



# **DRAFT (PARTIAL)IMMIGRATION AND CITIZENSHIP BILL**





# Draft (Partial) Immigration and Citizenship Bill

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

July 2008

**© Crown Copyright 2008**

The text in this document (excluding the Royal Arms and other departmental or agency logos) may be reproduced free of charge in any format or medium providing it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the document specified.

Where we have identified any third party copyright material you will need to obtain permission from the copyright holders concerned.

For any other use of this material please write to Office of Public Sector Information, Information Policy Team, Kew, Richmond, Surrey TW9 4DU or e-mail: [licensing@opsi.gov.uk](mailto:licensing@opsi.gov.uk)

ISBN: 9780101737326

# Immigration and Citizenship Bill

---

---

## CONTENTS

### PART 1

#### REGULATION OF ENTRY INTO AND STAY IN THE UK

##### *General principles*

- 1 British citizens
- 2 Non-British citizens
- 3 EEA entrants

##### *Immigration permission*

- 4 Immigration permission
- 5 Methods of grant
- 6 Individual grant of immigration permission
- 7 Duty to apply for an individual grant
- 8 Grant of immigration permission by order
- 9 Effect of grant
- 10 Conditions of temporary permission
- 11 Variation of conditions of temporary permission
- 12 Continuation pending decision on application for new permission
- 13 Automatic cancellation
- 14 Power to cancel
- 15 Continuation following cancellation and pending appeal

##### *Transit permission*

- 16 Transit permission
- 17 Methods of grant
- 18 Individual grant of transit permission
- 19 Grant of transit permission by order
- 20 Cancellation of transit permission

##### *Immigration rules*

- 21 Immigration rules

*Arrival in and entry into the UK*

- 22 Designated control areas
- 23 Entry into the UK

*Designated officials*

- 24 Power of Secretary of State to designate officials

**PART 2**

## POWERS TO EXAMINE ETC.

*Powers to examine*

- 25 Power to examine those who arrive in, enter or seek to enter etc. the UK
- 26 Power to examine those leaving the UK
- 27 Power to require further examination

*Powers to obtain information and documents*

- 28 Power to require production of passport etc.
- 29 Power to suspend permission on section 25 examination

*Hotel registration*

- 30 Hotel registration

**PART 3**

## CITIZENSHIP

- 31 Acquisition of British citizenship by naturalisation
- 32 Requirements for naturalisation as a British citizen
- 33 Requirements for naturalisation as a British citizen: partners etc.
- 34 The qualifying period for naturalisation as a British citizen
- 35 Regulations
- 36 Meaning of references to being in breach of immigration laws

**PART 4**

## EXPULSION ORDERS &amp; REMOVAL ETC. FROM THE UK

*Expulsion orders*

- 37 Power and duty to make an expulsion order
- 38 General limits on the making of an expulsion order
- 39 Exceptions to the duty to make an expulsion order in case of foreign criminal
- 40 Power of a court to recommend expulsion
- 41 Particular limits on the making of an expulsion order
- 42 Effect of expulsion order on immigration permission
- 43 Cancellation of an expulsion order

*Removal of those subject to expulsion orders*

- 44 Power to remove those subject to an expulsion order
- 45 Power to place those being removed on an aircraft etc.
- 46 Cost of complying with removal directions

*International travel bans*

- 47 International travel bans

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

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

*Assistance to voluntary leavers and other support*

- 49 Power to provide assistance in relation to voluntary leavers
- 50 Projects relating to migration

*Interpretation*

- 51 Meaning of “foreign criminal”
- 52 Meaning of member of the family of a person

**PART 5**

POWERS TO DETAIN & IMMIGRATION BAIL

*Powers to detain*

- 53 Persons liable to examination
- 54 Persons without immigration or transit permission on board aircraft etc.
- 55 Persons in relation to whom an expulsion order is or may be made
- 56 Persons subject to an expulsion order placed on board aircraft etc.
- 57 Persons liable to arrest

*Related provision*

- 58 Power to remove a person from an aircraft etc. for detention
- 59 Place and effect of detention
- 60 Duty to give reasons and to review detention
- 61 Recovery of costs of detention, accommodation and maintenance

*Immigration bail*

- 62 Power to grant immigration bail
- 63 Effect of grant of immigration bail
- 64 Financial security condition
- 65 Electronic monitoring condition
- 66 Restrictions on imposing electronic monitoring condition
- 67 Power to pay travel expenses in relation to reporting condition
- 68 Power to vary bail conditions
- 69 Power of the Tribunal to direct detention etc.

*Interpretation*

- 70 Meaning of liable to detention under this Act

**PART 6**

## DETAINED PERSONS AND REMOVAL CENTRES

*Escort of detained persons*

- 71 Escort arrangements  
72 Monitoring of escort arrangements  
73 Persons acting under escort arrangements  
74 Breaches of discipline  
75 Transfer directions

*Contracting out of removal centres etc.*

- 76 Contracting out of removal centres etc.  
77 Contract monitors  
78 Contracted out functions

*Management of removal centres*

- 79 Management of removal centres  
80 Intervention by the Secretary of State  
81 Independent Monitoring Boards and inspections

*Removal centre regulations*

- 82 Removal centre regulations

*Custody of detained persons*

- 83 Custodial functions at removal centres  
84 Persons exercising custodial functions  
85 Functions of a custodial nature at short-term holding facilities

*Discipline at removal centres etc.*

- 86 Medical examinations  
87 Assisting detained person to escape  
88 Introduction of alcohol  
89 Introduction of other articles  
90 Notice of penalties

*Detainee custody officers*

- 91 Authorisation of detainee custody officers  
92 Obtaining authorisation by false pretences

*Supplementary*

- 93 Assault or obstruction of detainee custody officers etc.  
94 Power of constable to act outside jurisdiction

95 Short-term holding facilities

*Interpretation*

96 Interpretation

**PART 7**

**OFFENCES**

*Offences relating to immigration permission*

- 97 Entering the UK without immigration permission
- 98 Staying in the UK without immigration permission
- 99 Breach of conditions of immigration permission
- 100 Failure to comply with regulations under section 10(2)

*Offences relating to examination etc.*

- 101 Refusal to be examined or provide information etc.
- 102 Failure to submit to medical examination or provide medical reports
- 103 Failure to take steps required in relation to designated control areas

*Entering the UK without a passport etc.*

- 104 Entering the UK without passport etc.
- 105 Section 104: interpretation etc.

*Assisting illegal entry etc.*

- 106 Assisting unlawful immigration to relevant European countries
- 107 Assisting protection applicant to enter the UK
- 108 Trafficking people for exploitation
- 109 Section 108: meaning of “exploit”

*Offences relating to expulsion orders & removal*

- 110 Breach of expulsion order
- 111 Assisting arrival, entry or stay in the UK
- 112 Failure by carriers etc. to comply with removal directions
- 113 Disembarking unlawfully

*Offences relating to detention & immigration bail*

- 114 Absconding from detention under section 57
- 115 Failure by captain to prevent disembarkation
- 116 Breach of conditions of immigration bail

*Deception and false documents etc.*

- 117 Deception
- 118 Altering documents and use or possession of false documents
- 119 Falsifying or altering etc. a registration card
- 120 Possession of immigration stamp



*Obstruction and assault*

- 121 Obstructing, resisting or assaulting officials etc.

**PART 8**

## CARRIERS' LIABILITY

*Penalty for carrying undocumented passengers*

- 122 Penalty for carrying undocumented passengers  
 123 Amount of penalty and period for payment  
 124 Defence  
 125 Notice of objection  
 126 Appeal  
 127 Enforcement  
 128 Notices and procedure etc.

*Penalty for carrying clandestine entrants*

- 129 Meaning of "clandestine entrant"  
 130 Penalty for carrying clandestine entrants  
 131 Amount of penalty and period for payment  
 132 Persons responsible for clandestine entrants  
 133 Liability of employer for penalty imposed on employee  
 134 Defences  
 135 Code of practice: level of penalty under section 130  
 136 Code of practice: prevention of clandestine entrants  
 137 Notice of objection  
 138 Appeal  
 139 Enforcement  
 140 Notices and procedure etc.

*Clandestine entrants: detention and sale of transporters*

- 141 Power to detain until penalty notice is given etc.  
 142 Power to detain after penalty notice is given  
 143 Power to detain in default of payment of penalty  
 144 Supplementary provisions about detention  
 145 Application for release of detained transporter  
 146 Power of Secretary of State to sell transporter  
 147 Permission to sell transporter  
 148 Sale of transporter

*Authority-to-carry schemes*

- 149 Authority-to-carry schemes

*Supplementary*

- 150 Transfer of proceedings  
 151 Interpretation

**PART 9**

## ILLEGAL WORKERS

*Meaning of "illegal worker" etc.*

- 152 Meaning of “illegal worker” etc.

*Penalty for employing illegal workers*

- 153 Penalty for employing illegal workers  
 154 Defence  
 155 Code of practice  
 156 Notice of objection  
 157 Appeal  
 158 Enforcement  
 159 Notices and procedure etc.

*Offence where employ illegal workers*

- 160 Employment of illegal workers

*Supplementary*

- 161 Transfer of proceedings  
 162 Discrimination: code of practice

**PART 10**

## APPEALS

*The Asylum and Immigration Tribunal*

- 163 The Tribunal

*Right of appeal against an immigration decision*

- 164 Right of appeal  
 165 Refusal of protection permission other than refugee permission  
 166 Refusal of refugee permission  
 167 Refusal of family life application  
 168 Refusal of immigration permission on other application  
 169 Cancellation of immigration permission other than refugee permission  
 170 Cancellation of refugee permission  
 171 Making of an expulsion order  
 172 Refusal to cancel an expulsion order  
 173 Case where person has in-country and out-of-country right of appeal  
 174 Grounds of appeal

*Other limitations and exceptions to right of appeal*

- 175 No appeal if permission refused or cancelled on certain grounds  
 176 Certification of repetitious or unmeritorious submissions  
 177 Certification of clearly unfounded protection or family life application

- 178 Power to amend list of countries in Schedule 2
- 179 Certification of late protection or family life application
- 180 Certification where decision relied upon classified information
- 181 Certification that exclusion conducive to public good

*Determination of appeal*

- 182 Matters to be considered
- 183 Decision on appeal

*Practice and procedure*

- 184 Procedure rules
- 185 Offence where fail to comply with rule requiring attendance
- 186 Practice directions
- 187 Forged document: proceedings in private

*Interpretation*

- 188 Meaning of “pending appeal”

**PART 11**

GENERAL SUPPLEMENTARY PROVISIONS

*Children*

- 189 Duty regarding the welfare of children

*Fees*

- 190 Fees
- 191 Fees: supplemental

*Procedure*

- 192 Requirement to state reasons and grounds

*General provision relating to offences*

- 193 Defence for a refugee
- 194 Commission of certain offences by director etc.
- 195 Extended time limit for prosecutions
- 196 Place of commission of offence
- 197 Proceedings not to affect exercise of powers
- 198 Transitory provision: imprisonment on conviction in England and Wales

*Notices and directions etc.*

- 199 Notices and directions
- 200 Giving of notices
- 201 Proof of documents

*Orders, regulations and rules*

- 202 Orders, regulations and rules
- 203 Parliamentary control of orders and regulations
- 204 Procedure for the Rules

**PART 12**

DEFINITIONS FOR THE PURPOSES OF THE ACT

- 205 Meaning of “protection application” etc.
- 206 Meaning of “family life application”
- 207 Meaning of references to arrival by ship in the UK
- 208 Other definitions

**PART 13**

FINAL PROVISIONS

- 209 Money
- 210 Repeals and revocations
- 211 Index of defined expressions
- 212 Extent
- 213 Commencement
- 214 Short title

- 
- Schedule 1 – The Asylum and Immigration Tribunal
    - Part 1 – Membership
    - Part 2 – Judicial assistance
    - Part 3 – Proceedings
    - Part 4 – Functions of Lord Chief Justice etc.
    - Part 5 – Supplementary
  - Schedule 2 – List of countries referred to in section 177
  - Schedule 3 – Repeals and revocations
    - Part 1 – Regulation of entry into & stay in the UK
    - Part 2 – Powers to examine etc.
    - Part 3 – Citizenship
    - Part 4 – Expulsion orders & removal etc. from the UK
    - Part 5 – Powers to detain & immigration bail
    - Part 6 – Detained persons and removal centres
    - Part 7 – Offences
    - Part 8 – Carriers’ liability
    - Part 9 – Illegal workers
    - Part 10 – Appeals
    - Part 11 – Children
    - Part 12 – Fees
    - Part 13 – Procedure
    - Part 14 – Notices and directions etc.
    - Part 15 – Definitions for the purposes of the Act
  - Schedule 4 – Index of defined expressions

DRAFT  
OF A  
**B I L L**

TO

Make provision about immigration and to replace the Immigration Acts; to make provision about the requirements to be met for the acquisition of British citizenship by naturalisation; and for connected purposes.

**B**E 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**

REGULATION OF ENTRY INTO AND STAY IN THE UK

*General principles*

**1 British citizens**

- (1) A British citizen is free to enter and leave, and to stay in, 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 in relation to the person which describes the person as a British citizen, or
  - (b) a valid ID card (within the meaning of the Identity Cards Act 2006 (c. 15)) in relation to the person which describes the person as a British citizen.

**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) That is subject to sections 59(5) and 63(5) (which enable a person, while being detained or on immigration bail, to enter or stay in the UK without permission).
- (3) 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 17), and
  - (b) is current (see section 208(3)).
- (4) A person who claims for the purposes of this Act that a person has immigration or transit permission must prove it.
- (5) See section 23 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) An “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 a national of an EEA state or of Switzerland,
  - (b) is entitled to enter and stay in the United Kingdom by virtue of an enforceable Community right or any provision made under section 2(2) of the European Communities Act 1972 (c. 68), and
  - (c) is exercising that entitlement.
- (3) Condition B is met if the person –
  - (a) is not a national of an EEA state or of Switzerland,
  - (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 an enforceable Community right or any provision made under section 2(2) of the European Communities Act 1972, and
  - (c) is exercising that entitlement.
- (4) 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 European Communities Act 1972 for proving the entitlement referred to in subsection (2)(b) 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, and
  - (b) may be granted subject to conditions in accordance with section 10.
- (4) “Permanent permission” is immigration permission which is granted for an unlimited period.
- (5) Permanent permission –
  - (a) may not be granted for a particular purpose, and
  - (b) may not be granted subject to conditions.

## **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 8.
- (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 of immigration permission**

- (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) Permanent permission granted by an individual grant –
  - (a) may not be varied, but
  - (b) may be cancelled under section 13 or 14.
- (4) Temporary permission granted by an individual grant –
  - (a) may be varied under section 11(1) (but only as regards the conditions subject to which it is granted), and
  - (b) may be cancelled under section 13 or 14.

## **7 Duty to apply for an individual grant**

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 the person –

- (a) is in the United Kingdom having entered it, whether before or after the commencement of this section, and
- (b) does not have immigration permission.

**8 Grant of immigration permission by order**

- (1) The Secretary of State may by order grant immigration permission to such descriptions of persons as are specified in the order.
- (2) An order under this section may, in particular, grant immigration permission to—
  - (a) persons who, immediately before the commencement of this section, had the right of abode in the United Kingdom by virtue of section 2(1)(b) of the Immigration Act 1971 (c. 77) (right of abode for certain Commonwealth citizens);
  - (b) members of the crew of a ship, aircraft or train;
  - (c) members of a mission within the meaning of the Diplomatic Privileges Act 1964 (c. 81);
  - (d) persons who are entitled to the same immunity from jurisdiction as is conferred by that Act on a diplomatic agent.
- (3) 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.
- (4) An order under this section may make—
  - (a) provision modifying or disapplying provisions of this Act, 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 a person granted immigration permission by an order under this section 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 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) of the British Nationality Act 1981 (c. 61).
- (5) Immigration permission granted by an order under this section—
  - (a) may be varied only by amendment of the order,
  - (b) may be cancelled by revocation of the order, and
  - (c) may be cancelled in relation to a particular person under section 13 or 14.

**9 Effect of grant**

- (1) Immigration permission granted to a person confers on that person, while it is current, permission—
  - (a) to enter the United Kingdom, where the person has not already done so,
  - (b) to stay in the United Kingdom,
  - (c) to re-enter the United Kingdom if the person leaves it, and



- (d) to 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.

## **10 Conditions of temporary permission**

- (1) Temporary permission may be granted subject to one or more of the following 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 register with the police (“a police registration condition”);
  - (d) a condition requiring the person to report to the Secretary of State or such other person as may be specified;
  - (e) a condition about 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 the person 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 a person who has temporary permission granted subject to a police registration condition to produce a certificate of registration to such persons and in such circumstances as may be prescribed by the regulations.
- (5) Any conditions subject to which temporary permission is granted are suspended during any time when the person is outside the United Kingdom.

## **11 Variation of conditions of temporary permission**

- (1) Where temporary permission has been granted to a person by an individual grant, the Secretary of State may vary the conditions (if any) subject to which it is granted by—
  - (a) amending one or more of those conditions;
  - (b) cancelling one or more of those conditions;
  - (c) imposing one or more of the conditions mentioned in section 10(1).
- (2) The power to vary, or to refuse to vary, under subsection (1) 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) But any application for variation under subsection (1) must be made—
  - (a) while the person is in the United Kingdom, and
  - (b) while the permission is current.

## **12 Continuation pending decision on application for new permission**

- (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 (“the existing permission”) and is in the United Kingdom, and
  - (c) the period of validity of the existing permission expires without the application for new permission having been decided.
- (2) The person is to continue to have the existing permission during any period when—
  - (a) the application for new permission is neither decided nor withdrawn, or
  - (b) in a case where the application is refused, an in-country appeal could be brought by the person against the refusal (see Part 10) or such an appeal against the refusal is pending (see section 188).
- (3) Permission continued by virtue of subsection (2) is automatically cancelled if the person leaves the United Kingdom.
- (4) While permission is continued by virtue of subsection (2), a further application may not be made for an individual grant of immigration permission to the person.
- (5) But subsection (4) does not prevent—
  - (a) the amendment of the application for new permission, or
  - (b) the making of a protection application or a family life application (see sections 205 and 206).
- (6) An application is decided for the purposes of this section when the person is given notice of the decision.

## **13 Automatic cancellation**

- (1) Immigration permission granted to a person is automatically cancelled if, after 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 immigration 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 when the period of validity of the new permission commences.
- (3) For other provisions under which immigration permission is automatically cancelled, see—
  - (a) section 12(3) (where a person with continuing permission pending a decision on an application for new permission leaves the UK);
  - (b) section 15(3) (where a person with continuing permission following cancellation leaves the UK);

- (c) section 42(1) (where an expulsion order is made);
- (d) section 47(2) (where a person becomes subject to a travel ban).

#### **14 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.

#### **15 Continuation following cancellation and pending appeal**

- (1) This section applies if a person's immigration permission is cancelled under section 14.
- (2) The person is to continue to have the permission during any period when an in-country appeal could be brought by the person against the cancellation (see Part 10) or such an appeal against the cancellation is pending (see section 188).
- (3) Permission continued by virtue of subsection (2) is automatically cancelled if the person leaves the United Kingdom.
- (4) While permission is continued by virtue of subsection (2), an application may not be made for an individual grant of new immigration permission to the person.
- (5) But subsection (4) does not prevent the making of a protection application or a family life application (see sections 205 and 206).

#### *Transit permission*

#### **16 Transit permission**

- (1) Transit permission is granted for a limited period.
- (2) Transit permission granted to a person confers on that person, while it is current, permission to pass through the United Kingdom, without entering it, en route to another country.
- (3) But that is subject to any requirements or restrictions imposed by or by virtue of this Act or any other enactment.

#### **17 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 section 18, or
  - (b) by an order under section 19.
- (3) The powers under those sections 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.

**18 Individual grant of transit permission**

- (1) The Secretary of State may grant transit permission to a person (“an individual grant”).
- (2) 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.
- (3) Transit permission granted by an individual grant may be cancelled under section 20.

**19 Grant of transit permission by order**

- (1) The Secretary of State may by order grant transit permission to such descriptions of persons as are specified in the order.
- (2) Transit permission granted by an order under this section—
  - (a) may be varied only by amendment of the order,
  - (b) may be cancelled by revocation of the order, and
  - (c) may be cancelled in relation to a particular person under section 20.

**20 Cancellation of transit permission**

- (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 42(1) (where an expulsion order is made);
  - (b) section 47(2) (where a person becomes subject to a travel ban).

*Immigration rules***21 Immigration rules**

- (1) The Secretary of State must make rules to be followed in relation to—
  - (a) the exercise of functions conferred by or by virtue of this Act;
  - (b) other matters relating to the administration of this Act.
- (2) The rules must be made for the purpose of regulating or controlling—
  - (a) the arrival in or entry into the United Kingdom,
  - (b) the stay in the United Kingdom, or
  - (c) the removal from the United Kingdom,of persons who are neither British citizens nor EEA entrants.
- (3) A failure to meet a requirement of the rules does not prevent the Secretary of State granting immigration or transit permission to a person under this Part.
- (4) References in this Act to “Rules” are to rules under this section.

*Arrival in and entry into the UK*

**22 Designated control areas**

- (1) The Secretary of State may give notice to the owners or agents of any 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) Owners and agents given notice under subsection (1) of a designated control area in a port or international railway station must take all reasonable steps to secure that –
  - (a) in the case of their 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) The Secretary of State may also give notice to persons 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.
- (4) A person given notice under subsection (3) of a designated control area which specifies conditions or restrictions to be observed in that area must take all reasonable steps to secure that they are observed.

**23 Entry into the UK**

- (1) 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 on which P arrived, 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.
- (2) For the purposes of subsection (1), a “designated control area” means a control area designated under section 22.

*Designated officials*

**24 Power of Secretary of State to designate officials**

- (1) The Secretary of State may designate officials of the Secretary of State as designated officials for the purposes of this Act.
- (2) A designation under this section is subject to such limitations as may be specified in the designation.
- (3) A limitation specified under subsection (2) may, in particular, relate to –

- (a) the functions which may be exercised by virtue of the designation, or
  - (b) the purposes for which those functions may be exercised.
- (4) A designation under this section –
- (a) may be permanent or for a specified period,
  - (b) may (in either case) be withdrawn, and
  - (c) may be varied.
- (5) The power to designate, or to withdraw or vary a designation, is exercised by the Secretary of State giving notice to the official or officials in question.
- (6) The Secretary of State may designate an official under this section only if the Secretary of State is satisfied that the official –
- (a) is capable of effectively carrying out the functions that would be 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.
- (7) A reference in this Act to a designated official is to an official designated under this section.
- (8) Where a function is conferred on a designated official by or by virtue of this Act, the function may be exercised by any designated official, subject to any limitations specified in the official’s designation.

## PART 2

### POWERS TO EXAMINE ETC.

#### *Powers to examine*

#### **25 Power to examine those 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,
  - (c) P is outside the United Kingdom and an application for the individual grant of immigration or transit permission to P has been made and has not been decided or withdrawn, 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 or transit permission, whether the 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.

## **26 Power to examine those 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 reasonably suspects that P has gone there for the purpose of embarking 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 breached any conditions subject to which it was granted;
    - (iv) whether P has committed an offence while in the United Kingdom;
    - (v) whether an expulsion order should be made in relation to P;
    - (vi) whether P’s return to the United Kingdom is prohibited or restricted.

## **27 Power to require further examination**

- (1) The Secretary of State may require –
  - (a) a person who is examined under section 25(1) or 26(1), to submit to a further examination under the provision in question, or
  - (b) a person who has been subject to a requirement under section 25(3)(a), to submit to one or more further specified medical examinations under that provision.
- (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) For the purpose of subsection (3), a “transit passenger” is a person who passes through the United Kingdom, without entering it, en route to another country.

*Powers to obtain information and documents***28 Power to require production of passport etc.**

- (1) This section applies where a person (“P”)—
  - (a) is being examined under section 25(1) or 26(1), or
  - (b) has been required to submit to a further examination under section 25(1) or 26(1).
- (2) P must provide to the Secretary of State all the information in P’s possession that is required by the Secretary of State for the purposes of the examination.
- (3) P must produce a valid identity document if required to do so by the Secretary of State.
- (4) If required to do so by the Secretary of State, P must—
  - (a) declare whether or not P is carrying or conveying, or has carried or conveyed, documents of any relevant description specified by the Secretary of State, and
  - (b) produce any documents of that description which P is carrying or conveying.
- (5) For the purposes of subsection (4), “relevant description” means any description appearing to the Secretary of State to be relevant for the purposes of the examination.

**29 Power to suspend permission on section 25 examination**

- (1) If a person (“P”) is being examined under section 25(1)(a) and P has immigration or transit permission, the Secretary of State may suspend P’s permission until the examination is complete.
- (2) That power is exercised by the Secretary of State giving notice to P.
- (3) When the suspension ends, P reverts to having the immigration or transit permission unless it is not current (whether by reason of the expiry of its period of validity or its cancellation).

*Hotel registration***30 Hotel registration**

- (1) 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.
- (2) A person commits an offence if, without reasonable excuse, the person fails to comply with a requirement imposed by virtue of subsection (1).
- (3) 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 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.

### PART 3

#### CITIZENSHIP

### 31 Acquisition of British citizenship by naturalisation

For section 6 of the British Nationality Act 1981 (c. 61) substitute –

#### “6 Acquisition by naturalisation

- (1) This section applies in the following four cases.
- (2) Case 1 is where –
  - (a) an application for naturalisation as a British citizen is made by a person of full age and capacity,
  - (b) on the date of the application, the applicant –
    - (i) has probationary citizenship permission or permanent permission, or
    - (ii) is serving outside the United Kingdom in Crown service under the government of the United Kingdom, and
  - (c) the Secretary of State is satisfied that the applicant fulfils the requirements of Schedule 1 for naturalisation as a British citizen under this subsection.
- (3) Case 2 is where –
  - (a) an application for naturalisation as a British citizen is made by a person of full age and capacity,
  - (b) on the date of the application, the applicant –
    - (i) has probationary citizenship permission, or permanent permission, granted on the basis of the applicant’s being a dependant relative of a British citizen, and
    - (ii) is still a dependant relative of that British citizen, and
  - (c) the Secretary of State is satisfied that the applicant fulfils the requirements of Schedule 1 for naturalisation as a British citizen under this subsection.
- (4) Case 3 is where –
  - (a) an application for naturalisation as a British citizen is made by a person of full age and capacity,
  - (b) on the date of the application, the applicant has probationary citizenship permission, or permanent permission, granted on the basis of the applicant’s being the partner of a British citizen, and
  - (c) the Secretary of State is satisfied that the applicant fulfils the requirements of Schedule 1 for naturalisation as a British citizen under this subsection.
- (5) Case 4 is where –

- (a) an application for naturalisation as a British citizen is made by a person of full age and capacity,
  - (b) on the date of the application, the applicant has probationary citizenship permission, or permanent permission, granted on the basis of the applicant’s having an association with a British citizen, and
  - (c) the Secretary of State is satisfied that the applicant fulfils the requirements of Schedule 1 for naturalisation as a British citizen under this subsection.
- (6) The Secretary of State may grant the applicant a certificate of naturalisation as a British citizen.
- (7) For the purposes of subsection (5)(b), an applicant (“A”) has an association with a British citizen (“B”) if—
- (a) A used to be B’s partner, the relationship having ended with B’s death,
  - (b) A used to be B’s partner, the relationship having broken down in circumstances where A suffered harm attributable to B’s conduct, or
  - (c) A is B’s spouse or civil partner but the relationship is no longer subsisting, having broken down in circumstances where A suffered harm attributable to B’s conduct.
- (8) For the purposes of this section (and Schedule 1)—
- (a) “partner” means spouse, civil partner, unmarried partner or same sex partner;
  - (b) “probationary citizenship permission” means temporary permission in reliance on which an application for a certificate of naturalisation as a British citizen may be made in accordance with rules under section 21 of the Immigration and Citizenship Act 2009;
  - (c) “permanent permission” and “temporary permission”, and other expressions relating to immigration permission, have the same meaning as in the Immigration and Citizenship Act 2009.”

### 32 Requirements for naturalisation as a British citizen

In Schedule 1 to the British Nationality Act 1981 (c. 61), for paragraphs 1 and 2 and the cross-heading immediately preceding them substitute—

*“Naturalisation as a British citizen under section 6(2) (Case 1) or section 6(3) (Case 2)*

- 1 (1) The following six requirements are the requirements for naturalisation as a British citizen under section 6(2) or (3), in the case of an applicant (“A”).
- (2) The first requirement is that—
- (a) A was in the United Kingdom at the beginning of the qualifying period,
  - (b) where A has probationary citizenship permission on the date of the application, A was absent from the United Kingdom for no more than 90 days in each period of 12 months for which A has had the permission (the first such period

- 
- beginning on the date of the commencement of the period of validity of the permission),
- (c) where A has permanent permission on the date of the application but has not had probationary citizenship permission –
    - (i) A has had the permanent permission for the whole of the qualifying period, and
    - (ii) A was absent from the United Kingdom for no more than 90 days in each year of the qualifying period, and
  - (d) A was not at any time in the qualifying period in the United Kingdom in breach of the immigration laws.
- (3) For the meaning of the “qualifying period” for the purposes of the first requirement, see paragraph 4A.
- (4) The second requirement is that –
- (a) A’s intentions are such that, in the event of a certificate of naturalisation as a British citizen being granted to A, A’s home (or principal home) will be in the United Kingdom, or
  - (b) A intends, in the event of a certificate of naturalisation as a British citizen being granted to A, to enter into or continue in Crown work.
- (5) For the purposes of the second requirement, “Crown work” means –
- (a) Crown service under the government of the United Kingdom, or
  - (b) service under an international organisation of which the United Kingdom, or Her Majesty’s government in the United Kingdom, is a member.
- (6) The third requirement is that A is of good character.
- (7) The fourth requirement is that A has a sufficient knowledge of the English, Welsh or Scottish Gaelic language.
- (8) The fifth requirement is that A has sufficient knowledge about life in the United Kingdom.
- (9) The sixth requirement is that, where on the date of the application A has probationary citizenship permission granted for the purpose of permitting A’s employment in the United Kingdom, A has, since the date of the commencement of the period of validity of the permission, been in employment in relation to which prescribed conditions are met.
- (10) For the purposes of the sixth requirement, “employment” includes self-employment.
- 2 The Secretary of State may, in the special circumstances of a particular case, do one or more of the following for the purposes of paragraph 1 –
- (a) treat A as fulfilling the requirement in paragraph 1(2)(a) where A was, at the beginning of the qualifying period, serving outside the United Kingdom in Crown service under the government of the United Kingdom;

- (b) treat A as fulfilling the requirement in paragraph 1(2)(b) or (c)(ii) even though the number of days on which A was absent from the United Kingdom in the period in question exceeds 90 days;
- (c) treat A as having been in the United Kingdom for the whole or any part of any period during which A would otherwise fall to be treated under paragraph 9(1) as having been absent;
- (d) treat A as fulfilling the requirement in paragraph 1(2)(d) even though A was in the United Kingdom in breach of the immigration laws in the qualifying period;
- (e) waive the need to fulfil either or both of the fourth and fifth requirements if the Secretary of State considers that, because of A's age or physical or mental condition, it would be unreasonable to expect A to fulfil the requirement or requirements."

### 33 Requirements for naturalisation as a British citizen: partners etc.

- (1) In Schedule 1 to the British Nationality Act 1981 (c. 61), for paragraphs 3 and 4 and the cross-heading immediately preceding them, substitute—

*“Naturalisation as a British citizen under section 6(4) (Case 3) or section 6(5) (Case 4)*

- 3 (1) The following six requirements are the requirements for naturalisation as a British citizen under section 6(4) or (5), in the case of an applicant (“A”).
- (2) The first requirement is that, in Case 3, A's relationship with the British citizen referred to in section 6(4) is subsisting.
- (3) The second requirement is that—
- (a) at the beginning of the qualifying period—
    - (i) A was in the United Kingdom, and
    - (ii) A had immigration permission granted on the basis of A's being the partner of the British citizen referred to in section 6(4) or (5),
  - (b) where A has probationary citizenship permission on the date of the application, A was absent from the United Kingdom for no more than 90 days in each period of 12 months for which A has had the permission (the first such period beginning on the date of the commencement of the period of validity of the permission),
  - (c) where A has permanent permission on the date of the application—
    - (i) A has had, for the whole of the qualifying period, immigration permission granted on the basis of A's being the partner of the British citizen referred to in section 6(4) or (5) or A's having the association referred to in section 6(5), and
    - (ii) A was absent from the United Kingdom for no more than 90 days in each year of the qualifying period, and
  - (d) A was not at any time in the qualifying period in the United Kingdom in breach of the immigration laws.

- (4) For the meaning of the “qualifying period” for the purposes of the second requirement, see paragraph 4A.
  - (5) The third requirement is that –
    - (a) A’s intentions are such that, in the event of a certificate of naturalisation as a British citizen being granted to A, A’s home (or principal home) will be in the United Kingdom, or
    - (b) A or A’s partner intends, in the event of a certificate of naturalisation as a British citizen being granted to A, to enter into or continue in Crown work.
  - (6) For the purposes of the third requirement, “Crown work” means –
    - (a) Crown service under the government of the United Kingdom, or
    - (b) service under an international organisation of which the United Kingdom, or Her Majesty’s government in the United Kingdom, is a member.
  - (7) In sub-paragraph (5), the reference to A’s partner applies in Case 3 only and is a reference to the British citizen referred to in section 6(4).
  - (8) The fourth requirement is that A is of good character.
  - (9) The fifth requirement is that A has a sufficient knowledge of the English, Welsh or Scottish Gaelic language.
  - (10) The sixth requirement is that A has sufficient knowledge about life in the United Kingdom.
- 4 (1) The Secretary of State may, in the special circumstances of a particular case, do one or more of the following for the purposes of paragraph 3 –
- (a) treat A as fulfilling the requirement in paragraph 3(2) even though there is not a subsisting relationship of the kind in question between A and the British citizen in question;
  - (b) treat A as fulfilling the requirement in paragraph 3(3)(b) or (c)(ii) even though the number of days on which A was absent from the United Kingdom in the period in question exceeds 90 days;
  - (c) treat A as having been in the United Kingdom for the whole or any part of any period during which A would otherwise fall to be treated under paragraph 9(1) as having been absent;
  - (d) treat A as fulfilling the requirement in paragraph 3(3)(d) even though A was in the United Kingdom in breach of the immigration laws in the qualifying period;
  - (e) waive the need to fulfil any or all of the requirements in paragraph 3(3)(b) and (c) if, on the date of the application, A’s partner is serving in service to which section 2(1)(b) applies, the partner’s recruitment for that service having taken place in the United Kingdom;
  - (f) waive the need to fulfil either or both of the fifth and sixth requirements if the Secretary of State considers that, because of A’s age or physical or mental condition, it would be unreasonable to expect A to fulfil the requirement or requirements.

- (2) In sub-paragraph (1)(e), the reference to A’s partner applies in Case 3 only and is a reference to the British citizen referred to in section 6(4).”
- (2) In that Schedule, in paragraph 9(1) (periods to be treated as periods of absence from the UK etc.), for “paragraph 2(b)” substitute “paragraphs 2(c) and 4(1)(c)”.

### 34 The qualifying period for naturalisation as a British citizen

- (1) In Schedule 1 to the British Nationality Act 1981, after paragraph 4 (as substituted by section 33) insert—

*“The qualifying period for naturalisation as a British citizen under section 6*

- 4A (1) The qualifying period for the purposes of paragraph 1 or 3 is, in relation to a case in the first column of the table, a period of years—
- which ends with the date of the application in question, and
  - the number of years of which is the number determined in accordance with the second column of the table.

<i>Case</i>	<i>Number of years in qualifying period</i>
Case where— (a) the activity condition is not met in relation to A, and (b) A has not been convicted of a prescribed offence.	X
Case where— (a) the activity condition is met in relation to A, and (b) A has not been convicted of a prescribed offence.	X - Y
Case where— (a) the activity condition is not met in relation to A, and (b) A has been convicted of a prescribed offence.	X + Z
Case where— (a) the activity condition is met in relation to A, and (b) A has been convicted of a prescribed offence.	X - Y + Z

- (2) The “activity condition” is met in relation to A if the Secretary of State considers that—
- A has participated otherwise than for payment in prescribed activities, or
  - A is exempt from participation in such activities.

- (3) “X” is—
  - (a) 8, in a case within paragraph 1;
  - (b) 5, in a case within paragraph 3.
- (4) “Y” is 2.
- (5) “Z” is the number of years prescribed in relation to the offence (or offences) concerned.
- (6) A reference in the Table to the conviction of A for a prescribed offence includes a reference to the conviction for a prescribed offence of a person who has a connection of a prescribed description to A.”

### 35 Regulations

- (1) Section 41 of the British Nationality Act 1981 (c. 61) (regulations) is amended as follows.
- (2) In subsection (1), after paragraph (bb) insert—
  - “(bc) for determining whether a person is or used to be another person’s unmarried partner or same sex partner for the purpose of an application for naturalisation within section 6;
  - (bd) for determining whether a marriage or civil partnership, or a relationship between unmarried partners or between same sex partners, is subsisting for the purpose of an application for naturalisation within section 6;
  - (be) for determining whether a person has, for that purpose, participated in activities prescribed for the purposes of paragraph 4A(2) of Schedule 1;
  - (bf) for determining whether a person is exempt from participation in such activities for the purpose of an application for naturalisation within section 6;
  - (bg) for amending paragraph 4A(3)(a) or (b) of Schedule 1 (default qualifying period for naturalisation) so as to substitute a different number for the number for the time being specified there;
  - (bh) for amending paragraph 4A(4) of Schedule 1 (impact of participation in prescribed activities on qualifying period) so as to substitute a different number (including the number zero) for the number for the time being specified there;”.
- (3) In subsection (7), after “this section” insert “(other than regulations referred to in subsection (8))”.
- (4) After subsection (7), insert—
  - “(8) Any regulations (whether alone or with other provision)—
    - (a) under subsection (1)(a) for prescribing an offence for the purposes of paragraph 4A(1) of Schedule 1 (impact of convictions on length of qualifying period),
    - (b) under subsection (1)(a) for prescribing a number of years for the purposes of paragraph 4A(5) of that Schedule (number of years prescribed in relation to an offence), or
    - (c) under subsection (1)(be), (bf), (bg) or (bh),

may not be made unless a draft has been laid before and approved by a resolution of each House of Parliament.”

### 36 Meaning of references to being in breach of immigration laws

After section 50 of the British Nationality Act 1981 (c. 61) (interpretation), insert—

#### “50A Meaning of references to being in breach of immigration laws

- (1) This section applies for the construction of a reference to being in the United Kingdom “in breach of the immigration laws” in—
  - (a) section 4(2) or (4),
  - (b) section 50(5), or
  - (c) Schedule 1.
- (2) A person (“P”) is in the United Kingdom in breach of the immigration laws if (and only if) —
  - (a) P is neither a British citizen nor an EEA entrant,
  - (b) P is in the United Kingdom, and
  - (c) P does not have immigration permission, or has temporary permission but is in breach of a condition subject to which it was granted.
- (3) In subsection (2), “EEA entrant” and expressions relating to immigration permission have the same meaning as in the Immigration and Citizenship Act 2009.
- (4) This section is without prejudice to the generality of—
  - (a) a reference to being in a place outside the United Kingdom in breach of immigration laws, and
  - (b) a reference in a provision other than one specified in subsection (1) to being in the United Kingdom in breach of immigration laws.”

## PART 4

### EXPULSION ORDERS & REMOVAL ETC. FROM THE UK

#### *Expulsion orders*

### 37 Power and duty to make an expulsion order

- (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) prohibits the person, if the person is outside the United Kingdom, from arriving in or entering it.
- (2) The Secretary of State —
  - (a) may make an expulsion order in relation to a person if the person is not a British citizen and falls within subsection (4),



- (b) must make an expulsion order in relation to a person who is a foreign criminal (see section 51) unless an exception mentioned in section 39 applies, and
  - (c) may make an expulsion order in relation to a person if the person is not a British citizen and is a member of the family of a person (“P”) in relation to whom an expulsion order is or has been made under paragraph (a) or (b).
- (3) Unless otherwise stated, references in this Act to an expulsion order are to an order made under subsection (2)(a), (b) or (c).
- (4) A person falls within this subsection if –
  - (a) the person has arrived in the United Kingdom and is not an EEA entrant and, on or after arrival, the person is refused the grant of immigration permission or the person’s immigration permission is cancelled,
  - (b) the person has arrived in the United Kingdom, is not an EEA entrant, is passing through the United Kingdom, without entering it, en route to another country, is required by the Rules to have transit permission before arrival and does not have such permission (whether or not as a result of its cancellation on or after arrival),
  - (c) the person has entered the United Kingdom, is not an EEA entrant and does not have immigration permission (whether or not the person had such permission on entering the United Kingdom),
  - (d) the person has temporary permission and has breached a condition subject to which the permission was granted,
  - (e) the person has obtained immigration permission wholly or partly by means of deception by that person or by another person,
  - (f) the person has attempted, or is attempting, to obtain immigration permission as described in paragraph (e),
  - (g) an appropriate court (within the meaning of section 40) has recommended under that section the person’s expulsion from the United Kingdom, or
  - (h) 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).
- (5) 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.
- (6) An expulsion order may be made for a limited period or an unlimited period.
- (7) An expulsion order is in force from when it is made until –
  - (a) it is cancelled (see section 43), or
  - (b) if sooner, in the case of an order made for a limited period, it expires.
- (8) 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.
- (9) The making of an expulsion order under subsection (2)(b) is at a time chosen by the Secretary of State.
- (10) Subsection (2)(b) does not create a private right of action in respect of consequences of non-compliance by the Secretary of State.

- (11) The power to make an expulsion order under subsection (2)(a) or (c) and the duty to make an expulsion order under subsection (2)(b) are subject to –
- (a) section 38 (general limits on the making of an expulsion order), and
  - (b) section 41 (particular limits on the making of an expulsion order).

### **38 General 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, or the prohibition by such an order on P’s entry into the United Kingdom, would breach a person’s Convention rights.
- (3) Exception B applies where the removal of P from the United Kingdom in pursuance of an expulsion order, or the prohibition by such an order on P’s entry into the United Kingdom, would breach rights of P under the Community Treaties.
- (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 the Refugee Convention.
- (5) Exception D 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).
- (6) The Secretary of State may by order amend this section so as to –
  - (a) add further exceptions or amend existing exceptions;
  - (b) make consequential amendments to section 43(3)(a).

### **39 Exceptions to the duty to make an expulsion order in case of foreign criminal**

- (1) The exceptions referred to in section 37(2)(b) 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 (c. 41),
  - (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 (c. 33) or an order under paragraph 4(2) of Schedule 1 to that Act,
  - (e) is the subject of a provisional warrant under section 8 of that Act, or
  - (f) is the subject of a warrant under paragraph 5(1)(b) of Schedule 1 to that Act.
- (4) Exception 3 applies where any of the following has effect in respect of the foreign criminal –
  - (a) a hospital order or guardianship order under section 37 of the Mental Health Act 1983 (c. 20),

- (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 (c. 46),
  - (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), or
  - (h) an order or direction under a provision which corresponds to a provision specified in any of paragraphs (a) to (g) and which has effect in relation to Northern Ireland.
- (5) Exception 4 applies where the Secretary of State thinks that the application of section 37(2)(b) in relation to the foreign criminal would contravene the United Kingdom's obligations under the Council of Europe Convention on Trafficking in Human Beings.
- (6) The application of Exception 1, 2, 3 or 4—
- (a) does not prevent the making of an expulsion order under section 37(2)(a) or (c) in relation to the foreign criminal, and
  - (b) in particular, does not prevent the making of an expulsion order under section 37(2)(a) on the ground that the foreign criminal falls within subsection (4)(h) of that section.
- (7) 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 37(4)(h).

#### **40 Power of a court to recommend expulsion**

- (1) An appropriate court may recommend the expulsion of a person ("P") from the United Kingdom if—
- (a) P is not a British citizen,
  - (b) P is convicted of an offence which is punishable with imprisonment, and
  - (c) P is aged 17 or over when P is convicted.
- (2) An "appropriate court" means—
- (a) in England and Wales, and in Northern Ireland, any court which has power to sentence P for the offence and has not committed P to be sentenced or further dealt with for that offence by another court;
  - (b) in Scotland, any court which has power to sentence P for the offence, except a court constituted by a justice of the peace or a court to which P's case has come from a court so constituted, if P is not sent to another court for sentencing or to be further dealt with for that offence.
- (3) An appropriate court must not recommend P's expulsion unless P has been given a notice at least 7 days previously which—
- (a) states that the court has no power to recommend the expulsion of a person who is a British citizen,
  - (b) describes the persons who are British citizens, and
  - (c) states the effect of section 1(3) (a person who claims that a person is a British citizen must prove it).

- (4) The relevant powers of adjournment are to include power to adjourn after convicting a person –
  - (a) for the purpose of enabling a notice to be given to the person under subsection (3), or
  - (b) if such a notice was given to the person less than 7 days previously, for the purpose of enabling the necessary 7 days to elapse.
- (5) “The relevant powers of adjournment” are the powers of adjournment conferred by –
  - (a) section 10(3) of the Magistrates’ Courts Act 1980 (adjournment of trial),
  - (b) section 201 of the Criminal Procedure (Scotland) Act 1995 (c. 46) (power of court to adjourn before sentence), and
  - (c) any corresponding enactment for the time being in force in Northern Ireland.
- (6) For the purposes of subsection (1), a person is to be treated as being aged 17 or over at the time of conviction if, on consideration of any available evidence, the person appears to be aged 17 or over to the appropriate court making or considering a recommendation under this section.
- (7) Despite any rule of practice restricting the matters which ought to be taken into account in dealing with a person who is sentenced to imprisonment, a recommendation under this section may be made in respect of a person who is sentenced to imprisonment for life.
- (8) Where an appropriate court makes or purports to make a recommendation under this section, the validity of the recommendation is not to be called into question except –
  - (a) on an appeal against the recommendation, or
  - (b) on an appeal against the conviction on which it is made.
- (9) A recommendation under this section is to be treated as a sentence for the purpose of any enactment providing an appeal against sentence.

#### **41 Particular limits on the making of an expulsion order**

- (1) An expulsion order may not be made in relation to a person under section 37(2)(a) on the ground that the person falls within subsection (4)(g) of that section (recommendation of expulsion by an appropriate court) while an appeal or further appeal against the recommendation or against the conviction on which it was made –
  - (a) has been instituted and neither withdrawn nor determined, or
  - (b) could be brought.
- (2) For the purposes of subsection (1)(b) an appeal or further appeal is capable of being brought at any time up until –
  - (a) in England and Wales, and Northern Ireland, the expiry of the time limit for bringing the appeal;
  - (b) in Scotland, the expiry of the period of 28 days beginning with the date of the recommendation.
- (3) An expulsion order may not be made in relation to a person under section 37(2)(b) while an appeal or further appeal against the conviction or sentence by reference to which the order is to be made –
  - (a) has been instituted and neither withdrawn nor determined, or

- (b) could be brought.
- (4) For the purposes of subsection (3)(b), 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.
- (5) An expulsion order may not be made under section 37(2)(c) if –
  - (a) the person referred to in that provision as P has left the United Kingdom after the making of the expulsion order in relation to P and more than 8 weeks have elapsed since P's departure, or
  - (b) the expulsion order in relation to P has been cancelled or has expired.

#### **42 Effect of expulsion order on immigration permission**

- (1) When an expulsion order in relation to a person is made, any immigration or transit permission previously granted to the person is automatically cancelled.
- (2) 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.

#### **43 Cancellation of an expulsion order**

- (1) The Secretary of State may cancel an expulsion order in relation to a person.
- (2) The power to cancel, or to refuse to cancel, is exercised by the Secretary of State giving notice to the person.
- (3) But an expulsion order made under section 37(2)(b) in relation to a foreign criminal may be cancelled under subsection (1) only if –
  - (a) the Secretary of State thinks that Exception A, B, C or D mentioned in section 38 applies,
  - (b) Exception 1, 2, 3 or 4 mentioned in section 39 applies, or
  - (c) the application for the cancellation of the order is made while the foreign criminal is outside the United Kingdom.
- (4) An expulsion order made under section 37(2)(c) in relation to a person is cancelled automatically on –
  - (a) the person ceasing to be a member of the family of the person referred to in that provision as P, or
  - (b) the cancellation or expiry of the expulsion order made in relation to the person referred to in that provision as P.

#### *Removal of those subject to expulsion orders*

#### **44 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 Secretary of State may give directions for P's removal to that country.
- (4) 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.
- (5) The directions may only be given to –
  - (a) the captain of the ship, aircraft or train in which P arrived in the United Kingdom,
  - (b) the carrier in relation to that ship, aircraft or train,
  - (c) the owner or agent of any other ship, aircraft or train, or
  - (d) the captain of any ship, aircraft or train which is about to leave the United Kingdom.
- (6) The directions given to a captain of a ship, aircraft or train as described in subsection (5)(a) or (d) must be directions requiring the captain to remove P from the United Kingdom in that ship, aircraft or train.
- (7) The directions given to the carrier in relation to the ship, aircraft or train in which P arrived in the United Kingdom must be –
  - (a) directions requiring the carrier to remove P from the United Kingdom in any ship, aircraft or train which is specified or indicated in the directions and of which the carrier is owner or agent, or
  - (b) directions requiring the carrier to make arrangements for P's removal from the United Kingdom in any ship, aircraft or train specified or indicated in the directions.
- (8) The directions given to the owner or agent of any other ship, aircraft or train must be –
  - (a) directions requiring the owner or agent to remove P from the United Kingdom in accordance with arrangements to be made by the Secretary of State, or
  - (b) directions requiring the owner or agent to make arrangements for P's removal from the United Kingdom in any ship, aircraft or train specified or indicated in the directions.
- (9) The directions may include provision for P to be accompanied by an escort consisting of one or more persons.
- (10) In this section, "the carrier" in relation to the ship, aircraft or train in 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 in that train.
- (11) See also section 48 (no removal etc. where right of in-country appeal).

#### **45 Power to place those being removed on an aircraft etc.**

- (1) This section applies where directions are given under section 44 for the removal of a person ("P") from the United Kingdom.

- (2) P may be placed, under the authority of the Secretary of State, on board any ship, aircraft or train in which P is to be removed in accordance with the directions.

#### **46 Cost of complying with removal directions**

- (1) Subject to subsections (2) and (3), the costs of complying with any directions given under section 44 are to be met by the Secretary of State.
- (2) Where the directions require P to be removed in the ship, aircraft or train in which P arrived in the United Kingdom, the carrier in relation to that ship, aircraft or train must meet the costs of complying with the directions.
- (3) Where the directions include provision for P to be accompanied by an escort, the Secretary of State may require the person to whom the directions are given to bear such costs in connection with the escort (including, in particular, remuneration) as are specified in the directions.
- (4) Subsection (1) does not affect any power of the Secretary of State to recover from P the costs of complying with the directions under section 190 (fees).
- (5) In this section, “the carrier” in relation to the ship, aircraft or train in which P arrived in the United Kingdom has the same meaning as in section 44.

#### *International travel bans*

#### **47 International travel bans**

- (1) A person is “subject to a travel ban” for the purposes of this section if –
  - (a) the person is named by or by virtue of a designated instrument, or is of a description specified in a designated instrument, and
  - (b) a failure to apply subsection (2) or (3) in relation to the person would contravene the United Kingdom’s obligations under a designated instrument.
- (2) When a person becomes subject to a travel ban, any immigration or transit permission previously granted to the person is automatically cancelled.
- (3) Any immigration or transit permission granted to a person while the person is subject to a travel ban is to be treated as if it had never been granted unless, in the case of immigration permission, a grant of such permission to the person is necessary to avoid a breach of a person’s Convention rights.
- (4) For the purposes of this section, 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).

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

#### **48 No removal etc. where right of in-country appeal**

- (1) This section applies where –
- (a) an expulsion order is made in relation to a person (“P”), and
  - (b) P has a right to bring an in-country appeal against the decision (see section 171).
- (2) While the in-country appeal could be brought or is pending –
- (a) P is not required by the expulsion order to leave the United Kingdom,
  - (b) P is not prohibited by that order from arriving in or entering the United Kingdom, and
  - (c) P may not be removed from or required to leave the United Kingdom in accordance with a provision of this Act.
- (3) This section does not prevent any of the following while the in-country appeal could be brought or is pending –
- (a) the detention of P under this Act;
  - (b) the grant of immigration bail to P under Part 5;
  - (c) the giving of directions under section 44 for P’s removal from the United Kingdom;
  - (d) the taking of any other interim or preparatory action in relation to P’s removal.

*Assistance to voluntary leavers and other support*

#### **49 Power to provide assistance in relation to voluntary leavers**

- (1) A person (“P”) is a “voluntary leaver” for the purposes of this section if –
- (a) P falls within subsection (2) or (3),
  - (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.
- (2) P falls within this subsection if P is none of the following –
- (a) a British citizen;
  - (b) a national of an EEA state;
  - (c) a national of Switzerland.
- (3) P falls within this subsection if –
- (a) P is a national of an EEA state (other than the United Kingdom) or a national of Switzerland, and
  - (b) the Secretary of State has reasonable grounds to believe that P is or has been a victim within the meaning of the Council of Europe Convention on Trafficking in Human Beings.
- (4) The Secretary of State may make arrangements to –
- (a) assist voluntary leavers;



- (b) assist individuals to decide whether to become voluntary leavers.
- (5) Those arrangements 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 the person’s family or household) to prepare for, or to assess the possibility of, the person becoming a voluntary leaver.

## 50 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 (whether or not that person is a refugee within the meaning of any international Convention), and
  - (b) “migration” is to be construed accordingly.
- (4) Subsection (1) does not –
  - (a) confer a power to remove a person from the United Kingdom, or

- (b) affect whether a person is entitled or permitted to enter or stay in the United Kingdom.

### *Interpretation*

#### **51 Meaning of “foreign criminal”**

- (1) For the purposes of this Part, “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 (c. 84) (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).

#### **52 Meaning of member of the family of a person**

- (1) For the purposes of this Part, a person (“X”) is a member of the family of a person (“P”) if—

- (a) X is P’s spouse, civil partner, unmarried partner or same sex 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, unmarried partner or same sex partner.
- (2) For the purposes of subsection (1), a person is P’s unmarried partner or same sex partner if –
- (a) the person is living with P in a qualifying relationship,
  - (b) where P is being detained under this Act, 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) For the purposes of subsection (2), “a qualifying relationship” means a relationship similar to marriage or civil partnership which has been subsisting for 2 years or more.
- (4) For the purposes of subsection (2)(c), “the relevant time” means –
- (a) when P left the United Kingdom, or
  - (b) where P was detained under this Act immediately before P left the United Kingdom, when P was detained.
- (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) For the purposes of subsection (5), “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 (c. 36), the Adoption and Children Act 2002 (c. 38) 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).

## PART 5

### POWERS TO DETAIN & IMMIGRATION BAIL

#### *Powers to detain*

#### **53 Persons liable to examination**

- (1) A person who is liable to examination or further examination under section 25 (1)(a) or (b) (examination of those who have arrived in or entered the UK) may be detained under the authority of the Secretary of State until –
- (a) the person’s examination has been completed, and

- (b) all relevant matters have been determined.
- (2) A “relevant matter” is a matter listed in section 25(2) for the purpose of whose determination the person is examined under that section.
- (3) A person who is liable to examination or further examination under section 26(1) (examination of those leaving the UK) may be detained under the authority of the Secretary of State –
  - (a) for not longer than 12 hours, or
  - (b) if sooner, until the person’s examination under that section has been completed.

#### **54 Persons without immigration or transit permission 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 until the Secretary of State decides whether or not to detain the person under another provision of this Act.

#### **55 Persons in relation to whom an expulsion order is or may be made**

- (1) If the Secretary of State thinks that a person is someone in relation to whom an expulsion order may be made, that person may be detained under the authority of the Secretary of State until the Secretary of State decides whether or not to make an expulsion order in relation to that person (see subsection (3)).
- (2) A person who has served a period of imprisonment may, at the end of that period of imprisonment, be detained under the authority of the Secretary of State –
  - (a) while the Secretary of State considers whether there is a duty to make an expulsion order under section 37(2)(b) in relation to the person (duty in the case of foreign criminals), and
  - (b) where the Secretary of State thinks that there is such a duty, until such an expulsion order is made in relation to the person (see subsection (3)).
- (3) 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 –
  - (a) until the person’s departure from the United Kingdom, or
  - (b) if later, until the directions given under section 44 for the person’s removal have been carried out.
- (4) If an expulsion order under section 37(2)(b) is made in relation to a person, the Secretary of State must detain the person under subsection (3) unless, in the circumstances, the Secretary of State thinks it inappropriate.
- (5) If a person is being detained under subsection (1) and a recommendation under section 40 has been made for the person’s expulsion from the United

Kingdom, a court determining an appeal against the recommendation or the conviction on which it was made may direct the person's release from that detention without setting aside the recommendation.

- (6) If a person is being detained under subsection (2), or under subsection (3) pursuant to the duty under subsection (4), a court determining an appeal against the person's conviction or sentence may direct the person's release from that detention.

#### **56 Persons subject to an expulsion order placed on board aircraft etc.**

- (1) This section applies where a person ("P") is placed on board a ship, aircraft or train under section 45(2) (power to place those being removed on an aircraft etc.).
- (2) The captain of the ship, aircraft or train must, if required to do so by the Secretary of State, prevent P from disembarking—
  - (a) in the United Kingdom, or
  - (b) before the directions given under section 44 for P's removal have been carried out.
- (3) For the purpose of preventing disembarkation under subsection (2), the captain may detain P in custody on board the ship, aircraft or train.

#### **57 Persons liable to arrest**

- (1) A designated official at a port or international railway station in England, Wales or Northern Ireland may detain a person if the official reasonably suspects that the person—
  - (a) may be liable to arrest by a constable under section 24(1), (2) or (3) of the Police and Criminal Evidence Act 1984 (c. 60),
  - (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 official who detains a person under subsection (1)—
  - (a) must arrange for a constable to attend as soon as is reasonably practicable,
  - (b) may search the person for, and retain, anything that might be used to assist escape or to cause physical injury to the person or another person,
  - (c) must retain anything found on a search which the official thinks may be evidence of the commission of an offence, and
  - (d) must, when the constable arrives, deliver the person to the constable together with anything retained on a search.
- (3) A person may be detained under subsection (1) for not longer than 3 hours.
- (4) Where a person whom a designated official has detained or attempted to detain under subsection (1) leaves the port or international railway station, a designated official may—
  - (a) pursue the person, and
  - (b) return the person to that port or station.

- (5) For the purposes of this section, in addition to having the meaning given in section 208(1), a “port” also includes a place, in relation to a person, if a designated official reasonably suspects 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*

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

A person liable to detention under this Act (see section 70) who is on board a ship, aircraft or train may be removed from it under the authority of the Secretary of State in order to be so detained.

**59 Place and effect of detention**

- (1) This section applies in relation to detention of a person (“P”) under this Act.
- (2) P may be detained in such places as the Secretary of State may direct (when not detained in accordance with section 54 or 56 on board a ship, aircraft or train).
- (3) P may be taken, in the custody of a constable or of any person acting under the authority of the Secretary of State, to and from a place where P’s presence is required for a purpose connected with the operation of this Act.
- (4) P is to be regarded as being in legal custody at any time when –
  - (a) P is detained under this Act, or
  - (b) P is being taken to or from a place in accordance with subsection (3).
- (5) P’s entry into or presence in the United Kingdom while being detained under this Act is not to be regarded as in breach of any provision of this Act.

**60 Duty to give reasons and to review detention**

- (1) The Secretary of State must give a person detained under this Act a notice stating the reasons for the person’s detention.
- (2) The notice must be given at the time of the person’s initial detention or as soon as is reasonably practicable after that.
- (3) The Secretary of State must review the detention of a person being detained under this Act if the person has been so detained for at least a month.
- (4) The Secretary of State must subsequently review the person’s detention at intervals of not more than a month.
- (5) The Secretary of State must, as soon as is reasonably practicable after reviewing a person’s detention under subsection (3) or (4), give the person a notice stating –
  - (a) the outcome of the review, and
  - (b) where the person continues to be detained, the reasons for the person’s continued detention.

## **61 Recovery of costs of detention, accommodation and maintenance**

- (1) This section applies where a person (“P”) is given either or both of the following notices in a respect of a person (“the entrant”) –
  - (a) a section 122 penalty notice (penalty for carrying undocumented passengers) within the meaning of Part 8 (carriers’ liability);
  - (b) a section 130 penalty notice (penalty for carrying clandestine entrants) within the meaning of that Part.
- (2) P must pay the Secretary of State on demand any costs incurred by the Secretary of State in respect of the custody, accommodation or maintenance of the entrant for any period (not exceeding 14 days) while the entrant was detained under this Act.

### *Immigration bail*

## **62 Power to grant immigration bail**

- (1) The Secretary of State may grant a person immigration bail if the person –
  - (a) is liable to detention, or is being detained, under section 53(1) (detention of those liable to examination under section 25(1)(a) or (b)),  
or
  - (b) is liable to detention, or is being detained, under section 55 (detention of those in relation to whom an expulsion order is or may be made).
- (2) The Tribunal (see section 163) may grant a person immigration bail if –
  - (a) the person is being detained under section 53(1) or 55,
  - (b) at least 7 days have elapsed since the date of that person’s arrival in the United Kingdom, and
  - (c) in a case where the person’s removal from the United Kingdom is imminent and there is no relevant pending appeal, the Secretary of State consents to the grant.
- (3) A “relevant pending appeal” is an appeal brought by the person under section 164 which is pending.
- (4) Immigration bail may be granted subject to one or more of the following 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 residence;
  - (e) a condition requiring the person to appear before the Secretary of State or the Tribunal at a time and place specified;
  - (f) a financial security condition (see section 64);
  - (g) an electronic monitoring condition (see sections 65 and 66).
- (5) References in this Act to bail conditions in the case of a grant of immigration bail are to the conditions subject to which the immigration bail is granted.

- 
- (6) In deciding whether to grant a person immigration bail and if so, whether to grant it subject to one or more conditions, the Secretary of State and the Tribunal must have regard to—
- (a) the likelihood of the person breaching 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, being not conducive to the public good,
  - (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 Tribunal thinks relevant.
- (7) For the purposes of subsection (6)(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 (c. 53) or any corresponding enactment for the time being in force in Northern Ireland.
- (8) If the Secretary of State decides to grant a person immigration bail, the Secretary of State must give the person notice of the decision.
- (9) If the Tribunal decides to grant a person immigration bail, the Tribunal must give the person and the Secretary of State notice of the decision.
- (10) A notice under subsection (8) or (9) must state—
- (a) when the grant of immigration bail commences, and
  - (b) the bail conditions.
- (11) 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.
- (12) Where a person is granted immigration bail, the person is “on immigration bail” for the purposes of this Act from when the grant commences until it ends.
- (13) A grant of immigration bail to a person ends when—
- (a) immigration permission is granted to the person,
  - (b) the person is detained under this Act and is given the notice required under section 60(2), or
  - (c) the person is removed or departs from the United Kingdom.

### **63 Effect of grant of immigration bail**

- (1) A person who is being detained under this Act 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 Act.



- (3) While a person is on immigration bail, any immigration or transit permission which the person has is automatically suspended.
- (4) When that suspension ends, the person reverts to having the immigration or transit permission unless it is not current (whether by reason of the expiry of its period of validity or its cancellation).
- (5) The entry into or presence in the United Kingdom of a person while on immigration bail is not to be regarded as in breach of any provision of this Act.
- (6) But despite subsection (5) –
  - (a) a grant of immigration bail is not to be regarded as a grant of any form of permission, and
  - (b) the entry into or presence in the United Kingdom of a person while on immigration bail is not to be regarded as authorised by reason of the grant of that bail.

#### **64 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) The Secretary of State or the Tribunal may grant immigration bail to a person subject to a financial security condition only if the Secretary of State or the Tribunal thinks it appropriate with a view to ensuring that the person complies with the 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 has breached one or more of the bail conditions; and where that is the case, the Secretary of State may forfeit the money.
- (6) But no money may be forfeited unless whoever provided it has been given an opportunity to make representations to the Secretary of State.

#### **65 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 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) throughout the currency of the arrangements.
- (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 Tribunal.
- (3) The Secretary of State may make regulations about arrangements for electronic monitoring for the purposes of this section.
- (4) 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.
- (5) In addition to the provision which may be made pursuant to section 202(2) (orders, regulations and rules), regulations under subsection (3) may make provision only in relation to specified areas.
- (6) An electronic monitoring condition must comply with regulations under subsection (3).
- (7) 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 Tribunal notice to that effect.

#### **66 Restrictions on imposing electronic monitoring condition**

- (1) Immigration bail may not be granted subject to an electronic monitoring condition if the person is under the age of 18.
- (2) The 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 section 65(7).

#### **67 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 62(4)(c) (a reporting condition), the Secretary of State may make a payment to the person in respect of travelling expenses which the person has incurred or will incur for the purpose of complying with the condition.

#### **68 Power to vary bail conditions**

- (1) Where immigration bail has been granted to a person, the Secretary of State or the Tribunal may vary the conditions (if any) subject to which it is granted by –
  - (a) amending one or more of the bail conditions;
  - (b) cancelling one or more of the bail conditions;
  - (c) imposing one or more of the conditions mentioned in section 62(4).

- (2) It is irrelevant for the purposes of subsection (1) who granted the immigration bail except that—
  - (a) the Secretary of State may not cancel a bail condition imposed by the Tribunal, and
  - (b) the Tribunal may not cancel a bail condition imposed by the Secretary of State.
- (3) The power to vary, or to refuse to vary, under this section is exercised by the Secretary of State or the Tribunal giving notice to the person.

#### **69 Power of the Tribunal to direct detention etc.**

- (1) This section applies where—
  - (a) the Tribunal grants immigration bail to a person,
  - (b) the person has brought an appeal under section 164 which is pending, and
  - (c) the person is arrested under section [] (which will provide for the arrest of a person breaching etc. bail conditions).
- (2) The person must be brought as soon as is reasonably practicable before the Tribunal.
- (3) The Tribunal may direct—
  - (a) that the person be detained under the authority of the Secretary of State where there is power to do so under this Part, or
  - (b) that the grant of immigration bail continues either on the same bail conditions or on varied conditions (the Tribunal having exercised its powers under section 68(1) (power to vary bail conditions)).

#### *Interpretation*

#### **70 Meaning of liable to detention under this Act**

References in this Act to a person being liable to detention under this Act or a provision of this Act 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 6**

## DETAINED PERSONS AND REMOVAL CENTRES

*Escort of detained persons***71 Escort arrangements**

- (1) The Secretary of State may make arrangements (“escort arrangements”) for the exercise of any of the following functions (“escort functions”)—
  - (a) the delivery of detained persons to premises in which they may lawfully be detained;
  - (b) the delivery of persons from any such premises for the purposes of their removal from the United Kingdom in accordance with directions given under section 44 (removal of those subject to an expulsion order);
  - (c) the custody of detained persons who are temporarily outside such premises;
  - (d) the custody of detained persons held on the premises of the Tribunal (see section 163) 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.
- (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 who are certified under—
    - (i) section 89 of the Criminal Justice Act 1991 (c. 53) (prisoner custody officers: England and Wales),
    - (ii) section 114 of the Criminal Justice and Public Order Act 1994 (c. 33) (prisoner custody officers: Scotland), or
    - (iii) section 122 of that Act (prisoner custody officers: Northern Ireland),
 to perform escort functions within the meaning of that section.
- (6) In this Act—
 

“detained person” means—

  - (a) a person who is being detained under this Act, 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;

“detainee custody officer” means a person in respect of whom a certificate of authorisation under section 91 (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 (c. 53);
- (b) in relation to Scotland, has the meaning given by section 114 of the Criminal Justice and Public Order Act 1994 (c. 33);
- (c) in relation to Northern Ireland, has the meaning given by section 122 of that Act.

## **72 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.

## **73 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 (in accordance with regulations made by the Secretary of State) any detained person for whose delivery or custody the officer is responsible in accordance with the arrangements, 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 article in the possession of such a person.
- (2) The power conferred by subsection (1)(b) does not authorise the officer to require a person to remove any clothing other than an outer coat, jacket or glove.
- (3) 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.
- (4) The Secretary of State may make regulations with respect to the exercise by detainee custody officers, prison officers and prisoner custody officers of their duty under subsection (3)(d).
- (5) The powers conferred by subsection (1), and the powers arising by virtue of subsection (3), include power to use reasonable force where necessary.

**74 Breaches of discipline**

- (1) This section applies if a detained person for whose delivery or custody a detainee custody officer, prison officer or prisoner custody officer has been responsible in accordance with escort arrangements is delivered to a prison.
- (2) The detained person is to be treated, for the purposes of such prison rules as relate to disciplinary offences, as if the detained person had been in the custody of the governor or controller of the prison at all times while the officer was so responsible.
- (3) This section does not authorise the punishment of a detained person under prison rules in respect of any act or omission for which the person has already been punished by a court.
- (4) In this section “prison rules” means –
  - (a) rules made under section 47 of the Prison Act 1952 (c. 52),
  - (b) rules made under section 19 of the Prisons (Scotland) Act 1989 (c. 45), or
  - (c) rules made under section 13 of the Prison Act (Northern Ireland) 1953 (c. 18 (N.I.)).

**75 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 secure that the function is exercised by a detainee custody officer, prison officer or prisoner custody officer acting in accordance with escort arrangements.
- (3) In this section “transfer direction” means –
  - (a) in England and Wales, a transfer direction given under section 48 of the Mental Health Act 1983 (c. 20) (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.*

**76 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 are to be treated for

the purposes of provision made by or under this Part as two separate centres or facilities.

- (3) While the contract is in force, the removal centre or short-term holding 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 (c. 41);
  - (b) the Conveyancing and Law of Property Act 1892 (c. 13);
  - (c) section 146 of the Law of Property Act 1925 (c. 20) (restrictions on and relief against forfeiture);
  - (d) section 19(1), (2) and (3) of the Landlord and Tenant Act 1927 (c. 36) (covenants not to assign etc.);
  - (e) Part 2 of the Landlord and Tenant Act 1954 (c. 56) (security of tenure);
  - (f) sections 4 to 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73) (irritancy clauses);
  - (g) the Agricultural Holdings Act 1986 (c. 5);
  - (h) the Landlord and Tenant Act 1988 (c. 26);
  - (i) the Agricultural Holdings (Scotland) Act 1991 (c. 55);
  - (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.
- (6) In this Part –
  - “contracted out”, in relation to a removal centre or short-term holding facility, means that a contract under this section 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;
  - “directly managed”, in relation to a removal centre or short-term holding facility, means that the centre or facility is not contracted out;
  - “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 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;
  - “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.

## 77 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 has such functions as may be conferred on the contract monitor by removal centre regulations.
- (4) A contract monitor appointed for a short-term holding facility has such functions as may be conferred on the contract monitor by regulations under section 95 (short-term holding facilities).
- (5) A contract monitor has the status of a Crown servant.
- (6) 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.
- (7) 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.
- (8) In this Part “removal centre regulations” means regulations under section 82 (removal centre regulations).

#### **78 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 certified prisoner custody officers who are provided by that person.
- (2) In this Part “certified prisoner custody officer” means a prisoner custody officer certified to perform custodial duties under—
  - (a) section 89 of the Criminal Justice Act 1991 (c. 53) (prisoner custody officers: England and Wales), or
  - (b) section 114 of the Criminal Justice and Public Order Act 1994 (c. 33) (prisoner custody officers: Scotland).

#### *Management of removal centres*

#### **79 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—
  - (a) enquire into a disciplinary charge laid against a detained person,
  - (b) conduct the hearing of such a charge, or
  - (c) make, remit or mitigate an award in respect of such a charge.



- (5) 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).

## **80 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.

## **81 Independent Monitoring Boards and inspections**

- (1) The Secretary of State must appoint an Independent Monitoring Board for each removal centre.
- (2) The Independent Monitoring Board has such functions as may be conferred on it by removal centre regulations.
- (3) Removal centre regulations must include provision –

- (a) about visits to the removal centre by members of the Independent Monitoring Board;
  - (b) for the Independent Monitoring Board to hear complaints made by persons detained in the centre;
  - (c) requiring the Independent Monitoring Board to make reports to the Secretary of State.
- (4) Each member of the Independent Monitoring Board may –
- (a) enter the removal centre at any time, and
  - (b) have free access to every part of the removal centre and to every person detained there.

#### *Removal centre regulations*

### **82 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.

#### *Custody of detained persons*

### **83 Custodial functions at removal centres**

- (1) Custodial functions may be discharged at a removal centre only by –
  - (a) a detainee custody officer authorised under section 91 (authorisation of detainee custody officers) to exercise such functions,
  - (b) a certified prisoner custody officer exercising such functions in relation to the removal centre as a result of a contract entered into under section 78 (contracted out functions), or
  - (c) a prison officer, or a certified prisoner custody officer, exercising such functions in relation to the removal centre in accordance with arrangements under this section.
- (2) The Secretary of State may confer custodial functions at a removal centre on –
  - (a) prison officers, or
  - (b) certified prisoner custody officers.
- (3) A prison officer acting under such arrangements has all the powers, authority, protection and privileges of a constable.

### **84 Persons exercising custodial functions**

- (1) A detainee custody officer, prison officer or prisoner custody officer exercising custodial functions at a removal centre has power –
  - (a) to search (in accordance with regulations made by the Secretary of State) any detained person in relation to whom the officer is exercising such functions, 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 article in the possession of such a person.
- (2) The power conferred by subsection (1)(b) does not authorise the officer to require a person to remove any clothing other than an outer coat, jacket or glove.
- (3) 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 detained person in relation to whom the officer is exercising custodial functions at a removal centre,
  - (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.
- (4) The powers conferred by subsection (1), and the powers arising by virtue of subsection (3), include power to use reasonable force where necessary.

#### **85 Functions of a custodial nature at short-term holding facilities**

- (1) A detainee custody officer, prison officer or certified prisoner custody officer may exercise functions of a custodial nature at a short-term holding facility (whether or not the officer is authorised to exercise custodial functions at a removal centre).
- (2) When acting under this section the officer has the same powers and duties in relation to the facility and persons detained there as the officer would have if the facility were a removal centre.

#### *Discipline at removal centres etc.*

#### **86 Medical examinations**

- (1) This section applies if –
  - (a) an authorisation by the manager of a removal 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 an order under subsection (4).
- (2) A detainee custody officer, prison officer or prisoner custody officer exercising custodial functions at the centre may require the detained person to submit to a medical examination there.
- (3) The medical examination must be conducted in accordance with removal centre regulations.
- (4) The Secretary of State may by order specify any disease that the Secretary of State thinks might, if a person detained in a removal centre were to suffer from it, endanger the health of others there.
- (5) A detained person commits an offence if, without reasonable excuse, the person fails to submit to a medical examination.

- (6) A person guilty of an offence under subsection (5) 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.

### **87 Assisting detained person to escape**

- (1) A person commits an offence if the person assists a detained person in escaping, or attempting to escape, from—
- (a) a removal centre, or
  - (b) a short-term holding facility.
- (2) A person commits an offence if, with a view to facilitating the escape of a detained person from a removal centre or short-term holding facility, the person—
- (a) brings anything into the centre or facility or to a detained person,
  - (b) sends anything (by post or otherwise) into the centre or facility or to a person detained there, or
  - (c) places anything anywhere outside the centre or facility, with a view to it coming into the possession of a person detained there.
- (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.

### **88 Introduction of alcohol**

- (1) A person commits an offence if—
- (a) contrary to removal centre regulations, the person brings or attempts to bring alcohol into a removal centre or to a detained person, or
  - (b) the person places alcohol anywhere outside a removal centre, with a view to it coming into the possession of a person detained there.
- (2) A relevant person commits an offence if, contrary to removal centre regulations, the person allows alcohol to be sold or used in the centre.
- (3) In subsection (2), “relevant 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 a removal centre.

- (4) In this section, “alcohol” has the same meaning as in the Licensing Act 2003 (c. 17).
- (5) 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.

## **89 Introduction of other articles**

- (1) A person commits an offence if—
  - (a) contrary to removal centre regulations, the person brings or attempts to bring anything into or out of a removal centre or to a detained person, or
  - (b) the person places anything anywhere outside a removal centre, with a view to it coming into the possession of a detained person.
- (2) But anything which would constitute an offence under section 87 or 88 does not constitute an offence under this section.
- (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.

## **90 Notice of penalties**

- (1) In the case of a contracted out removal centre, the contractor must cause a notice setting out the penalty to which a person guilty of an offence under section 87, 88 or 89 is liable to be fixed outside the centre in a conspicuous place.
- (2) In the case of any other removal centre, the Secretary of State must cause a notice of the kind mentioned in subsection (1) to be fixed outside the centre in a conspicuous place.
- (3) In the case of a contracted out short-term holding facility, the contractor must cause a notice setting out the penalty to which a person guilty of an offence under section 87 is liable to be fixed outside the facility in a conspicuous place.
- (4) In the case of any other short-term holding facility, the Secretary of State must cause a notice of the kind mentioned in subsection (3) to be fixed outside the facility in a conspicuous place.

### *Detainee custody officers*

## **91 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 not issue a certificate of authorisation unless satisfied that the applicant—
  - (a) is a fit and proper person to exercise the functions to be authorised, and
  - (b) has received training to such standard as the Secretary of State thinks appropriate for the exercise of 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 a fit and proper person to exercise escort functions or custodial 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 a fit and proper person to exercise escort 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 that a detainee custody officer is not a fit and proper person to exercise custodial functions at that centre, 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.

## **92 Obtaining authorisation by false pretences**

- (1) A person (“P”) commits an offence if, for the purpose of obtaining a certificate of authorisation under section 91 for P or another person, P—
  - (a) makes a statement which P knows to be false in a material particular, or
  - (b) 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.

### *Supplementary*

## **93 Assault or obstruction of detainee custody officers etc.**

- (1) A person commits an offence if the person assaults a detainee custody officer, prison officer or prisoner custody officer who is—
  - (a) acting in accordance with escort arrangements,
  - (b) exercising custodial functions at a removal centre, or

- (c) exercising functions of a custodial nature at a short-term holding facility.
- (2) A person commits an offence if the person resists or intentionally obstructs a detainee custody officer, prison officer or prisoner custody officer who is –
  - (a) acting in accordance with escort arrangements,
  - (b) exercising custodial functions at a removal centre, or
  - (c) exercising functions of a custodial nature at a short-term holding facility.
- (3) For the purposes of this section, a detainee custody officer, prison officer or prisoner custody officer is not to be regarded as acting in accordance with escort arrangements at a time when the officer is not readily identifiable as such an officer (whether by means of a uniform or badge or otherwise).
- (4) 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 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 (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **94 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 the constable’s office.

#### **95 Short-term holding facilities**

- (1) The Secretary of State may by regulations apply any provision made by or under this Part, with or without modifications, in relation to short-term holding facilities.
- (2) The Secretary of State may make regulations for the regulation and management of short-term holding facilities.

#### *Interpretation*

#### **96 Interpretation**

In this Part “prescribed” means prescribed by regulations made by the Secretary of State.

**PART 7**

## OFFENCES

*Offences relating to immigration permission***97 Entering the UK without immigration permission**

- (1) A person (“P”) who is neither a British citizen nor an EEA entrant commits an offence if –
  - (a) P knowingly enters the United Kingdom knowing that P does not have immigration permission, or
  - (b) P seeks to enter the United Kingdom knowing that P does not have immigration permission.
- (2) In proceedings for an offence under this section –
  - (a) if P is shown to have entered the United Kingdom within the period of 6 months ending with the day before the proceedings commenced, it is for the defence to prove that P had immigration permission;
  - (b) in all other cases, it is for the prosecution to prove that P did not have immigration permission.
- (3) For the purposes of proceedings for an offence under this section, a travel document purporting to have been stamped by a designated official on a particular date for the purpose of granting immigration permission is to be presumed to have been duly stamped by a designated official on that date and for that purpose (unless the contrary is proved).
- (4) In subsection (3), a reference to stamping a document includes fixing a sticker or other attachment on it or otherwise marking it.
- (5) See section 193 (defence for a refugee) for a defence to an offence under this section.
- (6) The extended time limit for prosecutions, provided for by section 195, applies 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.

**98 Staying in the UK without immigration permission**

- (1) A person (“P”) who is neither a British citizen nor an EEA entrant commits an offence if –
  - (a) immigration permission granted to P is cancelled or its period of validity expires,
  - (b) P stays in the United Kingdom after the cancellation or expiry without having immigration permission, and
  - (c) P does so knowing that P does not have immigration permission.



- (2) Subsection (1) does not apply where the immigration permission granted to P is cancelled as a result of section 42(1) (automatic cancellation of immigration permission if expulsion order made).
- (3) An offence under this section –
  - (a) is committed on the day when P first knows that P does not have immigration permission, and
  - (b) continues to be committed throughout any period thereafter during which P is in the United Kingdom without having immigration permission.
- (4) But a person is not to be prosecuted more than once under this section in respect of the same cancellation or expiry.
- (5) 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.

#### **99 Breach of conditions of immigration permission**

- (1) A person who is neither a British citizen nor an EEA entrant commits an offence if, having been granted temporary permission, the person knowingly breaches a condition subject to which the permission was granted.
- (2) An offence under this section –
  - (a) is committed on the day when the person first knows of the breach, and
  - (b) continues to be committed throughout any period thereafter during which the breach continues.
- (3) But a person is not to be prosecuted more than once under this section in respect of the same breach.
- (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.

#### **100 Failure to comply with regulations under section 10(2)**

- (1) A person commits an offence if, without reasonable excuse, the person fails to comply with a requirement of regulations under section 10(2) (regulations as to condition of temporary permission requiring registration with the police).
- (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.

*Offences relating to examination etc.*

**101 Refusal to be examined or provide information etc.**

- (1) A person (“P”) commits an offence if, without reasonable excuse –
  - (a) P refuses or fails to submit to examination under section 25(1) or 26(1), or
  - (b) P refuses or fails to provide information or produce documents which are in P’s possession or control and which P is required to provide or produce under section 28.
- (2) Subsection (1) applies whether the refusal or failure takes place inside or outside the United Kingdom.
- (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 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.

**102 Failure to submit to medical examination or provide medical reports**

- (1) A person commits an offence if, without reasonable excuse, the person fails to comply with a requirement imposed under section 25(3) to submit to a medical examination or to provide a medical report.
- (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.

**103 Failure to take steps required in relation to designated control areas**

- (1) A person (“P”) who is the owner or agent of a ship, aircraft or train commits an offence if, without reasonable excuse, P fails to take steps P is required to take under section 22(2) (requirement to take steps in relation to designated control areas for embarkation or disembarkation).
- (2) A person (“P”) concerned with the management of a port or international railway station commits an offence if, without reasonable excuse, P fails to take

steps P is required to take under section 22(4) (requirement to take steps in relation to designated control areas).

- (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.

*Entering the UK without a passport etc.*

**104 Entering the UK without passport etc.**

- (1) A person (“P”) commits an offence if P does not have with P at a permission interview—
  - (a) a current travel document in relation to P, or
  - (b) a current travel document in relation to a child with whom P claims to be travelling or living.
- (2) A person does not commit an offence under paragraph (a) or (b) of subsection (1) if—
  - (a) the interview takes place after the person has entered the United Kingdom, and
  - (b) within the period of 3 days beginning with the date of the interview, the person provides to a designated official or the Secretary of State a document of the kind specified in the paragraph in question of that subsection.
- (3) It is a defence for a person charged with an offence under subsection (1)(a) to prove that the person—
  - (a) is an EEA entrant,
  - (b) has a reasonable excuse for not being in possession of a document of the kind specified in subsection (1)(a), or
  - (c) travelled to the United Kingdom without, at any stage since setting out on the journey, having possession of a current travel document in relation to the person.
- (4) It is also a defence for a person charged with an offence under subsection (1)(a)—
  - (a) to produce a travel document which is false, and
  - (b) to prove that the person used it as a travel document in relation to the person for all purposes in connection with the journey to the United Kingdom.
- (5) It is a defence for a person charged with an offence under subsection (1)(b) in respect of a child to prove that—
  - (a) the child is an EEA entrant,
  - (b) the person has a reasonable excuse for not being in possession of a document of the kind specified in subsection (1)(b), or

- (c) the person travelled to the United Kingdom with the child without, at any stage since setting out on the journey, having a current travel document in relation to the child.
- (6) It is also a defence for a person charged with an offence under subsection (1)(b) in respect of a child –
  - (a) to produce a travel document which is false, and
  - (b) to prove that it was used as a travel document in relation to the child for all purposes in connection with the child’s journey to the United Kingdom.
- (7) Where the charge for an offence under this section relates to an interview which takes place after the defendant has entered the United Kingdom –
  - (a) subsections (3)(b) and (5)(b) do not apply, but
  - (b) it is a defence for the defendant to prove that the defendant has a reasonable excuse for not providing a document in accordance with subsection (2).
- (8) For the purposes of this section, a person is to be presumed not to have a document if the person fails to produce it to a designated official on request.
- (9) 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.

#### 105 Section 104: interpretation etc.

- (1) This section applies for the purposes of section 104.
- (2) “Permission interview” means an interview with a designated official at which a person seeks the grant of immigration permission (whether or not by means of a protection application (see section 205)).
- (3) The fact that a document was deliberately destroyed or disposed of is not a reasonable excuse for not being in possession of it or providing it in accordance with section 104(2), 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.
- (4) In subsection (3)(a), “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.

- (5) A document which purports to be, or is designed to look like, a travel document, is a false travel document.
- (6) A travel document is a false travel document if and in so far as it is used –
  - (a) outside the period for which it is expressed to be valid,
  - (b) contrary to provision for its use made by the person issuing it, or
  - (c) by or in respect of a person other than the one to or for whom it was issued.
- (7) “Child” means a person who is under the age of 18.

*Assisting illegal entry etc.*

**106 Assisting unlawful immigration to relevant European countries**

- (1) A person commits an offence if the person –
  - (a) does an act which facilitates the commission of a breach of immigration law by an individual who is not a relevant European citizen,
  - (b) knows, or has reasonable grounds for believing, that the act facilitates the commission of a breach of immigration law by the individual, and
  - (c) knows, or has reasonable grounds for believing, that the individual is not a relevant European citizen.
- (2) Subsection (1) applies to things done whether inside or outside the United Kingdom.
- (3) In this section, “immigration law” means a law which –
  - (a) has effect in a relevant European country, and
  - (b) controls, in respect of some or all persons who are not nationals of that country, entitlement to enter the country, pass through it or be in it.
- (4) A document issued by the government of a relevant European country certifying a matter of law in that country –
  - (a) is to be admissible in proceedings for an offence under this section, and
  - (b) is to be conclusive as to the matter certified.
- (5) In this section –

“relevant European citizen” means a citizen of the European Union or a national of a listed Schengen Acquis State, and

“relevant European country” means a member State or a listed Schengen Acquis State.
- (6) In subsection (5), “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 106 List of Schengen Acquis States”).
- (7) An order under subsection (6) 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.
- (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.

### **107 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 an individual, and
  - (b) knows, or has reasonable grounds for believing, that the individual is a protection applicant.
- (2) In this section, “protection applicant” means a person who intends to make a protection application (see section 205).
- (3) Subsection (1) applies to things 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.

### **108 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.

#### **109 Section 108: meaning of “exploit”**

- (1) For the purposes of section 108, a person is exploited if condition A, B, C or D is met.
- (2) Condition A is met if the person is the victim of behaviour that contravenes Article 4 of the Human Rights Convention (slavery and forced labour).
- (3) Condition B is met if the person is encouraged, required or expected to do anything as a result of which that person or another person would commit an offence under –
- (a) the Human Organ Transplants Act 1989 (c. 31),
  - (b) section 32 or 33 of the Human Tissue Act 2004 (c. 30), or
  - (c) Part 1 of the Human Tissue (Scotland) Act 2006 (asp 4).
- (4) Condition C is met if the person is subjected to force, threats or deception designed to induce that person to –
- (a) provide services of any kind,
  - (b) provide another person with benefits of any kind, or
  - (c) enable another person to acquire benefits of any kind.
- (5) Condition D is met if the person is requested or induced to undertake any activity, having been chosen as the subject of the request or inducement on the grounds that –
- (a) that person is mentally or physically ill or disabled, is young or has a family relationship with a person, and
  - (b) a person without the illness, disability, youth or family relationship would be likely to refuse the request or resist the inducement.

#### *Offences relating to expulsion orders & removal*

#### **110 Breach of expulsion order**

- (1) A person commits an offence if the person knowingly arrives in, enters, or stays in, the United Kingdom in breach of an expulsion order.

- (2) See section 193 (defence for a refugee) for a defence to an offence under this section.
- (3) The extended time limit for prosecutions, provided for by section 195, applies to 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.

### **111 Assisting arrival, entry or stay in the UK**

- (1) This section applies where—
  - (a) an expulsion order has been made in relation to a person (“X”),
  - (b) that order is in force, and
  - (c) X is a citizen of the European Union.
- (2) A person commits an offence if the person—
  - (a) knows, or has reasonable grounds for believing, that an expulsion order has been made in relation to X and is in force,
  - (b) does an act which assists X to arrive in, enter, or stay in, the United Kingdom, and
  - (c) knows, or has reasonable grounds for believing, that the act assists X to arrive in, enter, or stay in, the United Kingdom.
- (3) This section applies to things done whether inside or outside the United Kingdom.
- (4) 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.

### **112 Failure by carriers etc. to comply with removal directions**

- (1) A person to whom directions are given under section 44 (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.

### **113 Disembarking unlawfully**

- (1) A person who is not a British citizen commits an offence if the person disembarks in the United Kingdom from a ship, aircraft or train having been placed on board under section 45(2) with a view to the person's removal from the United Kingdom.
- (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.

#### *Offences relating to detention & immigration bail*

### **114 Absconding from detention under section 57**

- (1) A person commits an offence if the person absconds from detention under section 57 (detention of persons liable to arrest).
- (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 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.

### **115 Failure by captain to prevent disembarkation**

- (1) A person (“P”) who is the captain of a ship, aircraft or train commits an offence if P knowingly permits a person to disembark in the United Kingdom when required under section 54 or 56 (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.

**116 Breach of conditions of immigration bail**

- (1) A person commits an offence if, without reasonable excuse, the person while on immigration bail breaches a bail condition.
- (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.

*Deception and false documents etc.*

**117 Deception**

- (1) A person (“P”) who is neither a British citizen nor an EEA entrant commits an offence if, wholly or partly by means of deception by P—
  - (a) immigration permission is granted to P, or
  - (b) P seeks to obtain the grant of immigration permission to P.
- (2) A person (“P”) who is neither a British citizen nor an EEA entrant commits an offence if, with the intention of committing an offence under subsection (1), P does anything in preparation for the commission of an offence under that subsection.
- (3) A person (“P”) commits an offence if P—
  - (a) makes, or causes to be made, a return, statement or other representation to the Secretary of State or to a person exercising a function conferred by or by virtue of this Act, and
  - (b) knows it to be false or does not believe it to be true.
- (4) A person (“P”) who is not a British citizen commits an offence if, wholly or partly by means of deception by P—
  - (a) P secures, or
  - (b) P seeks to secure,
 the avoidance, postponement or revocation of enforcement action against P.
- (5) In subsection (4), “enforcement action”, in relation to P, means—
  - (a) the making of an expulsion order in relation to P,
  - (b) the giving of directions under section 44 for P’s removal from the United Kingdom, or
  - (c) the removal of P from the United Kingdom in consequence of such an expulsion order or such directions.
- (6) See section 193 (defence for a refugee) for a defence to an offence under this section.
- (7) The extended time limit for prosecutions, provided for by section 195, applies to an offence under subsection (3).
- (8) A person guilty of an offence under subsection (1), (2) or (4) 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.
- (9) A person guilty of an offence under subsection (3) 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.

#### **118 Altering documents and use or possession of false documents**

- (1) A person commits an offence if, without lawful authority, the person –
- (a) alters an identity document or other document issued or made under or for the purposes of this Act,
  - (b) uses for the purposes of this Act an identity document or other 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, an identity document or other document which that person knows, or has reasonable cause to believe, to be false.
- (2) See section 193 (defence for a refugee) for a defence to an offence under this section.
- (3) The extended time limit for prosecutions, provided for by section 195, applies to 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.

#### **119 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 a protection application (see section 205).
- (4) In this section, “false registration card” means a document which purports to be, or is designed to look like, a registration card.
- (5) The Secretary of State may by order amend this section so as to—
- (a) amend the definition of “registration card” in subsection (3);
  - (b) make consequential amendments.
- (6) 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.
- (7) 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.

## **120 Possession of immigration stamp**

- (1) A person commits an offence if, without reasonable excuse, the person has possession of an immigration stamp or a replica immigration stamp.
- (2) In this section—

- (a) “immigration stamp” means a device designed for the purpose of stamping documents in the exercise of an immigration function,
  - (b) “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 an immigration function, and
  - (c) “immigration function” means a function conferred on a designated official or the Secretary of State by or by virtue of this Act.
- (3) In subsection (2), a reference to stamping a document includes fixing a sticker or other attachment on it or otherwise marking it.
- (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.

*Obstruction and assault*

**121 Obstructing, resisting or assaulting officials etc.**

- (1) A person (“P”) commits an offence if, without reasonable excuse, P resists or obstructs a person exercising a function conferred by or by virtue of this Act.
- (2) A person who assaults a person exercising a function conferred by or by virtue of this Act commits an offence.
- (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 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.
- (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 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.

**PART 8**

## CARRIERS' LIABILITY

*Penalty for carrying undocumented passengers***122 Penalty for carrying undocumented passengers**

- (1) The Secretary of State may, by notice given to the owner of a ship, aircraft or specified train, require the owner to pay a penalty in respect of each undocumented passenger who arrives in the United Kingdom by that ship, aircraft or train.
- (2) “Undocumented passenger” means a person (“P”) who, in the course of an examination under section 25(1)(a) (examination on arrival in the UK) –
  - (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.
- (3) “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.
- (4) References in this Part to a section 122 penalty notice are to a notice under this section.

**123 Amount of penalty and period for payment**

- (1) The amount of a penalty imposed by a section 122 penalty notice must be that specified in regulations made by the Secretary of State.
- (2) Without prejudice to the generality of section 202(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 122 penalty notice must be paid to the Secretary of State before the end of –
  - (a) the period of 28 days beginning with the day on which the owner is given the notice in respect of the penalty, or
  - (b) such longer period as may be provided for by regulations under section 128 (notices and procedure etc.).
- (4) In calculating the period within which a penalty must be paid, no account is to be taken of –
  - (a) any period during which the Secretary of State is in receipt of a notice of objection under section 125 in respect of the penalty but has not given notice of the decision on the objection, or
  - (b) any period during which an appeal under section 126 in respect of the penalty has been brought but has not been determined or abandoned.

#### **124 Defence**

- (1) An owner of a ship, aircraft or specified train is not liable to the imposition of a penalty under section 122 in respect of a person (“P”) if the owner has a defence under this section.
- (2) It is a defence for an owner to show that P produced proper documentation in relation to P to the owner, or the owner’s employee or agent, when embarking for the journey to the United Kingdom.
- (3) For the purpose of subsection (2), an owner is entitled to regard a document –
  - (a) as being what it purports to be unless its falsity is reasonably apparent, and
  - (b) as relating to P unless it is reasonably apparent that it does not.
- (4) The Secretary of State may give a section 122 penalty notice to an owner without having established whether subsection (1) applies.

#### **125 Notice of objection**

- (1) A person (“P”) who is given a section 122 penalty notice may give a notice of objection to the Secretary of State.
- (2) P may object only on the grounds that P is not liable to the imposition of a penalty.
- (3) The Secretary of State must consider the notice of objection and –
  - (a) cancel the penalty notice, or
  - (b) confirm the penalty notice.
- (4) The Secretary of State must give P notice of the decision under subsection (3).

#### **126 Appeal**

- (1) A person (“P”) who is given a section 122 penalty notice may appeal to –
  - (a) a county court, in England and Wales or Northern Ireland, or
  - (b) the sheriff, in Scotland.
- (2) An appeal may be brought only if –
  - (a) P has given a notice of objection under section 125 in respect of the penalty, and
  - (b) the Secretary of State has given notice of the decision on the objection.
- (3) An appeal may be brought only on the grounds that P is not liable to the imposition of a penalty.
- (4) The court or sheriff may –
  - (a) cancel the penalty notice, or
  - (b) confirm the penalty notice.

#### **127 Enforcement**

- (1) Where a penalty under section 122 has not been paid before the end of the period mentioned in section 123(3), it may be recovered as a debt due to the Secretary of State.

- (2) In proceedings for the enforcement of a penalty under section 122, no question may be raised as to –
- (a) liability to the imposition of the penalty, or
  - (b) the amount of the penalty.

### 128 Notices and procedure etc.

- (1) The Secretary of State may by regulations make provision about –
- (a) the form and content of notices under section 122 or 125;
  - (b) the procedure in relation to such a notice;
  - (c) the means by which such a notice or a document in proceedings under section 127 may be given or served (including the giving of a notice to, or the serving of a document 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 under section 122 may or must be paid;
  - (f) the circumstances in which the time limit for payment in section 123(3)(a) may or must be extended;
  - (g) the procedure for notifying the recipient of a section 122 penalty notice of any such extension.
- (2) Subsection (1)(a) is subject to section 199(1) (requirement for notices to be in writing).

#### *Penalty for carrying clandestine entrants*

### 129 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, ship, aircraft or train,
  - (b) passes, or attempts to pass, through immigration control concealed in a vehicle, or
  - (c) arrives in the United Kingdom on a ship, aircraft or train, having embarked concealed in a vehicle 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 205).
- (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.

### 130 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 134, 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 130 penalty notice are to a notice under this section.

### **131 Amount of penalty and period for payment**

- (1) The amount of a penalty imposed by a section 130 penalty notice must not exceed the maximum penalty specified in regulations made by the Secretary of State.
- (2) A penalty imposed by a section 130 penalty notice must be paid to the Secretary of State before the end of –
  - (a) the period of 28 days beginning with the day on which the responsible person is given the notice in respect of the penalty, or
  - (b) such longer period as may be provided for by regulations under section 140 (notices and procedure etc.).
- (3) In calculating the period within which a penalty must be paid, no account is to be taken of –
  - (a) any period during which the Secretary of State is in receipt of a notice of objection under section 137 in respect of the penalty but has not given notice of the decision on the objection, or
  - (b) any period during which an appeal under section 138 in respect of the penalty has been brought but has not been determined or abandoned.

### **132 Persons responsible for clandestine entrants**

- (1) Where a clandestine entrant falls within section 129(1)(a), each of the following is responsible for the entrant for the purposes of this Part –
  - (a) if the transporter is a vehicle other than a detached trailer, the owner, hirer and driver;
  - (b) if the transporter is a detached trailer, the owner, hirer and trailer operator;
  - (c) if the transporter is a ship or aircraft, the owner and captain;
  - (d) if the transporter is a train, the train operator.
- (2) Where a clandestine entrant falls within section 129(1)(b) or (c), each of the following is responsible for the entrant for the purposes of this Part –
  - (a) if the transporter is a vehicle other than a detached trailer, the owner, hirer and driver;
  - (b) if the transporter is a detached trailer, the owner, hirer and trailer operator.
- (3) 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 130 on more than one of the persons responsible for the entrant;
  - (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.
- (4) 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 130 on the person in each capacity.
- (5) In this section –
- “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);
  - “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;
  - “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 stop before arrival, at the train’s point of departure for the United Kingdom.

### 133 Liability of employer for penalty imposed on employee

- (1) This section applies where a penalty under section 130 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 130 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 130 is also imposed on the employer in the capacity as owner or hirer of the vehicle).
- (4) The provisions of this Part about notification, objection or appeal apply accordingly in relation to the employer.

### 134 Defences

- (1) A person (“P”) is not liable to the imposition of a penalty under section 130 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 130 penalty notice to a responsible person without having established whether subsection (1) applies.

### **135 Code of practice: level of penalty under section 130**

- (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 130.
- (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 130.
- (4) Before issuing or reissuing the code, the Secretary of State must lay a draft before Parliament.

### **136 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 134 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.

### **137 Notice of objection**

- (1) A person (“P”) who is given a section 130 penalty notice may give a notice of objection to the Secretary of State.

- (2) P may object only on either or both of the following grounds –
  - (a) that P is not liable to the imposition of a penalty;
  - (b) that the amount of the penalty is excessive.
- (3) The Secretary of State must consider the notice of objection and –
  - (a) cancel the penalty notice,
  - (b) reduce the penalty by varying the penalty notice,
  - (c) increase the penalty by varying the penalty notice, or
  - (d) confirm the penalty notice.
- (4) When considering the notice of objection the Secretary of State must have regard to –
  - (a) the code of practice under section 135 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 136 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.
- (5) The Secretary of State must give P notice of the decision under subsection (3).

### **138 Appeal**

- (1) A person (“P”) who is given a section 130 penalty notice may appeal to –
  - (a) a county court, in England and Wales or Northern Ireland, or
  - (b) the sheriff, in Scotland.
- (2) An appeal may be brought only if –
  - (a) P has given a notice of objection under section 137 in respect of the penalty, and
  - (b) the Secretary of State has given notice of the decision on the objection.
- (3) An appeal may be brought only on either or both of the following grounds –
  - (a) that P is not liable to the imposition of a penalty;
  - (b) that the amount of the penalty is excessive.
- (4) 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.
- (5) The court or sheriff in determining an appeal must have regard to –
  - (a) the code of practice under section 135 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 136 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).

- (6) An appeal may be brought whether or not the penalty has been increased or reduced under section 137.

### **139 Enforcement**

- (1) Where a penalty under section 130 has not been paid before the end of the period mentioned in section 131(2), it may be recovered as a debt due to the Secretary of State.
- (2) In proceedings for the enforcement of a penalty under section 130, no question may be raised as to—
  - (a) liability to the imposition of the penalty, or
  - (b) the amount of the penalty.

### **140 Notices and procedure etc.**

- (1) The Secretary of State may by regulations make provision about—
  - (a) the form and content of notices under section 130 or 137;
  - (b) the procedure in relation to such a notice;
  - (c) the means by which such a notice or a document in proceedings under section 139 may be given or served (including the giving of a notice to, or the serving of a document 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 under section 130 may or must be paid;
  - (f) the circumstances in which the time limit for payment in section 131(2)(a) may or must be extended;
  - (g) the procedure for notifying the recipient of a section 130 penalty notice of any such extension.
- (2) Subsection (1)(a) is subject to section 199(1) (requirement for notices to be in writing).

#### *Clandestine entrants: detention and sale of transporters*

### **141 Power to detain until penalty notice is given etc.**

- (1) The Secretary of State may detain a vehicle, small ship, small aircraft, hovercraft or train pending—
  - (a) the giving of a section 130 penalty notice in respect of it, or
  - (b) a decision whether to detain it under section 142 (power to detain after penalty notice is given).
- (2) The Secretary of State must release a transporter detained under this section if—
  - (a) alternative security is given, and
  - (b) the Secretary of State thinks that the security is satisfactory.
- (3) The power under this section may not be exercised—
  - (a) for longer than is necessary in the circumstances of the case, or

- (b) 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.

#### **142 Power to detain after penalty notice is given**

- (1) If a section 130 penalty notice has been given in respect of a vehicle, 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) any connected expenses.
- (2) The power under this section may not be exercised if –
  - (a) alternative security is given, and
  - (b) the Secretary of State thinks that the security is satisfactory.
- (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 130 penalty notice is given to the owner or hirer of the vehicle.

#### **143 Power to detain in default of payment of penalty**

- (1) This section applies where a person (“P”) to whom a section 130 penalty notice is given fails to pay the penalty before the end of the period mentioned in section 131(2).
- (2) The Secretary of State may make arrangements for the detention of any vehicle, 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) any connected expenses.

#### **144 Supplementary provisions about detention**

- (1) If a transporter is detained under section 141, 142 or 143 the owner, consignor or any other 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 141, 142 or 143 is lawful even if it is later established that the section 130 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 141, 142 or 143 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.

#### **145 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 142 or 143—
  - (a) the person to whom the section 130 penalty notice was given;
  - (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) The court or sheriff may release a transporter detained under section 142 if the court or sheriff thinks that—
  - (a) satisfactory security has been tendered in place of the transporter for the payment of the penalty alleged to be due and any connected expenses, or
  - (b) there is a significant doubt as to whether the person on whom the penalty was imposed was liable to its imposition.
- (4) The court or sheriff may release a transporter detained under section 143 if the court or sheriff thinks that the detention was unlawful.
- (5) On an application by the owner, the court or sheriff may release a transporter detained under section 142 or 143 if—
  - (a) a section 130 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.

#### **146 Power of Secretary of State to sell transporter**

- (1) The Secretary of State may sell a transporter detained under section 142 or 143 if—
  - (a) the transporter is not released under section 145, and
  - (b) the penalty and any connected expenses are not paid before the later of—
    - (i) the end of the period mentioned in section 131(2), and

- (ii) the end of the period mentioned in subsection (2).
- (2) That period is—
    - (a) in the case of a transporter detained under section 142, 84 days beginning with the day on which the detention began, or
    - (b) in the case of a transporter detained under section 143, the period specified in regulations made by the Secretary of State.
  - (3) The power of sale under this section may not be exercised while—
    - (a) a notice of objection under section 137 in respect of the penalty could be given,
    - (b) such a notice has been given, but the Secretary of State has not given notice of the decision on the objection,
    - (c) an appeal under section 138 in respect of the penalty could be brought, or
    - (d) such an appeal has been brought but has not been determined or abandoned.
  - (4) The power of sale under this section lapses if it is not exercised within the period specified in regulations made by the Secretary of State.

#### **147 Permission to sell transporter**

- (1) The sale of a transporter under section 146 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 any connected expenses 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 130 penalty notice was given, and
  - (c) any other matter which appears to the court or sheriff to be relevant.

#### **148 Sale of transporter**

- (1) If the court or sheriff gives permission to sell a transporter, the Secretary of State must secure 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 (c. 38) (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 subsection (2) of section 147 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.

*Authority-to-carry schemes*

**149 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 nationality and the possession of specified documents.
- (4) The regulations may, in particular—
- (a) make provision similar to a provision of sections 122 to 128 (penalty for carrying undocumented passengers);
  - (b) do anything which may be done under a provision of any of those sections;
  - (c) amend any of those sections.

- (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*

**150 Transfer of proceedings**

- (1) This section applies in relation to proceedings before a county court or the sheriff under—
- (a) section 126 (section 122 penalty notice: appeal),
  - (b) section 138 (section 130 penalty notice: appeal),
  - (c) section 145 (application for release of detained transporter), or
  - (d) section 147 (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.

**151 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;
- “hirer”, in relation to a vehicle, means any person who is hiring the vehicle from another person;
- “owner” includes—
- (a) in relation to a ship, aircraft or train, the agent or operator, and
  - (b) in relation to a transporter which is the subject of a hire-purchase agreement, the person in possession of it under that agreement;
- “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;
- “specified train” means a train engaged on such an international service as may be specified in regulations made by the Secretary of State;
- “transporter” means a vehicle, ship, aircraft or train together with—
- (a) its equipment, and
  - (b) any stores for use in connection with its operation;
- “vehicle” includes a trailer, semi-trailer, caravan or other thing which is designed or adapted to be towed by another vehicle.
- (3) 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.

- (4) 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 9

### ILLEGAL WORKERS

#### *Meaning of "illegal worker" etc.*

#### **152 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 (4).
- (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 it is defective.
- (3) For the purposes of subsection (2)(c), immigration permission in relation to a person is defective if –
  - (a) it is not valid in relation to the person (see section 208(2)), or
  - (b) it was obtained by deception.
- (4) 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.
- (5) 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*

#### **153 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 –

- (a) the period of 28 days beginning with the day on which the employer is given the notice in respect of the penalty, or
  - (b) such longer period as may be provided for by regulations under section 159 (notices and procedure etc.).
- (5) In calculating the period within which a penalty must be paid, no account is to be taken of –
  - (a) any period during which the Secretary of State is in receipt of a notice of objection under section 156 in respect of the penalty but has not given notice of the decision on the objection, or
  - (b) any period during which an appeal under section 157 in respect of the penalty has been brought but has not been determined or abandoned.
- (6) References in this Part to a section 153 penalty notice are to a notice under this section.

#### **154 Defence**

- (1) An employer is not liable to the imposition of a penalty under section 153 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 prescribed requirements in relation to the employment.
- (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 153.
- (4) The Secretary of State may give a section 153 penalty notice to an employer without having established whether subsection (1) applies.
- (5) In this section “prescribed” means prescribed by regulations made by the Secretary of State.
- (6) 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.

#### **155 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 153.
- (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 153.

- (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.

#### **156 Notice of objection**

- (1) A person (“P”) who is given a section 153 penalty notice may give a notice of objection to the Secretary of State.
- (2) P may object only on either or both of the following grounds –
  - (a) that P is not liable to the imposition of a penalty;
  - (b) that the amount of the penalty is excessive.
- (3) The Secretary of State must consider the notice of objection and –
  - (a) cancel the penalty notice,
  - (b) reduce the penalty by varying the penalty notice,
  - (c) increase the penalty by varying the penalty notice, or
  - (d) confirm the penalty notice.
- (4) When considering the notice of objection the Secretary of State must have regard to –
  - (a) the code of practice under section 155 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.
- (5) For the purpose of subsection (4), “the relevant time” is to be construed in accordance with section 155(4).
- (6) The Secretary of State must give P notice of the decision under subsection (3).

#### **157 Appeal**

- (1) A person (“P”) who is given a section 153 penalty notice 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.
- (2) An appeal may be brought only if –
  - (a) P has given a notice of objection under section 156 in respect of the penalty, and
  - (b) the Secretary of State has given notice of the decision on the objection.
- (3) An appeal may be brought only on either or both of the following grounds –
  - (a) that P is not liable to the imposition of a penalty;
  - (b) that the amount of the penalty is excessive.
- (4) 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.
- (5) The court or sheriff in determining an appeal must have regard to—
  - (a) the code of practice under section 155 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).
- (6) For the purpose of subsection (5), “the relevant time” is to be construed in accordance with section 155(4).
- (7) An appeal may be brought whether or not the penalty has been increased or reduced under section 156.

### **158 Enforcement**

- (1) Where a penalty under section 153 has not been paid before the end of the period mentioned in subsection (4) of that section, it may be recovered as a debt due to the Secretary of State.
- (2) In proceedings for the enforcement of a penalty under section 153, no question may be raised as to—
  - (a) liability to the imposition of the penalty, or
  - (b) the amount of the penalty.

### **159 Notices and procedure etc.**

- (1) The Secretary of State may by regulations make provision about—
  - (a) the form and content of notices under section 153 or 156;
  - (b) the procedure in relation to such a notice;
  - (c) the means by which such a notice or a document in proceedings under section 158 may be given or served (including the giving of a notice to, or the serving of a document 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 under section 153 may or must be paid;
  - (f) the circumstances in which the time limit for payment in section 153(4)(a) may or must be extended;
  - (g) the procedure for notifying the recipient of a section 153 penalty notice of any such extension;
  - (h) the time limit for bringing an appeal under section 157.
- (2) Subsection (1)(a) is subject to section 199(1) (requirement for notices to be in writing).

### *Offence where employ illegal workers*

### **160 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) 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*

### **161 Transfer of proceedings**

- (1) This section applies in relation to proceedings before a county court or the sheriff under section 157 (section 153 penalty notice: appeal).
- (2) A county court may transfer the proceedings to the High Court.
- (3) The sheriff may transfer the proceedings to the Court of Session.

### **162 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 153 and while avoiding the commission of an offence under section 160, the employer also avoids contravening—
  - (a) the Race Relations Act 1976 (c. 74), or
  - (b) the Race Relations (Northern Ireland) Order 1997 (S.I. 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 10

### APPEALS

#### *The Asylum and Immigration Tribunal*

#### **163 The Tribunal**

- (1) There is to continue to be a tribunal known as the Asylum and Immigration Tribunal.
- (2) Schedule 1 (which makes provision about the Asylum and Immigration Tribunal) has effect.
- (3) A reference in this Act to the Tribunal is a reference to the Asylum and Immigration Tribunal.

#### *Right of appeal against an immigration decision*

#### **164 Right of appeal**

- (1) A person in respect of whom an immigration decision is made may appeal to the Tribunal against the decision.
- (2) In this Act, an “immigration decision” means—
  - (a) a refusal of an individual grant of protection permission on a protection application, other than a refusal of refugee permission,
  - (b) a refusal of an individual grant of refugee permission on a protection application,
  - (c) a refusal of an individual grant of immigration permission on a family life application,
  - (d) a refusal of an individual grant of immigration permission on an application other than a protection application or a family life application,
  - (e) the cancellation of immigration permission, other than refugee permission, under section 14 (power to cancel),
  - (f) the cancellation of refugee permission under section 14 (power to cancel),
  - (g) the making of an expulsion order, or
  - (h) a refusal to cancel an expulsion order.
- (3) For the purposes of this Act—
  - (a) an “in-country appeal” means an appeal under this section which a person brings while the person is in the United Kingdom;
  - (b) an “out-of-country appeal” means an appeal under this section which a person brings while the person is outside the United Kingdom.



- (4) For the purposes of sections 165 to 171, a person is to be treated as not having immigration permission if the person has immigration permission only by virtue of section 12(2) or 15(2) (continuation of permission).
- (5) The right of appeal under this section is subject to the limitations and exceptions in sections 165 to 181.

#### **165 Refusal of protection permission other than refugee permission**

- (1) This section applies in relation to the immigration decision referred to in section 164(2)(a) (refusal of protection permission on protection application other than refusal of refugee permission).
- (2) If that decision is made in respect of a person (“P”) –
  - (a) P may bring an in-country appeal 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 against the decision.

#### **166 Refusal of refugee permission**

- (1) This section applies in relation to the immigration decision referred to in section 164(2)(b) (refusal of refugee permission on protection application).
- (2) If that decision is made in respect of a person (“P”) –
  - (a) P may bring an in-country appeal against the decision;
  - (b) P may not bring an out-of-country appeal against the decision.

#### **167 Refusal of family life application**

- (1) This section applies in relation to the immigration decision referred to in section 164(2)(c) (refusal of immigration permission on family life application).
- (2) If that decision is made in respect of a person (“P”) –
  - (a) P may bring an in-country appeal against the decision only if –
    - (i) P is in the United Kingdom when the decision is made, and
    - (ii) the result of the decision is that P does not have immigration permission;
  - (b) P may bring an out-of-country appeal against the decision.

#### **168 Refusal of immigration permission on other application**

- (1) This section applies in relation to the immigration decision referred to in section 164(2)(d) (refusal of immigration permission on application other than 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 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 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 not bring an out-of-country appeal against the decision.

### **169 Cancellation of immigration permission other than refugee permission**

- (1) This section applies in relation to the immigration decision referred to in section 164(2)(e) (cancellation of immigration permission other than refugee permission).
- (2) If that decision is made in respect of a person (“P”) –
  - (a) P may bring an in-country appeal against the decision only if –
    - (i) the cancelled permission was not obtained wholly or partly by means of deception by P,
    - (ii) it was cancelled on P’s arrival in the United Kingdom, and
    - (iii) where the cancelled permission was temporary permission, P is not seeking to enter the United Kingdom for a purpose other than that for which the cancelled permission was granted;
  - (b) P may bring an out-of-country appeal against the decision.

### **170 Cancellation of refugee permission**

- (1) This section applies in relation to the immigration decision referred to in section 164(2)(f) (cancellation of refugee permission).
- (2) If that decision is made in respect of a person (“P”) –
  - (a) P may bring an in-country appeal 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 against the decision.

### **171 Making of an expulsion order**

- (1) This section applies in relation to the immigration decision referred to in section 164(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 against the decision only if –
    - (i) the expulsion order is a relevant expulsion order, and
    - (ii) when the order was made, P was in the United Kingdom and had immigration permission not obtained wholly or partly by means of deception by P;
  - (b) P may not bring an out-of-country appeal against the decision.
- (3) A “relevant expulsion order” means an expulsion order other than –
  - (a) an order made under section 37(2)(a) on the ground that the person falls within section 37(4)(d) (breach of condition of permission),
  - (b) an order made under section 37(2)(b) (duty to make expulsion order in relation to foreign criminals), or
  - (c) an order made under section 37(2)(c) on the ground that the person is a member of a family of a person in relation to whom an order which falls within paragraph (a) or (b) above is or has been made.

### **172 Refusal to cancel an expulsion order**

- (1) This section applies in relation to the immigration decision referred to in section 164(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 against the decision;
  - (b) P may bring an out-of-country appeal against the decision.

### **173 Case where person has in-country and out-of-country right of appeal**

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

### **174 Grounds of appeal**

- (1) An appeal under section 164 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) For the purposes of subsection (1), a decision which is not in accordance with the law is to be regarded as including a decision where removing the appellant from, and requiring the appellant to leave, the United Kingdom in consequence of the decision would not be in accordance with the law.

*Other limitations and exceptions to right of appeal*

### **175 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 164(2)(d) (refusal of immigration permission on application other than protection application or family life application);
  - (b) the decision referred to in section 164(2)(e) (cancellation of immigration permission other than refugee permission).
- (2) P may not bring an appeal under section 164 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.

**176 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 or a family life application, and
  - (c) one or more of the immigration decisions mentioned in subsection (2) have been made on the application and there is no pending appeal against any of those decisions, or the application has been withdrawn.
- (2) The immigration decisions referred to in subsection (1)(c) are –
  - (a) the decision referred to in section 164(2)(a) (refusal of protection permission on protection application other than refusal of refugee permission);
  - (b) the decision referred to in section 164(2)(b) (refusal of refugee permission on protection application);
  - (c) the decision referred to in section 164(2)(c) (refusal of immigration permission on family life application).
- (3) 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 has already considered, or
  - (b) an application based on the submissions would, when taken together with the material relating to P's case that the Secretary of State has already considered, have no realistic prospect of success.
- (4) 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 an application for an individual grant of immigration permission to P, and
  - (b) accordingly, there is no right of appeal under this Act against any decision made in relation to them.

**177 Certification of clearly unfounded protection or family life application**

- (1) This section applies if any of the following immigration decisions is made in respect of a person (“P”) –
  - (a) the decision referred to in section 164(2)(a) (refusal of protection permission on protection application other than refusal of refugee permission);
  - (b) the decision referred to in section 164(2)(b) (refusal of refugee permission on protection application);
  - (c) the decision referred to in section 164(2)(c) (refusal of immigration permission on family life application).

- (2) P may not bring an in-country appeal against the decision if the Secretary of State certifies that the relevant application is clearly unfounded.
- (3) The Secretary of State must certify the 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 (c. 41),
  - (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 (c. 33) or an order under paragraph 4(2) of Schedule 1 to that Act,
  - (e) is the subject of a provisional warrant under section 8 of that Act, or
  - (f) is the subject of a warrant under paragraph 5(1)(b) of Schedule 1 to that Act.

#### **178 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.

### **179 Certification of late protection or family life application**

- (1) This section applies if any of the following immigration decisions is made in respect of a person (“P”)—
  - (a) the decision referred to in section 164(2)(a) (refusal of protection permission on protection application other than refusal of refugee permission);
  - (b) the decision referred to in section 164(2)(b) (refusal of refugee permission on protection application);
  - (c) the decision referred to in section 164(2)(c) (refusal of immigration permission on family life application).
- (2) P may not bring an in-country appeal against the decision if the Secretary of State certifies that—
  - (a) P was given a notice under section 192 (requirement to state reasons for being permitted to be in the UK etc.),
  - (b) the application on which the decision was made relied on a matter which should have been (but was not) raised in a statement made under subsection (2) of that section in response to the notice, and
  - (c) the Secretary of State thinks that there is no good reason for the matter not having been raised in a statement under that subsection in response to the notice.
- (3) P may not bring an in-country appeal against the decision (“the new decision”) if the Secretary of State certifies that—
  - (a) P was notified of a right to an in-country appeal against an immigration decision (“the old decision”),
  - (b) the application on which the new decision was made relied on a matter 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 matter 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.

### **180 Certification where decision relied upon classified information**

- (1) An appeal under section 164 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 lapses.

### **181 Certification that exclusion conducive to public good**

- (1) This section applies where a person is outside the United Kingdom when –
  - (a) the decision referred to in section 164(2)(e) (cancellation of immigration permission other than refugee permission) is made in respect of the person, or
  - (b) the decision referred to in section 164(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 164 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 lapses.

#### *Determination of appeal*

### **182 Matters to be considered**

- (1) An appeal under section 164 against an immigration decision is to be treated by the 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 192(2) and any matter arising after the date of the decision) which it thinks relevant to the decision.
- (3) But subsection (4) applies where the decision referred to in section 164(2)(d) (refusal of immigration permission on application other than protection application or family life application) is 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 is genuine or valid, 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”.

**183 Decision on appeal**

- (1) On an appeal under section 164, the Tribunal must determine any matter raised as a ground of appeal (whether or not by virtue of section 182(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 was not in accordance with the law (including the Rules).
- (3) In so far as subsection (2) does not apply, the Tribunal must dismiss the appeal.
- (4) For the purposes of subsection (2), if the Tribunal thinks that removing the appellant from, and requiring the appellant to leave, the United Kingdom in consequence of a decision would not be in accordance with the law, it must regard that decision as not 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 satisfy the requirements of the Rules for such a grant.

*Practice and procedure***184 Procedure rules**

- (1) The Lord Chancellor may make rules (“procedure rules”)—
  - (a) regulating the exercise of the right of appeal to the Tribunal under section 164;
  - (b) with respect to applications to the Tribunal relating to its powers under Part 5 (immigration bail etc.) and matters arising out of such applications;
  - (c) prescribing procedure to be followed in connection with proceedings on such an appeal or application (including in relation to costs or expenses).
- (2) In making procedure rules, the Lord Chancellor must aim to ensure—
  - (a) that the rules are designed to ensure that proceedings before the Tribunal are handled as fairly, quickly and efficiently as possible, and
  - (b) that the rules, where appropriate, confer on members of the Tribunal responsibility for ensuring that proceedings before the Tribunal are handled as fairly, quickly and efficiently as possible.
- (3) Procedure rules may, in particular—
  - (a) confer discretion on the Tribunal (including discretion to decide the procedure to be followed) or on a member of the Tribunal;
  - (b) confer discretion on another person;
  - (c) confer ancillary powers on the Tribunal or a member of the Tribunal;
  - (d) include provision in the form of presumptions;
  - (e) apply (with or without modifications) an enactment;
  - (f) apply (with or without modifications) a provision made by—
    - (i) a practice direction (within the meaning of the Civil Procedure Act 1997 (c. 12)), or
    - (ii) a direction under section 23 of the Tribunals, Courts and Enforcement Act 2007 (c. 15).



- (4) Procedure rules may, instead of providing for a particular matter, refer to provision made or to be made about that matter by directions under section 186.

#### **185 Offence where fail to comply with rule requiring attendance**

- (1) A person commits an offence if, without reasonable excuse, the person fails to comply with a requirement imposed in accordance with rules under section 184 to attend before the Tribunal –
  - (a) to give evidence, or
  - (b) to produce a document.
- (2) 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.

#### **186 Practice directions**

- (1) Directions as to the practice to be followed by the Tribunal –
  - (a) may be given by the President of the Tribunal, and
  - (b) may be given by the Senior President of Tribunals.
- (2) A direction under this section may, in particular, require the Tribunal to treat a specified decision of the Tribunal as authoritative in respect of a particular matter.
- (3) The President of the Tribunal may not give directions under this section without –
  - (a) the approval of the Senior President of Tribunals, and
  - (b) the approval of the Lord Chancellor.
- (4) The Senior President of Tribunals may not give directions under this section without the approval of the Lord Chancellor.
- (5) Subsections (3)(b) and (4) do not apply to directions to the extent that they consist of guidance about any of the following –
  - (a) the application or interpretation of the law;
  - (b) the making of decisions by members of the Tribunal.
- (6) Subsections (3)(b) and (4) do not apply to directions to the extent that they consist of criteria for determining which members of the Tribunal may be chosen to decide particular categories of matter; but the directions may, to that extent, be given only after consulting the Lord Chancellor.

#### **187 Forged document: 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 164 is a forgery, and
  - (b) that disclosure to that party of a matter relating to the detection of the forgery would be contrary to the public interest.
- (2) The 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).

*Interpretation***188 Meaning of “pending appeal”**

- (1) This section applies for the purposes of this Act.
- (2) An appeal under section 164 is pending during the period –
  - (a) beginning when it is instituted, and
  - (b) ending when it is finally determined, withdrawn or abandoned (or when it lapses under section 180 or 181 (public interest etc.)).
- (3) An appeal under section 164 is not finally determined for the purposes of subsection (2)(b) until the Tribunal has given the parties to the appeal notice of its decision on the appeal.
- (4) An appeal under section 164 is to be treated as abandoned for the purposes of subsection (2)(b) 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) the appeal is an out-of-country appeal and 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 164(2)(b) (refusal of refugee permission on protection application), or
  - (b) the immigration decision referred to in section 164(2)(f) (cancellation of refugee permission).
- (6) Rules under section 184 may enable or require the Tribunal to treat an appeal as abandoned for the purposes of subsection (2)(b) in specified circumstances.

**PART 11**

## GENERAL SUPPLEMENTARY PROVISIONS

*Children***189 Duty regarding the welfare of children**

- (1) The Secretary of State must make arrangements for ensuring that –
  - (a) any function of the Secretary of State in relation to immigration or nationality, and any function in relation to immigration conferred by or by virtue of this Act on a designated official, is 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 made by the Secretary of State in the discharge of any function of the Secretary of State in relation to immigration or nationality are provided having regard to that need.
- (2) “Children” means persons who are under the age of 18.

*Fees*

**190 Fees**

- (1) The Secretary of State may by order provide for fees to be charged in respect of applications, services or processes in connection with immigration or nationality.
- (2) The amount of any fee to be charged must be specified in an order under this section.
- (3) The amount 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 which is intended to exceed the costs of determining the application, providing the service or undertaking the process in question.
- (5) An amount specified in reliance upon subsection (4) may reflect one or more of the following—
  - (a) the costs incurred, or to be incurred, in determining the application, providing the service or undertaking the process in question in the circumstances in relation to which the fee is charged and in other circumstances;
  - (b) the costs incurred, or to be incurred, in connection with any other matter for which a fee may be charged by virtue of this section;
  - (c) the costs incurred, or to be incurred, in connection with the exercise of any other function in connection with immigration or nationality;
  - (d) such other costs as the Secretary of State thinks appropriate.
- (6) References in subsection (5) to costs to be incurred for any purpose include references to costs that the Secretary of State thinks are likely to be incurred for that purpose over such period as the Secretary of State thinks appropriate.
- (7) An order under this section—
  - (a) may provide for exceptions to a requirement to pay a fee;
  - (b) may confer a discretion to reduce, waive or refund all or part of a fee;
  - (c) may make provision about when a fee may or must be paid;
  - (d) may make provision about the manner of payment;
  - (e) may make provision about the consequences of failure to pay a fee.
- (8) An order making provision under subsection (7)(c) may, in particular, provide that a fee chargeable in respect of a person's removal from the United Kingdom under Part 4 (expulsion orders etc.) is payable only if the person seeks to re-enter the United Kingdom and in such a case must be paid before arrival in the United Kingdom.
- (9) References in this section to anything in connection with immigration or nationality include a reference to anything in connection with an enactment (including an enactment of a jurisdiction outside the United Kingdom) that relates wholly or partly to immigration or nationality.
- (10) References in this section to “costs” are to costs of the Secretary of State or of any other person.

**191 Fees: supplemental**

- (1) An order under section 190 may be made only with the consent of the Treasury.
- (2) A fee under section 190 may relate to something done outside the United Kingdom.
- (3) Fees payable by virtue of section 190 may be recovered as a debt due to the Secretary of State.
- (4) Section 190 is without prejudice to—
  - (a) section 1 of the Consular Fees Act 1980 (c. 23) (fees for consular acts etc.),
  - (b) section 102 of the Finance (No. 2) Act 1987 (c. 51) (government fees and charges), and
  - (c) any other power to charge a fee.

*Procedure***192 Requirement to state reasons and 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 expulsion order is made in relation to P.
- (2) The Secretary of State may, by notice given to P, require P to state—
  - (a) P’s reasons for wishing to enter or stay in the United Kingdom,
  - (b) the grounds on which P thinks P should be permitted to enter or stay in the United Kingdom, and
  - (c) the grounds on which P thinks that P should not be removed from or required to leave the United Kingdom.
- (3) The notice must state the consequences under section 179 (no right to an in-country appeal where late protection or family life application) of failing to state the matters required under subsection (2).
- (4) A statement under subsection (2) need not repeat reasons or grounds set out in the application mentioned in subsection (1)(a).

*General provision relating to offences***193 Defence for a refugee**

- (1) This section applies to—
  - (a) an offence under Part 1 of the Forgery and Counterfeiting Act 1981 (c. 45) (forgery etc.),
  - (b) an offence under section 25(1) or (5) of the Identity Cards Act 2006 (c. 15) (false identity document),
  - (c) an offence under section 97 of this Act (entering the UK without immigration permission),
  - (d) an offence under section 110 (breach of expulsion order),
  - (e) an offence under section 117 (deception),
  - (f) an offence under section 118 (altering documents etc.), and

- (g) an offence of attempting to commit an offence mentioned in paragraph (a), (b) or (e).
- (2) In Scotland, this section also applies to –
  - (a) the common law offence of fraud,
  - (b) the common law offence of uttering a forged document, and
  - (c) an offence of attempting to commit an offence mentioned in paragraph (a) or (b).
- (3) It is a defence for a refugee (“R”) 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 reasonably practicable after arriving in the United Kingdom (see section 205).
- (4) If, in coming from the country where R’s life or freedom was threatened, R stopped in another country outside the United Kingdom, subsection (3) applies only if R shows that R could not reasonably have expected to be given protection under the Refugee Convention in that other country.
- (5) A refugee who makes a protection application is not entitled to the defence under subsection (3) in relation to an offence committed by the refugee after making the application.
- (6) If the Secretary of State has refused to grant refugee permission to a person (“P”) claiming to have a defence under subsection (3), P is to be taken not to be a refugee, unless –
  - (a) sufficient evidence is adduced to raise an issue as to whether P is a refugee, and
  - (b) the contrary is not proved beyond a reasonable doubt.
- (7) The Secretary of State may by order amend subsection (1) or (2) so as to add, vary or omit a reference to an offence.
- (8) But the Secretary of State must consult the Scottish Ministers before making an order under subsection (7) which makes provision having effect in Scotland.
- (9) In this section, “refugee” has the same meaning as it has for the purposes of the Refugee Convention.

**194 Commission of certain offences by director etc.**

- (1) This section applies in relation to an offence under –
  - (a) section 106 (assisting unlawful immigration to relevant European countries), or
  - (b) section 160 (employment of illegal workers).
- (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 160 (employment of illegal workers).

#### **195 Extended time limit for prosecutions**

- (1) This section applies in relation to an offence under—
  - (a) section 97 (entering the UK without immigration permission),
  - (b) section 110 (breach of expulsion order),
  - (c) section 117(3) (false statements etc.), or
  - (d) section 118 (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” is 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) Subsection (3) of section 136 of the Criminal Procedure (Scotland) Act 1995 (c. 46) (date on which proceedings are deemed commenced) has effect for the purposes of subsection (3) as it has effect for the purposes of that section.

#### **196 Place of commission of offence**

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.

#### **197 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 under this Act.

#### **198 Transitory provision: imprisonment on conviction in England and Wales**

- (1) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44) (limit on magistrates’ courts powers to impose imprisonment), the reference to 12 months in each of the following provisions, in relation to conviction in England and Wales, is to be read as a reference to 6 months –
  - (a) section 87(3) (assisting detained person to escape);
  - (b) section 104(9) (entering the UK without passport etc.);
  - (c) section 106(8) (assisting unlawful immigration to relevant European countries);
  - (d) section 107(5) (assisting protection applicant to enter the UK);
  - (e) section 108(5) (trafficking people for exploitation);
  - (f) section 111(4) (assisting arrival, entry or stay in the UK);
  - (g) section 117(8) (deception);
  - (h) section 119(6) and (7) (falsifying or altering etc. a registration card);
  - (i) section 120(4) (possession of immigration stamp);
  - (j) section 160(3) (employment of illegal workers).

- (2) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44) (alteration of penalties for summary offences), the reference to 51 weeks in each of the following provisions is to be read as a reference to 6 months –
- (a) section 30(3) (failure to comply with hotel registration);
  - (b) section 86(6) (medical examinations);
  - (c) section 88(5) (alcohol);
  - (d) section 93(4) (assault or obstruction of detainee custody officer etc.);
  - (e) section 97(7) (entering the UK without immigration permission);
  - (f) section 98(5) (staying in the UK without immigration permission);
  - (g) section 99(4) (breach of conditions of immigration permission);
  - (h) section 100(2) (failure to comply with regulations under section 10(2));
  - (i) section 101(3) (refusal to be examined or provide information etc.);
  - (j) section 102(2) (failure to submit to medical examination etc.);
  - (k) section 103(3) (failure to take steps required in relation to designated control areas);
  - (l) section 110(4) (breach of expulsion order);
  - (m) section 112(2) (failure by carriers etc. to comply with removal directions);
  - (n) section 113(2) (disembarking unlawfully);
  - (o) section 114(2) (absconding from detention under section 57);
  - (p) section 115(2) (failure by captain to prevent disembarkation);
  - (q) section 116(2) (breach of conditions of immigration bail);
  - (r) section 117(9) (deception);
  - (s) section 118(4) (altering documents etc.);
  - (t) section 121(3) and (4) (obstructing, resisting or assaulting officials etc.).

*Notices and directions etc.*

### 199 Notices and directions

- (1) A reference in this Act to the giving of a notice (however expressed) is a reference to the giving of a notice in writing.
- (2) A reference in this Act to directing or giving a direction (however expressed) is a reference to the giving of a direction in writing.
- (3) Any power conferred by this Act to direct or give a direction includes power to amend or cancel the direction.

### 200 Giving of notices

- (1) Where this Act refers to the giving of a notice (however expressed) to a person (“P”), this section applies in relation to the giving of the notice.
- (2) But it does not apply in relation to the giving of a notice under –
  - (a) Part 8 (carriers’ liability), or
  - (b) Part 9 (illegal workers).
- (3) The notice may be given –
  - (a) by hand to P or P’s representative;
  - (b) by sending it by post to the appropriate address.



- (4) The “appropriate address” means—
  - (a) an address provided by P or P’s representative for correspondence, or
  - (b) where no address has been so provided—
    - (i) the last known or usual place of abode of P or P’s representative, or
    - (ii) the last known or usual place of business of P or P’s representative.
- (5) For the purposes of subsection (3)(a), the notice may be given—
  - (a) where P or P’s representative is a body corporate, by being given to the secretary or clerk of that body;
  - (b) where P or P’s representative is a partnership, by being given to a partner in the partnership or a person having the control or management of the partnership business.
- (6) Where P is under the age of 18 and does not have a representative, any of the following may be treated for the purposes of this section as P’s representative—
  - (a) P’s parent,
  - (b) P’s guardian, or
  - (c) another adult who for the time being takes responsibility for P.
- (7) Where—
  - (a) P’s whereabouts are not known,
  - (b) there is no appropriate address, or the appropriate address is defective, false or no longer in use by P, 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.
- (8) Where a notice is deemed to have given under subsection (7), and P is subsequently located, P must be given, as soon as is reasonably practicable—
  - (a) a copy of the notice (in accordance with subsection (3)), and
  - (b) details of when and how it was deemed to have been given under subsection (7).

## 201 Proof of documents

- (1) A document—
  - (a) purporting to be an expulsion order made by the Secretary of State and to be signed by or on behalf of the Secretary of State, or
  - (b) purporting to be a 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,is to be received in evidence and, 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—
  - (a) an expulsion order made by the Secretary of State, or
  - (b) a notice, direction or certificate given, made or issued by the Secretary of State for the purposes of this Act,

is to be evidence (or, in Scotland, sufficient evidence) of the order, notice, direction or certificate in any legal proceedings or other proceedings under this Act.

### *Orders, regulations and rules*

#### **202 Orders, regulations and rules**

- (1) Orders and regulations under this Act, and rules under section 184 (procedure rules), are to be made by statutory instrument.
- (2) Orders, regulations and rules under this Act –
  - (a) may make provision generally or only for specified cases, purposes or circumstances;
  - (b) may make different provision for different cases, circumstances, purposes or areas;
  - (c) may make incidental, supplementary, consequential, transitional, transitory or saving provision.
- (3) This section does not apply to expulsion orders.

#### **203 Parliamentary control of orders and regulations**

- (1) A statutory instrument containing (whether alone or with other provision) –
  - (a) an order under section 8 (grant of immigration permission by order);
  - (b) an order under section 38(6) (power to amend the exceptions to making an expulsion order);
  - (c) an order under section 119(5) (power to amend the definition of “registration card” and make consequential amendments);
  - (d) regulations under section 149 (authority-to-carry schemes);
  - (e) an order under section 178(1) (power to add countries to list in Schedule 2);
  - (f) an order under section 190 providing for a fee to be charged;
  - (g) an excess fee order under section 190;
  - (h) an order under section 193(7) (power to amend the offences where a defence for refugees is available),

may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (2) A statutory instrument containing any other order or regulations under this Act, or rules under section 184 (procedure rules), other than a statutory instrument containing only –
  - (a) an order under section 213(2) or (3) (commencement), or
  - (b) an Order in Council under section 212(4) (extension to the Islands),

is subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) For the purposes of subsection (1)(g) an “excess fee order under section 190” means an order under that section –
  - (a) which specifies the amount of a fee in reliance on subsection (4) of that section (fees exceeding cost recovery), and
  - (b) in relation to which the change in value condition is not met.

- (4) The change in value condition is met if –
  - (a) the order, in specifying the amount mentioned in subsection (3)(a), is varying the amount of a fee previously specified by an order under section 190, and
  - (b) the Secretary of State thinks that it is expedient to make the variation in consequence of a change in the value of money.

#### **204 Procedure 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.

### **PART 12**

#### DEFINITIONS FOR THE PURPOSES OF THE ACT

#### **205 Meaning of “protection application” etc.**

- (1) This section applies for the purposes of this Act.
- (2) A “protection application” is an application for an individual grant of immigration permission to a person (“P”) on the basis that –
  - (a) P is a refugee,
  - (b) P is entitled to humanitarian protection, or
  - (c) P is entitled to human rights protection.
- (3) P is a refugee if P is recognised as a refugee for the purposes of the Refugee Convention on the grounds that removing P from, or requiring P to leave, the United Kingdom would contravene the United Kingdom’s obligations under that Convention.
- (4) P is entitled to humanitarian protection if P would face a real risk of suffering serious harm (within the meaning of Council Directive 2004/83/EC (international protection)) were P to be removed from, or required to leave, the United Kingdom.
- (5) P is entitled to human rights protection if P meets such conditions, framed by reference to the United Kingdom’s obligations under the Human Rights Convention, as are specified in the Rules for the purposes of this section.
- (6) A protection application may be made only while P is in the United Kingdom.

- (7) A person is to be treated as making a protection application if the person may reasonably be understood to be making one; but that is subject to section 176 (certification of repetitious or unmeritorious submissions following refusal or withdrawal of protection or family life application).
- (8) A reference to a grant of protection permission is to a grant of immigration permission on the basis of subsection (2)(a), (b) or (c).
- (9) A reference to a grant of refugee permission is to a grant of immigration permission on the basis of subsection (2)(a); and a reference to refugee permission is to immigration permission granted on that basis.

#### 206 Meaning of “family life application”

For the purposes of this Act, a “family life application” is an application—

- (a) which is for an individual grant of immigration permission, and
- (b) which is of a kind identified in the Rules as being an application for an individual grant of immigration permission for the purpose of family life.

#### 207 Meaning of references to arrival by ship in the UK

- (1) 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.
- (2) But the provisions of this Act which specifically relate to members of the crew of a ship are not, because of subsection (1), to apply in the case of any floating structure which is not a ship.

#### 208 Other definitions

- (1) In this Act—
  - “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;
  - “Convention rights” has the same meaning as in the Human Rights Act 1998 (c. 42);
  - “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 service or working, including the train manager;
  - “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;
- “the Human Rights Convention” has the same meaning as “the Convention” in the Human Rights Act 1998 (c. 42);
- “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;
- “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;
- “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);
- “national” includes citizen;
- “nationality” includes citizenship;
- “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;
- “ship” includes a hovercraft and every description of vehicle used in navigation;
- “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 this Act, permission or a document is “valid” in relation to a person if –
- (a) it is current,
  - (b) it relates to the person, and
  - (c) it was properly issued to the person.
- (3) For the purposes of this Act, permission or a document is “current” if –
- (a) the period of validity of the permission or document has commenced,
  - (b) that period has not expired or, if in the case of permission it has expired, any continuation of the permission under section 12(2) (continuation of permission pending decision on application for new permission) has not ended,
  - (c) the permission or document has not been cancelled or, if in the case of permission it has been cancelled, any continuation of the permission

- under section 15(2) (continuation following cancellation and pending appeal) has not ended, and
- (d) in the case of permission, it is not suspended under section 29 (power to suspend permission on section 25 examination) or section 63(3) (automatic suspension of permission while on immigration bail).
- (4) 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.
  - (5) A reference in this Act to being the owner of a vehicle, ship or aircraft includes a reference to being any of a number of persons who jointly own it.

### **PART 13**

#### FINAL PROVISIONS

#### **209 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, the Tribunal or the Lord Chancellor in connection with a provision of this Act must be paid into the Consolidated Fund.

#### **210 Repeals and revocations**

Schedule 3 (repeals and revocations, including repeals and revocations of spent enactments) has effect.

#### **211 Index of defined expressions**

Schedule 4 (which contains an index of defined expressions) has effect.

#### **212 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) The following provisions of this Act do not extend to Scotland –
  - (a) section 57 (power to detain persons liable to arrest);
  - (b) section 114 (absconding from detention under section 57).
- (3) A provision of this Act which amends another Act is to have the same extent as the relevant part of the amended Act (ignoring extent by virtue of an Order in Council).
- (4) 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.

- (5) Subsection (4) does not apply in relation to the extension to a place of a provision which extends there by virtue of subsection (3).

### **213 Commencement**

- (1) The following provisions come into force on the day on which this Act is passed—
- (a) sections 202 and 203 (orders and procedure etc.);
  - (b) section 212 (extent);
  - (c) this section;
  - (d) section 214 (short title).
- (2) Sections 108 and 109 (trafficking people for exploitation) and any related repeal of any provision of section 4 or 5 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), in so far as they extend to Scotland, come into force in accordance with provision made by order of the Scottish Ministers.
- (3) The remaining provisions of this Act come into force in accordance with provision made by order of the Secretary of State.

### **214 Short title**

This Act may be cited as the Immigration and Citizenship Act 2009.

## SCHEDULES

## SCHEDULE 1

Section 163

## THE ASYLUM AND IMMIGRATION TRIBUNAL

## PART 1

## MEMBERSHIP

*Appointment*

- 1 (1) The Lord Chancellor must appoint the members of the Tribunal.
- (2) A person (“P”) is eligible for appointment as a member of the Tribunal only if—
  - (a) P satisfies the judicial-appointment eligibility condition on a 5-year basis,
  - (b) P is an advocate or solicitor in Scotland of at least 5 years’ standing,
  - (c) P is a member of the Bar of Northern Ireland, or a solicitor of the Court of Judicature of Northern Ireland, of at least 5 years’ standing,
  - (d) the Lord Chancellor thinks that P has legal experience which makes P suitable for appointment as if P satisfied paragraph (a), (b) or (c), or
  - (e) the Lord Chancellor thinks that P has non-legal experience which makes P suitable for appointment.
- (3) A person appointed under sub-paragraph (2)(a) to (d) is to be known as a legally qualified member of the Tribunal.

*Terms*

- 2 (1) A member of the Tribunal—
  - (a) may resign by giving notice to the Lord Chancellor,
  - (b) is to cease to be a member on reaching the age of 70, and
  - (c) otherwise, is to hold and vacate office in accordance with the terms of the member’s appointment.
- (2) The terms of a member’s appointment may include—
  - (a) provision about the training, appraisal and mentoring of members of the Tribunal by other members, and
  - (b) provision for removal.
- (3) Sub-paragraph (1)(b) is subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 (c. 8) (extension of retirement age to 75).
- (4) Any power by which a person may be removed from membership of the Tribunal may be exercised only—



- (a) if the person exercises functions wholly or mainly in Scotland, with the concurrence of the Lord President of the Court of Session;
- (b) if the person exercises functions wholly or mainly in Northern Ireland, with the concurrence of the Lord Chief Justice of Northern Ireland;
- (c) if neither paragraph (a) nor paragraph (b) applies, with the concurrence of the Lord Chief Justice of England and Wales.

*Titles*

- 3
- (1) Every legally qualified member of the Tribunal is to have the title of Immigration Judge.
  - (2) The Lord Chancellor may confer upon a legally qualified member of the Tribunal the additional title of Senior Immigration Judge or Designated Immigration Judge.
  - (3) The Lord Chancellor may exercise the power under sub-paragraph (2) –
    - (a) on appointing the member concerned, or
    - (b) at any time while the member holds office.
  - (4) A Senior Immigration Judge or Designated Immigration Judge may exercise a function or jurisdiction which is exercisable in the capacity of Immigration Judge.

*Presidency*

- 4
- (1) The Lord Chancellor must appoint –
    - (a) a member of the Tribunal as President of the Tribunal, and
    - (b) one or more members of the Tribunal as Deputy President.
  - (2) A member may not be appointed as President unless that member –
    - (a) holds or has held high judicial office (as defined in section 60(2) of the Constitutional Reform Act 2005 (c. 4)), or
    - (b) is or has been a member of the Judicial Committee of the Privy Council.
  - (3) A Deputy President –
    - (a) may act for the President if the President is unable to act or unavailable, and
    - (b) must perform such functions as the President may delegate or assign to the Deputy.
  - (4) The Lord Chancellor may appoint a person under sub-paragraph (1)(a) only with the concurrence of –
    - (a) the Lord Chief Justice of England and Wales,
    - (b) the Lord President of the Court of Session, and
    - (c) the Lord Chief Justice of Northern Ireland.

*Training etc.*

- 5
- The Senior President of Tribunals is responsible, within the resources made available by the Lord Chancellor, for the maintenance of appropriate arrangements for the training, guidance and welfare of members of the Tribunal (in their capacities as such).

---

*Oaths*

- 6 (1) This paragraph applies to a person (“P”) who—
- (a) is appointed under paragraph 1(1), and
  - (b) has not previously taken the required oaths after accepting another office.
- (2) P must take the required oaths before—
- (a) the Senior President of Tribunals, or
  - (b) an eligible person who is nominated by the Senior President of Tribunals for the purpose of taking the oaths from P.
- (3) A person is eligible for the purposes of sub-paragraph (2)(b) if the person holds one or more of the following offices—
- (a) high judicial office (as defined in section 60(2) of the Constitutional Reform Act 2005 (c. 4));
  - (b) judicial office (as defined in section 109(4) of that Act);
  - (c) the office of sheriff (in Scotland).
- (4) In this paragraph, “the required oaths” means—
- (a) the oath of allegiance as set out in the Promissory Oaths Act 1868 (c. 72), and
  - (b) the judicial oath as set out in that Act.
- (5) But where it appears to the Lord Chancellor that P will carry out functions as a member of the Tribunal wholly or mainly in Northern Ireland, the Lord Chancellor may direct that, in relation to P, “the required oaths” means—
- (a) the oath as set out in section 19(2) of the Justice (Northern Ireland) Act 2002 (c. 26), or
  - (b) the affirmation and declaration as set out in section 19(3) of that Act.

*Remuneration etc.*

- 7 The Lord Chancellor—
- (a) may pay remuneration and allowances to members of the Tribunal, and
  - (b) may pay compensation to a person who ceases to be a member of the Tribunal if the Lord Chancellor thinks it appropriate because of special circumstances.

PART 2

JUDICIAL ASSISTANCE

*Assignment as a member of the Tribunal*

- 8 (1) The Senior President of Tribunals, with the consent of the President of the Tribunal, may assign—
- (a) a relevant tribunal judge to act as a legally qualified member of the Tribunal;
  - (b) a relevant other tribunal member to act as a member of the Tribunal who is not a legally qualified member.
- (2) In this paragraph, “relevant tribunal judge” means—

- (a) a person who is a judge of the First-tier Tribunal by virtue of appointment under paragraph 1(1) of Schedule 2 to the Tribunals, Courts and Enforcement Act 2007 (c. 15),
  - (b) a transferred-in judge of the First-tier Tribunal,
  - (c) a person who is a judge of the Upper Tribunal by virtue of appointment under paragraph 1(1) of Schedule 3 to that Act,
  - (d) a transferred-in judge of the Upper Tribunal,
  - (e) a deputy judge of the Upper Tribunal, or
  - (f) a person who is the Chamber President of a chamber of the First-tier Tribunal, or of a chamber of the Upper Tribunal, and does not fall within any of paragraphs (a) to (e).
- (3) In this paragraph, “relevant other tribunal member” means—
- (a) a person who is a member of the First-tier Tribunal by virtue of appointment under paragraph 2(1) of Schedule 2 to the Tribunals, Courts and Enforcement Act 2007 (c. 15),
  - (b) a transferred-in other member of the First-tier Tribunal,
  - (c) a person who is a member of the Upper Tribunal by virtue of appointment under paragraph 2(1) of Schedule 3 to that Act, or
  - (d) a transferred-in other member of the Upper Tribunal.
- (4) A relevant tribunal judge falling within sub-paragraph (2)(a) or (b) who is assigned under sub-paragraph (1) may, when acting under the assignment, exercise any function or jurisdiction falling within sub-paragraph (6).
- (5) A relevant tribunal judge falling within sub-paragraph (2)(c), (d), (e) or (f) who is assigned under sub-paragraph (1) may, when acting under the assignment, exercise any function or jurisdiction falling within sub-paragraph (6) or (7).
- (6) A function or jurisdiction falls within this sub-paragraph if it is exercisable in the capacity of Immigration Judge.
- (7) A function or jurisdiction falls within this sub-paragraph if it is exercisable in the capacity of Senior Immigration Judge.
- (8) A relevant other tribunal member who is assigned under sub-paragraph (1) may, when acting under the assignment, exercise any function or jurisdiction which is exercisable in the capacity of a member of the Tribunal appointed under paragraph 1(2)(e) (non-legal experience).

*Assignment as a Senior Immigration Judge*

- 9 (1) The Senior President of Tribunals may assign a relevant judge to act as a Senior Immigration Judge.
- (2) But an assignment under sub-paragraph (1) may be made only—
- (a) with the consent of the President of the Tribunal,
  - (b) with the consent required by sub-paragraph (5), (6) or (7), and
  - (c) with the consent of the relevant judge concerned.
- (3) In this paragraph, “relevant judge” means a person who is—
- (a) an ordinary judge of the Court of Appeal in England and Wales (including the vice-president, if any, of either division of that Court),
  - (b) a Lord Justice of Appeal in Northern Ireland,

- (c) a judge of the Court of Session,
  - (d) a puisne judge of the High Court in England and Wales or Northern Ireland,
  - (e) a circuit judge,
  - (f) a sheriff,
  - (g) a county court judge in Northern Ireland,
  - (h) a district judge in England and Wales or Northern Ireland, or
  - (i) a District Judge (Magistrates' Courts).
- (4) References in sub-paragraph (3)(c) to (i) to office-holders do not include deputies or temporary office-holders.
- (5) The consent of the Lord Chief Justice of England and Wales is required for the purposes of sub-paragraph (2)(b) where the relevant judge is –
- (a) an ordinary judge of the Court of Appeal in England and Wales,
  - (b) a puisne judge of the High Court in England and Wales,
  - (c) a circuit judge,
  - (d) a district judge in England and Wales, or
  - (e) a District Judge (Magistrates' Courts).
- (6) The consent of the Lord President of the Court of Session is required for the purposes of sub-paragraph (2)(b) where the relevant judge is –
- (a) a judge of the Court of Session, or
  - (b) a sheriff.
- (7) The consent of the Lord Chief Justice of Northern Ireland is required for the purposes of sub-paragraph (2)(b) where the relevant judge is –
- (a) a Lord Justice of Appeal in Northern Ireland,
  - (b) a puisne judge of the High Court in Northern Ireland,
  - (c) a county court judge in Northern Ireland, or
  - (d) a district judge in Northern Ireland.
- (8) A relevant judge who is assigned under sub-paragraph (1) may, when acting under the assignment, exercise any function or jurisdiction falling within paragraph 8(6) or (7).

### PART 3

#### PROCEEDINGS

##### *Sittings*

- 10 The Tribunal is to sit at times and places determined by the Lord Chancellor.

##### *Exercise of jurisdiction*

- 11 (1) The jurisdiction of the Tribunal is to be exercised by such number of its members as the President, having regard to the complexity and other circumstances of particular cases or descriptions of case, may direct.
- (2) A direction under sub-paragraph (1) –
- (a) may relate to the whole or part of specified proceedings or to the whole or part of proceedings of a specified kind,
  - (b) may enable jurisdiction to be exercised by a single member,

- (c) may require or permit a transfer of the whole or part of proceedings as mentioned in sub-paragraph (3), and
  - (d) is subject to rules under section 184.
- (3) A transfer referred to in sub-paragraph (2)(c) may be –
- (a) from one member to another,
  - (b) from one group of members to another,
  - (c) from one member to a group of members, or
  - (d) from a group of members to one member.

*Allocation of proceedings to members*

- 12 (1) The Senior President of Tribunals may make arrangements for the allocation of proceedings to members of the Tribunal.
- (2) Arrangements under sub-paragraph (1) –
- (a) may permit allocation by the Senior President of Tribunals or a member of the Tribunal,
  - (b) may permit the allocation of a case to a specified member or to a specified description of member,
  - (c) may include provision for transfer, and
  - (d) are subject to rules under section 184.

PART 4

FUNCTIONS OF LORD CHIEF JUSTICE ETC.

*Delegation to nominated judge or office-holder*

- 13 (1) The Lord Chief Justice of England and Wales may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005 (c. 4)) to exercise any of the functions of the Lord Chief Justice of England and Wales under this Schedule.
- (2) The Lord President of the Court of Session may nominate a judge of the Court of Session who is a member of the First or Second Division of the Inner House of that Court to exercise any of the functions of the Lord President under this Schedule.
- (3) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise any of the functions of the Lord Chief Justice of Northern Ireland under this Schedule –
- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002 (c. 26);
  - (b) a Lord Justice of Appeal in Northern Ireland.

PART 5

SUPPLEMENTARY

*Protected functions of the Lord Chancellor*

- 14 (1) In Schedule 7 to the Constitutional Reform Act 2005 (protected functions of the Lord Chancellor) Part A of the list in paragraph 4 is amended as follows.

- (2) Omit the entries for sections 81, 106 and 107 of, and Schedule 4 to, the Nationality, Immigration and Asylum Act 2002 (c. 41).
- (3) At the appropriate place insert—  
*“Immigration and Citizenship Act 2009*  
 Section 184  
 Section 186  
 Schedule 1.”

## SCHEDULE 2

Section 177

## LIST OF COUNTRIES REFERRED TO IN SECTION 177

<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	
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	

<i>Country or part of country</i>	<i>Description of person by reference to which country or part is listed</i>
Serbia	Men
Sierra Leone	
South Africa	

SCHEDULE 3

Section 210

REPEALS AND REVOCATIONS

PART 1

REGULATION OF ENTRY INTO & 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). In Schedule 2, paragraph 26(2) and (3).
British Nationality Act 1981 (c. 61)	Section 39(2) and (4). In Schedule 4— (a) in paragraph 2, in the table, the entries relating to sections 3, 4 and 8 of the Immigration Act 1971, and (b) paragraphs 4, 5 and 7(a)(ii).
Immigration Act 1988 (c. 14)	Section 2. Section 3(1) and (3). Section 4. Section 7. 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. 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) and (5). Section 57(1).
UK Borders Act 2007 (c. 30)	Sections 1 and 16.

PART 2

POWERS TO EXAMINE ETC.

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Immigration Act 1971 (c. 77)	In Schedule 2 – (a) paragraph 1(1), (b) paragraphs 2, 2A and 3, (c) paragraph 4(1) and (2), and (d) paragraph 6.
British Nationality Act 1981 (c. 61)	In Schedule 4, in paragraph 2, in the table, the entries relating to paragraphs 2, 3 and 6 of Schedule 2 to the Immigration Act 1971.
Immigration Act 1988 (c. 14)	In the Schedule, paragraphs 7 and 8.
The Channel Tunnel (International Arrangements) Order 1993 (S.I. 1993/1813)	In Schedule 5, paragraph 1(b).
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 58.



<i>Reference</i>	<i>Extent of repeal or revocation</i>
Nationality, Immigration and Asylum Act 2002 (c. 41)	Section 119. In Schedule 7, paragraph 2.
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19)	Section 18.
Immigration, Asylum and Nationality Act 2006 (c. 13)	Section 42(2).

PART 3

CITIZENSHIP

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Nationality, Immigration and Asylum Act 2002	Section 11.

PART 4

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 and 6. 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.
British Nationality Act 1981 (c. 61)	In Schedule 4, in paragraph 2, in the table, the entries relating to section 5 of, and paragraphs 12 and 13 of Schedule 2 to, the Immigration Act 1971.
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 78 and 79.

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Nationality, Immigration and Asylum Act 2002 (c. 41) – <i>cont.</i>	In Schedule 7, paragraph 4.
Civil Partnership Act 2004 (c. 33)	In Schedule 27, paragraph 37.
Immigration, Asylum and Nationality Act 2006 (c. 13)	Sections 47 and 48.
UK Borders Act 2007 (c. 30)	Sections 32 to 34. Section 35(2). Sections 37 and 38.
Criminal Justice and Immigration Act 2008 (c. 4)	Section 146.

## PART 5

## POWERS TO DETAIN &amp; 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, paragraph 1.
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(1). In Schedule 14, paragraphs 60, 62, 63, 67 and 68.
Nationality, Immigration and Asylum Act 2002 (c. 41)	Section 62(1) to (7). Section 67. Section 69. Section 73(5). In Schedule 7, paragraphs 6 and 7.
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.

<i>Reference</i>	<i>Extent of repeal or revocation</i>
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.

PART 6

DETAINED PERSONS AND REMOVAL CENTRES

<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 157. Section 159. Schedule 11. In Schedule 12, paragraphs 3 to 9. 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 (k) and (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).

PART 7

OFFENCES

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Immigration Act 1971 (c. 77)	Sections 24 to 25B and 26 to 28.

<i>Reference</i>	<i>Extent of repeal or revocation</i>
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.
British Nationality Act 1981 (c. 61)	In Schedule 4— (a) in paragraph 2, in the table, the entry relating to section 24(1) of the Immigration Act 1971, and (b) in paragraph 3(1), the entry relating to section 26(1)(d) of that Act.
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).

PART 8

CARRIERS' LIABILITY

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

PART 9

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 10

APPEALS

<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 (c. 41)	Section 72(8) to (10). 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.
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19)	Section 26(1) to (4). Sections 27 to 31. Schedule 1. In Schedule 2, paragraphs 1(2)(d) and 17 to 23.
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.

<i>Reference</i>	<i>Extent of repeal or revocation</i>
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 47(6) to (8). 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.
Asylum (Procedures) Regulations 2007 (S.I. 2007/3187)	Regulations 3 and 4.

PART 11

CHILDREN

<i>Reference</i>	<i>Extent of repeal or revocation</i>
UK Borders Act 2007 (c. 30)	Section 21.

PART 12

FEES

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19)	Section 42.
Immigration, Asylum and Nationality Act 2006 (c. 13)	Sections 51 and 52. Schedule 2.
UK Borders Act 2007 (c. 30)	Section 20.

PART 13

PROCEDURE

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

PART 14

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 (c. 33)	In Schedule 14, paragraph 54.

PART 15

DEFINITIONS FOR THE PURPOSES OF THE ACT

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

SCHEDULE 4

Section 211

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>
arrival by ship in the United Kingdom	section 207(1)
bail conditions	section 62(5)
captain	section 208(1)
certified prisoner custody officer (in Part 6)	section 78(2)
clandestine entrant (in Part 8)	section 129
concealed (in Part 8)	section 151(1)
connected expenses (in Part 8)	section 151(2)
contract monitor (in Part 6)	section 77
contracted out (in Part 6)	section 76(6)
contractor (in Part 6)	section 76(6)
Convention rights	section 208(1)
the Council of Europe Convention on Trafficking in Human Beings	section 208(1)
country	section 208(1)
crew (in relation to a ship or aircraft)	section 208(1)
crew (in relation to a train)	section 208(1)
current (in relation to permission or a document)	section 208(3)
designated official	section 24(7)
detained person	section 71(6)
detainee custody officer	section 71(6)
directing	section 199(2) and (3)
directly managed (in Part 6)	section 76(6)
EEA entrant	section 3
electronic monitoring condition (in Part 5)	section 65(1)
employment (in Part 9)	section 152(5)
enactment	section 208(1)
entering the United Kingdom	section 23
escort arrangements (in Part 6)	section 71(1)



<i>Expression</i>	<i>Where defined</i>
escort functions (in Part 6)	section 71(1)
expulsion order	section 37(3)
family life application	section 206
financial security condition	section 64(1)
foreign criminal (in Part 4)	section 51
giving a direction	section 199(2) and (3)
giving a notice	sections 199(1) and 200
has immigration permission	section 2(3)
has transit permission	section 2(3)
hirer (in Part 8)	section 151(2)
the Human Rights Convention	section 208(1)
identity document	section 208(1)
illegal worker (in Part 9)	section 152(1)
immigration bail	section 62
immigration decision	section 164(2)
Immigration Judge	Schedule 1, paragraph 3(1)
immigration permission	sections 2(1), 4 and 9
in force (in relation to an expulsion order)	section 37(7)
in-country appeal	section 164(3)
individual grant of immigration permission	section 6
individual grant of transit permission	section 18
international railway station	section 208(1)
the Islands	section 208(1)
legally qualified member of the Tribunal	Schedule 1, paragraph 1(3)
liable to detention under this Act	section 70
member of the crew	section 208(1)
member of the family of a person (in Part 4)	section 52
national	section 208(1)

<i>Expression</i>	<i>Where defined</i>
nationality	section 208(1)
on immigration bail	section 62(12)
out-of-country appeal	section 164(3)
owner (in Part 8)	section 151(2)
owner of a vehicle, ship or aircraft	section 208(5)
pending appeal	section 188
permanent permission	section 4(4)
persons responsible for clandestine entrants (in Part 8)	section 132
port	section 208(1)
prescribed (in Part 6)	section 96
President of the Tribunal	Schedule 1, paragraph 4(1)
prisoner custody officer	section 71(6)
protection application	section 205(2)
protection permission	section 205(8)
the Refugee Convention	section 208(1)
refugee permission	section 205(9)
removal centre (in Part 6)	section 76(6)
removal centre regulations (in Part 6)	section 77(8)
Rules	section 21(4)
section 122 penalty notice (in Part 8)	section 122(4)
section 130 penalty notice (in Part 8)	section 130(4)
section 153 penalty notice (in Part 9)	section 153(6)
Senior Immigration Judge	Schedule 1, paragraph 3(2)
ship	section 208(1)
short-term holding facility (in Part 6)	section 76(6)
small aircraft (in Part 8)	section 151(2) and (3)
small ship (in Part 8)	section 151(2)
specified train (in Part 8)	section 151(2)
sub-contractor (in Part 6)	section 76(6)

---

<i>Expression</i>	<i>Where defined</i>
temporary permission	section 4(2)
train	section 208(1)
train manager	section 208(1)
transit permission	sections 2(1) and 16
transporter (in Part 8)	section 151(2) and (4)
travel document	section 208(1)
Tribunal	section 163(3)
United Kingdom passport	section 208(1)
valid (in relation to permission or a document)	section 208(2)
vehicle (in Part 8)	section 151(2)

# **DRAFT IMMIGRATION AND CITIZENSHIP BILL 2008**

---

## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes relate to the partial draft Immigration and Citizenship Bill (the “Bill”) published on 14<sup>th</sup> July 2008. 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”)

It also amends the British Nationality Act 1981 (“BNA 1981”).

4. The draft for pre-legislative scrutiny is a partial Bill. There are a number of further topics for inclusion in the full Bill which are not yet drafted: the most relevant of which are powers (of arrest, entry, search, etc); data sharing; biometrics; asylum support and access to public funds. These topics will be covered in the notes on the full Bill.

5. The principles underlying the reform of immigration legislation are set out in the initial consultation paper *Simplifying Immigration Law: an initial consultation* which was published in June 2006. The Green Paper, *The Path to Citizenship: Next Steps in Reforming the Immigration System*, published in February 2008, consulted on more specific proposals alongside proposals for earned citizenship. The initial consultation document, an analysis of responses to it and the Green Paper, are available on the UK Border Agency's website at:

<http://www.ukba.homeoffice.gov.uk/managingborders/simplifying>

## **OVERVIEW**

6. The Bill is arranged under 13 Parts:

Part 1: Regulation of entry into and stay in the UK

Part 2: Powers to examine etc.

Part 3: Citizenship

Part 4: Expulsion orders & removal etc. from the UK

Part 5: Powers to detain & immigration bail

Part 6: Detained persons and removal centres

Part 7: Offences

Part 8: Carriers' liability

Part 9: Illegal workers

Part 10: Appeals

Part 11: General supplementary provisions

Part 12: Definitions for purposes of the Act

Part 13: Final provisions

## **SUMMARY**

### **PART 1: REGULATION OF ENTRY INTO AND STAY IN THE UK**

7. Clauses 1 to 3 provide the general principles of the framework for regulating entry into and stay in the UK. They provide for the entitlements of British citizens and “EEA entrants” (as defined in clause 3) to enter and stay in the UK. Those persons who are neither British nor EEA entrants require immigration permission to enter or stay in the UK, or to pass through the UK without entering (“transit”). Immigration permission will replace the current means by which permission is conferred to enter and stay through leave to enter, leave to remain and entry clearance (this latter concept is often deemed to be a type of leave to enter).

8. Clauses 4 to 15 make provision about immigration permission. There will be two kinds of immigration permission, temporary and permanent, which will be used across all the routes to visit, work and study in the UK and to settle here. Temporary permission may be subject to conditions and limited to a particular purpose. Permission may be granted individually on application or, by an order made under this Bill, to certain groups, generally those who were previously exempt from requiring leave to enter, leave to remain etc. A person who requires permission to be in the UK and is here without it will have a duty to apply for permission.

9. Clauses 16 to 20 set out provisions for passengers wishing to transit through the UK without entering i.e. without clearing immigration control, commonly known as transiting “airside”. The Bill will replace current provisions for direct airside transit visas with a system of individual transit permission or transit permission granted by order.

10. Clause 21 provides for the Secretary of State to make rules about the exercise of functions under the Bill (the immigration rules, referred to in these Explanatory Notes as the “Rules”).

11. Clause 22 sets out the powers of the Secretary of State to require carriers and port operators to make designated control areas available for the examination of passengers entering or leaving the UK and to meet conditions and restrictions placed on those control areas.

12. Clause 23 sets out when an individual is considered to have entered the UK.

13. Clause 24 provides that the Secretary of State may designate officials for the purpose of exercising specific functions under the Bill. The functions under the Bill will be 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, for example, powers to examine arriving and departing passengers.

However, some functions are to be reserved to officials who have received specialist training, for example in search (of persons) and control and restraint and criminal investigation. The Bill will make clear which functions may only be exercised by designated officials.

## **PART 2: POWERS TO EXAMINE ETC.**

14. Clauses 25 to 29 provide for the Secretary of State to examine persons who have arrived in the UK, those who have entered the UK, those who are seeking the grant of immigration or transit permission, those who are otherwise seeking to arrive in or enter the UK and those who are leaving the UK. Whilst the extent of the examination will vary according to a number of factors, it is essentially an administrative process which will include verification of the person's identity, questioning and examination of documents, with biometric information increasingly being used for this purpose.

15. Clause 30 allows the Secretary of State to make an order requiring people (including British citizens) who stay in hotels and other similar establishments in the UK to provide certain personal information and for this information to be recorded and kept. This clause replicates provisions in the IA 1971.

## **PART 3: CITIZENSHIP**

16. Clauses 31 to 34 replace section 6 and parts of Schedule 1 to the British Nationality Act 1981 ("BNA 1981"), which relate to naturalisation as a British citizen. The new section 6 will set four classes of people to whom the Secretary of State may grant a certificate of naturalisation as a British citizen, and new paragraphs 1 to 4A of Schedule 1 will revise the qualifying criteria.

17. Clause 35 amends section 41 of the BNA 1981 to provide for regulation-making powers in relation to the new provisions.

18. Clause 36 inserts a new section 50A in the BNA 1981 to define references to being in the UK in breach of the immigration laws.

## **PART 4: EXPULSION ORDERS & REMOVAL ETC. FROM THE UK**

19. Clauses 37 to 48 provide for a single mechanism to make an expulsion order. Expulsion will replace the existing concepts of administrative removal, deportation and exclusion; and expulsion orders may be made against persons inside and outside the UK. These clauses bring together the different categories of people who are liable to expulsion, including persons refused admission or immigration permission at ports of entry; those who enter the UK illegally; those who breach conditions attached to permission; those who obtain permission by deception; "foreign criminals" as defined; and persons whose expulsion would be conducive to the public good.

20. Clauses 49 and 50 give the Secretary of State the power to assist

those voluntarily leaving the UK and also to contribute to projects relating to migration. They will largely replicate sections 58 and 59 of the NIAA 2002. They will provide a new power for the Secretary of State to assist Swiss and EEA nationals to leave the UK voluntarily if they are a victim of trafficking within the meaning of the Council of Europe Convention on Action against Trafficking in Human Beings.

## **PART 5: POWERS TO DETAIN AND IMMIGRATION BAIL**

21. Clauses 53 to 61 set out powers to detain for immigration purposes. These will include the power to detain persons liable to examination; persons against whom an expulsion order may be made; persons against whom an expulsion order must be made; and persons against whom an expulsion order has been made pending removal from the UK. There will be additional powers for a captain to detain on board an aircraft, ship or train which support the powers of expulsion, and a power to detain persons arriving at port for a maximum of 3 hours pending police arrest.

22. Clauses 62 to 70 provide the basic machinery for granting a person immigration bail, and imposing conditions upon it. Immigration bail may be granted to a person who is liable to detention either at the point that the person becomes so liable or later on subsequent release from detention. This simplified legal framework will replace comparable provisions in the IA 1971 and creates a single concept of immigration bail replacing provisions of temporary admission, temporary release, release on restrictions and bail.

## **PART 6: DETAINED PERSONS AND REMOVAL CENTRES**

23. Clauses 71 to 96 provide the framework for the operation, management and regulation of removal centres, short-term holding facilities and escort arrangements used to hold or transport detained persons. This consolidated framework will largely replicate Part 8 of the IAA 1999 and Schedules 11 to 13 to that Act, including the offences contained in those Schedules.

## **PART 7: OFFENCES**

24. Clauses 97 to 121 set out a range of criminal offences in relation to immigration matters.

25. Unless otherwise indicated, the offences will essentially replicate those contained in the IA 1971, the AI(TC)A 2004 (clauses 104 and 105) and the UKBA 2007 (clause 114) and have been updated to reflect the concepts of permission, expulsion and immigration bail which are introduced in Parts 1, 4 and 5 of the Bill. There will also be one new offence (see clause 121). A new provision will be added to the offence of entering the UK without permission to cover seeking to enter, and to the deception offence (see clause 117(2)) to cover acts prior to seeking permission such as obtaining a certificate of sponsorship.

26. The penalties for the offences have been amended to reflect what will be the



position once sections 154(1) and 181 of the Criminal Justice Act 2003 come into force. Clause 198 of the Bill sets out transitory arrangements in this respect.

## **PART 8: CARRIERS' LIABILITY**

27. Clauses 122 to 151 enable the Secretary of State to impose a penalty on carriers who bring either undocumented passengers or "clandestine entrants" to the UK. This Part is based on Part 2 of the IAA 1999 and sections 124 and 125 of the NIAA 2002. The Bill will make some changes to the current position including extending the penalties to cover undocumented British citizens and EEA entrants, an appeal against a penalty only being available once the Secretary of State has given notice of the decision on an objection, and a power, on appeal, for the court to increase the level of penalty relating to clandestine entrants. It will also standardise some terminology and procedures which previously differed between carriers' liability and illegal working provisions, and some of the detailed procedural issues will now be set out in regulations rather than on the face of the Bill.

## **PART 9: ILLEGAL WORKERS**

28. Clauses 152 to 162 concern those persons who employ adults (aged 16 or over) who are neither British citizens nor EEA nationals and do not have the relevant authorisation to work in the UK. This Part is based on the illegal working provisions in the IANA 2006 and the main concepts remain unchanged. However, they have been updated to reflect the concepts of permission and immigration bail which are introduced in Parts 1 and 5 of the Bill. There will also be some changes to terminology to be consistent with the civil penalties in Part 8 of the Bill (carriers' liability). Further, an appeal will only be available when an objection has been made and the Secretary of State has given notice of the decision on an objection. Also, some of the detailed procedural issues will now be set out in regulations rather than on the face of the Bill.

## **PART 10: APPEALS**

29. Clauses 163 to 188 provide for the right of appeal to the Asylum and Immigration Tribunal against certain immigration decisions, subject to specified exceptions and limitations. This Part sets out the decisions against which an appeal may be brought and 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 repetitious submissions and of late or clearly unfounded protection or family life applications.

30. The provisions are similar to those in Part 5 of the NIAA 2002, as amended (particularly by the AI(TC)A 2004). However, there are some further changes, which are noted in the commentary below.

## **PART 11: GENERAL SUPPLEMENTARY PROVISIONS**

31. Clause 189 requires the Secretary of State to make arrangements for ensuring that immigration and nationality functions are discharged with regard to the need to safeguard and promote the welfare of the children who are in the UK.

32. Clauses 190 and 191 give the Secretary of State power to designate immigration and nationality-related applications, services and processes as chargeable, and set a fee for them. When setting the level of the fee, the Secretary of State will have the power to do so at a level which exceeds the administrative cost of processing the application, providing the service, or undertaking the process in question. These clauses will replace and expand on sections 51 and 52 of the IANA 2006, and section 42 of the AI(TC)A 2004.

33. Clause 192 sets out the notice procedure the Secretary of State must follow if requiring a person to state either all reasons and/or grounds for an application to enter and stay in the UK and grounds on why the person should not be removed from the UK.

34. Clauses 193 to 198 make general provisions applying to the offences clauses where specified. They will replicate provisions in existing legislation.

35. Clause 199 sets out that notices and directions are to be given in writing and clarifies the power to amend or cancel a direction under the Bill.

36. Clause 200 sets out the manner in which notices under the Bill will be given.

37. Clause 201 relates to proof of documents.

38. Clause 202 provides that orders and regulations under this Bill, and appeals procedure rules under clause 184, are made by statutory instrument.

39. Clause 203 makes provision about Parliamentary control of orders and regulations.

40. Clause 204 reflects the current procedure for making Rules and for any changes to the Rules.

## **PART 12: DEFINITIONS FOR PURPOSES OF ACT**

41. Clause 205 defines “protection application”. The definition includes those applying for recognition as a refugee, for humanitarian protection or on the basis of the UK’s obligations under the Human Rights Convention.

42. Clause 206 defines “family life application”.

43. Clause 207 refers to meaning of references to arrival by ship in the UK.

44. Clause 208 covers other definitions.

### **PART 13: FINAL PROVISIONS**

45. Clauses 209 to 214 set out some general provisions.

### **TERRITORIAL EXTENT**

46. Most of the Bill extends to England and Wales, Scotland and Northern Ireland. It has been drafted for the purposes of consultation. Before the Bill is introduced into the UK Parliament, agreement from each of the devolved administrations on how to handle the devolved aspects of the Bill will need to be reached, and the Bill amended accordingly.

### **COMMENTARY ON CLAUSES**

#### **PART 1: REGULATION OF ENTRY INTO AND STAY IN THE UK**

##### *General principles*

##### **Clause 1: British citizens**

47. This clause provides that British citizens are free to enter, leave and stay in the UK. They do not need permission to do so. Subsection (2) provides that this right is subject to the requirements of the Bill and other enactments, such as provisions of criminal law that may affect their ability to enter and leave. Under sections 1(1) and 2(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 that Act. Those with the right of abode who are not British citizens will now require permission to enter and stay in the UK. The intention is to confer that permission by order under clause 8 of the Bill. Subsection (3) provides that a person who claims to be a British citizen must prove it and subsection (4) provides that it must be proved by presenting a valid UK passport or valid ID card describing the holder as a British citizen.

##### **Clause 2: Non-British citizens**

48. The single concept of permission replaces the former concepts of leave to enter, leave to remain and entry clearance (which has often been deemed to be a type of leave to enter). Clause 2 provides the basis for regulation of the entry of non-British citizens to the UK. Clauses 4 to 15 make further provision about immigration permission.

49. Subsection (1) provides that those who are neither British citizens nor EEA entrants must have immigration permission to enter or stay in the UK and must have immigration or transit permission to transit through the UK without entering (see clause 23 on entry into the UK). Transit passengers do not need to pass through

immigration control and instead remain in the designated control area defined in clause 22 of this Bill. Clauses 16 to 20 make provision for transit permission. Subsection (4) provides that a person who claims to have immigration permission or transit permission must prove it.

**Clause 3: EEA entrants**

50. This clause defines an “EEA entrant”. A person is an EEA entrant under Condition A if the person is a national of an EEA state or of Switzerland and is exercising an entitlement to enter and stay in the UK either under European Community law or pursuant to any regulations the UK has made in order to implement European Community law. A person is an EEA entrant under Condition B if the person is not a national of an EEA state or of Switzerland but by virtue of the person’s relationship with a national of an EEA state or of Switzerland is exercising an entitlement to enter and stay in the UK, either under European Community law or pursuant to any regulations the UK has made in order to implement European Community law. Subsection (4) provides that a person claiming to be an EEA entrant must prove it.

51. This clause takes the same approach as existing legislation, enabling the entry and residence of EEA entrants in the UK to be regulated by European Community law and the domestic regulations the UK enacts in order to implement it.

***Immigration permission***

**Clause 4: Immigration permission**

52. Subsection (1) provides for the two types of immigration permission. Temporary permission may be granted for a particular purpose and may be subject to conditions (see clause 10). Temporary permission may be granted for all the major routes for migration into the UK, for example, to visit, to work, to study and to seek protection. The purposes for which temporary permission is granted are set out in the Rules (see clause 21). 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 will have to apply for new immigration permission. This replaces the current system where existing leave can be varied both as to purpose and duration. Permanent permission replaces indefinite leave to enter or remain. Temporary and permanent permission may be cancelled under clauses 13 and 14. The grounds for cancellation will be set out in the Rules.

**Clause 5: Methods of grant**

53. This clause provides that permission is to be granted by the Secretary of State by individual grant under clause 6 or by order under clause 8. Subsection (2) provides for permission to be granted or refused whether or not a person is in or out of the UK at the time.

**Clause 6: Individual grant of immigration permission**

54. This clause sets out the power of the Secretary of State to grant or refuse individual immigration permission by notice given to that person (see clause

199 on notices). An application for an individual grant of new immigration permission is the means by which a person who has temporary permission can seek the grant of temporary permission for a different purpose from the purpose (if any) for which the person's existing permission is granted, temporary permission for a further period, or permanent permission.

55. The intention is that the initial application for permission will generally be made overseas and issued in the form of a visa. We are working closely with our international partners on the measures mentioned in the *Securing the UK Border: Our vision and strategy for the future* (published in March 2007) to strengthen our existing offshore border controls (see clause 25 for the power to examine for the purpose of deciding whether to grant permission). Those persons not required to obtain permission before arrival in the UK are required to apply for permission at the border.

**Clause 7: Duty to apply for an individual grant**

56. This is a new provision which imposes a duty on any person who is neither a British citizen, nor an EEA entrant, and who is in the UK without permission, to make an application for permission. This applies to both those who have entered the UK illegally and have not since regularised their status here or returned home to seek immigration permission and to those whose permission has been cancelled or has expired ("overstayers").

**Clause 8: Grant of immigration permission by order**

57. This clause provides for the power of the Secretary of State to grant permission by order. A temporary grant under such an order is intended to provide for a number of routes into the UK that were previously exempt from control (such as seafarers and diplomats). The permission will only be valid whilst a person meets the requirements of the order. A grant of permanent permission by order could make provision for Commonwealth citizens with the right of abode as described in paragraph 47 above.

58. Subsection (4) provides that the order may modify or disapply provisions of the Bill, either conditionally or unconditionally, for those classes of people that the order relates to. The orders may make provision for those ceasing to fall within a class of persons who have permission by order. Provision is also made for those who have both permission by order and an individual grant of permission. Subsection (5) sets out the ways in which permission granted by order may be varied and cancelled.

**Clause 9: Effect of grant**

59. Subsection (1) provides that immigration permission, whilst current (see clause 208), confers the right to enter, stay in and re-enter the UK and pass through it in transit. Subsection (2) provides that these rights are limited by any conditions attached to temporary permission and by any restrictions under the Bill or other enactments.

**Clause 10: Conditions of temporary permission**

60. Subsection (1) sets out the conditions the Secretary of State may

place on temporary permission. Subsections (2) to (4) provide for the Secretary of State to make regulations regarding registration with the police. These regulations are subject to the negative resolution procedure (see clause 203(2)). Subsection (5) provides for any conditions to be suspended while a person is outside the UK.

**Clause 11: Variation of conditions of temporary permission**

61. Subsection (1) sets out the power for the Secretary of State to vary or refuse to vary the conditions attached to a person's temporary permission. Subsection (2) provides that this power is exercised by giving a person notice. Subsection (4) provides that a person can apply for conditions of temporary permission to be varied only while that person is in the UK and that person's permission is current.

**Clause 12: Continuation pending decision on application for new permission**

62. This clause extends a person's existing permission if that person's existing temporary permission expires while there is an outstanding application for new permission, or an appeal against refusal of new permission could be brought or is pending. This ensures that such a person has the right to be in the UK until a decision is made and while any appeal is pending (see clause 188). The permission will be cancelled if the person leaves the UK. Subsection (4) provides that a person can not make an application for new permission whilst that person's permission is extended under this clause unless subsection (5) applies. This is intended to prevent applicants misusing the appeals system by lodging multiple applications.

**Clause 13: Automatic cancellation**

63. This introduces the new concept of automatic cancellation of permission and specifies the circumstances where it applies. Subsection (1) reflects provisions under paragraph 18 of the existing Rules where leave lapses if a person has spent two years or more outside of the UK. Permission will also be automatically cancelled under other provisions of the Bill listed in subsection (3). Automatic cancellation of permission does not attract a right of appeal.

**Clause 14: Power to cancel**

64. This clause confers on the Secretary of State the power to cancel permission, whether or not the person is in or out of the UK at the time. The grounds for cancellation will be set out in the Rules.

**Clause 15: Continuation following cancellation and pending appeal**

65. This clause provides that a person whose permission has been cancelled under clause 14 has continuing permission to be in the UK whilst an appeal can be brought or is pending (see clause 188). The permission is automatically cancelled if the person leaves the UK. A person may not make an application for a new grant of permission whilst permission continues under this provision, unless subsection (5) applies. However, the conditions of a person's continued permission can be varied under clause 11.

### ***Transit permission***

#### **Clause 16: Transit permission**

66. This sets out the limited right that transit permission confers on passengers to arrive and transit through the UK without clearing immigration control and entering the UK (see clause 23). Subsection (3) provides that this right is subject to the requirements of the Bill and other enactments. Transit permission is currently governed by section 41 of the IAA 1999. A number of nationalities and holders of immigration documents from certain countries are currently exempt from the requirement to obtain a transit visa. Under this Part such persons could be granted transit permission by order under clause 19.

#### **Clauses 17 to 19: Methods of grant, individual grant of transit permission, grant of transit permission by order**

67. These clauses provide that transit permission can be granted to individuals on application or, granted by order to a description of persons. Transit permission can be granted or refused whether or not the person is in the UK. Individual transit permission cannot be varied, but transit permission by order can be varied by amendment of the order. Those claiming to have transit permission must prove that they have it, as set out under clause 2(4). In addition to powers under clause 20 to cancel transit permission, transit permission by order can also be cancelled by revocation of the order. There continue to be no rights of appeal in relation to decisions on transit permission.

#### **Clause 20: Cancellation of transit permission**

68. This clause provides that both an individual grant and a grant by order may be cancelled by the Secretary of State at any point before or after arrival in or entry to the UK.

### ***Immigration rules***

#### **Clause 21: Immigration rules**

69. This clause provides for the Secretary of State to make Rules as to how immigration controls will be exercised. A change from the previous wording means that the Secretary of State must now make rules. This is because in practice, Rules will be required in order for the immigration system to function effectively. Primary legislation cannot set out all the detailed provision which is required. Some adjustments have been made to the way the Rules are described: they will concern the exercise of functions conferred by or by virtue of the Bill. Subsection (3) is new but is not intended to change the existing position: it confirms that the Secretary of State can exercise discretion and grant immigration or transit permission to a person even if the person does not meet a requirement of the Rules.

### ***Arrival in and entry into the UK***

#### **Clause 22: Designated control areas**

70. This clause replicates in part provisions in paragraph 26(2) and (3) of

Schedule 2 to the IA 1971 in relation to designated control areas. Subsection (1) provides the Secretary of State with powers to give notice to owners or agents of any ship, aircraft or train requiring them to (i) designate control areas within a port or international railway station in the UK for the purpose of examining passengers entering and leaving the UK and (ii) specify the conditions and restrictions to apply in that control area.

71. Subsection (2) requires that where owners or agents are given notice, they must take all reasonable measures to ensure that passengers do not enter or leave the UK outside of the designated control area and that owners or agents must take all reasonable steps to meet the requirements set out in the notice, and ensure that passengers meet these requirements.

72. Subsection (3) provides similar powers in respect of port operators and operators of international railway stations in so far as it enables the Secretary of State to give notice to require them to (i) designate control areas in the port or international railway station and (ii) set out requirements and restrictions to be met in that area. Subsection (4) provides that operators of ports or international railway stations must take reasonable steps to comply with a notice under subsection (3).

#### **Clause 23: Entry into the UK**

73. This clause defines when a person enters the UK. The person (“P”) enters when P disembarks a ship, aircraft or train P arrived on, unless P enters at a port or international railway station with a designated control area, as provided for under clause 22. In these circumstances, P has entered the UK only when P has left that designated control area.

#### ***Designated officials***

#### **Clause 24: Power of Secretary of State to designate officials**

74. This clause provides that the Secretary of State may appoint officials as designated officials for the purposes of the Bill. A designation is subject to such limitations as may be specified in it. Subsection (3) sets out that such limitations may, in particular, relate to the functions which may be exercised under the designation or the purposes for which the functions may be exercised by the designated official.

75. Subsection (4) provides that a designation may be permanent or may be made for a specified period and may, in either case, be withdrawn and may be varied. Subsection (5) requires that the power to designate or withdraw designation must be exercised by the Secretary of State giving notice to the official or officials in question. Subsection (6) provides that the Secretary of State may designate an official only if satisfied that the official is capable of effectively carrying out the functions specified in the designation and has received adequate training in respect of those functions. In addition to these requirements, the Secretary of State must also be satisfied that the designated official is a suitable person to exercise those functions.

76. Subsection (8) provides that subject to any limitations specified in



relation to an individual official, a designated official may exercise any function conferred on a designated official by this Bill.

## **PART 2: POWERS TO EXAMINE ETC.**

### ***Powers to examine***

#### **Clause 25: Power to examine those who arrive in, enter or seek to enter etc. the UK**

77. Subsection (1)(a) provides that the Secretary of State may examine those who have arrived, or who are intending to enter the UK, but who have not entered. This allows examination of those who have arrived or are in transit. Subsection (1)(b) provides for examination of those who have entered the UK. Subsection (1)(c) provides for examination where a person is outside the UK and has applied for immigration or transit permission, and subsection 1(d) provides for examination where a person is otherwise seeking to enter the UK, which could be at a juxtaposed control or when examined at the boarding gate at an overseas airport or port.

78. The intention is for staff to have the power to examine passengers anywhere in the world (using our network of overseas border security advisers agreed with host governments) where it is operationally necessary. Immigration staff examine passengers on arrival at the UK border and at our agreed juxtaposed controls in Europe. The official will determine whether the person requires permission; if so, whether the person has permission and, if the person has permission, whether it should be cancelled.

79. Subsection (2) sets out the purposes for which the examination may be carried out.

80. The effect of clause 25 is to extend the categories of person that may be examined for immigration purposes. The powers in paragraph 2 to 4 of Schedule 2 to the IA 1971 apply only to those arriving in the UK. This power will also allow examination of those who have already entered the UK (whether recently or some time previously). It also provides for the examination of those making an application for permission at any stage, whether they are in the UK or abroad, and for the examination of those who are otherwise seeking to enter the UK, including those who are abroad and seeking to enter. Unlike the current powers to examine on arrival, which are vested in immigration officers (but also exercisable by the Secretary of State when considering asylum applications or claims to remain in the UK on human rights grounds by persons seeking leave to enter), the new power will be delegated by the Secretary of State to appropriate officials in the UK Border Agency.

81. Subsection (3) provides that the Secretary of State may require a person examined under clause 25 to submit to a specified medical examination or to provide a specified medical report.

**Clause 26: Power to examine those leaving the UK**

82. This clause provides a power for the Secretary of State to examine those who are leaving or seeking to leave the UK and sets out the purposes for which they may be examined. A person (“P”) leaving or seeking to leave the UK may be examined for the purpose of determining whether P is a British citizen. If P is not a British citizen, P may then be examined to determine P’s identity as well as other matters, including whether any offence has been committed by P whilst in the UK.

**Clause 27: Power to require further examination**

83. This clause provides for the Secretary of State to require a person who is examined under either clause 25 or 26 to submit to further examination. Subsection (2) provides for the power to require a person to submit to further examination to be exercised by the Secretary of State giving notice to the person concerned. 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, from leaving on their intended ship, aircraft or train.

***Powers to obtain information and documents***

**Clause 28: Power to require production of passport etc.**

84. This clause requires a person being examined, or being further examined, to provide a valid identity document to the Secretary of State. Subsection (4) requires a person (“P”) to declare whether or not P is carrying or conveying (for example in P’s luggage or vehicle), or has carried or conveyed, documents of any relevant description specified by the Secretary of State (subsection (5)) and produce such documents. “Identity document” is defined in clause 208(1).

**Clause 29: Power to suspend permission on section 25 examination**

85. This clause provides that where a person who had immigration or transit permission on arrival is examined under clause 25(1)(a), the Secretary of State may suspend the person’s permission until the examination is complete. The power to suspend permission ensures that the person under examination does not retain permission whilst under examination where there is reason to believe that the person may no longer be entitled to it.

***Hotel registration***

**Clause 30: Hotel registration**

86. This clause allows the Secretary of State to make an order requiring records to be kept of people (including British citizens) staying at hotels or other premises where lodging or sleeping accommodation is provided and requiring people staying in such establishments to provide the necessary information. Unless the person has a reasonable excuse, a failure to comply with these requirements is a criminal offence. The penalty for this offence reflects provision made by the Criminal Justice Act 2003, subject to the transitory provisions in clause 198.

### **PART 3: CITIZENSHIP**

#### **Clause 31: Acquisition of British citizenship by naturalisation**

87. This clause replaces section 6 of the BNA 1981.

88. The new section 6 sets out four cases in which the Secretary of State may grant the applicant a certificate of naturalisation as a British citizen. In all cases, the application must be made by a person of full age and capacity, and the Secretary of State must be satisfied that the applicant fulfils the relevant requirements in Schedule 1 to the BNA 1981 for naturalisation as a British citizen.

89. Subsection (2) sets out Case 1. In this case, on the date of application, the applicant must either have probationary citizenship permission or permanent permission or the applicant must be serving outside the UK in Crown service under the government of the UK. This case is for applicants who have permission to be in the UK in their own right.

90. Subsection (3) sets out Case 2. In this case, on the date of application, the applicant must either have probationary citizenship permission or permanent permission granted on the basis of the applicant being a dependant relative of a British citizen. The applicant must still be a dependant relative of that British citizen.

91. Subsection (4) sets out Case 3. In this case, on the date of application, the applicant must either have probationary citizenship permission or permanent permission granted on the basis of being the partner of a British citizen (as defined in subsection (8)(a)).

92. Subsection (5) sets out Case 4. In this case, on the date of application, the applicant must either have probationary citizenship permission or permanent permission granted on the basis of being the bereaved partner of a British citizen, or on the basis that the applicant is the victim of domestic violence by a British citizen partner (see subsection (7)).

#### **Clause 32: Requirements for naturalisation as a British citizen**

93. This clause replaces paragraphs 1 and 2 of Schedule 1 to the BNA 1981. It sets out six requirements for naturalisation as a British citizen for an applicant applying under section 6(2) or 6(3) (Cases 1 and 2).

94. The first requirement relates to the applicant's presence in the UK and to the applicant not being in breach of immigration laws. The requirement states that an applicant must have been in the UK at the beginning of the qualifying period, and must not have been in breach of the immigration laws at any point in that period. Qualifying period is defined in new paragraph 4A of Schedule 1.

95. Where the applicant has probationary citizenship permission on the date of the application, that person must not have been absent from the UK for more than a

permitted period. The permitted period of absence is 90 days per year for each year the applicant has probationary citizenship permission. A year is measured in terms of 12 month periods starting with the date the applicant was granted probationary citizenship permission. Sub-paragraph (1) tests the absences during the period of probationary citizenship permission rather than absences during the entire qualifying period because the absences in the first part of the qualifying period will have already been tested through the application for probationary citizenship.

96. Where the applicant has permanent permission on the date of application, and has not had probationary citizenship permission, that person must have had permanent permission for the whole qualifying period, and been absent from the UK for no more than 90 days in each year. Absences relate to each year of the qualifying period because the entire qualifying period will have been spent with permanent permission.

97. There is no stipulation about permitted absences where the applicant has permanent permission, and had probationary citizenship permission beforehand, because absences from the UK will already have been tested in the application for permanent permission.

98. The second requirement is about an applicant's intentions. An applicant must intend, in the event of being granted a certificate of naturalisation to make the UK that person's home (or principal home) or to enter into or continue in Crown work. Crown work is defined in subparagraph (5).

99. The third requirement is that the applicant must be of good character.

100. The fourth requirement is that the applicant must have sufficient knowledge of the English, Welsh or Scottish Gaelic language. Regulations made under section 41 of the BNA 1981 will continue to set out what is considered to be sufficient knowledge.

101. The fifth requirement is that the applicant must have sufficient knowledge about life in the UK. Regulations made under section 41 of the BNA 1981 will continue to set out what is considered to be sufficient knowledge.

102. The sixth requirement only applies to cases where the applicant has probationary citizenship permission which was granted for the purposes of employment. An applicant ("A") must show that A has continued to be in employment during the time that A has probationary citizenship permission. This is to avoid the situation where an applicant is granted probationary citizenship on the basis of employment, fails to work in the UK, but relies on having permission to qualify for naturalisation. For the purposes of this requirement, employment includes self-employment.

103. Paragraph 2 gives the Secretary of State discretion to waive some of the requirements in the special circumstances of a particular case.

**Clause 33: Requirements for naturalisation as a British citizen: partners etc.**

104. This clause replaces paragraphs 3 and 4 of Schedule 1 to the BNA 1981. It sets out six requirements for naturalisation as a British citizen for an applicant under section 6(4) or 6(5) (Cases 3 and 4).

105. The first requirement is that, if an applicant is applying on the basis that the applicant is the partner of a British citizen that relationship must be subsisting. This applies to all applicants applying under Case 3, including spouses and civil partners.

106. The second requirement relates to the applicant's presence in the UK, having the relevant type of permission, and not being in breach of immigration laws. At the beginning of the qualifying period, the applicant must have been in the UK and had immigration permission granted on the basis of being the British citizen's partner. If the relationship has subsequently broken down due to the British citizen's death, or due to domestic violence by the British citizen, and the applicant now has permission on this basis at the point of applying for naturalisation, the applicant must nonetheless have started the qualifying period with permission as a spouse, civil partner, unmarried or same sex partner of the same British citizen.

107. The requirement about absences from the UK is the same as for applicants under Cases 1 and 2 (described above). There is an additional requirement for applicants who have permanent permission. Where an applicant has permanent permission, the applicant must also show that the entire qualifying period was spent with permission granted on the basis of being the partner of the British citizen. An applicant may count permission on the basis of being a partner, as well as permission on the basis of being a bereaved partner, or victim of domestic violence.

108. The third, fourth, fifth and sixth requirements for applications under section 6(4) replicate the second, third, fourth and fifth requirements for applications under Cases 1 and 2, which are described above.

109. Paragraph 4 gives the Secretary of State discretion to waive some of the requirements in the special circumstances of a particular case.

**Clause 34: The qualifying period for naturalisation as a British citizen**

110. This clause inserts a definition of the qualifying period for naturalisation as a British citizen after paragraph 4 of Schedule 1 to the BNA 1981.

111. The default qualifying period is 8 years in the case of someone applying under section 6(2) or 6(3) (Cases 1 and 2). The default qualifying period is 5 years in the case of someone applying under section 6(4) or 6(5) (Cases 3 and 4).

112. The applicant can reduce the qualifying period by 2 years by participating in prescribed activities, or by virtue of being exempt from participating. If reduced, this will mean the qualifying period is 6 years in Cases 1 and 2; and 3 years in Cases 3 and 4.

113. The qualifying period can be increased if the applicant, or a connected person, is convicted of a prescribed offence. The prescribed offences, and the amount by which the qualifying period will increase for being convicted of a prescribed offence, will be set out in regulations, subject to the affirmative resolution procedure.

**Clause 35: Regulations**

114. This clause amends section 41 of the BNA 1981.

115. It inserts into section 41 the power to make regulations which define unmarried and same sex partners; define whether a relationship is subsisting; describe the prescribed activities which can reduce the length of the qualifying period; state who is exempt from carrying out prescribed activities, and therefore automatically qualifies for a reduced qualifying period; amend the length of the 8-year or 5-year default qualifying period; amend the length of the 2-year period by which the qualifying period is reduced for carrying out prescribed activities. In particular, the period can be set at zero, so that carrying out prescribed activities would have no effect on the default qualifying period.

116. Regulations which cover any of these points (with the exception of defining unmarried and same sex partners or whether a relationship is subsisting) will be subject to the affirmative resolution procedure.

**Clause 36: Meaning of references to being in breach of immigration laws**

117. This clause inserts a new section 50A in the BNA 1981. The new section, in effect, replaces section 11 of the NIAA 2002. Subsection (2) states that a person (“P”) is in the UK in breach of immigration laws if P is neither a British citizen nor an EEA entrant, P is in the UK and P does not have immigration permission, or having been granted temporary permission, is in breach of a condition subject to which temporary permission was granted.

118. This clause relates to the requirements in clauses 32 and 33 that an applicant for naturalisation as a British citizen must not, at any time in the qualifying period, be in the UK in breach of immigration laws. This requirement can be waived in the special circumstances of a particular case.

**PART 4: EXPULSION ORDERS & REMOVAL ETC. FROM THE UK**

*Expulsion orders*

**Clause 37: Power and duty to make an expulsion order**

119. Subsection (1) sets out the effect of an expulsion order. 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 should the person arrive or enter in breach of that prohibition, it will require him to leave.

120. The grounds for making an expulsion order are contained in subsections (2) and (4). The Secretary of State has the power to make an expulsion order in relation to a person who is not a British citizen and who falls within any ground in subsection (4). The Secretary of State has the duty to make an expulsion order in respect of foreign criminals. This maintains the position established in the UKBA 2007. The Secretary of State also has the power to make an expulsion order in relation to the family member of any person expelled under either of the two aforementioned heads. EEA entrants are liable to expulsion, subject to the protections provided against expulsion under European Community law. The relevant powers are set out in domestic regulations which implement European Community law.

121. Subsection (4) sets out the different triggers for exercising the power to make an expulsion order. It covers persons:

- refused immigration permission on or after arrival;
- whose permission is cancelled on arrival;
- who are intending to transit in the UK and who arrive without transit permission, or whose transit permission is cancelled;
- without immigration permission; persons who breach a condition of temporary immigration permission;
- who obtain or seek to obtain permission by deception;
- who are the subject of a court recommendation for expulsion;
- whose expulsion the Secretary of State thinks would be conducive to the public good.

This will also catch those who are outside the UK and who would have previously been excluded.

122. This clause contains various other provisions about the making and effect of an expulsion order. For example, subsection (5) clarifies that an expulsion order may also be made where the person is outside the UK. Subsection (6) provides that expulsion orders may be made for a limited or unlimited period. There will be guidelines in the Rules about the period for which an expulsion order should be made.

123. Subsection (8) requires the Secretary of State to give notice to a person where an expulsion order is made against that person.

**Clause 38: General limits on the making of an expulsion order**

124. This clause contains the exceptions which preclude the Secretary of State from making an expulsion order. These exceptions apply to all the grounds for making an expulsion order and, if any of these exceptions applies, an expulsion order

must not be made. Exception D is intended to meet the UK's obligations in respect of persons entitled to humanitarian protection under the Directive mentioned in subsection (5). Subsection (6) allows the Secretary of State to add or amend existing exceptions by order.

**Clause 39: Exceptions to the duty to make an expulsion order in case of foreign criminal**

125. This clause sets out the exceptions which only apply to the duty to make an expulsion order in respect of foreign criminal referred to at clause 37(2)(b). The application of one or more of the exceptions in this clause removes the duty to make an expulsion order but, subject to the exceptions listed in clause 38, does not prevent the Secretary of State from exercising discretion to make an expulsion order against that person (under clause 37(2)(a)).

126. Subsection (7) creates a presumption that where Exception 2 applies the expulsion of a person should be regarded as conducive to the public good for the purposes of clause 37(4)(h). Exception 2 relates to foreign criminals subject to extradition proceedings. This does not prejudice the Secretary of State's power to make an expulsion order against a foreign criminal to whom Exception 1, 3, or 4 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 exceptions in clause 38 will apply.

**Clause 40: Power of a court to recommend expulsion**

127. This clause replicates existing powers for a court to recommend expulsion where a person ("P") aged 17 or over is convicted of an imprisonable offence. This includes any offence for which imprisonment is an available sanction, regardless of whether P is sentenced to imprisonment.

128. Subsection (2) specifies which courts have the power to make a recommendation.

129. Subsection (3) provides that the court may not recommend expulsion unless the person has been given seven days' notice explaining that the court may not recommend the expulsion of a British citizen, describing the persons who are British citizens and stating that a person claiming to be a British citizen must prove it.

130. Subsection (4) provides that an appropriate court may adjourn after conviction for the purposes of serving such a notice or, where a notice was served less than 7 days previously, to allow the full 7 days to elapse.

131. Subsection (5) sets out the relevant powers of adjournment.

132. Subsection (6) specifies that a person is to be treated as being aged 17 or over at the time of conviction if he appears to be aged 17 or over on the basis of any evidence available to the court making or considering the recommendation.



133. Subsection (7) specifies that a recommendation may be made in respect of a person who is sentenced to imprisonment for life.

134. Subsection (8) states that the validity of the recommendation may only be called into question through an appeal against the recommendation or the conviction on which it is made.

135. Subsection (9) provides that a recommendation is to be treated as part of the sentence for the purposes of appeals against sentence.

**Clause 41: Particular limits on the making of an expulsion order**

136. This clause sets particular limits on the power to make expulsion orders in respect of court recommended expulsions, the duty to make an expulsion order against foreign criminals, and expulsion orders against family members.

137. Subsections (1) and (2) relate to court recommended expulsions, and provide that an expulsion order may not be made whilst any appeal against the recommendation, or the conviction to which it relates has been instituted or could be brought. This applies until any such appeal is either withdrawn or determined.

138. Subsections (3) and (4) relate to the duty to make an expulsion order against a foreign criminal. An expulsion order may not be made whilst any appeal against the conviction, or the conviction or sentence to which it relates has been instituted or could be brought. This applies until any such appeal is either withdrawn or determined.

139. Subsection (5) applies to family members of persons against whom an expulsion order has been made. It prevents an expulsion order from being made against a family member where more than 8 weeks have elapsed since the person given the original expulsion order has left the UK or the expulsion order in relation to that other person has been cancelled or has expired.

**Clause 42: Effect of expulsion order on immigration permission**

140. Subsection (1) provides that the making of an expulsion order automatically cancels any prior permission that has been granted to a person against whom an expulsion order has been made. Subsection (2) provides that any immigration 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 43: Cancellation of an expulsion order**

141. Subsection (1) allows for an expulsion order to be cancelled by the Secretary of State. It is intended that the provisions about applying for cancellation of an expulsion order will be contained in the Rules.

142. Subsection (2) specifies that a person must be given written notice of a decision to cancel or refuse to cancel an expulsion order.

143. Subsection (3) sets out that where a person is a foreign criminal, an expulsion order may be cancelled only if the exceptions in clause 38 or 39 apply, or if the foreign criminal is now outside the UK.

144. Subsection (4) 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.

***Removal of those subject to expulsion orders***

**Clause 44: Power to remove those subject to an expulsion order**

145. This clause provides for a person who has been made subject to an expulsion order to be removed. The person must be removed to a specified country falling within subsection (4). Removal directions may be given to the captain of a ship, aircraft or train on which the person arrived, the carrier in relation to that ship etc, the captain of any ship etc which is about to leave the UK and the owner or agent of any ship etc.

146. Subsection (7) provides for directions to be given to the carrier of a ship, aircraft or train in which P arrived in the UK.

147. Subsection (8) provides for directions to be given to the owner or agent of any ship, aircraft or train other than one in which P arrived in the UK.

148. Subsection (9) provides for the removal directions to include provision for a person to be accompanied by one or more escorts.

149. Subsection (10) defines “the carrier” as the owner or agent of the ship or aircraft in which P arrived in the UK or, where P arrived by train, the person operating that international service.

**Clause 45: Power to place those being removed on an aircraft etc.**

150. This clause 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 46: Cost of complying with removal directions**

151. This clause sets out who bears the costs of complying with removal directions including where escorts are required. Subsection (1) provides that the Secretary of State will bear those costs except where subsections (2) and (3) apply. Subsection (2) provides where a person (“P”) is removed in the ship, aircraft or train in which P arrived, the costs of removal must be met by the carrier in relation to that ship etc. Subsection (3) provides that where the directions include provision for P to be accompanied by an escort the Secretary of State may require the person given the directions to remove P to bear the costs relating to the escort. Subsection (4) states that subsection (1) does not prevent the Secretary of State from exercising any powers to recover costs from the person in relation to whom an expulsion order has been made under clause 189 (fees).

***International travel bans***

**Clause 47: International travel bans**

152. This clause defines a “person subject to a travel ban” as one named by or described in a designated instrument where failure to apply subsections (2) or (3) would breach the UK’s obligations in respect of a designated instrument.

153. Subsection (2) provides that any prior immigration or transit permission granted to that person is automatically cancelled. Subsection (3) provides that any such permission granted whilst that person is a person subject to a travel ban is treated as if it had never been granted unless a grant of immigration permission to the person is necessary to avoid a breach of a person’s human rights under the Human Rights Convention. Subsections (4) to (7) make provision about the meaning of a “designated instrument”.

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

**Clause 48: No removal etc. where right of in-country appeal**

154. This clause preserves the provisions in sections 78 and 79 of the NIAA 2002. It 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. 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.

155. Subsection (3) specifies that that this clause does not, however, prevent P’s detention, the grant of immigration bail to P, the giving of removal directions or other interim or preparatory action being taken for P’s removal.

***Assistance to voluntary leavers and other support***

**Clause 49: Power to provide assistance in relation to voluntary leavers**

156. This clause replaces section 58 of the NIAA 2002. It allows the Secretary of State to make arrangements to assist voluntary leavers. Subsections (1) to (3) define who is a “voluntary leaver”. A person (“P”) is a “voluntary leaver” if P falls within subsection (2) or (3), 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.

157. Subsection (2) provides that P must not be a British citizen, a national of an EEA state or a national of Switzerland. However, subsection (3) provides an exception in the case of EEA and Swiss nationals who the Secretary of State has reasonable grounds to believe are or have been victims of trafficking within the meaning of the Council of Europe Convention on Action against Trafficking in Human Beings. This carve-out for victims of trafficking is a change from section 58 of the NIAA 2002.

158. Subsection (4) provides that the Secretary of State may make arrangements to assist voluntary leavers and to assist individuals to decide whether to become voluntary leavers. Subsection (5) sets out the sort of assistance which can be given and in particular makes clear that financial assistance can be given.

**Clause 50: Projects relating to migration**

159. This clause replaces section 59 of the NIAA 2002. It provides a power to the Secretary of State to participate in certain 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) clarifies 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.

***Interpretation***

**Clause 51: Meaning of “foreign criminal”**

160. This clause replicates provisions contained sections 32(1) to (3), and 38(1) to (3) of the UKBA 2007.

161. 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.

162. Subsection (2) states that Condition A is met if the person is sentenced to a period of imprisonment of least 12 months.

163. Subsection (3) states that Condition B is met if the person is convicted of an offence specified by an order made by the Secretary of State, and P has been sentenced to a period of imprisonment.

164. 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).

165. Subsection (5) makes further provision about what is meant by Condition A. It does not cover suspended or aggregate sentences but does include persons:

- sentenced to detention, or ordered or directed to be detained, in a place other than a prison for at least 12 months; and
- those sentenced to detention, or ordered or directed to be detained, for an indeterminate period provided that it may last for 12 months.

166. Subsection (6) makes further provision about what is meant by Condition B. It does not include suspended sentences, but does include persons sentenced to detention, or ordered or directed to be detained, in a place other than a prison.

#### **Clause 52: Meaning of member of the family of a person**

167. This clause sets out the meaning of a family member for the purposes of Part 4. By virtue of subsection (1), a person's family members include that person's spouse, civil partner, unmarried partner or same sex partner; that person's children under the age of 18, and the children under the age of 18 of that person's spouse, civil partner, unmarried partner or same sex partner.

168. Subsections (2) to (4) define unmarried and same sex partners. Persons are considered to be unmarried or same sex 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 or removed under the powers in this Bill.

169. 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.

### **PART 5: POWERS TO DETAIN AND IMMIGRATION BAIL**

#### ***Powers to detain***

#### **Clause 53: Persons liable to examination**

170. This clause sets out the power to detain a person who is liable to examination under clauses 25 and 26. The power applies to those who are examined on arrival, after entry, and on seeking to depart from the UK, including British citizens and EEA entrants.

171. Subsection (1) provides for the detention of a person liable to examination on arrival or after entry until the examination is complete and until all "relevant matters" have been decided. The relevant matters are those listed in clause 25(2). They

include deciding whether permission should be granted to a person who does not have it, and whether to cancel the permission of a person who does.

172. Subsection (3) provides for the detention of a person who is required to submit to examination on seeking to depart from the UK. In those cases, the power to detain is limited to a maximum of 12 hours, which includes time spent in detention during initial and further examination.

**Clause 54: Persons without immigration or transit permission on board aircraft etc.**

173. This clause relates to a person who is not a British citizen or EEA entrant and provides for the detention of a person on board an aircraft, ship or train, where that person has been refused permission on or after arrival, or has arrived with permission which has been cancelled. This includes both immigration and transit permission.

174. Subsection (2) provides that the Secretary of State may require the captain of an aircraft etc to prevent a person disembarking in the UK.

175. Subsection (3) provides that detention under this power is until the Secretary of State decides whether to detain the person under another provision of this Bill.

**Clause 55: Persons in relation to whom an expulsion order is or may be made**

176. This clause provides that, where the Secretary of State thinks that an expulsion order may be made against a person, or where an expulsion order must be made against a person, or has been made against a person, that person may be detained under the authority of the Secretary of State.

177. Subsection (1) provides for the detention of a person whom the Secretary of State thinks an expulsion order may be made against. The power to detain lasts until a decision is made about whether or not to make an expulsion order.

178. Subsection (2) provides for the detention of a person who has served a period of imprisonment, pending consideration of whether there is a duty to make an expulsion order under clause 37(2)(b) and, where there is such a duty, pending the making of an expulsion order in relation to that person.

179. Subsection (3) provides for the detention of a person following the making of an expulsion order. Detention may continue while the order is in force and until the person's departure from the UK or removal pursuant to removal directions.

180. Subsection (4) contains a duty to detain a person who is foreign criminal and against whom an expulsion order has been made pursuant to the duty to make an expulsion order in clause 37(2)(b). The Secretary of State must detain the person concerned, unless in the circumstances the Secretary of State thinks it inappropriate to do so.

181. Subsection (5) provides that, in the case of a person being detained because a

court has recommended that person's expulsion, the court determining the appeal against the recommendation or conviction may direct the release of that person from detention without setting aside the recommendation.

182. Subsection (6) provides that, in the case of a person (i) being detained whilst the Secretary of State considers whether that person is a foreign criminal against whom there is a duty to make an expulsion order or (ii) being detained because that person is a foreign criminal against whom an expulsion order has been made, a court hearing that person's appeal against conviction or sentence may direct the release of that person from detention.

**Clause 56: Persons subject to an expulsion order placed on board aircraft etc.**

183. This clause supports the power to remove a person from the UK by providing that the captain of an aircraft, ship or train, when required to do so by the Secretary of State, must prevent a person who has been placed on that ship etc. from disembarking until the removal has been completed.

184. Subsection 3 allows the captain to detain for this purpose.

**Clause 57: Persons liable to arrest**

185. This clause allows a designated official acting in a port or international railway station in England, Wales or Northern Ireland to detain a person where the designated official thinks that person is someone who 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 where a warrant is outstanding for the individual. The detention is only envisaged to last until a constable arrives on the scene and is subject to a maximum of 3 hours. The designated official may search a person detained under this clause for anything that could be used to assist escape or cause physical injury, and may pursue a person and return that person to the port if the person attempts to abscond from detention. This power broadly replicates section 2 of the UKBA 2007, except that the power now extends to international railway stations.

***Related provision***

**Clause 58: Power to remove a person from an aircraft etc. for detention**

186. This clause provides the power for 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 59: Place and effect of detention**

187. This clause provides that a person detained under this Bill may be detained in such places as the Secretary of State may direct; may be taken, in the custody of a constable or any person acting under the authority of the Secretary of State, to and from a place where the person's presence is required for a purpose connected with the operation of this Bill; and is to be regarded as being in legal custody.

**Clause 60: Duty to give reasons and to review detention**

188. This clause details the Secretary of State's obligations to provide written confirmation to a person who has been detained of the reasons for that person's detention. It also sets out the need to review detention at monthly intervals, and provide written reasons for continued detention.

**Clause 61: Recovery of costs of detention, accommodation and maintenance**

189. This clause makes provision for the recovery of costs arising from a person's detention, accommodation and maintenance from a carrier served with a penalty notice under clauses 122 or 130. The costs may not relate to any period for which a person is detained beyond 14 days.

***Immigration bail***

**Clause 62: Power to grant immigration bail**

190. 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 or liable to detention under clauses 53(1) and 55. A person ("P") may therefore be granted immigration bail if P is detained or liable to be detained on the basis that P may be required to submit to examination or further examination on arrival or after entry, or P is someone in respect of whom an expulsion order may be, must be, or has been made. The Secretary of State does not have the power to grant immigration bail in cases where (i) P is required to submit to examination on leaving the UK; (ii) P is detained on board an aircraft, ship or train by a captain; or (iii) P is detained at port or an international railway station pending police arrest.

191. Subsection (2) sets out the circumstances in which the Tribunal may grant immigration bail. Immigration bail may be granted in cases where (i) a person ("P") is being detained under clauses 53(1) or 55; and (ii) at least 7 days have passed since P has arrived in the UK. There is an additional limitation on the Tribunal's power to grant immigration bail. Where P's removal from the UK is imminent and there is no pending appeal, the Tribunal may not grant immigration bail without the consent of the Secretary of State.

192. Subsection (4) sets out the conditions which may be imposed on a grant of immigration bail (bail conditions). These conditions largely mirror the conditions which may be imposed on immigration permission, except that there is no power to require a person to register with the police, and there are some additional conditions available here which are not available for immigration permission. The additional bail conditions are: (i) to require a person to appear before the Secretary of State or the Tribunal at a time and place specified, (ii) to require the payment of a financial security, and (iii) to require a person to co-operate with electronic monitoring arrangements.

193. The difference between requiring a person to report to the Secretary of State or such other person as may be specified (subsection (4)(c)), and requiring a person to appear before the Secretary of State or the Tribunal at a time and place specified (subsection (4)(e)) is that latter condition will be used to notify a time and date at



which a person must appear (for example, to appear for a hearing before the Tribunal). The former condition may also be used to require personal appearances, but is intended to be used for more regular reporting and contact management.

194. Subsection (6) sets out a list of factors to which the Secretary of State and Tribunal must have regard when deciding whether to grant immigration bail. These are:

- the likelihood of a person breaching a bail condition,
- a person's conviction for an offence,
- the likelihood of a person's presence in the UK being not conducive to the public good,
- where detention is necessary in a person's own interests. For example, if a person is suffering from a mental disorder and detention is necessary in that person's own interest, or if the person is under the age of 18 and satisfactory arrangements have not yet been made for that person's care, where detention is necessary for the protection of another person, and
- any other matters that the Secretary of State or Tribunal considers relevant.

195. Where immigration bail is granted to a person, the Secretary of State or Tribunal must give notice in writing of the decision to the affected person. The notice must state when the grant of immigration bail will commence and any conditions subject to which it is granted. Where the Tribunal grants immigration bail, the Tribunal is also required to notify the Secretary of State of the grant and of any conditions imposed.

196. Subsection (11) provides a power to grant immigration bail subject to conditions. Immigration bail may be granted but may be specified not take effect until the taking of a financial security or arrangements being put in place for any other condition imposed.

197. Subsection (13) sets out the circumstances in which immigration bail ends. Once granted, a person's immigration bail remains in place until that person is granted immigration permission, is detained, or departs from or is removed from the UK.

**Clause 63: Effect of grant of immigration bail**

198. 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 grant of 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.

199. Subsection (2) provides that a grant of immigration bail does not prevent a person's subsequent detention. So, for example, a person who is liable to detention may be granted immigration bail, and later be detained. And a person who is being detained may be released from detention on immigration bail, and later re-detained. A person's subsequent detention may be (but is not always) under the same powers of detention under which the person was initially detained (or initially became liable to detention).

200. By virtue of subsection (3), where immigration bail is granted to a person who has permission, that permission will be automatically suspended. Under subsection (4) when the suspension ends, the person reverts to having permission unless it has expired or is cancelled. The effect is that a person will never have immigration permission and be on immigration bail at the same time.

201. Subsection (5) provides that a person who is in the UK on immigration bail is not in breach of any provision of this Bill by virtue of that person's entry into or presence in the UK. But, in spite of subsection (5), where a person ("P") is admitted to the UK on immigration bail that does not mean that P's entry has been authorised. Equally, where P is granted immigration bail whilst in the UK, that does not mean that P's presence in the UK has been authorised. For the avoidance of doubt, a grant of immigration bail does not equate to a grant of any form of permission.

**Clause 64: Financial security condition**

202. 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 as a 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. The purpose of taking a financial security is to ensure compliance with any other bail conditions, and may be imposed by either the Secretary of State or the Tribunal.

203. The financial security condition must specify the sum of money required, when it is required to be paid, and the manner in which it is to be provided. The money is to be held by the Secretary of State until a person ceases to be on immigration bail, that is to say, the person is detained; is granted immigration permission; is removed or departs from the UK. At that point, the money is to be repaid 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 breached any other condition imposed on it, however, that person must first be given a chance to make representations to the Secretary of State.

204. There is also scope where subsection (4) applies for the financial security to be repaid if the condition is cancelled or the money is otherwise required to be repaid (for example, because the condition has been amended and the amount of the financial security has been reduced).

**Clause 65: Electronic monitoring condition**

205. This clause sets out the arrangements relating to electronic monitoring, which is one of the conditions which may be imposed on a grant of immigration bail.

206. A person subject to electronic monitoring in accordance with these provisions is required to co-operate with arrangements for detecting and recording that person's location at specified times, during specified periods of time, or throughout the currency of the arrangements. 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. Subsection (2) sets out the possible arrangements for electronic monitoring. Subsections (3) to (6) permit the Secretary of State to make regulations about arrangements for electronic monitoring.

207. Subsection (7) requires the Secretary of State to notify the Tribunal when arrangements for electronic monitoring are available in respect of a particular area.

**Clause 66: Restrictions on imposing electronic monitoring condition**

208. Subsection (1) prevents an electronic monitoring condition being imposed on a person under the age of 18.

209. Subsection (2) prevents the Tribunal from imposing an electronic monitoring condition on immigration bail where a person is expected to be in an area and the Secretary of State has not notified the Tribunal that electronic monitoring is available in that area.

**Clause 67: Power to pay travel expenses in relation to reporting condition**

210. This clause permits the Secretary of State to pay the travel expenses incurred by a person granted immigration bail for the purposes of complying with a reporting condition.

**Clause 68: Power to vary bail conditions**

211. This clause permits the Secretary of State or Tribunal to vary conditions of immigration bail by amending or cancelling one 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.

212. Subsection (3) provides that the power to vary the conditions is exercised by giving notice in writing to the bailed person.

**Clause 69: Power of the Tribunal to direct detention etc.**

213. This clause limits the Secretary of State's power to detain a person who has immigration bail where that person's immigration bail was granted by the Tribunal and there is a pending appeal to the Tribunal. Where the Secretary of State has a person arrested who is suspected to be in breach of the conditions imposed on that person's immigration bail, the Secretary of State must bring the person before the Tribunal as soon as reasonably practicable. Subsection (1)(c) provides a cross-reference to the relevant power of arrest which will be set out in the full Bill. The

Tribunal must then decide whether to direct the person's detention, or whether the person's immigration bail should continue on the same conditions as before, or with varied conditions.

### ***Interpretation***

#### **Clause 70: Meaning of liable to detention under this Act**

214. This clause states that the definition of a person who is liable to detention shall 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 for one of these reasons, that person is still a person in respect to whom immigration bail may be granted. This is to avoid the situation where a person is left at large in the UK without any way of keeping track of that person. The effect of this is that a person can be granted immigration bail even where that person may not be lawfully detained under the detention powers in this Bill. This replaces section 67 of the NIAA 2002.

## **PART 6: DETAINED PERSONS AND REMOVAL CENTRES**

### ***Escort of detained persons***

#### **Clause 71: Escort arrangements**

215. This clause allows the Secretary of State to make arrangements for the escorting of detained persons, by contract or otherwise. A "detained person" means a person who is being detained under the Bill or has been arrested under the Bill and is being delivered to a place of detention (see subsection (6)). It provides a regulatory framework for the movement and escorting of detained persons which is designed to be transparent and to safeguard staff, detainees and members of the public.

#### **Clause 72: Monitoring of escort arrangements**

216. This clause provides for the appointment of a Crown servant as an escort monitor and sets out the escort monitor's various duties.

#### **Clause 73: Persons acting under escort arrangements**

217. This clause details the powers and duties of detainee custody officers, prison officers and prisoner custody officers when escorting detained persons. This includes a power to search detained persons, and a power to carry out a search on the visitors of detained persons. By clause 71(6) "detainee custody officer" means a person certified under clause 91 to exercise escort functions in relation to a detained person or to exercise such functions and custodial functions at a removal centre. The same provision defines "prisoner custody officer" 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 74: Breaches of discipline**

218. This clause makes provision in relation to detained persons who breach

prison rules that relate to disciplinary offences while under escort, providing that such persons will be deemed, for the purposes of disciplinary action, to be in the custody of the governor or controller of the prison to which they are being escorted.

**Clause 75: Transfer directions**

219. This clause is concerned with the discharge by an escort of the obligation under a mental health transfer direction.

*Contracting out of removal centres etc.*

**Clause 76: Contracting out of removal centres etc.**

220. 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. A “removal centre” is a place (other than a short-term holding facility or prison) used for the detention of detained person, and a “short-term holding facility” is a place for the detention of detained persons for not more than 7 days or a prescribed period (subsection (6)).

**Clause 77: Contract monitors**

221. 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 or short-term holding facility; provides for functions to be conferred on the monitor by removal centre regulations and sets out other functions of the monitor; and requires the contractor to assist the monitor in the exercise of those functions. Removal centre regulations are defined in subsection (8) as regulations under clause 82.

**Clause 78: Contracted out functions**

222. 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 by the UK Border Agency. It allows detainee custody officers, or prisoner custody officers, to be provided by another person, while management of the centre would remain a matter for the Secretary of State.

*Management of removal centres*

**Clause 79: Management of removal centres**

223. This clause requires the appointment of a removal centre 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. The clause also provides that the functions of removal centre managers will be set out in removal centre regulations.

224. Subsections (4) and (5) require that managers of contracted-out removal centres must not deal with disciplinary matters in relation to detainees, and may not authorise removal from association, segregation or special control, or restraint of detainees other than in an emergency.

**Clause 80: Intervention by the Secretary of State**

225. 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.

226. Subsection (2) provides for the appointment of a Controller, who is to be a Crown servant. The powers of the Controller are set out and provision is made for termination of the Controller's appointment by the Secretary of State. It is envisaged that only a person with sufficient 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.

**Clause 81: Independent Monitoring Boards and inspections**

227. This clause provides for the appointment of an Independent Monitoring Board for every removal centre and makes provision for the functions of those Boards to be set out in removal centre regulations. In particular, the clause requires that the regulations must include functions of the type listed in subsection (3). Every member of an Independent Monitoring Board is entitled to enter the centre at any time and have free access to any part of it and to every person detained there.

***Removal centre regulations***

**Clause 82: Removal centre regulations**

228. This clause provides that the Secretary of State must make regulations for the operation and management of removal centres. The clause also exempts detained persons from the national minimum wage in respect of work performed in pursuance of removal centre regulations.

***Custody of detained persons***

**Clause 83: Custodial functions at removal centres**

229. This clause establishes that only detainee custody officers authorised to perform custodial functions or, in certain circumstances, prison officers or prisoner custody officers, may discharge custodial functions at removal centres.

**Clause 84: Persons exercising custodial functions**

230. 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. This includes a power to search detained persons, and a power to carry out a search on the visitors of detained persons.

**Clause 85: Functions of a custodial nature at short-term holding facilities**

231. This clause allows a detainee custody officer, prison officer or prisoner custody officer to perform functions of a custodial nature at a short-term holding facility, with the same powers and duties as if the facility were a removal centre.

***Discipline at removal centres etc.***

**Clause 86: Medical examinations**

232. This clause provides a power to require detained persons to be medically examined where there are reasonable grounds for believing that those persons are suffering from highly contagious diseases (to be specified by order) and where an authorisation given by the manager of a removal centre is in force. Subsection (5) makes it an offence for a person to fail to submit to such an examination without reasonable excuse. The penalty for this offence reflects the Criminal Justice Act 2003, subject to the transitory provisions in clause 198.

**Clause 87: Assisting detained person to escape**

233. Subsection (1) makes it an offence, to assist a detained person in escaping or attempting to escape from a removal centre or short-term holding facility. Subsection (2) makes it an offence to bring anything into a centre or facility or to a person detained there, or to place anything outside a centre or facility with a view to it coming into the possession of a person detained there, with a view to facilitating the escape of a detained person. The penalty for these offences reflects the Criminal Justice Act 2003, subject to the transitory provisions in clause 198.

**Clause 88: Introduction of alcohol**

234. Subsection (1) makes it an offence for a person to bring or attempt to bring alcohol into a removal centre or to a detained person or to place alcohol outside a removal centre with a view to it coming into the possession of a detained person. Subsection (2) makes it an offence for a detainee custody officer, prison officer or prisoner custody officer exercising custodial functions or any other person on the staff of a removal centre to allow alcohol to be sold or used in the centre, contrary to removal centre regulations. The definition of alcohol is now as defined in the Licensing Act 2003. The penalty for this offence reflects the Criminal Justice Act 2003, subject to the transitory provisions in clause 198.

**Clause 89: Introduction of other articles**

235. Subsection (1)(a) makes it an offence to bring or attempt to bring anything into or out of a removal centre or to a detained person contrary to removal centre regulations. Subsection (1)(b) makes it an offence to place anything outside a removal centre with a view to it coming into the possession of a detained person.

**Clause 90: Notice of penalties**

236. This clause replicates the existing requirements for the posting of penalty notices at removal centres and short-term holding facilities, which are intended to draw attention to the penalties to which a person may be liable if that person commits an offence under clause 87, 88 or 89.

***Detainee custody officers***

**Clause 91: Authorisation of detainee custody officers**

237. 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. It also provides for the suspension and revocation of certificates of authorisation.

**Clause 92: Obtaining authorisation by false pretences**

238. This clause makes it an offence to obtain a certificate of authorisation by false pretences.

*Supplementary*

**Clause 93: Assault or obstruction of detainee custody officers etc.**

239. This clause combines the existing offences of assaulting or obstructing detainee custody officers, prison officers or prisoner custody officers acting in the course of their duties under this Part. Subsection (3) provides that detainee custody officers, prison officers or prisoner custody officers performing escorting functions should be readily identifiable as such before an offence can be committed. The clause provides that the offence covers the three types of officers when they are escorting people and at short-term holding facilities as well as when they are performing other custodial functions. The penalty for the assault offence reflects the Criminal Justice Act 2003, subject to the transitory provisions in clause 197.

**Clause 94: Power of constable to act outside jurisdiction**

240. This clause provides constables who are engaged in undertaking escorts of detainees with the power to conduct such escorts outside their jurisdiction.

**Clause 95: Short-term holding facilities**

241. This clause allows the extension of any provision of Part 6, to the extent not already so extended, to short-term holding facilities. It also allows the Secretary of State to make regulations for the regulation and management of short-term holding facilities.

*Interpretation*

**Clause 96: Interpretation**

242. This clause defines “prescribed” in this Part 6 as meaning prescribed by regulations made by the Secretary of State.

**PART 7: OFFENCES**

*Offences relating to immigration permission*

**Clause 97: Entering the UK without immigration permission**

243. Subsection (1) creates an offence for a person who is neither a British citizen nor an EEA entrant knowingly to enter, or to seek to enter, the UK knowing that that person does not have immigration permission.



244. Subsection (2) provides that, if a person is shown to have entered the UK within a six month period which ends on the day before the proceedings commenced, then it is for the defence to prove that the person had immigration permission. In all other circumstances it will be for the prosecution to prove that the person did not have immigration permission.

245. Subsections (3) and (4) provide that for proceedings for an offence under this section, stamps, stickers, markings or other attachments contained within passports or other travel documents will be presumed accurate in relation to the date and purpose unless the contrary is proved.

246. Subsection (5) provides that clause 193 applies to this offence; so a refugee meeting the requirements of that clause has a defence against this offence. Subsection (6) provides that the extended time limit for prosecutions (clause 195) will apply to an offence under this clause.

**Clause 98: Staying in the UK without immigration permission**

247. Subsection (1) creates an offence for a person (“P”), who is neither a British citizen nor an EEA entrant, to stay in the UK knowing that P does not have immigration permission, whether that is because it has been cancelled or because it has expired.

248. Subsection (2) provides that the offence under subsection (1) does not apply where P’s immigration permission is automatically cancelled under clause 42(1) where an expulsion order is made. This is because in that case if P stays in the UK knowing that there is an expulsion order in force against them, P will be liable to an offence under clause 110.

249. Subsection (3) provides that an offence under this clause is committed on the day P first knows that P does not have immigration permission and will continue to be committed throughout any period thereafter during which P is in the UK without immigration permission.

250. Under subsection (4), a person will not be prosecuted more than once in respect of the same cancellation or expiry.

**Clause 99: Breach of conditions of immigration permission**

251. Subsection (1) of this clause makes it an offence for a person who is neither a British citizen nor an EEA entrant and who has been granted temporary permission, knowingly to breach a condition of that permission. Subsection (2) provides that the offence is committed on the first day the person knows of the breach and will continue to be committed throughout any period thereafter. Subsection (3) provides that a person may not be prosecuted more than once in respect of the same breach of immigration permission. These provisions are new and do not apply to the existing offence.

**Clause 100: Failure to comply with regulations under section 10(2)**

252. This clause creates an offence if, without reasonable excuse, a person fails to comply with requirements relating to registering with the police where this is a condition of the person's temporary permission.

*Offences relating to examination etc.*

**Clause 101: Refusal to be examined or provide information etc.**

253. This clause makes it an offence if, without reasonable excuse, a person ("P") refuses or fails to submit to examination under clause 25 or 26; or refuses or fails to provide information or documents in P's control which is required in an examination under clause 28.

**Clause 102: Failure to submit to medical examination or provide medical reports**

254. This clause makes it an offence for a person who is neither a British citizen nor an EEA entrant, without reasonable excuse, to fail to submit to a medical examination or provide a medical report on being required to do so under clause 25.

**Clause 103: Failure to take steps required in relation to designated control areas**

255. This clause creates two offences. One relates to owners and agents and the other to persons concerned with the management of ports or international railway stations. Subsection (1) provides that a person ("P") who is the owner or agent of a ship, aircraft or train commits an offence if, without reasonable excuse, P fails to take steps required under clause 22(2) (requirement to take steps in relation to designated control areas for embarkation or disembarkation). Subsection (2) makes it an offence for a person concerned with management of a port or international railway station if, without reasonable excuse, that person fails to take steps as required under clause 22(4) (requirement to take steps in relation to designated control areas for embarkation or disembarkation).

*Entering the UK without a passport etc.*

**Clause 104: Entering the UK without passport etc.**

256. This clause creates an offence for a person ("P") to arrive in the UK without a valid travel document and without a reasonable excuse for not having one. Subsection (1) provides that is an offence if P does not have at a permission interview a current travel document in relation to P or a current travel document for a child with whom P claims to be travelling or living.

257. Under subsection (2) P does not commit the offence if the interview takes place after P has entered the UK and, within the period of three days beginning with the date of that interview, P provides the document in question to the Secretary of State. Subsections (3) and (4) set out the defences available to a person charged with not having their own travel document. The person ("P") will have a defence if P can prove that P is an EEA entrant; that P has a reasonable excuse for not being in possession of a current travel document; or that P travelled to the UK without, at any stage since P set out on that journey, having possession of a current travel

document. P also has a defence if P produces a travel document in relation to P which is false, and proves that P used that document for all purposes in connection with P's journey to the UK.

258. Subsections (5) and (6) set out equivalent defences against a person not having a current travel document in respect of a child with whom that person claims to be living or travelling. Subsection (7) relates to an interview which occurs after the person has entered the UK. In these circumstances, the defence of having a reasonable excuse for not being in possession of the documents (subsections 3(b) and 5(b)) does not apply, but it is a defence for the person to prove that the person has a reasonable excuse for not providing the document in accordance with subsection (2). Subsection (8) states that a person is presumed not to have a document if that person fails to produce it on request.

**Clause 105: Section 104: interpretation etc.**

259. This clause sets out the definitions of the terms referred to in clause 104. These definitions only apply to that clause. Subsection (2) states that a "permission interview" means an interview at which a person seeks the grant of immigration permission, whether or not this is by way of a protection application. Subsections (3) and (4) provide that a person will not be able to rely on the deliberate destruction or disposal of a document as their excuse for not being in possession of it unless it was done for a reasonable cause or was beyond that person's control. It will not be for a reasonable cause, however, if the document was destroyed or disposed of with a view to delaying an application or increasing its chances of success or on the instructions or advice of a facilitator (unless it would have been unreasonable to expect non-compliance). Subsections (5) and (6) define a false travel document for the purposes of this offence. Subsection (7) provides that in respect of this offence, a child is a person under the age of 18.

***Assisting illegal entry etc.***

**Clause 106: Assisting unlawful immigration to relevant European countries.**

260. This clause makes it an offence for a person ("P") to facilitate the breach of immigration law by an individual who is not a relevant European citizen. P must know, or have reasonable grounds to believe, that the act facilitates a breach of immigration law and that the individual is not a relevant European citizen. Subsection (2) makes clear that the offence applies to acts of facilitation committed both inside and outside the UK. Subsections (3) and (5) define "immigration law" as one that applies in a member State or listed Schengen Acquis State. Subsection (4) describes which documents will be admissible and taken as conclusive in proceedings relating to this offence. Subsections (5) and (6) additionally provide definitions for "relevant European citizen", "relevant European country" and "listed Schengen Acquis State".

**Clause 107: Assisting protection applicant to enter the UK**

261. 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 an individual who P knows, or has reasonable grounds for believing, is a person who intends to make a protection application (see clause 205). 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 108: Trafficking people for exploitation**

262. This clause makes it an offence to traffic an individual for exploitation. 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 acts of facilitation committed inside or outside the UK

**Clause 109: Section 108: meaning of “exploit”**

263. This defines the meaning of “exploit in a way that is consistent with the Council of Europe Convention on Action against Trafficking in Human Beings.

***Offences relating to expulsion orders & removal***

**Clause 110: Breach of expulsion order**

264. This clause makes it an offence for a person to knowingly arrive in, enter, or stay in the UK in breach of an expulsion order. Subsection (2) provides a defence for refugees as provided for by clause 193 and subsection (3) applies the extended time limits for prosecution set out in clause 195 to this offence.

**Clause 111: Assisting arrival, entry or stay in the UK**

265. This clause makes it an offence for a person (“P”) to do an act which assists another person (“X”), where X is a citizen of the European Union and there is an expulsion order in force against X. Subsection (2) provides that P commits the offence if P does an act which assists X to arrive in, enter or stay in the UK where P knows or has reasonable grounds to believe that the act will assist X and where P knows or has reasonable grounds to believe that there is an expulsion order in force against X. Subsection (3) makes clear that the offence applies to prohibited actions undertaken both inside and outside of the UK.

**Clause 112: Failure by carriers etc. to comply with removal directions**

266. This clause makes it an offence for a person to, without reasonable excuse, fail to comply with any removal directions which have been made in respect of that person under clause 44.

**Clause 113: Disembarking unlawfully**

267. This clause makes it an offence for a person, who is not a British citizen, to disembark in the UK from a ship, aircraft or train having been placed on board for removal from the UK under clause 45(2).

***Offences relating to detention & immigration bail***

**Clause 114: Absconding from detention under section 57**

268. This clause makes it an offence for a person to abscond from detention where that person has been detained pursuant to clause 57.

**Clause 115: Failure by captain to prevent disembarkation**

269. This clause makes it an offence for the captain of a ship, aircraft or train to knowingly permit a person to disembark in the UK when the captain is required under this Bill to prevent that under clauses 54 or 56.

**Clause 116: Breach of conditions of immigration bail**

270. This clause makes it an offence for a person on immigration bail to breach a bail condition.

***Deception and false documents etc.***

**Clause 117: Deception**

271. This clause creates four offences relating to deception. Subsection (1) makes it an offence for a person, who is neither a British citizen nor an EEA entrant, to obtain or seek to obtain immigration permission by deception.

272. Subsection (2) creates a new offence of doing anything in order to prepare for the commission of an offence under subsection (1). Subsection (3) makes it an offence for a person (“P”) to make, or cause to be made, a statement, return or other representation to the Secretary of State or to a person exercising functions under this Bill, if P knows that it is false or does not believe it to be true.

273. Subsections (4) and (5) make it an offence for a person, who is not a British citizen, to secure or seek to secure the avoidance, postponement or revocation of enforcement action by means including deception. Subsection (5) defines enforcement action as the making of an expulsion order, the giving of removal directions or the removal of a person pursuant to such an expulsion order or directions. Subsection (6) provides that the refugee defence under clause 193 applies to all of the offences in this clause. Subsection (7) provides that the extended time limit for prosecution provided by clause 195 applies to an offence committed under subsection (3).

**Clause 118: Altering documents and use or possession of false documents**

274. This clause makes it an offence for a person to alter, use or possess a false identity document or other document made or issued under this Bill if that person knows or has reasonable cause to believe that the document is false. Subsection (2)

provides that the refugee defence in clause 193 applies to this offence. Subsection (3) provides that the extended time limit provided for by clause 195 applies to an offence committed under this section.

**Clause 119: Falsifying or altering etc. a registration card**

275. This clause creates offences relating to the 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 205). Subsection (4) defines “false registration card” as a document that purports to be or is designed to look like a registration card. Subsection (5) provides that the Secretary of State may amend the definition of “registration card” and make consequential amendments by order.

**Clause 120: Possession of immigration stamp**

276. This clause makes it an offence for a person to, without reasonable excuse, have possession of an immigration stamp or a replica immigration stamp.

***Obstruction and assault***

**Clause 121: Obstructing, resisting or assaulting officials etc.**

277. Subsection (1) makes it an offence for a person to, without reasonable excuse, resist or obstruct a person exercising a function under this Bill. Subsection (2) makes it an offence for a person to assault a person exercising a function under this Bill. This is a new offence. It extends the existing offence of assault or obstruction of detainee custody officers etc. (see clause 93) to other officials exercising functions under this Bill. The penalty replicates the one for the existing offence.

**PART 8: CARRIERS’ LIABILITY**

***Penalty for carrying undocumented passengers***

**Clause 122: Penalty for carrying undocumented passengers**

278. This clause enables the Secretary of State to impose a penalty on the owner of any ship, aircraft or specified train which brings an undocumented passenger to the UK. The penalty can be applied if, whilst being examined under clause 25(1)(a), the passenger is unable to produce, on request, a valid identity document and immigration permission or transit permission (if the person needs permission before arrival) and is unable to show that the passenger is a British citizen or EEA entrant. To that extent the current power is extended to cover undocumented British citizens and EEA entrants. It also applies to train services specified in regulations, replacing an existing power to extend the provision to trains.

**Clause 123: Amount of penalty and period for payment**

279. Subsections (1) and (2) require the Secretary of State to specify in regulations the amount of the penalty, which can be different for different cases or circumstances. Subsection (3) stipulates that penalties must be paid within 28 days or within a longer period specified in regulations. Subsection (4) states that in calculating the payment period, no account should be taken of the period from receipt of a notice of objection to notice of decision or from the moment an appeal is brought until it is determined or abandoned.

**Clause 124: Defence**

280. This clause provides the owner with a defence against a penalty imposed under clause 122. Under subsection (2) the owner is not liable to a penalty if the owner can show that the passenger produced proper documentation when embarking to the UK. Subsection (3) entitles the owner 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. Under subsection (4), the Secretary of State may impose a penalty without having established whether the carrier has a defence. This power could be used where the owner has been given the opportunity to show they have a defence but have not responded. It is a new provision.

**Clause 125: Notice of objection**

281. Subsections (1) and (2) enable a person who is given a clause 122 penalty notice to object on the grounds the person is not liable for the penalty. Under subsections (3) and (4) the Secretary of State must consider the objection notice and cancel or confirm the penalty by notice.

**Clause 126: Appeal**

282. Under subsection (1) a person may appeal against a clause 122 penalty to a county court or, in Scotland, a sheriff, on grounds specified in subsection (3). Subsection (2) provides that a person can only appeal after giving a notice of objection against the penalty and the Secretary of State has taken a decision on that objection. Subsection (4) enables the court or sheriff to cancel the penalty or confirm it.

**Clause 127: Enforcement**

283. This clause enables the Secretary of State to recover unpaid debts arising from clause 122 penalties. Subsection (2) states that no question regarding liability to the imposition of the penalty or the amount may be raised during the enforcement proceedings. Any issue relating to liability must therefore be raised in the objection and appeal.

**Clause 128: Notices and procedure etc.**

284. This clause enables the Secretary of State by regulations to make provision regarding notices of a clause 122 penalty or objection decisions, related procedures, including how they are served, time limits and manner of payment.

***Penalty for carrying clandestine entrants***

**Clause 129: Meaning of “clandestine entrant”**

285. Subsection (1) defines a clandestine entrant. It applies to a person who arrives in the UK concealed in a vehicle, ship, aircraft or train (a “transporter”), who passes, or attempts to pass, through immigration control whilst concealed in a vehicle or who arrives in the UK on a ship, aircraft or train having been concealed in a vehicle 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.

286. Subsection (2) defines “UK immigration control” as including a prescribed control zone abroad. This clause now applies to all trains engaged on an international service, rather than only freight trains and freight shuttle trains (see the definition of “train” in clause 208(1)).

**Clause 130: Penalty for carrying clandestine entrants**

287. Subsection (1) enables the Secretary of State to give notice to a person responsible for bringing in a clandestine entrant (and anyone concealed with them in the same transporter) to pay a penalty. Subsection (2) provides that, subject to any clause 134 defence, the person responsible must pay the penalty regardless of whether that person was aware that a clandestine entrant(s) 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 also concealed will be determined with reference to the carried transporter.

**Clause 131: Amount of penalty and period for payment**

288. Subsection (1) states a clause 130 penalty must not exceed the maximum specified in regulations made by the Secretary of State. Subsection (2) stipulates payment must be made within 28 days or such longer period as may be provided by regulations. Subsection (3) states that when calculating the payment period, no account should be taken of any period during which the Secretary of State is in receipt of a notice of objection and has not given notice of a decision or during which an appeal has been brought but which has not been determined or abandoned. The payment deadline is now 28 days and specified in the Bill, rather than regulations. The Secretary of State can now set out in regulations that small firms who provide evidence that they cannot pay the penalty within 28 days may be allowed to pay in instalments over a longer period.

**Clause 132: Persons responsible for clandestine entrants**

289. Subsections (1) and (2) sets out the person(s) responsible for the penalty according to the type of transporter used to carry a clandestine entrant. Subsection (3) enables the Secretary of State to impose a clause 130 penalty on more than one responsible person but the aggregated amount must not exceed that specified in regulations. Under subsection (4), where a person is responsible in more than one capacity, the Secretary of State may impose a penalty notice for each



capacity. Subsection (5) defines a “detached trailer” as something designed or adapted for towing by a vehicle but which has been detached for transport. It defines “trailer operator” as the person responsible for transporting it to the point from which it embarked for the UK. It defines “train operator” as being the person responsible for certifying the train as fit to travel to the UK at the last stop before the UK, or if the train did not stop before arrival, at the train’s departure point.

**Clause 133: Liability of employer for penalty imposed on employee**

290. Subsection (1) applies this clause where the 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) states that the provisions in this Part about notification, objection or appeal to the employer in the same way as to the employee.

**Clause 134: Defences**

291. Under subsection (1) a person responsible for bringing a clandestine entrant to the UK will not be liable to the imposition of a penalty under clause 130 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 the employee responsible 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) only applies where the responsible person did not know or have did not have grounds for suspecting a clandestine entrant was concealed in the transporter. The defence in subsection (5) applies where a train operator 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. This power could be used where the carrier has been given the opportunity to show they have a defence but have not responded.

**Clause 135: Code of practice: level of penalty under section 130**

292. 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 130. The Secretary of State may, under subsection (2), revise and reissue the code. By subsection (3) the code must be taken into account in determining the amount of penalty. Under subsection (4) the Secretary of State must lay a draft of the code before Parliament.

**Clause 136: Code of practice: prevention of clandestine entrants**

293. 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

294. Subsection (2) enables the Secretary of State to revise and reissue the code. Subsection (3) stipulates that this code must be taken into account when determining whether a particular system for preventing clandestine carriage was effective and so provided a defence under clause 134. Under subsection (4) before reissuing this code of practice, the Secretary of State must consult those he thinks appropriate and lay a draft of the code before Parliament.

**Clause 137: Notice of objection**

295. Subsections (1) and (2) provide for a person to object to a clause 130 penalty on the grounds the person is not liable for the penalty, or that the amount is excessive. Under subsection (3) the Secretary of State must consider the objection and can cancel, reduce, increase or confirm the penalty. Under subsection (4), when considering an objection, the Secretary of State must have regard to the code of practices prescribed in clauses 135 and 136 which were in effect at the time of the events to which the penalty relates and to any other relevant matters. Subsection (5) requires the Secretary of State to give notice of the decision.

**Clause 138: Appeal**

296. Under subsections (1) and (2) a person may appeal against a clause 130 penalty to a county court or, in Scotland, a sheriff but only if the person has given a notice of objection which the Secretary of State has decided. Subsection (3) states that a person may appeal on the grounds that the person is not liable for the penalty and/or that the amount of the penalty is excessive. Subsection (4) enables the courts or sheriff to cancel, reduce, increase or confirm the penalty. Under subsection (5) the court or sheriff must take account of the relevant code of practice specified in clauses 135 and 136 and any other relevant matter. Under subsection (6) an appeal can be brought whether or not the Secretary of State has increased or reduced the penalty. Unlike the IAA 1999, under this provision the court or sheriff can increase the amount of the penalty, whether because the court or sheriff thinks it was initially insufficient or the appeal should not have been brought.

**Clause 139: Enforcement**

297. Under subsection (1), if a clause 130 penalty has not been paid within 28 days, or any longer specified period, the Secretary of State may recover the money as a due debt. Under subsection (2), in proceedings for the enforcement of a clause 130 penalty, no question may be raised regarding liability to the imposition of, or the amount of, the penalty. Issues of liability and the amount of the penalty must therefore be dealt with in the objection and appeal.

**Clause 140: Notice and procedure etc.**

298. This clause enables the Secretary of State to make provisions by regulations regarding clause 130 penalty notices or decisions regarding objections, including their content, how they are served, time limits, manner of payment and any related procedures. Subsection (2) applies clause 199, which means that all notices must be in writing.

***Clandestine entrants: detention and sale of transporters***

**Clause 141: Power to detain until penalty notice is given etc.**

299. Subsection (1) enables the Secretary of State to detain the relevant transporter pending the giving of a clause 130 penalty notice or a decision on whether to detain the transporter under clause 142. Subsection (2) obliges the Secretary of State to release the transporter if alternative security is given which the Secretary of State finds satisfactory. Under subsection (3) the Secretary of State may not exercise this power for longer than is necessary or beyond 24 hours from the conclusion of the first search of the transporter.

**Clause 142: Power to detain after penalty notice is given**

300. Subsection (1) enables the Secretary of State to detain a vehicle, 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.

301. 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 clause 130 penalty is given to the owner or hirer. This power has been extended to cover trains (see also clause 144).

**Clause 143: Power to detain in default of payment of penalty**

302. This clause applies where a person given a clause 130 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 were 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 associated expenses are paid.

**Clause 144: Supplementary provisions about detention**

303. 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 130 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 if the person responsible for that wagon is liable to a penalty.

**Clause 145: Application for release of detained transporter**

304. Subsection (1) states that the person to whom the clause 130 penalty was given, the transporter owner or any other person whose interests may be affected by its detention can apply for its release. Under subsection (2) an application can be made to the county court or in Scotland, the sheriff. Subsection (3) enables the court or sheriff to release a transporter detained under clause 142 if a satisfactory security

has been tendered or where there is significant doubt about liability. Subsection (4) enables release of a transporter detained under clause 143 if the court or sheriff considers the detention unlawful.

305. 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, the court or sheriff must consider the hardship caused by detention, the extent of the owner's responsibility and any other relevant factor.

**Clause 146: Power of Secretary of State to sell transporter**

306. Subsections (1) and (2) enable the Secretary of State to sell a detained transporter if the courts do not release it and provided the penalty and connected expenses are unpaid within 84 days from the commencement of detention (in the case of those detained under clause 142) or the period specified in regulations (in the case of those detained under clause 143) or (if longer) within the period in clause 131(2). Subsection (3) prevents a sale whilst an objection or appeal is pending or can be brought and has not been concluded. Under subsection (4) the power to sell lapses if not exercised within a period specified in regulations.

**Clause 147: Permission to sell transporter**

307. Under subsection (1) permission to sell a detained transporter 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 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 due and that it has 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.

**Clause 148: Sale of transporter**

308. 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 prescribed regarding priority payments. Under subsection (3) regulations may, in particular, require proceeds to be applied in payment of the various taxes, duties and outstanding penalties listed. 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 147(2) or 148(1), but non-compliance does not invalidate the sale.

***Authority-to-carry schemes***

**Clause 149: Authority-to-carry schemes**

309. This clause makes provision for authority-to-carry schemes. It enables the

Secretary of State to make regulations requiring carriers to seek authority for bringing passengers to the UK. It is envisaged that carriers will be required to do so by checking the details of passengers travelling to the UK against information held on a Home Office database to confirm that they do not pose certain immigration or security risks and to confirm that their documents are in order. This will take place before the passenger embarks for the UK. Subsection (1) allows the Secretary of State to make regulations requiring a carrier who brings a person to the UK to pay a penalty if the carrier did not seek authority to carry a person, when required to do so, or if the carrier carried a person even though authority has been refused. Subsection (2) provides that the regulations must specify the description of carriers and passengers to which they apply and subsection (3) specifies the characteristics which may be used to define carriers and passengers for these purposes. Subsection (4) provides that the regulations made under this clause may amend, make similar provision to or do anything that may be done under clauses 122 to 128, which concern people arriving in the UK without proper documents. 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.

### ***Supplementary***

#### **Clause 150: Transfer of proceedings**

310. This clause sets out the procedure for transferring proceedings to the High Court (from the county court) or, in Scotland, to the Court of Session (from the sheriff) in relation to an appeal against a penalty imposed for carrying an undocumented passenger or a clandestine entrant, an application for release of a detained transporter or the sale of a transporter.

#### **Clause 151: Interpretation**

311. This clause contains definitions for Part 8.

### **PART 9: ILLEGAL WORKERS**

#### ***Meaning of “illegal worker” etc.***

#### **Clause 152: Meaning of “illegal worker” etc.**

312. This clause defines an “illegal worker”. Subsection (1) provides that an “illegal worker” is a person who is aged 16 or over, is neither a British citizen nor EEA entrant and falls within subsections (2) or (4). Subsection (2) catches a person if the person neither has immigration permission nor has been granted immigration bail; has immigration permission but it is subject to a condition preventing the person from accepting the work in question; or has immigration permission but it is defective.

313. Subsection (3) defines defective permission as permission which is not valid in relation to the person or which was obtained by deception. Subsection (4) covers a person who is on immigration bail where a condition of that immigration bail prevents the person from accepting the work in question. Subsection (5) 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 worker***

**Clause 153: Penalty for employing illegal workers**

314. 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. Subsection (4) provides that a penalty imposed under this clause must be paid before the end of 28 days which begins on the day on which the employer is given the penalty notice or a longer period provided for by regulations. The reference to provision for a longer period in regulations is new and enables the Secretary of State to provide in regulations that small firms who provide evidence that they cannot pay the penalty within 28 days may be allowed to pay in instalments over a longer period. Subsection (5) provides that in calculating the time limit for payment, no account is to be taken of any period during which the Secretary of State is considering a notice of objection or any period during which an appeal against the penalty has been brought but has not been determined or abandoned.

**Clause 154: Defence**

315. This clause provides for a defence available to employers of illegal workers. 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 it was contrary to clause 153. Subsection (4) provides that the Secretary of State can give a penalty without having established that the defence under subsection (1) applies. Subsection (6) 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.

**Clause 155: Code of practice**

316. This clause requires the Secretary of State to issue a code of practice specifying matters to be considered in determining the amount of the 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 153. Subsection (5) provides that before issuing or reissuing the code, the Secretary of State must lay a draft before Parliament.

**Clause 156: Notice of objection**

317. This clause sets out the procedure for employers to object to the Secretary of State in relation to a penalty notice, and for the Secretary of State to consider objections. Subsections (1) and (2) provide that an employer may object either to the employer's liability to the imposition of a penalty or that the amount of the penalty is excessive or both. Subsections (3) to (5) cover the Secretary of State's consideration of the objection. The Secretary of State can cancel the penalty, reduce the amount, increase the amount or confirm the penalty notice. In making the decision,

the Secretary of State must have regard to the code of practice under clause 155 and any other relevant matters. Unlike the existing provisions, where the amount of the penalty is increased the existing penalty notice is varied rather than a new one issued. This means that the employer cannot submit a second objection against the same penalty. Subsection (6) provides that the Secretary of State must give the employer notice of the decision on the objection. Clause 159 provides for regulations to make further provision about notices.

**Clause 157: Appeal**

318. This clause sets out the arrangements for an employer wishing to appeal against a penalty. Subsection (2) provides that an employer can only appeal after giving a notice of objection against the penalty and the Secretary of State has taken a decision on that objection. There is no equivalent provision in the IANA 2006. Subsection (3) provides that the grounds of appeal are that an employer is not liable to the penalty and/or that the amount of the penalty is excessive. Subsection (4) covers the actions that may be taken by the court or sheriff: cancel, reduce, increase the penalty or confirm the penalty notice. The ability to increase the penalty is new and subsection (4)(c) provides that the penalty can be increased 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. Subsections (5) and (6) specify that the court or sheriff, in determining an appeal, must have regard to the code of practice having effect at the relevant time (as defined in clause 155) and any other relevant matters, which may include matters of which the Secretary of State was unaware.

**Clause 158: Enforcement**

319. This clause covers the arrangements for enforcing a penalty imposed by the Secretary of State. Subsection (1) provides that the amount may be recovered as a debt. Subsection (2) restricts the matters that may be raised in proceedings for the enforcement of a penalty. In such proceedings, no question may be raised as to the employer's liability to the penalty or its amount, because the legislation already caters for these matters to have been dealt with

**Clause 159: Notices and procedure etc.**

320. This clause enables the Secretary of State to provide, in regulations, for matters regarding procedure and notices. The regulations may include, for example, the form and content of notices, how they will be given to employers, time limits for payment (beyond the initial 28 days) and how penalties may or must be paid. Subsection (2) of this clause makes it clear that where regulations make provision about the form and content of notices in this Part, must be subject to the requirement in clause 199 that a notice must be in writing.

***Offence where employ illegal workers***

**Clause 160: Employment of illegal workers**

321. This clause makes it a criminal offence to knowingly employ an illegal worker. In the case of a non-natural person, subsection (2) provides that a body will be treated as knowing a fact about a person, if the person with responsibility

in that body for an aspect of the employment knows that fact. There is no change to the penalty for committing this offence as section 21 of the IANA 2006 already takes account of the position under the Criminal Justice Act 2003.

### ***Supplementary***

#### **Clause 161: Transfer of proceedings**

322. This clause provides that in relation to proceedings before a county court or sheriff under clause 157, the county court may transfer the proceedings to the High Court and the sheriff to the Court of Session. This clause is the equivalent of clause 150 in Part 8, which relates to carriers' liability.

#### **Clause 162: Discrimination: code of practice**

323. 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 while avoiding liability for a civil penalty under clause 153 or the commission of a criminal offence under clause 160. 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 the 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 10 AND SCHEDULES 1 AND 2: APPEALS**

### ***The Asylum and Immigration Tribunal***

#### **Clause 163: The Tribunal**

324. This clause makes provision for the continuation of the Asylum and Immigration Tribunal which hears appeals against immigration decisions. Schedule 1 makes provision about the Tribunal.

### ***Right of appeal against an immigration decision***

#### **Clause 164: Right of appeal**

325. This clause provides that a person may appeal against an "immigration decision", which means a decision listed in subsection (2). These include the refusal of immigration permission as the result of a protection or family life application, the refusal to grant further immigration permission to someone who is in the UK with permission, the cancellation of immigration permission, the making of an expulsion order and the refusal to cancel an expulsion order. There is no right of appeal against the refusal or cancellation of permission if deception is used in obtaining or seeking permission. Subsection (3) defines "in-country" and "out-of-country" appeals.



Subsection (4) states that for the purposes of clauses 165 to 171, which describe the rights of appeal, references to a person having immigration permission do not include permission arising under clause 12(2) or 15(2) (continuation of permission).

**Clause 165: Refusal of protection permission other than refugee permission**

326. Subject to the possible certification of unfounded and late applications in clauses 177 and 179, this clause provides that where the relevant immigration decision being appealed against is a refusal to grant permission for protection (other than as a refugee), the appeal may be brought in-country if, following the decision, the person has no permission. There is no out-of-country right of appeal. This reflects the current position.

**Clause 166: Refusal of refugee permission**

327. Subject to the possible certification of unfounded and late applications in clauses 177 and 179, this clause provides that where the relevant immigration decision being appealed against is a refusal to grant refugee permission the appeal may be brought in-country. There is no out-of-country appeal. This reflects the current position.

**Clause 167: Refusal of family life application**

328. Subject to the possible certification of unfounded and late applications in clauses 177 and 179, this clause provides that where the relevant immigration decision being appealed against is a refusal to grant permission for family life the appeal may be brought in-country if the person was in the UK when the decision being appealed against was made. Where the decision was made while the person was not in the UK an out-of-country appeal may be made. This reflects the current position.

**Clause 168: Refusal of immigration permission on other application**

329. This clause concerns the refusal of permission on an application other than a protection or family life application. It provides that a person (“P”) may appeal in-country against a refusal of permission if the application was made while P had permission, the permission was not obtained by deception, P did not use deception in making the application that has been refused, and P is left without permission following refusal of the application. There is no out-of-country appeal against a refusal of permission under this clause.

**Clause 169: Cancellation of immigration permission other than refugee permission**

330. This clause concerns the cancellation of permission other than permission given for protection as a refugee, and includes cancellation of permanent permission. It provides that where temporary permission is cancelled on arrival, an appeal may only be brought in country if the purpose of entry is for the same reason as for which permission was granted. This is equivalent to current restrictions on appeals against refusal of leave to enter. Where permanent permission is cancelled on arrival there is an in-country right of appeal against that decision. There is an exception to the in-country right of appeal where the cancelled permission (whether temporary or permanent permission) was obtained by deception. There is an out-of-country

right of appeal against the cancellation of permission under this clause.

**Clause 170: Cancellation of refugee permission**

331. This clause sets out the right of appeal against the cancellation of refugee permission, and states that an in-country appeal may be brought where P is in the UK when the decision is made, and that there is no out-of-country right of appeal.

**Clause 171: Making of an expulsion order**

332. This clause provides that there is an in-country right of appeal against the making of an expulsion order where the subject of the order is in the UK and had immigration permission at the time the order was made, unless that permission was obtained by deception. Foreign criminals subject to the duty to expel and persons being expelled for breach of condition attached to permission are excepted from the right of appeal, as are the family members of persons falling within this exception.

**Clause 172: Refusal to cancel an expulsion order**

333. This clause provides an out-of-country right of appeal against a refusal to cancel an expulsion order.

**Clause 173: Case where person has an in-country and out-of-country right of appeal**

334. It is possible for an appeal to be brought either in-country or out-of-country where the immigration decision was a refusal to grant immigration permission on a family life application or the decision taken was a cancellation of permission. This clause makes it clear that only one appeal, either in-country or out-of-country, may be brought.

**Clause 174: Grounds of appeal**

335. This clause provides that an appeal under clause 164 may be brought on the grounds that the decision is not in accordance with the Rules or not in accordance with the law. The list of grounds that may be raised is shorter than that in section 84 of the NIAA 2002, but the effect is largely unchanged because almost all of those grounds fall within the ground of the decision not being in accordance with the law. There is also a change in the provision in subsection (2) that provides that a decision is only to be regarded as not in accordance with the law if both removal and voluntary departure in consequence of the decision would not be in accordance with the law. The only significant change is that it will no longer be possible to bring an appeal on the grounds that the person taking the decision should have exercised discretion differently.

***Other limitations and exceptions to right of appeal***

**Clause 175: No appeal if permission refused or cancelled on certain grounds**

336. This clause prevents an appeal being brought against the refusal of further immigration permission to someone who is in the UK, or against the cancellation of immigration permission (other than refugee permission), if the decision was taken on one of the listed grounds; nationality, age or failure to produce a valid identity

document. Identity document is defined in clause 207. 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, someone who applies in a category of the Points Based System that requires the applicant to be sponsored by an employer or college in the UK, and who is refused because the applicant does not have a sponsor, cannot appeal against that refusal.

**Clause 176: Certification of repetitious or unmeritorious submissions**

337. This clause provides that the Secretary of State may issue a certificate where a person makes submissions on a protection or family life matter that have already been raised as part of an earlier protection or family life application. The effect of the certificate is that the submissions are not regarded as a new protection or family life application, and the rejection of those submissions will not generate a right of appeal. This gives statutory effect to the provision currently contained in paragraph 353 of the current immigration rules.

**Clause 177: Certification of clearly unfounded protection or family life application**

338. When a person has made either a protection or a family life application or both, an in-country appeal may not be brought against any refusal decision if the Secretary of State certifies that the application or applications are clearly unfounded. Additionally, subsection (3) requires applications to be certified where the applicant comes from a country listed in Schedule 2 unless the Secretary of State is satisfied that the application is not clearly unfounded. Subsection (4) disapplies the requirement to certify in 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. An applicant who is subject to extradition proceedings and would normally have the application certified will have an in-country right of appeal against any refusal of the protection or family life application.

**Clause 178: Power to amend list of countries in Schedule 2**

339. 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 the country or part of persons entitled to reside there and that removal to that country will 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 then that country or part 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 (4). Where a protection or family life applicant is both entitled to reside in the country or part added and falls within the defined description of person for that country or part, the Secretary of State must certify the application as clearly unfounded unless satisfied that it is not. The purpose of this power is to provide extra flexibility to identify groups of persons within a country or part for whom conditions are generally safe. Subsection (5) allows the Secretary of State, by order, to amend

the list so that part of a country remains listed or so that the country remains listed only in respect of a description of person.

**Clause 179: Certification of late protection or family life application**

340. This clause sets out when the Secretary of State may issue a certificate to prevent an appeal being brought against a decision on a “late” protection or family life application. Subsection (2) provides that a certificate may be issued where a person has been notified of the requirement under clause 191 to state the person’s reasons for being permitted to be in the UK and subsequently seeks to rely on a matter that should have been raised earlier.

341. Subsection (3) provides that a certificate may be issued where a person was notified of a right of appeal against another decision, whether or not that right was exercised, and in the opinion of the Secretary of State the new application relies on matters which could have been raised at the earlier appeal and there is no good reason for the matter 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.

**Clause 180: Certification where decision relied upon classified information**

342. This clause permits the Secretary of State to certify that an immigration decision was taken wholly or partly in reliance on classified information. Certification has to be by the Secretary of State personally. The effect of certification is that an appeal cannot be brought before the Tribunal. Subsection (2) defines “classified information” and subsection (3) states that any pending appeal to the Tribunal against the immigration decision lapses on certification.

**Clause 181: Certification that exclusion conducive to public good**

343. This clause applies to certain types of immigration decision (the cancellation of immigration permission and the refusal to cancel an expulsion order) where the decision was taken by the Secretary of State personally 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 an appeal against the decision cannot be brought before the Tribunal, and that any pending appeal to the Tribunal lapses on certification.

***Determination of appeal***

**Clause 182: Matters to be considered**

344. This clause sets out the evidence that the Tribunal may consider when dealing with an appeal. Subsection (1) provides that an appeal against an immigration decision is to be treated as an appeal against any other immigration decision against 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 cases the Tribunal will generally only be able to consider evidence that was submitted with the

application that is being appealed against. New evidence will, however, still be allowed if it is being submitted to prove that a document is genuine or valid, 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 183: Decision on appeal**

345. This clause stipulates when an appeal is to be allowed or dismissed. The Tribunal will be required to consider all valid grounds of appeal raised by the appellant, as well as considering any other immigration decision against which the applicant may bring an appeal (as required by clause 182(1)).

346. The Tribunal must allow the appeal if it considers that the decision appealed against is not in accordance with the law, including the Rules, but will otherwise need to dismiss the appeal. A change for the current position is that the Tribunal will not be able to allow an appeal because it thinks that a discretion exercised in making the decision appealed against should have been exercised differently.

347. The Tribunal will be required to allow an appeal if it considers that the appellant's removal or 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 from the UK. This provision previously only covered enforced removals from the UK. Subsection (5) provides that a decision is not to be regarded as not in accordance with the law only because the decision maker refused to exercise discretion to grant immigration permission to someone who did not qualify for it under the Rules. A further change from the current position is that the Tribunal will not have the power to make a direction to give effect to its decision when it allows an appeal.

***Practice and procedure***

**Clause 184: Procedure rules**

348. This clause gives the Lord Chancellor the power to make procedure rules in relation to regulating the exercise of the right of appeal provided by clause 164 of this Bill, the Tribunal's powers under Part 5 of this Bill, and the procedure to be followed in connection with proceedings on appeals or applications. Subsection (2) provides that in making rules, the Lord Chancellor should aim to ensure that the rules are designed to ensure that the proceedings are handled as fairly, quickly and efficiently as possible, and that they confer on members of the Tribunal similar responsibility for ensuring that proceedings are dealt with in that way. Subsection (3) sets out particular matters that may be included in the rules; specifically it establishes that the procedure rules may confer discretionary and ancillary powers on the Tribunal, or apply an enactment or practice directions under the Civil Procedure Act 1997 or the Tribunals, Courts and Enforcement Act 2007. Subsection (4) establishes that procedure rules may allow for certain matters to be provided for by practice directions made under clause 186 rather than by rules.

**Clause 185: Offence where fail to comply with rule requiring attendance**

349. This clause makes it an offence to fail to give evidence or produce a document without reasonable excuse when required to do so by the rules.

**Clause 186: Practice directions**

350. This clause enables practice directions to be given by the President of the Tribunal and the Senior President of Tribunals and the procedure for making directions. Practice directions may, in particular, require the Tribunal to treat certain decisions of the Tribunal as authoritative.

**Clause 187: Forged document: proceedings in private**

351. This clause makes provision for hearings and investigations to be held in private when an allegation of forgery is made. The allegation must relate to documents relied on by a party to an appeal under clause 164 and the Tribunal must be of the view that the disclosure of a matter relating to the detection, would not be in the public interest.

***Interpretation***

**Clause 188: Meaning of “pending appeal”**

352. This clause defines when an appeal is to be regarded as pending, and when an appeal is treated as abandoned. Subsection (2) provides that an appeal is pending from the point at which it is made, until it is finally determined, withdrawn, abandoned or it lapses under section 180 or 181. Subsection (4) states that an appeal is treated as abandoned if the application is withdrawn, permission is granted, if the appellant leaves the UK or, for an out-of-country appeal, if the appellant enters the UK. Subsection (5) ensures that an appeal against refusal or cancellation of refugee protection is not ended by a grant of permission. Subsection (6) provides that procedure rules made under clause 184 may make further provision on treating an appeal as abandoned.

**Schedule 1 – The Asylum and Immigration Tribunal**

**Part 1: Membership**

353. Paragraph 1 of Schedule 1 sets out the eligibility criteria for the appointment of Tribunal members. Paragraph 1 requires that appointments are made by the Lord Chancellor. Paragraph 2 makes provision on Tribunal members’ terms of appointment, and paragraph 6 specifies the oaths that must be taken by Tribunal appointees, in accordance with the Tribunals, Courts and Enforcement Act 2007. Payment arrangements are dealt with under paragraph 7.

354. Paragraph 3 establishes that legally-qualified members of the Tribunal are to have the title of Immigration Judge. The Lord Chancellor may give an Immigration Judge the title of Senior Immigration Judge or Designated Immigration Judge.

355. Paragraph 4 makes provision for the presidency of the Tribunal. The Lord Chancellor must, with the approval of the Lord Chief Justice of England and Wales

and his counterparts in Scotland and Northern Ireland, appoint a member as President and one or more member(s) as Deputy President. This paragraph sets out the eligibility criteria of the President and Deputy Presidents, and the powers and functions of the Deputy Presidents. Paragraph 5 sets out that the Senior President of Tribunals is responsible for training, guidance and welfare of the Tribunal's members.

**Part 2: Judicial assistance**

356. Part 2 makes provision for the Senior President of Tribunals to assign a relevant judge or member of another Tribunal to act as a member of the Asylum and Immigration Tribunal, or for a relevant judge to act as a Senior Immigration Judge, and the eligibility criteria, functions and jurisdiction applying to such assignments.

**Part 3: Proceedings**

357. Paragraphs 10 to 12 are provisions for the sitting arrangements, constitution of the Tribunal composition, and allocation of proceedings to members of the Tribunal. In particular, paragraph 11 provides that it is for the President to determine, having regard to various factors, whether cases are heard by a single Tribunal judge or a panel of members. The direction-making power is subject to procedure rules under clause 184.

**Part 4: Functions of Lord Chief Justice, etc.**

358. Part 4 establishes that the Lord Chief Justice and the Scottish and Northern Irish equivalents may delegate (to certain judicial office holders) functions bestowed on them by this Schedule.

**Part 5: Supplementary**

359. Part 5 brings Schedule 7 to the Constitutional Reform Act 2005 on protected functions of the Lord Chancellor into line with the Bill by replacing the references to the NIAA 2002 with a reference to the present Bill when enacted.

**Schedule 2 - List of countries referred to in clause 177**

360. This provides the list of countries referred to in clause 177.

**PART 11: GENERAL SUPPLEMENTARY PROVISIONS**

***Children***

**Clause 189: Duty regarding the welfare of children**

361. This clause requires the Secretary of State to make the arrangements for ensuring that immigration and nationality functions are discharged with regard to the need to safeguard and promote the welfare of children who are in the UK. It also applies to designated officials carrying out immigration functions. The intention is that this duty will replace the duty to issue a code of practice under section 21 of the UKBA 2007. Subsection (1)(b) provides for the duty to apply to those carrying out functions pursuant to arrangements made by the Secretary of State, generally under contract.

## **Fees**

### **Clause 190: Fees**

362. This clause covers charging for applications, services or processes in connection with immigration or nationality.

363. Subsection (1) gives the Secretary of State a power to designate, in an order, immigration and nationality-related applications, services or processes as chargeable. An example of a service would be the processing of data.

364. Subsection (4) permits the Secretary of State to charge a fee higher than the basic cost of processing an application, providing a service, or undertaking a process as the Secretary of State sees fit.

365. Subsection (5) clarifies that, when setting a higher fee, the Secretary of State may take into account other immigration and nationality-related costs, even though they do not directly relate to the application, service or process in question (known as cross-subsidisation). Examples of why fees might be set higher than full cost include recovering deficits from previous years, recouping part of the cost of deciding overseas applications through in-country applications, or recouping the cost of removals from those persons who have been removed from the UK. Subsections (3) to (6) replace section 42 of the AI(TC)A 2004, but are wider in application. Unlike section 42 of the AI(TC)A 2004, the power in this Bill to charge more than full cost is not limited to particular types of application, and does not necessarily have to reflect a benefit to the applicant.

366. Subsection (7) enables the Secretary of State to:

- list the consequences of non-payment;
- list any exemptions from the requirement to pay;
- make provision about the manner of payment, including, for example, payment by instalments; and
- provide for other administrative matters in an order.

367. Subsection (8) states that, if a fee is set for the cost of a person's removal from the UK, an order under this clause may provide that the fee is only payable if the person seeks to re-enter the UK, and in such cases must be paid before the person's arrival in the UK.

368. Subsection (9) allows the Secretary of State, when setting a fee, to take into account costs incurred under foreign enactments which relate to immigration and nationality. For example, this could be used to take into account the cost of processing nationality applications for which functions have been delegated to the Governor of a British overseas territory or a Lieutenant- Governor in one of the Channel Islands



under section 43 of the BNA 1981. The power could also be used to take into account the costs of processing any applications which are decided on behalf of a Crown Dependency.

**Clause 191: Fees: supplemental**

369. This clause contains supplemental provisions about charging.

370. Subsection (1) provides that any order made under clause 190 may only be made with the consent of the Treasury.

371. Subsection (2) extends the power to charge a fee to applications decided, services delivered and processes undertaken overseas. For example, it would be possible to set a fee for visa applications decided abroad. This provision replicates part of section 52(1) of the IANA 2006.

372. Subsection (3) provides that the Secretary of State may recover any unpaid fee due to the Secretary of State, as though it is a debt. In practice, it is likely that an order made under clause 190 will specify that the consequences of not paying a fee are that the application will not be decided, the service not provided or the application not undertaken. But there may be cases in which it is appropriate for the fee to be collected at a later point, in which case, this subsection provides a mechanism for enforcement in the event of non-payment. In the IANA 2006, the Secretary of State had the power to make similar provision about enforcement in an order (section 51(3)(e)).

373. Subsection (4) is a technical provision. It ensures that any existing powers to charge fees, including powers under section 1 of the Consular Fees Act 1980, or section 102 of the Finance (No.2) Act 1987, are not prejudiced by the operation of clause 190. It does not introduce a new power, but ensures that clause 190 can be operated concurrently with existing legislative provisions. This is similar to the provision in section 52(1) and (2) of the IANA 2006.

***Procedure***

**Clause 192: Requirement to state reasons and grounds**

374. Subsections (1) and (2) provide that in relation to an individual application for immigration permission or on making an expulsion order, the Secretary of State may give notice requiring a person to state reasons or grounds for an application to enter and stay in the UK and grounds why they should not be removed from the UK. Subsection (3) ensures that the notice states the consequences for appeal rights if a person does not include the matters required under subsection (2). Subsection (4) makes clear that there is no need to repeat reasons or grounds already mentioned in the initial application.

### ***General provision relating to offences***

#### **Clause 193: Defence for a refugee**

375. This clause creates a defence for refugees against charges for certain offences. The relevant offences are specified in subsections (1) and (2). Subsection (3) makes it clear that the defence applies where the person concerned (“P”) is a refugee within the meaning of the Refugee Convention and can show that P presented himself or herself to the authorities in the UK without delay, made an application for protection as soon as reasonably practicable after arriving in the UK and showed good cause for P’s illegal entry or presence. Subsection (4) provides that the defence does not apply if P stopped in another country en route to the UK unless P can show that P could not reasonably have been expected to be given protection under the Refugee Convention in that country. Subsection (5) states that the defence will not be available in respect of any offence P commits after making a protection application. Subsection (6) provides that where the Secretary of State has refused to grant refugee permission that person is taken not to be a refugee unless that person can show otherwise, e.g. by means of other legal proceedings, including an appeal to the Tribunal. Subsection (7) makes provision for the Secretary of State to add to the list of offences to which this defence can apply. The defence, which is modelled on Article 31(1) of the Refugee Convention, is intended to supplement the administrative arrangements introduced in mid-1999 which were intended to identify at an early stage those cases where Article 31(1) of the Refugee Convention may be relevant.

#### **Clause 194: Commission of certain offences by director etc.**

376. This clause applies to the offences specified in subsection (1): clause 106 (assisting unlawful immigration to relevant European countries) and clause 160 (employment of illegal workers). 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 (6) and (7) provide for partnerships to be liable in the same way.

#### **Clause 195: Extended time limit for prosecutions**

377. This clause provides 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. This clause provides that the summary offences listed in subsection (1) shall be subject to an extended time limit. Subsection (2) makes provision for a magistrates’ court in England and Wales to try an offence within 6 months of proceedings brought within the extended time of 3 years. Subsection (3) makes equivalent provision for proceedings brought in Scotland. Subsection (4) makes equivalent provision for proceedings brought in Northern Ireland.

#### **Clause 196: Place of commission of offence**

378. 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 197: Proceedings not to affect exercise of powers**

379. 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 under this Bill have already commenced.

**Clause 198: Transitory provision: imprisonment on conviction in England and Wales**

380. This clause takes effect in respect of offences that are committed before the commencement of sections 154(1) and 281(5) of the Criminal Justice Act 2003 which are concerned with the maximum sentences a magistrates' court can impose. For the offences specified in subsection (1) the reference to 12 months in each of the provisions will be read as six months in relation to offences committed in England and Wales. Subsection (2) similarly takes effect in respect of offences that are committed before the commencement of section 281(5) of the Criminal Justice Act 2003 which is concerned with the alteration of penalties for summary offences. All the references to 51 weeks in the offences specified in this subsection should be read as references to 6 months.

*Notices and directions etc.*

**Clauses 199: Notices and directions**

381. Subsection (1) provides that references to notices in the Bill are to references to notices given in writing. Subsection (2) clarifies that any reference in this Bill to directing or giving a direction is to the giving of a direction in writing. This also reflects current practice. Subsection (3) provides, for the avoidance of any doubt, that the power to give a direction also includes the power subsequently to amend or cancel that direction.

**Clause 200: Giving of notices**

382. Subsections (1) and (2) provide that the clause applies to the giving of all notices under the Bill, except those relating to carriers' liability and to illegal workers. Subsections (3) to (5) specify how a notice may be given and to whom: by hand to a person or a representative or by post to either at the appropriate address. Subsection (4) defines the term "appropriate address".

383. Subsection (6) provides that the notice can be given to a parent or guardian if a person is under the age of 18 and does not have a representative. Subsection (7) sets out circumstances in which notice may be deemed to have been given if the person's whereabouts are unknown, or an address is defective, false or no longer in use by that person, and where there is no representative acting for that person. Subsection (8) provides that where a notice is deemed to have been given under subsection (7), and the person is then located, a copy of the previous notice must be given to the person as soon as is reasonably practicable with details of when and how it was deemed to have

been given under subsection (7). These provisions broadly accord with current practice.

**Clause 201: Proof of documents**

384. This clause reflects section 32(3) of the IA 1971. Subsection (1) provides that in any legal proceedings a document purporting to be an expulsion order, notice, direction or certificate signed by or on behalf of the Secretary of State is to be received in evidence and, unless the contrary is proved, is to be taken to have been so given, made or issued by the Secretary of State. Subsection (2) provides that 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 Bill is to be evidence of the order, notice, direction or certificate.

***Orders, regulations and rules***

**Clause 202: Orders, regulations and rules**

385. Subsections (1) and (2) specify that orders and regulations under this Bill, and appeals procedure rules under clause 184, are to be made by statutory instrument. Subsection (2) provides that such instruments can make provision generally or only for specified cases, purposes or circumstances; different provision for different cases, circumstances, purpose or areas; and incidental, supplementary, consequential, transitional, transitory or saving provision. Subsection (3) clarifies that this provision does not apply to expulsion orders.

**Clause 203: Parliamentary control of orders and regulations**

386. This clause sets out the procedure which will apply in respect of orders and regulations made under the Bill. Subsection (1) lists those orders and regulations which will be subject to affirmative resolution procedure. Subsection (2) provides that all other statutory instruments under the Bill will be subject to negative resolution procedure, with the exception of commencement orders and any Order in Council extending provisions of the Bill to the Islands.

**Clause 204: Procedure for the Rules**

387. 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.

## **PART 12: DEFINITIONS FOR THE PURPOSES OF THE ACT**

### **Clause 205: Meaning of “protection application” etc.**

388. Subsection (2) defines “protection application” as an application for an individual grant of immigration permission to a person on the basis that the person is a refugee, is entitled to humanitarian protection or is entitled to human rights protection. Subsections (3) to (5) provide for when a person is recognised as a refugee, is entitled to humanitarian protection and entitled to human rights protection. Subsection (6) specifies that a protection application can only be made while that person is in the UK. Subsection (7) provides that a person is making a protection application if the person may reasonably be understood to be making one. However, this provision is subject to clause 176, which allows for the certification of repetitious or unmeritorious submissions following refusal or withdrawal of a protection or family life application. Subsection (8) defines the term “protection permission” which refers to a person who is given immigration permission on the basis that the person is a refugee, or is entitled to humanitarian protection or human rights protection. Subsection (9) clarifies that “refugee permission” means the grant of immigration permission to a person who is recognised as a refugee.

### **Clause 206: Meaning of “family life application”**

389. This clause defines “family life application” as a grant of immigration permission based on an application for family life as identified in the Rules.

### **Clause 207: Meaning of references to arrival by ship in the UK**

390. This clause provides that any references to a person arriving by ship in the UK includes arrival by any floating structure, however provisions in the Bill which relate to members of the crew of a ship do not apply in the case of a floating structure which is a ship merely because of subsection (1).

### **Clause 208: Other definitions**

391. This clause provides definitions of other terms referred to in the Bill.

## **PART 13 FINAL PROVISIONS**

### **Clause 209: Money**

392. This clause is a standard financial provision. Subsection (1) provides that expenditure by 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 210: Repeals and revocations**

393. This clause introduces Schedule 3 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 211: Index of defined expressions**

394. This clause introduces Schedule 4 which lists where in the Bill a number of expressions are defined.

**Clause 212: Extent**

395. Subsection (1) provides that the Bill generally applies to the whole of England, Wales, Scotland and Northern Ireland. Subsection (2) lists two clauses which will not apply to Scotland: clause 57 (persons liable to arrest) and clause 114 (absconding from detention under section 57). The criminal law is a devolved area and these offences have not been extended to Scotland.

396. Subsection (3) 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. This is relevant, for example, to the amendments to the BNA 1981 in Part 3, as part of that Act extend to the Islands. Subsection (4) 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 (5).

**Clause 213: Commencement**

397. This clause sets out the arrangements for bringing into force the provisions of the Bill. Subsection (1) provides clauses 202 and 203 (orders and procedure etc.), clause 212 (extent), this clause and clause 214 (short title) will all come into force on the day this Bill receives Royal Assent. Provisions relating to the trafficking of people for exploitation (clauses 108 and 109) as they extend to Scotland will come into force in accordance with provision made by order of the Scottish Ministers. The remaining provisions of this Act come into force in accordance with provision made by order of the Secretary of State.

**Clause 214: Short title**

398. This provides the short title for the Bill.

**Schedule 1 – The Asylum and Immigration Tribunal**

399. See Part 10 above.

**Schedule 2 – List of countries referred to in clause 177**

400. See Part 10 above.

**Schedule 3 – Repeals and revocations**

401. This lists the repeals and revocations of immigration and non-immigration legislation.

**Schedule 4 – Index of defined expressions**

402. This provides a list of defined expressions used throughout the Bill.

## **COMMENCEMENT**

403. This is a draft partial Bill. Commencement will be considered in the Explanatory Notes for the full Bill in the next session.

## **FINANCIAL EFFECTS OF BILL**

404. Financial effects, as far as it is possible to quantify in a draft partial Bill such as this have been considered in the accompanying Impact Assessment. A full assessment will be made ahead of introduction of the full Bill in the next session.

## **EFFECTS OF BILL ON PUBLIC SECTOR MANPOWER**

405. 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. A full assessment will be made ahead of introduction of the full Bill in the next session.

## **SUMMARY OF IMPACT ASSESSMENT**

406. An impact assessment has been completed for this draft Bill.

407. Major changes to the immigration system are underway and now is the right time to support and reinforce this process by creating a simpler legal framework. Our 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.

408. Due to the fact that this is a draft partial Bill the impact assessment is necessarily unable to cover the full range of changes being considered. It presents the latest thinking on the changes we are considering and working on, helping to assess if they are realistic and achievable

409. A partial impact assessment has been produced which addresses areas which are published in the draft partial Bill only. Options which have been considered in the assessment are: do nothing and maintain the existing complex legislation; consolidate the existing legislation without making any further changes to the existing provisions; replace the existing Acts; and simplify immigration law.

410. An initial consultation on the potential impacts of the earned citizenship proposals were set out in Annex C of the recently published Green Paper, *The Path to Citizenship: Next Steps in Reforming the Immigration System* (February 2008). This presented an initial indication of the potential direct costs and benefits under the headings relating to distinct aspects of the proposed policy: system architecture and

*These notes refer to the draft Immigration and Citizenship Bill*

progression; access to benefits and entitlements; active citizenship; criminality; the fund to manage the transitional impact of migration; and simplification. This document is available at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/pathtocitizenship/>.

411. A separate partial impact assessment is being prepared on earned citizenship proposals and will be made available separately.



## **EUROPEAN CONVENTION ON HUMAN RIGHTS**

### **PART 1: REGULATION OF ENTRY AND STAY IN THE UK.**

412. 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 are vested in the Secretary of State and will normally be exercised by officials acting on her behalf under *Carltona* principles. There is provision 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 Government believes that the powers in this Part are compatible with the European Convention on Human Rights (“ECHR”). 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***

413. 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. The power to grant or refuse leave to remain is vested in the Secretary of State, although in practice the power is exercised by officials acting on her behalf under *Carltona* principles. 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.

414. 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***

415. 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 her, 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.

416. 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***

417. 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 knowingly enter the UK without permission or to stay in the UK when permission has been cancelled or has expired (see clauses 97 and 98). 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 37(4)).

***Cancellation***

418. Clause 13 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.

419. Under clause 14 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***

420. Clause 21 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 174).

421. 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 205 and 206).

422. 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 (3) of clause 21 enables the Secretary of State to grant permission to a person who does not meet the requirements of the Rules.

### ***Designated officials***

423. 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 her behalf 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 24 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 subsection (6)). Some functions under the Bill will be exercisable only by designated officials, which means officials of the Secretary of State designated to carry out that function. This clause provides appropriate safeguards over the exercise of “coercive” functions.

## **PART 2: POWERS TO EXAMINE ETC.**

424. Part 2 provides for a power to examine and other related powers. Clause 25 provides a power for the Secretary of State to examine a person who has arrived but not entered the UK; who has entered; who is outside the UK seeking immigration or transit permission; or who is seeking to arrive or enter. 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, as 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 53). A person may also be required to submit to a medical examination or provide a medical report. It is a criminal offence to fail to comply with this requirement. There is also 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.

## **PART 3: CITIZENSHIP**

425. The Government does not believe the provisions in the Bill raise any ECHR issues.

#### **PART 4: EXPULSION ORDERS & REMOVAL ETC. FROM THE UK**

426. Expulsion replaces the existing concepts of administrative removal, deportation, and exclusion. At the moment, persons who are non-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 provision for foreign criminals to be automatically deported.

##### ***Power to make an expulsion order***

427. Clause 37 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. There is a 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 or whose permission is cancelled.
- Who is transiting the UK without entering, and does not have transit permission.
- Who is in the UK without permission (e.g. an illegal entrant or an overstayer).
- Who has breached a condition of their permission.
- Who has obtained, or attempted to obtain, permission by deception.
- Who has been recommended for expulsion by a relevant court.
- 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.

428. 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 38(2) 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.

### ***International travel bans***

429. 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.

430. 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 47(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.

### **PART 5: POWERS TO DETAIN & IMMIGRATION BAIL**

431. The powers of detention in Part 5 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 thinks 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.

432. 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 notes in relation to detention powers in this Bill that, subject to their obligations under the ECHR, all states to the ECHR have "an undeniable sovereign right to control aliens' entry into and residence in their country". 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***

433. 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.

434. Subject to specified limitations, the power to grant immigration bail will rest with the Secretary of State and the Tribunal. Under clause 62(1), it will be possible for the Secretary of State to grant immigration bail in all cases, except where:

- The person is detained (or liable to detention) under clause 57 (persons liable to arrest).
- The person is detained (or liable to detention) under clause 53(3) (persons liable or subject to examination on leaving the UK).
- The person is detained (or liable to detention) on board an aircraft, ship or train by its captain under clauses 54 (persons without immigration permission on board aircraft etc) or 56 (persons subject to an expulsion order placed on board aircraft etc).

435. Under clause 62(2), 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.

436. 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.

437. 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 60). This provision is intended to ensure compliance with the duty in Article 5(2) ECHR.

438. 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).

***Detention of persons liable to examination***

439. Clause 53(1) permits the detention of a person who may be required to submit to examination or further examination under clause 25(1)(a) or (b). The purpose of detention is to allow a person who arrives in, seeks to enter, or has entered the UK to be examined for the specified purposes. The Government considers that this power to detain falls within one of the permitted cases for detention, namely Article 5(1)(f).

440. Subsection (3) permits the detention of a person who is liable to examination or further examination under clause 26 (power to examine those leaving the UK). The purpose of examination for certain specified purposes. The Government is of the view that this power to detain falls within one of the permitted cases for detention in Article 5, namely Article 5(1)(b). The operation of embark controls acts as an aid to immigration control, and to counter terrorism and criminality. The purpose of detention is to secure the fulfilment of the specific obligation to submit to examination, which is prescribed by law. Those checks would be frustrated if the person being examined could leave at will. Detention will only last for as long as examination continues, which is subject to a 12-hour limit.

***Detention of persons without immigration or transit permission on board aircraft etc.***

441. Clause 54 requires the captain of an aircraft, ship, or train to detain a person on board, if required to do so by the Secretary of State, to prevent that person disembarking in the UK. The purpose of the power is to hold a person on the aircraft etc to prevent him affecting an unauthorised entry into the country. The Government believes that this purpose falls within one of the permitted cases for detention, namely the first limb of Article 5(1)(f).

***Detention of persons in relation to whom an expulsion order is or may be made***

442. Under clause 55, where the Secretary of State thinks that an expulsion order may be made against a person, that person may be detained under subsection (1) until a decision is reached about whether or not to make an expulsion order. Subsection (2) provides that a person who has served a period of imprisonment may be detained whilst the Secretary of State considers whether the duty to make an expulsion order because they fall within the definition of a foreign criminal, and if so, until the expulsion order is made. Subsection (3) permits the detention of a person against whom an expulsion order has been made. The power is available until the person's removal or departure from the UK and as long as the expulsion order remains in force (and is not cancelled or expires). Subsection (4) obliges the Secretary of State to detain a foreign criminal in respect of whom an expulsion order has been made. However, the person will not be detained if the Secretary of State thinks it inappropriate to do so.

443. In all these cases, the Government's position is that detaining a person whilst considering whether to make an expulsion order would fall within one of the permitted cases for detention in Article 5, namely the second limb of 5(1)(f).

***Detention of persons subject to expulsion order placed on board aircraft etc.***

444. Clause 56 allows the captain of an aircraft, ship or aircraft to detain a person on board, if required to do so by the Secretary of State, to prevent that person disembarking in the UK, or until removal directions have been carried out. The purpose of detention is to effect the person's removal from the UK. As such, the Government considers this power to detain falls within one of the permitted cases for detention in Article 5, namely the second limb of Article 5(1)(f).

***Detention of persons liable to arrest***

445. Clause 57 allows for a designated official at a port or an international railway station in England, Wales or Northern Ireland to detain a person where the designated official considers him someone who a constable could arrest without a warrant pursuant to section 24(1), (2) and (3) of the Police and Criminal Evidence Act 1984 (in England and Wales) and pursuant to Article 26 (1), (2) or (3) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (in Northern Ireland), or where a warrant is outstanding for him. The detention will be solely pending the arrival of a police constable and will be subject to a maximum detention period of 3 hours. Designated officials who detain a person pending the arrival of a constable will have limited powers to search the individual to check for weapons and/or documents and to seize any relevant items found. These powers are required to ensure that where a person passes through immigration controls (whether disembarking or embarking), and there is not an immediate police presence, on becoming aware that a person is arrestable designated officials are able to detain pending the arrival of a constable.

446. These powers of detention, search and seizure are required to strengthen border security. They will ensure that those subject to arrest by the police do not evade intervention simply because a police officer is not in the immediate vicinity. The associated powers of search and retention are primarily aimed at securing the detention of the person and ensuring his safety, as well as that of any other person with whom he comes into contact.

447. The Government considers that this power to detain falls within one of the permitted cases for detention, namely Article 5(1)(c). This permits the lawful arrest or detention of a person for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably necessary to prevent his committing an offence of fleeing after having done so.

448. The Government's view is that the power to search individuals, and seize weapons or documents, can be justified under Article 8(2) and Article 1 Protocol



1. The powers of search and seizure pursue the legitimate aim of public safety, and/or the prevention of disorder or crime, and are proportionate. The power to search is for very specific and limited purposes and will be carried out by designated officials who the Secretary of State has concluded are capable of effectively carrying out, have received adequate training for, and are otherwise suitable persons to be carrying out the functions.

***Electronic monitoring***

449. Clauses 65 and 66 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 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 8.

**PART 6: DETAINED PERSONS AND REMOVAL CENTRES**

450. Part 6 of the Bill covers the operation and management of immigration removal centres, used solely to hold those detained under immigration powers. Part 6 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***

451. Clauses 73, 84 and 85 permit detainee custody officers, prison officers or prison custody officers acting in accordance with escort arrangements, or carrying out custodial functions at a removal centre or a short-term holding facility to search a person being detained under the powers in the Bill. 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 outer garments or gloves.

452. 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***

453. Clause 79 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 urgent situation. 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 and 8 ECHR but for the above reasons believes that this power is compatible with the ECHR.

### ***Medical examinations***

454. Clause 86 requires a detainee to submit to medical examination if there are reasonable grounds for believing that a person being detained in the centre is suffering from a specified disease, and the manager of the removal centre has made a relevant authorisation. Subsection (4) provides an order-making power to list which diseases trigger the power to examine.

455. 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 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.

## **PART 7: OFFENCES**

### ***Entering the UK without immigration permission***

456. The duty of (non-EEA entrant) foreign nationals to obtain immigration permission to enter the UK is set out in clause 2 of the Bill. Clause 97 makes it an offence for persons who are neither British citizens nor EEA entrants to knowingly enter or seek to enter the UK knowing that they do not have immigration permission to do so.

457. This offence essentially replaces the offence in the IA 1971 of entering the UK without leave. The offence has been extended to catch those who seek to enter the UK without permission. This will provide a sanction against those who attempt to enter the UK without permission but who are prevented from doing so, for example having been stopped airside at immigration control. The Government does not consider that this raises any ECHR issues.

458. As is the case with the existing offence, where the offence is committed within 6 months of proceedings being commenced, the defence has to prove that the defendant had immigration permission. In all other cases, it is for the prosecution to prove that the defendant did not have immigration permission.

459. The Government notes that the reversal of the burden of proof engages Article 6(2) of the ECHR. 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 as Article 6(2) does not impose an absolute prohibition on reverse burdens but requires an assessment of the reasonableness of doing so in each case. The reverse burden will only operate where the accused has sought entry or has actually entered within 6 months of the proceedings being commenced. The prosecution will still have to prove that the accused entered within 6 months of proceedings being commenced.

460. As is the case with the existing offence the extended time limit for prosecution applies. This departs from the usual position for summary offences where a prosecution may only be brought within 6 months of the offence under section 127 of the Magistrates' Courts Act 1980. For the purpose of the offences in this Bill to which the extended time limit applies, the prosecution have 3 years to commence proceedings. The purpose of extending the time limit is to catch those who have entered the UK in the absence of permission and who have remained undetected before being apprehended. The Government does not consider that this raises any ECHR issues.

461. A refugee 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. This adopts the defence required by Article 31 of the Refugee Convention, which is applied to certain offences by clause 193

### ***Staying in the UK without immigration permission***

462. 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 requires non EEA entrant foreign nationals to apply for permission to stay in the UK where they do not already have immigration permission. Clause 98 makes it an offence for a person who is neither a British citizen nor an EEA entrant to stay in the UK knowing that any permission granted to him has expired or has been cancelled. Subsection (2) ensures that those whose permission has automatically been cancelled as a result

of clause 42(1) (automatic cancellation of permission where an expulsion order is made) are not caught by the offence. This is because there is a separate offence in clause 110 of entering or staying in the UK in breach of an expulsion order.

463. As is the case with the existing offence, the offence is a continuing one. It is committed on the day when the person first knows that he does not have immigration permission and continues to be committed for the duration of the period he stays in the UK without permission. A person can only be prosecuted once in respect of the same cancellation or expiry of permission. The Government does not consider that this clause raises any ECHR issues.

***Breaching conditions of immigration permission***

464. Clauses 4 and 10 of the Bill enable the Secretary of State to grant temporary permission subject to certain conditions.

465. Clause 99 makes it is an offence for a person who has been granted temporary permission to knowingly breach a condition subject to which that permission was granted. We have amended the offence to make it a continuing one; it is committed on the day when the person first knows of the breach of conditions and continues to be committed for the duration of the period for which the breach continues. A person can only be prosecuted once in respect of the same breach. The Government does not consider that this clause raises any ECHR issues.

***Failing to comply with regulations under clause 10(2) and offence where refuse to be examined or to provide information etc***

466. Clause 10(2) enables the Secretary of State, by regulations, to make provision as to police registration and to include as a condition of a person's temporary permission a requirement to register with the police. Clause 100 makes it an offence for a person to, without reasonable excuse, fail to comply with a requirement of any regulations made under clause 10(2).

467. The powers of the Secretary of State to examine and require information from persons who have either arrived in the UK or who are outside the UK and are seeking immigration or transit permission are set out in clauses 25 to 28. Clause 101 makes it an offence for a person, without reasonable excuse, to refuse to comply with such requirements.

468. The Government notes that Article 6(2) is potentially engaged in both of these clauses 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 upon the presumption of innocence. The prosecution will still have to prove that the defendant has failed to comply with the requirement. 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.

***Offences by persons connected with ships, aircrafts and trains***

469. Subsection (1) of clause 103 makes it an offence for a person who is the captain of a ship, aircraft or train to, without reasonable excuse, fail to take steps he is required to take in relation to the disembarkation of passengers, examination of passengers or provision of passenger lists or particulars of crew. Subsection (2) makes it an offence for a person concerned in the management of a port to, without reasonable excuse, take steps in relation to the embarkation or disembarkation of passengers where a control area is designated.

470. The Government notes that Article 6(2) is potentially engaged 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.

***Entering the UK without a passport, etc***

471. Clause 104 makes it an offence for a person not to have a travel document relating to him or a dependent child with him at a permission interview. A travel document is an identity document which permits the person to travel. An identity document is a passport or other document which satisfactorily establishes both the person's identity and the person's nationality. 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.

472. 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.

***Failure by carrier, etc to comply with removal directions***

473. Clause 44 of the Bill enables the Secretary of State to give directions to a carrier for the removal of a person who is in the UK and in respect of whom an expulsion order is in force. Clause 112 makes it an offence for a carrier to, without reasonable excuse fail to comply with such directions. 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.

***Breach of conditions of immigration bail***

474. Clause 62 enables the Secretary of State or the Tribunal to grant a person immigration bail and this immigration bail may be subject to conditions. Clause 116 makes it an offence for a person on immigration bail to, without reasonable excuse, breach a condition of his immigration bail.

475. 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 conditions of his 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.

***Falsifying or altering etc. a registration card and possession of immigration stamp***

476. Subsection (1) of clause 119 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.

477. Clause 120 makes it an offence for a person to, without reasonable excuse; possess an immigration stamp or a replica immigration stamp. The meaning of 'stamping a document' has now been extended to include fixing a sticker or other attachment on it or otherwise marking it.

478. 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.

***Obstructing, resisting or assaulting officials, etc***

479. Subsection (1) of clause 121 makes it an offence for a person to, without reasonable excuse, resist or obstruct a person exercising a function conferred by or by virtue of this Bill. Subsection (2) of this clause makes it an offence for a person to assault a person exercising a function conferred by or by virtue of this Bill.

480. 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.

***Offence where fail to comply with rule requiring attendance***

481. Clause 185 makes it an offence for a person to, without reasonable excuse, fail to comply with a requirement imposed by the Tribunal procedural rules requiring that person to attend before the Tribunal to give evidence or to produce a document.

482. The Government notes that this offence 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 not complying with a requirement. 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 a requirement.

**PART 8: CARRIERS' LIABILITY**

483. Part 8 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***

484. 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.

485. It will be a defence for the carrier to show that he did not know, and had no reasonable grounds for suspecting, that he 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.

486. 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.

487. 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***

488. Clause 149 enables the Secretary of State to establish an authority to carry scheme, authorising her 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.

489. The authority to carry scheme is similar to the civil penalty for undocumented 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 9: ILLEGAL WORKERS**

490. Part 9 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.

491. 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.

492. 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 above), 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.

493. 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.

494. Clause 162 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 153 or a criminal offence under clause 160. 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 10: APPEALS**

495. Part 10 provides for the right of appeal in relation to immigration decisions.

### ***Right of appeal***

496. Clause 164 provides for a right of appeal against specific immigration decisions. Those decisions include refusal of 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.

497. 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” (defined in clause 205) which includes an asylum or human rights 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 or ECHR will be treated as having made an application for permission for the purposes of protection and there will generally be an in country right of appeal against refusal of permission on that application.

498. Family life applications (defined in clause 206) will be treated separately, but in the same way as protection applications. 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.

499. 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 174). 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 183).

500. Clause 175 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.

#### ***Repetitious or unmeritorious submission***

501. Clause 176 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 164. 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 judicially review certification under this provision, thereby providing a safe guard against incorrect certification.

#### ***Clearly unfounded protection or family life applications***

502. Clause 177 prevents a person bringing a right of appeal on a protection or family life 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 178), unless satisfied that the application is not clearly unfounded..

503. The Government notes that this clause could raise 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.

504. Where a person believes that their application has been wrongly certified they can judicially review that decision. The Government is of the view that this provides an effective safeguard against a possible breach of the ECHR.

#### ***Certification of late protection or family life application***

505. Clause 179 broadly replicates section 96 of the NIAA 2002. Where a person has been notified of the requirement under clause 192 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.

506. These provisions provide a sanction, in the form of denial of the right to appeal to the 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.

#### ***Certification that exclusion conducive to the public good***

507. Clause 181 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.

## **PART 11: GENERAL SUPPLEMENTARY PROVISIONS**

### *Fees*

508. Clause 191 gives the Secretary of State power to set a fee for any application, service or process in connection with immigration or nationality. 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 and in particular, it does not consider that this power is in breach of the right to be free of discrimination on the ground of property in Article 14 ECHR.



Published by TSO (The Stationery Office) and available from:

**Online**

[www.tsoshop.co.uk](http://www.tsoshop.co.uk)

**Mail, Telephone, Fax & E-mail**

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries: 0870 600 5522

Order through the Parliamentary Hotline Lo-call 0845 7 023474

Fax orders: 0870 600 5533

E-mail: [customer.services@tso.co.uk](mailto:customer.services@tso.co.uk)

Textphone 0870 240 3701

**TSO Shops**

16 Arthur Street, Belfast BT1 4GD

028 9023 8451 Fax 028 9023 5401

71 Lothian Road, Edinburgh EH3 9AZ

0870 606 5566 Fax 0870 606 5588

**The Parliamentary Bookshop**

12 Bridge Street, Parliament Square,

London SW1A 2JX

**TSO@Blackwell and other Accredited Agents**

ISBN 978-0-10-173732-6



9 780101 737326