or a clause 262 penalty is given to the owner or hirer. This power has been extended to cover trains (see also clause 272 (supplementary provisions about detention)).

Clause 271: Power to detain in default of payment of penalty

467. This clause applies where a person given a clause 262 penalty fails to pay before the due date. Subsection (2) enables the Secretary of State to detain any transporter used by that person in the course of their business. Under subsections (3) and (4) the transporter may be detained if the person does not own it, but (in the case of a vehicle) only if they are the owner or hirer or they were an employee of the owner or hirer when the penalty notice was given. Subsection (5) obliges the Secretary of State to release a transporter if the penalty and any connected expenses are paid.

Clause 272: Supplementary provisions about detention

468. Subsection (1) enables anyone with an interest in the freight carried on a detained transporter to remove it or arrange for it to be removed at a reasonable time and in a reasonable way. This is a change from the current position. Subsections (2) and (3) make detention lawful even if the related clause 262 penalty was ill-founded, unless the Secretary of State acted unreasonably. Subsections (4) and (5) provide that part of a train, rather than a whole train, can be detained.

Clause 273: Application for release of detained transporter

469. Subsection (1) specifies the people who may apply for the release of a transporter detained under clauses 270 or 271. These are the person to whom the clause 262 penalty was given, the transporter owner or any other person whose interests may be affected by its detention. Under subsection (2) an application must be made to the county court or, in Scotland, to the sheriff. Subsection (3) enables the court or sheriff to release a transporter detained under clause 270 if satisfactory security has been tendered or where there is significant doubt about liability. Subsection (4) enables release of a transporter detained under clause 271 if the court or sheriff considers that the conditions under 271(1) have not been met. Subsection (5) enables release of a transporter if the penalty notice was not issued to the owner or an employee of the owner and the court or sheriff thinks it right to release the transporter. Under subsection (6), in determining whether to release a transporter under subsection (5), the court or sheriff must consider the hardship caused by detention, the extent of the owner's responsibility and any other relevant factor. Subsection (7) defines the meaning of "owner" in the clause.

Clause 274: Power of Secretary of State to sell transporter

470. This clause enables the Secretary of State to sell a detained transporter if the penalty or connected expenses have not been paid and there is no outstanding notice of objection or appeal (but see also clause 275).

Clause 275: Permission to sell transporter

471. Under subsection (1) permission to sell a detained transporter under clause 274 must be sought from a county court or sheriff. Subsection (2) requires the Secretary of State, before seeking permission, to take such steps as may be specified in regulations to bring the proposed sale to the notice of anyone likely to be affected if permission was granted and to give them the chance to become a party to the application proceedings. Subsection (3) prevents the court or sheriff giving permission to sell without proof that the penalty is or was due and that the penalty or any connected expenses have not been paid. Under subsection (4), where the owner is party to the permission proceedings, the court or sheriff must consider the extent of any hardship likely to be caused, the extent of the owner's responsibility and any other relevant issue. Subsection (5) provides a definition of "owner" for this clause.

Clause 276: Sale of transporter

472. Under subsection (1) where permission for sale is given the Secretary of State must secure the best price that can reasonably be obtained. Under subsection (2) any proceeds must be applied in making payments specified in regulations and in accordance with any provisions made by regulations regarding the priority of those payments. Under subsection (3) regulations may, in particular, require proceeds to be applied in payment of the various taxes, duties and outstanding penalties listed in that subsection. Under subsection (4) anyone suffering loss as a consequence of the sale may bring an action against the Secretary of State for non-compliance with clause 275(2) or subsection (1) of this clause, but non-compliance does not invalidate the sale.

Clause 277: Transfer of proceedings

473. This clause states that proceeding before a county court or a sheriff can be transferred to the High Court (from the county court) or to the Court of Session (from the sheriff) where the proceedings relate to an application for release of a detained transporter or an application for permission to sell a transporter.

Authority-to-carry schemes

Clause 278: Authority-to-carry schemes

474. Subsection (1) allows the Secretary of State to make regulations requiring a carrier who brings a passenger to the UK to pay a penalty if the carrier did not seek authority to carry that person, when required to do so, or if the carrier carried a passenger when authority has been refused. Subsection (2) provides that the regulations must specify the description of carrier and passenger to which they apply and subsection (3) specifies the characteristics which may be used to define "carrier" and "passenger" for these purposes. Subsection (4) provides that the regulations may amend, make similar provision to, or do anything that may be done under, clauses 258 to 260 or Part 15. Subsection (5) provides that a decision as to whether to grant authority under the scheme does not indicate whether the person is entitled or permitted to enter the UK. It is envisaged that under an authority-to-carry scheme, carriers will be required to submit the details of passengers, before embarkation to the

UK, in order for them to be checked against a Home Office database to confirm that they do not pose certain immigration or security risks and that their documents are in order. See clauses 334 and 335 on regulations.

Supplementary

Clause 279: Application of Part to certain trains

475. This clause enables the Secretary of State by order to make provision about the application of this Part to trains formed of other trains. See clauses 334 and 335 on orders.

Clause 280: Interpretation

476. This clause contains definitions for the purposes of Part 14.

PART 15: CIVIL PENALTY PROCEDURE

Application of this Part

Clause 281: Meaning of “penalty notice” etc.

477. Subsection (1) defines a “penalty notice” for the purpose of this Part as a notice under clause 62 (penalty for non-compliance with biometric requirements), 253 (penalty for employing illegal workers), 258 (penalty for carrying inadequately documented passengers) or 262 (penalty for carrying clandestine entrants)

478. Subsection (2) defines “prescribed” as meaning prescribed by regulations made by the Secretary of State. See clauses 334 and 335 on regulations.

Notice of objection

Clause 282: Notice of objection

479. This clause sets out the procedures by which a person (“P”) on whom a penalty is imposed can object to the Secretary of State in relation to that penalty, and makes provision for the Secretary of State to consider such objections.

480. Subsection (1) states that P may give a notice of objection against the penalty to the Secretary of State. Subsection (2) states that P may not give a notice of objection if P has arranged to pay the penalty by instalments. Subsections (3) and (4) state that a notice of objection must be given before the end of the prescribed period, which will begin with the date on which the penalty notice is given, and must not be less than the initial deadline for payment of the penalty prescribed under clause 62(5), 253(4), 259(3) or 263(2). Therefore (on the basis of the current policy for the deadline for payment) the deadline for giving a notice of objection will be not less than 28 days beginning with the date on which the penalty notice is given.

481. Subsection (5) states that P may only object on one or more relevant grounds. Subsections (6), (7) and (8) set out what those relevant grounds are in relation to

each of the civil penalties. In all cases P can object on the grounds that P is not liable to the imposition of a penalty. In the case of a penalty under clause 62 (penalty for non-compliance with biometric requirements), 253 (penalty for employing illegal workers) or 262 (penalty for carrying clandestine entrants) P can also object on the ground that the amount of the penalty is excessive. In the case of a penalty under clause 62 P can also object on the ground that it is unreasonable to require P to pay the penalty.

482. Subsection (9) obliges the Secretary of State to consider the notice of objection. The Secretary of State can then cancel the penalty notice, confirm the penalty notice or – in the case of a penalty under clause 62, 253 or 262 – reduce or increase the penalty by varying the penalty notice.

Clause 283: Duty to consider codes of practice

483. This clause provides that the Secretary of State must have regard to the relevant code of practice when considering a notice of objection. Subsection (1) relates to penalties imposed under clause 62 (penalty for non-compliance with biometric requirements). In this case the Secretary of State must have regard to the code of practice under clause 63 (which covers whether to impose a penalty under clause 62 and the amount of a penalty) having effect at the time of the failure to which the penalty relates.

484. Subsections (2) and (3) relate to penalties imposed under clause 253 (penalty for employing illegal workers). In this case the Secretary of State must have regard to the code of practice under clause 255 (matters to be considered in determining the amount of a penalty – so this is relevant insofar as the objection relates to the amount of the penalty) having effect at the relevant time, and any other matters which the Secretary of State thinks relevant. The relevant time is the same as for clause 255 (see subsection (4) of that clause) – in other words the date of commencement of the employment which gave rise to the imposition of the penalty.

485. Subsection (4) relates to penalties imposed under clause 262 (penalty for carrying clandestine entrants). In this case the Secretary of State must have regard to the code of practice under clause 267 (matters to be considered in determining the amount of a penalty) where the objection relates to the amount of the penalty and the code of practice under clause 268 (which is to be followed by any person operating a system for preventing the carriage of clandestine entrants) where the objection relates to liability for the penalty. In both cases the Secretary of State must have regard to the code in place at the time of the events to which the penalty relates. The Secretary of State must also take into account any other matters which the Secretary of State thinks relevant.

Clause 284: Decision of the Secretary of State

486. Subsection (1) requires the Secretary of State to give P (the person upon whom the penalty was imposed) notice of the decision under clause 282 on the notice of objection. Subsection (2) states that, if the decision is to vary or confirm the penalty

notice, then the penalty must be paid within a deadline which is prescribed (that is set out in regulations) unless the person brings an appeal under clause 285 in respect of the penalty. Subsection (3) states that this prescribed period must begin with the date on which P is given notice of the decision as to the objection and must not be less than the deadline for bringing an appeal in respect of the penalty. Subsection (4) states that, where an appeal is brought against the penalty and then abandoned, the penalty must be paid before the end of the prescribed period mentioned in subsection (2).

Appeal

Clause 285: Appeal

487. This clause sets out the arrangements for P (upon whom a penalty notice has been imposed) to appeal against the penalty notice. Subsection (2) states that P may not appeal if P has arranged to pay the penalty by instalments.

488. Subsections (3) and (4) specify where appeals can be lodged. Subsection (5) specifies that an appeal cannot be lodged unless P has given a notice of objection in respect of the penalty, and the Secretary of State has given notice of the decision on this objection. There is no equivalent in any of the four existing civil penalty regimes. Subsection (6) allows an appeal to be brought whether or not the penalty was increased or reduced following the decision on the notice of objection. Subsection (7) states that an appeal must be brought before the end of such period as may be specified by rules of court. Subsection (8) states that an appeal may be brought only on one or more relevant grounds. Subsections (9) to (11) set out the grounds of appeal in relation to each penalty. These are the same as the relevant grounds for objecting to the penalty, as described in relation to clause 282 above.

Clause 286: Disposal of appeal

489. Subsection (1) states that an appeal under clause 285 is to be a re-hearing of the decision to impose a penalty. Subsections (2) and (3) specify the possible outcomes of an appeal against each of the types of penalty. In all cases the court or sheriff may cancel or confirm the penalty notice. In the case of a penalty under clause 62, 253 or 262, the court or sheriff can also vary the penalty notice to reduce or increase the amount of the penalty. In these cases, the court or sheriff can increase the amount of the penalty either on the grounds the original amount was insufficient or on the grounds that the appeal should not have been brought. Subsections (4) and (5) state that where the decision of the court or sheriff is to vary or confirm the penalty, that penalty must be paid to the Secretary of State before the end of the prescribed period (that is as set out in regulations), and this period begins with the date on which P is given notice of the decision.

Clause 287: Duty to have regard to codes of practice

490. This clause states that the court or sheriff must have regard to the relevant codes of practice when considering an appeal. These are the same as the codes of practice the Secretary of State must have regard to when considering a notice of objection, as described in relation to clause 283 above. However, at an appeal the

court or sheriff may consider any other matters which the court or sheriff thinks relevant, which may include matters of which the Secretary of State was unaware.

Clause 288: Transfer of proceedings

491. This clause provides that in relation to proceedings before a county court or sheriff in relation to a penalty imposed under clause 253 (penalty for employing illegal workers), 258 (penalty for carrying inadequately documented passengers) or 262 (penalty for carrying clandestine entrants) the county court may transfer the proceedings to the High Court and the sheriff to the Court of Session.

Cases of joint & several liability

Clause 289: Application to cases of joint and several liability

492. This clause is about the application of this Part to a penalty where clause 265 (liability of employer for penalty imposed on employee) applies. Clause 265 applies where a penalty for carrying a clandestine entrant is imposed on the driver of a vehicle who is an employee of the vehicle's owner or hirer, and provides for the employer and employee to be joint and severally liable for the penalty.

493. Subsections (2) to (6) relate to notices of objection. Subsection (2) states that a notice of objection against the penalty may be given, in accordance with this Part, by the employer or employee but not both. Subsection (3) states that neither the employer nor employee may give a notice of objection if either has arranged to pay the penalty in instalments. Subsection (4) provides that the grounds of objection may relate to the employer or employee or both. Subsection (5) provides that the cancellation, variation or confirmation of the penalty notice has effect in relation to any notice in respect of the penalty given to the person objecting and any such notice given to the employer or employee (as the case may be). Subsection (6) provides that the notice of decision on the notice of objection must be given to the person objecting and the employer or employee (as the case may be).

494. Subsections (7) to (11) relate to appeals. They are similar to the provisions for notices of objection. This means that either the employer or the employee can appeal (as long as neither has arranged to pay the penalty in instalments), irrespective of who gave the notice of objection in relation to the penalty. The grounds of appeal may relate to the employer or employee or both, and the decision of the court or sheriff has effect in relation to any notice in respect of the penalty given to the person appealing and any such notice given to the employer or employee (as the case may be).

Enforcement

Clause 290: Enforcement

495. This clause covers the arrangements for enforcing a penalty imposed by the Secretary of State. Subsection (1) provides that where a penalty has not been paid as required, it may be recovered as a debt due to the Secretary of State. Subsections (2) and (3) state that no question regarding liability to the imposition of the penalty or the

amount of the penalty or, for penalties under clause 62 (penalty for non-compliance with biometric requirements), whether it was unreasonable to require P to pay the penalty, may be raised during the enforcement proceedings.

Notices and procedure etc.

Clause 291: Notices and procedure etc.

496. This clause enables the Secretary of State by regulations to provide for matters relating to procedure and notices. The regulations may include, for example, the form and content of notices, how notices will be given or served and when they will be taken to have been given or served, and the manner in which penalties may or must be paid. See clauses 334 and 335 on regulations and clause 329(1) on notices.

PART 16: INSPECTION & OVERSIGHT

UK Border Agency Inspectorate

Clause 292: Chief Inspector of the UK Border Agency

497. Subsections (1) and (2) confirm the continuation of the role of Chief Inspector of the UK Border Agency. Subsection (3) provides that the person appointed as Chief Inspector cannot be an employee of a government department or devolved administration. Subsection (4) provides for the Secretary of State to pay remuneration, expenses and allowances to the Chief Inspector, as well as consideration of compensation at the cessation of the appointment if the Secretary of State considers there are special circumstances. Under subsection (5) the Secretary of State must, before the start of each financial year, set the Chief Inspector's budget for the year, which the Secretary of State can allow the Chief Inspector to exceed for a specified purpose. Subsection (6) provides that the Chief Inspector will hold and vacate office in accordance with the terms of the appointment and subsection (7) allows the Chief Inspector to appoint staff.

Clause 293: Role of the Chief Inspector

498. This clause sets out at subsection (1) that the Chief Inspector will monitor, and report on, the efficiency and effectiveness of the performance of the functions of the UK Border Agency (which are defined in clause 339(3) and (4)) and may monitor and report on those persons discharging functions of the Agency. Areas to be considered and for the Chief Inspector to make recommendations about include, at subsection (2):

- consistency of approach within the Agency, including comparing the practice and performance of the Agency against similar bodies;
- practice and procedure in making decisions;
- how the Agency treats applicants, which includes assessment of the main processes involved for those experiencing the immigration system, and also provides for the Chief Inspector to look at certification of protection applications as clearly

unfounded under clause 188;

- the Agency's use of enforcement powers;
- compliance with discrimination law, including reliance on authorisations made under section 19D of the Race Relations Act 1976;
- the Agency's practice and procedure in relation to criminal matters, both immigration and customs-related;
- whether customs functions (as defined in clause 339(1)) have been appropriately exercised by the Secretary of State and the Director of Border Revenue;
- provision of information by the Agency including at UK ports, through Agency websites and letters, by face-to-face contact, by e-mail and over the telephone, and through publications;
- the Agency's handling of complaints;
- assessment of information on other countries which the Secretary of State compiles and uses for immigration purposes.

499. Subsection (3) sets out the functions that will not fall within the remit of the Inspector unless directed to do so by the Secretary of State. Subsections (4) and (5) make clear that the Chief Inspector will not investigate individual cases, although is not prevented from looking at individual cases within the context of considering a wider issue.

500. Subsection (6) defines relevant persons discharging the functions of the Agency; and the Scottish and Northern Ireland inspectors for the purposes of this section.

Clause 294: Reports by Chief Inspector

501. Clause 294 requires the Chief Inspector to report in writing to the Secretary of State (i) once a year and (ii) at such other times as requested by the Secretary of State in relation to specified matters. Subsection (2) requires that the Secretary of State lay before Parliament a copy of any report received from the Chief Inspector. Subsection (3) allows the Secretary of State to withhold material from the copy of the report laid before Parliament if the Secretary of State thinks its publication is undesirable for reasons of national security or may place an individual in danger.

Clause 295: Plans of the Chief Inspector

502. Clause 295 requires the Chief Inspector to prepare plans describing the objectives and terms of reference of proposed inspections. The Secretary of State has the power to specify: when plans should be prepared and in what format, including

information they should contain and who should be consulted; what periods they should cover (although the Chief Inspector may prepare plans at other times, and in respect of other periods, if he thinks appropriate); who should receive copies of plans. Subsection (7) provides that the Chief Inspector is free to carry out actions even if they are not listed in a plan.

Clause 296: Relationship with other bodies: general

503. Clause 296 allows for close working between the Chief Inspector and other bodies. The Chief Inspector must co-operate with and may act jointly with such persons as the Secretary of State by order specifies, providing the Chief Inspector thinks it consistent with the efficient and effective performance of his functions. The Chief Inspector may assist a person specified by the Secretary of State, or may delegate a specified aspect of his functions to a person specified by the Secretary of State. Such persons will be identified by order (see clause 297).

Clause 297: Relationship with other bodies: non-interference notices

504. Clause 297 gives the Chief Inspector the power to issue a notice preventing a person (specified by the Secretary of State by order) from conducting an investigation of the UK Border Agency if the Chief Inspector thinks that it may impose an unreasonable impediment to the exercise of the functions of the Agency. The person on whom the notice is served must comply with it, unless the Secretary of State cancels it on the basis that the inspection would not impose an unreasonable impediment. The Secretary of State has the power to specify by order the form of notices and what information they must contain and set out details about the timing, publication and revision or cancellation of notices. Subsection (5) confirms the notice must be in writing. Subsection (6) provides that the definition of “relevant persons” is as for clause 297.

Clause 298: Prescribed matters

505. Clause 298 defines “prescribed” for those clauses of the Bill that relate to the Chief Inspector of the UK Border Agency as meaning prescribed by order of the Secretary of State. See clauses 334 and 335 on orders.

Clause 299: Senior President of Tribunals

506. Clause 299 requires the Senior President of Tribunals, in exercising the functions under section 43 of the Tribunals Courts and Enforcement Act 2007 to take into account the functions of the Chief Inspector of the UK Border Agency and the power of the Secretary of State to request the Chief Inspector to report about specified matters.

Police Ombudsman for Northern Ireland

Clause 301: Police Ombudsman for Northern Ireland

507. The Police Ombudsman for Northern Ireland (PONI) was established under Part VII of the Police (Northern Ireland) Act 1998. This clause inserts new section 60ZB into the 1998 Act enabling the remit of PONI to be expanded to provide

oversight of certain personnel and contractors in the UK Border Agency. Subsection (1) provides that the Secretary of State and PONI may enter into an agreement for the establishment of complaints procedures similar to those that apply in respect of the Police Service Northern Ireland and Serious Organised Crime Agency in order that PONI may independently oversee serious complaints, incidents and conduct matters relating to the Agency's functions.

508. Subsection (2) provides a reserve power for the Secretary of State to establish complaints procedures. Subsection (6) provides that the Secretary of State must consult with PONI and such other persons as he thinks appropriate before making an order under subsection (2). Subsection (3) lists the persons to be subject of PONI's oversight and in the case of designated immigration officials, other officials and contractors with immigration functions that PONI's oversight may only relate to those who have exercised "specified enforcement functions". Subsection (4) provides that the reference to "enforcement functions" in subsection (3) includes reference to powers of entry, powers to search persons or property, powers to seize or detain property, powers of arrest and detention, powers of examination, and powers in connection with the removal of persons from the UK.

509. Subsection (5) provides that the Secretary of State must approve any variation or termination to the agreement.

510. Subsection (8) provides that any order or agreement made under this section may only confer functions on PONI in relation to the exercise of the Agency's functions in or in relation to Northern Ireland and not in relation to matters arising prior to the day on which the agreement or order is made. Subsection (9) provides that the agreement or order made under this section may not confer functions on PONI in relation to the exercise by any person of a function conferred on him by or under Part 7 of the Bill, which relates to detained persons and removal centres.

PART 17: IMMIGRATION ADVISERS & IMMIGRATION SERVICE PROVIDERS [TO BE DRAFTED]

PART 18: OFFENCES: GENERAL

Illegal immigration etc.

Clause 301: Illegal presence in the UK

511. This clause makes it an offence for a person ("P") who is neither a British citizen nor an EEA entrant to be illegally present in the UK. Subsection (2) defines "illegally present" for the purposes of this clause as when P is in the UK, having entered it, and knowingly does not have immigration permission, is not on immigration bail and is not being detained (under Part 6 or otherwise). Subsections (3) and (4) make this a continuing offence. So the offence of being illegally present in the UK is committed on the first day that P is illegally present, and continues to be committed throughout any period after that where P is illegally present in the UK. P

may only be prosecuted once under this section in respect of the same period of illegal presence in the UK. The defence in clause 318 (defence for a refugee or person entitled to humanitarian protection) applies to this offence. This offence replaces separate offences relating to entering the UK without leave and remaining in the UK beyond the time limited by the leave. The application of the defence for a refugee or person entitled to humanitarian protection is new.

Clause 302: Assisting illegal immigration

512. This clause makes it an offence for a person (“P”) to do an act which facilitates the breach of immigration law by a person where P knows, or has reasonable grounds for believing, that the act facilitates the commission of a breach of immigration law by the person.

513. Subsection (2) defines “immigration law” as one that applies in a member State or listed Schengen Acquis State and controls, in respect of some or all persons who are not nationals of that State, entitlement to enter the State, pass through it or be in it. Subsection (3) describes which documents certifying matters of law in those states will be admissible and taken as conclusive in proceedings relating to this offence. Subsections (4) and (5) define “listed Schengen Acquis State” as set out in a list prescribed by order, and state that such an order may be made only if the Secretary of State thinks it necessary for the purpose of complying with the UK’s obligations under the Community Treaties.

514. Subsection (6) states that the offence applies to any act whether committed inside or outside the UK. Subsection (7) highlights that the provisions of clause 320 (commission of certain offences by director etc.) apply to this offence. This combines two offences in the IA 1971 (sections 25 and 25B), so that the same offence applies to a person who facilitates a breach of immigration law by either a relevant European citizen or a person who is not a relevant European citizen – in doing so it extends the breaches of immigration law which can be committed by relevant European citizens which are covered by this offence.

Clause 303: Assisting protection applicant to enter the UK

515. This clause makes it an offence for a person (“P”) to knowingly and for gain facilitate the arrival in, or entry into, the UK of a person who P knows, or has reasonable grounds for believing, is a person who intends to make a protection application (see clause 21). Subsection (3) makes clear that the offence applies to acts of facilitation committed inside or outside the UK. Subsection (4) makes it clear that this offence does not apply to anything done by someone acting on behalf of a charitable organisation which aims to assist protection applicants.

Clause 304: Trafficking people for exploitation

516. This clause makes it an offence to traffic an individual for exploitation (see clause 305). This is consistent with the Council of Europe Convention on Action against Trafficking in Human Beings. Subsection (1) makes it an offence for a person (“P”) to arrange for an individual to arrive in or enter the UK where P intends to exploit that individual or believes that another person is likely to do so.

Subsection (2) makes it an offence for P to arrange travel within the UK for the individual brought to the UK under subsection (1). Subsection (3) makes it an offence for P to arrange or facilitate the departure of an individual whom he intends to exploit or believes is likely to be exploited outside the UK. Subsection (4) makes clear that the offence applies to things done inside or outside the UK.

Clause 305: Section 304: meaning of "exploit"

517. This clause defines the meaning of "exploit" in clause 304 in a way that is consistent with the Council of Europe Convention on Action against Trafficking in Human Beings. It has been amended to reflect section 54 of the BCIA 2009.

Clause 306: Failure to possess passport etc. at examination on arrival

518. This clause contains two offences. The first is that a person who is neither a British citizen nor an EEA entrant commits an offence if, at an examination on arrival, the person does not have in the person's possession a relevant travel document in relation to the person. Subsection (2) defines a "relevant travel document" in relation to the person. Subsection (3) provides that it is a defence for a person charged with this offence to prove that the person travelled to the UK without having possession of a relevant travel document or that the person has a reasonable excuse for not being in possession of a relevant travel document (see clause 308).

519. Subsections (4) to (6) provide an equivalent offence for a person who does not have in that person's possession at examination on arrival a relevant travel document in relation to a child with whom the person claims to be travelling or living. In this offence, it is a defence for the person to show that the child was a British citizen or EEA entrant at the time of the examination, as well as either that the person travelled to the UK without having possession of a relevant travel document in relation to the child or that the person has a reasonable excuse for not being in possession of a relevant travel document in relation to the child (see clause 308).

520. Subsection (7) defines "examination on arrival". Subsection (8) states that it is irrelevant whether the document is a valid, current or false document for the purposes of this offence.

Clause 307: Failure to possess passport etc. at permission interview after entry

521. Clause 307 creates two offences which are equivalent to those in clause 306 – except in this case they apply where a person does not possess a relevant travel document at permission interview after the person's entry into the UK and fails to produce a relevant travel document before the end of 3 days beginning with the date of that interview.

Clause 308: Meaning of "reasonable excuse" in sections 306 & 307

522. This clause sets out what is and is not a "reasonable excuse" for the purposes of the offences in clauses 306 and 307.

Deception and false documents etc.

Clause 309: Deception

523. This clause creates an offence of deception. A person (“P”) commits an offence if, either wholly or partly by means of deception by P, P or another person seeks to obtain or obtains a grant of immigration permission or an immigration document (as defined in clause 339(1)), or seeks to secure or secures the avoidance, postponement or revocation of enforcement action against P or another person.

524. Subsection (2) defines “deception” for the purposes of this offence. Subsection (3) defines the ways in which a representation may be made. Subsection (4) defines “enforcement action” for the purposes of subsection (1). Subsection (5) states that the offence applies to any act whether committed inside or outside the UK. The defence in clause 318 (defence for a refugee or person entitled to humanitarian protection) applies to this offence. This combines two offences in the IA 1971 (sections 24A and 26(1)(c)) – one relating to deception aimed at obtaining leave or avoiding, postponing or revoking enforcement action (which does not apply to British citizens), and the other on making false representations.

Clause 310: Altering documents and use or possession of false documents

525. This clause makes it an offence for a person to alter a document made or issued under or for the purposes of this Bill or to use or possess a false document if that person knows or has reasonable cause to believe that the document is false. The defence in clause 318 (defence for a refugee or person entitled to humanitarian protection) applies to this offence. The extended time limit provided for by clause 322 applies to an offence committed under this clause. The definitions of a document and false document in clause 337(1) and (4) apply to this offence.

Clause 311: Falsifying or altering etc. a registration card

526. This clause creates offences relating to creation, possession and use of false or altered registration cards. The offences are contained in subsections (1) and (2). These include making a false card, altering a genuine card with intent to deceive (or to enable someone else to deceive), possessing a false or altered card without reasonable excuse, using a false card, and using an altered genuine card with intent to deceive. There are also offences relating to equipment designed to be used in making or altering cards. Subsection (3) defines a “registration card” as a card carrying information, whether or not wholly or partly electronically, about a person which is issued by the Secretary of State to a person wholly or partly in connection with a protection application (see clause 21) or an application for support under clause 206 or 210. Subsection (4) provides that the Secretary of State may amend the definition of “registration card” by order. See clauses 334 and 335 on orders. The definition of a false document in clause 337(4) applies to this offence.

Clause 312: Possession of immigration stamp or vignette

527. This clause makes it an offence for a person to, without reasonable excuse, have possession of an immigration stamp, a replica immigration stamp or an immigration vignette which is not attached to an identity document. Subsection (2)

defines “immigration stamp”, subsection (3) defines a “replica immigration stamp” and subsection (4) defines an “immigration vignette”. Subsection (5), which is new, states that references to stamping a document include fixing a sticker or other attachment or otherwise marking it. The provision for unattached vignettes is new.

Failure to comply with conditions of permission or immigration bail etc.

Clause 313: Failure to comply with conditions of permission or immigration bail etc.

528. This clause makes it an offence for a person to, without reasonable excuse, fail to comply with a condition attached to the grant of temporary permission, to fail to comply with a requirement to register with the police under clause 11(2), and to fail to comply with a condition attached to immigration bail. Subsections (2) and (3) make this a continuing offence. The offence is committed on the first day that P fails to comply, and continues to be committed throughout any period after that during which the failure continues. P may only be prosecuted once under this section in respect of the same failure to comply. This clause combines three existing offences.

Impersonation and assault etc.

Clause 314: Impersonation

529. This clause makes it an offence if a person (“P”), with intent to deceive, impersonates a person acting in the exercise of a function of the UK Border Agency (which are defined in clause 339(3) & (4)) or P makes a statement or does an act calculated falsely to suggest that P is a person acting in the exercise of a function of the UK Border Agency. This is a new offence, based on section 51(3) of the Serious Organised Crime and Police Act 2005 (with some modifications).

Clause 315: Assault or obstruction etc.

530. Subsection (1) of this clause makes it an offence for a person to assault another person who is acting in the exercise of a function under this Bill. This expands the scope of the current offences (which apply to assaulting immigration officers, detainee custody officers carrying out certain functions in removal centres and short-term holding facilities, and authorised persons searching transporters entering the UK).

531. Subsection (2) of this clause makes it an offence for a person to resist or wilfully obstruct another person who is acting in the exercise of a function under this Bill. This expands the scope of the current offences (which apply to obstructing a person lawfully acting in the exercise of a function of the IA 1971, resisting or obstructing detainee custody officers carrying out certain functions in removal centres and short-term holding facilities, obstructing authorised persons searching transporters entering the UK and obstructing designated immigration officials detaining people subject to police warrants at ports).

Powers to detain and forfeit transporters where assist illegal immigration etc.

Clause 316: Detention of transporter

532. This clause provides for the detention of transporters where a person (“P”) is arrested for an offence under clause 302 (assisting illegal immigration), 303 (assisting a protection applicant to enter the UK) or 304 (trafficking people for exploitation). Subsection (2) sets out under which circumstances a designated immigration official or constable may detain a relevant transporter in England, Wales and Northern Ireland. Subsection (3) sets out under which circumstances a designated immigration official or constable may detain a relevant transporter in Scotland, and subsection (4) confirms at which point criminal proceedings are instituted against a person in Scotland for the purposes of this clause.

533. Subsection (5) defines a “relevant” transporter. Subsection (6) provides for a person other than P to apply to a court or sheriff for the release of a detained transporter on certain grounds. Subsection (7) sets out the circumstances in which a court or sheriff can release the transporter following an application under subsection (6). Subsection (8) defines the meaning of “court” in relation to England and Wales for the purposes of this clause, and subsection (9) does the same in relation to Northern Ireland. Subsection (10) defines a “transporter” with reference to Part 14 (clause 280(2)), other than it also includes a part of a train. Subsection (11) defines a “hirer”.

Clause 317: Forfeiture of transporter

534. This clause provides for the court to order the forfeiture of a transporter where a person (“P”) is convicted on indictment of an offence under clause 302, 303 or 304. Subsection (2) states under what circumstances a court may forfeit a transporter – this is about the link between P and the transporter. Subsections (3) and (4) set out relevant conditions which must be met. Subsection (5) states that a court may not make an order for forfeiture unless a person who has claimed to have an interest in the transporter has been allowed an opportunity to make representations to the court.

General provision relating to offences

Clause 318: Defence for a refugee or person entitled to humanitarian protection

535. This clause creates a defence for refugees and those entitled to humanitarian protection against charges for certain offences as listed in clause 319. Subsection (1) makes it clear that the defence applies to a refugee (“R”) who can show that R presented himself or herself to the authorities in the UK without delay, showed good cause for R’s illegal entry or presence, and made a protection application as soon as reasonably practicable after arriving in the UK. Subsection (2) provides that the defence does not apply if R stopped in another country en route to the UK unless R can show that R could not reasonably have been expected to be given protection under the Refugee Convention in that country. Subsection (3) provides that where the Secretary of State has refused to grant refugee permission that person is taken not to be a refugee unless sufficient evidence is adduced to raise an issue as to whether the person is a refugee and the contrary is not proved beyond a reasonable doubt. Subsections (4) to (6) create an equivalent defence for a person entitled to

humanitarian protection. This is a new provision.

536. Subsection (7) states that the defence will not be available in respect of any offence committed after the making of the protection application. Subsections (8) and (9) define a “refugee” and a “person entitled to humanitarian protection” by reference to the Refugee Convention and Council Directive 2004/83/EC respectively.

Clause 319: Offences to which section 318 applies

537. This clause sets out which offences the defence in clause 318 applies to.

Clause 320: Commission of certain offences by director etc.

538. This clause provides that, where a relevant offence has been committed by a body corporate or partnership, certain persons within that body corporate or partnership may be held to have also committed the offence, subject to certain circumstances. This clause applies to the offences specified in subsection (1). Subsections (2) and (3) provide that where the offence has been committed by a body corporate with the consent or due to the neglect on the part of an officer of the body, both the officer and the body are to be treated as having committed the offence. Subsection (4) makes clear who is to be considered as an “officer” of the body. Subsections (5) to (7) provide for partnerships to be liable in the same way. Subsection (8) states that the element of “neglect” in subsections (2)(b) and (5)(b) will not apply to the offence of employment of illegal workers (clause 256).

Clause 321: Jurisdiction to try offences

539. This clause provides that an offence under this Bill, for the purposes of a trial, will be treated as having been committed at the place it was actually committed or at any place where the perpetrator is.

Clause 322: Extended time limit for prosecutions

540. Where an offence is triable only summarily, proceedings have to be brought within 6 months of the offence being committed unless the legislation provides for a longer period. Subsection (1) provides that the offence in clause 310 (altering documents etc.) shall be subject to an extended time limit. Subsection (2) makes provision for a magistrates’ court in England and Wales to try an offence if the information is laid within 6 months of the date when the commission of the offence came to the attention of the “relevant officer” (as defined in subsection (7)) and within 3 years of the commission of the offence. Subsection (3) makes equivalent provision for proceedings brought in Scotland. Subsection (4) makes equivalent provision for proceedings brought in Northern Ireland.

Clause 323: Proceedings not to affect exercise of power

541. This clause provides that any powers exercisable under this Bill may be exercised against a person even though proceedings for the commission of an offence (whether or not under this Bill) have been taken.

PART 19: GENERAL SUPPLEMENTARY PROVISIONS

Power to board ships, aircraft or trains

Clause 324: Power to board ships, aircraft or trains

542. This clause enables a person exercising a function under the Bill to board a ship, aircraft or train for the purpose of exercising that function.

Use of reasonable force & codes of practice

Clause 325: Use of reasonable force

543. This clause confers on designated immigration officials the power to use reasonable force, if necessary, in the exercise of any of their functions under the Bill, other than the power to stop in clause 133. In addition, it provides for authorised officials (see clause 47), persons authorised to take biometrics (see clause 58), detainee custody officers, prison officers and prisoner custody officers (see Part 7) and constables to use reasonable force when exercising certain specified powers under this Bill.

Clause 326: Codes of practice under PACE etc.

544. This clause allows the Secretary of State to direct that designated immigration officials must have regard to the relevant provisions of the existing PACE codes of practice in England, Wales and Northern Ireland when exercising specified powers to arrest, question, search, enter and search premises, or seize property. The direction issued under this section must specify which powers are covered, which provisions of the existing PACE codes of practice are relevant and list any modifications necessary to ensure consistency of approach. This clause will reinforce the existing commitment under section 67(9) of PACE 1984 – which requires persons other than police officers who are charged with the duty of investigating offences to have regard to any relevant provision of a code – in its application to designated immigration officials when they are exercising specified administrative powers under this Act, and also to any authorised person exercising a power to obtain biometric information conferred by clause 53 of this Act.

Children

Clause 327: Duty regarding the welfare of children

545. Clause 327 replicates section 55 of the BCIA and requires the Secretary of State to make arrangements to ensure that the functions of the UK Border Agency (as defined in clause 339(3) and (4)) are carried out having regard to the need to safeguard and promote the welfare of children who are in the UK. Subsection (1)(b) requires the Secretary of State to make similar arrangements to ensure that other persons, including contractors, who carry out those functions also have regard to the

need to safeguard and promote the welfare of children. Subsection (2) requires anyone carrying out a function of the UK Border Agency (other than those of the Director of Border Revenue) to have regard to any guidance issued to them by the Secretary of State for the purposes of subsection (1).

546. Subsection (3) imposes a duty on the Director of Border Revenue to make arrangements for ensuring that the Director of Border Revenue's functions are carried out having regard to the need to safeguard and promote the welfare of children who are in the UK. Subsection (3)(b) requires the Director of Border Revenue to make similar arrangements to ensure that other persons carrying out the Director of Border Revenue's functions also have regard to the need to safeguard and promote the welfare of children. Subsection (4) requires any person exercising a function of the Director of Border Revenue to have regard to any guidance issued by the Secretary of State for the purpose of subsection (3).

Fees

Clause 328: Fees

547. Clause 328 enables the Secretary of State to by order provide for fees to be charged in respect of the exercise of functions in connection with immigration or nationality. Subsection (2) provides for the amount of the fee to be specified in the order. Subsection (3) enables the fee to be set as a fixed amount or an amount calculable by reference to an hourly rate or other factors specified in the order. Under subsection (9) an order in connection with fees may be made only with the consent of the Treasury.

548. Subsections (4) and (5) provide for the Secretary of State to set a fee above the costs of exercising the function, based on a broader set of criteria or matters the Secretary of State can take into account. The effect of this is to enable the Secretary of State when setting the fees for immigration or nationality services, to cross-subsidise between different in-country services, and between in-country and certain out-of-country services in connection with immigration or nationality. Costs are defined under subsection (8) as the Secretary of State's costs or costs of any other person who is entirely or substantially funded from public money.

549. Subsection (6) enables the Secretary of State to provide by order for: exceptions to payment of fees; a discretion to waive, reduce or refund all or part of a fee; make provision about when or how a fee is to be paid; and the consequences of failure to pay a fee.

550. Subsection (7) enables the Secretary of State to charge fees for functions exercised in connection with entitlement to enter or stay in any of the Islands, a British overseas territory or a Commonwealth country. Subsection (10) provides for a fee under this section to relate to something done outside the UK. Subsection (11) provides that a fee payable under this section may be recovered as a debt due to the

Secretary of State.

551. Subsection (12) provides that fees charged under section 328 may operate without prejudice to section 1 of the Consular Fees Act 1980, section 102 of the Finance (No. 2) Act 1987 or any other power to charge a fee.

552. Clause 335(4) (r) (s) (t) and (5) provide for a fees order to be subject to either the affirmative or negative procedure, to ensure an appropriate level of Parliamentary scrutiny. Subject to the affirmative procedure is any new fee order and any variation excess fee order which increases the fee for a reason not due to a change in the value of money (for example, inflationary or exchange rate factors). Subject to the negative procedure are subsequent changes in fee levels due to a change in value conditions, fees that continue to be set below cost, fees that are reduced to a level below that previously agreed in Parliament and fees that are deleted.

Clause 329: Notices

553. This clause requires any notice given under this Bill to be given in writing except in the case of an application for temporary permission for the purpose of a visit, where a notice of decision may be given orally.

Clause 330: Giving of notices

554. This clause prescribes the manner in which a written notice must be given under the Act except in the case of the giving of a notice under clause 297 (non-interference notices given by the Chief Inspector). Subsections (2) to (6) specify how a notice may be given (for example, by hand, post, fax or other electronic means) to a person (“P”) or the P’s representative at an “appropriate address”, which is defined.

555. Subsections (7) and (8) provide that if a person is under 18 without a representative, a notice can be given to a “responsible person”, as defined. Subsection (9) provides for when a notice is deemed to have been given if a P’s whereabouts are unknown, there is no correct address and no representative.

556. Subsection (10) provides that where a notice is deemed to have been given to P under subsection (9) and P or P’s representative is then located, a copy of the notice must be given as soon as is reasonably practicable, with details of when and how it is deemed to have been given.

Clause 331: Giving of notices electronically other than by fax

557. This clause enables the Secretary of State to give a notice electronically other than by fax if the recipient has indicated a willingness to receive a notice by this means and has provided a receipt address and such other information as is required. The recipient must notify the Secretary of State if the recipient no longer wants to receive notices electronically. The Secretary of State can determine the manner and form of the transmission.

Clause 332: Directions

558. This clause provides that a power to direct or give a direction is a power to give a direction in writing and can be amended or cancelled by a subsequent direction. Subsection (2) excludes certain provisions of the Bill from the requirement that a direction is in writing.

Clause 333: Proof of documents

559. This clause provides that documents issued by the Secretary of State which are signed by him or on his behalf must be received in evidence as genuine unless it can be proved otherwise. Copies of such documents are to be treated as evidence if they are accompanied by a certificate signed by, or on behalf of the Secretary of State, confirming they are a true copy.

Orders, regulations and rules

Clause 334: Orders, regulations and rules

560. The clause provides that orders, regulations and rules (other than expulsion orders and the Rules made under the Bill) are made by statutory instrument and may make provision as set out in subsection (4).

Clause 335: Parliamentary control

561. Subsection (1) provides that a statutory instrument under this Bill is subject to the negative resolution procedure unless it is listed in subsection (2).

562. Subsection (4) lists the statutory instruments which are subject to the affirmative resolution procedure.

Clause 336: Procedure for the Rules

563. Subsection (1) provides that the Secretary of State must lay before Parliament any statements of the Rules, and any statements of changes to the Rules. Subsection (2) provides that if a statement is disapproved by a resolution of either House passed during the 40 days from the date it was laid, the Secretary of State must make further changes in the Rules as soon as possible and lay a statement of those changes before the end of the period of 40 days beginning with the date of the resolution. Subsection (3) provides that in calculating those periods no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days. This mirrors the current Parliamentary procedure for the Rules.

PART 20: FINAL PROVISIONS

Clause 337: Meaning of “document”, “valid”, “current”, and “false”

564. This clause defines “document”, “valid”, “current” and “false” for the purposes of the Bill.

Clause 338: When immigration or transit permission is “current”

565. This clause defines when immigration or transit permission is current for the purposes of the Bill.

Clause 339: Other definitions

566. This clause provides other definitions for the purposes of the Bill. Subsection (6) provides that when construing references in the Bill to a time when an appeal could be brought, any possibility of an appeal out of time with permission is to be ignored. See also clause 344 and Schedule 7 (Index of defined expressions).

Clause 340: Money

567. This clause is a standard financial provision. Subsection (1) provides that expenditure by the Secretary of State or Lord Chancellor for the purposes of the Bill will be paid out of money provided by Parliament. Subsection (2) provides that sums received will be paid into the Consolidated Fund

Clause 341: Power to make consequential amendments etc.

568. This clause enables the Secretary of State by order to make consequential amendments.

Clause 342: Transitional, transitory or saving provisions

569. This clause enables the Secretary of State by order to make transitional, transitory and saving provision.

Clause 343: Repeals and revocations

570. This clause introduces Schedule 6 which sets out the extent to which immigration and other non-immigration legislation is repealed by this Bill. The schedule contains provisions which are replaced by provisions in this Bill and provisions which are repealed and which are not being replaced.

Clause 344: Index of defined expressions

571. This clause introduces Schedule 7 which lists where in the Bill a number of expressions are defined for the purposes of the Bill or a Part of the Bill.

Clause 345: Extent

572. Subsection (1) provides that the Bill generally applies to the whole of England, Wales, Scotland and Northern Ireland. Subsection (2) and (3) excludes certain provisions from applying to Scotland and Northern Ireland. Subsection (4) provides that where the Bill amends any other Act, that amending provision has the same extent as the relevant parts of that Act which have been amended. Subsection (5) enables any provision of this Bill to be extended, with or without modification to any of the Islands, by Order in Council, this is subject to subsection (6).

Clause 346: Commencement

573. This clause sets out the arrangements for bringing into force the provisions of the Bill. Subsection (1) lists clauses that come into force on the day this Bill receives Royal Assent. The remaining provisions of this Bill come into force in accordance

*These notes refer to the Draft Immigration Bill
as published on 12 November 2009*

with provision made by order of the Secretary of State.

Clause 347: Short title

574. This provides the short title for the Bill – the Immigration Act 2009.

Schedule 1 - Listed offences referred to in section 171

575. See Part 8 above.

Schedule 2 - List of countries referred to in section 188

576. See Part 9 above.

Schedule 3 - List of countries referred to in sections 194 and 195

577. See Part 9 above.

Schedule 4 - The Special Immigration Appeals Commission

578. See Part 10 above.

Schedule 5 - Transitory, transitional and saving provision

579. See clause 343. This makes transitory, transitional and saving provisions.

Schedule 6 - Repeals and revocations

580. See clause 344. This lists the repeals and revocations of immigration and non-immigration legislation.

Schedule 7 - Index of defined expressions

581. See clause 345. This provides a list of defined expressions used throughout the Bill.

COMMENCEMENT

582. This is a draft Bill. Commencement will be considered in the Explanatory Notes for the Bill at introduction.

FINANCIAL EFFECTS OF BILL

583. Financial effects, as far as it is possible to quantify in a draft partial Bill such

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as this have been considered in the accompanying Impact Assessment. A full assessment will be made ahead of introduction of the full Bill to Parliament.

EFFECTS OF BILL ON PUBLIC SECTOR MANPOWER

584. Effects of the Bill on public sector manpower, as far as it is possible to quantify in a draft partial Bill such as this, have been considered in the accompanying Impact Assessment.

SUMMARY OF IMPACT ASSESSMENT

585. An Impact Assessment has been completed for this draft Bill.

586. The Impact Assessment makes estimates within a wider framework of changes in the operation and processes of the immigration system and how the draft Bill would support and reinforce these processes by creating a simpler legal framework. The Bill's objective is to make the immigration system clearer, more streamlined and easier to understand, in the process reducing the potential for abuse of the system and maximising the benefits of migration.

587. The Impact Assessment presents the latest thinking on the changes we are considering and working on, helping to assess if they are realistic and achievable. However, as detailed implementation planning has not been completed the figures in the Assessment are necessarily indicative at this stage. Options which have been considered in the Assessment are: do nothing and maintain the existing complex legislation; or replace the existing Acts and consolidate and simplify immigration law.

EUROPEAN CONVENTION ON HUMAN RIGHTS

PART 1: PERMISSION TO ENTER & STAY IN THE UK

588. Part 1 of the Bill sets out the basic machinery for immigration control. It provides that anyone who is not a British Citizen or an EEA entrant requires permission to enter and stay in the UK (immigration permission), or to transit through the UK without entering (transit permission). Part 1 also provides that the Secretary of State must make Immigration Rules. The functions under this Part which are vested in the Secretary of State will normally be exercised by officials acting on his behalf under the *Carltona* principles. There is provision in Part 2 for the designation of officials to exercise certain specified functions, where it is necessary for them to be specially trained, for example in arrest or search and seizure powers. The way in which these powers are exercised will raise issues under the ECHR and section 6 of the Human Rights Act 1998 ("HRA 1998") which requires officials to act compatibly

with ECHR rights.

Immigration permission

589. Immigration permission replaces the IA 1971 concepts of leave to enter and leave to remain. Currently the power to grant or refuse leave to enter is vested in immigration officers appointed under the IA 1971. Under the Bill the power to grant or refuse immigration permission to an individual is vested in the Secretary of State, and is exercised by notice in writing.

590. There is also provision in the Bill for immigration permission to be granted by order. The intention is to use this order-making power to grant immigration permission to those who are, under the IA 1971, exempt from immigration control by virtue of having a particular status, such as diplomats and crew members. In certain circumstances permanent immigration permission may also be granted.

Temporary immigration permission

591. Temporary immigration permission, like leave to enter or remain, may be subject to conditions. These conditions are broadly unchanged from the IA 1971 (as amended) and allow restrictions on work and study; recourse to public funds; place of residence; and the imposition of a requirement to register with the police and/or report to the Secretary of State, or person authorised by him, at regular intervals. The Secretary of State may vary conditions. As now, not all temporary immigration permission will be subject to conditions, and not all conditions will apply in every case. The power to impose conditions must be exercised in each case in a way which does not breach the ECHR, but the ability to impose conditions, and the nature of those conditions, is not itself a breach of the ECHR.

592. Provision is also made for where a person with immigration permission makes an application for new permission, either for a further period or for a different purpose. The current permission will continue to run until a decision is made on that application, and any right of appeal against refusal of that application is exhausted. This is to prevent the person being in the UK unlawfully if their permission expires before their application for new permission is decided.

Duty to have permission in the UK

593. Clause 7 imposes a duty on a person who requires permission and is in the UK without permission to make an application for permission. It is a criminal offence to be present illegally in the UK – that is for a person to be in the UK, knowing that the person does not have permission and is not on immigration bail and is not being detained (see clause 301). This provision reinforces that position, but does not provide any additional sanction. However, there is also a power to make an expulsion order, and to remove, a person who is in the UK without permission (see clause 73). Clause 8 requires a person to state all their grounds for seeking to stay in the UK. Failure to do so may affect their right of appeal

Cancellation

594. Clause 14 provides that permission, whether temporary or permanent, is automatically cancelled where a person remains outside the UK for more than two years. This, in part, reflects the existing position. The policy is that during that two-year period the person's circumstances may have changed and they may no longer be entitled to enter the UK, so they are required to make an application for new permission. The Government believes that to the extent that this may be an interference with Article 8 (private and family life) in any particular case it is regarded as proportionate, because it simply requires the person to make a new application for permission, which must be granted if to refuse would be a breach of ECHR.

595. Under clause 15 the Secretary of State may cancel permission by notice in writing given to the individual. The grounds on which permission may be cancelled will be set out in the Rules. The Rules, as secondary legislation, must be compatible with the ECHR, and the exercise of the power must, in the individual case, also be compatible with the ECHR.

Immigration rules

596. Clause 20 makes provision for the Secretary of State to make Immigration Rules. The Rules are not a statutory instrument but are subject to similar parliamentary scrutiny as a negative resolution instrument. A failure by the Secretary of State to apply the Rules is a ground of appeal (see clause 184).

597. The Rules provide for the purposes for which permission may be granted and the requirements to be met. The Government's intention is that the Rules will be drafted to reflect ECHR obligations and so will provide for permission to be granted where it is necessary to do to avoid a breach of the ECHR. In particular, there are Rules governing a person seeking protection (for example under Article 3 ECHR or the Refugee Convention), or seeking to remain for the purpose of exercising family life (see clauses 21 and 22).

598. Where a person does not qualify under the Rules but where it is necessary in that particular case to grant permission to reflect ECHR obligations, or desirable for compassionate reasons, subsection (5) of clause 20 enables the Secretary of State to grant permission to a person who does not meet the requirements of the Rules.

PART 2: IMMIGRATION CONTROLS

599. Part 2 defines where, how and by whom, immigration controls will be operated and defines the point at which a person enters the UK.

Control Areas

600. Clause 25 and 26 enable the Secretary of State by order to establish "juxtaposed controls". This means that by agreement with another State immigration controls for those seeking to enter the UK from that State are carried out in that State,

and vice versa. Juxtaposed controls currently operate in relation to sea routes from France (and train routes under orders made under the Channel Tunnel Act 1987).

601. It is the Government's view that, although in certain circumstances the operation of a juxtaposed control may engage the UK's obligations under the ECHR, a juxtaposed control is not, in itself, contrary to the ECHR.

Powers to require information from carriers and captains

602. Clause 29 allows the Secretary of State to require persons seeking to arrive in or enter, or seeking to leave, the UK to provide him with specified immigration information and to complete and produce to him an embarkation or landing card, as the case may be. The Government accepts that potential issues arise under Article 8, as any exercise of these powers will result in the acquisition of information about individuals. However, the Government considers that any interference is justified, given that any such sharing will be for one of the legitimate aims specified in Article 8(2), namely for ensuring an effective immigration control, preventing disorder or crime, or protecting national security interests or the rights and freedoms of others.

603. Clauses 32 to 36 contain powers relating to the exchange of data with the UK Border Agency. Whilst the Government accepts that potential issues arise under Article 8, given the need to share information about individuals, the Government considers that any interference is justified, given that any such sharing will be for one of the legitimate aims specified in Article 8(2), namely for ensuring an effective immigration control; the prevention of disorder or crime; in the interests of national security, or the protection of the rights and freedoms of others.

Related Offences

604. Clause 37 creates a series of offences for persons who fail, without reasonable excuse, to take the steps required of them under clause 28.

605. Clause 38 makes it an offence for a person to fail, without reasonable excuse, to provide information in accordance with a requirement imposed under clause 29(2), (3) or (4).

606. Clause 39 makes it an offence for a person to fail, without reasonable excuse, to provide specified information in accordance with a requirement imposed under clause 32(2), 33(2) or (3) or clause 34(2).

607. The Government notes that Article 6(2) is potentially engaged in respect of each of these offences as the burden of proof is on the defendant to show that he has a reasonable excuse for not taking certain steps. The Government is of the view that the presumption of innocence is not infringed as it is reasonable to expect a person charged with such responsibility to discharge it in order to support an effective system of immigration control. The defendant will have the opportunity to put forward his reasons as to why he considers that he had a reasonable excuse for not doing so.

Designated immigration officials

608. Although the powers and functions under the Bill in relation to immigration control are generally vested in the Secretary of State, and will be exercised by officials acting on behalf of the Secretary of State under *Carltona*, there are some powers and functions that will never be exercised by the Secretary of State in person, in particular powers of entry, search and arrest. Clause 40 provides for the Secretary of State to designate officials in relation to particular functions. The officials must have been appropriately trained to exercise the functions (see clause 41(5)). Some functions under the Bill will be exercisable only by designated immigration officials, which means officials of the Secretary of State designated to carry out that function. These clauses provide appropriate safeguards over the exercise of “coercive” functions.

PART 3: POWERS TO EXAMINE ETC.

609. Part 3 provides for a power to examine and other related powers. Clause 42 provides a power for the Secretary of State to examine a person who has arrived but not entered the UK; who has entered the UK (and in respect of whom an application for an individual grant of immigration permission is pending); who is outside the UK and is seeking immigration or transit permission; or who is seeking to arrive in or enter the UK. The purpose of examination is set out in subsection (2). The Government does not believe the power to examine amounts to detention under Article 5 of the ECHR, based on the criteria described in *R (Gillan) v Commissioner of Police for the Metropolis* UKHL 2006 12, because the examination procedure will ordinarily be relatively brief; the person will not be arrested, restrained, confined or removed to any different place. There is no deprivation of liberty. However, there is a power to detain attached to this power (see clause 85). A person may also be required to submit to a medical examination or provide a medical report. It is a criminal offence to fail, without reasonable excuse, to comply with this requirement (see clause 52).

610. Again, the Government accepts that Article 6(2) is potentially engaged by this offence as the burden of proof is on the defendant to show that he has a reasonable excuse for non-compliance. For the reasons set out in paragraph 607 above, however, the Government is of the view that any interference with Article 6 is justified.

611. Clause 55 provides a power for the responsible authority (as defined in clause 54(9)) on whose behalf a post-arrival medical examination is conducted to disclose information acquired as a result of that examination to the Secretary of State for use for immigration purposes.

612. Clause 56 permits a responsible authority to disclose information, which it has acquired about a person (“P”) during a post-arrival medical examination, to a specified health body to which P is subsequently required by the Secretary of State to

report for consideration of a further medical examination on public health grounds.

613. The Government accepts that the supply of information (which might include personal information) under this provision potentially engages Article 8 of the Convention. However, the Government believes any interference with the rights protected by Article 8 to be justifiable and proportionate. Anything which is supplied under these powers will be provided either for immigration or public health purposes, for the legitimate aims of ensuring an effective immigration control, in the interests of the economic well-being of the country or for the protection of health and the rights and freedoms of others.

614. There is a power for the Secretary of State to examine for specified purposes a person who is seeking to leave the UK. The Government does not believe the power to examine itself raises any ECHR issues.

615. Part 3 also contains powers of the Secretary of State to search (clauses 46, 49 and 51) ships, aircraft or trains; persons; and for identity documents. It is the Government's view that whilst a search potentially interferes with the rights to peaceful enjoyment of possessions (Article 1, Protocol 1) and to respect for private life (Article 8) any interference with these rights is proportionate to the legitimate aim pursued, which is to apprehend individuals seeking to evade immigration control (including those already subject to an expulsion order due to previous criminal activity and vulnerable individuals being illegally trafficked into the UK). As such, any such interference with these rights is proportionate to the legitimate aim of effective immigration control and the prevention of crime and is in the public interest.

Related offences

616. The powers of the Secretary of State to conduct examinations, including medical examinations, of - and require information from - persons who have arrived in the UK, who are outside the UK and are seeking immigration or transit permission, or who are in the UK and have a pending application for an individual grant of immigration permission is pending, are set out in clauses 42 to 44. Clause 52 makes it an offence for persons in the UK to refuse, without reasonable excuse, to comply with such requirements.

617. Clause 52 also makes it an offence for a person, without reasonable excuse, to refuse to comply with the powers of search in Part 3. The Government notes that Article 6(2) is potentially engaged as the legal burden of proof is placed on the defendant to prove that he has a reasonable excuse for not complying with the requirement. However, the Government does not consider that the reverse burden in this offence infringes the presumption of innocence. The prosecution will still have to prove that the defendant has failed to comply with the requirement or that he has a reasonable excuse for not supplying information or documents. What will be regarded as a reasonable excuse is not defined and will therefore be judged on a case by case basis so the defendant has the opportunity to put forward his reasons as to why he has

a reasonable excuse.

PART 4: POWER TO OBTAIN BIOMETRIC INFORMATION

618. Part 4 provides for the power to obtain biometric information and other consequential powers. “Biometric information” is defined as information about external physical characteristics (see clause 339(1)). The definition of biometric information does not include DNA.

619. The power to obtain and retain biometrics does not raise questions of self-incrimination under Article 6 ECHR since the ECtHR has not considered words that are independent of the will of the suspect to give rise to self-incrimination. There is no reason why biometrics should be treated any differently.

Power to obtain biometric information

620. Clause 58 gives a person authorised by the Secretary of State the power to require a person falling within the categories listed at subsection (3) to supply biometrics. This clause consolidates and simplifies the existing powers in immigration legislation to obtain biometrics.

621. The Government notes that the power to require a person to provide biometric information potentially constitutes interference under Article 8(1) but also believes that the power to take biometrics on examination from anyone seeking to enter or leave the UK is justifiable under Article 8(2) on the basis that it is necessary for the legitimate aim of ensuring an effective immigration control and for the prevention of crime. In relation to Article 14, the Government also notes that those subject to immigration control will be treated differently from those who are not. However, those subject to immigration control are not in a comparable position to those who are not subject to immigration control. Biometrics powers are for the legitimate aim of ensuring effective immigration control. Biometrics are essential to detect those travelling on false documents, those subject to an expulsion order or otherwise engaging in illegal activity, and where there are difficulties fixing and securing their identities.

622. Clause 60 requires the Secretary of State to make regulations as to the retention of biometric information and this power must be exercised in a way which is compatible with the ECHR.

PART 5: EXPULSION ORDERS & REMOVAL ETC. FROM THE UK

623. Expulsion replaces the existing concepts of administrative removal, deportation, and exclusion. At the moment, persons whose presence in the UK is not

conducive to the public good are deported from the UK, those who have no right to remain here or who have breached immigration laws are administratively removed; and those who have not yet arrived in the UK are capable of exclusion. There is also a duty to deport foreign criminals, subject to certain exceptions.

Expulsion orders

624. Clause 64 provides that everyone who is to be removed from the UK will have an expulsion order made against them. This includes those who the Secretary of State has the power to expel and those who the Secretary of State has a duty to expel. An expulsion order may be made in relation to a person who is outside the UK. There is a duty to make an expulsion order in respect of specified foreign criminals, subject to certain exceptions.

625. Clause 65 provides for the duty and power to make an expulsion order. There is broadly a power to make an expulsion order against a person who is not a British citizen and:

- Who arrives in the UK and is refused permission on or after arrival.
- Who is in the UK without permission (e.g. an illegal entrant or an overstayer).
- Who has failed to comply with a condition of permission.
- Who has obtained, or attempted to obtain, permission by deception.
- If the Secretary of State thinks their expulsion would be conducive to the public good.
- Who is the family member of a person in respect of whom an expulsion order has been made.

626. An expulsion order will bar re-entry to the UK for a limited or unlimited period of time. The Government accepts that expulsion from the UK, or a prohibition on entry, could potentially engage ECHR rights. However, the Government is of the view that the expulsion provisions are compatible with the ECHR. Clause 67(5) provides that an expulsion order must not be made if the removal of that person from the UK, or prohibition on the person arriving in or entering the UK, would breach a person's ECHR rights.

Removal from the United Kingdom

627. Clause 73 provides the power to place people who are liable to removal on a ship, aircraft, or train in order to effect removal. In most cases, there will be no use of force to place the person on board. However, there will be a power to use reasonable force to place the person on board and it may be necessary to use reasonable force where the person refuses to comply (see clause 325). The use of reasonable force to place a person on board would not reach the relatively high threshold of inhuman or degrading treatment for the purposes of Article 3 ECHR.

International travel bans

628. These provisions give effect to the UK's international obligations on restricting the movement of certain individuals associated with regimes or 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 by means of a UN Resolution, or by an instrument of the Council of the European Union. Both require Member States of the United Nations or the European Union to deny the individuals concerned entry or transit through their territory except in limited circumstances.

629. In the case of persons in the UK when they become the subject of a travel ban, the automatic cancellation of their permission will enable the Secretary of State to make an expulsion order against them. The Government notes that the subsequent removal of a person from the UK could potentially engage ECHR rights. This is covered in the power to make an expulsion order. However, clause 80(3) provides that the invalidation of permission while the person is subject to a travel ban does not take effect if the grant of such permission is necessary to avoid a breach of ECHR rights.

Related offences

630. Clause 77 makes it an offence for a person to be present in the UK in breach of an expulsion order – that is to knowingly be in the UK, where that person knows that his presence is in breach of an expulsion order. It does not apply to those in detention, on immigration bail or with permission. A refugee and a person entitled to humanitarian protection will have a defence to this offence if he can prove that having come directly to the UK from another country where his life or freedom was threatened, he presented himself without delay, showed good cause for his illegal entry or presence and made a claim for protection as soon as reasonably practicable after arriving in the UK. The Government does not consider that this clause raises any ECHR issues.

631. Clause 78 makes it an offence for a carrier to, without reasonable excuse fail to comply with directions under clause 73. The Government notes that Article 6(2) is potentially engaged as the legal burden of proof is placed on the defendant to prove that he has a reasonable excuse for not complying with the directions. The Government does not consider that the reverse burden in this offence infringes upon

the presumption of innocence. The prosecution will still have to prove that the defendant has failed to comply with the directions. It is not unreasonable to expect a carrier to explain why he has not complied with directions. The offence acts as deterrent against carriers not complying with directions and the directions themselves provide the mechanism by which those who do not have any permission to be here are removed, therefore supporting an effective immigration control.

PART 6: POWERS TO DETAIN & IMMIGRATION BAIL

632. The powers of detention in Part 6 broadly replicate existing powers to detain in the immigration legislation. There is a power to detain a person under the authority of the Secretary of State:

- Where the person is liable to examination under a specified power to examine.
- Where the Secretary of State reasonably suspects that an expulsion order may be made against the person.
- Where an expulsion order has been made against the person.
- Where the person is detained at port pending police arrest.
- On an aircraft, ship, or train to stop the person alighting, which is a power exercisable by the captain of that aircraft etc.

633. The Bill also replicates the existing duty to detain specified foreign criminals, subject to certain exceptions. All the powers to detain engage Article 5 ECHR. However, the Government believes that the use of the powers will be “in accordance with a procedure prescribed by law” for the purposes of Article 5 as the Bill will specify when they can be exercised, and the limitations on their use. The Government considers that each of the detention powers is compatible with Article 5, and each of the powers falls within one of the permitted cases for detention set out in Article 5. The powers are for the purpose of preventing unauthorised entry, or to taking action with a view to expulsion from the UK. Furthermore, the length of detention will be decided on a case-by-case basis, and immigration bail will be available as an alternative to detention in nearly all cases when a person is liable to detention.

Immigration bail

634. The power to grant immigration bail will be available where a person is detained or is liable to be detained. If the person is already in detention, this will have the effect of releasing that person. If the person is merely liable to detention, this will have the effect of permitting that person to be at large in the UK (but will not authorise his entry). Immigration bail replaces existing concepts of temporary

admission, temporary release, and bail.

635. Subject to specified limitations, the power to grant immigration bail will rest with the Secretary of State and the First-tier Tribunal. Under clause 98(1), it will be possible for the Secretary of State to grant immigration bail in all cases.

636. Under clause 98(8), it will be possible for the Tribunal to grant immigration bail where a person is being detained and the Secretary of State would have the power to grant immigration bail, 7 days have elapsed since the person arrived in the UK, and removal is not imminent.

637. The restrictions on the Tribunal's power to grant immigration bail are to ensure that action can be swiftly taken to expel the person from the UK in cases where removal is imminent and a grant of immigration bail would interfere with expulsion action being taken or to ensure that those on special immigration status remain on that regime.

638. Whenever a person is detained under the powers in the Bill, there is a duty on the Secretary of State to give the person a notice in writing, as soon as reasonably practicable, which sets out the reasons for the detention (clause 93). This provision is intended to ensure compliance with the duty in Article 5(2) ECHR.

639. Judicial review and habeas corpus are remedies available to a person detained under the powers in the Bill. The Government takes the view that there are sufficient protections to ensure that anyone who is deprived of his liberty is entitled to take proceedings by which the lawfulness of his detention can be speedily decided, and to have his release ordered if it is not lawful (Article 5(4) ECHR).

640. Clause 103 provides the Secretary of State and the Tribunal the power to impose a financial security condition on a grant of immigration bail. Where one is imposed, the sum of money required will be set on a case-by-case basis with regard to the full facts of the case. The money may be paid by the person who is the subject of immigration bail, or by someone else on his behalf. Financial securities will be held by the Secretary of State, to be repaid at the end of immigration bail, or to be forfeited if the person fails to comply with any of the other conditions (for example, if the person fails to report). The Government does not consider that this raises any issues under the Convention. In particular, it does not consider there is any interference with the person's peaceful enjoyment of his possessions under Article 1 of Protocol 1 ECHR. Even though the money can be forfeited, it is not obtained by seizure. The money is given to the Secretary of State by the person, or someone on his behalf, in the knowledge that the money will be forfeited if conditions are breached. Subsection (6) of clause 103 provides for a person to be able to make representations before any financial security is forfeited.

Electronic monitoring

641. Clauses 104 and 105 provide that a person who is at least 18 years of age may

be required to submit to electronic monitoring when he is granted immigration bail. Electronic monitoring may involve any of the following: the placing of equipment in the person's home; the wearing of a monitoring device throughout the period of monitoring; and the recording and retention of a voice print. The Government believes that any interference is justified because the minimum level of severity will depend upon the circumstances of the case and the interests of the State in maintaining an effective immigration policy for the economic well-being of the UK and for the prevention of crime and disorder justify any interference with a person's rights under Article 3 or Article 8.

PART 7: DETAINED PERSONS & REMOVAL CENTRES ETC.

642. Part 7 of the Bill covers the operation and management of immigration removal centres, used solely to hold those detained under immigration powers. Part 7 also makes provision in relation to the custody and movement of detained persons, including the powers and duties of detainee custody officers. There is a power to make regulations about the management of removal centres, and it is intended those regulations will contain detailed provision about the safety, care, activities, discipline and control of detained persons. There is also a duty on the Secretary of State to appoint an Independent Monitoring Board to oversee the functions of removal centres.

Persons acting under escort arrangements; persons exercising custodial functions; functions of a custodial nature at short-term holding facilities

643. Clause 111 permits detainee custody officers, prison officers or prison custody officers acting in accordance with escort arrangements to search a detained person, and clause 120 allows such persons carrying out custodial functions at a removal centre or STHF to search a person being detained in the centre or facility. There is also a power to search a person who comes to visit the detainee, and search their possessions (e.g. their bags). The power to search visitors does not permit the officer to remove any clothing, except outerwear.

644. The power to search is necessary to ensure that the detainee does not have any prohibited articles, such as drugs or weapons, and that visitors are not carrying any prohibited articles into the removal centre or passing them to detainees. The Government believes any interference with Article 8(1) ECHR to be justified as necessary and proportionate in the interests of public safety and the prevention of crime.

Management of removal centres

645. Clause 116 requires the appointment of a manager at every removal centre. In the case of contracted-out centres, the appointed person must be a detainee custody officer whose appointment is approved by the Secretary of State. This clause requires that removal centre managers who are private contractors must not deal with disciplinary matters in relation to detainees, nor may they authorise segregation or restraint of detainees other than in an emergency. Any segregation would be for as

short a time as possible and the power would not be used to keep detainees in prolonged periods of isolation. In respect of restraint, this would again be used only in cases of urgency, and does not contemplate the use of excessive force in restraining a detainee. Both of these powers are intended to be used as a last resort, in cases of urgency. Furthermore, they must be ordered by the manager of the removal centre, who must be a detainee custody officer whose appointment is approved by the Secretary of State. All detainee custody officers must be authorised by the Secretary of State to carry out escort and/or custodial functions, and can only be authorised if the Secretary of State is satisfied that the applicant is a fit and proper person, and has received sufficient training. The Government notes that the segregation or restraint of detainees could potentially raise issues under Article 3 but for the above reasons believes that this power is compatible with the ECHR.

Medical examinations

646. Clause 122 requires a person being detained in a removal centre or STHF to submit to a medical examination if there are reasonable grounds for believing that the person is suffering from a specified disease, and the manager (in the case of a removal centre) or the Secretary of State (in the case of a STHF) has made a relevant authorisation.

647. The duty to submit to an examination potentially engages Article 8(1) ECHR. The Government, however, considers that any interference with a person's private life under this clause is justified under Article 8(2). Since detainees in a removal centre or STHF are being held together in a confined space, it is necessary to prevent the spread of contagious diseases to other detainees, to any staff working in, and to any visitors to the removal centre or STHF.

Testing for drugs and alcohol

648. Clause 123 requires a detainee to submit to providing a urine sample, breath sample or such other type of sample as may be specified (except an intimate sample), for the purposes of testing whether that person has drugs or alcohol in their body. The power to require testing is only available if the Secretary of State has made a relevant authorisation in respect of that removal centre or STHF.

649. The power is required to ensure that action can be taken where drug or alcohol use is suspected in the removal centre or STHF. The Government believes that although this power has the potential to interfere with a person's right to his private life under Article 8(1), any such interference with a person's private life under this clause is justified under Article 8(2), as necessary and proportionate for the prevention of disorder and crime.

Related offences

650. Clause 125 makes it an offence for a person who has been detained at a removal centre or STHF to refuse, without reasonable excuse, to provide a sample or to submit to a medical examination.

651. The Government notes that the duty to provide a sample or submit to medical examination potentially engages a person's right not to have his private life interfered with as set out in Article 8(1). However the Government considers that the requirements and consequently the criminalising of those who without reasonable excuse refuse can be justified as necessary and proportionate in the interests of preventing crime and protecting public health under Article 8(2).

652. Article 6(2) is, in the Government's view, also potentially engaged as the legal burden of proof is placed on the defendant to prove that he has a reasonable excuse for not submitting to the requirement. The Government does not consider that the reverse burden in this offence infringes upon the presumption of innocence. What will be a reasonable excuse is not defined and will therefore be judged on a case by case basis so the defendant has the opportunity to put forward his reasons for not submitting to an examination. These factors will be particularly within his knowledge. Finally the purpose of criminalising the failure to comply with such a duty is the seriousness of the duty in relation to its aim – the prevention of crime and the protection of public health.

PART 8: POWERS TO STOP, ARREST, ENTER & SEARCH ETC.

653. Part 8 provides for the use by designated immigration officials of powers of stop, arrest, entry, search and seizure. Clause 326 provides for the application of relevant provisions of the codes of practice under the PACE 1984 or the Police and Criminal Evidence (Northern Ireland) Order 1989 ("PACE NI"), as the case may be, to these specified powers. The application of the safeguards contained in these codes will provide valuable and substantive protection to anyone in relation to whom a relevant power is exercised and is vitally important in ensuring that those exercising those powers on its behalf do so lawfully and compatibly with the Convention.

Power to stop, etc

654. Clauses 133 to 135 make provision for the Secretary of State to give an authorisation for the power to stop a person within a given area for a specified period if there are reasonable grounds for believing that there are immigration offenders in an area. A person ("P") may be stopped for the purposes of determining P's immigration status; to ask P to supply all the documents or other information in P's possession which might be used to establish identity or nationality, and to ask P to supply biometric information about P for the purpose of verifying P's identity. The clause 315(2) offence of resisting or wilfully obstructing a person acting in the exercise of a function under this Bill does not apply to the failure by a person stopped to answer questions or to supply information requested. No power to use reasonable force attaches to the power to stop. The exercise of this power potentially engages Article 5, Article 8 and Article 14 of the Convention.

655. The exercise of the power to stop a person is not regarded as amounting to detention under Article 5 of the ECHR, based on the criteria described in *R (Gillan) v*

Commissioner of Police for the Metropolis [2006] UKHL 12, because the examination procedure will ordinarily be relatively brief and the person will not be arrested, restrained, confined or removed to any different place.

656. Article 8 rights can be engaged by the gathering and recording of personal data, including data to establish a person's identity *Friedl v Austria* [1996] 21 EHRR 83 (para 52). Asking P to supply all documents or other information which might be used to establish P's identity or nationality potentially engages Article 8(1) as "personal information" has broadly been interpreted by the European Court of Human Rights to include information establishing personal identity *Amann v Switzerland* [2000] 30 EHRR 843; *Rotaru v Romania* [2000] 8 BHRC. Identifying documents therefore qualify as personal information for the purposes of Article 8. The use or disclosure of information relating to a person's private life also engages Article 8.

657. The request for supply of documents to a designated immigration official has no associated requirement for P to carry any specified identifying document/s on his person and the clause 315(2) offence of resisting or wilfully obstructing a designated immigration official in the exercise of a function under the Act does not apply to a failure to provide such information.

658. Nor does this offence attach to the failure of P to answer questions for the purpose of determining his identity, nationality or immigration status. There is no obligation on the person questioned to answer or to provide personal details. Clause 133(3) sets out the limited and specific matters for which questions may be put to an individual.

659. The taking and retention of biometric information potentially engages Article 8(1) as constituting an interference with private life as set out in the recent judgment of *S and Marper v United Kingdom* [2008] ECHR 1581, which held that the system for indefinitely retaining the fingerprints of two individuals who had been charged but not convicted constituted an interference which could not be justified under Article 8(2). In contrast, the proposed provision is a verification power to assist in establishing identity. Biometric information about P will not be retained and will be used only to undertake a real time check to verify the individual's identity. The biometric data will not be retained on any UK Border Agency database. Failure to provide biometric information will not amount to the clause 315(2) offence of resisting or wilfully obstructing a designated immigration official in the exercise of a function under the Bill.

660. However, there is, in addition, a further question as to legal certainty in relation to the exercise of this power and its potential interference with Article 8 rights and the application of Article 14 rights under Article 8. The *Gillan* case concerned the power at section 45 of the Terrorism Act 2000 to stop and search under an authorisation and specifically considered the question of legal certainty in relation to the requirement that any interference with a person's rights should be exercised in accordance with the law. Particular criticisms of the power included the fact that the

criterion of foreseeability was not met because the powers were widely drawn, the public did not have access to the relevant authorisations for exercise of the power as they were not published and because it was difficult to detect an improper or discriminatory use of the power, rendering it arbitrary. The section 45 power was held to be compatible in this case and a significant factor in consideration of the question of foreseeability was PACE Code A as it applied to how the power was to be exercised.

661. Clause 134 specifies that the power of the Secretary of State to give an authorisation is exercisable by the Secretary of State personally or by a senior official designated by the Secretary of State. It further specifies that the power must be in writing, must specify the grounds on which it is given, the area in which the power can be exercised and the period within which it can be exercised. Any authorisation is valid for only twenty four hours and no longer than reasonably necessary. In this context, the provisions are sufficiently clear and foreseeable.

662. Clause 135 provides for a Code of Practice to be issued in connection with the exercise of this power by designated immigration officials, and specifically provides that the Secretary of State must consult the Commission for Equality and Human Rights and the Equality Commissioner for Northern Ireland (and such other persons as he thinks appropriate) in relation to the Code. The intention of the Code is to avoid, as far as possible, any risk that this power can be exercised arbitrarily or discriminatorily or that it should be vulnerable to interference by public officials for any purpose other than that for which the power is conferred. Clause 133 sets out the obligation on the designated official to take reasonable steps to bring their identification to the person's attention and it is intended that the Code will set out further detail including the procedure for the exercise of the power to stop and information that the official must take reasonable steps to give to the person when stopped. The Code of Practice will also specify that designated immigration officials must wearing clothing identifying them as UK Border Agency officials and clause 133 sets out the obligation on an official to take reasonable steps to bring identification to the person's attention to demonstrate that the power is exercisable by virtue of his designation.

663. The level of detail provided about the procedure in the published Code and the duty to comply with the procedure for giving an authorisation on the face of the Bill define and limit the power. In addition, the power is closely constrained by the specified purposes for which the power can be exercised. The Department's view is that the provisions are sufficiently clear and foreseeable to avoid potential abuses. Therefore any interference with Article 8 is justified and the proposed power is compatible with P's Article 8 rights.

664. This power is compatible with Article 14 in the application of rights under Article 8. The power to stop a person in an authorised area will not be exercised on the basis of race. In addition, the clause 135 Code of Practice will set out further details in relation to the exercise of the power to stop persons under clause 133,

including the procedure for exercising the power to stop, to ask questions and to request information and before issuing or reissuing the Code, the Secretary of State will consult the Commission for Equality and Human Rights and the Equality Commission for Northern Ireland to ensure that the parameters of the power are clearly defined to ensure that it is not exercised in a way which unlawfully discriminate against any person or group.

Powers of arrest without warrant

665. Clauses 136 to 140 cover powers of arrest without warrant. The Government notes that the exercise of any power of arrest may engage Article 5 or 8 of the ECHR. However, an assessment has to be made in each case by the arresting officer to ensure compatibility with the Convention and the Government believes the powers used will be in accordance with a procedure prescribed by law for the purposes of Article 5 and justified in terms of Article 8 on one or more of the following grounds: an effective immigration control; national security; public safety; the prevention of disorder or crime and the protection of the rights and freedoms of others.

Powers to enter, search & search premises for purpose of arrest

666. The Government notes the exercise of powers of entry, search and seizure may engage Article 8 of, and Article 1 Protocol 1 to the Convention. However, any interference with these rights may be necessary, in principle, and therefore justified under Article 8, in the interests of ensuring an effective immigration control; national security; public safety; the prevention of disorder or crime; for the protection of health or morals, or for the protection of the rights and freedoms of others. The Government considers that all the powers of entry, search and seizure contained in the Bill are justifiable on one or more of these grounds and, accordingly, that any control on the use of or deprivation of property under such powers is also permissible in the public interest under Article 1 Protocol 1 to the Convention.

Powers to enter premises & search for and seize identifying documents

667. Clause 144 gives a designated immigration official (and in case 2 also a constable) the power without warrant to enter and search premises for the purpose of finding documents which might be identifying documents and clause 145 gives a similar power with a warrant. The Government notes that for the purposes of Article 8 and Article 1 Protocol 1 to the Convention, consideration would have to be given to whether the exercise of a power in any particular case was compatible.

668. The Government is also aware that the exercise of the powers of entry, search and seizure may engage Article 8 of, and Article 1 Protocol 1 to the Convention but believes that interference may be necessary and justified. Identifying documents are central to establishing the immigration status of those to whom they relate and the power to enter and search premises to look for, seize and retain such documents is a critical tool for the effective operation of the UK immigration controls. In particular, it will facilitate identification at the earliest possible juncture of those who have, or may have, entered the UK without permission, including those intent on carrying out

criminal activity, or persons who have been trafficked into the country illegally.

Powers to enter & search premises to find evidence etc.

669. The Government believes that the significant safeguards incorporated into these clauses, and the public interest justifications for them, render them proportionate and defensible by reference both to Article 8 of, and Article 1 Protocol 1 to, the Convention; and with reference specifically to clauses 149 and 150, the case of *Niemietz v Germany* (1993) 16 EHRR 97, suggests that the degree of interference which can be justified under Article 8(2) is greater in relation to business premises than it is for domestic premises.

670. Any interference would also be proportionate in principle, both by reason of the conditions, restrictions and safeguards built into the clauses themselves and because any exercise of the relevant powers would strike a fair balance between the rights of the general community and the individual (for the purposes of Article 8 and Article 1 Protocol 1 to, the Convention respectively). The Government believes there is a strong public interest in an efficiently- and effectively-run immigration system and in the investigation and, if appropriate, prosecution of immigration-related criminal offences.

Powers to search people

671. The Government is aware that any power to search a person is likely to engage Article 8, and any associated power to seize and retain property may additionally engage Article 1 Protocol 1 to, the Convention. However, the Government believes that any interference with Convention rights which the exercise of the powers in clause 152 to 156 might occasion is justified. These powers are intended to be used in the pursuit of legitimate aims in accordance with Article 8(2), namely ensuring an effective immigration control and preventing disorder and crime.

Examination and retention of documents and other items

672. Clause 168 makes provision for the examination and retention of items and documents seized under the Bill (other than under the clauses specified in subsection (8)). Retention must be for the purposes set out in subsection (2). Although this provision engages Article 8 of, and Article 1 of Protocol 1 to, the Convention, the limited permitted purposes for retention are clearly linked to the legitimate aims of an effective immigration control; for the purposes of legal proceedings or the protection of others and are therefore also in the public interest.

Disposal of property

673. Clause 169 provides for the disposal of property which has come into the possession of the Secretary of State in the course of, or in connection with, the exercise of a function under the Bill. Disposal of the property may be ordered on application to a court. Alternatively, where an owner cannot be ascertained and no court order has been made to the contrary, the Secretary of State can make regulations for the disposal of the property. The provisions are comparable to the equivalent powers for the police (in England and Wales) and the Serious Organised Crime

Agency (“SOCA”) under the Police Property Act 1897 and the Police (Property) Regulations 1997.

674. The Government notes the relevance of Article 8 of, and Article 1 Protocol 1 to, the Convention. The justification for the disposal under Article 8(2) depends on the particular item and has to be assessed at the time before disposal. The Government believes that where the item has been seized because it could be used to harm persons or property, the power of disposal may be necessary for public safety, for the prevention of disorder or crime, and for the protection of the rights and freedoms of others. Where the item has been seized because it is relevant evidence of a criminal offence then it may be necessary for the prevention of disorder and crime and for the protection of rights and freedoms of others. More generally, where an official of the Secretary of State is exercising immigration-related functions, disposal may be necessary as part of the maintenance of immigration control and thus for the economic well-being of the country. Similarly, the Government believes an interference with the right to property under A1P1 to the Convention may be justified as in the public interest.

675. Before any item is disposed of an assessment would have to be made as to whether disposal was proportionate (in respect of Article 8 and A1P1). The Government believes that the disposal would be proportionate as the interference is in accordance with the law. The provisions will be set out in primary and secondary legislation (the latter subject to negative resolution procedure). The requirements of the regulations will be formulated with sufficient precision so that their ambit is absolutely clear, accessible and foreseeable. These powers are, in principle, proportionate because it is intended to make equivalent provision to police and SOCA powers. In particular, provision for disposal by SOCA in the Police (Property) Act 1897 was introduced by the Police Reform Act 2002, as amended by the Serious Organised Crime and Police Act 2005.

Disposal of false travel or immigration documents

676. Clause 170 provides a new power for the Secretary of State to dispose of a false travel or immigration document which has been retained under clause 163. The UK Border Agency needs to be able to deal swiftly with false documents which come into their possession both in the UK and overseas. The power is limited to false travel or immigration documents. Where the Agency is satisfied that the document is counterfeit (and therefore there is no issuing authority) the document may be destroyed. Subsection (6) enables the Secretary of State to endorse a document to indicate that it is not valid for travel to the UK. The destruction of a document belonging to another person raises issues under Article 8 (for example, it interferes with the right to travel) and Article 1 of Protocol 1. The power is necessary to prevent the use and circulation of false documents and is for the legitimate aim of an effective immigration control and the prevention of crime and disorder. The destruction of such documents is in the public interest.

PART 9: APPEALS AGAINST IMMIGRATION DECISIONS

677. Part 9 provides for the right of appeal in relation to immigration decisions. The draft Bill anticipates the transfer of the Asylum and Immigration Tribunal (“the AIT”) to the unified Tribunal service established under the Tribunals, Courts and Enforcement Act 2007.

Right of appeal against an immigration decision

678. Clause 173 provides for a right of appeal against specific immigration decisions. Those decisions include refusal of permission, refusal of protection permission, cancellation of permission and the making of an expulsion order. The policy aim is that there should generally be a right of appeal against a decision to refuse immigration permission if that decision is on a protection or family life application. Any such application will be treated as a new application for permission, regardless of whether it is expressed as such, or whether the person already has permission for a different purpose. This is a change from the current position. However, no-one who currently has a right of appeal will lose that right as a result of this change.

679. Broadly, under the current system a person will generally have an in country right of appeal against an immigration decision if the person has made a protection application. Under the Bill the concept of a “claim” does not exist, but a person who is in the UK and states, or may reasonably be understood to have stated, that removing him, or requiring him to leave, the UK would be a breach of the Refugee Convention, the EU Qualification Directive on humanitarian protection, or ECHR will be treated as having made a protection application (as defined in clause 21) and there will generally be an in country right of appeal against refusal of permission on that application.

680. Family life applications (defined in clause 22) are identified separately where the applicant is outside the UK, but in the same way as protection applications where the application is made in country. This is because family life applications can be made by those in the UK and by those applying for permission from abroad, whereas protection applications can only be made by those in the UK.

681. Where there is a right of appeal, either on a protection or family life application, or against any other immigration decision the grounds of appeal are that the decision was not in accordance with the Rules or was otherwise not in accordance with the law (clause 184). Therefore, where a person has a right of appeal it will always be possible for them to raise human rights grounds and where the decision is unlawful under section 6 of the HRA 1998 the appeal must be allowed (see clause 186).

682. Clause 183 excludes the right of appeal in certain circumstances. However, this clause does not apply to a person who has made a protection or family life

application and so will not affect those rights of appeal.

Certification powers

683. Clause 187 provides for certification of further submission on the grounds that they do not constitute an application. At present, this provision is in paragraph 353 of the Rules. The aim is to prevent a person getting sequential rights of appeal by submitting further representation which they assert amount to a protection or family life application and therefore, if refused, give rise to a right of appeal under clause 174. The grounds for certification are that the submission are not significantly different from material previously considered, or have no realistic prospect of success. The Government considers that if these grounds are met then there can be no arguable breach of the ECHR and there is therefore no requirement to provide an effective remedy under Article 13 ECHR. The person would be able to apply for judicial review of the certification under this provision, thereby providing a safeguard against incorrect certification.

684. Clause 188 prevents a person bringing a right of appeal on a protection application where the Secretary of State has certified that that application is clearly unfounded. There is an obligation to certify such an application if the person is entitled to reside in a country, or part of a country, listed in Schedule 2 (the criteria for inclusion in the list are set out in clause 189), unless satisfied that the application is not clearly unfounded.

685. This clause raises ECHR issues, in that its effect is that there is no right of appeal on human rights or other grounds where the application is certified as clearly unfounded. A protection or family life application is by definition one which raises human rights issues, and therefore it may be argued that it is in breach of Article 13 of the ECHR (right to an effective remedy). The Government believes that since this provision only allows certification where an application is clearly unfounded, and Article 13 only requires an effective remedy where there is an arguable breach, it is not itself incompatible with the ECHR.

686. Where a person believes that their application has been wrongly certified they can bring a judicial review of that decision. The Government is of the view that this provides an effective safeguard against a possible breach of the ECHR.

687. Clause 190 broadly replicates section 96 of the NIAA 2002. Where a person has been notified of the requirement under clause 8 to state grounds for staying in the UK and then makes a protection or family life application the Secretary of State may certify that there is no good reason for the application not having been made earlier and the person will then not have a right of appeal against refusal of that application. Where a person had a right of appeal, and after that appeal has been determined makes a protection or family life application which could have been raised at that appeal, the Secretary of State may certify that there is no good reason for the application not having been made earlier. The effect of certification is that the person

will not have a right of appeal against refusal of that application.

688. These provisions provide a sanction, in the form of denial of the right to appeal to the First-tier Tribunal where a person did not make a protection or family life application earlier and there is no good reason for not having done so. It is aimed at those who attempt to prolong their stay in the UK by holding back a relevant application in the hope of frustrating removal and initiating a right, or a further right, of appeal. The Government notes that although the denial of the right of appeal in these cases raises ECHR issues the person can challenge certification under this provision by way of an application for judicial review. The person can also challenge the underlying refusal of their application by way of judicial review, or by proceedings under section 7 of the HRA 1998. The Government does not believe this provision is itself incompatible with Convention rights.

689. Clause 191 allows for certification of an appeal where the decision relies on classified information. The appeal is then heard by SIAC under Part 10.

690. Clause 192 provides that a person may not appeal a decision to make an expulsion order, or refusal to cancel an expulsion order, where the decision was taken by the Secretary of State personally on the grounds wholly or partly that the person's exclusion from the UK would not be conducive to the public good. This certification power applies only to a decision made when the person is outside the UK. It would not apply if the person made a family life application. A protection application may not be made from outside the UK. The person would be able to challenge the decision to make the expulsion order, or refusal to cancel it, by way of an application for judicial review.

691. Clause 193 provides that where the Secretary of State certifies that removal of a person from the UK is in the interest of national security that person may not appeal to the First-tier Tribunal against the decision to make an expulsion order or refuse a protection application. There will be a right of appeal to SIAC (see Part 10).

PART 10: THE SPECIAL IMMIGRATION APPEALS COMMISSION

692. There are no proposals to change the current policy or procedures in relation to SIAC, but as the procedures are parasitic on ordinary immigration appeals they will reflect those provisions. In relation to the right of appeal the arguments as to ECHR compatibility are the same as under Part 9 above.

PART 11: SUPPORT

Duties & power to provide support

693. Clause 211(1) makes provision broadly equivalent to section 55 of the 2002 Act. It provides that support may not be provided under clause 206, 209 or 210 if the

Secretary of State is not satisfied that the relevant protection application was made as soon as was reasonably practicable after arrival in the UK. The clause was considered in the House of Lords judgment in *R (on the application of Limbuela) v Secretary of State for the Home Department* [2005] UKHL 66. Clause 211(2)(a) provides that subsection (1) does not prevent the provision of support to the extent necessary for the purpose of avoiding a breach of a person's Convention rights. The Government intends that clause 211 is operated in such a way as to ensure that there is no breach of Article 3.

694. Part 11 makes provision broadly equivalent to Part 6 of the IAA 1999. It imposes a duty on the Secretary of State to provide support to those who have made an eligible protection application. Support will only be provided to those who have made an application under subsection (1)(a) or (b) of clause 21. This means that a person who has made a human rights application which is, for example, based on Article 3 medical grounds or on Article 8 family life grounds will not be entitled to support.

695. Part 11 also gives the Secretary of State a power to provide support for others, which is broadly in line with section 4 of the IAA 1999.

696. The Government notes that the suspension or discontinuation of support may raise issues under Article 3. However, it does not believe it contrary to Article 3 to suspend or discontinue support due to the refusal of a person to meet reasonable requirements concerning behaviour and cooperation with the UK Border Agency. The regulation-making power provides a mechanism for withdrawing support from a person due to his actions, taken in knowledge of the consequences and therefore, in the Government's view, the withdrawal of support would be self-inflicted.

PART 12: INFORMATION

697. Part 12 provides for the regulation, exchange and protection of information relating to immigration functions.

Powers to require information

698. Clauses 233 to 237 give the Secretary of State power to require information from local authorities, employers and financial institutions respectively. Clause 237 gives the Secretary of State the power to make provision by order for records to be made and kept of those staying in hotels or in other places providing lodging or sleeping accommodation and for those who stay at those places to provide the necessary information.

699. The Government notes that these provisions engage Article 8. However, it believes the clauses to be proportionate and that any data-sharing required under them will be for one or more of the following legitimate purposes: in the interests of national security, public safety or the prevention of disorder or crime, or for ensuring an effective immigration control. The overriding purpose for collecting information

under these provisions is to assist with the investigation of criminality and, in the case of clause 237 in particular, to protect national security. To remove these provisions would severely restrict the ability of law enforcement to counter the serious problem of illegal working and, again specifically in relation to clause 237, the capacity of the security agencies to trace those residing at hotels and boarding houses, including in particular short term visitors to the UK, during the course of their investigations.

700. Clause 238 makes it an offence for a person to fail, without reasonable excuse, to comply with a requirement imposed under clause 234, 235 or 237. The Government notes that Article 6(2) is potentially engaged in respect of each of these offences as the burden of proof is on the defendant to show that he has a reasonable excuse for failing to take certain action. The Government is of the view that the presumption of innocence is not infringed as it is reasonable to expect a person charged with such responsibility to discharge it in order to support an effective system of immigration control and to assist in the prevention of crime and disorder and protect the rights and freedoms of others. The defendant will have the opportunity to put forward his reasons as to why he considers that he had a reasonable excuse for non-compliance.

Powers to supply information

701. Clauses 239 to 243 contain provisions to allow for the sharing of information for immigration, nationality, police, SOCA and customs (including Revenue and Customs) purposes. The Government notes that the supply of information (which might include personal information), documents or articles under this provision potentially engages Article 8 of, and Article 1 Protocol 1, to the Convention. However, the Government believes any interference with the rights protected by Article 8 to be justifiable and proportionate. Anything which is supplied under these powers will be provided for the purposes referred to above, for the legitimate aim of ensuring an effective immigration control; in the interests of national security, public safety or the economic well-being of the country; the prevention of crime; and the protection of the rights and freedoms of others.

Duty to supply information

702. Clause 244 imposes a duty on those to whom it applies to share passenger, crew and freight information for immigration and nationality purposes and police and Revenue and Customs purposes.

703. Again, the Government accepts that the supply of information (which might include personal information) engages Article 8 of the Convention. However, the Government believes any interference with the rights protected by Article 8 to be justifiable and proportionate. Anything which is supplied in accordance with this duty will be shared for the purposes specified in the clause, for the legitimate aim of ensuring an effective immigration control; in the interests of national security, public safety or the economic well-being of the country; the prevention of crime; and the protection of the rights and freedoms of others.

Exceptions to the prohibition on disclosure of information supplied by HMRC or RCPO

704. The Bill imposes prohibitions on the disclosure of certain information supplied by HMRC or RCPO under clauses 240, 241 and 244. Limited exceptions to those prohibitions are then set out in clauses 247 and 248. The Government acknowledges that the effect of those exceptions will be to allow the disclosure, on occasions, of personal information. Accordingly, Article 8 of the Convention will be engaged. The Government considers, though, that any interference with Article 8 which may arise is justified. Disclosure will be for the purposes specified in clauses 247 and 248 for one or more of the following legitimate aims: ensuring an effective immigration control, protecting the economic well-being of the country, national security, public safety and the rights and freedoms of others and preventing crime.

705. Clause 249 creates an offence of disclosing personal information about an individual in breach of clause 246(1) or (2) or clause 248. This provision engages Article 6 of the Convention, but is compatible with it. A person charged under the clause will be tried before an appropriate court and receive the benefit of all the necessary protections to ensure a fair trial. The defence available in subsection (3) allows a defendant to advance his reasons for disclosing the relevant information and those reasons will be particularly within his knowledge. Accordingly, the reverse burden within the offence does not infringe the presumption of innocence.

PART 13: ILLEGAL WORKERS

706. Part 13 provides for a civil penalty regime in relation to employers of adults who are not British citizens or EEA entrants and who have no right to do the work in question. These provisions are broadly similar to those contained in sections 15 to 20 and 23 to 25 of the IANA 2006.

707. It is expected that the maximum penalty will remain the same: £10,000 per illegal worker but, as now, there will be a statutory code of practice setting out the matters which must be considered when determining the level of the penalty.

708. It will be a defence for the employer to show that he has complied with the prescribed requirements of checking and copying certain documents. It is proposed that those requirements will be materially the same as those under the current regime and, as with that regime, would only need to be complied with at the point of recruitment for British citizens, EEA entrants and those with permanent permission. For those who have temporary permission or are on immigration bail, the document checks will need to be repeated at specified intervals (at present it is every 12 months and we expect this to remain the case). There is a right of objection to the Secretary of State and a right of appeal to the county court or sheriff.

709. As with the provisions under the IANA 2006 the Government notes that this

civil penalty scheme raises issues under Article 6 of the ECHR. That the scheme will be classified as civil in domestic law is not determinative of whether it will be considered to be civil for the purposes of Article 6. In *Roth*, which concerned the compatibility with Article 6 of the carriers' liability scheme under the IAA 1999 (see below), the Court of Appeal held that the civil penalty scheme was criminal for the purposes of Article 6. The Government takes the view that the illegal workers civil penalty scheme would also be classified as criminal for the purposes of the ECHR. The consequence of such classification would be that Article 6 will be applied with the intensity of review reserved for criminal penalties.

710. Notwithstanding that classification, the Government considers that the scheme is compatible with Article 6. In addition there is to be a code of practice concerning the matters to be taken into account when determining the level of the penalty in any given case.

711. Clause 257 requires the Secretary of State to issue a code of practice to employers specifying how to avoid contravening the Race Relations Act 1976 or the Race Relations (Northern Ireland) Order 1996 while avoiding liability for a civil penalty under clause 253 or a criminal offence under clause 256. The aim is to reduce the possible risk of unlawful racial discrimination by employers and therefore possible breaches of Article 14 in conjunction with Article 8.

PART 14: CARRIERS' LIABILITY

712. Part 14 provides for a civil penalty regime in relation to the carrying of passengers without proper documentation and the transporting of clandestine entrants to the UK. It also makes provision for an authority to carry scheme. These provisions are broadly similar to Part II of the IAA 1999 (as amended by the NIAA 2002).

Clandestine entrants

713. As is currently the case, a person responsible for bringing clandestine entrants to the UK may be liable for a civil penalty. Currently the penalty is a maximum of £2000 per clandestine, or each person concealed with the clandestine in the same transporter.

714. It will be a defence for the carrier to show that the carrier did not know, and had no reasonable grounds for suspecting, that the carrier was carrying a clandestine entrant; that there was an effective system in operation for preventing the carriage of illegal entrants and that the person responsible for operating the system had done so properly. There is a right of objection to the Secretary of State and a right of appeal to the county court or sheriff.

715. The clandestine entrant provisions in the IAA 1999 were considered in the case of *International Transport Roth GmbH v Secretary of State for the Home Department* [2002] EWCA Civ 158 ("*Roth*") and the Court of Appeal held that the

scheme was at that time incompatible with Article 6 and Article 1 of the First Protocol. Subsequently, the NIAA 2002 amended the provisions in Part II of the IAA 1999 to ensure ECHR compatibility.

716. In *Roth* it was held that the civil penalty scheme for clandestine entrants was criminal and so Article 6 must be applied with the intensity of review reserved for criminal penalties. Notwithstanding that classification, the Government considers that the proposed scheme will be compatible with Article 6 and Article 1 of the First Protocol as the prevention of illegal entry is a legitimate aim and there is to be a code of practice concerning the matters to be taken into account when determining the level of the penalty in any given case.

Authority to carry

717. Clause 278 enables the Secretary of State to establish an authority to carry scheme, authorising the Secretary of State to require a carrier to pay a penalty if the carrier brings a person to the UK who the carrier requires authority to carry and does not have it.

718. The authority to carry scheme is similar to the civil penalty for inadequately documented passengers and to the Government does not believe such a scheme would in itself breach the ECHR. In any event, there is a degree of flexibility about the scheme which is introduced and therefore its implementation will be carried out in a way which meets the concerns expressed by the court in *Roth* and which is compatible with ECHR rights.

PART 15: CIVIL PENALTY PROCEDURE

719. The ECHR issues in respect of Part 15 have been discussed with the powers to impose a penalty notice above – that is in relation to Parts 4, 13 and 14 of the Bill.

PART 18: OFFENCES: GENERAL

Illegal immigration etc.

720. Clause 2 of the Bill requires non EEA entrant foreign nationals to obtain permission to enter and stay in the UK. Clause 7 of the Bill imposes a duty on a person who requires permission to apply for permission to enter and stay in the UK where they do not already have immigration permission. Clause 301 makes it an offence for a person who is neither a British citizen nor an EEA entrant to stay in the UK knowing that he does not have permission, unless he is on immigration bail or detained.

721. Under clause 2 the burden is on the accused to evidence that he has permission to enter and stay the UK. It is reasonable to expect a person to be able to prove that he has permission. Further the offence is designed to support the provision that all foreign nationals, with the exception of EEA entrants, must obtain permission to enter

the UK. The offence provides a significant deterrent to those who seek to undermine this. The Government notes that the reversal of the burden of proof engages Article 6(2) of the ECHR. As discussed above, the Government does not believe Article 6(2) imposes an absolute prohibition on reverse burdens but requires an assessment of the reasonableness of doing so in each case. Thus the Government does not consider that the imposition of the burden of proof on the accused in this offence is incompatible with the presumption of innocence.

722. A refugee or person entitled to humanitarian protection will now have a defence (see clause 318) to this offence if he can prove that having come directly to the UK from another country where his life or freedom was threatened, he presented himself without delay, showed good cause for his illegal entry or presence and made a claim for protection as soon as reasonably practicable after arriving in the UK. This adopts the defence required by Article 31 of the Refugee Convention, which is currently applied to certain offences by section 31 of the IAA 1999.

723. Clauses 306 and 307 make it an offence for a person not to have a relevant travel document relating to him or a dependent child with him on arrival in the UK or at a permission interview. A travel document is an identity document which permits the person to travel. If the interview takes place after the person has entered the UK and within 3 days of the interview the person provides the document, he will not commit an offence.

724. The Government notes that Article 6(2) ECHR is potentially engaged as the legal burden of proof is placed on the defendant to prove that he has a reasonable excuse for not being in possession of a travel document. Whilst there is an interference with the presumption of innocence it is both for a legitimate aim and proportionate to that aim.

Deception and false documents etc.

725. Subsection (1) of clause 311 makes it an offence for a person to make a false registration card; use or attempt to use a false registration card for a purpose for which a registration card is issued; make an article designed to be used in making a false registration card; alter a registration card with intent to deceive or to enable another to deceive; use or attempt to use an altered registration card with intention to deceive or make an article designed to be used in altering a registration card with intent to deceive or enabling another to deceive. Subsection (2) of this clause makes it an offence for a person to, without reasonable excuse, have possession of a false or altered registration card, an article designed to be used in making a false registration card or an article designed to be used in altering a registration card with intent to deceive or enable another to deceive. Subsection (3) defines what a registration card means for these purposes.

726. Clause 312 makes it an offence for a person to, without reasonable excuse; possess an immigration stamp, a replica immigration stamp or an immigration vignette which is not attached to an identity document. The meaning of “stamping a

document” has now been extended to include fixing a sticker or other attachment on it or otherwise marking it and the provision related to vignettes is new.

727. The Government notes that the offence in subsection (2) of each of these clauses potentially engages Article 6(2) as the legal burden of proof is placed on the defendant to prove that he has a reasonable excuse for having possession of the prohibited items. However, the Government is of the view that the reverse burden in these offences does not infringe upon the presumption of innocence. The prosecution will still have to prove that the defendant has possession of the items in either subsection (2). It is not unreasonable to expect a person to explain his reasons for being in possession of such items.

Failure to comply with conditions of permission or immigration bail etc.

728. Clauses 4 and 10 of the Bill enable the Secretary of State to grant temporary permission subject to certain conditions. Clause 99 enables immigration bail to be subject to conditions. Clause 313 makes it an offence for a person who has been granted immigration permission, or immigration bail, to, without reasonable excuse, breach a condition subject to which that permission or bail was granted.

729. The Government notes that Article 6(2) is potentially engaged as the legal burden of proof is placed on the defendant to prove that he has a reasonable excuse for failing to comply with the conditions of his immigration permission or immigration bail. The Government does not consider that the reverse burden in this offence infringes upon the presumption of innocence. The prosecution will still have to prove that the defendant has failed to comply with his conditions. What will be regarded as a reasonable excuse is not defined and will therefore be judged on a case by case basis so the defendant has the opportunity to put forward his reasons as to why he has a reasonable excuse. It is not unreasonable to expect a person to explain why he has not complied with his conditions.

Impersonation and obstruction etc.

730. Subsection (1) of clause 315 makes it an offence for a person to assault someone a person exercising a function conferred by or by virtue of this Act. Subsection (2) of this clause makes it an offence for a person to resist or wilfully obstruct a person exercising a function conferred by or by virtue of this Act.

731. The Government notes that the offence in subsection (1) potentially engages Article 6(2) as the legal burden of proof is placed on the defendant to prove that he has a reasonable excuse for resisting or obstructing the person. The Government does not consider that the reverse burden in this offence infringes upon the presumption of innocence. The prosecution will still have to prove that the defendant has resisted or obstructed the person. The offence is significant as it catches the behaviour of those who have sought to resist or obstruct someone acting in an official capacity.

PART 19: GENERAL SUPPLEMENTARY PROVISIONS

*These notes refer to the Draft Immigration Bill
as published on 12 November 2009*

Fees

732. Clause 328 gives the Secretary of State power to set a fee for the exercise of functions in connection with immigration or nationality (for example applications, services or processes). By virtue of subsection (4), it is possible to set the fee above the full administrative cost of processing the application, providing the service or undertaking the process in question. For example, it is possible to cross-subsidise the costs of other immigration or nationality matters. The Government does not consider that this raises any issues under the Convention.



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