IMMIGRATION BILL

DELEGATED POWERS MEMORANDUM

BY THE HOME OFFICE

INTRODUCTION

1. This Memorandum identifies the provisions of the Immigration Bill as introduced in the House of Lords which confer powers to make delegated legislation, and explains in each case why the power has been taken and the nature of, and reason for, the procedure selected.

2. The Bill is in 9 parts:

- Part 1 makes provision for labour market enforcement and offences of illegal working;
- Part 2 deals with access to certain public services;
- Part 3 concerns enforcement powers and immigration bail;
- Part 4 concerns appeals;
- Part 5 deals with support for certain migrants;
- Part 6 contains provisions on border security;
- Part 7 concerns language requirements for public sector workers;
- Part 8 deals with fees; and
- Part 9 contains final provisions including commencement powers and provisions in respect of the parliamentary procedure to be applied to regulations made under the Bill.

PART 1: LABOUR MARKET ENFORCEMENT AND ILLEGAL WORKING

Clause 3(2)(e): amending the definition of "labour market enforcement functions"

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Negative (affirmative if making consequential amendments to primary legislation)*

3. Clause 1 of the Bill establishes a Director of Labour Market Enforcement. Clause 2(2) of the Bill requires the Director to prepare an annual strategic report, which in part sets out how labour market enforcement functions should be exercised during that year and how funding should be allocated between those functions. Clause 2(6) requires those who exercise labour market enforcement functions to have regard to the strategy once made. Clause 3(2) provides that "labour market enforcement functions" means: the functions of the Secretary of State in prohibiting people from running employment agencies and businesses under section 3A of the Employment Agencies Act 1973, the work of enforcement officers authorised under section 9 of that Act, any function of an enforcement officer under the National Minimum Wage Act 1998 and any function of an enforcement officer under the Gangmasters (Licensing) Act 2004 (in so far as it applies to Great Britain).

Effect of the provision

4. This power will enable the Secretary of State to add functions to the definition of "labour market enforcement functions", essentially extending those functions for which the Director sets the strategic direction and allocation of budgets.

Justification of the delegation

5. The role of Director is being created to bring a common objective and vision to labour market enforcement, to make it more efficient and effective. Whilst at present we believe that the Director's remit is sensibly defined, it may make sense in the future to extend this to include other functions, and it is appropriate for such extension to be made by secondary legislation to ensure flexibility.

Justification of the level of Parliamentary scrutiny

6. The power in clause 3(2)(e) is subject to the negative procedure. We believe this is an appropriate level of scrutiny because this is not a power to create new labour market regulation or to create a new body, but is simply a power to move responsibility for strategic oversight of labour market enforcement functions to the Director.

7. A similar power, also in the area of labour market enforcement, exists in section 1(2)(f) of the Gangmasters (Licensing) Act 2004. That power allows the Secretary of State to give additional functions to the Gangmasters Licensing Authority and this power is, by virtue of section 25(6) of that Act, subject to the negative procedure.

8. Clause 3(5) provides that consequential amendments can be made to clauses 2, 4, 5, 6, or 7, but where this is done the procedure will be affirmative, since it will involve amending primary legislation.

Clause 3(3)(d) and (4)(f): amending the definition of "non-compliance in the labour market"

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Negative (affirmative if making consequential amendments to primary legislation)*

9. Clause 2(2) requires the Director to prepare an annual strategic report, which in part assesses the scale and nature of non-compliance in the labour market. Clause 4 requires the Director to produce an annual report, which in part assesses the effect of the previous year's strategy on non-compliance in the labour market. Clause 6 also requires the Director to establish an intelligence hub relating to non-compliance in the labour market.

10. "Non-compliance in the labour market" is defined in clause 3(1) as a breach of a requirement imposed by or under the "labour market legislation" or the commission of a "labour market offence". Clause 3(3) provides that "labour market legislation" means the Employment Agencies Act 1973, the National Minimum Wage Act 1998 and the Gangmasters (Licensing) Act 2004 (in so far as it applies to Great Britain). Clause 3(4)

provides that "labour market offence" means offences under the Employment Agencies Act 1973, the National Minimum Wage Act 1998, the Gangmasters (Licensing) Act 2004 (in so far as it applies to Great Britain), section 1 of the Modern Slavery Act 2015 and sections 2 and 4 of that Act in so far as it relates to workers and work-seekers or in circumstances where section 3(2) of that Act applies.

Effect of the provision

11. The power in clause 3(3)(d) enables the Secretary of State to add enactments to the definition of "labour market legislation" and the power in clause 3(4)(f) enables the Secretary of State to add offences to the definition "labour market offence". Both extend the definition of non-compliance in the labour market and essentially extend the Director's remit to assess non-compliance and run an intelligence hub to deal with such non-compliance.

Justification of the delegation

12. The role of Director is being created to bring a common objective and vision to labour market enforcement, to make it more efficient and effective. Whilst at present we believe that the Director's remit is sensibly defined, it may make sense in the future to extend this to include other areas, of pre-existing or new labour market legislation, and it is appropriate for such extension to be made by secondary legislation to ensure flexibility.

Justification of the level of Parliamentary scrutiny

13. The powers in clause 3(3)(d) and 3(4)(f) are subject to the negative procedure. We believe this is an appropriate level of scrutiny because this is not a power to create new labour market regulation or to create a new body, but instead is simply a power to extend the Director's responsibility to assess non-compliance and run an intelligence hub to include additional labour market legislation or offences.

14. A similar power, also in the area of labour market enforcement, exists in section 1(2)(f) of the Gangmasters (Licensing) Act 2004. That power allows the Secretary of State to give additional functions to the Gangmasters Licensing Authority and this power is, by virtue of section 25(6) of that Act, subject to the negative procedure.

15. Clause 3(5) provides that consequential amendments can be made to clauses 2, 4, 5, 6 or 7, but where this is done the procedure will be affirmative, since it will involve amending primary legislation.

Clause 10: Licensing Act 2003: amendments relating to illegal working: extension to Scotland and Northern Ireland

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Affirmative*

16. Clause 10(2) provides a regulation-making power for the Secretary of State to make provision to extend the measures relating to illegal working in licensed premises to Scotland and Northern Ireland.

Effect of the provision

17. Clause 10(2) provides that the Secretary of State may by regulations make provision which (a) has a similar effect to that made by Schedule 1, which contains amendments to the Licensing Act 2003 (the "2003 Act") relating to illegal working in licensed premises, and (b) applies in relation to Scotland and Northern Ireland. Subsection (3) provides that regulations may (a) amend, repeal or revoke any enactment and (b) confer functions on any person. This is subject to subsection (4) which provides that regulations may not confer functions on Scottish Ministers or the First Minister and deputy First Minister in Northern Ireland, a Northern Ireland Minister or a Northern Ireland department.

Justification of the delegation

18. The measures introduced by clause 10 and Schedule 1, which amends the 2003 Act, are designed to address concerns about persons with no entitlement to work in the UK obtaining premises or personal licences under the 2003 Act. The 2003 Act applies to England and Wales. In order to make the provisions relating to illegal working in licensed premises effective in Scotland and Northern Ireland it will be necessary to make some detailed modifications of Scottish and Northern Ireland legislation. Also there are specific provisions in both Scotland and Northern Ireland which may require consequential amendments to make the scheme effective. This will require detailed input from the devolved administrations which might itself be consequential on the main clauses and Parliament's views on them. It is considered appropriate for this to be done in secondary legislation once the main clauses have been approved by Parliament.

19. A comparable power to extend provisions of the Immigration Act 2014 (the "2014 Act") concerning the referral and investigation of proposed marriages and civil partnerships to Wales, Scotland and Northern Ireland can be found at section 53 of the 2014 Act.

Justification of the level of Parliamentary scrutiny

20. This is a power to amend primary legislation and it is therefore considered appropriate for the affirmative procedure to apply.

Clause 11: Private hire vehicles etc

Power conferred on: *Secretary of State*
Power exercisable by: *Regulations made by statutory instrument*
Parliamentary procedure: *Affirmative resolution*

21. Clause 11(2) contains a regulation-making power for the Secretary of State to make provision to extend the measures relating to licensing of private hire vehicles etc to Scotland and Northern Ireland.

Effect of the provision

22. Clause 11(2) provides that the Secretary of State may by regulations make provision which has a similar effect to that made by Schedule 2 on private hire vehicles etc, and which applies in relation to Scotland and Northern Ireland. Subsection (3) provides that regulations may amend, repeal or revoke any enactment and may confer functions on any person. This is

subject to subsection (4) which provides that regulations may not confer functions on Scottish Ministers or the First Minister and deputy First Minister in Northern Ireland, a Northern Ireland Minister or a Northern Ireland department.

Justification of the delegation

23. The measures introduced by clause 11 and Schedule 2, which amends various pieces of legislation on taxi and private hire licensing applicable to England and Wales, are designed to address concerns about persons with no entitlement to live or work in the UK obtaining driver licences for taxis or driver or operational licences for private hire vehicles. In order to make the provisions relating to private hire etc licensing effective in Scotland and Northern Ireland it will be necessary to make some detailed modifications of Scottish and Northern Ireland legislation. Also there are specific provisions in both Scotland and Northern Ireland which may require consequential amendments to make the scheme effective. This will require detailed input from the devolved administrations, which might itself be consequential on Parliament's views on the amendments relating to England and Wales. It is considered appropriate for the changes for Scotland and Northern Ireland to be made in secondary legislation, therefore, once Parliament has approved the main concept of the scheme with reference to the existing amendments suggested to private hire etc. licensing legislation.

24. A comparable power to extend provisions of the Immigration Act 2014 (the "2014 Act") concerning the referral and investigation of proposed marriages and civil partnerships to Wales, Scotland and Northern Ireland can be found at section 53 of the 2014 Act.

Justification of the level of parliamentary scrutiny

25. This is a power to amend primary legislation and it is therefore considered appropriate for the affirmative procedure to apply.

Clause 11 and Schedule 2: Private hire vehicles etc

Power conferred on: *Secretary of State*
Power exercisable by: *Guidance*
Parliamentary procedure: *None*

Effect of the provision

26. A duty on licensing authorities to have regard to guidance issued by the Secretary of State, regarding whether an applicant is disqualified from being granted a licence by reason of the applicant's immigration status, is inserted:

a) by paragraph 5(3) of Schedule 2 into section 51 of the Local Government (Miscellaneous Provisions) Act 1976;
b) by paragraph 8(3) of Schedule 2 into section 55 of the Local Government (Miscellaneous Provisions) Act 1976;
c) by paragraph 10(3) of Schedule 2 into section 59 of the Local Government (Miscellaneous Provisions) Act 1976;
d) by paragraph 17(3) of Schedule 2 into section 3 of the Private Hire Vehicles (London) Act 1998; and

e) by paragraph 19(3) of Schedule 2 into section 13 of the Private Hire Vehicles (London) Act 1998.

This amounts to a new power because it enables the Secretary of State to issue guidance to which licensing authorities must have regard, whereas previously there was no previous power to do so. It is arguably legislative in nature since the requirement that licensing authorities have regard to this guidance is set out in statute.

Justification of the delegation

27. The guidance will contain a level of detail which would be inappropriate to set out on the face of the Bill. The use of guidance ensures the necessary flexibility to amend and update requirements to reflect developments in the acceptability of immigration status documents.

Justification of the level of Parliamentary scrutiny

28. It is considered unnecessary for the guidance to be subject to specific parliamentary scrutiny because the guidance, which will be prepared in consultation with licensing authorities, will essentially assist licensing authorities in performing their statutory functions, rather than imposing additional requirements on them.

Clause 12 and paragraph 1(13) of Schedule 3: Power to issue illegal working closure notices

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Affirmative*

29. Paragraph 1 of Schedule 3 to the Bill permits an immigration officer of at the least the rank of chief immigration officer to issue an illegal working closure notice. The notice has the effect of closing business premises and may only be issued following the detection of a second instance of illegal working on the premises. Following issue of the notice, the premises will be closed for a maximum period of 24 hours during which the immigration officer must apply to a court for an illegal working compliance order. The order may make any provision to prevent illegal working from recurring on the premises, including keeping the premises closed. The initial 24 hour period during which the closure notice has effect and an order must be sought may be extended up to an absolute maximum period of 48 hours upon authorisation by an immigration officer not below the rank of immigration inspector.

Effect of the provision

30. The power in paragraph 1(13) of Schedule 3 will enable the Secretary of State to modify the minimum rank of immigration officer who may exercise the power to issue the closure notice or the power to extend the initial 24 hour duration period.

Justification of the delegation

31. The ability to modify the rank of immigration officer provides flexibility to reflect possible changes in Immigration Enforcement operational practice following any future

review of use of the powers. The power also ensures that the level of rank can be altered to reflect any changes in the structure of operational teams.

Justification of the level of Parliamentary scrutiny

32. The power amends primary legislation and it is appropriate Parliament has the opportunity to closely scrutinise any amendments to the authorisation level of a significant power.

Clause 12 and paragraph 5(6) of Schedule 3: Power to prescribe checks and documents relating to the right to work for the purposes of illegal working compliance orders

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Negative*

Effect of the provision

33. Paragraph 5(6)(b) of Schedule 3 enables the Secretary of State to prescribe what checks may be conducted by a person (normally an employer) to satisfactorily establish a person's right to work. Similarly, paragraph 5(6)(c) of Schedule 3 enables the Secretary of State to prescribe the documents that a person (again, normally the employer) may produce as evidence of a person's right to work. A court may require a specified person to conduct the prescribed checks as part of an illegal working compliance order.

Justification of the delegation

34. It is expected that the prescribed checks will be similar to those set out in the Immigration (Restrictions on Employment) Order 2007 and the prescribed documents will be similar to those listed in the Schedule to that Order. The right to work checks are likely to require the employer to physically examine certain approved documents which will establish whether or not a person has the right to work. The Regulations may also provide that the use of Home Office employer checking services will be acceptable. It is essential that there is flexibility to amend the list of prescribed checks and documents in response to the creation of new documents or new technology. Given the technical nature of the checks and that the Bill itself gives courts a wide discretion as to the content of an illegal working compliance order, we do not consider it appropriate to set out an initial list of checks on the face of the Bill.

35. Whilst a court may impose right to work checks or require the production of documents under an illegal working compliance order without the Regulations, we consider it would be impractical to expect a court to include long lists of documents or checks in a court order. It might also lead to courts adopting inconsistent practices as to what is specified and might even engender reluctance by courts to specify the checks due to the lengthy drafting required. To avoid this, the Regulations will provide an easy way for courts to consistently specify right to work checks by simply referencing the Regulations in an illegal working compliance order.

Justification of the level of Parliamentary scrutiny

36. It is considered that the negative procedure provides a sufficient level of parliamentary scrutiny due to the fact that the Regulations do not of themselves have any operative effect. For them to have such effect, a court must specify them in an illegal working compliance order. Under the powers provided on the face of the Bill, a court may add to or depart from the checks prescribed in the Regulations as it sees fit and is not reliant on the Regulations to specify the checks. Whilst such reasoning might suggest that the Regulations should be simply laid without further parliamentary control, we consider that the negative procedure is still important to allow Parliament an opportunity to consider whether the checks and documents specified are appropriate, especially when the prescribed checks are likely to become a standard feature of illegal working compliance orders.

Clause 12 and paragraph 16 of Schedule 3: Power to issue guidance on illegal working compliance orders

Power conferred on:	*Secretary of State*
Power exercisable by:	*Statutory guidance*
Parliamentary procedure:	*None*

Effect of the provision

37. Paragraph 16 of Schedule 3 enables the Secretary of State to issue statutory guidance to immigration officers about the exercise of their functions in relation to the issue of premises closure notices and illegal working compliance orders.

Justification of the delegation

38. The power enables the Secretary of State to issue guidance to a level of detail which would be inappropriate to set out on the face of the Bill. It ensures that the guidance has the flexibility to be amended and updated to reflect developments in operational practice.

Justification of the level of Parliamentary scrutiny

39. It is not considered necessary for the guidance to be subject to specific parliamentary scrutiny and follows the approach taken in section 91 of the Anti-Social Behaviour, Crime and Policing Act 2014 on which the illegal working compliance order provisions are loosely based. Although no specific parliamentary procedure will apply to the guidance, Parliament will be afforded the opportunity to scrutinise the guidance as a result of the requirement placed in the Bill that any guidance issued must be published.

PART 2: ACCESS TO SERVICES, ETC

Clause 14(2): eviction: insertion of a new section 33D(5)(d) into the Immigration Act 2014: termination of agreement when all occupiers disqualified

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Negative resolution*

40. New section 33D(5)(d), which is inserted into the Immigration Act 2014 by clause 14(2) of the Bill, clarifies how a landlord may serve a notice terminating the tenancy on a tenant or tenants when relying on this new route to eviction. This route is available only where all members of the household are disqualified from renting private residential property because of their immigration status and where a landlord has received a notice or notices in respect of all of them. It specifies that notice may be given by delivering it to the tenant or tenants, by leaving it at the premises, by sending it by post to the tenant or tenants at the premises or, as specified in new sub-paragraph (d), in any other prescribed manner.

Effect of this provision

41. The effect of this enabling provision is to ensure that, should it become more usual under housing legislation to serve notice electronically or by other means in future, additional means of serving notice may be prescribed in regulations.

Justification of the delegation

42. At present, it is usual to serve notice on tenants to quit a property by the means specified in the new subsection. However, it is likely that the acceptable means of service in this sector will develop in the future and sufficient flexibility is required to take account of technological advances and to allow for additional means of serving notice to be prescribed at that point.

Justification of the level of Parliamentary scrutiny

43. The regulations relate to the administrative matter of service by electronic means and this issue is left to secondary legislation in order to enable flexibility in relation to emerging technology and to keep step with acceptable means of service: it is not considered a matter for which Parliamentary scrutiny by affirmative resolution is necessary.

Clause 16: Residential tenancies – Extension to Wales, Scotland and Northern Ireland

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Affirmative*

44. Clause 16 contains enabling powers for the Secretary of State to make regulations to allow any of the "residential tenancies provisions" to apply in relation to Wales, Scotland or Northern Ireland (the "devolved administrations"), and to make provision with similar effect which applies in relation to those jurisdictions. The "residential tenancy provisions" means clauses 13 to 15 and the amendments made by those sections to the 2014 Act.

45. Clause 16(3) allows provision to be made by those regulations to amend, repeal or revoke any enactment or confirming functions on any person. Such regulations may not confer functions on the Welsh or Scottish Ministers, or the Northern Ireland Ministers or Departments.

Effect of the provision

46. The enabling power will allow amendment of the 2014 Act provisions to widen their application. They will also allow provisions similar to other amendments in the clauses and which apply or extend to Wales, Scotland, or Northern Ireland, including by amending Westminster or devolved legislation.

Justification of the delegation

47. The Scottish Government will introduce their new Tenancy Reform Bill in September with a view to gaining Royal Assent around March before Parliament dissolves for the elections. Implementation is unlikely to occur before the end of 2016. That Bill proposes fairly extensive changes to the existing legal framework for landlord and tenant law in Scotland. It is therefore proposed to establish a power enabling future equivalent provision in respect of routes to eviction in Scotland.

48. The position is similar for Wales and an enabling power is again sought to enable legislation to be passed before the elections in May 2016.

49. An enabling power is also sought in order to facilitate equivalent provision regarding routes to eviction and provision in consequence of current and future legislation in the devolved administrations.

50. A comparable power to extend provisions to Wales, Scotland and Northern Ireland can be found at section 53 of the 2014 Act.

Justification of the level of Parliamentary scrutiny

51. The provisions at section 53 of the 2014 Act were subject to the affirmative procedure during passage through Parliament. We believe the affirmative procedure is appropriate in this case in order to satisfy the required level of scrutiny.

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

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Negative*

52. Clause 18 inserts new sections 24C to 24F into the Immigration Act 1971 (the "1971 Act"). New section 24C provides for a new criminal offence of driving while unlawfully present in the United Kingdom. New section 24D provides for detention of vehicles used in the commission of this offence and new section 24F for the forfeiture of such vehicles.

Effect of the provision

53. There is a regulation-making power in new section 24D(8) which enables the Secretary of State to make provision about the release of a vehicle detained under that section, in particular regarding the release of a vehicle before the investigation of/proceedings for the offence have been finally determined, the procedure for vehicle release, the persons to whom a vehicle may or must be released, any conditions to be met before a vehicle may be released (including payment of detention costs), as to the disposal of a vehicle in a case where any release conditions are not met and as to the destination of the proceeds arising from any such disposal.

54. There is a regulation-making power in new section 24F(4) which enables the Secretary of State to make regulations about the disposal of a vehicle forfeited under that section and the destination of the proceeds arising from the disposal of such a vehicle.

Justification of the delegation

55. It is considered appropriate to include these powers in secondary legislation to allow for flexibility about the release procedure and detention costs of vehicles, things which may have to change in accordance with practical and economic considerations. There are equivalent regulations made under the Road Traffic Act 1988 relating to retention and disposal of vehicles used in the commission of road traffic offences (the Road Traffic Act 1988 (Retention and Disposal of Seized Motor Vehicles) Regulations 2005).

Justification of the level of Parliamentary scrutiny

56. The level of parliamentary scrutiny proposed is that the regulations are subject to negative procedure. The negative procedure is felt appropriate to allow the necessary flexibility since the detention costs to be detailed in regulations will be dependent on the actual costs of such detention which are likely to change over time. The Road Traffic Act 1988 (Retention and Disposal of Seized Motor Vehicles) Regulations 2005 are subject to negative procedure.

Clause 19 introducing Schedule 4: Bank accounts

Power conferred on:	*HM Treasury / Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument / Statutory Code of Practice*
Parliamentary procedure:	*Affirmative / Negative / Laid only*

57. Paragraph 2 of Schedule 4 to the Bill inserts new provisions into Part 3 of the Immigration Act 2014 (access to services etc.). Sections 40 to 43 of the 2014 Act made provision establishing a prohibition on banks and building societies opening current accounts for "disqualified persons" within the meaning of section 40(3)(b) (i.e. illegal migrants whom the Secretary of State considers that banks and building societies should not open current accounts for).

58. Paragraph 2 of Schedule 4 inserts new sections 40A to 40H into the 2014 Act. These new sections establish requirements on banks and building societies to carry out periodic

checks of the immigration status of persons holding current accounts with them (“immigration checks”). Where an immigration check identifies that a current account holder is a “prohibited person” (i.e. an illegal migrant that the Secretary of State considers should not be provided with a current account) the bank or building society must notify the Secretary of State that this is the case (see new section 40B(2)) and one of two consequences will follow. Either the Secretary of State will apply to the court for a freezing order in respect of the account or accounts held by the prohibited person with the bank or building society making the notification (see new section 40C(2)) or the Secretary of State will notify the bank or building society that it is under a duty to close the account or accounts (see new section 40C(3)).

59. The new sections inserted into the 2014 Act for the purposes of establishing the duty to carry out immigration checks in respect of current accounts include the following provision conferring delegated powers: new sections 40A(1); 40A(4); 40B(2)(b) and (3); 40C(4); 40F(1) and 40G(9). Paragraph 3 of Schedule 4 also amends section 41 of the 2014 Act for the purpose of conferring further delegated powers.

Effect of the provisions

60. Section 40A(1) confers power on the Treasury to make regulations that specify the times at which banks and building societies will be required to carry out an immigration check. These regulations will be subject to the negative resolution procedure (see section 74(4) of the 2014 Act).

61. Section 40A(4) confers power on the Treasury to make regulations specifying categories of current account that will fall outside of the scope of the general duty to carry out an immigration check. Any such excluded category of current account will be expressed by a description of the person or body operating the account. These regulations will be subject to the affirmative resolution procedure (see the amendment made to section 74 of the 2014 Act by paragraph 6 of Schedule 4).

62. Section 40B(3) confers power on the Treasury to prescribe in regulations the form and manner in which notifications to the Secretary of State by banks and building societies must be given in instances where, following an immigration check, the bank or building society has identified that a person holding a current account with it is a prohibited person. The Treasury will also have the power to prescribe what other information the bank or building society must also provide along with notification of the match (see section 40B(2)(b)). Regulations made under this power will be subject to the affirmative resolution procedure (see the amendment made to section 74 of the 2014 Act by paragraph 6 of Schedule 4).

63. Section 40C(4) confers power on the Treasury to prescribe in regulations the form and manner in which notifications given by the Secretary of State to banks and building societies pursuant to the duty established by section 40C(3) must be given. This duty arises where the Secretary of State, having been notified by a bank or building society that a person holding a current account with that bank or building society is a prohibited person, decides not to exercise her right pursuant to section 40D to apply to the court for a freezing order in respect of the relevant account or accounts. In such circumstances section 40C(3) requires the Secretary of State to notify the bank or building society that the bank or building society is required to close the relevant account or accounts (subject to various exceptions). Regulations

prescribing the form and manner of any such notification are subject to the negative resolution procedure (see section 74(4) of the 2014 Act).

64. Section 40F requires the Secretary of State to issue a code of practice specifying the factors that the Secretary of State will consider when deciding whether to make an application for a freezing order, outlining the arrangements for keeping freezing orders under review for the purposes of deciding whether to apply for variation or discharge, and the factors to be taken into consideration when determining whether to make an application for a variation or discharge of the order. Section 40F(3)(a) requires that any such code cannot be issued unless it has been laid before Parliament.

65. Section 40G(9) requires the Secretary of State to prescribe in regulations the form and manner, times and frequency of information that banks or building societies must provide to the Secretary of State about the steps they have taken to comply with their duties for accounts not subject to freezing orders.

66. Paragraph 3 of Schedule 4 amends section 41 of the 2014 Act in order to allow the Treasury to make regulations to enable the Financial Conduct Authority to make arrangements for monitoring and enforcing compliance with the requirements imposed on banks and building societies under the new regime.

Justification of the delegation

67. It is appropriate for detail regarding the frequency of immigration checks and the manner and form in which the various notifications required under the new regime are to be given to be left to regulations in order to provide flexibility in the way in which the new regime is to be administered. These are matters of administrative detail which may be subject to change, so are more appropriate to secondary legislation.

68. It is also appropriate for details as to the powers to be conferred on the Financial Conduct Authority for the purposes of monitoring compliance with the regime and taking enforcement action to be left regulations in order to allow for modification of these arrangements in the light of experience and to deal with any changes to the Financial Conduct Authorities powers under the Financial Services and Markets Act 2000 which will be applied for this purpose.

69. The power to alter the ambit of the categories of current account that will be subject to the immigration check by way of regulations is appropriate in order to ensure that the burden placed on the banks and the building societies is not, in practice, disproportionate, and in order to ensure that any avoidance strategies that may develop may be promptly addressed. It is also appropriate for the form and manner and frequency of information to be provided by banks and building societies to the Secretary of State about the steps they have taken to comply with their duties for accounts not subject to freezing orders to be set out in secondary legislation in order to afford the Secretary of State flexibility.

70. It is desirable to set out the factors that the Secretary of State will take into account when deciding whether to make an application for freezing order, an application to vary or discharge a freezing order in a statutory code of practice rather than in primary or secondary legislation in order to allow these factors to be revised as case law and policy develops.

Justification of the level of Parliamentary scrutiny

71. The approach taken is that regulations that prescribe administrative matters (such as the manner and form of notifications to be given) should only be subject to the negative resolution procedure. These will deal with procedural matters which are likely to be uncontroversial.

72. The regulation-making powers that allow for the substantive detail of the regime to be altered (i.e. the extent of current accounts within scope of the immigration check and the disclosure requirements incumbent upon banks and building societies) are more appropriate for the affirmative resolution procedure as they will have a greater impact on the rights and duties of persons affected.

73. The code of practice will not, of itself, determine whether or not an account will be frozen: this decision is left to the courts. Nevertheless, given that the code will be taken into consideration in deciding whether or not to institute proceedings, it is apt for Parliament to be aware of its content before it comes into force.

PART 3: ENFORCEMENT

Clause 29: Supply of information to Secretary of State

Power conferred on: *Secretary of State*
Power exercisable by: *Regulations made by statutory instrument*
Parliamentary procedure: *Affirmative resolution to add a reference to a person or description of person; and negative resolution to remove a reference to a person or modify a reference to a person or description of a person in consequence of a change of name or transfer of functions.*

74. Clause 29(11) inserts new section 20A (duty to supply information to the Secretary of State) into the Immigration and Asylum Act 1999 ("the 1999 Act"). Section 20A enables the Secretary of State to require the provision of documents which are lawfully in the possession of persons specified in new Schedule A1 to the 1999 Act, or any person acting on their behalf. The power is exercisable where the Secretary of State suspects that a person to whom the document relates may be liable to removal from the United Kingdom in accordance with a provision of the Immigration Acts and that the document may facilitate the removal. A person to whom a direction is given must, as soon as is practicable, supply the document to the Secretary of State.

Effect of the provision

75. The provision at new section 20A(12) of the 1999 Act allows the Secretary of State to alter, by regulations, the list of persons from whom relevant documents can be required so as to add, modify or remove a reference to a person or description of a person. By virtue of subsection (13), such regulations may not amend Schedule A1 so as to apply the duty to any legislature in the United Kingdom or a person exercising functions in connection with proceedings in those legislatures.

Justification of the delegation

76. In order to provide flexibility to alter the list of persons subject to the duty as a result of the creation and abolition of new public authorities, the Government considers it appropriate to provide for the list to be capable of amendment through regulations. Such flexibility is also required to amend the list in consequence of any future changes to the functions of existing public authorities which may result in those authorities holding nationality documents or, conversely, it being no longer necessary for them to do so.

Justification of the level of Parliamentary scrutiny

77. To ensure that there is no expansion to the ambit of the powers of the Sectary of State to require persons to provide nationality documents without appropriate Parliamentary scrutiny, regulations which add a reference to a person or description of a person will be subject to the affirmative procedure. Where a person is removed from the duty to provide nationality documents to the Secretary of State, (i.e. where the powers of the Secretary of State are being limited), or where a reference or a description is simply being modified in consequence of a change of name or transfer of functions, the regulations will be subject to the negative procedure. This reflects the fact that the Secretary of State is under no obligation to issue a direction to the persons listed. This dual procedure approach achieves the right balance between subjecting the regulations to an appropriate level of parliamentary scrutiny without unnecessarily taking up parliamentary time to make minor amendments.

PART 5: SUPPORT FOR CERTAIN CATEGORIES OF MIGRANT

Clause 37 introducing Schedule 8: Support for certain migrants: Amendments to the Immigration and Asylum Act 1999

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Negative*

78. The Immigration and Asylum Act 1999 ("the 1999 Act") currently contains a power to support asylum-seekers in section 95 and a power to support failed asylum-seekers in section 4. Both sections contain a power to make regulations by negative resolution procedure to supplement the power contained in each provision. Regulations have previously been made under both provisions and remain in force.

79. Paragraph 1 of Schedule 8 repeals section 4, and paragraph 9 of that Schedule creates a new power to support failed asylum-seekers, inserting a new section 95A into the 1999 Act. The power to support asylum-seekers in section 95 and the related power to make regulations in that section remain substantially unchanged.

80. Paragraph 9 of Schedule 8 sets out four criteria which must be met in order for the Secretary of State to consider providing support under the section. The clause gives the Secretary of State a power to make regulations which make more detailed provision in relation to three of those criteria, and which may set out additional criteria to be used in determining whether to provide or continue to provide support under this section.

81. Paragraph 44(3) of Schedule 8 alters the regulation-making powers in section 4(11)(b) of the 1999 Act, so that the Secretary of State may have the flexibility to provide in those regulations (for persons who continue to be supported under section 4 of the Immigration and Asylum Act 1999 under the transitional arrangements) to receive support in the form of cash or vouchers.

Effect of the provisions

82. Paragraph 3 of Schedule 8 confers enabling powers in new subsections (2B), (3A) and (3D) which are inserted into section 94 of the 1999 Act (interpretation of Part 6). These new subsections have effect for the purposes of determining whether a person is an "asylum-seeker" under Part 6 of that Act. Subsection (2B) concerns situations where a person has made further qualifying submissions and enables the Secretary of State to prescribe by regulations the period within which those submissions should be determined. Subsection (3A) defines "qualifying submissions" and provides that the Secretary of State may prescribe by regulations the period by which those submissions are to be determined, while subsection (3D) defines the "review period" for purposes of subsection (3C) as ending with a period that the Secretary of State prescribes by regulations. These powers allow the Secretary of State to retain the necessary flexibility to specify the time frames for purposes of the definitions in Part 6 of the Act.

83. The provisions in paragraph 9 of Schedule 8 to the Bill will enable the Secretary of State to make regulations making more detailed provision around the criteria for support which are contained in the new section 95A: the requirements which must be met by an "application for support" in subsection (1)(b), the time period within which a person must be "likely to become destitute" in order to qualify for support in subsection (1)(c), and "what is or is not to be regarded as a genuine obstacle to leaving the UK" in subsection (3). Regulations under subsection (4) may also prescribe additional criteria to be used in determining whether to provide or continue to provide support. Regulations under subsections (4) and (5) may in particular provide for provision or continuation of support to be a matter for the Secretary of State's discretion to a prescribed extent or in cases of a prescribed description, and for the continuation of support to be subject to conditions.

84. Subsection (6) specifies that any condition imposed as above may relate to any matter relating to the use of the support provided, to compliance with a particular restriction imposed under the 1971 Act, or to the performance of or participation in community activities. Regulations may provide for a condition requiring the performance or participation in community activities to be conditional on the Secretary of State having made arrangements for such activities in the area in which the person has been accommodated using the powers under the section.

85. Section 4 support currently consists of accommodation and a weekly non-cash allowance to buy food and other essential items, provided through vouchers. The provision in paragraph 44(3) of Schedule 8 allows the Secretary of State the flexibility to provide in regulations for persons who continue to be supported under section 4 of the Immigration and Asylum Act 1999 under the transitional arrangements to receive support in the form of cash as well as vouchers. This may be needed, for example, if the numbers supported under section 4 reduced to a point at which the costs of administering vouchers outweighed its benefits.

Justification of the delegation

86. The proposed delegation of the power to further specify and prescribe additional criteria for the provision of support mirrors the approach adopted in section 95 of the 1999 Act (which remains in force) and section 4 of that Act (which this new power replaces). In a similar manner to the section 95 and section 4 schemes, the regulations will be supported by non-statutory guidance regarding the application of the criteria by decision makers. In light of the fact that the approach is to mirror this existing model, we consider that the approach provides the appropriate degree of parliamentary scrutiny. It is intended to have a consistent approach to the provisions for support to asylum-seekers and failed asylum-seekers throughout the 1999 Act.

87. Providing for these details to be contained in regulations provides greater flexibility for future changes to be made if it is thought appropriate that further criteria or amendments to existing criteria are required as to the way the powers in the section should be exercised. By way of particular example, the definition of what amounts to a "genuine obstacle to leaving the UK" should necessarily be flexible rather than contained in primary legislation, as it may depend on a variety of changing factors.

88. The proposed delegation of the ability to provide support for those persons who continue to be supported under section 4 of the Immigration and Asylum Act 1999 under the transitional arrangements by way of cash as well of vouchers provides flexibility for the Secretary of State to respond to changes in the operation of the current voucher programme. As mentioned above, one example would be if the Secretary of State considered that the numbers supported under section 4 reduced to a point at which the costs of administering vouchers outweighed its benefits.

Justification of the level of Parliamentary scrutiny

89. The level of parliamentary scrutiny proposed for regulations making provision for the detail of the criteria for support for failed asylum-seekers is the same as that already provided for by Parliament in respect of support to asylum-seekers (in the form of regulations made under section 95 of the 1999 Act) and of the previous power to support failed asylum-seekers (section 4 of that Act, which will be repealed in this Bill). It is appropriate that regulations concerning the support of failed asylum-seekers should be subject to the same scrutiny procedures as these comparable regulations.

90. A further reason why the proposed level of parliamentary scrutiny in this delegated power is considered appropriate is that many of the matters which may be covered by regulations are set out on the face of the Bill. Parliament will be fully aware of what the Executive can do from the primary legislation. The negative procedure gives it the option of scrutinising if members feel that the delegated power is not being used appropriately rather than requiring further parliamentary time.

91. The level of parliamentary scrutiny for delegation of the ability to provide support for those persons who continue to be supported under section 4 of the Immigration and Asylum Act 1999 under the transitional arrangements by way of cash as well of vouchers is justified as it amends an existing regulation-making power that is subject to the negative procedure (section 4(11)(b) of the 1999 Act).

Clause 38 introducing Schedule 9: Availability of local authority support

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Negative*

92. Paragraph 9 of Schedule 9 inserts new paragraphs 10A and 10B into Schedule 3 to the Nationality, Immigration and Asylum Act 2002 (the "2002 Act").

93. Paragraph 10A provides that the Secretary of State may make regulations to enable local authorities to provide for the accommodation and subsistence needs of destitute families without immigration status in specified circumstances where they are ineligible for such support under paragraph 1 of Schedule 3 to the 2002 Act. Paragraph 10B provides that Secretary of State may make regulations to enable local authorities to provide for the support of adult migrant care leavers in specified circumstances where they are ineligible for such support under paragraph 1 of Schedule 3 to the 2002 Act.

Effect of the provision

94. Both paragraphs 10A and 10B will provide that where destitute families (in the case of paragraph 10A) or adult migrant care leavers (for paragraph 10B) are ineligible for support provided by local authorities by the operation of paragraph 1 of Schedule 3 to the 2002 Act because they fall within the category of ineligible persons in paragraph 7B(1) of that Schedule, the Secretary of State may provide by regulations for local authority support in the form of accommodation and subsistence (and other support in the case of adult migrant care leavers) to be provided if certain conditions are met.

95. Paragraph 10A applies to destitute families without immigration status (the details of which are set out in sub-paragraph (1)) and provides that the Secretary of State may make regulations for support to be provided where section 95A of the 1999 Act does not apply and the persons concerned satisfy one of the conditions set out on the face of the Schedule. These conditions are that (a) the family has an outstanding specified immigration application, (b) the family has an outstanding appeal on that specified application; (c) the family has exhausted appeal rights and has not failed to co-operate with arrangements to leave the UK; or (d) the provision of support is necessary to safeguard and promote the welfare of a dependent child. This will enable local authorities to take any action they consider necessary to prevent destitution pending the resolution of the family's immigration status or their departure from the UK.

96. The regulations under paragraph 10A allow the Secretary of State to provide further details for the application of the support, including the type of application that is covered, and the factors which a local authority may or must (or must not) take into account in making a determination that the provision of support is necessary to safeguard and promote the welfare of a dependent child.

97. Paragraph 10B applies to adult migrant care leavers (the details of which are set out in sub-paragraph (1)) and provides that the Secretary of State may make regulations for support to be provided where section 95A of the 1999 Act does not apply and the persons concerned satisfy one of the conditions set out on the face of the Schedule. These conditions are that (a) the person is destitute and has an outstanding specified immigration application; (b) the person is destitute and has an outstanding appeal; or (c) the person is appeal rights exhausted

and the local authority or another person is satisfied that support needs to be provided to them.

98. The regulations under paragraph 10B allow the Secretary of State to provide further details for the application of the support, including the type of application that is covered and the factors which a local authority may or must (or must not) take into account in making a determination that support needs to be provided to a person under condition C of paragraph 10B.

Justification of the delegation

99. The proposed delegation of the power for detailed arrangements for the provision of support under paragraphs 10A and 10B is justified as both the category of persons covered by these regulations and the conditions that they have to fulfil to qualify for support are set out on the face of the Schedule. The regulations will set out the technical operation of the provisions as well as certain factors that may or must (or must not) be taken into account in determining whether one of the conditions in paragraphs 10A and 10B is satisfied. This approach is similar to that adopted for the provision of support under section 95 of the 1999 Act.

100. Providing for these details to be contained in regulations provides greater flexibility for future changes to be made in the provision of support under paragraphs 10A and 10B.

Justification of the level of Parliamentary scrutiny

101. It is considered that the negative procedure is appropriate for these regulations as many of the matters which may be covered by the regulations are set out on the face of the Schedule. Parliament will be fully aware of what the Executive can do from the primary legislation. The negative procedure gives it the option of scrutinising if members feel that the delegated power is not being used appropriately rather than requiring further parliamentary time.

102. A further reason why the proposed level of parliamentary scrutiny in this delegated power is considered appropriate is that it is the same as that already provided for by Parliament in respect of support to asylum-seekers (in the form of regulations made under section 95 of the 1999 Act) and of the previous power to support failed asylum-seekers (section 4 of that Act, which will be repealed in this Bill). It is appropriate that regulations concerning support should be subject to the same scrutiny procedures as these comparable regulations.

Clause 39: Transfer of responsibility for relevant children

Power conferred on: *Secretary of State*
Power exercisable by: *Regulations made by statutory instrument*
Parliamentary procedure: *Negative*

103. Clause 39 creates a mechanism to transfer responsibility for caring for particular categories of unaccompanied migrant children, including unaccompanied asylum seeking children, from one local authority to another.

Effect of the provisions

104. This clause will allow a local authority ("local authority A") to make arrangements with another local authority ("local authority B") under which functions of local authority A under Part 3, 4 of 5 of the Children Act 1989 (or functions under those provisions which may be conferred to local authority A) can be transferred to local authority B in relation to a category of unaccompanied migrant children. This category consists of unaccompanied children who require leave to enter or remain in the UK but do not have it and who are of a type specified in regulations.

105. From the time at which the arrangements take effect, local authority B will assume all functions under Part 3, 4 or 5 of the Children Act 1989 for the relevant child and those functions will cease to be those of local authority A.

106. The Secretary of State may by regulations under subsection (6) make further provision about the effect of the arrangements under this clause. The Secretary of State has a further power under subsection (9) to specify the type of child that falls within this section, and may also make regulations under subsection (10) about the meaning of "unaccompanied" for purposes of the definition of "relevant child" in this clause.

Justification of the delegation

107. The power to make arrangements transferring functions under the Children Act 1989 is set out on the face of the Bill, as are the principal effects of that transfer. As there may be certain further minor technical effects of the transfer that will flow from the effects set out in subsection (3), it is appropriate for these further technical effects be delegated to the Secretary of State.

108. The categories of children who would be the subject of the transfer in this clause are defined in the Bill, in subsection (9) of this clause, but the Secretary of State's power to further specify the categories of children who are captured by this clause, including by providing for the meaning of "unaccompanied", is justified to allow the Secretary of State the flexibility to tailor the application of this clause where circumstances require, for example in response to changes in patterns of migration.

Justification of the level of Parliamentary scrutiny

109. The negative procedure is justified for both of these powers as they relate to details of the operation of the transfer that are appropriately left to the Secretary of State.

110. The principal effect of the transfer is set out in the clause and will be the subject of full parliamentary debate. The power in subsection (6) is intended to apply to minor technical effects of the transfer and so it would not be an appropriate use of parliamentary time to have to subject regulations under this power to further parliamentary debate.

111. Similarly, the categories of children who will be the subject of the transfers in this clause are set out in the Bill and so will be the subject of full parliamentary scrutiny. The powers in subsections (9) and (10) to further specify the categories of children to whom the clause is intended to apply is intended to allow the Secretary of State the flexibility to respond to changing circumstances such as changes to patterns of migration, so it is considered that the negative procedure is appropriate.

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

Power conferred on: *Secretary of State*
Power exercisable by: *Regulations made by statutory instrument*
Parliamentary procedure: *Negative*

112. Clause 40 enables the Secretary of State to direct local authorities to provide information about the support and accommodation provided to children in their care. This will inform arrangements made for the transfer of particular categories of unaccompanied migrant children from one local authority to another.

113. Subsection (2) of the clause includes a power for the Secretary of State to specify by regulations additional information that the Secretary of State may direct the local authority to provide.

Effect of the provision

114. This clause permits the Secretary of State to gather information for purposes of the operation of arrangements to be made for the transfer of responsibility for relevant children from one local authority to another or for the exercise of her functions under clause 42.

115. A direction by the Secretary of State under this clause must be framed in terms of the purposes of clauses 39 and 40. The information that the Secretary of State may direct a local authority to provide is information about the support or accommodation provided to children who are looked after by the local authority within the meaning of the Children Act 1989. The Secretary of State may also provide in regulations for other information to be the subject of a direction under this clause.

Justification of the delegation

116. The clause sets out the mechanism for the Secretary of State to direct a local authority to provide information and the purpose for which that information may be requested. The clause also specifies the specific information that the Secretary of State may request, but it is appropriate that other types of information that may be required for purposes of this clause should be delegated to the Secretary of State. This is to allow the Secretary of State sufficient flexibility to respond to changing circumstances within local authorities, which may require additional types of information to be requested.

Justification of the level of Parliamentary scrutiny

117. The negative procedure is appropriate for this power because any additional information that may be set out in regulations as the subject of a direction in this clause could be provided by a local authority only for purposes specified in the clause. As both the principle of a direction by the Secretary of State and the purposes for which that information may be used will have been subject to full parliamentary scrutiny, it is not considered appropriate for regulations under this power to require further parliamentary debate.

Clause 42: Scheme for transfer of responsibility for relevant children

Power conferred on: *Secretary of State*
Power exercisable by: *Scheme and directions*
Parliamentary procedure: *None*

118. Clause 42 enables the Secretary of State to prepare a scheme for functions of a local authority in England in respect of particular categories of unaccompanied migrant children to be transferred to another local authority in accordance with arrangements with arrangements made under clause 39. The Secretary of State may direct both authorities to comply with the scheme.

Effect of the provision

119. This clause permits the Secretary of State to prepare a scheme for the transfer of responsibility for relevant children from one local authority to another under arrangements made pursuant to clause 39. It is anticipated that local authorities will use the provisions of clause 39 voluntarily, but if that is not the case this clause permits the Secretary of State to prepare a scheme and then direct both local authorities concerned to comply with that scheme. Any scheme must specify the local authority to which it relates and, if the scheme does not relate to all relevant children who may be the subject to arrangements under clause 39, the category of children to which the scheme will apply.

120. Subsections (4), (5) and (6) provide that the Secretary of State may not make such a direction: (a) unless she is satisfied that compliance with the direction would not unduly prejudice the discharge by the second authority of its functions, (b) without giving 14 days written notice of the proposed direction, and (c) without giving the relevant local authorities the opportunity to make written representations about the proposed direction. If written representations are received from the relevant local authority, the Secretary of State may modify or withdraw the direction based on those representations.

Justification of the delegation

121. The Department considers that it is appropriate for both the scheme and the direction under this clause to be delegated to the Secretary of State. The purpose of the scheme is set out on the face of the clause – to allow for functions of one local authority to become the functions of a second local authority in accordance with arrangements under clause 39. The clause further sets out specifically what the scheme must include – the local authorities to which it relates and, if the scheme does not relate to all relevant children who may be the subject to arrangements under clause 39, the category of children to which the scheme will apply. It would not be appropriate to set these matters out on the face of the Bill, and delegating them to the Secretary of State provides her with the flexibility necessary to respond to changing circumstances, for example specific issues in one local authority or with regard to one subset of relevant children in one local authority.

122. Similarly, the purpose of the direction under this clause is set out on the face of the clause. Additionally, the procedure for the direction to be issued is also described in detail in the clause, particularly in subsections (4) to (10). It is appropriate for the making of the direction to be delegated to the Secretary of State to allow her to respond flexibly to changing circumstances in different local authorities.

Justification of the level of Parliamentary scrutiny

123. It is not considered necessary for the scheme and the direction to be subject to specific parliamentary scrutiny. This is because the purposes behind both powers are clearly set out on the face of the clause and will themselves be the subject of parliamentary scrutiny. Parliament will have approved the principle of transfer of responsibility in clause 39, so further parliamentary scrutiny is not considered necessary for the application of such a transfer to individual authorities who do not voluntarily avail themselves of that clause. The detailed process for the imposition of the direction on individual authorities set out on the face of the Bill, including the ability for the affected authority to make written representations which the Secretary of State must take into account, further supports the argument that specific parliamentary scrutiny is not necessary.

Clause 43: Extension to Wales, Scotland and Northern Ireland

Power conferred on: *Secretary of State*
Power exercisable by: *Regulations made by statutory instrument*
Parliamentary procedure: *Affirmative*

124. This clause enables the Secretary of State to make regulations to extend any of the provisions made by clauses 39 to 42 to Wales, Scotland and Northern Ireland and to make provision with similar effect which applies in relation to those jurisdictions.

125. Subsection (3) allows provision to be made by those regulations to amend, repeal or revoke any enactment or confirming functions on any person. Such regulations may not confer functions on the Welsh or Scottish Ministers, or the Northern Ireland Ministers or Departments.

Effect of the provision

126. The enabling power will allow amendment to clauses 39 to 42 to extend their application to Wales, Scotland and Northern Ireland.

Justification of the delegation

127. The measures introduced by clauses 39 to 42 provide for (a) the transfer of responsibility from one local authority to another for relevant children, (b) for a direction by the Secretary of State to a local authority to provide relevant information, (c) for a direction by the Secretary of State to a local authority which refused to comply with the request from another local authority to transfer functions, and (d) for the Secretary of State to prepare a scheme to transfer functions from one local authority to another. Most of these provisions relate to functions under the Children Act 1989, which extends to England and Wales, although clauses 39 to 42 only apply to England.

128. In order to make these provisions effective in Wales, Scotland and Northern Ireland it will be necessary to make some detailed modifications of Welsh, Scottish and Northern Ireland legislation. This will require detailed input from the devolved administrations which might itself be consequential on the main clauses and Parliament's views on them. It is considered appropriate for this to be done in secondary legislation once the main clauses have been approved by Parliament.

129. A comparable power to extend provisions of the Immigration Act 2014 (the "2014 Act") concerning the referral and investigation of proposed marriages and civil partnerships to Wales, Scotland and Northern Ireland can be found at section 53 of the 2014 Act.

Justification of the level of Parliamentary scrutiny

130. We believe the affirmative procedure is appropriate in this case in order to allow Parliament to scrutinise adequately the extension of these provisions to other jurisdictions in the United Kingdom.

PART 6: BORDER SECURITY

Clause 44 and Schedule 10: new paragraph 26(2) of Schedule 2 to the 1971 Act: power to prescribe maximum level of penalty relating to airport control areas

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Negative*

131. Paragraph 26(2) of Schedule 2 to the 1971 Act enables the Secretary of State, by written notice to the owners or agents of a ship or aircraft, to designate a control area "for the embarkation or disembarkation of passengers in any port in the United Kingdom" specifying the "conditions and restrictions" to be observed in a control area. Where a control area is so designated to an owner or agent of a ship or aircraft, the same owner or agent shall take all reasonable steps to secure that passengers from their ship or aircraft "do not embark or disembark … at the port outside the control area and that any conditions or restrictions notified to them are observed."

132. Similarly, paragraph 26(3) of Schedule 2 to the 1971 Act provides that the Secretary of State may by written notice "to any persons concerned with the management of a port in the United Kingdom", designate a control area in a port and specify conditions and restrictions to be observed in that control area. Any person so designated is then under a duty to take all reasonable steps to ensure that any conditions or restrictions are observed.

133. Schedule 10 introduces a civil penalty regime for owners or agents of an aircraft or persons concerned with the management of an airport in the United Kingdom where they fail to take all reasonable steps to secure that the conditions or restrictions specified in the written notices served on them by the Secretary of State under paragraph 26(2) or (3) of Schedule 2 to the 1971 Act are observed.

Effect of the provision

134. Paragraph 1 of Schedule 10 inserts a new paragraph 28(6) of Schedule 2 to the 1971 Act which enables the Secretary of State to prescribe the maximum level of penalty that may be imposed for purposes of the civil penalty regime.

Justification of the delegation

135. This power has been taken as we do not wish to specify the maximum amount of the penalty in the legislation itself, as this would provide insufficient flexibility to amend the maximum amount of the penalty to respond to changing circumstances. There is precedent for the delegation of this type of power, for example in section 32(2A) of the 1999 Act.

136. It is the intention of the Home Office to consult affected parties on the level of penalty before prescribing the maximum level of penalty.

Justification of the level of Parliamentary scrutiny

137. The negative procedure is justified because the regulations will only prescribe the maximum level of penalty following consultation with relevant stakeholders, while the civil penalties regime itself is included in the Bill and will therefore be subject to scrutiny by both Houses. The negative procedure is also justified because it will allow the Secretary of State the requisite flexibility to amend the maximum level of penalty to respond to changing circumstances and the similar power to prescribe a maximum level of penalty in section 32(2A) of the 1999 Act is also subject to the negative procedure.

Clause 44 and paragraph Schedule 10: new paragraph 28A(1) of Schedule 2 to the 1971 Act: Duty to issue code of practice to be followed by (a) agents and operators of aircraft, and (b) persons concerned with management of airports in the United Kingdom to whom notices under paragraph 26(2) and (3) have been given

Clause 44 and Schedule 10: new paragraph 28A(3) of Schedule 2 to the 1971 Act: Duty to issue code of practice specifying matters to be considered in determining the amount of penalty under paragraph 28

Power conferred on:	*Secretary of State*
Power exercisable by:	*Statutory Code of Practice*
Parliamentary procedure:	*Laid only*

138. Schedule 10 inserts paragraph 28A(1) and (3) into Schedule 2 to the 1971 Act, which impose a duty on the Secretary of State to introduce two codes of practice relevant to the operation of the civil penalties regime. Paragraph 28A(1) concerns a code of practice to be followed by agents and operators of aircraft and persons concerned with the management of airports in the United Kingdom who have received notices under paragraph 26(2) or (3) of Schedule 2 to the 1971 Act, while paragraph 28A(3) concerns a code of practice specifying the matters that should be considered in determining the amount of penalty under the civil penalties regime.

139. It is the intention of the Home Office to consult affected parties on both codes of practice before finalising them and laying them before Parliament.

Effect of the provision

140. These powers require the Secretary of State to make codes of practice to provide guidance and certainty to parties affected by the civil penalties regime.

Justification of the delegation

141. The purposes of the codes and the use that must be made of them by the Secretary of State and affected parties (agents and operators of aircraft and persons concerned with the management of airports in the United Kingdom who have received notices under paragraph 26(2) or (3) of Schedule 2 to the 1971 Act) are set out on the face of the Bill. However, it is appropriate for the detailed content of the codes to be delegated to the Secretary of State as they will include provisions specific to the layouts of different airports and operating procedures of carriers within different airports. It is also appropriate that the Secretary of State has the flexibility to make and amend these codes of practice as the layout of each airport and the operating procedures of each carrier will vary over time and it is therefore important that the codes can be altered quickly in response to new operating practices or airport layouts. There is precedent for the delegation of this type of power, for example in the codes of practice under sections 32A and 33 of the 1999 Act.

Justification of the level of Parliamentary scrutiny

142. The codes are not subject to any parliamentary procedure on the basis that the operation of the civil penalties regime and the use that must be made of the codes are set out on the face of the Bill. The codes will however be laid before Parliament in draft and any codes (including revised codes) will be brought into force by regulations subject to parliamentary scrutiny (see below). This procedure will ensure that Parliament is fully informed of the use of the powers as, in practice, the codes will be laid at the same time as the regulations bringing them into force. The codes of practice under sections 32A and 33 of the 1999 Act are subject to the same process.

Clause 44 introducing Schedule 10: new paragraph 28A(6) of Schedule 2 to the 1971 Act: Power to make regulations bringing codes of practice into force

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Negative*

143. Schedule 10 inserts paragraph 28A(6) into Schedule 2 to the 1971 Act, which requires codes of practice issued under paragraph 28A to come into force in accordance with provisions made by regulations made by the Secretary of State. By virtue of paragraph 28A(8) this provision also applies to revised codes made under paragraph 28A.

Effect of the provision

144. Regulations made under paragraph 28A(6) bring into force codes of practice that the Secretary of State is required to issue under paragraph 28A.

Justification of the delegation

145. It is appropriate for the timing of the entry into force of the codes to be delegated to the Secretary of State, as this will enable the Secretary of State to engage with affected stakeholders. There is precedent for the delegation of such powers to bring codes of practice into force, for example in sections 32A(4) and 33(4) of the 1999 Act.

Justification of the level of Parliamentary scrutiny

146. The regulations are subject to the negative procedure. The regulations relate to the coming into force of the codes of practice and this issue is left to delegated legislation in order to enable flexibility in relation to revised codes: it is not considered a matter for which parliamentary scrutiny by affirmative resolution is necessary. The analogous statutory instruments bringing codes of practice into force in sections 32A(4) and 33(4) of the 1999 Act are also subject to the negative procedure.

Clause 44 introducing Schedule 10: new paragraph 28F of Schedule 2 to the 1971 Act: Powers to make regulations concerning service of documents

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Negative*

147. Schedule 10 inserts paragraph 28F into Schedule 2 to the 1971 Act, which sets out methods for service of documents on persons outside the United Kingdom for purposes of the civil penalties regime under paragraph 28.

Effect of the provision

148. Regulations made under paragraph 28F(1)(e) may prescribe additional methods of service, and regulations made under paragraph 28F(2) permit the Secretary of State to provide that documents issued or served under paragraph 28F(1) are to be considered to have been received at a specified time.

Justification of the delegation

149. These powers relate to the detail of service of documents on persons outside the United Kingdom and it is appropriate to delegate these details to the Secretary of State, as is the case in similar provisions, for example section 35(12) and (13) of the 1999 Act.

Justification of the level of Parliamentary scrutiny

150. The regulations are subject to the negative procedure. The regulations relate to the detail of the service of documents and are appropriately left to delegated legislation in order to enable flexibility: it is not considered a matter for which parliamentary scrutiny by affirmative resolution is necessary. The analogous powers in section 35(12) and (13) of the 1999 Act are also subject to the negative procedure.

PART 7: LANGUAGE REQUIREMENTS FOR PUBLIC SERVICE WORKERS

Clause 48: Meaning of public authority

Power conferred on:	*Secretary of State or the Chancellor of the Duchy of Lancaster*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Affirmative*

151. This provision defines what is meant by public authority. Subsection (5) sets out those bodies which are not to be regarded as a public authority. (Currently subsection (5) refers to the Security Service, Secret Intelligence Service and the Government Communications Headquarters). Subsection (6) provides that the relevant Minister, which can be the Secretary of State or the Chancellor of the Duchy of Lancaster, may amend subsection (5) so as to add or remove a reference to a person or description of person with functions of a public nature.

Effect of the provision

152. The effect of the provision is to allow the Secretary of State to carve out further public bodies from the scope of this Part of the Bill.

Justification of the delegation

153. It is important that the Government has the ability to anticipate requirements in the future to add further public bodies which it does not wish to be in scope for this Part of the Bill.

Justification of the level of Parliamentary scrutiny

154. The affirmative procedure is considered to provide the correct level of parliamentary scrutiny, as this is a power to amend primary legislation. This will enable the regulations on the exclusion of further public bodies from this Part of the Bill to be fully debated.

Clause 49(1): Power to expand meaning of persons working for public authority

Power conferred on:	*Secretary of State or the Chancellor of the Duchy of Lancaster*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Affirmative*

155. Clause 49 provides that the relevant Minister may by regulations amend clause 47 with the effect that a person who works for a contractor of a public authority is regarded as a person who works for the authority for the purposes of this Part. Consultation will take place prior to any regulations being introduced.

Effect of the provision

156. This provision will enable the relevant Minister to extend a public authority's duty to ensure that all workers in a customer-facing role speak fluent English to those workers providing contracted out public services.

Justification of the delegation

157. As extending this duty to cover workers providing contracted out services will impact on existing contracts and be subject to consultation with key stakeholders delegation will allow public authorities time to consult and prepare for the changes. The consultation will inform the contents of the regulations and any code issued under clause 50. Any code will contain a level of detail which it would not be appropriate to include on the face of the Bill. Furthermore, having this provision contained in regulations will allow for flexibility to adapt them in the future to take account of the practical experience of the implementation of the provision.

Justification of the level of Parliamentary scrutiny

158. The affirmative procedure is considered to provide the correct level of parliamentary scrutiny for the extension of this duty, as it involves the amendment of primary legislation. This will enable the provisions on how this duty interacts with existing contracts and what a public authority's obligations are in relation to enforcement to be fully debated.

Clause 50: duty to issue and bring into force codes of practice

Power conferred on:	*Secretary of State or the Chancellor of the Duchy of Lancaster*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Negative*

159. Clause 50(1) requires the relevant Minister, which can be the Secretary of State or the Chancellor of the Duchy of Lancaster, to issue a code or codes of practice. The code(s) must include provision about the standard of spoken English to be met by a person working for a public authority, the action to be taken by a public authority where such a person does not meet that standard, the complaints procedure that should be in place to deal with any complaints that the duty has been breached and how the public authority is to comply with its other duties as well as complying with its duty to ensure that all workers in a customer-facing role speak fluent English. Codes may be issued for different public authorities or descriptions of public authorities. The draft code(s) must be laid before Parliament and then may be brought into operation by regulations made by statutory instrument under clause 51(3).

Effect of the provision

160. The effect of the provision is to require a code or codes to be issued. Some matters required to be addressed in the code(s) are set out in the face of the Bill at clause 50(2).

Justification of the delegation

161. The code(s) of practice will contain practical advice on how public authorities can comply with the duty to ensure that each person who works for the public authority in a customer-facing role speaks fluent English. It is not appropriate to provide for this level of detail on the face of the Bill. The Bill does set out at clause 50 some provisions that must be included. There will be consultation on what the code(s) of practice should cover which will inform any additional matters to be included in the code(s). Further providing for these

details to be contained in a code of practice allows greater flexibility for future changes to be made if it is thought appropriate that further provision is required to take account of the practical experience of the implementation of the provision.

Justification of the level of Parliamentary scrutiny

162. As provisions which the code of practice will cover are on the face of the Bill and will be subject to parliamentary scrutiny it is considered that the negative resolution procedure will provide the appropriate level of parliamentary scrutiny for the power to bring a code into force.

PART 8: FEES

Clause 55 – Immigration skills charge

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument, with the consent of HM Treasury*
Parliamentary procedure:	*Affirmative resolution*

163. Clause 55 inserts a new section 70A into the 2014 Act. Subsection (1) of new section 70A provides that the Secretary of State may, by regulations, provide for a charge to be imposed on persons who make immigration skills arrangements. An immigration skills arrangement is an arrangement made by a sponsor employer with the Secretary of State a view to securing entry clearance, leave to remain or authorisation to work in the United Kingdom for a non-exempt national as defined in subsection (6).

164. Subsection (3) of new section 70A provides that the regulations may impose a separate charge on a sponsor in respect of each worker they sponsor. They may make provision determining the amount of the charge, about when or how the charge may or must be paid to the Secretary of State and about the consequences of non-payment of the charge. Subsection (3) of new section 70A also enables the Secretary of State to provide for exemptions from the charge, and for reduction, waiver or refund of the charge, including by conferring a discretion.

165. Under subsection (4) of new section 70A sums paid under this section must be paid into the Consolidated Fund or applied in such other way as the order may specify. In addition, by virtue of subsection (5) of new section 70A any regulations under this Clause must be made with the consent of the Treasury.

Effect of the provision

166. The provision allows the Secretary of State to impose, by regulations, a charge on sponsors making immigration skills arrangements.

Justification of the delegation

167. The full scheme for administering the charge will necessarily be detailed, encompassing, for example, the precise scope of persons on whom the charge will fall,

charge levels, exceptions, and details of payment procedures. It is not considered appropriate to include all of this detail on the face of the Bill.

168. In addition, and importantly, the regulation-making power provides the government with the flexibility it requires to make adjustments to the scheme as appropriate from time to time. It will be important, for example, that the scope of those on whom the charge falls, charge levels, exceptions and payment procedures can be set and adjusted as appropriate in response to a variety of relevant factors (for example, fluctuations in migration flows, and changes to the costs associated with recruitment of workers) and in light of experience as to how the charge is operating.

Justification of the level of Parliamentary scrutiny

169. The regulations are subject to the affirmative procedure. It is appropriate that Parliament has the opportunity to scrutinise and debate the regulations given that they will impose a charge which could have a significant impact on certain companies and sectors and will contain a substantial amount of detail over which the government is properly afforded a great deal of flexibility.

Clauses 51, 52 and 53: Passport fees regulations

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Affirmative or Negative*

170. Passport fees are currently set in Consular Fees Orders made under the Consular Fees Act 1980. Consular Fees Orders are made by Order in Council and include fees charged by the Foreign and Commonwealth Office in relation to consular services abroad as well as passport fees. In the past immigration fees were also charged under this provision but they are now set under dedicated immigration fee legislation.

171. It is now proposed to enact dedicated passport fee legislation in order to provide more flexibility to Her Majesty's Passport Office (HMPO) in the way that it sets fees. HMPO provides services in relation to passport validation and a range of different products and services for which they wish to charge differing fees. They also wish to be able to reflect the full costs of their overall services in their fees on a cost-recovery basis. It is also felt more appropriate for fees regulations to be subject to scrutiny in Parliament by way of the affirmative procedure when specifying the functions for which a fee may be charged rather than in the Privy Council in line with the practice for immigration fees. This will increase transparency and provide HMPO with more options to provide and charge for discretionary services in addition to its core service of issuing passports.

Effect of the provisions

172. The provisions will provide a new legal mechanism for the setting of passport and other HMPO fees. These will now be set in dedicated passport fees regulations.

Clause 51

173. Subsection (1) provides the Secretary of State with a power to charge fees for the exercise of functions in connection with issuing passports or other travel documents.

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

175. Subsection (4) provides that the fee charged may exceed the cost of exercising the function, subsection (5) lists the functions that can be considered by the Secretary of State when fixing a fee and subsection (6) enables the regulations to provide for exceptions and the reduction, waiver or refund of part of all of a fee, including by conferring a discretion or otherwise. This enables the regulations, and the person to whom the fee is payable, to respond where requiring payment of the fee would be unduly harsh or otherwise inappropriate. Subsection (6) also enables the Secretary of State to make provision about the failure to pay a fee, time limits for payment and enforcement.

176. Subsections (7) and (8) provide definitions and clarification of terms used in this section.

Clause 52

177. Subsections (1), (2) and (3) provide that passport fees regulations can only be made with the consent of the Treasury (subsection (1)), may relate to functions exercised outside the UK (subsection (2)) and that fees payable may be recovered as a debt due to the Secretary of State (subsection (3)).

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

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

Clause 53

180. Subsection (1) allows the Secretary of State to charge a fee for the provision of a validation service, which is defined in subsection (2) as confirming the validity of passports or the accuracy of the information in them.

181. Subsection (3) defines "United Kingdom passport" and subsection (4) provides that any fee payable may be recovered as a debt due to the Secretary of State.

182. Subsection (5) provides that fees paid under this provision must be paid into the Consolidated Fund or be applied in such other way as is specified in fees regulations.

183. Subsection (6) provides that regulations under subsection (5) may only be made with the consent of the Treasury, and subsection (7) provides that this power, like that in Clause 48, is without prejudice to existing powers to charge fees.

Justification of the delegation

184. The provision of passport services is a business that fluctuates enormously depending on the economic climate and other factors. HMPO operates within Treasury rules and attempts to ensure that the level of fees is such as to allow full cost-recovery without its income exceeding its costs. It is therefore usual for the fees to be set on an annual basis by way of secondary legislation. It would be unduly cumbersome and not a good use of parliamentary time to require these fees to be set in primary legislation.

Justification of the level of Parliamentary scrutiny

185. Currently passport fees are set in orders made by way of Order in Council made under the Consular Fees Act 1980. The level at which the passport fee is set and the fees charged for the range of services provided by HMPO is a matter of interest to Parliament and it is therefore felt that the affirmative resolution procedure is the most appropriate to allow for full debate and consideration by Parliament of the functions for which a fee may be charged. Where regulations under these provisions merely set the level of the charge for a function already approved by Parliament, in accordance with the requirements of this legislation, then the negative resolution procedure is more appropriate. No fees regulations may be made without the consent of the Treasury.

Clause 59 and paragraph 1 of Schedule 12: registration etc of marriages: fees

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Negative*

186. Fees associated with marriage have to date been included in the Marriage Act 1949 ("the 1949 Act") itself, and amended by order under section 5 of the Public Expenditure and Receipts Act 1968. As the 1949 Act has been amended over time, further powers to set fees in secondary legislation have been added (sections 31(5F), 43D(1), 46A, 51(1A), and 65A), all of which are subject to the negative procedure. This paragraph creates a more modern, flexible power enabling the Secretary of State to set fees in regulations for a wider range of services provided in connection with marriages.

Effect of the provision

187. This paragraph inserts a new section 71A into the 1949 Act. Subsections (1) and (2) of new section 71A empower the Secretary of State to set fees for existing fee-bearing marriage services as well as for services that have to date been provided free of charge (such as corrections to register entries, or the verification of overseas divorce documents). In addition, the power may be used to set fees for services under the Marriage (Registrar General's Licence) Act 1970 ("the 1970 Act"), which provides an alternative procedure for marriage involving a person who is seriously ill and not expected to recover. To date, fees under the 1970 Act have been set in the primary legislation with no means of amendment, and are consequently well below cost recovery levels. Section 71A(1)(j) enables fees to be set for other services provided in connection with marriages by or on behalf of the Registrar General, superintendent registrars and registrars, such as fees in connection with corrections to marriage register entries, or for the issue of certified copies of entries in the Gender

Recognition Marriage Register (see paragraph 11A of Schedule 3 to the Gender Recognition Act 2004 and SI 2015/50).

188. Subsections (3) and (4) enable the Registrar General to recover costs of his contribution to products and services provided by superintendent registrars and registrars, via fees payable to those persons. For example, the Registrar General provides blank certificate stock for use in providing marriage certificates; and provides casework assistance in connection with certain types of corrections to register entries. The regulations may require a specified amount of the fee payable to superintendent registrars or registrars to be passed on to the Registrar General on a quarterly or annual basis.

189. Subsection (5) enables the regulations to provide for the reimbursement, reduction, waiver or refund of part of all of a fee, including by conferring a discretion or otherwise. This enables the regulations, and the person to whom the fee is payable, to respond where requiring payment of the fee would be unduly harsh or otherwise inappropriate. The power to provide for "reimbursement" is included here (but not in the equivalent amendments to other enactments) to enable the regulations to make provision akin to section 57(4) of the Marriage Act 1949 (which requires the local authority to reimburse superintendent registrars for the payments they must make to persons making quarterly returns of marriages registered by them).

190. Subsections (6) to (8) make supplementary provision which mirrors the provision made in section 39A of the Births and Deaths Registration Act 1953.

Justification of the delegation

191. It is not considered appropriate for fees to be set in primary legislation because of the relatively frequent need for their amendment. The delegation of fee setting enables the amount of the fees to be varied, and also enables fees to be charged for a wider, and more flexible range of services. This will enable the Registrar General to respond more flexibly to demand, and will also assist the registration service to recover a greater proportion of costs from fees, reducing the reliance on central and local government funding. All fees will be set in accordance with HM Treasury rules.

Justification of the level of Parliamentary scrutiny

192. Existing powers to set fees in connection with marriages (section 5 of the Public Expenditure and Receipts Act 1968; sections 31(5F), 43D(1), 46A, 51(1A) and 65A of the 1949 Act), are subject to the negative resolution procedure. In addition, associated civil registration fees are also set under powers subject to negative resolution. These include fees under sections 33A(1)(b) and 34A(2) of the Births and Deaths Registration 1953 Act; section 34 of the Civil Partnership Act 2004; and section 9 of the Marriage (Same Sex Couples) Act 2013 (all of which are also amended in this Bill). All civil registration fees are amended where possible in a single instrument for reasons of transparency and efficiency, and it is therefore desirable that they all be subject to the same parliamentary procedure.

Paragraph 2 of Schedule 12: Registration of births and deaths: fees

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Negative*

193. To date, fees for services connected with the registration of births and deaths have been included on the face of the primary legislation (the Births and Deaths Registration Act 1953, ("the 1953 Act")) and amended by order under section 5 of the Public Expenditure and Receipts Act 1968. The existing arrangements are inflexible and outdated, restricting the products and services for which fees can be charged. This provision creates a modern and flexible power enabling the Secretary of State to set fees in regulations for a wider range of services provided in connection with birth and death registrations.

Effect of the provision

194. This clause inserts a new section 38A into the 1953 Act, and will enable the Minister (defined in section 41 of the 1953 Act as the Secretary of State) to set fees in respect of those services for which fees are currently payable, as well as fees for services which have to date been provided free of charge, such as corrections to certain birth and death register entries. The initial registration of births and deaths will continue to be free of charge (see sections 5 and 20 of the 1953 Act). Subsection (1)(e) enables fees to be prescribed in respect of birth or death registration services carried out by or on behalf of the Registrar General, superintendent registrars, registrars ("registration officials") or by any other person (a variety of people have functions in connection with the registration of births and deaths (persons performing rites of baptism, or effecting the disposal of bodies[1], for example) and it is sensible for the power to be sufficiently broad to encompass those functions although there are no immediate plans to prescribe fees other than for services carried out by registration officials).

195. Subsections (3) and (4) apply where the regulations provide for a fee to be payable to a superintendent registrar or registrar. In those cases, the regulations may require the superintendent registrar or registrar to pay a specified part of the fee (on a quarterly or annual basis) to the Registrar General in prescribed circumstances. This power will be used to ensure that the Registrar General's contribution to the cost of a product or service can be recovered even where the fee is payable to the superintendent registrar or registrar.

196. Subsection (5) enables the regulations to provide for the reduction, waiver or refund of fees, including by conferring a discretion or otherwise. This enables the regulations, and the person to whom the fee is payable, to respond where requiring payment of the fee would be unduly harsh or otherwise inappropriate.

197. Paragraph 30 of Schedule 12 adds regulations made under the new section 38A to the list of statutory instruments in section 39A of the 1953 Act that must be made by the Minister and are subject to the negative resolution procedure. Section 39A(1)(c) is amended to enable consequential provision to be made, as there may be consequential changes to regulations required that have not yet been identified. The requirement in section 39A(2) for consultation with the Registrar General is disapplied in respect of regulations under new section 38A, for reasons of consistency with existing civil registration fee setting powers (under the Marriage Act 1949 and as set out below).

[1] See section 3 of the Births and Deaths Registration Act 1926

Justification of the delegation

198. It is not considered appropriate for fees to be set in primary legislation because of the relatively frequent need for their amendment. The delegation of fee setting enables the amount of the fees to be varied, and also enables fees to be charged for a wider, and more flexible range of services. This will enable the Registrar General to respond more flexibly to demand, and will also assist the registration service to recover a greater proportion of costs from fees, reducing the reliance on central and local government funding. All fees will be set in accordance with HM Treasury rules.

Justification of the level of parliamentary scrutiny

199. Existing powers to set fees in connection with the registration of births and deaths (section 5 of the Public Expenditure and Receipts Act 1968; sections 33A(1)(b) and 34A(2) of the 1953 Act) are subject to the negative resolution procedure. In addition, associated civil registration fees are also set under powers subject to negative resolution. These include fees under the Marriage Act 1949 (sections 31(5F), 43D(1), 46A, 51(1A), and 65A); section 34 Civil Partnership Act 2004; and section 9 Marriage (Same Sex Couples) Act 2013 (all of which are also amended in this Bill). All civil registration fees are usually amended in a single instrument for reasons of transparency and efficiency, and it is therefore desirable that they all be subject to the same parliamentary procedure.

Paragraph 3 of Schedule 12: Fees in respect of provision of copies of records etc

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Negative*

200. The Registration Service Act 1953 details the structure of the registration service and establishes the office of the Registrar General as the General Register Office (GRO). Paragraph 3 inserts a new section 19B into that Act enabling the Minister (defined in section 21(1) of that Act as the Secretary of State) to set fees for the provision by the Registrar General of copies of records or other information held by him.

Effect of the provision

201. This provision enables fees to be set for the provision of copies of records or other information held by him, irrespective of the enactment under which the information or records are held. The Registrar General is responsible for holding records under a complex web of enactments, some of which are archaic and many of which contain quite specific interlinking fee provision. This power is to be used to prescribe a fee for providing copies of records where no other fee is specified, so that the Registrar General remains able to recover the costs of this basic function in the absence of any other power. The power may also be used to prescribe fees that apply across a number of different enactments. For example, the Registrar General expects in the next few years to be required by an EU regulation on the acceptance of public documents to issue multi-lingual forms of many of the certified copies currently issued, and this power could be used to prescribe a single fee for a multi-lingual form irrespective of whether it related to an entry in a register of births, deaths, adoptions, parental orders, presumed deaths, gender recognition and so on.

Justification of the delegation

202. It is not considered appropriate for fees to be set in primary legislation because of the relatively frequent need for their amendment. All fees will be set in accordance with HM Treasury rules.

Justification of the level of Parliamentary scrutiny

203. Existing powers to set fees for civil registration functions are subject to the negative resolution procedure (as set out above in relation to births, deaths and marriages, and below in relation to civil partnerships and conversions). This power is narrowly drawn and enables fees to be set only for the provision of copies or other records of any information held by the Registrar General. It is not considered necessary to have a full parliamentary debate in both Houses on the amount of such fees.

Paragraph 4 of Schedule 12: Civil partnerships: fees

Power conferred on:	*Secretary of State*
Power exercisable by:	*Order made by statutory instrument*
Parliamentary procedure:	*Negative*

204. Section 34 of the Civil Partnership Act 2004 ("the 2004 Act") already contains a broad and flexible power for the Secretary of State to set fees for services provided in connection with civil partnerships, subject to the negative resolution procedure (section 36(5)). This clause amends section 34 to match the provision made for births, deaths and marriages in paragraphs 1 and 2 of Schedule 12.

Effect of the provision

205. Services provided in connection with the registration of civil partnerships are carried out by the Registrar General and by registration authorities (local authorities – section 28 of the 2004 Act) and civil partnership registrars (section 29).

206. Subsections (2) and (3) amend section 34 of the 2004 Act, inserting a new subsection (1A) so that fees may be either specified in the instrument or determined in accordance with it, giving greater flexibility and for consistency with the provision made for births, deaths and marriages.

207. As for births, deaths and marriages, new subsections (1B) and (1C) of section 34 enable the Registrar General to recover costs of his contribution to products and services provided by registration authorities, via fees payable to them. The order may require a specified amount of the fee payable to be passed on to the Registrar General (on a quarterly or annual basis).

208. New subsection (2) of section 34 enables the order to provide for the reduction, waiver or refund of part of all of a fee, including by conferring a discretion or otherwise. This enables the order, and the person to whom the fee is payable, to respond where requiring payment of the fee would be unduly harsh or otherwise inappropriate. The existing section 34(2) which enables the Registrar General to remit the fee for his licence (issued where one

party is seriously ill and not expected to recover) on grounds of hardship is omitted since provision of that nature may now be made in an order made under section 34.

Justification of the delegation

209. The 2004 Act already contains delegated fee-setting provision, enabling fees to be set for a broad range of services provided in connection with civil partnership. The additional provision made in this clause (provision for recovery of the Registrar General's costs via fees paid to registration authorities and civil partnership registrars), will assist the Registrar General to recover a greater proportion of costs from fees, reducing the reliance on central government funding. These elements cannot sensibly be included in primary legislation because of the need frequently to amend the amounts of the fees. All fees will be set in accordance with HM Treasury rules.

Justification of the level of parliamentary scrutiny

210. Existing powers to set fees in connection with civil partnerships are subject to the negative resolution procedure (see sections 34 and 36(5) of the 2004 Act). In addition, associated civil registration fees are also set under powers subject to negative resolution. These include fees amended under section 5 of the Public Expenditure and Receipts Act 1968; sections 33A(1)(b) and 34A(2) of the Births and Deaths Registration 1953 Act; fees under the Marriage Act 1949 (sections 31(5F), 43D(1), 46A, 51(1A) and 65A); and section 9 Marriage (Same Sex Couples) Act 2013 (all of which are also amended in this Bill). All civil registration fees are amended where possible in a single instrument for reasons of transparency and efficiency, and it is therefore desirable that they all be subject to the same parliamentary procedure.

Paragraph 5 of Schedule 12: Conversion of civil partnership into marriage: fees

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Negative*

211. Section 9 of the Marriage (Same Sex Couples) Act 2013 ("the 2013 Act") already contains a broad and flexible power for the Secretary of State to set fees for functions in connection with the conversion of civil partnerships into marriages, subject to the negative resolution procedure. This paragraph amends section 9 to match the provision made for births, deaths, marriages and civil partnerships in paragraphs 1, 3 and 4 of this Schedule.

Effect of the provision

212. As for births, deaths, marriages and civil partnerships, subsections (5A) and (5B) enable the Registrar General to recover costs of his contribution to products and services provided by superintendent registrars and registrars, via fees payable to those persons. The regulations may require a specified amount of the fee payable to be passed on to the Registrar General on a quarterly or annual basis.

213. Subsection (5C) enables the regulations to provide for the reduction, waiver or refund of part of all of a fee, including by conferring a discretion or otherwise. This enables the

regulations, and the person to whom the fee is payable, to respond where requiring payment of the fee would be unduly harsh or otherwise inappropriate.

Justification of the delegation

214. Section 9 of the 2013 Act already contains delegated fee setting provision, enabling fees to be set for a broad range of functions provided in connection with conversions of civil partnerships into marriages. The additional provision made in this clause (provision for recovery of costs via fees paid to superintendent registrars and registrars), will assist the Registrar General to recover a greater proportion of costs from fees, reducing the reliance on central government funding. These elements cannot sensibly be included in primary legislation because of the need frequently to amend the amounts of the fees. All fees will be set in accordance with HM Treasury rules.

Justification of the level of parliamentary scrutiny

215. Existing powers to set fees in connection with conversions of civil partnerships into marriage are subject to the negative resolution procedure (section 18(2)(b) and (c), the first regulations under section 9 having been made in S.I. 2014/3181). In addition, associated civil registration fees are also set under powers subject to negative resolution. These include fees amended under section 5 Public Expenditure and Receipts Act 1968; sections 33A(1)(b) and 34A(2) of the Births and Deaths Registration 1953 Act; fees under the Marriage Act 1949 (sections 31(5F), 43D(1), 46A, 51(1A) and 65A); and section 34 Civil Partnership Act 2004 (all of which are also amended in this Bill). All civil registration fees are amended where possible in a single instrument for reasons of transparency and efficiency, and it is therefore desirable that they all be subject to the same parliamentary procedure.

Paragraph 6 of Schedule 12: Places of Worship Registration Act 1855

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Negative*

216. This paragraph substitutes section 5 of the Places of Worship Registration Act 1855 with a new fee setting power. To date, fees for the certification of places of religious worship (an essential pre-requisite to registration of a building for the solemnisation of marriage under sections 41 or 43A of the Marriage Act 1949) have been included on the face of the primary legislation and amended by order under the Public Expenditure and Receipts Act 1968. Although the Registrar General is solely responsible for determining whether a place may be certified under the 1855 Act, the Registrar General has no means of recovering these costs, because the whole fee is payable to the superintendent registrar.

217. Subsections (1) and (2) enable fees to be prescribed for the certification to the Registrar General of a place of meeting for religious worship. Subsections (3) and (4) enable the regulations to provide for part of the fee, where payable to the superintendent registrar, to be paid to the Registrar General. This is intended to ensure that the Registrar General can recover the costs of certifying places of worship via fees payable to superintendent registrars. Subsection (5) enables the regulations to provide for the reduction, waiver or refund of part or all of the fee whether by conferring a discretion or otherwise, to enable the regulations, and the person to whom the fee is payable, to respond in appropriate circumstances. Subsection

(7) mirrors the provision made in respect of other civil registration fee-setting powers to ensure that the regulations have flexibility.

Justification of the delegation

218. It is not considered appropriate for fees to be set in primary legislation because of the relatively frequent need for their amendment. All fees will be set in accordance with HM Treasury rules.

Justification of the level of parliamentary scrutiny

219. This power is narrowly circumscribed and enables fees to be set only in respect of the certification to the Registrar General of places of religious worship. It is not considered necessary to have a full debate in both Houses on the amount of such fees.

PART 9: FINAL PROVISIONS

Clause 61(1): Power to make transitional, transitory or saving provision

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*None*

220. Clause 61(1) confers power on the Secretary of State to make transitional, transitory or savings provisions the Secretary of State considers appropriate in connection with the coming into force of the Act. This is a relatively common power to enable the changes made by the Bill to be implemented in an orderly manner. Such powers are often included as part of the power to make commencement orders (for example, section 116 of the Protection of Freedoms Act 2012 and section 73(1) of the 2014 Act) and, as such, are not subject to any parliamentary procedure on the grounds that Parliament has already approved the principle of the provisions in the Bill by enacting them. Although drafted as a free standing power on this occasion, the same principle applies and accordingly the power is not subject to any parliamentary procedure. Both this power and that in clause 61(2) are limited by definition to the matters in the Bill itself and the implementation of that Bill once it becomes an Act of Parliament. As such, from a devolution perspective these powers do not reach beyond the reserved purpose and content of the Bill.

Clause 61(2) - Power to make consequential provision

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*Negative resolution unless the statutory instrument amends or repeals primary legislation in which case affirmative resolution*

221. Clause 61(2) confers a power on the Secretary of State to make such consequential provision as considered appropriate for the purposes of the Bill. The powers conferred by this clause are wide. But there are various precedents for such provisions including section 115 of the Protection of Freedoms Act 2012, section 59 of the Crime and Courts Act 2013 and

section 73(2) of the 2014 Act. It is considered that as the Bill contains far-reaching changes to immigration law it would be prudent for the Bill to contain a power to deal with consequential provisions by secondary legislation. Regulations under clause 61(2) will normally be subject to the negative resolution procedure. However, the affirmative procedure is required if such regulations amend or repeal primary legislation. It is considered that this provides the appropriate level of parliamentary scrutiny for this power.

Clause 63 - Commencement power

Power conferred on:	*Secretary of State*
Power exercisable by:	*Regulations made by statutory instrument*
Parliamentary procedure:	*None*

222. Clause 63(1) contains a standard power for the Secretary of State to bring provisions of the Bill into force by commencement regulations. As is usual with commencement powers, regulations made under this clause are not subject to any parliamentary procedure. Parliament has approved the principle of the provisions to be commenced by enacting them; commencement by regulations enables the provisions to be brought into force at a convenient time.

Clause 64(4) – Extension to Channel Islands or Isle of Man

Power conferred on:	*Her Majesty*
Power exercisable by:	*Order in Council*
Parliamentary procedure:	*None*

223. Clause 64(4) permits Her Majesty by Order in Council to extend any of the provisions of the Bill to the Channel Islands or the Isle of Man, with or without modification. Similar provision is found in other immigration legislation, for example, section 57 of the Borders, Citizenship and Immigration Act 2009 and section 76(6) of the 2014 Act.

Home Office
1 December 2015